



Study to Support an Impact Assessment on Options for Combatting Illicit Firearms Trafficking in the European Union

Final Report



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Study to Support an Impact Assessment on Options for Combatting Illicit Firearms Trafficking in the European Union

Final Report

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Executive Summary

Below we provide a summary of the main findings and conclusions of the assignment for DG Home 'Study to Support an Impact Assessment on Options for Combatting Illicit Arms Trafficking in the European Union'. The assignment was carried out by the Centre for Strategy & Evaluation Services (CSES) in the first half of 2014.

1. Résumé – Study objectives and methodology

The purpose of the study was to:

- Analyse the current legal framework in all Member States including the definitions of specific offences relating to firearms trafficking, the sanctions, the liability of legal and natural persons and the notions of intent, negligence and aggravating or mitigating circumstances;
- Analyse the implementation of the above-mentioned offences in practice and identify possible obstacles in police and judicial cooperation due to the existence of different legal systems;
- Make recommendations as to the advisability of the approximation of certain offences and sanctions and suggest specific provisions if appropriate.

The purpose of this study was to provide DG Home with information required for the Impact Assessment to determine the most appropriate policy option within the context of possible changes to the 2008 Directive.

The research involved desk research to examine legal frameworks and other information, a survey of key stakeholders, an interview programme, and three workshops covering the Benelux countries, Baltic States and the Western Balkans, Austria and Hungary, which were attended by representatives from a total of 11 Member States.

2. Main Conclusions

The study's main findings and conclusions are summarised below under three sub-headings - the problem of illicit firearms trafficking, existing legal frameworks to combat illicit arms trafficking, and policy objectives and evaluation of policy options.

2.1 The problem of illicit firearms trafficking

Overall, the research confirms that Europe faces a serious illicit firearms trafficking problem. This is a problem in its own right but also as an important factor contributing to other criminal activities such as drugs smuggling and human trafficking as well as terrorist-related activities that threaten the security of EU Member States and their citizens. Trafficked firearms also contributes to increased lethality of criminal violence by adding to firearms availability.

The nature and scale of illicit firearms trafficking in the EU is difficult to assess given the hidden nature of the problem. Two approaches could be used – a broad indicator based on the number of unregistered firearms and a narrower measure based on firearms seizures – but they give widely differing estimates (there are 67 million unregistered firearms in the EU or 79% of the 81 million total licit and illicit firearms; seizures are estimated to account for around 1% or 81,000 of the total). The first of these approaches is likely to be very much an overestimate of the quantity of illicit firearms whilst the second calculation is almost certainly an underestimate. Informed estimates by national enforcement authorities or other institutions using various other methodologies are illuminating but also unreliable. The conclusion is that the illicit firearms trafficking cannot be estimated precisely and

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only quantified in terms of a broad range. Notwithstanding the methodological complications in measuring the phenomenon, most of the literature suggests however that illicit arms trafficking takes place on a considerable scale.

In many respects, the scale of the illicit firearms trafficking problem is usefully measured by the number of firearms-related homicides. It is estimated that illicit firearms trafficking has been directly responsible for at least 10,000 firearms-related deaths in EU Member States over the past decade. Some other estimates (e.g. by the UNODC) put the deaths at a higher level than this (around 1,200 p.a.). Availability of firearms during violent incidents tends to substantially increase the lethality of injuries. In addition to murders committed by individuals, illegally-held firearms are often used by organised crime groups to coerce and to intimidate their victims. Moreover, the use of illicit firearms in organised crime activities such as drug trafficking, prostitution, and money laundering leads to further deaths (e.g. from drugs use). Terrorists and extremists have also used illicit firearms to carry out attacks. Overall, the use of firearms is a significant destabilising factor in European societies.

In terms of the drivers of illicit firearms trafficking, three main types of players can be identified on the demand and supply sides of the problem. On the demand-side, the illicit firearms end users of most concern are criminal or terrorist individuals and groups that procure firearms illegally to use in the pursuit of their goals. Secondly, traffickers and other intermediaries are involved in the actual trafficking of firearms either for profit or other reasons (e.g. being linked to a criminal conspiracy). Lastly, on the supply-side, suppliers are individuals and organisations that provide a source of illicit firearms (either intentionally or unintentionally) who are again likely to be motivated by financial considerations, at least where the act of supplying illicit weapons is intentional.

The main sources of illegal weapons in the EU are the reactivation of neutralised weapons, burglaries and thefts, embezzlement of legal arms, legal arms diverted to the illegal market, firearms retired from service by army or police, and the conversion of gas pistols. Most illicit firearms originate from cross-border trafficking, often from outside the EU. Since the early 1990s, the firearms illicitly trafficked have originated from three main sources that have replaced each other: first of all the former Soviet Union and Warsaw Pact bloc were a source of illicit firearms due to the fall of the iron curtain; then, during the wars of Yugoslav succession, the Western Balkans became an important source of illicit firearms; and more recently, North Africa has superseded the former, with a pool of weapons available and following some of the main drug trafficking routes into the EU. According to Europol, the amount of heavy firearms and Small Arms and Light Weapons (SALW) in circulation in the EU seems to satisfy much of the demand at present and suppliers in south-eastern Europe have the capacity to meet any rise in demand in the foreseeable future.

There is already extensive cross-border cooperation between EU Member States and their law enforcement agencies to combat illicit firearms trafficking. Whilst there are many examples of successful operations to intercept weapons before they can be used, there are also cases where police and/or judicial cooperation has been made more difficult because of differences in legal frameworks in different countries. There are also significant complications of tackling cross-border illicit firearms trafficking of a non-legal nature.

2.2 Existing legal frameworks to combat illicit arms trafficking

At present, there are significant differences with regard to EU Member States' legal frameworks for combatting illicit firearms trafficking. This

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applies to the definition of offences, the types and levels of penalties applicable to legal and natural persons, the treatment of aggravating or mitigating circumstances, and the factor of negligence and degrees of intent.

International and EU legal frameworks that have a bearing on illicit firearms trafficking are broadly defined and leave signatories with considerable discretion on how key provisions are implemented. Example provisions on the criminalisation of illicit firearms trafficking are included in the UNODC's Model Law. However, the Model Law itself has no binding force on EU Member States. What is more, to leave a 'margin of discretion' for national legislators to implement the instruments in the most appropriate manner in line with their legal traditions, neither the Model Law clauses nor the other international or EU instruments are prescriptive as regards the various legal elements of an illicit firearms trafficking offence. Similarly, the relevant provisions of the UN Programme of Action on Small Arms and Light Weapons and the Firearms Protocol to the UN Convention on Organised Crime also leave considerable scope for discretion on these matters.

As a result of the different legal histories and cultures and the non-prescriptive approach at international/EU level, there is a diversity of legal frameworks in relation to illicit firearms trafficking at the national level. Differences exist with regard to the definition of offences, penalties and sanctions, the existence of aggravating or mitigating circumstances and the possibility of a negligent illicit firearms trafficking offence. Other important issues where there are differences relate to the ways in which firearms trafficking offences are prosecuted (as mere possession in some instances) and seizure in transit (and tracing issues). However, divergences in national legislation are not per se a rationale for EU intervention. The relevant issue is whether, pursuant to Article 83(1) TFEU, there is a need to establish minimum rules concerning the definition of criminal offences and sanctions in the area of illicit firearms trafficking with a cross-border dimension resulting from the nature or impact of this offence or from a special need to combat such trafficking on a common EU basis.

Minimum, EU-wide rules on illicit firearms trafficking would have the benefit of reducing legal uncertainty produced by these divergences for national police and investigating authorities, facilitate prosecutions, ensure that criminals are unable to exploit loopholes, and reduce incentives for criminals forum shop between EU jurisdictions. The research indicates that divergences do indeed affect cross-border police and judicial cooperation – and that, given the intrinsically cross-border nature of illicit firearms trafficking, there is a strong need to combat the offence on an EU-wide basis.

However, the evidence also suggests that practical issues such as lack of resources, conflicting policy priorities (for example with anti-terror legislation) and lack of enforcement of existing laws are equally significant impediments to cross-border efforts to combat illicit firearms trafficking than differences in national legislation in this area. Feedback from the research indicates that cooperation between the police and other law enforcement agencies on cross-border cases is generally good, if often cumbersome and dependent on the quality of networks of contacts. However, at the judicial stage, e.g. in seeking permission for controlled deliveries or asking for a prosecutor to take up a case following an investigation, these differences in legal frameworks can cause complications. In considering any EU initiative, however, it should be acknowledged that there are likely to be political sensitivities in approximating some elements of the illicit firearms trafficking offence given that questions of aggravating or mitigating circumstance, sanctions and penalties, and the factor of negligence and

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degrees of intent touch on fundamental principles of criminal law at the national level.

2.3 Policy Objectives and Evaluation of Policy Options

The overall policy objectives of any new EU-level initiative should be to help Member States to combat illicit firearms trafficking more effectively and by doing so, enhancing the common area of freedom, security and justice. More specific goals include deterring criminal offences related to firearms, improving cooperation between law enforcement authorities in preventing detecting, disrupting, investigating and prosecuting illicit arm trafficking; and providing a model which can be promoted in discussions with third countries on firearms risk reduction. Operational goals are defined as being to minimize the differences in definitions of firearms offences and levels of sanctions across the EU; to put in place a system for regular monitoring the effectiveness of efforts to disrupt firearms crime, and to further encourage the sharing of information and intelligence.

Several Policy Options have been defined and assessed in the report. To summarize:

- **Policy Option 1: Status Quo** – continuation of the current situation with no new EU intervention.
- **Policy Option 2(a): Non-legislative action** – promoting closer collaboration between Member States rather than introducing new EU-level initiatives (although these may be necessary to promote close collaboration). This option would include non-statutory intervention, either as a first step or supporting action for implementing EU legislation in the future.
- **Policy Option 2(b): Minimum legislative intervention at the EU level** – a minimum level of legislative intervention at EU level to strengthen cross-border cooperation between law enforcement agencies by making certain types of cooperation obligatory.
- **Policy Option 3: Comprehensive legislative solution at EU level** – EU action to introduce legally-binding common minimum standards across Member States with regard the definition of criminal offences and their sanctions related to illicit arms trafficking and linked offences.
- **Policy Option 4 – Combination of legislative and non-legislative actions**, i.e. Policy Options 2 and 3.

In essence, Policy Option 1 entails a continuation of the status quo as defined in the problem assessment (this could mean a potential worsening of the problem caused by illicit firearms trafficking) with the 'advantageous effects' of Policy Options 2 and 3 being measured against this baseline. Because it is difficult to quantify what impact different Policy Options might have on the current level of illicit firearms trafficking, the assessment of the merits and drawbacks of different Policy Options is essentially qualitative.

Drawing on the results of the analysis of expected financial and economic, social and other impacts, including the implications for fundamental rights, **the conclusion is that Policy Option 4 (i.e. a combination of Policy Options 2 and 3) will have the most advantageous effect on the problem and on promoting EU policy aims. Policy Option 4 is therefore the recommended option.**

Introduction

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This document contains the Final Report submitted by the Centre for Strategy & Evaluation Services (CSES) for the assignment for DG Home 'Study to Support an Impact Assessment on Options for Combatting Illicit Arms Trafficking in the European Union'.

1.1 Resume – Study objectives and scope

The purpose of the study was to:

- Analyse the current legal framework in all Member States including the definitions of specific offences relating to firearms trafficking, the sanctions, the liability of legal and natural persons and the notions of intent, negligence and aggravating or mitigating circumstances;
- Analyse the implementation of the above-mentioned offences in practice and identify possible obstacles in police and judicial cooperation due to the existence of different legal systems;
- Make recommendations as to the advisability of the approximation of certain offences and sanctions and suggest specific provisions if appropriate.

The Commission intends to examine possible policy options, including the approximation of various relevant offences, to better prevent, deter, detect, disrupt, investigate, prosecute and cooperate on illicit arm trafficking in the EU. The purpose of this study is to provide DG Home with information required for the Impact Assessment to determine the most appropriate policy option within the context of possible changes to the 2008 Directive. The study covers all EU28 Member States.

1.2 Background to the study

In the past 10 years, there have been over 10,000 victims of murder or manslaughter involving firearms in EU Member States and every year there are over 4,000 suicides by firearms.¹ The problem of illicit firearms trafficking is linked to other criminal activities. Availability of trafficked firearms contributes to the lethality of, and insecurity from, all types of violent incidents or crimes. There can be particularly close links between illicit firearms trafficking and organised criminal activities including gang violence and intimidation as well as other trafficking processes such as drug smuggling, money laundering and human trafficking, as well as financial crimes and terrorism. Similarly, to the extent to which illicit firearms trafficking supports activities such as human trafficking and drugs smuggling, there are clearly social consequences linked to the distress caused to vulnerable groups. The problem of illicit firearms trafficking and its consequences is further examined in Section 2 of this report.

Existing Legal Frameworks to Combat Illicit Firearms Trafficking

The trafficking and misuse of firearms is a serious threat to the EU's security from both an internal and an external perspective and one that requires a coordinated

¹ Information retrieved from UNODC Global Study on Homicide (2011) and GunPolicy.org. This is a partial figure as for most Member States, statistics for the whole period are unavailable.

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response to be effective². Article 83 (1) TFEU includes "illicit arms trafficking" in the list of crimes for which there is a legal basis for adopting a Directive on minimum rules concerning the definition of criminal offences and sanctions in the area of illicit arms trafficking with a cross-border dimension.

Reflecting the priority put on an EU-level response to the problem of illicit firearms, several EU-level measures have been adopted to complement EU Member States' measures. The aim is to properly monitor the movement of firearms within the EU and to develop cooperation between national administrations in charge of controls. In **Directive 2008/51/EC on control of the acquisition and possession of weapons**, measures are laid down for the improvement of the marking and registration of firearms within Member States, including possible common guidelines on deactivation standards and techniques to ensure that deactivated firearms are rendered irreversibly inoperable.³ Under the Directive, firearms and related items should not be transferred between EU Member States without the knowledge and consent of all the authorities involved. To give EU law enforcement authorities better tools to combat illicit arms trafficking, the Directive sets out strong rules for exports and imports of firearms. The European Commission aims to make exports of firearms subject to export authorisations that must contain the necessary information for tracing the firearms, including the country of origin and of export, the consignee and the final recipient, as well as a description of the quantity of the firearms, their parts, components and ammunition.

There are a number of limitations. Firstly, the legislation does not apply to firearms intended for military purposes. Secondly, it only concerns trade and transfers of firearms between EU Member States and countries outside the EU. Transfers of firearms within the EU are regulated by the Directive on the control of the acquisition and possession of weapons (91/477/EEC), which integrates the appropriate provisions required by the UN Firearms Protocol as regards intra-Community transfers of weapons. The Directive establishes rules on controls by the Member States on the acquisition and possession of firearms and their transfer to another Member State. Whilst it is prohibited to acquire and possess Category A firearms (explosive arms, automatic weapons), for Category B weapons (semi-automatic weapons) an authorization is necessary and for Category C and D a declaration suffices. The Directive requires authorities in the Member States to issue a European firearms pass to any person lawfully entering into possession of and using a firearm.

One of the main objectives of the Commission's current policy on firearms has been to complete the process of transposition into EU legislation of all the provisions of the **UN Fire Arms Protocol**. In the absence of EU legislation covering criminalisation, the Protocol had previously only been partially signed and ratified. The limited ratification rate of the UN Fire Arms Protocol was an important explanation for differences in the scope of the crime and sanctions for illicit arms trafficking that exist at the national level in the EU. There is also considerable

² Council Report on the Implementation of the European Security Strategy - Providing Security in a Changing World; The EU Internal Security Strategy in Action: Five steps towards a more secure Europe, COM (2010) 673.

³ Directive 2008/51/EC of the European Parliament and of the Council of 21 May 2008 amending Council Directive 91/477/EEC of 19 June 1991.

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flexibility available to Member States in the implementation of both Recital 16 of Regulation 258/2012 and Art. 16 of the Directive on control of the acquisition and possession of weapons, which has led to more diverse legal frameworks in the EU (Firearms Directive). In March 2013, the EU proposed that the Protocol should be ratified after all the provisions of the protocol that fall under the Union's competence had been fully transposed into EU legislation. The latest position is that the EU has ratified the UN Firearms Protocol on 21 March 2014.

Section 2 of this report supports the argument that the lack of a common EU legal framework on illicit firearms trafficking has impeded effective cross-border police and judicial cooperation. Similarly, going beyond the preventative and investigation stages of a case the lack of a common legal framework has also made it more difficult for judicial authorities to prosecute cases that involve a cross-border dimension. The situation is not clear-cut but there is sufficient evidence to point to a problem that justifies additional EU measures.

The need to take action at the EU level was underlined in the Commission's recent (October 2013) Communication on 'Firearms and the internal security of the EU: protecting citizens and disrupting illegal trafficking'⁴ which noted that differences in national legislation on firearms are exploited by criminals, increasing the risk of illicit circulation across borders. To address this situation, various stakeholders discussed the possibility of approximating national firearms legislation.⁵ A lack of reliable EU-wide statistics and intelligence hampers effective policy and operational responses (the availability of statistics is examined in Section 2). The last joint customs operations focused on firearms was in 2006⁶, and it was unable to make any seizures due to a lack of investigative leads and precise knowledge of routes of firearms trafficking.

The Communication proposes an integrated policy for addressing the threat of illicit firearms trafficking, through legislation, operational action, training and EU funding. It focuses on four priorities: firstly, safeguarding the licit market for civilian firearms through new EU standards. Second, reducing firearms held by criminals through the development of effective standards on safe storage of civilian firearms and on how to deactivate civilian and military firearms. Third, making greater efforts to reduce illicit trafficking of firearms (whether civilian or military) from outside the EU and increase pressure on criminal markets through better cross-border cooperation between police, customs and border guards. Ultimately, the level of criminal sanctions should be imposed by Member States (this issue is assessed in Section 3 (*Comparative Legal Assessment*) of this report. This shall be combined with building better intelligence by gathering and sharing

⁴ COM (2013) 716 final. Communication from the Commission to the Council and the European Parliament Firearms and the internal security of the EU: protecting citizens and disrupting illegal trafficking.

⁵ For instance, Europol (2010). OC-Scan Policy Brief. Integrated EU approach against the illegal trafficking in heavy firearms. OC-SCAN Policy Brief For Threat Notice: 004-2010. Retrieved from: https://www.europol.europa.eu/sites/default/files/publications/heavy-firearms_0.pdf. See also: South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (mandated by UNDP). Convertible Weapons in the Western Balkans, report retrieved from: <http://www.seesac.org>. See also: Communication from the Commission to the Council and the European Parliament. Firearms and the internal security of the EU: protecting citizens and disrupting illegal trafficking. Brussels, 21.10.2013 COM (2013) 716 final.

⁶ Operation Fireball targeted lorries originating in the Western Balkans and entering the EU through its eastern border.

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more information on firearms crimes, and by targeted training of law enforcement officers.

As the Communication makes clear, a combination of different types of intervention are needed to tackle illicit firearms trafficking and its consequences. Section 4 of this report (*Policy Options*) defines a number of policy options. In addition to assessing the scope for the approximation of certain offences and sanctions, the policy options we have defined include not just legislative but also non-legislative initiatives that could be taken to help combat illicit firearms trafficking.

1.3 Research plan and data collection

Below, we provide a summary of the research plan for this study:

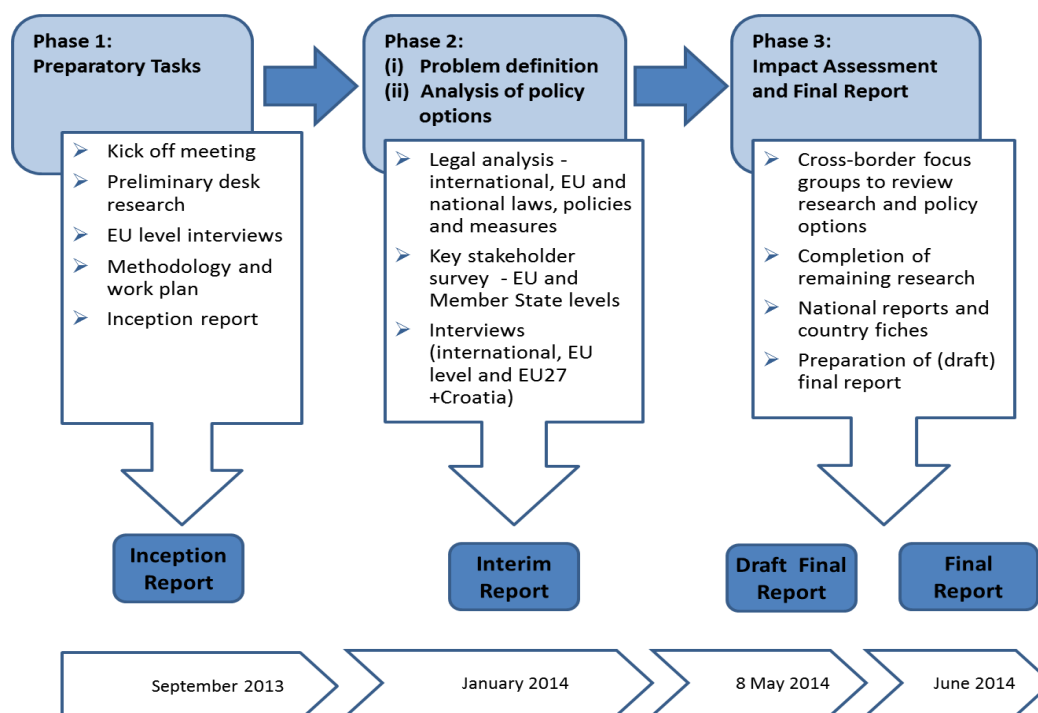
- **Phase 1: Preparatory tasks** – a kick-off meeting with the Steering Group, a preliminary interview programme, desk research, finalisation of the methodological approach (selection of countries for in-depth research, research tools, detailed work plan, etc.) and preparation of an inception report (September 2013).
- **Phase 2: Problem Definition and Policy Options** – desk research, survey work and an interview programme leading to preparation of country report for each EU Member State. All Member States were covered by the Phase 2 research with workshops taking place in a number of countries to consider the problem definition in more detail and to discuss policy options. An interim report was submitted in January 2014.
- **Phase 3: Impact Assessment and Final Report** – in the final phase the policy options and their likely impacts were evaluated as a basis for recommending a preferred option. A draft final report was submitted in May 2014 and discussed at a workshop with representatives from the Member States in June 2014. The report was then finalised.

The following chart summarises the work plan and key milestones agreed with DG HOME:

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Figure 1.1: Work Plan Phases and Timing



Phase 1 – Preliminary Tasks

The assignment started with a kick-off meeting with the DG HOME Steering Group on 17 May 2013. Following the kick-off meeting, various tasks were completed - a preliminary interview programme, desk research, finalisation of the methodological approach (selection of countries for in-depth research, research tools, detailed work plan, etc) and preparation of an inception report. The inception report was discussed and agreed with DG HOME in September 2013.

Phase 2 – Problem Definition and Policy Options

The Phase 2 research involved three main tasks – the problem definition, comparative legal analysis, and development of policy options. This involved research into the legislation at European level, internationally and across EU28 Member States, development of the first batch of EU28 'country fiches', survey work and interview programme, leading to assessment of the problem and its evolution from the baseline scenario in line with impact assessment guidelines. We have also held the first of a series of regional workshops. Early findings from the Phase 2 research were presented and discussed at the first meeting of the DG HOME Firearms Expert Group that met in Brussels on 10 December 2013.

The following tables provide a summary of the Phase 2 research. A more detailed breakdown of the distribution of interviews and the focus groups, and the options regarding geographical coverage, is provided in the following text.

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Table 1.1 (a): Geographical coverage of the Phase 2 research

Member State	Interviews		Workshops	Member State	Interviews		Workshops
	F2F	Tel			F2F	Tel	
Austria		x	x	Lithuania		x	x
Belgium		x	x	Luxembourg		x	x
Bulgaria		x		Malta		x	
Cyprus		x		Netherlands	x		x
Croatia	x		x	Poland	x		x
Czech Rep.		x		Portugal		x	
Denmark		x		Romania	x		
Estonia		x	x	Slovakia		x	
Finland		x		Slovenia		x	x
France	x		x	Spain	x	x	
Germany	x			Sweden		x	
Greece		x		UK	x	x	
Hungary		x	x	EU level	x		x
Ireland		x		International		x	
Italy	x						
Latvia		x	x	Total	11	22	11

We completed legal fiches from 21 Member States. A total of 45 interviews and other consultations (e.g. discussions with workshop participants) were undertaken covering 18 Member States as well as the EU and international levels. The survey website was visited by 87 people with 62 providing partially completed questionnaires - 28 being fully completed. Reminders were sent out on several occasions to help maximise the response rate.

Table 1.1 (b): Legal Fiche, Interviews and Survey Responses

Member States	Legal Fiche	Interviews & Focus Groups	Survey Replies	Member States	Legal Fiche	Interviews & Focus Groups	Survey Replies
Austria	0	2	1	Lithuania	1	1	2
Belgium	0	2	3	Luxembourg	0	1	1
Bulgaria	0	0	0	Malta	1	0	0
Cyprus	1	1	2	Netherlands	1	1	2
Croatia	0	3	0	Poland	1	0	2
Czech Rep.	1	1	0	Portugal	1	2	1
Denmark	1	1	1	Romania	0	0	0
Estonia	1	1	0	Slovakia	1	0	0
Finland	1	2	7	Slovenia	1	1	2
France	1	1	0	Spain	1	2	18
Germany	1	0	1	Sweden	1	1	2

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Greece	1	1	1	UK	1	3	1
Hungary	1	2	0	EU level	n/a	7	0
Ireland	1	0	2	International	n/a	2	0
Italy	0	0	13	Other	n/a	10	0
Latvia	1	2	0	Total	21	50	62

The purpose of the 'country fiche' was to collect important information on the legal situation in the EU Member States. This was used for the comparative assessment of legal frameworks.

The Phase 2 interview programme was used to discuss the key issues set out in the Commission's terms of reference with the relevant national authorities and other key stakeholders in each Member State. At DG HOME's suggestion, we initially contacted members of the Council's Firearms Working Group to interview them and also to obtain further contacts.

Whilst some Firearms Working Group members were quick to react, in many cases we did not obtain a response to our emails despite several approaches. In this situation we approached the authorities directly, in some cases after receiving suggested contacts from DG HOME. The interview programme focused on the problem definition and possible policy options (Phase 2(ii)). The following table provides a more detailed breakdown of the interviews completed (some of the interviews took place as part of the regional workshops). A list of interviews is provided in Appendix A.

Table 1.2: Phase 2 Interview Programme

Interview target groups	Completed
(1) EC and agencies, international bodies	9
(2) National authorities and law enforcement agencies	35
(3) Public prosecutors, judges	0
(4) Entities covered by the Firearms Protocol	0
(5) Civil society groups, fundamental rights groups	0
(6) Academics, other experts, etc.	4
Total	50

The purpose of the Phase 2 survey was to help collect key information for the study that is not readily available from documentary sources and to enable all key stakeholders who wish to make an input to the evaluation to do so. The survey was conducted online using a questionnaire that was designed in a way to be user friendly, with a combination of open and closed response options. Although the number of 'hits' to the survey website and responses to the first few questions was quite high, the number of those answering all the questions varies and is generally quite low (as noted above, 28 of the 87 respondents provided fully completed questionnaires).

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Table 1.3 (a): Response Rates for the Phase 2 Survey (by type of organisation)

Survey target groups	Estimated Total	Survey Responses	Response Rate
(1) EC and agencies, international bodies	10	0	0.0
(2) National authorities/ law enforcement agencies	75	10	13.3
(3) Public prosecutors, judges	75	0	0.0
(4) Entities covered by the Firearms Protocol*	100+	41	41.0
(5) Civil society, fundamental rights groups	50	0	0.0
(6) Academics, other experts, etc	30	2	6.7
(7) Information not provided	n/a	34	n/a
Total	340	87	25.5

Table 1.3 (b): Response Rate for the Phase 2 Survey (by country)

Country	Nº	%	Country	Nº	%
Austria	1	1.3	Latvia	0	0.0
Belgium	3	3.8	Lithuania	2	2.5
Bulgaria	0	0.0	Luxembourg	1	1.3
Croatia	0	0.0	Malta	0	0.0
Cyprus	2	2.5	Netherlands	2	2.5
Czech Rep.	0	0.0	Poland	2	2.5
Denmark	1	1.3	Portugal	1	1.3
Estonia	0	0.0	Romania	0	0.0
Finland	7	8.8	Slovakia	0	0.0
France	0	0.0	Slovenia	1	1.3
Germany	1	1.3	Spain	18	22.5
Greece	1	1.3	Sweden	0	0.0
Hungary	0	0.0	UK	1	1.3
Ireland	1	1.3	Other/not given	29	27.5
Italy	13	16.3	Total	87	72.5

To help validate the problem definition and to support the assessment of policy options, a number of regional workshops were organised:

Table 1.3 (c): Regional workshops

Workshops	Date / Venue	Member States
Baltic States	18 February / Riga	EE, LT, LV
Western Balkans	17 January / Ljubljana	AU, B-H, CR, HU, SL
Benelux countries	26 March / Brussels	BE, NL, LU

The first workshop took place on 17 January 2014 and covered the Western Balkans and several neighbouring countries with 8 participants from Austria, Bosnia and Herzegovina, Croatia, Hungary and Slovenia. The second workshop covering the three Baltic States involved 6 participants from the three countries. In both cases the participants were from mainly law enforcement authorities (e.g. the Deputy Director

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of the Bosnia and Herzegovina Ministry of Security, State Investigation and Protection Agency) and the police. A third workshop took place in Brussels on 26 March with representatives from the three Benelux countries. In addition, CSES participated in two workshops organised by DG HOME and attended by firearms experts from the Member States.

These sessions were used to discuss the emerging findings from the research, further develop and validate the problem assessment (particularly the issues relating to the country/region concerned) and to discuss possible EU-level policy options and other measures that could help to tackle the problem of illicit firearms trading. Some regional workshops that had been originally envisaged did not go ahead (i.e. Germany, Italy, Ireland-UK). However, in these and other EU Member States, CSES conducted interviews with national authorities as an alternative or (in one case) received a written response to questions via the country's Permanent Representation in Brussels.

Finally, the wider Phase 2 desk research focused on the key issues set out in DG Home's terms of reference for this study (Section IV of 'Tasks of the Study'). This research encompasses secondary literature, i.e. previous studies and other research. This aspect of the Phase 2 desk research also goes beyond this phase because relevant material is still being identified as a result of contacts with Member States.

1.4 Structure of the Final Report

The rest of the Final Report is structured as follows:

- **Section 1: Introduction** - summarises study objectives and the methodological approach to the research.
- **Section 2: Problem definition** – drawing on the desk research and discussions with the Commission, this section examines the nature and scale of the problem of illicit firearms trafficking, the cross-border dimension and existing policies and institutional mechanisms to tackle the problem.
- **Section 3: Comparative Legal Analysis** – presents an analysis of the legal frameworks at the international, EU and Member State levels that relate to illicit arms trafficking in the EU.
- **Section 4: Policy objectives and policy options**– drawing on the research, we present four policy options, evaluate them and assess their likely impacts, and then identify the preferred policy option.
- **Section 5: Conclusions and recommendations** – summarises the key research findings and preferred option.

The final report contains various appendices including a list of interviews completed and regional workshop participants, survey data and legal fiches.

Impact Assessment Guidelines

The Commission's approach to impact assessments is outlined in a document entitled 'Impact Assessment Guidelines' that was issued on 15 January 2009. Although these guidelines are intended primarily for Commission staff and for the report the Commission itself submits to the Impact Assessment Board, it was agreed that the structure set out in the guidelines should be used for this report. The introduction and Part II of the guidelines set out the 'key analytical steps in impact assessment'. These steps are summarised in the table below which also indicates how this report relates to the Impact Assessment structure:

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Table 1.4.: Structure of an impact assessment

	Identifying the problem	Report
1	Describe the nature and extent of the problem	Section 2.1
	Identify the key players/affected populations.	Section 2.5
	Establish the drivers and underlying causes.	Section 2.5
	Is the problem in the Union's remit to act? Does it pass the necessity and value added test?	Section 2.7.2
	Develop a clear baseline scenario, including, where necessary, sensitivity analysis and risk assessment.	Section 4.3
2	Define the objectives	
	Set objectives that correspond to the problem and its causes.	Section 4.1
	Establish objectives at a number of levels, going from general to specific/operational.	Section 4.1
	Ensure that the objectives are coherent with existing EU policies and strategies, such as the Lisbon and Sustainable Development Strategies, respect for Fundamental Rights as well as the Commission's main priorities and proposals.	Section 4.2
3	Develop main policy options	
	Identify policy options, where appropriate distinguishing between options for content and options for delivery mechanisms (regulatory/non-regulatory approaches).	Section 4.3 to Section 4.6
	Check the proportionality principle.	Section 4.7.4
	Begin to narrow the range through screening for technical and other constraints, and measuring against criteria of effectiveness, efficiency and coherence.	Section 4.7
	Draw-up a list of potentially valid options for further analysis.	Section 4.8
4	Analyse the impacts of the options	
	Identify (direct and indirect) economic, social and environmental impacts and how they occur (causality).	Sections 4.4.6; 4.5.4 and 4.7.2
	Identify who is affected (including those outside the EU) and in what way.	Section 4.7
	Assess the impacts against the baseline in qualitative, quantitative and monetary terms. If not possible, explain why.	Section 4.7
	Identify and assess administrative burden/simplification benefits (or provide a justification if this is not done).	Section 4.7
5	Compare the options	
	Weigh-up the positive and negative impacts for each option on the basis of criteria clearly linked to the objectives.	Sections 4.4; 4.5 and 4.6
	Where feasible, display aggregated and disaggregated results.	Section 4.6
	Present comparisons between options by categories of impacts or affected stakeholder.	Section 4.7
	Identify, where possible and appropriate, a preferred option.	Section 4.8
6	Outline policy monitoring and evaluation	
	Identify core progress indicators for the key objectives of the possible intervention.	Section 4.9
	Provide a broad outline of possible monitoring and evaluation arrangements.	Section 4.9

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In this section we provide an assessment of the illicit firearms trafficking problem, the drivers of the problem and existing measures to tackle the problem. This problem definition provides is supported by the comparative legal assessment in Section 3.

2.1 Overview

This provides a first draft of the problem definition. This section is structured as follows:

- **Section 2.1: Nature and scale of illicit firearms trafficking** – examines the scale and nature of illicit firearms trafficking in the EU;
- **Section 2.2: Illicit firearms trafficking and its effects** - summarises the social, economic and other consequences of illicit firearms trafficking;
- **Section 2.3: Drivers of illicit firearms trafficking** – identifies and assesses the drivers of illicit arms trafficking;
- **Section 2.4: Existing policies and institutional frameworks** – summarises the organisations at the international, EU and national level involved in combatting illicit firearms trafficking, and assesses their effectiveness in tackling the problem.

After examining the nature and scale of the problem, Section 2.1 looks more closely at **the cross-border dimension of illicit firearms trafficking** both in terms of the inflow of weapons from external sources as well as the export of arms to non-EU countries and regions.

An important aspect of the problem definition is the analysis of the **wider economic and social consequences** of the problem. In many regions, illicit firearms trafficking is an important source of firearms that are misused in the range of crimes of violence and intimidation (violent theft, gangs, social violence, protection rackets, and so on) that contribute to the economic and social impoverishment and marginalisation of areas and communities. Numerous studies have established that such criminal gun violence disproportionately contributes to rates of deaths and serious injury with major direct and indirect economic costs; and to insecurity that reinforces poverty and limits local and inward investment.⁷ The extent to which illicit firearms trafficking is a primary source of such misused firearms compared to domestic sales or losses/thefts from authorised holdings depends on the context; its relative importance is generally greater in countries with relatively stringent domestic gun controls or in countries whose neighbours are unable (for a range of reasons) to exercise adequate gun control.

As noted above, illicit firearms trafficking is linked to other transnational criminal activities, such as drug smuggling and illicit distribution; trafficking in other

⁷ See for instance: Kapusta N, Etzersdorfer E, Krall C, Sonneck G. Firearm legislation reform in the European Union: Impact on firearm availability, firearm suicide and homicide rates in Austria. *British Journal of Psychiatry* 2007;191:253–7; and Hawton K, Fagg J, Simkin S, Harris L, Malmberg A. Methods used for suicide by farmers in England and Wales. The contribution of availability and its relevance to prevention. *British Journal of Psychiatry* 1998;173:320–4; Haw C, Sutton L, Simkin S, Gunnell D, Kapur N, Nowers M, Hawton K. Suicide by gunshot in the United Kingdom: a review of the literature. *Medicine, Science and the Law* 2004;44:295–310; O. Greene and N, Marsh (eds). *Small Arms, Crime and Conflict: global governance and the threat of armed violence*. Routledge, London, 2012.

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controlled goods and in humans; and also to terrorism. These links are complex but real (see for example, discussions in Small Arms Survey Yearbook)⁸; and thus imply that illicit firearms trafficking is a contributing factor for the wider economic and social consequences of such transnational criminal networks. Access to, and use of, firearms is an intrinsic part of the operations and personnel of transnational criminal organisations, for purposes of intimidation and self-protection from competitors or law-enforcement agencies – and trafficking of illicit firearms is thus organic to many smuggling operations. Suppliers of illicit firearms to national and local gangs that are part of the transnational criminal network tend to make smart opportunistic use of trafficking networks established for other purposes (narcotics, alcohol, tobacco); thus reinforcing the overall problems arising from transnational crime. Money laundering processes and financial crimes sometimes appear to be relatively 'white collar' and distant from direct gun trafficking, but in practice these are intrinsically-linked to the processes above and thus legitimately can also be recognised as part of the problem definition of this study. The added value of any EU intervention lies in the difference it makes to the baseline situation and trends.

Section 2.3 identifies the main **factors promoting illicit firearms trafficking** which lie in the motivation of criminal or terrorist groups that procure and use firearms illegally in the pursuit of their goals, those who are involved in the actual trafficking of firearms either for profit or some other reason, and those who provide a source of illicit firearms (either intentionally or unintentionally). In addition to the factors that can be considered to be the 'drivers' of illicit firearms trafficking, there is also a set of 'enabling factors', in particular shortcomings in the national legal frameworks and in their enforcement in cross-border situations. (Legal frameworks at the international, EU and Member State levels are examined and compared in Section 3 of the report). Last but not least, Section 2.4 reviews the current **policy and institutional framework for combatting illicit arms trafficking** both at the international and EU level. Because of the study's focus on legal aspects of the current frameworks in place at a national level for combatting illicit firearms trafficking, this aspect is examined separately in Section 3 of the report. The assessment of existing policies and institutional frameworks, and more particularly, identifying the strengths and weaknesses, is important in defining the policy options.

2.2 Nature and scale of illicit firearms trafficking

The starting point of the problem assessment is to examine the nature and scale of the illicit firearms trafficking problem.

2.2.1 Nature of the illicit firearms trafficking problem

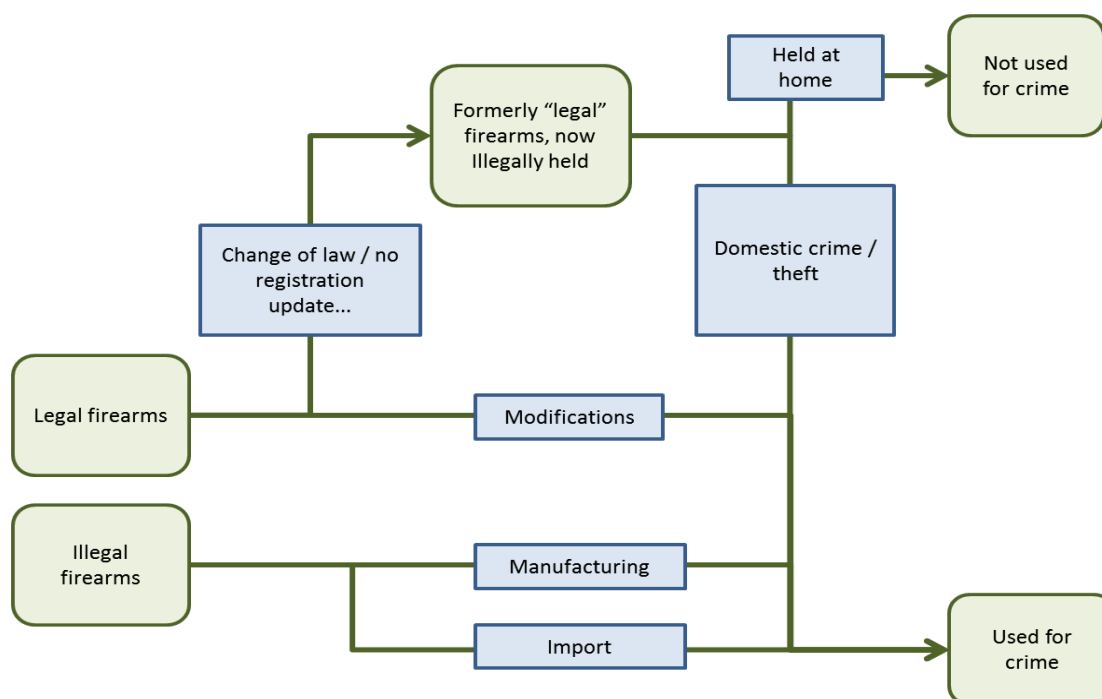
There are various ways in which illicit firearms trafficking occurs. The following diagram provides an overview:

⁸ The Small Arms Survey 2012: Moving Targets, published by Small Arms Survey, Geneva. Retrieved from <http://www.smallarmssurvey.org/publications/by-type/yearbook/small-arms-survey-2012.html>

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Figure 1.1: Overview – Types of Illicit firearms trafficking



The Small Arms Survey 2013 estimates that there are some 875 million small arms and light weapons in circulation worldwide. Between 530,000 and 580,000 are produced annually, either under licence or as unlicensed copies, by an estimated 1,249 companies in more than 90 countries. According to the same source, the international small arms trade is worth an estimated US\$8.5 billion with a further US\$2 billion spent on illicit weapons. The largest exporters of licit weapons are Russia, the United States, China, Brazil, Italy, Germany, France, Belgium and the United Kingdom.⁹

According to our discussions with firearms experts and others including national authorities, there are essentially six **ways in which firearms can enter the illicit market**:

- Legally held firearms being stolen or otherwise diverted to illegal uses or users;
- Legally held firearms becoming illegal;

⁹ Small Arms Survey 2012 (page 247). The Small Arms Survey has recently concluded a four-year study on the authorized trade in firearms and has now started a follow-up project focusing on illicit firearms trafficking. This focuses on particular regions, starting with conflict zones in Africa and the Near East. Another estimate of the value of the illicit firearms trade is provided by Geopolitical Monitor estimates the illicit market to be worth around US\$ 1 billion (<http://www.geopoliticalmonitor.com/the-illicit-trade-of-small-arms-4273/>)

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- Modification of legally held firearms (including deactivated or collection weapons);
- Direct import of illegal firearms;
- Diversion of legally transferred or imported firearms to unauthorized users or uses;
- Manufacture of illicit firearms.

There are no precise quantified estimates of how important these different sources are in relation to each other - this depends greatly on specific contexts. However, according to the same sources quoted above, the black market for small arms and light weapons is mostly sustained by diversion (theft, loss, leaks, etc.) from stockpiles of legally held unused weapons or by diversion of authorised international firearms transfers to unauthorised uses or users.

Taking the first of the above categories, **stocks of legally-held** firearms are vulnerable to loss, theft or unauthorised misuse – whether these are privately held licensed firearms or held by police, armed forces or other government agencies. Some degree of vulnerability of dispersed authorised holdings is inevitable, and moreover national regulatory requirements for secure storage and regular stock checks and reporting are not always stringent or actively enforced.

In relation to the second of the above categories, **legally held firearms can be rendered illegal in a number of ways.** The law can change making previously legal firearms illegal (as was the case in Belgium following the 2006 legislative change). Second, previously legal weapon can enter the illegal sphere if a registration update is not performed or when a weapon is kept in a family. For example, in some countries (e.g. France or Belgium), there are firearms dating from the Second World War that have remained in families without either being deactivated or registered. Although it is difficult to assess the size of this particular illegal pool of weapons, it can be assumed that in the majority of cases, these firearms are not primarily used for criminal purposes (although it increases the risks in the case of family tragedies and homicides). A link to organised crime can exist when such weapons are stolen through burglaries, both domestic and from stocks of weapons (new or to be decommissioned). In such cases, weapons that might have previously been illegally held albeit not for the purpose of crime can enter the criminal arena.

Another similar way in which illegal firearms can enter the criminal market is through the modification of legal firearms. A common example of this situation is the modification of gas pistols that can be purchased without a permit in Latvia and transferred to another country (e.g. Estonia or Lithuania, or the UK) where they are modified. A variation on this type of activity is the reactivation of deactivated firearms. Illegal firearms can also be brought in through illegal importation (i.e. trafficking) and can also be manufactured directly in the EU.

The United Nations' definition of the illicit trade in firearms¹⁰ contained in a 1996 report describes this phenomenon as being "that international trade in conventional

¹⁰ For the sake of clarity, the report uses the terminology and definitions used by the EU.

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arms, which is contrary to the laws of States and/or international law.”¹¹ The EU defines illicit firearms trafficking in the Directive 2008/51/EC amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons, Article 1 (2b) as:

“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)”.¹²

Definitional issues are significant and are examined further in Section 4 of the report (this part of the report include a table indicating which Member States cover which provisions in legal terms and in practice).

The end of the Cold War resulted in an increase in the number of local wars and civil conflicts throughout the world, fought primarily with small arms and light weapons. Large quantities of small arms are in circulation today. Traditionally regions such as Europe have been adversely affected by the spread of small arms.¹³ The types of illicit firearms circulating in the EU include those which are converted or reactivated, lost or stolen, diverted from their lawful lifecycle, and illegally imported from third countries. Although the influx of firearms into the EU is not on a vast scale, there is a regular supply of small arms primarily from the Western Balkan region as well as from Eastern Europe.¹⁴ More recently, North Africa is thought to have become a significant source of illicit firearms according to several firearms experts we consulted as part of the research.¹⁵ The spread of crime and instability, especially to the southern regions of Europe, could lead to further proliferation of light weapons in the region and eventually into the EU.¹⁶ According to several national authorities we interviewed, the USA is also a source of illicit weapons (e.g. for the UK).¹⁷

2.1.2 Scale of the illicit firearms trafficking problem

Reliably quantifying the problem of illicit firearms trafficking, and the source and destination of weapons, is intrinsically very difficult. By its very nature, illicit firearms’ trafficking is an illegal activity carried out by criminals or terrorists which is not captured by official statistics. The true scale of the problem is therefore impossible to quantify. Nonetheless, there are several estimates of the volume and value of illicit firearms trafficking but these tend to be at a global level and do not provide a detailed insight to the problem as it affects the EU:

¹¹ UN General Assembly. Report of the Disarmament Commission. Supplement No. 42 (A/51/42). <http://www.smallarmssurvey.org/fileadmin/docs/N-Instruments/1996-UN-report-disarmament-commission.pdf>

¹² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:179:0005:0011:EN:PDF>

¹³ The Small Arms Survey 2012: Moving Targets, published by Small Arms Survey, Geneva. Retrieved from <http://www.smallarmssurvey.org/publications/by-type/yearbook/small-arms-survey-2012.html>

¹⁴ Kiss, Y. (2004). Small Arms and Light Weapons Production in Eastern, Central, and Southeast Europe. In: Small Arms Survey (2004). Retrieved from: <http://www.smallarmssurvey.org/fileadmin/docs/B-Occasional-papers/SAS-OP13-SE-Europe-Production.pdf>

¹⁵ See also: On the Edge? Trafficking and Insecurity at the Tunisian–Libyan Border, by Moncef Kartas, December 2013. Working Paper No. 17. Retrieved from: <http://www.smallarmssurvey.org/weapons-and-markets/transfers/illicit-trafficking.html>

¹⁶ <http://www.saferworld.org.uk/resources/view-resource/76>

¹⁷ Philip J. Cook, Wendy Cukier and Keith Krause (2009) The illicit firearms trade in North America *Criminology and Criminal Justice* August 2009 vol. 9 no. 3 265-286.

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Global estimates of illicit firearms trafficking

- According to the UNODC the illegal firearms trade generates between €125 million to €236 million per year globally, which represents between 10 to 20% of the total trade in legal firearms.¹⁸
- The United Nations 2011 Small Arms Survey estimates that the value of the global trade in illicit arms may be worth more than a billion dollars.¹⁹
- The Small Arms Survey estimates that there are over 875 million SALW in the world but the real number may be considerably higher. **Global value of the illegal trade in firearms has been estimated to between \$170 million and \$320 million per year.**

There is no comparable estimate specifically for Europe of the scale of illicit firearms trafficking although the scale of the problem is likely to be less than in most other regions of the world. Given the data limitations, any approach to quantifying the problem of illicit firearms trafficking has to rely on proxy indicators. Ideally, in order to develop a broad estimate of the problem of illicit firearms trafficking, the following approach would be adopted:

- **Step 1** – estimating the total number of **licit firearms** circulating in the EU by comparing and, where possible, reconciling the estimates provided by international and EU institutions.
- **Step 2** – estimating the total number of **illicit firearms** that are trafficked based on data from various sources on registered/unregistered firearms and official data provided by the Member States (e.g. on the number of illicit firearms seized over a five year period). Another 'proxy' indicator is the number of criminal offences committed with an illicitly held firearm.
- **Step 3** – assessing the extent to which illicit firearms originate from **cross-border trafficking**.
- **Step 4** – linking this to the consequences of illicit firearms trafficking, i.e. the extent to which illicit firearms cause or contribute to **increased/decreased levels of crime** (homicides, coercion and intimidation of victims, etc).

Taking the first step, the website www.gunpolicy.org provides data from academic and governmental sources on the number of unregistered firearms in each Member State.²⁰ Using this and other data, the European Commission estimates that there are some **81 million licit and illicit civilian firearms in the EU**. The most recent

¹⁸ UNODC (October 2011). Estimating illicit financial flows resulting from drug trafficking and other transnational organized crimes. Research report. Retrieved from: https://www.unodc.org/documents/data-and-analysis/Studies/Illicit_financial_flows_2011_web.pdf, p. 49

¹⁹ *ibid.*, p. 25.

²⁰ Gun Policy Information Partners: Groupe de recherche et d'information sur la paix et la sécurité, Aiming for Prevention, ArmsNetAfrica, Saferworld, the South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons in Belgrade, The Trauma Foundation, the Violence Prevention Research Program at the University of California, and The Injury Research Center at the Medical College of Wisconsin.

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data provided by www.gunpolicy.org²¹ notes the average amount of firearms per 100 people and the total amount of civilian firearms in the population. Nevertheless, these numbers are only estimations and do not always coincide with the data held by governmental agencies.

Turning to the second step outlined earlier, estimating the total **number of illicit firearms** that are trafficked can be based on data from various sources:

- Records held by Member States on the number of registered/unregistered firearms;
- Official estimates made by some Member States on the number of illicit firearms seized over a given period;
- Other indicators - another 'proxy' indicator is the number of criminal offences committed with an illicitly held firearm.

The first method tends to overestimate the scale of illicit firearms trafficking while the second underestimates it. Moreover, in both cases much of the data that is publicly available is regarded as inaccurate. At the two meetings of firearms experts from EU Member States convened by DG Home during the course of this study, many participants commented that the data for the number of registered firearms and seizures quoted in this report did not correspond with their own records. The reason for this is that in general it is difficult to find concrete statistics in this highly sensitive field. CSES relied mainly on publicly available sources and numbers provided in interviews or expert estimations. Despite requests to national government contact points/experts, we were not provided with a sufficiently comprehensive and authoritative set of official national government estimates of EU Member States to be able to use these to generate a further aggregate estimate. It can be assumed that the methodology used by Member States is different to the one used by other organisations/experts. Another factor explaining the divergence between the numbers can be a reference to different time scales.

Estimate based on unregistered firearms

The first approach to estimating the scale of illicit firearms trafficking involves taking the estimate for the total number of firearms and deducting the number of registered firearms from this figure, leaving (in theory) the unregistered weapons, including the illicit element.

According to GunPolicy data, there are around 67 million unregistered firearms in the EU or 79% of the estimated total of 81 million in circulation. This provides a very broad indication of the quantity of illicitly held firearms. The 79% estimate is, however, likely to be unreliable, and most experts believe that it is very much an over-estimate. The high unreliability is due to the great uncertainties in each of the above global estimates that are being compared.

The national data on numbers of legally registered firearms holders used by GunPolicy appears to be very incomplete in several countries, perhaps because of the decentralised nature of record-keeping (see the Denmark example below). Similarly, the number of firearms actually held by individual licensed firearms is

²¹ Gunpolicy.org is an organization funded by Swiss Federal Department of Foreign Affairs, Bern and Joseph Rowntree Charitable Trust, York.

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probably often under-recorded in official records, and although some such weapons should thereby be classed as illicit, historic legal ambiguities can mean that many such weapons may be regarded as potentially legal, even if inadequately controlled. Linked with the above factors, records of firearms destruction or disposal are often very limited, implying that many of the firearms within the 79% figure may no longer exist or be available. Finally, the strong scepticism about the scale of this estimate comes from national police and law enforcement officials – although these tend to regard the quantity of illicit firearms as a matter of high concern, they generally do not believe the extraordinary scale that is indicated by the above rough estimate.

GunPolicy also provides an estimate for eight EU Member States of the number of illicit firearms and this suggests that there are some 19 million illicit firearms (23% of the total). In relation to both these estimates, there are significant limitations to the data provided on the gunpolicy.org website. In particular, law enforcement practitioners have expressed doubt about the accuracy of the data on the number of firearms holders (e.g. in Denmark there are known to be over 200,000 registered hunters and shooters according to official sources while the number of licenced firearms holders is only 21,000 according to gunpolicy.org). Relevant Gunpolicy data is provided in Appendix C.

Estimate based on firearms seizures

An alternative approach to estimating the number of illicitly trafficked firearms is to use the total number of illicit firearms seizure by Law Enforcement Authorities in the Member States as an indicator. In most Member States, a high proportion of the firearms seized by the authorities originate from cross-border trafficking and therefore this approach could provide a useful indicator of the lower-bound estimate of the number of illicitly trafficked firearms in the EU. The table below shows the data provided by national authorities to CSES on the number of firearms seized in Member States over the last five years:

Table 2.2: Number of Firearms Seized (7 Member States)

Member State	No. of firearms seized in last 5 years	Total number of registered and unregistered firearms	Percentage of all firearms
Denmark	7,049	650,000	2%
Estonia	95	123,000	1%
France	3,910	1,900,000	0%
Greece	8,946	2,500,000	0%
Lithuania	691	135,000	1%
Portugal	31,670	2,400,000	1%
UK	3,348	4,060,000	0%
Total/average	7,958	4,124,000	1%

Source: based on data provided to CSES by national authorities that completed a country fiche.

The above estimate of 7,958 seizures needs to be scaled up to provide an EU-level estimate. In order to do this we have first calculated the number of illicit seizures as

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a proportion of registered and unregistered firearms in each of the seven Member State for which data is available. We then calculated the average percentage of illicit seizures as a proportion of total firearms for the seven Member States which amounted to around 1%. Using this approach and based on the Commission's estimate of 81 million licit and illicit firearms circulating in the EU, gives an estimate of 81,000 illicitly trafficked firearms in the EU. Scaling up in this way is fraught with imperfections from a methodological point of view but nevertheless provides a very approximate estimate.

There are also major limitations with this approach of a more substantive nature because not all illicitly trafficked firearms are seized by the authorities and some illicit firearms remain unaccounted for. For example, in 2005 a consignment of 2,000 PPS submachine guns was trafficked into Estonia from a neighbouring country of which approximately 500 were confiscated by the internal security service as a result of various operations and investigations. Moreover, as noted above, holders (and family members) of unregistered firearms often destroy or otherwise dispose of them without notifying the relevant authorities, to avoid risk of prosecution or penalties. In addition, in at least some countries and localities, firearms that are not identified as having been used in crime which are nevertheless confiscated or destroyed by local law enforcement in the course of enquiries, are probably often disposed of in a low-profile way without notifying central data-bases: evidence for this is anecdotal, but significant, particularly in relation to countries where certain categories of firearm are widely and relatively permissively legally-held.

Overall, whilst the first method (deducting the number of registered firearms from the total in circulation) is likely to over-estimate the quantity of illicitly-trafficked firearms, the second method based on seizures is most likely to under-estimate the figure. Together, they provide a range of estimates, with the actual quantities almost certainly within this range. In addition to data limitations, another complication is the way in which Member States investigate and report on illicit firearms trafficking. For example, some Member States have different legal definitions and/or information fragmented and held by different law enforcement authorities, thereby making it more difficult to obtain a comprehensive overview.²²

A reasonable overall conclusion is that whilst it is possible to provide a range of estimates, this range is very wide, underlining the fact that no accurate quantification of the problem is feasible on the basis of existing available data. A potentially useful approach to clarify likely quantities within this range is to aggregate 'best estimates' of relevant national authorities from each EU Member State. However, as noted above, we attempted to pursue this approach but limited responses from the national authorities meant that we were unable to do so.

²² For example, in Estonia, investigations concerning the handling of illicit firearms at the national level are carried out by the Police and Border Guard Board, whereas the Internal Security Service (with the co-operation of police and foreign partners) is responsible for investigating cross-border trafficking of firearms and ammunition. Whereas in the UK, frontier customs regimes (e.g. HMRC, NCA's Border Policing Command, and the UK Border Force) are concerned primarily with the Trafficking and Brokering Licensing Controls²² applied to UK nationals, while the police, UKBF and NCA are responsible for combating cross-border criminal importation of firearms.

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Bearing in mind the difficulties with the two approaches outlined above, in many respects, a better approach to clarifying the scale of the problem is to highlight the number of civilian firearms-related deaths since most, if not all, of these will occur as a result of the possession of illicit weapons (particularly in EU Member States with relatively stringent regulatory controls on authorised personal possession of firearms). In Section 2.3 we examine the extent of firearms-related deaths.

Availability of statistics on firearms

Over the last decade, most EU Member States have made concerted efforts to promote more comprehensive and systematic reporting in this area, but awareness and quality-assurance systems remains 'work in progress'.²³

A significant limitation to collecting and analysing reliable data on the number of illicit firearms seizures is the absence in all EU28 Member States of central databases for reporting information on recovered firearms and ballistic material. Although we do not have exact numbers due to the lack of responses of some Member States, our consultations suggest that centralized databases only exist in a minority of EU Member States. It is important to note that concerted regional and international action to promote development of effective central national databases only gained real momentum over the last 15 years, with historical legacies of inadequately reliable overall data. In 2012, the United Nations Working Group on Firearms concluded that the improvement of the tracing ability of many countries requires sustainable investment in capacity development and technical assistance.²⁴

It is important in this context to emphasise that the formal establishment of a centrally-accessible database for such information is necessary but not sufficient for each country.²⁵ It is also important to ensure that appropriate information is systematically and accurately entered into the database in a timely way. This also remains a challenge. Obtaining a clear overall picture of Member States' capacities in this respect is difficult²⁶ but some countries are more advanced than others.

²³ These efforts are mostly based on data gathering and the establishment or improvement of databases.

²⁴ CTOC/COP/WG.6/2012/3: United Nations Conference of the Parties to the United Nations Convention against Transnational Organized Crime. Working Group on Firearms. Vienna, 21-22 May 2012. Often State parties do not maintain central registries and the exchange of information among national, sub-regional and regional databases, when available, is a time-consuming process that does not allow for effective combating of illicit trafficking in firearms

²⁵ Note that our reference to the importance of 'centrally-accessible national data-bases' does not necessarily imply that the actual data-bases have to be centralised in a single national data-base. It is possible for example that a decentralised network of data-bases could be adequate provided that they were properly co-ordinated in a consistent and actively managed national network that can be readily accessed by appropriately authorised personnel. In practice, this does however, probably imply a relatively centralised national facility.

²⁶ It is difficult since databases are sometimes not publicly available nor is their existence declared in any way. This is due to the sensitive nature of the data collected.

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Statistics available on firearms in the UK

The UK Home Office provides data on recorded offences involving the use of firearms in its supplementary volume to the annual statistical bulletin.²⁷ A number of different types of firearms are covered in the bulletin including:

- **Firearms that use a controlled explosion to fire a projectile.** This category includes handguns, shotguns and rifles. These types of weapon are often used in the more serious offences, and tend to account for most of the fatalities and serious injuries from such offences.

- **Imitation firearms.** This category includes replica weapons, as well as low-powered weapons which fire small plastic pellets, such as BB guns and soft air weapons. While injuries can occur from offences involving these weapons, they are less common and tend to be less serious. In the UK these two categories combined are referred to as non-air weapons in the bulletin.

- **Air weapons.** The majority of offences involving air weapons relate to criminal damage. While air weapons can cause injury (and sometimes fatalities), by their nature they are less likely to do so than firearms that use a controlled explosion.

According to the data, in 2010/11 the most commonly used firearm was an air weapon, with 4,203 offences or 37% of the total recorded offences involving a firearm (Table 2.2). This proportion has fallen steadily since its peak in 2002/03 (13,822 offences, or 55% of all recorded offences involving a firearm). There were 3,105 handgun offences in 2010/11, 28 per cent of the total (or 44% of the total if excluding air weapons). The number of offences involving a shotgun has remained fairly steady over recent years, in contrast to falls seen in other firearm types.

The bulletin also provides a detailed breakdown of the number of recorded offences by type of weapon used in 2010/2011 (i.e. Deactivated firearm (6), Reactivated (13) Blank firer (10), Unconverted starting gun (5), Converted Imitation (11), Converted air pistol (9), other reactivated weapon (2). The data also shows that the number of firearms recorded by the police as being stolen has fluctuated between 2,000 and 3,000 in the past ten years. During 2010/11, 2,534 firearms were stolen. This is a decrease of four per cent compared with the 2,627 firearms stolen in 2009/10. The fall is mainly due to a reduction in stolen air weapons and shotguns. In 2010/11, 63% of firearms were stolen from residential premises.²⁸ Air weapons accounted for around a half (46%) of the thefts.

Measures being taken in Western Balkans to improve information on firearms

The poor quality of data on the quantity of illicit firearms applies to the Western Balkans, which is an important source of such weapons and there are several initiatives to address this shortcoming.

For example, in one of the regional workshops we held as part of the research for this study, we were told that the authorities in **Croatia** were undertaking a project funded by the UNDP to investigate how many illicit weapons there are in the

²⁷ Homicides, Firearm Offences and Intimate Violence 2010/11: Supplementary Volume 2 to Crime in England and Wales 2010/11 Kevin Smith (Ed.), Sarah Osborne, Ivy Lau and Andrew Britton

²⁸ Such estimate for other MS could not be found

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country (the project is due to end in 2014). As a result of the investigations, two factories that had been manufacturing illegal firearms have been closed down and some 2-3,000 illegal weapons are now being destroyed p.a. There are also projects of a similar nature supported by other agencies (e.g. Europol).²⁹

In **Bosnia**, some 5,000 illicit firearms were seized during the first 9 months of 2013 alone. Here too, several factories producing illicit weapons have been identified and closed down. UNDP support has been used to help investigate the illicit firearms trade. Measures that have been implemented include a 'buy-back' scheme to encourage those holding firearms to hand them into the authorities. Consideration is being given to extending this scheme to Albania, Kosovo and Serbia but at present there is insufficient funding to do so. A similar scheme worked well in Croatia.

2.3 Cross border dimension of the problem

Just as it is not possible on the basis of existing data to precisely estimate the quantity and value of illicit firearms trafficking in the EU, so this also applies to map the geographical flows with any degree of precision. In our key stakeholder survey we asked for an opinion on how significant cross-border illicit firearms trafficking is compared to trafficking activities within the same countries (e.g. theft of legally held weapons). Although the survey results need to be treated with caution because of the low response rate to this question, a high proportion of those with a view of this issue see the cross-border dimension as being very significant and accounting for most trafficking activities. This overall assessment was shared and endorsed by the members of the Group of Experts on Firearms, which includes responsible national officials from the great majority of EU member states.

According to expert opinion and feedback from key stakeholders in Member States, the great majority of illicit firearms circulating in the EU originate from cross-border trafficking activities. This is not the only source: some illicit firearms are obtained through the theft of weapons that are originally held legally (e.g. in the UK, sawn-off shotguns) or that are stolen from other legal sources (for example, in the Liege 2011 mass shootings a FN rifle was used that had been stolen from the Belgian armaments manufacturer Fabrique Nationale de Herstal). However, according to the experts we consulted it is firearms that originate from outside the EU that account for the majority of illicit weapons in Member States. As noted earlier, Eastern Europe, the former conflict zones in the Western Balkans, and weapons that originate from countries in North Africa where there has been civil war or unrest, are all significant sources of illicit weapons that are smuggled into Europe and then across borders from one country to another.

The distinction between these different forms of illicit firearms trafficking is not clear-cut. For example, illicit firearms can be brought into an EU Member State from a neighbouring country but the ultimate source may not be known and could be a third country outside the EU. Similarly, in the 2011 Liege mass shootings, the FN rifle that has been manufactured in Belgium had Israeli markings because it was taken there to be modified before being brought back to Belgium). The blurred distinction between the different types of trafficking, and the fact that

²⁹ Europol is participating in EMPACT which is an ad hoc management environment. It is a structured multidisciplinary co-operation platform of the relevant Member States, EU Institutions and Agencies, as well as third countries and organisations (public and private) to address prioritised threats of serious international and organised crime. Also initiatives against illicit arms trafficking with a focus on the Balkans is organised under EMPACT.

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the activity is illegal, means that it is very difficult to quantify the relative importance of different sources of illicit firearms. There is also a significant 'grey' market (i.e. illicit possession of firearms by unregistered gun enthusiasts which creates a risk a diversion but often not criminal use) and the 'black' market (i.e. trafficking of firearms as an illicit commodity and criminal use). According to the Organisation for Security Cooperation in Europe, almost 90% of illicit weapons are legally produced but later diverted into the illegal market.³⁰ Section 2.5.3 examines the sources of illicit firearms trafficking in further detail.

Some example from our research of the complications that have arisen in efforts to tackle cross-border firearms trafficking are given below:

Examples of cross-border firearms trafficking and limitations of existing legal frameworks

The German authorities sentenced a citizen to two years imprisonment for having 800 hand grenades in his possession without a licence. Despite not being usable – the hand grenades were from the First World War period – it is an offence in Germany to possess such items. The Slovenian authorities were asked to investigate the case because the German citizen had bought the hand grenades via the internet from a dealer in Slovenia. There was, however, a limited ability to act because no offence had been committed in Slovenia. The problem of different standards of criminalization in this case arose because of differences between Germany and Slovenia in the classification of old hand grenades.

In January 2011, three **UK** nationals were stopped by **French** police at the Calais ferry port while travelling en route to the UK. On being searched two handguns and 46 rounds of ammunition were discovered in the car. In the interview, one occupant claimed to have been sent from the UK by an unidentified male to Amsterdam to collect a package, which unbeknownst to him contained the firearms. Two of these males were convicted in France of attempting to smuggle firearms to the UK, and given non-custodial sentences by a French Magistrate. The case against the third individual was not proceeded with. Within 12 months of their return to the UK all three had been arrested for other firearms offences (one being convicted of firearms possession, the other two are on remand and await trial in relation to firearms supply and/or possession). Had the individuals been encountered at Dover rather than Calais, they would have been liable to a maximum of 10 years' imprisonment. They would have been given credit for any early plea, and sentences may have been lenient (as in other examples given in this response. Consequently, sentences differ greatly between Member States. Streamlining French and UK legislation would have mitigated this. Additionally, it should be noted that French law has subsequently changed.

On several occasions (2006-2009), handguns have been imported to the **UK** concealed in private multi-occupancy passenger-vehicles or privately operated parcel post vehicles from **Lithuania**. Even where large numbers of firearms have been found in these vehicles, successful prosecutions have been problematic as it is difficult to prove knowledge of the items and the intent to evade the importation restriction. On one occasion, 10 converted Baikal pistols with silencers and 300 rounds of suitable ammunition were found behind the vehicle dashboard of a

³⁰ Organization for Security and Co-operation in Europe (2003). Handbook of Best Practices on Small Arms and Light Weapons. Retrieved from: <http://www.osce.org/fsc/13616?download=true>

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Lithuanian-registered minibus at the Dover inbound tourist controls; the driver and passengers were all found not guilty for offences charged under Section 5 of the Firearms Act (1968). In a separate incident, 15 converted Baikal pistols with silencers and one other handgun, together with several hundred rounds of suitable ammunition, was found concealed in a Lithuanian registered car-transporting lorry; no further action could be taken against the three occupants of the vehicle. On a third occasion, charges were brought under Section 50 of CEMA (1979) after four handguns were found concealed within paint tins carried in a Lithuanian-registered minibus. However, no further action could be taken, as the prosecuting agencies could not satisfy the Points to Prove in relation to intent and knowledge.

As revealed in the country fiche, there is an increasing trend of deactivated firearms being reactivated and gas pistols being modified to become firearms in **Latvia** and trafficked abroad. This problem is difficult to control, as the EU Firearms Directive does not define procedures for deactivating firearms. Prior to 2011 there was no requirement for firearms dealers to register sales of gas pistols with national authorities. According to the authorities, gas alarm firearms accounted for 56% of the total seizures in **Lithuania** in 2010. Following a successful operation carried out by Law Enforcement Authorities in Latvia and Lithuania that prevented cross-border trafficking of illegally converted gas pistols, Latvia introduced a new requirement to register gas pistols. Since similar legal requirements for permits were introduced in Lithuania, the number of sold gas alarm pistols has been reduced from 6,850 (in 2010) to 691 (in 2012).

Nowadays it is still possible to buy gas (alarm) pistols in Latvia without a permit. In Latvia gas (alarm) pistols (revolvers) could be acquired and possessed without a permit by natural persons from the age of 18, by presenting their identity documents to the dealers, who have the license to trade in arms. So there are many cases, when criminals bought gas (alarm) pistols by providing forged or invalid personal documents to the dealers. After that criminals brought gas (alarm) firearms into Lithuania, converted and used them for committing the crimes. Mostly such gas (alarm) pistols as Zoraki 914, Zoraki 906, BlowCompact are brought into Lithuania.³¹

Efforts to combat illicit firearms trafficking effectively requires cooperation between authorities in different countries and this, in turn, requires a degree of similarity in the approach to the problem. The research, in particular the discussions with national authorities in the interviews, has highlighted examples where legal differences have made cross-border collaboration difficult.³²

³¹ Despite the introduction of the above measures law enforcement agencies have had difficulty in collecting, registering and forwarding data (i.e. proof of age) on existing firearms to the Ministry of Interior. A new database has been established to record the nationality of people purchasing gas firearms in Latvia. From 2015 the law will lead to fines being given to people who fail to register their gas pistols (Latvian law provides for gas and other firearms to be re-registered online). There is a need for more staff and funding to implement the new requirements. A key problem is that the law on gas pistols varies considerably across the EU. For example, Turkey is the main supplier of gas pistols with low manufacturing standards, which allows them to be easily converted. The Baltic States are in favour of a harmonised EU definition of how firearms can be deactivated as this would remove a significant barrier to cross-border cooperation. Baltic Law Enforcement Authorities are also in favour of extending the types of firearms offences covered by national law. Training and familiarisation courses are a very helpful way for national focal points and designated experts to network and exchange contact information.

³² In our online survey, legal differences (e.g. differences in legal definitions) were identified as key barriers to cross-border police cooperation for 38% of respondents, lack of approximation of legislation

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2.4 Consequences of illicit firearms trafficking

An important aspect of the problem definition is the assessment of the economic, social and other consequences of illicit firearms trafficking.

Illicit firearms' trafficking is linked to other criminal activities (as highlighted in Europol's 2013 Organised Crime and Terrorism Threat Assessments). Not only does it substantially contribute to firearms availability that increases lethality and insecurity from a wide variety of violent crimes, but also there can be particularly close and organic links with organised criminal activities such as drug smuggling, money laundering and human trafficking, as well as with financial crimes and terrorism. Similarly, to the extent that illicit firearms trafficking supports activities such as human trafficking and drugs smuggling, there are clearly social consequences linked to the distress caused to vulnerable groups. These and other effects, and the possible evolution of the problem (baseline scenario) are examined in this section.

2.4.1 Serious and organised crime, terrorism and illicit firearms

As noted earlier, in addition to the murders committed by individuals in the context of disputes and general crime, illegally-held firearms are often used by organised crime groups - to coerce, intimidate or punish their victims, and to pursue and sustain their criminal enterprises in rivalry with other criminal groups and in possible opposition to public authorities. There is an overlap between this and 'individual' criminal firearms use, because members with access to firearms due to their membership of crime groups are often highly undisciplined and violent in their personal behaviour. Although some organised crime groups may exercise considerable discipline over lethal use of firearms by their members, this is not at all the norm. However, it is also important to recognise the importance of access to illicit firearms to enable organised criminal activities.

The illegal import and sale of these weapons itself provides lucrative business for the EU's estimated 3,600 organised crime groups, and the dealers that service them.³³ Terrorists and extremists have used firearms to instil fear and to kill: for example, seven people died in the Toulouse and Montauban attacks in 2012, and two in the 2011 Frankfurt airport incident.³⁴ Europol highlighted the role of Organised Crime Groups (OCG) in its 2013 'Serious and Organised Crime Threat Assessment'. The assessment showed that OCG's often rely on the availability of firearms to carry out their activities. The firearms illicitly trafficked are usually intended for either personal use or to meet specific orders. Most groups enter the firearms illicit trafficking business through other criminal activity, which may offer contacts, knowledge of existing routes and infrastructure related to the smuggling of weapons.³⁵

Even in the UK, which has particularly stringent restrictions on licit firearm possession, firearms were used in about one per cent of all incidents of the British

for 31% of respondents and limited resources for 47% of respondents. The equivalent percentages for cross-border judicial cooperation were 25%, 19% and 43% respectively.

³³ United Nations Office on Drugs and Crime (UNODC), 'Digest of Organized Crime Cases', 2012, p.101.

³⁴ Europol, TE-SAT 2013 - EU Terrorism Situation and Trend Report. The weapons used were a Colt 45 pistol and an Uzi submachine gun (Toulouse/ Montauban) and a 9 mm FN P35 pistol (Frankfurt).

³⁵ Europol, Serious and Organised Crime Threat Assessment, 2013.

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Crime Survey on violent crime in 2010/11.³⁶ Additionally, the 'Hospital Episode Statistics'³⁷ show that in 2010/11 there were 159 admissions (on average 3 a week with obvious social costs) to NHS hospitals for assault by a firearm in England, 24 per cent fewer than the same period the previous year (208 admissions).

Another important issue is that organised crime groups often remove markings (i.e. serial numbers) on firearms, which makes it difficult for law enforcement agencies to track and trace the origin of different weapons. (Interestingly, according to participants in one of the regional workshops, since Estonia introduced higher sentences for possession of unmarked firearms, criminal organisations started leaving the markings on illegal firearms.) However, deactivated firearms do not have to have markings (only a certificate is issued to the person who deactivated it). This means that if brought back into use, it can be more difficult to trace the origins of such weapons. Another problem is that there is no EU database to store and share information on deactivated firearms to show by who, where and when deactivation was carried out.

2.4.2 Firearms-related murders

Firearms have lawful and responsible civilian uses, and their manufacture, sale and purchase are a part of the EU's internal market³⁸. Firearms in the wrong hands, however, can have devastating consequences for citizens and communities.

As noted earlier, there were some 1,200 firearms-related homicides in EU28 Member States in the last year for which statistics are available (see Table 2.2). This indicates that **over the past 10 years there have been over 10,000 victims of murder or manslaughter involving firearms in the EU28 Member States.**³⁹ The UNODC's 'Global Study on Homicide'⁴⁰ (2011) indicates that for the latest year for which statistics are available:

- An average of 22% of all homicides occurred in the EU28 Member States as a result of the use of firearms with a range from 1.3% in Romania to 66% in Italy;
- The total number of firearms-related homicides in EU28 Member States was 1,223 with a range from 2 in Slovenia to 417 in Italy. The average number of homicides by firearms per 100,000 population was 0.29 with a range from 0.02 in Romania to 0.71 in Italy.

³⁶ Homicides, Firearm Offences and Intimate Violence 2010/11. Kevin Smith (Ed.), Sarah Osborne, Ivy Lau and Andrew Britton

³⁷ The figures presented are the 2010/11 Hospital Episode Statistics available from <http://www.hesonline.nhs.uk/Ease/servlet/ContentServer?siteID=1937&categoryID=211>.

³⁸ Producers in the EU made almost 2 million civilian firearms in 2011, equivalent to an estimated 20% of global production, see 'The Global Regime for Transnational Crime,' Council on Foreign Relations, Issue Brief, July 2, 2012) and additional figures in Annex 2.

³⁹ Period 2000-2009. Source: UNODC Global Study on Homicide 2011. This is a partial figure as for most Member States statistics for the whole period are unavailable.

⁴⁰ UNODC's 'Global Study on Homicide' (2011), pp. 39-57. Retrieved from: http://www.unodc.org/documents/data-and-analysis/statistics/Homicide/Globa_study_on_homicide_2011_web.pdf

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- In addition to the victims of murder or manslaughter involving firearms in the EU28 Member States, every year there are also over 4,000 suicides by firearm.

Taking just the absolute number of firearms-related homicides and irrespective of possible comparability issues between the UNODC and Eurostat, the total of 1,223 for the latest year when data is available compares with around 30,000 people deaths on the EU's roads (Eurostat, 2011) or 1.3 million predicted deaths from cancer (European Society of Medical Oncology, 2013). Whilst the number of firearms-related homicides is relatively small compared with these benchmarks, the total is nevertheless significant with the social and economic consequences being arguably greater (such as insurance, hospital costs...) thus even though comparatively "small" these deaths and injuries (arguably more numerous than homicides while bearing long-term impacts) bear significant costs.

There are no comprehensive statistics covering all EU28 Member States on the number of firearms-related homicides that are specifically linked to organised crime and terrorism (as opposed to those caused by for example domestic disputes, accidents, or suicides). However, a 2011 study carried out for the UK's Home Office concluded that 6% of all recorded non-terrorist homicides in England and Wales in the 2005–06 period had some link with organised crime. Although not necessarily firearms-related, the study argued that victims of organised crime homicides were more likely to be stabbed or shot than victims in non-organised crime cases where other methods (such as beatings and strangulation) were more common. **The study estimated that three-quarters of organised crime-related homicides involved the use of firearms compared to just under 4% in the cases that were not linked to organised crime.⁴¹ At an international level, the UNODC estimates that organized crime, especially drug trafficking, accounted for a quarter of deaths caused by firearms in the Americas compared with only some 5% of homicides in Asia and Europe.⁴²**

Not all firearms-related homicides are linked to criminal activities, terrorism or domestic disputes. The gunmen responsible for mass shootings in recent years, in the schools in Tuusula (2007), Kauhajoki (2008), and in Cumbria (2010) and Alphen aan den Rijn (2011), were mentally unstable adults and yet were licensed to possess a firearm. It is not clear from publicly-available information whether the perpetrators in these cases became ill after obtaining a firearms license or whether they were already ill and the requirements of Directive 91/477 with regard to medical checks were not properly enforced. In some Member States, for example Sweden, there is no need to pass medical checks before licensing for a firearm. In Winnenden (2009), an adolescent used a pistol which had been insecurely stored in his parents' bedroom. In the attacks in Liège in 2011, the gunman drew from a huge personal arsenal including military weapons and collectors' items which he had purchased and converted. These specific incidents alone claimed the lives of 61 people, including 19 children.

⁴¹ 'Summary - Exploring the links between homicide and organised crime', Matt Hopkins and Nick Tilley, study published by the UK Home Office, June 2011. The research was based on a total of 696 non-terrorist cases that were extracted from the Home Office Homicide Index in England and Wales for 2005–06 and follow up interviews with the police officers involved in the cases.

⁴² '2011 Global Study on Homicide - Trends, Context, Data', UNODC, 2011.

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There is substantial evidence that, although firearms availability does not generally affect the rates of violent arguments, disputes or crime, ready availability of such firearms is a significant factor in determining the lethality (or seriousness of injury) of such disputes or crime.⁴³ This is the case whether the firearms are legally registered or illicitly held. In this context, however, holders of illicitly trafficked firearms are more likely to be at least irresponsible in relation to safe storage and legitimate use (thus raising risks of 'accidental' misuse, and typically are more likely to be linked with crime or violent disputes. Thus, illicitly held and trafficked firearms contribute disproportionately to such societal costs from death and injury.

A recent study by the UK Home Office quantified the 'supply-related' costs of firearms offences. The social and economic costs of firearms supply capture the harms resulting from the use of firearms supplied by organised crime groups. This was based on the estimated number of incidents where certain firearms were fired or used as weapons (over 4,000 offences in 2012). While these offences themselves were not necessarily organised, it was assumed that the firearms used to commit them were supplied by organised crime networks. Therefore, the offences were direct consequences of organised crime. Using Home Office costs of crime estimates, these offences were attributed a value. The estimated social and economic costs of illicit firearms was £160 million. This compared with £10.7bn as being the estimated social and economic cost of drugs supply and £1.3bn for human trafficking for sexual exploitation. The report argued that while the £160m figure was likely to be an overestimate of the direct costs of firearms-related offences, it was likely to significantly underestimate the harms resulting from the organised supply of illicit firearms.⁴⁴ We are not aware of similar research having been undertaken in other EU Member States.

2.4.3 Effects on societies outside Europe

Although not the primary focus of this study, illegal firearms trafficking of weapons originating in EU has negative impacts on countries outside Europe.

Outside Europe, illegally-trafficked firearms – sometimes originating from within the EU (e.g. weapons from the Western Balkans being supplied to opposition groups in Syria) – aggravate conflicts, destabilize societies and hinder development. Insurgents, armed gangs, pirates, extremists and terrorists can all multiply their force through the use of unlawfully acquired firearms. At an international level, the ready availability of firearms and ammunition has led to human suffering, political repression, crime and terror among civilian populations. Irresponsible transfers of conventional weapons can destabilize security in a region. Investment is discouraged and development disrupted in countries experiencing conflict and high levels of violence.

⁴³ Roth, J. (1994). Firearms and Violence. U.S. Department of Justice, Office of Justice Programs, National Institute of Justice. See also: Libby, N.E. (2009) Predictors Of Firearm Use And Effects Of Weaponry On Victim Injury In Violent Crime: A Criminal Events Approach. Retrieved from: <http://purl.fcla.edu/fcla/etd/CFE0002722>

⁴⁴ 'Understanding Organised Crime: Estimating the Scale and the Social and Economic Costs', Research Report 73, Hannah Mills, Sara Skodbo and Peter Blyth., published by the UK Home Office, October 2013.

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Interpol estimates that each year, firearms are used in more than 245,000 murders worldwide (excluding war-torn countries).⁴⁵ However, this is only a small percentage of all crimes committed with firearms, which are widely used to support other criminal acts. The UNODC has calculated that roughly 42% of homicides committed worldwide in 2010 involved the use of firearms (there is no distinction in this respect in the data between individuals and organised groups). Furthermore, unlike other illicit commodities, firearms may be used and passed on over decades often as long as the relevant ammunition is available (self-manufacturing of ammunition excluded).

In 2000, UN Secretary-General, Kofi Annan stated that “the death toll from small arms dwarfs that of all other weapons systems — and in most years greatly exceeds the toll of the atomic bombs that devastated Hiroshima and Nagasaki. In terms of the carnage they cause, small arms, indeed, could well be described as ‘weapons of mass destruction.’” Illicit firearms’ trafficking is not isolated from other illegal activities. When small firearms flow to the black market, they become one of many illegal commodities there, and may be the subject of illicit trafficking alongside other controlled goods. This is particularly the case in regions close to areas of actual or potential large-scale conflict. More generally, access to illicit firearms is integral to the operations of most organised trafficking groups, for instrumental purposes of coercion and defence and also as a result of their specific gangs’ sub-cultures. Mini ‘arms races’ also take place – between rival organised crime groups or between these and law enforcement agencies – sometimes resulting in periods of high local demand for military-style firearms with impacts of trafficking prices and activities. The firearms can be exchanged for money, drugs, conflict diamonds, endangered species, etc.

There are successful examples of cross-border cooperation between EU Member States and third countries (e.g. the Baltic States and third countries such as the United States and Russia) in combatting firearms trafficking. Furthermore, information sharing takes place with Turkey and Romania based on similar legal frameworks.

2.5 Main Players and Drivers of illicit firearms trafficking

We now examine the main demand and supply-side drivers of illicit firearms trafficking, i.e. the factors that explain why there is a problem. We also identify the ‘enablers’.

- On the **demand side**, the main drivers are criminal or terrorist activities and those involved who procure firearms illegally to use in the pursuit of their goals.
- On the **supply side**, the drivers include traffickers and other intermediaries who are involved in the trafficking of firearms either for profit or some other reason (e.g. the intermediaries may be part of the same criminal or terrorist group as the end users. In some cases it could be that the intermediaries are unaware of their role.)

⁴⁵ Speech to the CRIM Hearing 23 April 2013.

<http://www.europarl.europa.eu/document/activities/cont/201304/20130425ATT65090/20130425ATT65090EN.pdf>

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- Also on the supply-side are the suppliers themselves, i.e. individuals and organisations that provide a source of illicit firearms. In many cases, unintentional sources are important, where authorized holdings of firearms are stolen or lost and then enter the illicit market. However, intentional sources are normally critically involved in the supply chain, either through corrupt neglect or direct engagement motivated by financial or other considerations.

There are a number of problem 'enablers' including differences in legal frameworks, administrative and judicial procedures, and the capacities of law enforcement agencies in different EU Member States which means that the problem cannot be effectively tackled.

2.5.1 Demand-side - End users of illicit firearms

In our key stakeholder survey, **the main users of illicit firearms were identified as being organised crime groups although many respondents did not know.** Ideally, the analysis might be limited to law enforcement agencies that responded to the survey but only four of them replied to this question (their responses mirrored the findings below with two stating that organised crime groups were the 'most important' groups involved in illicit firearms trafficking, and one in each case indicating that terrorists and non-organised criminal groups were the 'most important').

Table 2.5: Who are the main groups involved in illicit firearms trafficking in your country?

Options	Most important	
	Nº	%
Terrorists	4	4.4
Organised criminal groups	15	16.7
Non-organised criminal groups	4	4.4
Don't know or no answer	67	74.4
Total	90	100.0

Source: CSES survey

The 2011, Europol Review showed that the possession of firearms by Organised Crime Groups is rising in Europe.⁴⁶ The willingness of OCG members to misuse firearms, not only instrumentally to pursue their criminal enterprises, but also in wider contexts of disputes has posed a significant threat not only to themselves but also to both the general public and law enforcement personnel. There are regular instances where innocent civilians appear to be caught in the 'crossfire' between rival gang members, for example. Although most OCGs prefer firearms, there is also an upward trend in the use of heavy SALW such as assault rifles (e.g. AK-47s) and explosive devices. The increased use of heavy arms by serious and organised crime networks in the EU was also mentioned by the European Commission at a high level conference that took place in November 2012. One of the conclusions of the conference was that Member States should consider

⁴⁶ Europol Review (2011). Retrieved from: https://www.europol.europa.eu/sites/default/files/publications/en_europolreview2011_0.pdf

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introducing legislative proposals based on Article 83 (1) TFEU to combat illicit arms trafficking.

As shown earlier, there are clear connections between organised crime and illicit arms trafficking. The connections can be categorised in three overall forms:

- Carrying firearms as an intrinsic aspect of trafficking operations (including closely linked organised criminal activities involved in the overall trafficking process);
- Accessing firearms for use for violence, intimidation and self-defence by local and national gangs that are the local or national elements of transnational criminal networks;
- Transnational criminal networks that to some extent specialise in illicit firearms trafficking.

In most national or local contexts, these three types of links co-exist. The extent to which the second factor above depends on illicit firearms trafficking obviously depends on relative prices and reliability of other potential sources (domestic illicit production; loss or theft from licensed holders etc.) – the more stringent national controls are on these other sources, the greater the relative importance of illicit trafficking.

Organised criminal groups act in accordance with the commercial rules of supply and demand that govern profit-making, and areas in which SALW are restricted or prohibited will be likely to be areas where there is conflict, thus presenting a prime business opportunity for organised crime groups. Russian and Italian criminal organisations, for instance, were operating in the midst of the Yugoslav conflicts.⁴⁷ According to Europol, Organised Crime Groups often rely on the availability of weapons to carry out their activities. **However, the market for firearms in the EU remains modest in size compared to other regions. Trafficking within the EU or for EU-based end-users occurs mainly through relatively small scale transactions (each individual transaction typically involving a few weapons);⁴⁸ and the weapons trafficked are intended for either personal use or to meet specific orders. The data collected for the SOCTA 2013 do not indicate an increase in the trafficking of heavy firearms.**

According to Europol's recently published 'EU Terrorism Situation and Trends Report (TE-SAT 2013)', an **increased use of firearms has been observed across a variety of terrorist and extremist groups.** Thus, "terrorists and violent extremists have also been found in possession of a significant amount of firearms and ammunition over the reporting period. The use of firearms by terrorists and violent extremists has increased in recent years. This modus operandi appears to be emerging across a range of ideologies and is of concern".⁴⁹

⁴⁷ Chrissie Hurst, Bernardo Mariani, Ian Davis. Organised crime, corruption and illicit arms trafficking in an enlarged EU. 2001. Saferworld.

⁴⁸ Note however, that arms shipments transiting the EU to be illicitly diverted to external end users (for examples in conflict -affected regions) may involve large numbers of weapons and substantial ammunition stocks).

⁴⁹ Europol 'EU Terrorism Situation and Trends Report (TE-SAT 2013)', April 2013

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2.5.2 Supply-side - traffickers and other intermediaries

Illicit firearms trafficking within the EU takes place in a variety of different ways and involves a range of different intermediaries.⁵⁰ For example, the methods can include **transfers by individuals, small groups or firms** that 'deliberately break the law by transferring firearms to illicit recipients' by concealing the firearms from export control authorities, customs and border guards either by smuggling, mislabelling the shipment, concealing the firearms in a shipment of other goods. Arms transfer diversions are defined as the transfer of controlled items authorized for export to one end user, but delivered to an unauthorized end user or used by the authorized end user in unauthorized ways.⁵¹ Another type is **transfer of firearms that are deliberately facilitated by governments or state agents (including corrupt national officials)**, in a covert manner, to supply non-state actors. The main sources of illicit firearms within the EU are the reactivation of neutralised weapons; burglaries and thefts; embezzlement of legal arms, legal arms sold in the illegal market; firearms retired from service by army or police; and the conversion of gas pistols.

Comprehensive statistics on how important these different sources are relative to one another do not appear to be available and any attempt to provide an estimate would probably have to be based on police statistics from particular areas where detailed seizures records are maintained. However, these will suffer not only from all of the well-known problems of reliability of statistics on such issues, but also because these proportions will be highly dynamics and context-dependent. Moreover, the relative importance of such sources is probably highly context dependent. People and organisations will obtain illicit firearms from a variety of potential sources according to relative prices and reliability. These not only vary according to locality but also change (for example, due to changing priorities of law enforcement agencies, new legislation, etc. The well-known story of the rise (and recent fall) of sources from re-activated or replica firearms in the UK illustrates this.

Examples of traffickers and other intermediaries

- Some Member States collect accurate data on the origin of illicit firearms. Thus, a rough estimate provided to us in an interview with the national authorities in **Finland** was that 60-70% of illicit firearms in the country are the result of cross-border trafficking (the remainder is probably sourced from diversion from legally-held arms licensed in Finland, for example due to insecure holdings or diversion to unauthorized uses by licensed individuals. Most of these are stolen firearms that have been used in armed robberies and burglaries). Only 10% originate directly from outside the EU (e.g. USA) and are often trafficked unknowingly by holidaymakers with the remaining 50-60% coming from other EU Member States, albeit in some cases in the form of trans-shipments that could originate from regions outside Europe.
- In **Denmark**, the main method of trafficking illicit firearms into the country is via Heavy Goods Vehicles primarily from the Western Balkans.

⁵⁰ Greene O, 'Examining international responses to illicit arms trafficking', *Crime, Law & Social Change*, vol 33, 2000, p 154.

⁵¹ Deadly Deception: Arms Transfer Diversion, by Matt Schroeder, Helen Close, and Chris Stevenson, 2008. In *Small Arms Survey, Small Arms Survey 2008: Risk and Resilience*.

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Although, monitoring illicit firearms trafficking is a relatively new area of responsibility for Danish law enforcement authorities they suspect that most of the firearms trafficked into Denmark are destined to be used by organised criminal groups. Evidence provided by Danish law enforcement officers also suggests that gun collectors are unknowingly involved in illicit firearms trafficking (i.e. by importing unlicensed firearms for private display).

- According to law enforcement authorities in **Estonia**, there were several cases of illicit arms trafficking in the middle of 1990s, when weapons were smuggled to Estonia from Central and Eastern Europe. The number of illicit firearms contained in illegal consignments often ranged from a few hundred to 2000 firearms. Interestingly, the demand for illicit firearms is mainly from organised crime groups outside of Estonia rather than the internal black market.

Those engaged in illicit firearms trafficking have every incentive to involve different entities in different countries in the process. The cross-border element can add to the opacity of illicit firearms trafficking and can create difficulties for Law Enforcement Authorities who need to coordinate their response across different legal jurisdictions.

Research carried out by Saferworld found that although the influx of firearms into the EU is not overwhelming, there is a steady supply of small arms primarily from the Western Balkans region, as well as from Eastern Europe, which could increase with future EU enlargement and the extension of the Schengen system (no quantification of the importance of these different sources was provided). Small arms and light weapons (SALW) have fed the local criminal underworld as well as European terrorist groups, such as the Real IRA, thus contributing to the undermining of West European public safety.⁵² According to the same study, the two main users of SALW in the EU are terrorist organisations, especially those struggling for secession from a state, and criminal groups involved in profitable illegal activities, such as drug-trafficking, prostitution, smuggling of illegal immigrants, and extortion.

Illicit firearm trafficking is almost exclusively a supplementary rather than primary source of income for the OCGs involved in this crime area. Most groups enter the weapons trafficking business through other criminal activity, which may offer contacts, knowledge of existing routes and infrastructure related to the smuggling of weapons. Motorcycle gangs are also involved in the trafficking of weapons and have, for example, opened chapters in the Western Balkans. OCGs use existing criminal routes to traffic weapons.⁵³ With regard to illicit firearms trafficking by terrorist organisations, although most of their attacks have been conducted with explosives and handguns, despite the cessation of hostilities these organisations still possess vast arsenals that might eventually end up in the hands of criminals if not properly decommissioned.⁵⁴ The recent study by the UK Home

⁵² The proliferation of illegal small arms and light weapons in and around the European Union: instability, organised crime and terrorist groups, Dr Domitilla Sagramoso, Saferworld & Centre for Defence Studies, April 2001, pp1-2.

⁵³ <https://www.europol.europa.eu/sites/default/files/publications/socta2013.pdf>

⁵⁴ Dr Domitilla Sagramoso. The proliferation of illegal small arms and light weapons in and around the European Union: Instability, organised crime and terrorist groups. 2001. Saferworld.

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Office quoted earlier that quantified the 'supply-related' firearms offences as being equivalent to £160m argued that while the number of illicit firearms in use by organised criminals was likely to be small. Intelligence from the National Ballistics Intelligence Service (NABIS) was quoted suggesting that the same firearms are often passed between different criminal groups and used in different violent incidents, indicating that the market for illicit firearms (within the UK at least) involves suppliers loaning firearms to a number of organised crime groups.⁵⁵

2.5.3 *Supply-side - suppliers of illicit firearms*

The main sources of illegal weapons within the EU are the reactivation of neutralised weapons, burglaries and thefts, embezzlement of legal arms (e.g. thefts from shops selling firearms), legal arms sold in the illegal market, firearms retired from service by army or police, and the conversion of gas pistols.

There is no reliable indication of the proportions coming from these different sources although feedback from our consultations and the workshops suggests that in most EU countries, the reactivation of neutralised weapons is the largest single source of illicit firearms. Most illicit firearms originate from cross-border trafficking, often as noted above from outside the EU. Since the early 1990s, the firearms illicitly trafficked have originated from three main sources that have replaced each other:

- First of all the former Soviet Union and Warsaw Pact bloc because a source of illicit firearms following the collapse of the iron curtain;
- Then, during the wars of Yugoslav succession, the Western Balkans became an important source of illicit firearms;
- More recently, North Africa has superseded the former, with a pool of weapons available and following some of the main drug trafficking routes into the EU⁵⁶.

According to Europol, the amount of heavy firearms and SALW in circulation in the EU seems to satisfy much of the demand at present and suppliers in south-eastern Europe and elsewhere have the capacity to meet any rise in demand in the foreseeable future.⁵⁷ The fact that, (according to law enforcement agencies participating in the Western Balkans workshop we organised), Kalashnikov or a rocket launcher can be acquired for as little as EUR 300 to EUR 700 in some parts of the EU indicates their ready availability to criminals and others.

Furthermore, advances in technology increases the risk that sectors of society that have traditionally not been able to obtain illicit firearms could gain access to them. For example, 3D printing can be used to manufacture firearms and produce essential components to reactivate deactivated firearms. Last year, what was thought to be the world's first gun made with 3D printer technology was successfully fired in the US. The gun was made on a 3D printer that cost

⁵⁵ 'Understanding Organised Crime: Estimating the Scale and the Social and Economic Costs', Research Report 73, Hannah Mills, Sara Skodbo and Peter Blyth., published by the UK Home Office, October 2013.

⁵⁶ Philip J. Cook, Wendy Cukier and Keith Krause (2009) The illicit firearms trade in North America *Criminology and Criminal Justice* August 2009 vol. 9 no. 3 265-286.

⁵⁷ Europol Review (2011). Retrieved from: Philip J. Cook, Wendy Cukier and Keith Krause (2009) The illicit firearms trade in North America *Criminology and Criminal Justice* August 2009 vol. 9 no. 3 265-286.

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U\$8,000 and was assembled from separate printed components made from ABS plastic (only the firing pin was made from metal).⁵⁸ 3D technology works by building up layer upon layer of material - typically plastic - to build complex solid objects. At present and the near future, this potential production technology poses an emerging rather than major risk: other more 'traditional' sources of supply will probably remain more important for the foreseeable future. Nevertheless, it remains a serious concern that the printers become cheaper, implying that instead of buying goods from shops, consumers will instead be able to download designs and print out the items at home.

Large amounts of powerful military-grade weapons have, since the mid-1990s, reached the EU from the Western Balkans and former Soviet Bloc countries,⁵⁹ often trafficked in small quantities and hidden in vehicles like long distance coaches to avoid detection.⁶⁰ Recent upheavals in North Africa and the Middle East carry a risk that surplus and stolen military arms will reach European criminal markets along similar routes. Firearms, parts and components are also, to an increasing extent, traded online and delivered through mail order, postal or express delivery services.⁶¹ There is no way of accurately quantifying this trend because it is largely hidden from public view.

Examples of Suppliers of illicit firearms⁶²

A considerable number of firearms and other military equipment were illegally obtained from the Soviet Army's military bases, which were located in **Estonia**. This mostly happened in the end of 1980s, when the collapse of the communist regime started and the control over Soviet Army's weaponry decreased. The occupying forces of Soviet Union definitively left Estonia on 31st August 1994. In that period some of the civilians residing in Estonia (criminals as well as people with entrepreneurial character) managed to illegally exchange money, alcohol, food and other goods which the foreign troops valued for Kalashnikov rifles, Makarov pistols and ammunition. Naturally, we do not have the exact number of firearms and ammunition, which were obtained using this scheme, but probably these numbers range from a few hundred to a few thousand. These illegal firearms and ammunition are not possessed by a small group of people, but are rather divided by different people who each own a small number of firearms.

⁵⁸ BBC News <http://www.bbc.co.uk/news/science-environment-22421185>

⁵⁹ COM(2013) 716 final. Precise estimates of the size of these stores are impossible, and those available vary widely, partly because volumes are dynamic. In one recent study, defence stockpiles in Bosnia and Herzegovina in 2011 were estimated at 76 000 pieces of small arms and light weapons and 100 000 metric tons of ammunition, and in Montenegro in 2011 at 28 000 weapons and 7000 metric tons of ammunition; Pierre Gobinet, 'Significant Surpluses: Weapons and Ammunition Stockpiles in South-east Europe', Small Arms Survey, The Regional Approach to Stockpile Reduction and the US Office of Weapons Removal and Abatement, Dec 2011.

⁶⁰ European Firearms Expert group; Convertible Weapons in the Western Balkans, SEESAC, 2009. In UK in 2010/11 63% of the 2534 stolen firearms were stolen from residential premises; Homicides, Firearms Offences and Intimate Violence 2010/11: Supplementary Volume 2 to Crime in England and Wales 2010/11, Kevin Smith et al, Home Office Statistical Bulletin 2012.

⁶¹ For instance: www.gunbroker.com

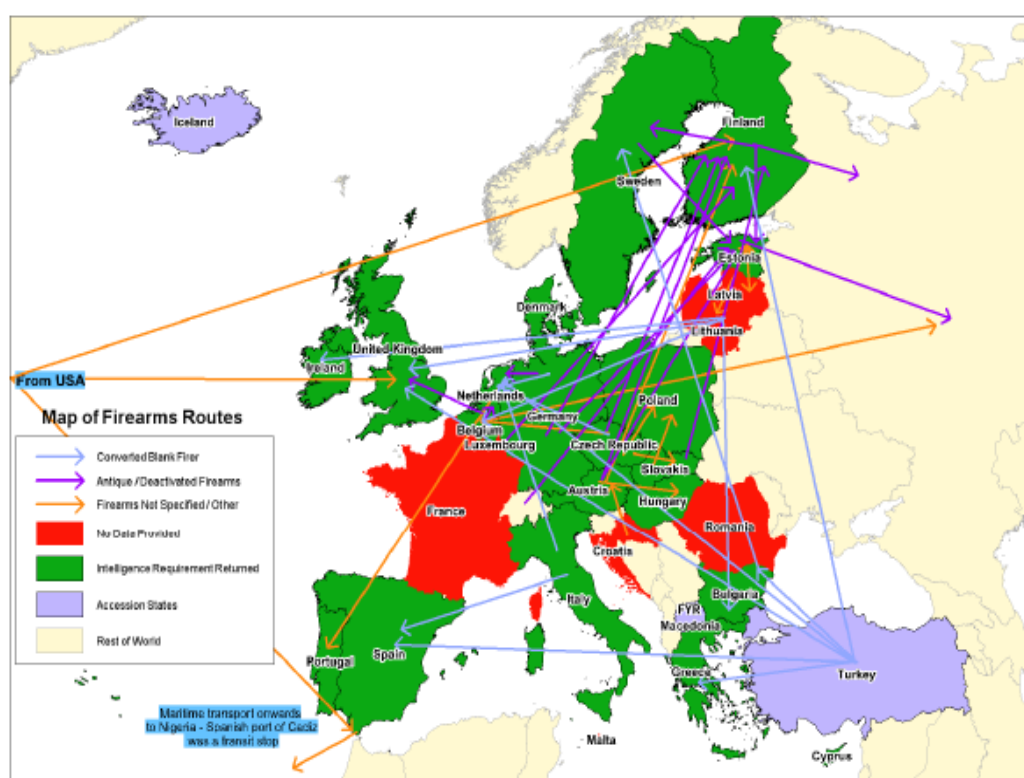
⁶² Information obtained through interviews.

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Illicit firearms trafficking can involve many transit countries (those that are passed through in order to reach a destination), the wider implication is that to enhance the probability of success, the policy options should provide a proactive approach to dealing with the legal and law enforcement issues faced by Member States.

Figure 2.3: Trafficking routes as reported to the European Firearms Expert group⁶³



Turning to the type of firearms, conversion of air/gas pistols into a lethal weapon is a common source of illicit firearms. Another common source of illicit firearms in the EU originates from the reactivation of firearms (often though the purchase of parts over the internet) that have previously been deactivated.

In addition to these sources of illicit weapons, the research suggests that many firearms in illegal circulation are the result of theft or diversion from their lawful lifecycle (the extent to which this is the case cannot be estimated), of being illegally imported from third countries and of the conversion of other objects into firearms. Almost half a million firearms lost or stolen in the EU remain unaccounted for, the overwhelming majority of which are civilian firearms, according to the Schengen Information System⁶⁴. The research shows that most of the firearms used in crime and seized in the UK with the

⁶³ COM(2013) 716 final. Based on input from Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Ireland, Estonia, Germany, Greece, Hungary, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, UK.

⁶⁴ The second generation Schengen Information System is an EU computer system which enables Member States authorities to share data (e.g. type and serial number) on firearms reported as lost, stolen or misappropriated.

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exception of shotguns originate from outside of the UK. Of the firearms originating from outside of the UK there is a 50/50 split between those originating in the Member States and other countries, such as the US, Turkey and Russia. These proportions will vary for other EU Member States, according to the stringency and enforcement of national firearms control regulations, geographical location and other factors.

2.5.4 Relationship between laws and illicit firearms

The earlier analysis of firearms-related deaths (see Table 2.3) suggest that although Member States with larger populations tend to have a larger total number of gun deaths, by contrast, the rate of gun deaths is lower in Member States with relatively tougher restrictions on the research on the relationship between firearms availability and lethal violence.

Availability of firearms is not typically linked with overall levels of violent disputes or crime in a society, but it is significantly linked to the lethality of such violence. In this context, availability concerns the availability of firearms to people that might misuse them, and not so much to the overall numbers of firearms held by citizens. This is the case in relation to attempted suicides and misuse of arms in the context of family or social disputes: the rates of attempted suicide or violent disputes are not correlated with gun availability, but the lethality of such disputes is substantially correlated. In this context, the most systematic research has been conducted in relation to USA, Canada, and Australia: the qualitative literature is less well-developed in relation to EU states, but what exists on the EU is fully consistent with such wider findings.⁶⁵

In this context, it is to be expected that countries with relatively stringent and strongly enforced restrictions on civilian possession of firearms will benefit from lower death rates from violent disputes or crime. The key factor is ready availability at the point of potential misuse. This factor is one of several that combine to determine risks of lethal misuse of firearms. Cultural and societal norms not only affect the stringency and character of legal restriction on firearms possession, but also the risk factors associated with patterns of access to firearms. Also cultural factors (such as attitudes to gun ownership) can play a significant role in determining the rate of gun deaths.

According to a Eurobarometer survey, most Europeans are concerned about the levels of crimes using firearms.⁶⁶ Respondents were evenly divided on the question of the level of firearms-related crime in their country. Just under half (49%) thought that there is a high level of firearms-related crime; of these, 12% perceived it to be 'very high' and 37% considered it to be 'fairly high'. However, virtually the same proportion (48%) thought that the level of firearms-related crime in their country is 'low', with 9% estimating that it is 'very low' and 37% saying that it is 'fairly low'. It is important to note here that this question relates to perceptions

⁶⁵ Not only literature but also research centres are more numerous in the US than the EU. For instance, the Harvard Injury Control Research Center (conducting firearms research) or the Center for Gun Policy and Research which belongs to the Johns Hopkins Bloomberg School of Public Health. See detailed discussion in, for example, O. Greene and N. Marsh, *Small Arms, Crime and Conflict*, Routledge London, 2012; and P. Squires, *Gun Crime on Global Contexts*, Routledge, London, 2014.

⁶⁶ Flash Eurobarometer 383: Firearms in the European Union. http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/trafficking-in-firearms/docs/fl383_firearms_report_en.pdf

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of firearms-related crime. While they are a useful measure of public concern, opinions are also likely to reflect differences in media coverage of such crimes.

The survey also found that most Europeans expect the EU to take action in close collaboration with national governments. Almost two thirds (64%) thought that the EU, working in cooperation with national authorities, is in the best position to address the issue of firearms trafficking while a quarter (26%) of people say that national authorities should act on their own in tackling firearms trafficking.⁶⁷

2.6 Illicit arms trafficking in the context of the European armaments sector

To put illicit firearms trafficking into context, it is helpful to consider Europe's armaments industry and the legal firearms market. In the context of the European arms manufacturing industry, there is scope for legally manufactured firearms to fall into the illicit market.

According to the statistical classification of economic activities in the EU (Eurostat NACE Rev 1.1), the armaments sector covers the production of arms and ammunition, corresponding to NACE Group 29.6, which is part of the machinery and equipment sector. The activities covered are the production of: tanks and other fighting vehicles; artillery material and ballistic missiles; military small arms and ammunition; hunting, sporting or protective firearms and ammunition; explosive devices such as bombs, mines and torpedoes. The data does not cover military aircraft and warships, which are classified instead as transport equipment.

According to Eurostat, the EU's arms and ammunition manufacturing sector (covering all categories of arms) generated EUR 4.7 billion of value added and employed 97,300 persons (2.4 % of the total value added generated by the EU's machinery and equipment manufacturing sector and 2.7 % of its workforce in 2006). There were 1,300 enterprises registered in the EU28's arms and ammunition manufacturing sector in 2006, less than 1% of all the machinery and equipment manufacturing enterprises in the EU28.⁶⁸ Gross tangible investment by the EU-27's arms and ammunition manufacturing sector was valued at EUR 326 million in 2006, 1.9% of the machinery and equipment manufacturing total.

Note that these statistics aggregate value of an entire sector, of which firearms manufacture is a relatively small part. Nevertheless, firearms (and associated ammunition manufacture and sale is economically significant in the EU. **For example, the Institut Européen des Armes de Chasse et de Sport (IEACS) has estimated that the hunting and shooting sports market generates in excess of €18 billion of economic activity annually and that this activity supports more than 580,000 jobs.** Although this is probably a relatively high estimate (IEACS has an interest), it is nevertheless indicative. Overall, there are more than 1,800 manufacturers, 200 distributors and 14,000 retailers in Europe whose business is totally or significantly dependent on the hunting or recreational shooting market.⁶⁹

⁶⁷ Flash Eurobarometer 383: Firearms in the European Union.

⁶⁸ http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Arms_and_ammunition_production_statistics_-_NACE_Rev._1.1#Database

⁶⁹ Speakers' Contributions: The Fight Against Illicit Trafficking In Firearms And The Securing Of Explosives. The Role of the Industry in Controlling the Sales of Firearms and Countering Trafficking: More

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The arms and ammunition manufacturing sector overall generated more value added in the UK than in any other Member State, accounting for well over one third (37.3 %) of EU27 value added in 2006. The next largest contribution in this sector was made by Germany, with a 22.4 % share, but no other Member State recorded a double-digit share of the EU27 total. In employment terms, this sector was less concentrated: although the UK was again the largest by this measure (16,600 persons employed), its share of the EU27 total was just 17.0%, less than half its share in value added terms. Bulgaria had the second largest workforce of 14,100 persons employed, slightly more than in Germany.⁷⁰

During the period between 1997 and 2007, the production index for arms and ammunition manufacturing in the EU grew by an average 1.3 % per year. There were three distinct periods of output development: the first was characterised by falling output after 1997 and until 2000; the second was the subsequent, sustained strong growth through until 2006, at an average rate of 5.3 % per year; the third and most recent was a return to negative rates of change in 2007 when output contracted by 4.9 %.

The table below shows the total number and value of civilian firearms production, exports and imports in the EU.

Table 2.6: EU Firearms production, exports and imports (2011)

Statistics	Short guns*	Long guns*	Total
Production of civilian firearms in EU27 (units) (world in italics) ⁷¹	806 645 (1 219 000)	1 167 511 (5 074 395)	1 974 156 (10 255 580)
Exports of civil firearms in EU27 (units) ⁷²	566 345	634 596	1 200 941
Imports of civilian firearms in EU27 2011 (units) ⁷³	25 958	169 424	195 382
Exports of civilian and military firearms in EU-28 (Value in EUR) ⁷⁴	-	-	€931 633 044

Note*: A long gun is a category of firearms and cannons with longer barrels than other classes. In small arms, a long gun is designed to be fired braced against the shoulder, in contrast to a handgun.

Self-Regulation or Government Intervention? Institut Européen Des Armes De Chasse Et De Sport (IEACS). 2013.

⁷⁰ http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=Arms_and_ammunition_production_statistics_-_NACE_Rev._1.1&stable=1

⁷¹ Source: World Forum of Shooting Activities, March 2013, using information from proof houses composed of official figures from Belgium, Finland, France, Germany, Italy, Spain and UK, estimates for other Member States.

⁷² Eurostat. Cited in COM(2013) 716 final. Brussels: Europa.eu. 21 October.

⁷³ Eurostat. A number of Member States did not report any exports of pistols and revolvers (Austria, Belgium, Bulgaria, France, Romania) and military firearms (Austria, Belgium, Bulgaria, Finland, France, Germany, Italy, Romania).

⁷⁴ Peace Research Institute Oslo cited in COM (2013) 716 final. Brussels: Europa.eu. 21 October.

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In comparison to many other sectors of the European economy, the availability of data on the arms and ammunition sector is often restricted by issues of confidentiality. Therefore, the likelihood of an under-reporting of arms production and sales must be borne in mind. However, it is clear from the Eurostat and IEACS data that the licit European arms sector employs a large number of people and that it generates significant revenue for the Member States and European businesses.

Based on the earlier estimates of illicit firearms trafficked within the EU (see Section 2.1.2) it is clear that illicit firearms are likely to make up only a small (albeit impossible to quantify) proportion of the total firearms market which includes both civilian and military weapons. Nevertheless, the effect of any proposals for new measures to combat illicit firearm trafficking must take into account any wider effects on the EU's licit firearms sector to prevent unintended damage to a very important sector the EU's economy while aiming to prevent, detect, investigate and prosecute possible diversion.

2.7 Existing institutional framework for combatting illicit arms trafficking

As note earlier, it is important that any new measures to combat illicit firearms trafficking take into account existing policies and institutional frameworks. There are a number of organisations at the international, EU and national level that have a role in combatting illicit firearms trafficking.

2.7.1 International level

At the international level, in 2001 the UN established the **Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects** (UNPoA). The UN UNPoA provides the framework for activities to counter the illicit firearms trafficking. It includes a range of important international norms to promote and ensures adequate controls on legal SALW to prevent and combat illicit or unauthorised proliferation and misuses of SALW. At the national level the UNPoA includes obligations for states to put in place adequate to control of the production, export, import, transit or retransfer of SALW in order to prevent illegal manufacture and illicit arms trafficking. Furthermore the UNPoA obliges countries to designate national coordination agencies or bodies and institutional infrastructure responsible for policy guidance, research and monitoring of efforts to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects. The UNPoA obligation are politically rather than legally binding, but they command high-level political authority and legitimacy for UN Member States.

The Firearms Protocol of the UN Conventional to Combat Transnational Organised Crime (2001) is a legally-binding international instrument that complements and reinforces the international norms of the UNPoA, particularly in relation to international firearms trafficking. In addition, the International Tracing Instrument (2008) provides important obligations to ensure effective marking, record-keeping and international tracing co-operation, to enable effective international co-operation to trace sources and diversion points of illicit SALW seized, for example, in conflict affected or conflict-related contexts. As such, it complements and re-forces international police co-operation through INTERPOL in relation to crime weapons.

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INTERPOL facilitates international police co-operation to help states to improve their collection and analysis of the information that can be gleaned from inside and outside a firearm to prevent and solve firearm-related crime. For example, the INTERPOL Firearms Reference Table (IFRT) is an interactive online tool that provides a standardized way to identify and describe firearms, and enables an investigator to obtain or verify the details of a firearm. The IFRT contains more than 250,000 firearm references and 57,000 firearm images, as well as extensive information on firearm markings. Interpol has also established a Ballistic Information Network (IBIN), which provides a global platform for collecting, storing, and comparing ballistic data. IBIN is the first and only large-scale international ballistic data sharing network.⁷⁵

In terms of criminal intelligence analysis, INTERPOL is developing its capacity to contribute to firearm-related criminal investigations by conducting and disseminating research and analysis on firearm related crime trends and techniques, as well as intelligence on firearm trafficking routes and methods.

The **World Customs Organization (WCO)** is also relevant. The WCO is an independent intergovernmental body whose mission is to enhance the effectiveness and efficiency of customs administrations. One of the most critical components of the UN Firearms Protocol and the one which impacts on Customs administrations is the import, export and transit system (Articles 10, 11, 12 and 13). It is a reciprocal system requiring countries to exchange authorisations before permitting shipments of firearms, their parts and components and ammunition to arrive in, leave, or transit their territory. Customs administrations have an important role in helping to identify and prevent the illicit movement and supply of firearms around the world.

There are a number of important regional agreements relating to SALW and firearms, in the Americas, East, West and Southern Africa. The **Organisation for Security Cooperation in Europe (OSCE)** is of most direct relevance for the EU. It plays an important role in combatting illicit arms trafficking in its 52 member countries. By adopting the OSCE Documents on Small Arms and Light Weapons (SALW) and Stockpiles of Conventional Ammunition, as well as Forum for Security Cooperation (FSC) Decision 15/02, the OSCE participating States are committed to ensure effective controls of SALW and ammunition. The OSCE Forum for Security Co-operation also agreed to provide assistance with collection, destruction, improving stockpile management and security.

The Document on Small Arms and Light Weapons, adopted in 2000, contains a wide range of norms, principles and measures relating to the production, transfer, storage, collection or seizure, and destruction of weapons. The Document obliges participating states to disclose their annual imports and exports of SALW, as well as the numbers of small arms seized and destroyed. The Document is supplemented by FSC decisions regulating related matters, such as SALW export controls. Most recently, the FSC adopted a Plan of Action on SALW that fosters the full

⁷⁵ The INTERPOL Illicit Arms Records and tracing Management System (iARMS) is the first centralized system for reporting and querying lost, stolen, trafficked and smuggled firearms. The system allows authorised users to query the iARMS database and instantly determine whether the firearm they seized has been reported to INTERPOL by another member country. It also assists member countries by providing an enhanced tracing system and enables countries to statistically chart their requests and responses for international assistance.

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implementation of SALW-related commitments as well as encouraging further development of norms, measures and principles to prevent the proliferation of illicit SALW.

2.7.2 Cooperation within the EU to combat illicit firearms trafficking

In terms of EU level cross-border cooperation to stop illegal possession and circulation of firearms, an operational action⁷⁶ has been devised by firearms and customs experts in Member States and Europol. This plan includes:

- **Coordinated collection and sharing of information on firearms crime** involving police, border guards and custom authorities both within Member States and across borders;
- **Police control operations to tackle the principal sources and routes of illegal firearms**, including the Western Balkans and assessing the risk of arms trafficking across the EU's eastern border and from North Africa;
- **Encouraging concerted follow-up to firearms-related alerts** on the second generation Schengen Information System to ensure that the number of unresolved alerts does not continue to rise; and
- **A programme of joint police customs operations** under the direction of Member States and Europol and with the participation of the Commission to identify the risk of firearms being trafficked by passenger movements across Member States.

The Commission and the Council with Europol will monitor the effectiveness of these operational activities. The EU Internal Security Fund will be deployed in support of the implementation of actions under the policy cycle for 2014-17.⁷⁷

Cooperation on illicit arms trafficking is mainly based on instruments such as the **Schengen Convention**, the **Naples II Convention** and the **Convention on Mutual Assistance in Criminal Matters** as well as the **2010 European Action Plan**, sets out a number of actions and indicators to combat illegal trafficking in heavy firearms. Information sharing instruments for Member States include the **Customs Information System (CIS)** and the **Schengen Information System (SIS)** and its database on stolen firearms. These systems are not, however, specifically designed for information on illicit firearms and there is no single database for records on seized firearms unless national authorities use the iARMS INTERPOL system (there is no information about its use by Member States).

More generally, because EU Member States that belong to the Schengen area have a commitment to open borders, this can make it more difficult to control the movement of illicit firearms. Indeed, the intra-EU dimension could be considered as the weakest link in the EU security architecture. However, the EU has developed in recent years a common framework consisting of risk criteria and IT systems for managing risks relating to the movement of goods crossing the EU external border as part of the commercial supply chain. The Commission has recently highlighted the challenges in risk management faced by EU customs authorities, and has made

⁷⁶ This will also form a part of wider cooperation in the EU's 7th customs-police cooperation action plan.

⁷⁷ COM(2011) 753 final, Proposal for a Regulation establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management .

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several proposals for improving customs capabilities including better use of information, data sources and other tools and procedures for pinpointing risks and analysing commercial supply chain movements⁷⁸.

At the operational level, the **European Firearms Experts group (EFE)**⁷⁹ provides expertise in the field of illicit trafficking in firearms. This expert group is responsible for the EU Firearms Threat Assessment, which focuses on issues such as international firearms trafficking and distribution within EU States, the criminal use of firearms and the response by law enforcement authorities across the EU. In 2010, the EFE adopted an action plan to facilitate tracing and cooperation against firearms trafficking.⁸⁰ Member States and the Commission, on the basis of Europol's 2013 EU Serious and Organised Crime Threat Assessment, have made the disruption of illicit manufacturing and trafficking in firearms one of the EU's nine law enforcement priorities for 2014-17.⁸¹

Europol serves as a EU centre of law enforcement expertise. Over the years it has built up experience in fighting drug trafficking, illicit immigration networks and trafficking in arms and human beings, illicit vehicle trafficking, cybercrime, money laundering and forgery of money. In 2014, Europol established a focal point illicit trafficking in firearms, to provide strategic and operational support to ongoing investigations. Within the EU policy cycle, Member States and relevant EU agencies identify specific priorities in the complex area of illicit arms trafficking. Based on political guidelines, law enforcement officers can then tailor their operational work nationally, regionally and locally to address new trends in trafficking. **Eurojust's** competence covers the same types of crime and offences for which Europol has competence including combatting cross-border arms trafficking. Both of these EU level organisations assist in investigations and prosecutions at the request of a Member State.

The **European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)** was set up in 2004 to reinforce and streamline cooperation between national border authorities. In pursuit of this goal, Frontex has several operational areas that are

⁷⁸ Commission communication on Customs Risk Management and Security of the Supply Chain, COM(2012) 793.

⁷⁹ European Firearms Expert Group was established in 2004 to facilitate exchange of information and to promote cooperation fighting illegal arms trading and possession. It supports the Law Enforcement Working Party of the Council and includes firearms experts from each EU Member State, from Europol and from associate members Liechtenstein, Norway, Switzerland and Turkey.

⁸⁰ Council Recommendation on a standard procedure in Member States for cross-border enquiries by police authorities in investigating supply channels for seized or recovered crime-related firearms, 12 and 13 June 2007; Council Conclusions on a European Action Plan to combat illegal trafficking in so called "heavy" firearms which could be used or are used in criminal activities, December 2010.

⁸¹ In 2010, the EU established a multi-annual policy cycle on the fight against serious international and organised crime in order to ensure effective cooperation between Member States law enforcement agencies, EU Institutions, EU Agencies and relevant third parties and to deliver coherent and robust operational action targeting the most pressing criminal threats facing the EU. The first full policy cycle runs from 2014-7, following the 2013 serious and organised crime threat assessment and the definition of a multiannual strategic plan (in July 2013) and an operational action plan (October 2013); Council conclusions on the creation and implementation of a EU policy cycle for organised and serious international crime, 3043rd Justice and Home Affairs Council meeting, Brussels, 8 and 9 November 2010.

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defined in the founding Frontex Regulation⁸² and a subsequent amendment⁸³. These areas of activity include: Joint Operations, Training, strategic and operational Risk Analyses, Research, providing a rapid response capability, Assisting Member States in joint return operations, providing an Information systems and information sharing environment. Frontex liaises closely with other EU entities such as the **European Police College (CEPOL)**. CEPOL's mission is to bring together senior police officers from police forces in Europe - to support the development of a network and encourage cross-border cooperation in the fight against crime, public security and law and order by organising training activities and research findings notably through tailored trainings aiming to disseminate good practices, enhance expertise and foster standardisation of protocols facilitating police cooperation.

The EU agencies provide an overall framework for coordinating actions relating to law enforcement and customs, judicial systems and training of police officers. At one of the workshops organised by CSES to discuss the study, there was some criticism expressed by participating national officials that the EU agencies could do more to support national authorities. As part of the EU policy cycle CEPOL is developing a common curricula on illicit trafficking.

In the field of EU judicial cooperation there are also developments that could help combat illicit firearms trafficking. This includes the recently adopted **European Investigation Order (EIO)**. The EIO replaces the existing legal framework applicable to the gathering and transfer of evidence between the Member States. It involves a procedure that would allow an authority in one Member State (the "issuing authority") to request specific criminal investigative measures to be carried out by an authority in another Member State (the "executing authority").

The EIO contained several significant innovations over existing procedures. Firstly, it focuses on the investigative measure to be executed, rather than on the type of evidence to be gathered. The EIO also has a broad scope – all investigative measures are covered, except those explicitly excluded. Clear time limits are provided for the recognition and, with more flexibility, for the execution of the EIO. The proposal also innovates by providing the legal obligation to execute the EIO with the same celerity and priority as for a similar national case. The EIO could be used by national judicial authorities in illicit firearms trafficking cases and should, in theory, facilitate cross-border cooperation although it is still too early to assess any practical experience.

2.7.3 Existing Cross Border Cooperation

Although the overwhelming majority of those participating in the CSES survey did not feel able to express an opinion on this issue, those that did answer a question on cross-border cooperation indicated that it is currently of somewhat limited effectiveness.

⁸² COUNCIL REGULATION (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

⁸³ REGULATION (EU) No 1168/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

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Table 2.7: To what extent is cross-border police cooperation effective?

Options	Nº	%
Large extent	0	0.0
Some extent	11	12.2
Neutral	1	1.1
Small extent	4	4.4
No extent (not effective at all)	0	0.0
Don't know or no answer	74	82.2
Total	90	100.0

Source: CSES survey

For a number of reasons, it is not possible to gain a comprehensive overview of existing cross-border cooperation between national authorities responsible for combatting illicit firearms trafficking. However, feedback from the research (in particular, the three 'regional' workshops and the interview programme) suggests that:

- There is often a **close working relationship between senior officials** in the law enforcement agencies of different Member States and there are many examples of successful cross-border collaboration to combat illicit firearms trafficking, often depending substantially on the quality of networks and contacts between particular officers and enforcement agencies;
- However, that said, there are also problems with cross-border collaboration:
 - There is sometimes a **lack of information sharing** between the authorities, the quality of which often depends greatly on ad-hoc networks and working contacts between particular states and agencies;
 - **Differences in the legal frameworks applicable to illicit firearms**, e.g. with regard to which weapons are classified as illegal, can make cooperation to investigate particular cases difficult;
 - Similarly, **differences in judicial procedures** between one country and another can cause complications, e.g. problems in obtaining the agreement of a prosecutor to allow an investigation in their country;
 - **Lack of expertise and resources** available to law enforcement agencies in some countries, and the need to prioritize purely domestic cases, can have a negative effect on cooperation with the authorities from another Member States.

Some examples from our research of these factors are provided below:

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Examples of complications in cooperation to tackle cross-border firearms trafficking relating to administrative factors and lack of capacity

- Cooperation between law enforcement agencies is sometimes made more difficult not just by different laws but also by different judicial procedures, e.g. deciding on the competent jurisdiction and prosecutor. A further complication is that enquiries from another country are sometimes given less priority than purely domestic cases. The authorities in **Austria**, for example, had difficulties obtaining authorization for a controlled delivery of illicit firearms in **Belgium** because of problems in finding a prosecutor there to take on the case.
- A similar situation occurred with a controlled delivery of RPGs to **France** that had been transported through **Slovenia**. To authorize the operation, the French prosecutor wanted the RPGs to be delivered in their original packaging (reflecting national legislation that did not allow replacement of the items of the packaging for a control delivery) whereas the Slovenian authorities wanted to unpack the weapons to have them photographed for evidence purposes. Because of the insistence of the French prosecutor, the controlled delivery could not be organised. Bureaucratic delays can also hinder cross-border cooperation. An operation involving the authorities in Bosnia, Slovenia, Italy and **Spain**, again involving a controlled delivery, could not proceed because the Spanish authorities, in particular the judicial authorities, took over a week to respond to initial requests for cooperation by which time the opportunity to undertake the operation had passed.
- In a number of newer EU Member States, for example, **Slovenia**, lack of capacity is a constraint on being able to collaborate with colleagues from other countries to pursue investigations. In particular, there is a need to develop personnel with the specialized know-how and skills to handle firearms issues. Many police officers (the exact number is not known) have benefited from the FBI Academy's courses and training activities run by CEPOL but there is scope for this type of capacity building to be further developed.

Notwithstanding the examples cited earlier where cross-border cooperation to tackle illicit firearms trafficking has proved difficult, there are also many examples of successful cross-border cooperation:

Examples of successful cooperation between EU Member States to tackle cross-border firearms trafficking

In October 2013 the National Crime Agency (NCA) in the **UK** concluded an investigation (NCA Operation GUSTFUL) into a UK-based Organised Crime Group, which was importing drugs and weapons into the UK from **The Netherlands**. The operation demonstrated how law enforcement authorities successfully cooperate to tackle cross-border illicit firearms trafficking as it involved 5 search warrants executed in UK, coordinated searches being undertaken in Germany, 1 arrest made in the UK, 4 in the Netherlands and 6 firearms seized.

The **German** customs approached the **UK's** Serious Organised Crime Agency (now the National Crime Agency) after detecting handguns and ammunition in a parcel destined for an address in the UK. SOCA carried out a controlled delivery of the parcel and arrested the recipient whilst upstream enquiries with German law enforcement ascertained the identity of the consignor. In addition to a cannabis charge, the recipient of the firearms was convicted on two counts of conspiracy to

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import firearms under and two counts of conspiracy to import ammunition. He was sentenced to a total of eight years' imprisonment (six for the firearms and 2 for the ammunition).

In Slovenia, the authorities have faced situations involving the transshipment of firearms from the former conflict areas in the Western Balkans to other EU Member States and where they have been asked for help in tracking down those responsible for trafficking activities. In general, cross-border collaboration works well. For example, earlier this year the **Swedish** police intercepted a consignment of automatic weapons that were being transported in a box that had been placed on a bus traveling from a town in Bosnia to Malmo. The consignment was not accompanied by a passenger. Investigations were undertaken at the request of the Swedish police by the **Austrian, Croatian and Slovenian** authorities but no clear picture emerged regarding the incident and the identity of the arms traffickers remains unknown. However, it is thought that an organised crime gang in Malmo was responsible and that they had probably asked a Bosnian citizen living in Sweden who travels home frequently to place the weapons on the bus.

In 2007, **Finland** and **Russia** signed a Protocol on Intensifying Crime Prevention Activities between the Finnish and Russian border guard authorities. This Protocol has fostered excellent cooperation between the customs authorities of the two countries. Many border incidents have been solved between border professionals without the need for intergovernmental procedures. This Protocol has even been recognised in the EU as a good practice for organising border guard cooperation with the Union's neighbouring countries.

Baltic States Example – Successful combat against converting gas (alarm) pistols (revolvers)

Until 1 March 2011, gas (alarm) pistols (revolvers) as well as revolvers of small power were not registered with the Lithuanian police. Thus, every person over 18 could purchase and carry gas (alarm) and small power handguns without checking his/her reputation. Until 2011, about 6,000 gas (alarm) pistols (revolvers) and revolvers of small power were sold every year in Lithuania. Weapons were purchased legally from the licensed dealers. The lack of control on gas (alarm) firearms and no requirements for the person's reputation to be checked, made gas (alarm) pistols (revolvers) very popular among criminals. The purposes for purchasing so many weapons could be converting them to firearms with live fire ammunition and selling them to illegal market.

From 2000 till 2008, **the Lithuanian Police Forensic Science Centre carried out 45 examinations of converted pistols "IZH-78-9"**. Lithuania prohibited the import of gas pistol "IZH-78-9" from 16 January 2007. However, such a measure did not have the expected impact. Criminals started to convert other types of gas (alarm) weapons. From 2008 till 2013, **the Lithuanian Police Forensic Science Centre examined 113** other converted gas (alarm) weapons. Moreover, from 2009 criminals started to use some models of traumatic revolvers without any conversion, by using rubber or lead bullets with 9 mm Knall cartridges. For example, the revolver "ME38 Compact G" was very often used in Lithuania. **The Lithuanian Police Forensic Science Centre carried out examination of revolvers ME38 Compact G, from 2008 till 1 July 2013 seized 93 times. Lithuania prohibited the import of gas revolvers Olympic 38 and traumatic revolvers ME38 Compact G from 15 June 2010.**

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Verifications of some examples of gas (alarm) weapons consignments at the time of their import into Lithuania were established as well. Checking was applied to those models of gas (alarm) weapons, which were brought into Lithuania for the first time. It was checked if the new model of gas (alarm) weapon meets the requirements for gas (alarms) weapons. This control wasn't effective due to the fact that manufacturers very often used to change the construction of the gas (alarm) weapon without changing its name. Thus, Lithuania had many situations when at first the same model of gas (alarm) weapon met the requirements for gas/alarm weapons, but another consignment of the same model of gas (alarm) weapons did not meet these requirements. According to our practice, every gas (alarm) firearm could be converted or used without conversion as the real one.

The control mechanism for gas (alarm) weapons applied in Lithuania from 2007 till 2011 was not effective and the police had to seek for new ways and means to control circulation of gas (alarm) weapons. **It was decided to establish a simple procedure of registration of gas (alarm) weapons and to start checking the reputation of every person who is going to purchase a gas (alarm) weapon before issuing the permit to purchase it.** This decision was made, because it's a person who is responsible for pulling the trigger. Not a single gun can shoot by itself.

The new legal regulation came into force since the 1st March, 2011. According to the new legal regulation, it is required to register gas (alarm) pistols (revolvers) as well as revolvers of small power. Only a person, who meets all requirements of the Law, can purchase, store and carry gas (alarm) weapon. Requirements applied for a person reputation are the same as for possession of conventional firearms. Gas (alarm) pistols (revolvers) as well as revolvers of small power could be acquired and possessed by natural persons only upon getting the permit from the police. Possessors of gas (alarm) weapons, who acquired such weapons until 1 March 2011, must register them at the police stations until 1 January 2014.

From 1 March 2011 till 1 February 2014, the Lithuanian police registered more than 35,000 gas (alarm) pistols (revolvers) and revolvers of small power. **After the registration procedure for these types of firearms was established, the demand for gas alarm weapons decreased by ten times. In 2010 it was sold 6850 gas (alarm) weapons (single person could purchase uncontrolled number of such weapons).** In 2012 only 691 pistols (revolvers) were sold, therefore it can be stated, that purchasing of gas (alarm) weapons for converting them to conventional firearms and selling to illegal market reduced significantly.

To be effective, any measures to combat illicit firearms trafficking should include capacity-building support to third countries. Because of the earlier civil war, **Bosnia** is an important source of illicit firearms (during the first 9 months of 2013, 5,094 illicit weapons were seized) and there is close cooperation with the State Investigation and Protection Agency (SIPA) to help tackle the problem. Carrying out investigations in Bosnia can be very difficult because of the fragmented administrative and judicial picture. Differences between the law on firearms trafficking (e.g. on how possession is treated) at a federal level and the law in force in the 11 cantons can make it difficult to pursue investigations. There can also be complications caused by uncertainty over which courts and prosecutors within Bosnia have the competence to deal with investigations and cases. A national strategy group has been set up to tackle these and other problems.

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2.8 Summary – Problem definition

The nature and scale of illicit firearms trafficking in the EU is difficult reliably to assess quantitatively given the hidden nature of the problem.

The two basic approaches we have used – a broader indicator based on the number of unregistered firearms and a narrower measure based on firearms seizures – give very widely differing estimates: 67 million unregistered firearms in the EU or 79% of the 81 million total licit and illicit firearms; seizures are estimated to account for around 1% or 81,000 of the total. The first of these is likely to be very much an overestimate of the quantity of illicit firearms whilst the second calculation is almost certainly an underestimate. The number of lost and stolen firearms registered in the SIS II also provides indication of their availability and transfer. Together these provide a range of estimates, within which the actual quantities almost certainly lie.

A central problem with the approaches used to estimate the scale of illicit firearms trafficking is that they involve data (i.e. number of registered vs unregistered firearms, number of illicit firearms seizures over a five year period) that are only collected by some EU Member States. Even where data is collected, there are considerable limitations. For example, some Member States have different legal definitions and employ different law enforcement authorities to address internal and cross-border firearms trafficking (the proposed Firearms Contact Points could help resolve this problem). In this regard the development of Europol and Eurojust's roles as central repositories for information exchange and judicial cooperation could be important in developing better monitoring data and a better understanding of illicit firearms trafficking.

The wide range of possible estimates highlighted in Section 2.2 underlines the conclusion that the scale of illicit firearms trafficking cannot be accurately estimated and quantified on the basis of presently-available data. Notwithstanding the methodological complications in measuring the phenomenon, most of the literature suggests however that illicit arms trafficking takes place on a considerable scale: a judgment endorsed by practitioners and representatives of relevant national enforcement agencies. In many respects the most appropriate indicator to use to highlight the problem of the illicit firearms trafficking is the number of firearms-related homicides (some 1,200 p.a. in addition to which there are around 4,000 firearms-related suicides). In addition, there are many firearms-related injuries. Although the precise number cannot be quantified, there are likely to be long-term consequences for the well-being of the individuals concerned.

Turning to the consequences of the problem, illicit firearms trafficking has been directly responsible for at least 10,000 firearms-related deaths in EU Member States over the past decade. Some other estimates (e.g. by the UNODC) put the deaths at a higher level than this. In addition to murders committed by individuals, illegally-held firearms are often used by organised crime groups to coerce and to intimidate their victims. Moreover, the use of illicit firearms in organised crime activities such as drug trafficking, prostitution, and money laundering leads to further deaths (e.g. from drugs use). Terrorists and extremists have also used firearms to carry out attacks.

In terms of the drivers of illicit firearms trafficking, a distinction can be made between demand-side and supply-side drivers, i.e. the factors that explain why there is a problem. On the demand-side, end users are criminal or terrorist individuals and groups procure firearms illegally to use in the pursuit of

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their goals. On the supply side, traffickers and other intermediaries are involved in the trafficking of firearms either for profit or some other reason (e.g. the intermediaries may be part of the same criminal or terrorist group as the end users. In some cases it could be that the intermediaries are unaware of their role. Lastly, the suppliers themselves are individuals and organisations that provide a source of illicit firearms (either intentionally or unintentionally) who are again likely to be motivated by financial considerations. There are other relevant problem 'enablers' including differences in legal frameworks, administrative and judicial procedures, and the capacities of law enforcement agencies in different EU Member States, which means that the problem cannot be effectively tackled.

The main sources of illicit weapons within the EU are the reactivation of neutralised weapons, burglaries and thefts, embezzlement of legal arms, legal arms sold in the illegal market, firearms retired from service by army or police, and the conversion of gas pistols. Most illicit firearms originate from cross-border trafficking, often, as noted above, from outside the EU. Since the early 1990s, the firearms illicitly trafficked have originated from three main sources that have replaced each other: first of all the former Soviet Union and Warsaw Pact bloc because a source of illicit firearms following the collapse of the iron curtain; then, during the wars of Yugoslav succession, the Western Balkans became an important source of illicit firearms; and more recently, North Africa has superseded the former, with a pool of weapons available and following some of the main drug trafficking routes into the EU. According to Europol, the amount of heavy firearms and SALW in circulation in the EU seems to satisfy much of the demand at present and suppliers in south-eastern Europe have the capacity to meet any rise in demand in the foreseeable future.

As Section 2.6 shows, there is already considerable cross-border cooperation between EU Member States and their law enforcement agencies to combat illicit firearms trafficking. Whilst there are many examples of successful operations to intercept weapons before they can be used, there are also cases where police and/or judicial cooperation has been made more difficult because of differences in legal frameworks in different countries. There are also significant complications to tackling cross-border illicit firearms trafficking of a non-legal nature.

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In this section we provide a comparative analysis of the legal frameworks in EU Member States that are used to combat illicit firearms trafficking. The analysis is supported by a number of comparative tables in the appendices.

3.1 Introduction

We begin by examining the legal frameworks that are in place to help tackle the problem of illicit firearms trafficking in the EU Member States. The purpose is to help identify the scope for greater harmonisation that might, in turn, make it easier to deal with cross-border aspects of the problem. This analysis covers the current legislation at both EU and international level, as well as in Member States' national laws. The key elements are:

- **Definition of offences** and their impact on the enforcement of illicit firearms trafficking and related sanctions;
- **Level and type of penalties** and sanctions applicable to legal and natural persons;
- **Aggravating or mitigating circumstances** and their impact on both the definition of illicit firearms trafficking and related sanctions; and the **factor of negligence and degrees of intent**.

The context in which these elements are examined is the **absence of EU-wide legislation criminalising illicit firearms trafficking and the resulting diversity of national laws in the EU**. This has the potential to impede effective police and judicial cooperation in cross-border cases. Article 83 (1), the basis for any EU action in this area, provides for the possibility of a directive on minimum rules concerning the definition of criminal offences and sanctions in the area of illicit firearms trafficking with a cross-border dimension.

The overview in Section 3.2 below summarises the current legislative framework at international and EU level. This is followed at Section 3.3 by a more detailed comparative assessment of existing legislation at the EU, national and international levels (including the UN Firearms Protocol, UNPoA, UNODC Model Law and the Arms Trade Treaty) relating to the abovementioned key elements of legal frameworks applicable to illicit firearms trafficking.

3.2 Current legislative framework at the international and EU levels

We begin by providing an overview of the existing international and EU instruments as regards the criminalisation of illicit firearms trafficking. In section 3.2.2 we set out a high-level summary of the extent to which EU Member States are compliant with the UN standard on the provisional basis of the research carried out for the study to date. This leads to a more detailed comparative analysis in Section 3.3 of national legislation related to illicit arms trafficking and the possible need for an EU measure in this area notably based on possible identified good practices.

3.2.1 Overview of existing international and EU frameworks

UNPoA provides the main international framework agreement containing norms and obligations on a wide range of issues relevant to preventing and combatting illicit firearms trafficking. It is however, politically rather than legally binding. The principal legal instruments which influence or could influence (despite incomplete ratification in some

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instances, described below) EU Member States' national laws on illicit firearms trafficking are the following:

- UN Firearms Protocol (the "Protocol");⁸⁴
- Draft UN Arms Trade Treaty ("ATT");
- UNODC Model Law⁸⁵ ("Model Law");
- Directive on the control of the acquisition and possession of weapons (91/477/EEC) as amended by Directive 2008/51/EC (the "Directive"), together with Regulation (EU) No 258/2012.

UN Firearms Protocol

The Protocol was adopted in May 2001 as the third supplementary Protocol to the **United Nations Convention against Transnational Organized Crime** (the "Convention"), by General Assembly resolution 55/255. The Protocol entered into force on 3 July 2005. It aims at promoting and strengthening international cooperation and developing cohesive mechanisms to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.⁸⁶ By ratifying or acceding to the Firearms Protocol, contracting states make a commitment to adopt and implement a series of crime-control measures that aim, inter alia, at **establishing as a criminal offence the illicit manufacturing of and trafficking in firearms in line with the Protocol's requirements and definitions.**⁸⁷

UN Arms Trade Treaty

The UN Arms Trade Treaty regulates the international trade in conventional arms.⁸⁸ The definition of conventional arms is given at Article 2 and covers a wide range of weaponry, from small arms to battle tanks, combat aircraft to warships. A definition of "small arms and light weapons" is not included in the ATT. On 2 April 2013, the UN General Assembly adopted the ATT. However, it will not enter into force until it has been ratified or acceded to by 50 states;⁸⁹ at the time of writing 114 states have signed the treaty, of which over 40 have so far ratified it.⁹⁰ It is expected that it comes into force by the end of 2014.

Under Article 6, State Parties are prohibited from authorising any transfer of conventional arms covered under the treaty if that transfer would violate their international obligations, and in particular those relating to the transfer of, or illicit trafficking in, conventional arms. While a key aim of the treaty is to promote and ensure responsible authorisation and control of conventional arms transfers by states, to prevent violations of UNSC arms embargoes or of international human rights and humanitarian laws, and to prevent and combat diversion of legal arms transfers into illicit markets or unauthorised end-uses and

⁸⁴ UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, adopted May 2001.

⁸⁵ UNODC, Model Law against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, 2011.

⁸⁶ See Article 2 of the Firearms Protocol.

⁸⁷ <http://www.unodc.org/unodc/en/firearms-protocol/firearmsprotocol.html>

⁸⁸ <http://www.un.org/disarmament/ATT/>.

⁸⁹ [Arms Trade Treaty: Treaty Status](#), United Nations website, 4 June 2013.

⁹⁰ <http://www.un.org/disarmament/ATT/>.

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end-users. The ATT focuses on states parties' obligations to ensure responsible and effective controls on legal transfers of conventional arms, and thus to reduce sources of illicit or uncontrolled flows of arms. It does not directly cover illicit firearms traffickers who are not State Parties. In other words, **it does not explicitly address the criminalisation of illicit firearms trafficking among individuals or criminal organisations operating independently of any state who is a signatory to the treaty**. The ATT is thus relevant to this study but does not provide an adequate source of legal obligations and regulations to address the main concerns of this study.

UNODC Model Law

The final UN instrument is the Model Law developed in 2011 by the United Nations Office on Drugs and Crime (UNODC). This was in response to the request of the General Assembly to the Secretary-General to promote and assist the efforts of Member States to become party to and implement the United Nations Convention against Transnational Organized Crime and the Protocols thereto (including the Firearms Protocol). It was developed in particular to assist States in implementing a legislative regime consistent with the provisions contained in the UN Firearms Protocol, supplementing the United Nations Convention against Transnational Organized Crime.

Overview of UN Model Law provisions

The Model Law is divided into three parts:

- **Part One** (Introductory provisions) contains Model Law text on the introductory provisions and definitions States may choose to include in their domestic legislation. Terms used in the Firearms Protocol are included in the definitions. Additionally, draft definitions are suggested for other terms used in the present Model Law. **This section includes definitions of 'firearms' and 'illicit firearms trafficking' that follow those included in the Protocol.**
- **Part Two** (Mandatory provisions) contains Model Law text on all the mandatory provisions of the Firearms Protocol that States are required to ensure are included in their domestic legislation. This includes chapters on preventive measures aimed at regulating the manufacturing, marking, record-keeping and international transfers of firearms, their parts and components and ammunition. The mandatory penal provisions that derive from the preventive measures and the mandatory international cooperation measures are also included in chapters in this part. **This section includes model provisions on the criminalisation of illicit firearms trafficking pursuant to the general provisions in the Protocol. It also contains commentary on the position in the Convention, Protocol and Model Law as regards penalties and sanctions (including their applicability to legal persons), *mens rea* requirement and the existence of aggravated offences.**
- **Part Three** (Non-mandatory provisions) elaborates inter alia on provisions in the Firearms Protocol on brokers and brokering activities that States are required to consider for inclusion in their national legislation. **This section is out of the direct scope of the study.**
- **Annex I** (Additional considerations) contains other provisions that States can also consider for inclusion in their national legislation. These provisions are

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included to assist States in developing comprehensive legislation on various aspects of firearms regulation. These suggestions stem from other international instruments and national practice. **This section includes suggestions for optional firearms-related offences which a State can also consider for inclusion in their national legislation.**

EU legislation

The key legislation at EU level is Directive 91/477/EEC, as amended, and **Regulation (EU) No 258/2012**. The preamble to Directive 91/477/EEC includes the following rationale and aims for this instrument:

- Mutual confidence will be improved if the abolition of controls on the possession of weapons at intra-Community frontiers is underpinned by partially harmonised legislation. It would therefore be useful to determine the category of firearms whose acquisition and possession by private persons are to be prohibited, or subject to authorisation or declaration.
- Passing from one Member State to another while in possession of a weapon should, in principle, be prohibited, and derogation from this is only acceptable if a procedure is adopted that enables Member States to be notified that a firearm is to be brought into their territory (the 'European firearms pass').

In turn, the preamble to Directive 2008/51/EC⁹¹ provides that, not least in light of the Commission having signed the UN Arms Protocol on behalf of the EU in 2002, notions of illicit manufacturing and trafficking of firearms, their parts and ammunition, as well as the notion of tracing, should be defined for the purposes of Directive 91/477/EEC. Definitions of "firearms" and "illicit trafficking" are accordingly included in the amended Article 1 of Directive 91/477/EEC and these are modelled on the definitions found in the Protocol. A general provision on sanctions for infringements of national rules adopted pursuant to the Directive is set out in the revised Article 16.

More recently, **Regulation (EU) No 258/2012** of the European Parliament and of the Council of 14 March 2012 implements Article 10 of the Protocol (this covers general requirements for export, import, and transit licensing or authorisation systems). Recital 16 of the Regulation, like Article 16 of Directive 91/477/EEC, as amended, provides that Member States should lay down rules on penalties applicable to infringements of the Regulation⁹² and ensure that they are implemented, and those **penalties should be effective, proportionate and dissuasive.**

Appendix A summarises how, if at all, existing international and EU law prescribe national legal frameworks in the area of illicit firearms trafficking. **It is clear that there are closely overlapping definitions of 'firearms' and 'illicit firearms trafficking' in the Protocol, Model Law and Directive 91/477/EEC, as amended – though in both cases the Protocol definition is slightly wider than the EU definition (for the former because there is no blanket prohibition on categorising post-1899 weapons as 'antique weapons' in the Directive, and for the latter because the**

⁹¹ See Preamble 6.

⁹² Or relevant national legislation, in the case of Article 16 of Directive 91/477/EEC, as amended.

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conducts of importing and exporting are not included in the EU trafficking definition). The important question of whether the EU definitions should be modified or amplified as part of any EU legislative initiative on illicit firearms trafficking will be considered at Section 4. The ATT meanwhile refers to 'small arms and light weapons' without defining these terms.

The Protocol is vague on the criminalisation of illicit firearms trafficking, and criminalisation is not covered at all by the Directive (or ATT). **However, the Model Law provides the following suggested provisions criminalising illicit firearms trafficking:**

Model Law – Illicit firearms trafficking offences

Article 34. Transnational transfers without legal authorization

1. Every person who [*specify level of intent, as appropriate*] imports, exports or otherwise acquires, sells, delivers, moves or transfers any firearm or its parts and components or ammunition from or across the territory of [*name of State*] to another State without legal authorization [a licence] issued in accordance with [*name of this Law*] commits an offence.

2. A person guilty of an offence under paragraph 1 of this article shall upon conviction be subject to [imprisonment for ...] and/or [a fine of/up to ...] [a fine of the ... category].

Article 35. Transnational transfers of unmarked/improperly marked firearms

1. Every person who [*specify level of intent, as appropriate*] imports, exports or otherwise acquires, sells, delivers, moves or transfers any firearm from or across the territory of [*name of State*] to another State that have not been marked at the time of manufacture, at the time of import or at the time of transfer from government stocks to civilian use in accordance with chapter IV of this Law commits an offence.

2. A person guilty of an offence under paragraph 1 of this article shall upon conviction be subject to [imprisonment for ...] and/or [a fine of/up to ...] [a fine of the ... category].

The model UN provisions set out above are designed to assist national legislators in implementing the legal framework established by the Protocol (and consequently the Directive, whose definition of illicit firearms trafficking we have seen closely follows that of the Protocol). As such they are an obvious starting point for provisions on illicit firearms trafficking offences in any EU legal instrument. The inclusion of similar or identical wording to Articles 34 and 35 in a possible EU measure will be considered further in Section 4 (policy options).

In relation to sanctions, the Firearms Protocol and UNODC Model Law generally leave these to individual states to determine, while the Directive makes general reference to Member States laying down penalties that are effective, proportionate and dissuasive. (The ATT contains a general enforcement provision that does not refer expressly to penalties and sanctions.) Neither the ATT nor Directive covers the possible liability of legal as well as natural persons nor refers to aggravating or

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mitigating factors – though the Firearms Protocol and UNODC Model Law state that civil and criminal liability should attach to legal persons for “serious offences” (Article 2(b) of the Palermo Convention defines a ‘serious crime’ as meaning ‘conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty’). The possibility of negligent illicit firearms trafficking is not addressed by the Directive or ATT, while the Firearms Protocol and UNODC Model Law only cover an offence of intent.

Notwithstanding the provisions on the illicit firearms trafficking offence included in the Model Law, the margin of discretion afforded to Member States by the UN and EU instruments in matters of criminalisation and the related elements of level and types of penalties is considerable and the monitoring of compliance fairly limited. This also applies to provisions on the liability of legal and natural persons, existence in national laws of aggravating or mitigating circumstances, and the notions of intent and negligence. The margin of discretion in relation to these issues is a key factor accounting for the diverse legal frameworks at national level. Together with a general analysis these factors, which are in turn potential obstacles to effective police and judicial cooperation at the cross-border level, are examined in more detail in Section 3.3.

3.2.2 Overview of Member States’ compliance with UN standard for criminalisation of illicit firearms trafficking

Despite the existing international legal framework for illicit firearms trafficking described in Section 3.2.1 there continue to be divergences at national level in the approach to defining the crime of illicit firearms trafficking and the possible sanctions.

Below we set out a high-level summary of the more detailed comparative table founds at Appendix E. Member States are grouped according to their compliance with the UN standard as regards the criminalisation of illicit firearms trafficking. The stringency of Member States’ national legislative framework for the various elements of the illicit firearms trafficking offence (including definition of ‘firearms’, prohibition of illicit manufacturing, provisions in relation to marking, sanctions regime) are examined in detail at section 3.3.

Table 3.2: Criminalisation of illicit firearms trafficking: Compliance of Member States with UN standard

Compliance of national illicit firearms trafficking prohibition with UN Protocol standard	No.	Member States
Compliant	8	BE, DE, EL, ES, FR, LV, PT, SI
Largely Compliant	8	BG, CY, DK, HR, SK, UK, MT, RO
Partially Compliant	5	AT, CZ, EE, LT, SE
Non-compliant	2	FI, IE

Source: Legal fiches, CSES research (Note: When Member States are missing in the table, no information was available)

Note 1: Information in Table 3.2 and Appendix E has been sent to national experts for their comment/clarification.

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Note 2: Member States are deemed 'largely compliant' where only a single element (for example, relating to marking of weapons or illicit manufacturing) of the firearms trafficking offence is missing in the national law. If more than one element appears absent, the Member States is deemed 'partially compliant'.

For the 18 EU jurisdictions for which information is presently available a clear majority are either compliant or largely compliant with the UN standard as established, inter alia, in Article 3 of the Protocol.

3.3 Comparative assessment of national legislation relating to firearms trafficking

In this section we set out a comparative assessment of national legislation relating to firearms trafficking. The information here draws on the responses to our legal 'fiches' for each Member States, as well as desk research such as the Legal Loopholes Study⁹³ and other Phase II material such as stakeholder interviews and online survey responses. As noted earlier, for the purposes of this comparative assessment, Member States' national laws relating to firearms trafficking are divided by the key elements of:

- **Definition of offences** and their impact on the enforcement of illicit firearms trafficking and related sanctions;
- **Level and type of penalties and sanctions** applicable to legal and natural persons;
- Aggravating or mitigating circumstances and their impact on both the definition of illicit firearms trafficking and related sanctions, and the **factor of negligence and degrees of intent**.

For each key element, we begin by summarising the relevant EU and international legislation (including the UN Firearms Protocol and Arms Trade Treaty), before looking at the common ground/areas of divergence in the legislation at Member State level and the potential of such divergences to inhibit effective police and judicial cooperation in cross-border cases. Having done this, in our discussion of the policy options at section 4 we will be in a position to make recommendations as to the advisability of the approximation of certain offences and sanctions, as well as to suggest specific provisions (such as illicit firearms trafficking offences based on Articles 34 and 35 of the Model Law).

The source material for the analysis in this section are the legal fiches and stakeholder questionnaires compiled as part of the Phase II research programme, as well as the comparative tables of national legislative definitions of 'firearms' and 'illicit firearms trafficking' at Appendix B and E of this report.

⁹³ European Firearms Experts, *Study of loopholes in national weapons legislation and regulations in Europe*, 2011.

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3.3.1 Definition of offences and their impact on the enforcement of illicit firearms trafficking and related sanctions

The analysis of the definition of illicit firearms trafficking offences is a fundamental element of the legal analysis and indeed the study itself. For this reason, section 3.3.1 is divided into three sub-sections dealing with the conducts identified in Article 5 of the Protocol.

Article 5, UN Protocol

1. *Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct, when committed intentionally:*
 - (a) **Illicit manufacturing** of firearms, their parts and components and ammunition;
 - (b) **Illicit trafficking** in firearms, their parts and components and ammunition;
 - (c) **Falsifying or illicitly obliterating, removing or altering the marking(s)** on firearms required by article 8 of this Protocol.
2. *Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct:*
 - (a) *Subject to the basic concepts of its legal system, attempting to commit or participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and*
 - (b) *Organizing, directing, aiding, abetting, facilitating or counselling the commission of an offence established in accordance with paragraph 1 of this article.*

Thus, there are sub-sections for each of (i) illicit firearms trafficking (ii) illicit manufacturing and (iii) the issue of marking (removing or altering serial numbers of other markings). The first sub-section on illicit trafficking is the most substantive of these, and will look at both the definition of 'firearms' and 'illicit firearms trafficking'.

(i) Definition of 'illicit firearms trafficking', including definition of 'firearms', in national legislation

We begin with a comparative assessment of the definition of 'firearms' in national legislation, before moving on to consider the definition of 'illicit firearms trafficking'.

'Firearms' definition - International / EU standard

UN Protocol

"Firearm" shall mean any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas. Antique firearms and their replicas shall be defined in accordance with domestic law. In no case, however, shall antique firearms include firearms manufactured after 1899." (Article 3(a)).

Directive 91/477/EEC, as amended

"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 Annex I.

For the purposes of this Directive, an object shall be considered as capable of being

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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.*" (Article 1(1))

Note: Certain carve-outs are set out in Part III of Annex I of the Directive, with the effect that the EU definition is narrower than that of the Protocol. The most notable carve-out is for antique weapons or replicas not included in other categories in Annex I and which are already subject to national laws: such weapons are excluded from the definition of 'firearm' in the Directive. By contrast, in the Protocol there is a blanket prohibition of any firearms manufactured after 1899 from being classified as 'antique'.⁹⁴

A comparative table of national legislative definitions of 'firearms' is contained at Appendix E, the high-level findings of which are summarised below.

Table 3.3: Definition of firearms: Conformity of Member States' laws with UN Protocol

Conformity of national definitions of firearms with UN Protocol	No.	Member States
Wider definition than Protocol	5	BG, CZ, LV, AT, NL
Conforms to Protocol definition	6	BE, CY, EL, ES, HU, PL
Narrower definition than Protocol	14	DE, DK, EE, FR, IE, IT, LT, PT, RO, SI, SK, SE, UK, MT

Source: Legal fiches, CSES research

Of the jurisdictions for which information is available, roughly half have either a wider definition or one that conforms to that found in the Protocol and, by extension, the Directive. Where the definition is judged to be wider, this is because, unlike the UN definition, there is no requirement for the weapon to be barrelled (LV); or it is not necessary for the weapon to be designed or readily converted to shoot, merely that it *can* do so (BG and CZ).

For Member States judged to have narrower definitions of 'firearms' than the one contained in the UN Protocol, in many cases (DE, DK, EE, FR, IE, LT, PT, SE, UK) this is because there is no explicit reference to weapons that may be readily converted (that is, in addition to weapons that are specifically designed) to fire projectiles. Some jurisdictions (FR, IE, UK) stipulate that weapons must be 'lethal' or capable of causing harm to be classified as 'firearms', whereas in the UN Protocol capacity to cause physical damage is not specifically contemplated. In Germany a firearm is a gun designed for specific

⁹⁴ Part III of Annex 1 provides: "For the purposes of this Annex objects which correspond to the definition of a 'firearm' shall not be included in that definition if they: (a) have been rendered permanently unfit for use by the application of technical procedures which are guaranteed by an official body or recognized by such a body; (b) are designed for alarm, signaling, life-saving, animal slaughter or harpoon fishing or for industrial or technical purposes provided that they can be used for the stated purpose only; (c) are regarded as antique weapons or reproductions of such where these have not been included in the previous categories and are subject to national laws. Pending coordination throughout the Community, Member States may apply their national laws to the firearms listed in this Section."

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purposes of attack or defence, or for the specific and named activities of 'signalling', hunting, firing darts or sport and recreation.

The following summary matrix considers further elements of the definition of 'firearms' in national legislation, broken down by Member State.

Table 3.4(a): Definition of 'illicit firearms' (AT to HU)

	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU
Does this definition include replicas?	✓	✓	✗	✗	✓	✗	✓	✗	✓	✓	✓	✓	✓	N/A
Does this definition include antiques?	✗	✗	✗	✓	✓	✓	✓	✗	✓	✓	✓	✓	✗	N/A
Does this definition include deactivated arms?	✓	✓	✗	✓	✓	✗	✓	✗	✓	✓	✓	✓	✓	N/A
Does this definition include parts, essential components or ammunition?	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	N/A
Are there any categories of arms restricted or prohibited for civilian use?	✓	✓	✗	✓	✓	✓	✓	✓	✗	✓	✓	✓	✓	N/A

Table 3.4(b): Definition of 'illicit firearms' (IE to UK)

	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SK	SI	UK
Does this definition include replicas?	✗	N/A	✓	✗	N/A	N/A	✓	N/A	✓	✓	✗	✓	✓	✗
Does this definition include antiques?	N/A	N/A	✓	✓	N/A	N/A	✗	N/A	✓	✗	✓	✓	✗	✗
Does this definition include deactivated arms?	N/A	N/A	✗	✗	N/A	N/A	✓	N/A	✓	✓	✓	✗	✓	✗
Does this definition include parts, essential components or ammunition?	✗	N/A	✓	✓	N/A	N/A	✓	N/A	✓	✓	✓	✓	✓	✓
Are there any categories of arms restricted or prohibited for civilian use?	✗	N/A	✓	✓	N/A	N/A	✓	N/A	✓	✓	✓	✓	✓	✓

From the matrix it can be seen that six EU jurisdictions (CZ, DK, EL, ES, FI, FR and PT) have a definition of illicit firearms wide enough to include replicas; antiques; deactivated firearms; and parts, essential components or ammunition. In this context it should be noted that matters related to deactivated firearms were investigated by a separate study for DG HOME.

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The UN definition excludes antique firearms or their replicas from the general firearm definition (though it provides that firearms manufactured after 1899 should not be classed as antique firearms in domestic law). It is important to note that there is no equivalent post-1899 proviso in the Directive. Instead, as long as antique or replica weapons do not fall into other categories in the Directive and are subject to national laws they fall outside the definition of 'firearm'. As the case study below shows, there is some evidence to suggest that this situation has given rise to a 'legal loophole' which criminals who are aware of national laws are able to exploit. The possibility of including an amended definition of 'firearm' in any new EU measure, in line with the Protocol wording, under Policy Option 3 (comprehensive legislative solution) will be addressed in Section 4.

Case example: criminals exploiting 'legal loophole' in UK definition of 'firearm'

A recent article in the London *Evening Standard* ("Gangs use 'antique' guns loophole to import deadly weapons into London", 17 April 2014) reports concerns by the Metropolitan police that weapons manufactured after 1899 (the point beyond which no weapon may be classified as an 'antique' under the Protocol), and which are capable of firing live ammunition, are being brought into the UK from other EU Member States and legally traded. In this way, police believe gang members are actively exploiting Section 58 of the UK Firearms Act 1968, which exempts 'antique' weapons from the provisions in the Act relating to 'firearms', including the ban on handguns, if they are "sold, transferred, purchased, acquired or possessed as a curiosity or ornament." The Act fails to define 'antique.' A spokesman for the UK's National Ballistics Intelligence Service told the *Evening Standard*:

"Our concern is that at the moment you are entitled to walk down the street with an antique firearm capable of firing real bullets. Criminals are finding it difficult to acquire modern weapons so they are having to find alternative sources of supply such as antique weapons. We are finding criminals with a knowledge of the law. They recognise that they can carry these weapons with little or no risk of jail."

Other examples of 'antique' guns include the 1920s Dutch revolver carried by the terrorist extremists who killed Drummer Lee Rigby in Woolwich, London in May 2013.

Turning from the definition of 'firearms' to that of '**illicit firearms trafficking**':

'Illicit firearms trafficking' definition - International / EU standard

UN Protocol

" 'Illicit trafficking' shall mean the import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition from or across the territory of one State Party to that of another State Party if any one of the States Parties concerned does not authorize it in accordance with the terms of this Protocol or if the firearms are not marked in accordance with article 8 of this Protocol." (Article 3(e))

Directive 91/477/EEC, as amended

"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

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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).” (Article 1(2))

Note: The Protocol conducts of ‘import’ and ‘export’ are not included in the definition of illicit firearms trafficking in the Directive. The extent to which it would be advisable to widen the EU definition in line with the international/UN wording will be considered in the discussion on policy options in Section 4.

The comparative summary at Table 3.2 is reproduced here. This table groups EU Member States according to their degree of compliance with the UN definition of the illicit firearms trafficking as established in Article 3 of the Protocol. A separate analysis of national legislation specifically covering the two sub-elements of firearms trafficking per Article 5 of the Protocol, namely illicit manufacturing and the issue of marking, will be discussed separately at (ii) and (iii) below.

Compliance of national illicit firearms trafficking prohibition with UN Protocol standard	No.	Member States
Compliant	6	DE, EL, ES, FR, PT, SI,
Largely Compliant	6	BG, CY, DK, LV, SK, UK
Partially Compliant	5	AT, CZ, EE, LT, SE
Non-compliant	2	FI, IE

Source: Legal fiches, CSES research (Note: When Member States are missing in the table, no information was available)

For the EU jurisdictions for which information is available, a clear majority is either compliant or largely compliant with the UN standard. The analysis below should be read in conjunction with the comparative table in Appendix E, which includes, where available, the text of the relevant national legislation.

It is notable that even for those Member States judged ‘compliant’, no EU jurisdiction transposes the precise working of Article 3 of the UN Protocol into their national law. Rather, it can be said that the relevant national provisions taken as a whole conform to the UN standard. In **France**, furthermore, the UN standard is implicitly met since under the relevant provision⁹⁵ illicit firearms trafficking conduct is criminalised if it violates EU or international law.

‘Largely compliant’ Member States are compliant with the UN definition of illicit firearms trafficking but for a missing reference to marking (BG, DK, LV, UK); exporting, in the case of **Cyprus**; or sales, in the case of the **Slovak Republic**.

‘Partially compliant’ Member States are missing more than one element of the UN definition. Thus, **Czech Republic** has no reference to sale, import/export, or movement or transfer of firearms; **Estonia** no reference to acquisition or marking; **Lithuania** no reference to sale of firearms or marking; **Sweden** no reference to export, acquisition,

⁹⁵ Décret n° 2013-700 du 30 juillet 2013 article 1er – III – 11° (see infra) Décret n° 2013-700 du 30 juillet 2013 article 1er – III – 11.

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sale, delivery or movement of firearms, or illicit manufacturing or reference to marking of firearms.

The only Member States so far found to be 'non-compliant' is **Finland and Ireland**. In the former case, there is no legal definition of "trafficking in fire arms": legal sanctions do however exist and are divided into several laws and regulations. For the latter jurisdiction, the country respondent records in Appendix E: *"There is no specific legal definition of Firearms Trafficking. Firearms Importation Licensing Laws cover offences of Trafficking and sales without a permit. There is no historic, present or expected future firearms' manufacturing industry in this state. The impact of Firearms Trafficking has as a result only been an inward phenomenon from other European and international States. Legislation has not been required to regulate a non-existent Firearms industry in Ireland."*

As with the 'firearms' definition, the following summary matrix contains additional aspects of the 'illicit firearms trafficking' offence, broken down by Member State.

Table 3.5(a): Definition of 'illicit firearms trafficking' (AT to HU)

	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU
Does the definition include selling a firearm without a licence or authorization from the State?	✓	✗	✓	✓	✓	✓	✗	✓	✓	✓	N/A	✓	✓	N/A
Does the definition include selling to an unlicensed buyer?	✓	✗	✓	✓	✓	✓	✓	✓	✓	✗	N/A	✓	✓	N/A
Is there a distinction made between selling or supplying firearms unlawfully to a legal/natural person resident in the country as opposed to a legal/natural person abroad?	✗	✗	✗	✗	✗	✓	✗	✓	✓	✗	N/A	✓	✗	N/A
Are there other offences related to illicit firearms trafficking in your country, such as possession of arms?	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	N/A	✓	✓	N/A
Is the use of special investigative techniques legally envisaged?	✓	✗	✓	✗	✓	✓	✗	✗	✗	✗	✗	✗	✓	N/A
Is there liability for legal persons, ie corporate bodies? To what extent can a legal person be held liable in the context of illicit arms trafficking	✓	N/A	✓	✓	✓	✗	✓	✓	✗	✓	✗	✓	✓	N/A

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(fine, criminal liability of directors)?														
Does the offence of illicit firearms trafficking allow for 'lesser' forms of intent, such as suspicion of committing an offence?	X	X	X	X	✓	X	N/A	N/A	N/A	N/A	N/A	X	X	N/A
Is possession of firearms criminalised in the laws on illicit firearms trafficking?	N/A	N/A	✓	✓	✓	✓	✓	✓	✓	✓	N/A	✓	N/A	N/A
Is export/import of firearms criminalised in the laws on illicit firearms trafficking?	N/A	N/A	✓	✓	✓	✓	✓	✓	✓	✓	N/A	✓	N/A	N/A

Table 3.5(b): Definition of 'illicit firearms trafficking' (IE to UK)

	IE	IT	LT	LV	LU	M T	NL	PL	PT	R O	SE	SK	SI	UK
Does the definition include selling a firearm without a licence or authorization from the State?	X	N/A	✓	X	N/A	N/A	✓	N/A	✓	N/A	✓	✓	✓	✓
Does the definition include selling to an unlicensed buyer?	N/A	N/A	✓	✓	N/A	N/A	✓	N/A	✓	✓	✓	✓	✓	✓
Is there a distinction made between selling or supplying firearms unlawfully to a legal/natural person resident in the country as opposed to a legal/natural person abroad?	N/A	N/A	X	N/A	N/A	N/A	X	N/A	✓	X	✓	X	X	✓
Are there other offences related to illicit firearms trafficking in your country, such as possession of arms?	X	N/A	✓	✓	N/A	N/A	✓	N/A	✓	✓	✓	✓	✓	✓
Is the use of special investigative techniques legally envisaged?	X	N/A	✓	✓	N/A	N/A	X	N/A	✓	X	✓	✓	✓	✓
Is there liability for legal persons, ie corporate bodies? To what extent can a legal person be held liable in the context of illicit	X	N/A	✓	X	N/A	N/A	✓	N/A	✓	X	X	X	✓	✓

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arms trafficking (fine, criminal liability of directors)?														
Does the offence of illicit firearms trafficking allow for 'lesser' forms of intent, such as suspicion of committing an offence?	X	N/A	N/A	x	N/A	N/A	x	N/A	✓	x	N/A	✓	x	x
Is possession of firearms criminalised in the laws on illicit firearms trafficking?	X	N/A	✓	✓	N/A	N/A	N/A	N/A	✓	N/A	✓	N/A	✓	✓
Is export/import of firearms criminalised in the laws on illicit firearms trafficking?	X	N/A	✓	✓	N/A	N/A	N/A	N/A	✓	N/A	✓	N/A	✓	✓

Looking at the findings of the matrix in more detail, in general terms there appears to be some divergence in Member States' approach to aspects of the illicit firearms trafficking offence not already covered by the definition of IFT in Article 3 of the Protocol. These divergences are summarised in Table 3.6 below and are most evident in the cases of (i) distinctions in national laws between selling or supplying firearms unlawfully to a legal or natural person resident in the country versus to a legal or natural person abroad; (ii) whether liability extends to legal as well as natural persons; (iii) the use of special investigative techniques; (iv) attempted trafficking; (v) aiding or abetting and (vi) whether the offence of illicit firearms trafficking allows for 'lesser' forms of intent in national legislation. The latter is considered further in Section 3.3.4.

Table 3.6: Inclusion of aspects of IFT offence in national laws by number of EU Member States

Element of illicit firearms trafficking offence contained in national law	Yes	No	NA
Does the definition include selling a firearm without a licence or authorization from the State?	17	4	7
Does the definition include selling to an unlicensed buyer?	19	2	7
Is there a distinction made between selling or supplying firearms unlawfully to a legal/natural person resident in the country as opposed to a legal/natural person abroad?	7	13	8
Are there other offences related to illicit firearms trafficking in your country, such as possession of arms?	21	1	6
Is the use of special investigative techniques legally envisaged?	12	11	5
Is there liability for legal persons, i.e. corporate bodies?	14	8	6
Does the offence of illicit firearms trafficking allow for 'lesser' forms of intent, such as suspicion of committing an offence?	3	13	12
Is possession of firearms criminalised in the laws on illicit firearms trafficking?	15	1	12

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Elaborating on the key legislative divergences:⁹⁶

Distinction at national law between selling or supplying firearms unlawfully to a person resident in the country versus a person abroad⁹⁷: In seven Member States no distinction is made between selling or supplying firearms unlawfully to a legal or natural person resident in the country as opposed to a legal or natural person abroad. However, in the **United Kingdom**, for example, a different regime applies in the latter circumstances and the Export Control Act 2002 will be applicable for selling or supplying firearms outside the territory of the UK. This does not mean that a person outside the territory of the UK cannot be prosecuted. It only means that the person will be prosecuted under a different legal regime.

Liability for legal persons:⁹⁸ In **Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, France, Lithuania, Portugal, Spain, Slovenia, and the United Kingdom** only natural persons have the ability to register a firearm under their name, thus obtaining a license to use it. A corporate body or a legal person can register a firearm only under limited circumstances, namely in the case of obtaining it as a collection item or where the firearm itself is deactivated. The **Czech Republic** is an example of a Member State which has recently enacted provisions regarding corporate criminal liability. Nonetheless, a legal person can still be found guilty of illicit firearms trafficking in all of the abovementioned countries. Germany, **Slovakia and Sweden**, for instance, recognise only personal liability and there are no provisions regarding legal persons. An interesting regime is applicable in **Slovenia** where a two-step process is followed: proceedings are initiated and carried out against the legal person together with parallel proceedings against the perpetrator of the same criminal offence. In practice, a single charge will be lodged against both the natural and legal persons and the court will deliver a single judgment.

Use of special techniques for the investigation of criminal offences: this is not envisaged in **Cyprus, Denmark, Estonia, Greece, Finland, France, Ireland and Spain**. By contrast, the **Czech Republic, Germany, Lithuania, Portugal, Slovak Republic, Slovenia, Sweden and the United Kingdom** have enacted such provisions. A summary of the special techniques available for specific offence in each applicable Member State is provided below.

Attempted trafficking: under Article 5(2)(a) of the UN Firearms Protocol signatories are required to adopt such legislative measures as are necessary to establish as criminal offences attempting to commit or participating as an accomplice in either illicit manufacturing of firearms, or illicit trafficking in firearms. **Bulgaria, Cyprus, the Czech Republic, Germany, Lithuania, Portugal, Slovak Republic, Slovenia, Spain and the United Kingdom** have adopted definitions which cover attempted trafficking. By contrast, the definition in **Denmark, Estonia, Greece, Finland, France and Latvia** do not expressly cover attempted trafficking.

⁹⁶ The extent to which the offence of illicit firearms trafficking allows for 'lesser' forms of intent in national legislation is considered at 3.3.4. In addition, Member States' compliance with the final 3 rows of the IFT matrix (covering export/import, acquisition/sale, and delivery movement or transfer of firearms) formed part of the analysis of the IFT definition for Table 3.2, and are not discussed again here.

⁹⁷ This distinction is not mentioned in the UN Protocol.

⁹⁸ This point is not covered in the UN Protocol

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Aiding or abetting the commission of the offence: under Article 5(2)(b) of the UN Firearms Protocol each state party is required to adopt legislative measures as may be necessary to establish as criminal offences the organizing, directing, aiding, abetting, facilitating or counselling the commission of an illicit firearms trafficking offence. In **Bulgaria, Cyprus, the Czech Republic, Germany Lithuania, Portugal, Slovak Republic, Slovenia Spain, Sweden and the United Kingdom** the definition of illicit firearms trafficking encompasses aiding and abetting. In contrast, on the basis of the existing legal fiches the definitions in **Denmark, Estonia, Greece, Finland, France and Latvia** do not cover aiding or abetting.

Table 3.5: Form of special investigative and applicable IFT offence by EU Member State

In general the following Member States can make use of special investigative techniques: UK, Sweden, Slovenia, Slovakia, Portugal, Lithuania, Estonia, Czech Republic. In contrast, in the following they cannot: Spain, Ireland, Greece and Cyprus.⁹⁹

Member State	Special investigative technique	Applicable IFT offence / statutory reference
BG	Framework for tracing of civilian firearms which is coordinated by the Control of Hazardous Devices Offices within the Ministry of Interior.	Any unlawful activity
CZ	No details provided in legal fiche	See previous column
DE	In the prosecution of illegal trafficking of firearms all means provided for by the Code of Criminal Procedure are admissible (if their respective requirements are met).	See previous column
LT	It is legally envisaged a possibility to execute criminal intelligence investigations (i. e. undercover actions: secret surveillance, secret control of telecommunications, controlled delivery, undercover agents, simulation of criminal offence, etc) for all crimes related to illicit firearms trafficking, including less serious crimes provided for in Article 253 of Criminal Code of the Republic of Lithuania. Forensic examination of firearms and ammunition is envisaged as well.	See previous column
PT	No details provided in legal fiche	See previous column
SK	No details provided in legal fiche	See previous column
SE	No details provided in legal fiche	See previous column
SI	Secret surveillance of the person suspected of committing illicit firearms trafficking, including electronic communication, wiretapping also in foreign premises, control of computer systems of banks or other legal entities which may be involved in financial or other commercial activities. Moreover, the investigative techniques allow the use of	General rules of the Criminal Procedure Act

⁹⁹ Note that not all Member States answered this question. Therefore, not all MS are mentioned.

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	undercover agents and the acquisition of bank transactions data, thus allowing the national authorities to trace any suspicious activity on part of both natural and legal persons.	
UK	No details provided in legal fiche	See previous column

Source: CSES legal fiches

(ii) Illicit firearms manufacturing

Under Article 5 of the UN Protocol, State Parties are required to adopt necessary legislative measures criminalising the conduct of illicit manufacturing of firearms, their parts and components and ammunition. A definition of illicit manufacturing is provided at Article 3 of the Protocol.

'Illicit firearms manufacturing' definition - International / EU standard

UN Protocol

" 'Illicit manufacturing' shall mean the manufacturing or assembly of firearms, their parts and components or ammunition:

- (i) From parts and components illicitly trafficked;
- (ii) Without a licence or authorization from a competent authority of the State Party where the manufacture or assembly takes place; or
- (iii) Without marking the firearms at the time of manufacture, in accordance with article 8 of this Protocol" (Article 3(d))

Directive 91/477/EEC, as amended

"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)." (Article 1(2))

Note: These definitions are very similar. However, with the Protocol refers to "parts and components" where the Directive uses the slightly narrower wording of "any essential component".

A summary table of national legislative definitions of 'illicit firearms manufacturing' (where such an offence exists) is set out in the table below. Reference should be made to Appendix E for further detail, including where available the wording of the relevant national provisions.

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Table 3.6: Conformity of definition of illicit firearms manufacturing definition with UN Protocol

Conformity of national definitions of illicit firearms manufacturing with UN Protocol	No.	Member States
Wider definition than Protocol	0	-
Conforms to Protocol definition	5	CY, DE ES, FR, LT
Manufacturing criminalised but legislative definition unavailable	8	BG, DK, EL, LV, PT, SI, SK, UK
Offence not defined in national law	3	FI, IE, SE

Source: Legal fiches, CSES research (Where MS are not mentioned, data was missing)

Eight Member States have criminalised the illicit manufacturing of firearms offence; however, the precise wording of the definition is not available.¹⁰⁰ Of other EU jurisdictions, **Cyprus and Spain** replicate the definition found in the Protocol (and thus the Directive, which is based on the wording in the Protocol). The situation in **France** is identical to the overarching illicit firearms trafficking offence definition: the relevant international and EU standards are implicitly incorporated. Meanwhile, illicit firearms manufacturing in **Lithuania** appears to be covered by Article 253(2) of the Criminal Code:

*"A person who, without an authorisation, **produces**, acquires, stores, carries, transports or handles at least three firearms, the ammunition, explosives or explosive materials of a large explosive power or in a large quantity shall be punished by imprisonment for a term of four up to eight years."*

In relation to **Sweden** Chapter 9 of the Weapons Act covers persons who intentionally possess a firearm without having the right to it, or transfer or lend a firearm to someone who is not entitled to possess the firearm. The national expert for SE has been asked to confirm if a manufacturing of illicit firearms offence exists elsewhere in Swedish criminal law. Finally, as already stated Finland and Ireland do not formally define illicit firearms trafficking or, it is presumed, the 'sub-conduct' of illicit manufacturing.

(iii) Marking

The final sub-section of this 3.3.1 refers to **falsifying or illicitly obliterating, removing or altering the marking(s) on firearms** as criminalized at Article 5 of the UN Protocol.

¹⁰⁰ We will seek this information from legal fiche respondents and other stakeholder in order that this information is established by the end of Phase III.

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'Illicit firearms trafficking' definition - International / EU standard

UN Protocol

Article 3(e):

"*'Illicit trafficking' shall mean the import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition from or across the territory of one State Party to that of another State Party if any one of the States Parties concerned does not authorize it in accordance with the terms of this Protocol or **if the firearms are not marked in accordance with article 8 of this Protocol.***" (Article 3(e))

Article 8:

"1. For the purpose of identifying and tracing each firearm, States Parties shall:

(a) At the time of manufacture of each firearm, either require unique marking providing the name of the manufacturer, the country or place of manufacture and the serial number, or maintain any alternative unique user-friendly marking with simple geometric symbols in combination with a numeric and/or alphanumeric code, permitting ready identification by all States of the country of manufacture;

(b) Require appropriate simple marking on each imported firearm, permitting identification of the country of import and, where possible, the year of import and enabling the competent authorities of that country to trace the firearm, and a unique marking, if the firearm does not bear such a marking. The requirements of this subparagraph need not be applied to temporary imports of firearms for verifiable lawful purposes;

(c) Ensure, at the time of transfer of a firearm from government stocks to permanent civilian use, the appropriate unique marking permitting identification by all States Parties of the transferring country.

2. States Parties shall encourage the firearms manufacturing industry to develop measures against the removal or alteration of markings."

Directive 91/477/EEC, as amended

Article 1(2)

"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).**"

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."

The table that follows divides EU Member States recorded in the comparative table at Appendix E as including a marking requirement in their definition of illicit firearms trafficking and Member States where such a requirement is absent from the relevant IFT provisions.

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Table 3.7: Marking requirement in national illicit firearms trafficking legislation

EU Member States including marking requirement in offence of illicit firearms trafficking	No.	Member States
Marking requirement	9	CY, CZ, DE, EL, ES, FR, PT, SI, SK
No marking requirement	9	BG, DK, EE, FI, IE, LT, LV, SE, UK

Source: Legal fiches, CSES research (Note that not all Member States answered this question. Therefore, not all MS are mentioned.)

There is no marking requirement in just over half of jurisdictions for which information is available. On the face of it, this is a notable deficiency in Member States' national legislation, which could be redressed by an EU measure either:

- Setting out its own legislative provision criminalising the import, export or otherwise acquisition, sale, delivery, movement or transfer of any firearm from or across the relevant State's territory to another State that has not been marked in the prescribed manner; or
- Enshrining Article 35 of the UN Model Law, or a suitably amended version of this, in EU law.

The policy options as regards a possible EU legislative instrument in this area will be considered further at Section 4.

Consequences of diversity of national legislation on illicit firearms trafficking offences (including definitions of 'firearms', 'firearms trafficking', 'firearms manufacturing' and requirements on marking of weapons) for cross-border cooperation by police and judicial authorities

Turning to the potential consequences of the diverse definitions of the illicit firearms trafficking offence in national laws – starting with differences in the meaning of 'firearms' itself – can hamper cross-border efforts to combat the offence. The Legal Loopholes Study notes that:

"Differences in (Member States') national legislation entail practical problems. For instance, what one Member States considers a criminal offence and prosecutes accordingly might be entirely legal in another. Not only does this lead to practical problems in combined efforts to combat illegal firearms and other weapons, these differences may also have serious judicial or criminal law implications (...) (Differences in EU definitions of firearms) make comparisons and surveys virtually impossible, thwarting collaboration between Europe's police forces in line with the preferred approach of the EU and UN to tackle the illicit trafficking of firearms, ammunition and explosives and, consequently, creating too many opportunities for criminals to act."¹⁰¹

¹⁰¹ European Firearms Experts ("EFE"), *Study of loopholes in national weapons legislation and regulations in Europe*, p.5

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The study goes on to cite the example of toy weapons, which are “legal and widely available in many European countries”, but “strictly forbidden under Dutch weapons legislation”.¹⁰² In our own Phase 2 research we heard the example of stun devices and self-defence sprays which can be legally held and carried in a large number of countries, including some EU Member States, but not the UK. This gives rise to difficulties for UK prosecuting authorities who need to show intent and knowledge on the part of the suspect. Because of this legislative divergence it is often not possible to do so – and therefore often no prosecution is made – as ‘importers’ claim they did not know that such items are covered by a prohibition or restriction in the UK (see case example in Section 3.3.3 below).

A majority (59%) of respondents to our online survey are of the view that compared with illicit firearms trafficking that takes place purely within their Member State the cross-border dimension of illicit firearms trafficking is either quite or very significant. Asked about the extent to which legal barriers, such as the differences in legal definitions, are also an obstacle to cross-border cooperation, 38% of stakeholders thought these were a very significant impediment, with another 13% and 19% considering as quite or slightly significant respectively. Under a third of respondents (31%) considered legal barriers were not an impediment.

It is important to acknowledge that **obstacles to successfully combatting illicit firearms trafficking in the EU are practical as well as legal**. The table at Appendix E records answers from country respondents to the questions of whether there are any obstacles to securing illicit arms trafficking convictions in relation to the offences outlined in national legislation; and whether there are any there gaps or shortcomings in the Member State’s legislation to combat the illicit arms trafficking business. Responses include:

- For **Cyprus**, it was felt that, while the legislation was poorly designed to secure convictions, there were **insufficient resources** to tackle the full scale of the problem of illicit firearms trafficking.
- Thoroughgoing criminalisation of firearms trafficking was required according to the respondent for **Spain**: *“The articles of the Criminal Code are not intended for arms trafficking. It would be very important that the illicit arms trafficking existed as a crime itself and that the Audiencia Nacional has the competence for dealing with these cases.”*
- In other EU Member States (**FI, UK**) shortcomings were noted in the laws on deactivated firearms.¹⁰³

In pointing out these ‘deficiencies’ it is important to note that for six of the 11 Member States for which respondents have so far completed this question,¹⁰⁴ country researchers were of the view that there were **no shortcomings in national legislation** as regards securing convictions or tackling illicit firearms trafficking more generally.

¹⁰² Ibid.

¹⁰³ Issues in relation to deactivation are dealt with in more depth in the Ernst & Young study being undertaken for DG Home in parallel with this study.

¹⁰⁴ See Appendix E.

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It is clearly of vital relevance to establish whether an identified deficiency is of a legal or practical nature. Generally a distinction needs to be made between legal shortcomings and practical or cultural factors (surrounding, inter alia, corruption, low prosecution and conviction rates, inadequate resourcing for police and judicial authorities to confront the problem). The latter factors would require different and possibly non-legislative solutions at the EU-level when it comes to formulating policy options.

Conclusions – definitions of specific offences relating to firearms trafficking

Despite the substantively similar definition of 'firearms' in the Protocol, Model Law and Directive 91/477/EEC, and the existence of model provisions on the criminalisation of 'illicit firearms trafficking' in the Model Law, it is clear definitional differences in Member States' national legislation remain in relation to the conducts identified in article 5 of the UN Protocol and discussed in this section of firearms trafficking, firearms manufacturing and falsifying or illicitly obliterating, removing or altering the markings on firearms. It is not possible to create an approximated EU offence of illicit firearms trafficking without a standard, EU-wide definition of 'firearms'; in turn, both the absence of a common understanding of 'firearms' and of the offence of illicit firearms trafficking creates uncertainty for national investigating authorities and has the potential to impede cooperation at the cross-border level.

3.3.2 Level and type of penalties and sanctions applicable to legal and natural persons

Under the Model Law, it is generally up to individual states to determine penalties and sanctions of breaches of illicit firearms trafficking crimes. However, for "serious" offences to be compliant with the Convention (the parent instrument of the Protocol) sanctions must be custodial sentences of at least 4 years for both natural and legal persons. The Directive meanwhile merely stipulates that rules on infringements of its provisions – which do not explicitly cover an offence of illicit firearms trafficking – should be effective, proportionate and dissuasive.

EU Member States

The following matrix identifies the maximum and minimum (i) custodial sentences and (ii) financial penalties for illicit firearms trafficking by Member State. This matrix will be updated with the outstanding information for the remaining EU jurisdictions in Phase III.

Table 3.8(a): Sanctions (AT to HU)

	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU
What is the minimum custodial sentence for illicit firearms trafficking?	N/A	N/A	1 year	-	6 mont hs	-	-	6 mont hs	6 mont hs	6 mont hs	4 mont hs	-	N/A	N/A
What is the maximum custodial	N/A	5 years	6 years	15 years	8 years	10 years	6 years	10 years	2 years	4 years	4 years	10 years	N/A	N/A

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sentence for illicit firearms trafficking?														
What is the minimum financial penalty for illicit firearms trafficking?	N/A	N/A	€100	-	-	-	-	-	€600	-	N/A	-	N/A	N/A
What is the maximum financial penalty for illicit firearms trafficking?	N/A	€25,000	€15,000	€42,715	€1.8M	€30,000	-	-	€30,000	-	N/A	€500,000	N/A	N/A

Table 3.8(b): Sanctions (IE to UK)

	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SK	SI	UK
What is the minimum custodial sentence for illicit firearms trafficking?	N/A	N/A	From 15 days up to 90 days (or 3 years in the case of an overlap with smuggling)	2 years	N/A	N/A	N/A	N/A	10 years	N/A	6 months	1 year	6 months	-
What is the maximum custodial sentence for illicit firearms trafficking?	6 years	N/A	8 years or 10 years in the case of an overlap with smuggling	10 years	N/A	N/A	9 months	N/A	12 years	N/A	6 years	8 years	3 years	5 years
What is the minimum financial penalty for illicit firearms trafficking?	N/A	N/A	-	-	N/A	N/A	N/A	N/A	-	N/A	-	N/A	€10,000	-
What is the maximum financial penalty for illicit firearms trafficking?	N/A	N/A	-	-	N/A	N/A	N/A	N/A	-	N/A	-	N/A	€1m	-

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Table 3.8 summarises the information in the matrix by grouping the Member States by stringency in relation to custodial sentences and financial penalties.

Table 3.9 (a): Sanctions – Summary of Current situation in Member States

Custodial sentence	Member States
Maximum sentence 0 – 3 years and 364 days years	EL, SI, NL
Maximum sentence 4 – 10 years	BG, CZ, DE¹⁰⁵, DK, EE, ES, FI, FR, IE, LT, LV, SE, SK, BE
Maximum sentence 11 years +	CY, PT
Administrative sanctions (Financial penalties)	Member States
Maximum penalty less than € 100,000	BG, CY, DE, EL, BL, BE
Maximum penalty € 100,000 – € 1,000,000	FR, SI
Maximum penalty more than € 1,000,000	CZ

Source: CSES legal fiches (Note: When Member States are missing in the table, no information was available)

It can be seen from the table above that some Member States (EL) have relatively low maximum custodial sentences as well as low maximum financial penalties for illicit firearms trafficking offences. Others are a mixture, in that they have higher maximum sentences but lower maximum penalties (CY). Others still (FR) are in the middle grouping in terms of stringency for both maximum custodial sentences and financial penalties. A more detailed discussion follows of the individual sanctions regimes in Member States.

Bulgaria is an example of a Member State which has recently introduced more stringent requirements for acquisition of firearms, licencing, while at the same time imposed more severe punishments in case of offending any of the provisions. In 2012 the Law on Arms, Ammunitions, Explosive Substances and Pyrotechnical Articles was passed. Under Articles 156-212 of that law in cases of violations fines may be imposed from €100 to €2,500, property sanctions from €500 to €15,000 and withdrawal of the issued license for manufacture, acquisition or trade with SALW up to 1 year. In case of a repetitive infringement property sanction up to €25,000 and withdrawal of the issued license up to 2 years can be imposed. Along these administrative sanctions, Articles 338 and 339 of the Penal Code¹⁰⁶ impose a punishment of 1 to 6 years in case of storing, trading, importing or exporting firearms without having the right according to law to do so.

In **Cyprus** the maximum sanction which can be imposed on a person found guilty of illicit firearms trafficking is imprisonment not exceeding 15 years or to a fine not exceeding €42,715 or both¹⁰⁷. In addition, the firearms subject to the offence will be confiscated by the relevant authorities and destroyed with the consent of that person.

¹⁰⁵ Chapter 51 (2) of the Weapons Act.

¹⁰⁶ As amended in 2010.

¹⁰⁷ Article 51 (1) of Law 113(i) 2004.

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The legislation¹⁰⁸ in **Portugal** stipulates that illicit firearms trafficking is punished by imprisonment from 2 to 10 years. However, there is a discretion on part of the judges who can increase the sentence from 4 to 12 years¹⁰⁹ in cases where the person is an official responsible for the prevention of any illicit firearms trafficking, where the person has knowledge that the arms are destined for the purposes of criminal organisations, or where he gains substantial remuneration from the trade in arms.

In **Greece**, by contrast, a less stringent regime with regards to penalties is in place. By virtue of Law 2168/93,¹¹⁰ illicit firearms trafficking is subject to both criminal penalties and administrative sanctions. Criminal penalties range from imprisonment of at least 6 months to 2 years along with fines ranging from €3,000 up to €30,000 €.

Slovenia applies a dual sanctions regime: provisions relating to natural persons and legal persons are contained in separate legislative frameworks. In essence this reflects both the prevailing national criminal procedure and the different treatment of offences as undertaken by the Office of the State Prosecutor General of the Republic of Slovenia. The illicit firearms trafficking of chemical, biological or nuclear weapons is punished by a sentence from 6 months and up to 5 years in prison. Large quantities of or very valuable and dangerous arms invoke a sentence of imprisonment for not less than 1 and not more than 10 years¹¹¹. If the natural person is found guilty of trafficking an individual firearm or a small quantity of ammunition he will be punished by imprisonment of up to one year.

With regard to illicit trafficking of composite or spare parts of firearms, ammunitions or any substances or ingredients, which are known to be used for manufacture of firearms a sentence of up to 5 years in prison will be applied. In relation to legal persons¹¹² the possible sanctions for the entity involve a fine, confiscation of property (in cases where the proscribed punishment is 5 years of imprisonment) and winding up of the legal entity itself. In addition to the measure of confiscation the Slovenian authorities have a wide discretion in imposing safety measures- either the publication of the judgment or prohibition of a specific commercial activity. Under Article 13 the fine which may be prescribed for an offence committed by a legal person may not be less than €10,000, or more than €1,000,000. Different financial penalties apply depending on the custodial sentences- punishment of up to 3 years' imprisonment is accompanied by a fine of up to €500,000 whereas a fine of at least €50,000 will be applied where the punishment is imprisonment of over 3 years.¹¹³

Due to the fact that **Estonia** makes an express differentiation between offences committed by natural and legal persons two sanctions regimes are applied: in the former situation the offender can be faced with financial penalties alongside a custodial sentence, whereas in the latter case the legal entity will be punishable by a pecuniary punishment or compulsory dissolution, thus allowing for the liability of company directors to be dealt with separately. Confiscation of the firearms is also envisaged by virtue of Article 392 of the

¹⁰⁸ Article 87- Law 5/2006- "Weapons Law".

¹⁰⁹ To be read in accordance with the *Portuguese Penal Code*- LEI 59/2007.

¹¹⁰ Law 2168/93 on "Matters related to arms, ammunition and explosives", 3 September 1993, amended by Law 3944/2011 in 2011 to transpose the provisions of Directive 2008/51/EC.

¹¹¹ Article 307(2) of *Illegal Manufacture of and Trade in Weapons or Explosive Materials*.

¹¹² *Liability of Legal Persons for Criminal Offences Act*

¹¹³ Article 26 of the *Liability of Legal Persons for Criminal Offences Act*.

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Penal Code. The unlawful handling of small firearms, including small quantities of cartridges is punishable by a pecuniary penalty or up to 3 years' imprisonment. Where the object of the offence is a large quantity of firearms or essential components thereof the offender is faced with up to 5 years of imprisonment. However, the Penal Code makes an explicit reference to offences committed by criminal organisations- the act of unlawful handling of large quantity of firearms prohibited for civilian use is punishable by 6 to 20 years' imprisonment.

In **Spain** in case of being found in possession of a firearm without authorisation/licence a sliding scale of sentencing will be applied: imprisonment from 1 to 2 years for handguns and in case of long firearms a sentence of 6 months to 1 year. With regards to the more serious offences the Spanish legislation provides for stronger sanctions and much higher financial penalties. In the case of owning, trafficking and deposition of regulated firearms or the ammunition for these,¹¹⁴ a sentence of imprisonment of 2 to 4 years is envisaged for the principals, and with imprisonment from 6 months to 2 years for those found to have cooperated to the organisation of the offence.

Latvia is also an example of an EU Member State that enforces financial penalties alongside custodial sentences. The applicable punishment for a person who illegally imports or exports explosives, weapons or ammunition the applicable punishment is deprivation of liberty for a term not exceeding 5 years. The authorities, however, have the discretion of ordering community service and a fine instead of imprisonment. Depending on the involvement of any aggravating or mitigating circumstances the property may be confiscated by the Latvian police authorities. Similarly to the legislative framework in **Estonia**, **Latvia** also takes a stronger stance against acts committed by organised groups- imprisonment for a term of not less than 2 years and not exceeding 11 years is prescribed by section 190.1 (3) of the Criminal Law. In addition to that, members of the organised group face the possibility of probationary supervision for a term not exceeding 3 years with deprivation of the right to take up a specific office or engage in entrepreneurial activity for a term not exceeding 5 years. The **Czech Republic**¹¹⁵ also has provisions regarding offences committed by an organised group and the applicable prison sentence in that case ranges from 2 to 8 years.

In **Slovakia** the Penal Code stipulates imprisonment ranging from 1 to 8 years depending on the severity of the offence. This is to be judged by virtue of the specific motivation of the offender. However, the term might be extended where the possession, exports, transits of firearms, ammunitions or explosives is carried out as a member of a dangerous group. In such cases the term of imprisonment of the offender may be increased of up to 20 years when chemical or biological weapons are involved.¹¹⁶ It is important to note that no financial penalties are envisaged in the Slovakian Penal Code.

Sweden applies a categorisation of illegal trafficking where the maximum sanction according to the Act on Penalties for Smuggling is imprisonment for at most 6 years¹¹⁷. A different sanctions regime applies in cases of petty and grave smuggling- in the former the maximum sentence is a fine, and in the latter the maximum sentence is imprisonment

¹¹⁴ Article 566, Chapter V of the Criminal Code.

¹¹⁵ Section 279 of the *Criminal Code No.40/2009 Coll.*

¹¹⁶ Article 294 (4) *Penal Code No. 300/2005.*

¹¹⁷ Section 5(1) of *Act on Penalties for Smuggling.*

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for at most 6 years. The unlawful import of firearms is sanctioned with a maximum sentence of imprisonment for at most 2 years.¹¹⁸

In the **United Kingdom** the sanctions regime is relatively straightforward and no sliding scale of sentences is envisaged. The maximum sanction for illicit firearms trafficking is 5 years' imprisonment. The maximum custodial sentence applicable in the **Czech Republic**¹¹⁹ is also 5 years with a discretion given to the authorities in assessing whether large quantities of ammunition or weapons of mass destruction were involved. In the former case the offender shall be punished by a prison sentence of up to 2 years, disqualification in case of a legal person, and forfeiture of items or other assets.

In **Denmark** a broadly similar approach is followed subject to the caveat that a different regime is applied for exceedingly dangerous weapons (examples include mortars, grenades, bombs, submachine guns and machine guns), which will involve a custodial sentence of up to 6 years. With regards to small firearms (also including ammunition, crossbows, silencers and optical sights) section 192(a) of the Danish Criminal Code stipulates that sanctions will vary from a fine to imprisonment of up to 2 years. A novel provision covering the commission of acts of terror is contained in the Danish legislative framework. Life imprisonment may be applied to any person who transports weapons or explosives with a view to commit such acts.¹²⁰

No specified offences for illicit firearms trafficking are envisaged in **Ireland** and therefore the sanctions regime applies only to firearms offences which are punishable up to 6 years of imprisonment on indictment.

As a consequence of the above-mentioned diversity of national legislation on sanctions, cross-border cooperation by police and judicial authorities could be hampered. In this regard harmonisation of the sanctions regime among EU Member States could facilitate smoother application of many preventive and investigative measures.

Looking at the possible cross-border consequences of the varying nature and severity of penalties and sanctions in national laws outlined above, the present maximum custodial sanction for illicit firearms trafficking related offences of two years (for unlawful import) in Sweden to 10 years in France to 15 years in Cyprus arguably encourages 'forum shopping' by criminals. Under this theory, criminals may pick and choose EU jurisdictions between which to move illicit firearms on the basis that such activity carries a lower penalty if the offenders are caught in the chosen Member State(s). Although beyond the scope of this study, further research is needed to establish whether this theory is correct in practice, but a number of stakeholders (including representatives of police and investigating authorities) were of the view that forum shopping of this kind was indeed practised by criminals.

If illicit firearms trafficking is not consistently criminalised for **legal as well as natural persons**, this creates an uneven framework for penalising the offence which could be exploited by criminals to their advantage. At the same time it may hinder cross-border judicial and police attempts to combat illicit firearms trafficking: for example, if a

¹¹⁸ Section 7 of *Act on Penalties for Smuggling*.

¹¹⁹ Section 279 of the *Criminal Code* No. 40/2009 Coll.

¹²⁰ Section 114(2) of the *Danish Criminal Code*.

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corporate entity (i.e. a legal rather than a natural person) is operating in two jurisdictions, A and B, and undertakes activities which constitute illicit firearms trafficking in jurisdiction A but not in jurisdiction B, this will hinder a joint investigation by, or cross-border assistance between, the investigating authorities of those Member States. Equally, joint investigations and assistance run the risk of being undermined if the likely sanction for the same firearms trafficking offence is serious in one jurisdiction but relatively trivial in another.

Conclusion – penalties and sanctions applicable to legal and natural persons

Approximating penalties and sanctions for illicit firearms trafficking sanctions would provide legal certainty for police and judicial authorities and reduce criminals’ incentives to forum shop. This view was expressed by most stakeholders that we consulted although some did not have a definite view. However, there may be political and legal obstacles to ensuring uniformity of national laws in this area, given that penalties and sanctions are deeply embedded in Member States’ criminal codes.

Because any EU measure in this area would only seek to establish ‘minimum maximum’ thresholds for sanctions, Member States would be free to set whatever upper limit on sanctions that they wished (provide they were at least four years). The overall public and policy benefit of minimum rules in the area of illicit firearms trafficking under the legal basis of article 83(1) TFEU is additionally pertinent to any subsidiarity assessment.

3.3.3 Impact of aggravating or mitigating circumstances on definition of illicit firearms trafficking and related sanctions

The key legislation at international and EU level does not address the impact of either aggravating or mitigating circumstances on the definition of illicit firearms trafficking and related sanctions. The Model Law containing model provisions prohibiting illicit firearms trafficking (in the form of (i) any transnational transfer of firearms without legal authorization and (ii) any transnational transfer of firearms if these are not marked)¹²¹ simply states that the general system of aggravating or mitigating circumstances already existing within a Member State’s national legislation would be applicable to these provisions.¹²²

¹²¹ Articles 34 and 35 of the Model Law.

¹²² Model Law Section B commentary, p.45.

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Table 3.9: Aggravating or mitigating circumstances - Current situation in Member States

Principle aggravating or mitigating circumstances	Member States
Degree of intention	CZ, ES, PT, SI
Participation in organised criminal organisation	CZ, DE, FR, LT, LV, SE, SI, SK
Recidivism	CZ, ES, FR, SI
Terrorism connection	CZ, FR
State of emergency / war / crisis situation	CZ, LT, SK
Large scale / grave consequences	CZ, LT, LV, SE
No explicit provision in national law (could be an element at the judicial discretion)	BG, CY, DK, EE, EL, FI, IE
Aggravated illicit firearms trafficking a separate offence	UK
Aggravating/mitigating circumstances derive from general criminal procedural code	CZ, ES, LT, PT, SI, SK

A comparative table containing the national provisions for aggravating or mitigating circumstances in respect of illicit firearms trafficking offences is set out at Appendix E.

Member States

As can be seen from the table above, around half of Member States for which information is available provide in their national laws for aggravating or mitigating circumstances relating to the factual circumstances of the offender. In four Member States the question of *mens rea* is applicable. The question of aggravating or mitigating circumstances for illicit firearms trafficking is dealt with under general criminal law provisions in several EU jurisdictions, while the UK is the only Member State where there is only a separate offence of aggravated illicit firearms trafficking.

Examining the findings in further detail: aggravating factors in the case of **Czech Republic**,¹²³ **Germany**,¹²⁴ **Lithuania**,¹²⁵ **Latvia**,¹²⁶ **Slovak Republic**,¹²⁷ **Slovenia**¹²⁸

¹²³ Aggravating circumstances in CZ are governed by those set out in the criminal code for all offences. Of most relevance for illicit firearms trafficking are section 42 (a) on "premeditation", (j) on committing a criminal offence "during an emergency situation", (m) on committing the offence "**in a larger extent**" and (o) on committing the offence "**as an organizer, a member of an organized group or a member of a conspiracy**," See CZ legal fiche, question 2.2.12.

¹²⁴ Sections 51(2) and 52(2) (sanctions) of the German Weapons Act: "A particularly serious instance shall generally be deemed to apply when the offender acts for gain or as a member of a gang formed for the purpose of committing such offences on a continuing basis, with the involvement of another gang member."

¹²⁵ See Lithuania legal fiche.

¹²⁶ Criminal Law Section 190.1, sub-sections (2) and (3). See Latvia legal fiche.

¹²⁷ Section 294, sub-sections (4) and (5). See Slovak Republic legal fiche.

¹²⁸ Under Article 307 of the Criminal Code the sanction for the basic offence is imprisonment of not less than six months and no more than five years. The sanction for the criminal offence committed in **aggravating circumstances (a large quantity or very valuable or dangerous firearms or an offence committed within criminal association)** consists of imprisonment of not less than one year and no more than ten years. See Slovenia legal fiche.

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and Sweden¹²⁹ principally involve whether the offence is (i) committed as part of an organised criminal gang or (ii) on a “large scale”. In **Sweden** it may also be an aggravating factor if the illicit trafficking act was “of a particularly dangerous nature, or if the act otherwise involved a serious violation of an important public interest”. Likewise in the **Czech Republic** and also the **Slovak Republic** it is relevant if the act was committed in a “crisis situation”. In common with these other Member States, aggravating circumstances for weapons offences in **France** include whether the offender was part of a criminal organization, as well as whether he was a repeat offender or engaged in terror-related activities.

In **Portugal**, the degree of intention of the offender is significant (see further discussion on intent and negligence at section 3.3). In this jurisdiction, illicit firearms trafficking offences committed intentionally are deemed aggravated and this is reflected in the resulting custodial sentence. Similarly, it is thought that **absence of intent could be a mitigating factor in Spain**. Article 565 of the Spanish Criminal Code¹³⁰ provides:

“The Judges or Courts of Law may lower the penalties stated in the preceding Articles by one degree, as long as the circumstances of the fact and of the offender prove the lack of intention to use the weapons for unlawful purposes”.¹³¹

However, this refers to articles 563 and 564, which relate to crimes of possession of arms and not illicit firearms trafficking. The lack of intention may therefore be a mitigating factor only if the court applies an analogous approach to the sentencing of illicit firearms trafficking offences as it does to illicit firearms possession offences.

It should be noted that in jurisdictions such as **Bulgaria, Cyprus, Denmark, Estonia, Finland, Greece and Ireland** where there are **no explicit provisions** in national legislation on aggravating or mitigating circumstances, it is nevertheless very conceivable that the court may, at their discretion, take the existence of such circumstances into account in their sentencing of guilty offenders.

Consequences of diversity of aggravating or mitigating factors for cross-border cooperation by police and judicial authorities

Having set out the above brief comparative overview regarding the existence of aggravating/mitigating circumstances for illicit firearms trafficking in EU Member States, **what are the consequences of the diverging situation described above in terms of police and judicial cooperation in a cross-border context?** The first point to note is that **aggravating or mitigating circumstances are linked to the issues of penalties and sanctions**, discussed above. These in turn have an effect on police and judicial cooperation. In the case of mitigating circumstances, where the existence of these is likely to lower the possible penalty or sanction for a suspected offence, incentives may be reduced for sustained, coordinated investigation by investigating authorities in two or more EU jurisdictions.

Our online survey indicates that stakeholders consider issues of negligence (see Section 3.3 below) and aggravating or mitigating circumstances to be of relevance to the problem

¹²⁹ The Act on Penalties for Smuggling defines “aggravating circumstances” in Section 5, paragraph 2: see Sweden legal fiche.

¹³⁰ See Chapter V “On owning, trafficking and deposit of weapons, ammunition or explosives”.

¹³¹ Spain legal fiche.

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of illicit firearms trafficking. However, one survey respondent noted that, more than these legalistic concerns, tackling illicit firearms trafficking involves more practical, operational issues relating to the manner in which police investigations are organised and conducted.

CSES Online Survey – Negligence, aggravating or mitigating circumstances

Q: How effective are the notions of negligence, aggravating or mitigating circumstances in tackling the problem of illicit firearms trafficking?

A: Survey respondents: Large extent: 23.5%; Some extent: 29.4%; Neutral: 17.6%; Small extent: 17.6%; No extent: 11.8%.

Stakeholder (Italian firearms manufacturer) comment: "The problem is not the law, but the structure of operative organisations, investigation and action."

Conclusion – aggravating or mitigating circumstances

There are divergences in the treatment of aggravating or mitigating circumstances in Member States' national laws. The research suggests that **the external factual context in which the offence is committed is frequently a material factor** (for example, whether the suspect is part of a criminal organisation or the scale/gravity of the alleged trafficking offence). **In a smaller number of EU jurisdictions, by contrast, the internal working of the suspect's mind (his degree of intent in committing the offence) is relevant** to whether he has committed aggravated illicit firearms trafficking. Finally, it should be noted that national laws refer more frequently to the existing of aggravating than mitigating circumstances – though mitigating factors may indeed be available as part of a jurisdiction's general criminal legal framework.

Approximating national legislation on aggravating or mitigating circumstances may be politically challenging for the reasons outlined above in relation to penalties and sanctions. Namely, it may result in anomalies regarding national courts' approach to aggravating or mitigating circumstances for illicit firearms trafficking as compared with other related offences, such as drug or people trafficking. Member States may be reluctant to undertake these, and may furthermore be of the view that the availability and nature of aggravating or mitigating circumstances is best determined at a national not EU level.

3.3.4 Factor of negligence and degrees of intent

Article 5 of the UN Firearms Protocol only provides for an offence of illicit firearms trafficking committed intentionally. The drafting does not stipulate a precise form of intent (for example knowledge only, or whether suspicion or 'wilful blindness' would suffice). In light of "the varying degrees and definitions of *mens rea* in national

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jurisdictions,¹³² the Model Law also leaves it to individual states to specify the level of intent required for each article in accordance with their legal system and national practice.

Table 3.5: Negligence and degrees of intent - Current situation in Member States

Negligence and degrees of intent	Member States
No distinction between intentional or negligent illicit firearms trafficking	BG, CY, DK, IE,¹³³ LV
Higher penalty for intentional illicit firearms trafficking (aggravating factor)	PT
Lower penalty for negligent illicit firearms trafficking (mitigating factor)	CZ, DE, ES, FR, SE
Negligent illicit firearms trafficking not criminalised	EL, LT, SI, SK, UK¹³⁴

Source: CSES legal fiches (Note: When Member States are missing in the table, no information was available)

Note: 'Negligent illicit firearms trafficking' is understood to mean an illicit-firearms-related offence which an offender is judged to have been committed *negligently*, howsoever this is precisely defined under local law. Negligence commonly entails conduct of an unreasonably low standard but which lacks specific knowledge/intent on the part of the perpetrator.

EU Member States

The above table shows that in a number of EU jurisdictions the offence of illicit firearms trafficking offence is not worded in such a way that criminal intention is explicitly required. In other Member States (**Czech Republic, France, Germany, Portugal, Spain, Sweden**) the degree of intention – its presence or absence – may influence the penalty or sanction awarded by the court.¹³⁵ It is also notable that 'unlawful import' of firearms in **Sweden** includes a **gross negligence** offence, meaning that ordinary

¹³² Model Law, Section B commentary, p.45. On the meaning of 'intention', the Model Law commentary further cautions that this "refers only to the conduct or action that constitutes each criminal offence and should not be taken as a requirement to excuse cases in particular where persons may have been ignorant or unaware of the law that constituted the offence".

¹³³ There is no distinction because no specific legal definition of firearms trafficking exists in Ireland (see IE legal fiche.)

¹³⁴ However, it should be noted under section 1 (1) and section (5) of the Firearms Act 1968 possession of an illicit firearm is an absolute offence and therefore encompasses negligent possession.

¹³⁵ In Spain the possibility of a lower sanction in the absence of intent is applicable if illicit firearms trafficking is dealt with analogously to illicit firearms possession. The legal fiche notes that Article 565 of the Criminal Code (Chapter V "On owning, trafficking and deposit of weapons, ammunition or explosives") provides: "The Judges or Courts of Law may lower the penalties stated in the preceding Articles by one degree, as long as the circumstances of the fact and of the offender prove the lack of intention to use the weapons for unlawful purposes". However, this refers to articles 563 and 564 that related to crimes of possession of arms and not illicit firearms trafficking."

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negligence does not suffice for the court to establish the crime.¹³⁶ In a minority of jurisdictions (**Greece, Lithuania, Slovak Republic, Slovenia**) it is **not possible negligently to commit the crime of illicit firearms trafficking**: some degree of intent on the part of the suspect must be established, in other words.

As noted above, negligent illicit firearms trafficking falls outside the scope of the UN Firearms Protocol. However, article 34, paragraph 3 of the 'parent' Convention of the Protocol **expressly allows states to adopt "more strict or severe" measures than those provided for by the Convention**.¹³⁷ In other words, there is nothing in the current international (or indeed EU) instruments to stop Member States from criminalising illicit firearms trafficking committed negligently as well as intentionally. The reason policymakers have left the issue of negligence to individual states is because it is an area of criminal law where there are divergences in the legislation and legal culture between jurisdictions. 'Dolus eventualis', for example, is a civil law concept, while in common law systems negligence is only rarely sufficient for criminal liability to arise: most criminal offences require intention, knowledge or recklessness. Indeed, a maxim of the common law considered fundamental to upholding the rule of law is that "actus non facit reum nisi mens sit rea" ("the deed does not make a man guilty unless his mind be guilty").

It has already been established that negligent illicit firearms trafficking is an offence in some Member States and not others. Further differences exist as to the meaning of 'intention' in the different EU jurisdictions. An overview of the **varying degrees of intention required by Member States**, where this information has so far been established in our research, is provided below:

Table 3.6: Intent – Current situation in Member States

Intention	'Lesser' form of intent possible (e.g. suspicion, wilful blindness)
Yes	CZ, EL, ES, LT, PT, SI, SK
No (knowledge required)	BG, CY, DE, IE, UK

Source: CSES legal fiches (Note: When Member States are missing in the table, no information was available)

Not only is there a divergence between Member States where intention refers to knowledge of and desire to commit the crime and those where a 'lesser' intent is possible, but the form of this lesser intent also differs between EU jurisdictions.

For example, in **Spain** the judge has wide discretion to determine whether the suspect had a requisite state of mind amounting to intention at the time of committing the offence.¹³⁸ In **Lithuania**, by contrast, the Criminal Code distinguishes between specific and general intent. The latter category requires knowledge on the part of the suspect. However, general intent may nevertheless be considered a 'lesser' degree of intent to the

¹³⁶ See Sweden legal fiche.

¹³⁷ See Model Law, Section B commentary, p.45.

¹³⁸ See Spain legal fiche, question 2.2.7.

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extent that, so long as the suspect consciously allows the offence to take place, general intent can be made out **even if the court determines he did not actually desire it to happen**.¹³⁹ Similarly, in **Slovenia** the suspect does not need to wish to perform the offence if it can be established that he was aware that he could perform it and he consented to it (contingent intent).¹⁴⁰

In other Member States (**Czech Republic, Greece, Portugal and Slovak Republic**) the legal fiche responses suggest that lower forms of intent than pure knowledge, such as suspicion or wilful blindness, are sufficient for the offence of illicit firearms trafficking. Strict liability is applied to corporations and legal persons in the **Czech Republic**. **Turning to the possible consequences of this legislative variation in the factor of negligence and degrees of intent on cross-border police and judicial cooperation to combat illicit firearms trafficking**, as noted at section 3.3 above, 53% (nine of 17) stakeholders responding to the online survey question 'How effective are the notions of negligence, aggravating or mitigating circumstances in tackling the problem of illicit firearms trafficking?' agreed that these notions were indeed effective. **The practical consequences of the standard of *mens rea* for investigating/prosecuting authorities** charged with combatting cross-border illicit firearms trafficking was illustrated by a senior policy officer at the UK National Crime Agency. These are summarised in the text box below.

Case example – knowledge and intention in UK firearms trafficking legislation

- Section 5 of **the Firearms Act 1968** is a strict liability offence. This means that mere possession of a proscribed firearm is a crime, regardless of the individual's state of mind/intention.
- However, there is **no specific importation of illicit firearms offence** under the firearms legislation. The relevant importation offence is found at section 170 of the Customs and Excise Management Act 1970 ("CEMA"). To commit an offence under section 170 an individual must have knowledge and intention in relation to importing firearms.¹⁴¹
- A senior officer at the UK National Crime Agency told us that on several occasions (2006-2009), handguns have been imported concealed in private multi-occupancy passenger-vehicles or privately operated parcel post vehicles which carry legitimate post, parcels and passengers for monetary remuneration (typically minibuses providing a service to transport parcels/post and passengers from Lithuania to the UK). Even where large numbers of firearms have been found in these vehicles, **successful prosecutions have been problematic as it is difficult to prove knowledge of the items and the intent to evade the importation restriction**.
- Differences in what constitutes an illicit firearm between Member States can also contribute to the difficulty of establishing *mens rea* on the part of the suspect.

¹³⁹ Article 15 of the Criminal Code. See Lithuania legal fiche, question 2.2.7.

¹⁴⁰ Article 25 of the Criminal Code. See Slovenia legal fiche, question 2.2.12.

¹⁴¹ The NCA official explained that, to commit an offence under s.170 CEMA, the person must be knowingly concerned with the acquisition, carrying, removing, depositing, harbouring, keeping or concealing or in any manner dealing with items whose importation or exportation is prohibited or restricted by legislation. In addition to this, the importation must be with the intent to evade a prohibition or restriction on the items.

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For example, stun devices and self-defence sprays can be legally held and carried in a large number of countries, including some EU Member States and the USA, from where many travellers to the UK arrive. As both intent and knowledge are necessary in order to prove the offence, it is often not possible to do so – and therefore often no prosecution is made – as ‘importers’ claim they did not know that such items are covered by a prohibition or restriction in the UK.

Source: CSES research

Conclusion – factor of negligence and degrees of intent

Approximating legislation in the area of negligence and degrees of intent would reduce the uncertainty produced by existing divergences for national police and investigating authorities. It would further remove the potential obstacle of illicit firearms trafficking activity being considered an offence in one EU jurisdiction but not another as a result of differing approaches to the negligence and/or the *mens rea* requirement in the Member States, hampering efforts to tackle the problem at a cross-border level.

Approximating legislation in such a way that lowers the requirement of intent and includes the possibility of a negligent illicit firearms trafficking offence in all EU Member States would make it easier for police and judicial authorities to prosecute suspects, and give confidence that cross-border investigations will bear fruit. It would in addition reduce incentives for forum shopping for the most ‘lenient’ jurisdictions by criminals. However, regards negligence, in particular the common law jurisdictions may consider this a sensitive area given that as a general principle criminal offences require an element of intention or recklessness (with the latter defined as the conscious taking of an unjustified risk). Negligent conduct – understood as conduct of an unreasonably low standard but which is unconscious or lacking in foresight – generally falls outside of criminal liability.

Finally, it should be noted that policy and practical factors may be more relevant than legislative divergences/deficiencies in this area. The UK National Crime Agency official told us that although the police, armed forces and coastguard were all under a statutory duty to assist in the enforcement of the importation offence (s.170 of CEMA), in reality conflicting policy priorities – in particular in relation to counter terrorism – may lead to other offences being considered instead.

3.4 Conclusions - Comparative legal analysis

International and EU legal frameworks that have a bearing on illicit firearms trafficking leave signatories are broadly defined and leave signatories with considerable discretion on how key provisions are implemented. Example provisions on the criminalisation of illicit firearms trafficking are included in the Model Law. The latter was developed after many signatory states to the Convention and Protocol indicated their need for model legislation or guidelines in order to harmonise domestic legislation with the requirements of these U.N. instruments. However, the Model Law itself has no binding force on EU Member States. What is more, to leave a ‘margin of

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appreciation' for national legislators to implement the instruments in the most appropriate manner in line with their legal traditions, neither the Model Law clauses nor the international or EU instruments are prescriptive as regards the various legal elements of an illicit firearms trafficking offence, notably the areas of penalties and sanctions; the existence of aggravating or mitigating circumstances and the possibility of a negligent illicit firearms trafficking offence. Other important issues where there are differences relate to the ways in which firearms trafficking offences are prosecuted (as mere possession in some instances) and seizure in transit (and tracing issues).

As a result of the different legal cultures and the non-prescriptive approach at international/EU level, there is a diversity of legal frameworks in relation to illicit firearms trafficking at the national level. However, it should be emphasised that divergences in national legislation are not per se a rationale for EU intervention. The relevant issue is whether such divergences reflect legislative deficiencies at the national level which undermine both local and intra-Member State efforts to combat the trafficking of firearms.. It goes without saying that the legal basis of any EU measure is of preeminent relevance in any consideration of the rationale for EU action in this area, namely Article 83(1) TFEU, which provides for the establishment of minimum rules concerning the definition of criminal offences and sanctions in the area of illicit firearms trafficking with a cross-border dimension where this is necessary as a consequence of the nature or impact of this offence or from a special need to combat such trafficking on a common EU basis.

Minimum, EU-wide rules on illicit firearms trafficking (of the kind set out for Policy Option 3 in Section 4) would have the potential benefit of: reducing legal uncertainty produced by divergences between Member States' national laws on illicit arms trafficking offences for police and investigating authorities; facilitating prosecutions, where this is a result of deficient national legislation rather than a 'cultural' or practical reluctance to bring charges for illicit firearms trafficking offences; ensuring that criminals are unable to exploit loopholes, and reducing incentives for criminals forum shop between EU jurisdictions. The results of our Phase 2 research indicate that divergences do indeed affect cross-border police and judicial cooperation – and that, given the intrinsically cross-border nature of illicit firearms trafficking, there is an argument for combatting the problem on an EU-wide basis.

However, the research suggests that in addition to differences in the laws, practical issues such as lack of resources, impediments to joint investigations by police authorities in different Member States (for example lack of intelligence-sharing or use of special investigative techniques), conflicting policy priorities (for example with anti-terror legislation) and lack of enforcement of existing laws also hinder cross-border efforts to combat illicit firearms trafficking. Feedback from the research indicates that at the judicial stage in cross-border cases, for example in seeking permission for controlled deliveries or asking for a prosecutor to take up a case following an investigation, differences in legal frameworks can cause complications.

In considering any EU initiative it is to bear in mind that there are likely to be political sensitivities in approximating some elements of the illicit firearms trafficking offence where and to the extent that these involve fundamental principles of criminal law at the national level.

Policy Objectives & Options

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This section begins by defining the policy objectives and policy options with regard to any EU intervention to strengthen the framework for combatting illicit firearms trafficking. The various policy options are then evaluated to identify the preferred option. The final section sets out a framework for the monitoring and evaluation of measures relating to the preferred option.

4.1 Overview - Policy objectives and options

To recap briefly, the assessment set out in Sections 2 and 3 suggests that different legal frameworks exist across the EU to address illicit firearms trafficking and that these make it more difficult to tackle the problem. The research shows that cross-border police and judicial cooperation can be impeded by the lack of harmonisation with regard to the definition of offences for illicit firearms trafficking, aggravating or mitigating circumstance, sanctions and penalties, and the factor of negligence and degrees of intent. That said the research highlights other (non-legal) factors that are also significant.

The overall policy objectives of any new EU-level initiative to combat illicit firearms trafficking can be summarised as being to combat illicit firearms trafficking in the EU more effectively and by doing so to enhance the common area of freedom, security and justice. More specifically, the aims should be to better prevent, deter, detect, disrupt, investigate, prosecute and cooperate on illicit firearms cross-border trafficking. The policy objectives are summarised below:

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Operational objectives

- To minimize the differences in definitions of firearms offences and levels of sanctions across the EU.
- To further encourage the sharing of information and intelligence on illicit firearms trafficking and the links with other criminal activities.
- To put in place a system for regular monitoring the effectiveness of efforts to disrupt firearms crime including generation of comparable statistics.

Strategic objectives

- To deter the committing of criminal offences related to illicit firearms trafficking.
- To improve the cooperation between law enforcement authorities at the EU and Member State levels in preventing, detecting, disrupting, investigating and prosecuting illicit firearms trafficking.
- To provide a model which can be promoted in discussions with third countries on firearms risk reduction.

Overall objective

- To contribute to an enhanced level of security and to less firearms-related crime in the EU by reducing the number of firearms illicitly trafficked to, from and within the EU.

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Ultimately the policy objective should be to contribute to a reduction in the level of illicit firearms trafficking in the EU, thereby enhancing the security and welfare of citizens, and reducing the social and economic harm caused by the problem.

Definition of Policy Options

Based on the research, a number of policy options can be defined that, in varying degrees, would promote EU objectives and tackle the problem of illicit firearms trafficking. To summarise:

Summary of Policy Options

- **Policy Option 1: Status Quo** – continuation of the current situation with no new EU intervention.
- **Policy Option 2(a): Non-legislative action** - would aim to promote closer collaboration between Member States in combatting illicit firearms trafficking rather than introducing any new EU-level initiatives (except where this is necessary to promote closer collaboration). This option would include non-statutory intervention, either as a first step or to support action for implementing EU legislation in the future.
- **Policy Option 2(b): Minimum legislative intervention at the EU level** - this would involve a minimum level of legislative intervention at EU level to strengthen cross-border cooperation, e.g. by adding legal obligations to certain aspects of cooperation. Policy Option 2(b) would require Member States to undertake certain tasks set out in Policy Option 2(a), thereby strengthening cooperation between the law enforcement agencies and judiciaries of different Member States.
- **Policy Option 3: Comprehensive legislative solution at EU level** - EU action to introduce legally-binding common minimum standards across Member States with regard the definition of criminal offences and their sanctions related to illicit arms trafficking and linked offences.
- **Policy Option 4** - this would involve combining Policy Options 2 and 3.

The research indicates that there is a consensus amongst those we consulted that the status quo is not desirable and that if nothing is done, the problem of illicit firearms trafficking will worsen. Beyond this, however, there is considerable uncertainty amongst key stakeholders as to which Policy Option should be pursued.

To the extent that opinions were expressed, it would seem that Policy Option 2 is favoured most followed by Policy Option 3. Many argued that differences in legal frameworks are not the main obstacle to effective cross-border cooperation in the effort to tackle the problem of illicit firearms trafficking, and that priority should be given to addressing other issues such as improving the sharing of information on illicit firearms trafficking, strengthening the capacity of law enforcement agencies to tackle the problem, and speeding up judicial proceedings in relation to investigations.

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4.2 Policy Option 1 - Status Quo and Baseline Scenario

Policy Option 1 is a situation where no new EU action is taken to tackle illicit firearms trafficking.

If no action is taken at EU level, the scale of illicit firearms trafficking problem is likely to increase in the coming years. As discussed in Section 2 ('Problem definition'), it is very difficult to quantify the number of legally held firearms in the EU. However, the EU's internal market and dismantling of barriers to free movement and trade means that the trafficking of illicit firearms is made much easier.¹⁴² Even if the scale of the illicit trafficking in firearms remains the same, this would nevertheless translate into an increased stock of illicitly held firearms. Europol's 2013 SOCTA report argued that the EU still has the advantage of having a relatively immature firearms trafficking market, with the majority of cases being either "small scale" or "to order". The existing supply of illicit firearms from within the EU (theft of legal firearms, reactivation, etc) appears to be large enough for Organised Crime Groups to procure their weapons without the need to import firearms. This situation could continue if no action is taken at the EU level.

More generally, if no action is taken at the EU level, it is expected that the problem of illicit firearms trafficking will continue to develop as an important driver/facilitator of criminality in the EU. The research has shown that Member States could be categorised into three board types: (i) countries of origin, (ii) transit countries and (iii) countries where the firearms are used. One Member State can fit into more than one of these categories. No action at EU level would thus also increase the risk that countries which are currently only countries of origin or transit might gradually experience higher level of criminality stemming from the availability of firearms.

Overall, Policy Option 1 would have no positive impact on the policy objectives and could have negative effects by sending a signal to criminals that the EU does not consider illicit firearms trafficking as an important issue. Furthermore, if the problem is not seen to be tackled, the EU as a whole would lose some of the goodwill and 'soft leverage' it currently holds in trying to tackle illicit firearms trafficking at a global level.

The status quo scenario does not mean that nothing will change in terms of actions to combat illicit firearms trafficking because some initiatives are currently underway. Even if no new actions are taken at the EU level, the problem would still be affected by existing measures, or pieces of legislation that are either already in place or expected to be introduced in the near future by Member States. Amongst these, the following are of particular importance:

Firstly, **existing international conventions** (the UN firearms protocol and Draft Arms Trade Treaty (ATT)) are being implemented by all EU28 Member States. Even without

¹⁴² For example, France experienced a 40% rise in the seizure of illicit firearms between 2010 and 2011 with new trends emerging. The recent seizure of firearms in Reims (France) illustrates this situation: the suspected group of "collectors" imported deactivated firearms by mail from a number of Member States which were then reassembled. The Shooting in Istres was also done with a firearm that had been ordered online and received through the post. Such loopholes in the legislation and enforcement of the legislation will continue to exist in a status quo scenario and could lead to the illicit firearms trafficking problem becoming worse.

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EU action, a minimum level of harmonisation already exists with the illicit manufacturing of and trafficking in firearms being criminalised in line with the Protocol's requirements and definitions.

Secondly, some **legislative developments at the national level** could proceed anyway in the absence of an EU initiative in this area. For example, Belgium amended its law of firearms in 2006¹⁴³ which drastically reduced the legal ownership of some types of firearms. Traditionally, the introduction of new national firearms legislation follows high-profile incident where they are used (e.g. the Liege shooting in Belgium) and this pattern is likely to continue as long as incidents occur involving fatalities linked to the use of illicit firearms. However, such legislative developments will be piecemeal both in the timetable of their implementation and the substance of the national laws enacted, and therefore less effective than a comprehensive EU-level initiative.

Thirdly, **existing tools for police and judicial cooperation** will almost certainly evolve and improve. Cross-border efforts to tackle illicit firearms trafficking rely on close operational joint working at the police/judicial and customs levels, and over time this cooperation has improved as officials get used to working together more closely. Law enforcement and judicial officials consulted during this study have underlined the usefulness of existing tools such as Joint Investigation Teams, direct rogatory letters exchanged to gather information and other types of cooperation, and the use of these existing techniques is likely to increase.

4.3 Policy Option 2(a) Non-Legislative Action

Policy Option 2(a) would aim to promote closer operational collaboration between Member States' law enforcement agencies with responsibility for tackling illicit firearms trafficking. This option would focus on non-statutory intervention, possibly as first step or supporting action for more comprehensive EU legislation in the future (i.e. Policy Option 3) but this need not necessarily be the case. The key measures could include:

- Improving the exchange information on illicit firearms trafficking;
- Facilitating special investigative techniques and the capacity building needed for more effective action to combat cross-border aspects of the problem;
- Strengthening the regulatory framework for legal firearms to reduce the transfer of weapons into the illicit market;
- Other measures - improved monitoring and data collection tools, strengthening the role of the EU agencies.

Policy Option 2(a) would be designed to help make existing legislative frameworks, institutional set-ups and implementation structures work more efficiently and effectively. Unlike Policy Options 2(b) and Policy Option 3, no new legislation would be introduced at either the EU or Member State levels. Interventions would be aimed at promoting closer collaboration between Member States rather than introducing new EU-level initiatives (although these may be necessary to promote close collaboration, e.g. an EU-level information sharing platform). The focus would be on measures to improve enforcement of existing legal frameworks, to strengthen police

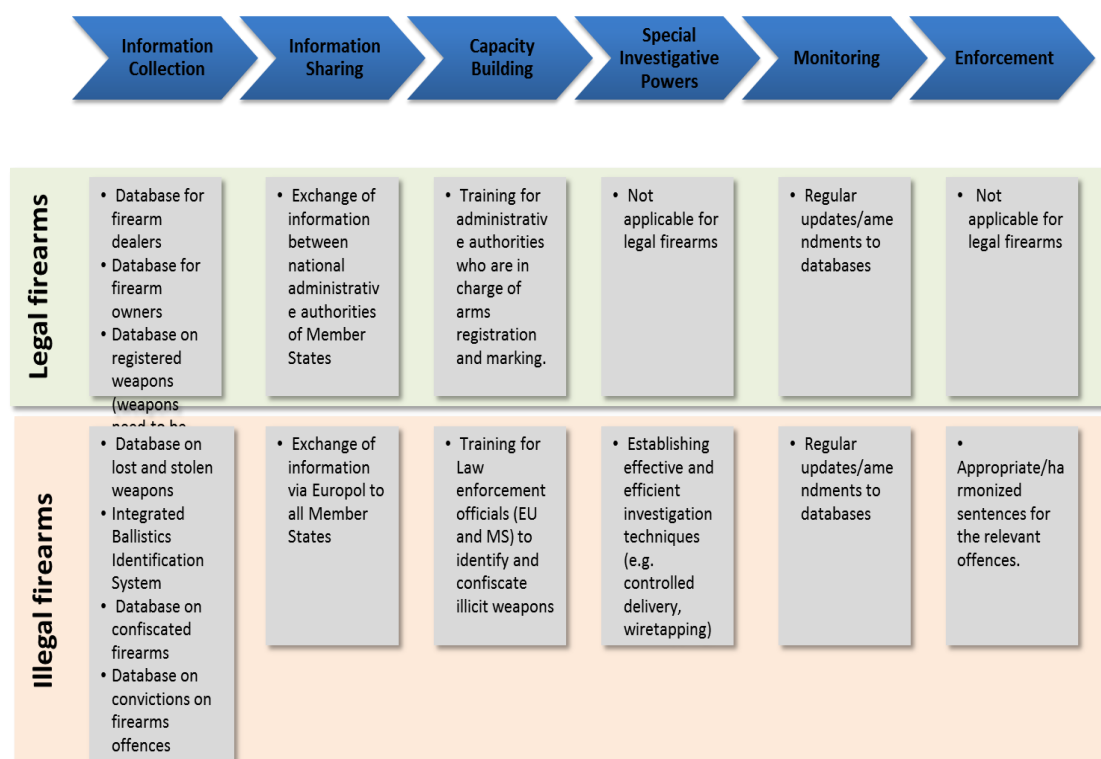
¹⁴³ Loi réglant des activités économiques et individuelles avec des armes of 8 June 2006.

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and judicial cooperation, and to improve monitoring systems. Policy Option 2(a) could include other non-legislative actions such as improve networking between Member States, capacity building, etc. This policy option could be considered to be partially addressed through the framework of the firearms policy cycle priority and the implementation of the COM Communication.

Figure 4.1: Overview of Policy Option 2 Measures



According to our interviews and the workshops, law enforcement agencies generally have good relationships with each other and already work closely together on cross-border cases. However, in some of the newer EU Member States – which are often the transit routes of if not the source of illicit firearms – there is a need to improve the capacity of law enforcement agencies to collaborate as some face a shortage of human resources and the skills needed to deal with cross-border cases. In this situation, perhaps inevitably, priority tends to be given to dealing with domestic law and order cases. According to the research, there is also a need to improve the sharing of information and intelligence on illicit firearms trafficking.¹⁴⁴

¹⁴⁴ These points were stressed particularly by the representatives of law enforcement authorities from Croatia, Slovenia and Bosnia who participated in the workshop organised by CSES covering Austria, Hungary and the Western Balkans.

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4.3.1 Improving the exchange of information on illicit firearms trafficking

A key non-legislative measure would involve improving the availability and sharing of information between Member States on both licit and illicit arms.

Currently, there are several databases at the EU and international levels. An initiative in this area would probably not involve setting up a new database but rather improving existing systems and their accessibility to the law enforcement authorities and others in Member States involved in combatting illicit firearms trafficking.

There are several existing databases on firearms. Firstly, the 2008 Directive requires that arms are marked and registered in the Member State where the owner resides. While this database can be used to monitor legal weapon possession, a second database exists for stolen and lost weapons which is a part of the **Schengen Information System (SIS II)**. Furthermore, the **Integrated Ballistics Identification System (IBIS)** can also be regarded as a kind of database. IBIS is a technological tool that can be used to help identify ballistics and the weapons used together with the ballistics. In this way a network can be created across borders linking weapons, ballistics and ultimately the weapon-holder. Interpol established a database called **Illicit Arms Records and tracing Management System (iARMS)** which is a state-of-the art technology facilitating information exchange and investigative cooperation between law enforcement agencies in regard to the international movement of illicit firearms, as well as licit firearms that have been involved in the commission of a crime.

The first of these databases deals with legal arms possession while SIS, IBIS and iARMS deal with illicit firearms use or possession. The existence of these databases is a helpful step forward but more could be done to maximise their usefulness. Firstly, the 2008 Directive does not specifically set out how the information contained in these and other databases should be shared by the Member States. Also, the databases could be developed. For instance, developing a register of legal arms dealers would help to keep track of legal flows of weapons between Member States. Likewise, with the iARMS database it would be useful to add additional information on individuals who have been convicted of firearms offences. In this way, re-offenders might be detected more easily. Member States could also establish common standards for collecting data on ballistic evidence (i.e. bullets and shell casings). Once such parameters are developed, they should be compatible with **INTERPOL's IBIN network**. Besides merely focusing on EU efforts, this information gathering exercise could be developed in conjunction with UNODC with the aim of developing a simple and worldwide method to collect ballistic data on firearms. This type of initiative is highly relevant since many illicit firearms originate from outside the EU.

Besides gathering more information, another way to make data exchange more effective is to change the way data is distributed. First, it is suggested to introduce end-user search tools, such as INTERPOL's **MIND and FIND**, at the national level so that end-users can search the various databases simultaneously with a single query whilst maintaining the integrity of the separate systems. This would facilitate searches on firearms by using one single transaction. Related to this, there should be one-to-one mapping of the terms used in the various databases to describe firearms. This

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would facilitate both carrying out comparison searches in different databases and uploading new records. A starting point would be to compare the iARMS and SIS II terminology. Additionally, as the firearms element of UMF has not been finalised it would also be helpful to carry out a comparison between iARMS, SIS II and the nascent UMF firearms terms in order to promote commonality. Thirdly, EU Member States should be encouraged to ensure that all relevant and appropriate data on lost and stolen firearms registered in national systems are, by default, automatically registered in SIS II, EIS and iARMS and to ensure that the creation, updating and deletion of these data in the national database are synchronised with SIS II EIS and iARMS.

These proposals do not have to lead to the introduction of centralized databases but rather involve optimizing the current framework in terms of availability of data and the information exchange between Member State authorities. This approach can be considered as a Prüm-style solution, where separate data systems still exist but are connected in a highly efficient way.

The exchange of information between Member States is constrained by **data protection considerations**. Article 16 TFEU, Article 8 of the European Convention of Human Rights (ECHR) and Article 8 of the European Charter of Fundamental Rights (CFREU) stress that everybody has a right to privacy and data protection of personal data concerning them. These provisions complicate the sharing of sensitive information such as information on firearm convictions. However, Article 8 (2) of the ECHR stipulates that *"There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*¹⁴⁵ This list of exemptions clearly shows that for the prevention of crime through illicit firearms trafficking, information sharing is appropriate. This is also reflected in Article 87(2a) of the TFEU which states that further legislation can be adopted to regulate information exchange between Member States' law enforcement authorities. Consequently, Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters¹⁴⁶ has been adopted.

Having established that for the prevention of disorder or crime, Member States should do more to share information, it is also important to elaborate on the **mechanism for information collection and information sharing**. Europol national units coordinate the collection of information from the various law enforcement agencies in Member States, and Europol itself administers the information exchange between the national units. Article 88 (2a) of the TFEU stipulates that the tasks of Europol might include *"the collection, storage processing, analysis and exchange of information forwarded particularly by the authorities of the Member States or third countries or bodies"*.¹⁴⁷ In this regard, Europol is already working with EU Member States on an **Information**

¹⁴⁵ Article 8 (2) ECHR

¹⁴⁶ Currently this Framework Decision is subject to revision and might be replaced by a Directive soon.

¹⁴⁷ This task is also mentioned in Article 5 (1a) COUNCIL DECISION of 6 April 2009 establishing the European Police Office (Europol), 2009/371/JHA.

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Exchange Platform (IXP) that could provide a basis for such an initiative. Nevertheless, this information exchange cannot include information on legal weapon possession. Therefore, Europol cannot serve as sole administrator of existing databases.

Europol is well-suited to manage the IXP database. First, Europol has national units in each Member State and there is a liaison officer for each Member State in The Hague. Consequently, information collection and processing should be easier since officials are already working alongside each other. Second, Europol has the Europol Information System at its disposal. By integrating the IXP database into this ICT framework, costs could be reduced at the development of improved databases speeded up. Moreover, the Europol Information System is already regulated and subject to data protection rules. Therefore, it is more likely that Member States would accept it as the “host” of the new bearing in mind their previous agreement to Europol’s data protection rules and procedures.

4.3.2 Strengthening the regulatory framework for legal firearms

Strengthening the regulatory framework for legal firearms would help ensure that weapons do not fall into the wrong hands. A number of initiatives could be taken in relation to: (i) firearms dealers, (ii) firearms owners and (iii) firearms marking.

At present, firearms dealers must register with the national (or regional) authorities in all Member States before engaging in commerce. However, the research has highlighted at least one case where a person who had been convicted of firearms trafficking had been able to open a firearms shop in another Member State. Under this option a **common registration procedure for firearms dealers** would be introduced. This could also include checking any new dealers against the database of convictions (see point above) as well as developing a pan-European register of firearms dealers. The ECRIS (European Criminal Information System) is very relevant in this respect, both with regard to identifying dealers but also individuals seeking to purchase a firearm who have criminal convictions in another Member State.¹⁴⁸

In a number of Member States, **firearms holders** must hold a licence. In some countries, such as the UK, licence holders’ obligations include the need for the firearms to which the certificate relates to be stored securely at all times so as to prevent access by unauthorized persons. This type of law might be difficult to implement at the EU level. However, ensuring that each Member State has a comprehensive and up to date list of licence holders would strengthen controls with regard to the legal ownership of firearms in the EU and help reduce the risk of weapons falling into the wrong hands. Going one step further, these databases of

¹⁴⁸ ECRIS was established in April 2012 to achieve an efficient exchange of information on criminal convictions between EU countries. It provides an electronic interconnection of criminal records databases to ensure that information on convictions is exchanged between EU countries in a uniform, speedy and easily computer-transferable way. Since ECRIS concerns only EU nationals, it is currently not possible to determine whether third country nationals were previously convicted in other EU countries without consulting all of them. The creation of a European index of convicted third-country nationals to supplement ECRIS is under consideration. Illicit trafficking and other offences related to weapons, firearms, their parts and components, ammunition and explosives is one of the categories of offences covered by the ECRIS system.

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licence holders would, under Policy Option 2(b) be harmonised in order to allow information to be shared on a cross-border basis.

Finally, **firearms marking** and deactivation is currently not harmonised in the EU. This problem is the subject of another study being conducted by the European Commission. It is important to note however that with different technical definition of deactivation and marking, it is possible to legally procure deactivated firearms that can be used to build a functioning weapon. At a minimum, a typology of the types of deactivation procedures should be developed alongside a table of comparison to ensure that national authorities have the capacity to understand each others' rules and procedures.

4.3.3 Special Investigative Techniques and Capacity Building

One of the operational problems faced by law enforcement authorities in seeking to tackle cross-border aspects of illicit firearms trafficking relates to the use of special investigative techniques.

More specifically, **wire-tapping** can only be used in some Member States (such as Belgium) where the penalties and sanctions that can be given for a firearms trafficking offence are under the threshold regulating the use of such techniques. In the absence of a harmonisation of sanctions and penalties, a list of the investigation tools available to help combat firearms trafficking offences should be developed. As part of Policy Option 2(b), Member States would be requested to ensure that a minimum range of special investigative techniques are available to law enforcement authorities in cases relating to firearms trafficking.

Another issue relating to investigation techniques concerns the **procedures governing controlled deliveries**. These types of operations require very close cooperation between the law enforcement authorities of a number of Member States as well as between the prosecutors in these Member States. Controlled deliveries are by definition complex and high risk, which means that trust in the information received and a capacity to act at short notice is paramount for the success of such operations. In this respect, there is a need to ensure that the rules governing controlled deliveries are harmonised so that prosecutors in one Member State do not impose conditions that jeopardise the conduct of an operation in another Member State, or cause delays that prevent a controlled delivery going ahead. In a similar vein, the development of networks and relationships between law enforcement agencies and prosecutors would help develop mutual trust and consequently play a positive role in the effectiveness of cross-border investigations and controlled deliveries.

Turning to the wider question of capacity building, there is considerable scope to further develop the **training of law enforcement officers to help identify and successfully stop illicit trafficking of firearms**. The FBI Academy has played a significant role in developing skills amongst law enforcement officers from many of the newer EU Member State. Under Policy Option 2(a), capacity building involving EU agencies such as EUROPOL and CEPOL would be stepped up, as well as bilateral initiatives between Member States. As noted earlier, some of the newer EU Member States face particularly severe capacity constraints in dealing with cross-border cases and additional resources (financial assistance, secondment of personnel, training) is

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required. Sharing best practices (e.g. with regard to marking systems to help combat illicit firearms trafficking) would be helpful.

4.3.4 Other Measures

There are several other measures could be introduced as part of Policy Option 2 (a). For example, **buy-back schemes** have been quite effective in collecting weapons (e.g. in Australia, some US cities, Croatia). There is a risk of financing organised crime through such schemes but overall the idea could be explored especially in Member States where the rate of gun ownership is high or where the introduction of new legislation renders previously legally held firearms illegal.

For each of the measure described in this section, **improved monitoring and data collection tools** should be set up. This horizontal action would at least have the benefit of allowing policy makers at the national and European levels to develop a clear understanding of the extent of the problem. This would include monitoring of the number of cases of illicit firearms cases prosecuted and tried, their value, the types of crimes they are linked to, trends in cross-border illicit trafficking, etc. The availability of this data would also allow data collection for future action. Linked to this, Policy Option 2(a) would involve encouraging the integration of existing databases on firearms ownership and developing a warning system to tackle existing issues linked to a change of ownership, etc.

Other EU-level initiatives might also be considered such as **strengthening the role of European agencies** that are engaged in the effort to combat illicit firearms trafficking (Europol, Eurojust and possibly Frontex and CEPOL), for example by increasing the number of personnel specialising in the illicit firearms problem, as well as developing better ways of monitoring the problem and sharing information (perhaps using the existing FIU platform). There may also be a case for even closer joint-working with international agencies and countries outside Europe that are either the source or destination of illicit firearms.

Policy Option 2(a) would have the advantages and disadvantages of a 'soft law' instrument. The positive aspects relate to the identification of Member State good practices and the promotion of a convergence of practices, enhancing overall the EU response and improving investigation and prosecution activities in cross-border cases. The less positive aspect could be slow and uneven progress in the detection, investigation and prosecution of illicit firearms cases from one Member States to the other because of the absence of a stronger framework of common measures. Even those stakeholders who are doubtful of the need for EU intervention see the benefits of measures to enhance cross-border cooperation between Member States and their law enforcement agencies that is proposed under Policy Option 2(a). As noted earlier, this policy option could be considered being partially addressed through the framework of the firearms policy cycle priority and the implementation of the Commission Communication. However, a soft measure such as Policy Option 2(a) would only affect the implementation side of the illicit firearms trafficking problem without tackling any of the more fundamental issues linked to diverging definitions and sanctions.

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4.4 Policy Option 2(b) - Minimum legislative intervention at the EU level

Policy Option 2(b) would involve a minimum level of legislative intervention at EU level to strengthen police and judicial cross-border cooperation. Policy Option 2(b) would be based on elements of Policy Option 2(a) but take them further by making them legally binding.

As already explained in Policy Option 2(a), Option 2(b) also includes the improvement of the availability of information on illicit firearms trafficking. In Option 2(a) it has been illustrated that there are several existing databases on illicit firearms trafficking. Nevertheless, the 2008 Directive does not explicitly regulate the practicalities of sharing of information between Member States. Therefore, information-sharing needs to be enhanced both on the Europol (IXP) and national levels. Policy Option 2(a) would be based on soft law instruments and guidelines, meaning that information sharing through Europol and national units would be voluntary. Under Policy Option 2(b) information sharing (through Europol or another mechanism) would be made obligatory. In this way Member States would be obliged to allow other Member State authorities access to their information on illicit firearms and trafficking. By linking the Directive to the general legal basis and the core functions of Europol¹⁴⁹ it would be feasible to agree on common terms on information sharing while respecting data protection and privacy concerns.

Policy Option 2(b) would also include a minimum harmonization among Member States of the legal basis for special investigative techniques used by law enforcement authorities in inquiries relating to firearms trafficking. An example mentioned in Policy Option 2(a) is wiretapping: while this can be used in Belgium for offences related to firearms trafficking, it is prohibited in many other Member States. These and other differences in rules relating to special techniques can hamper successful investigations as soon as an investigation covers more than one jurisdiction. Consequently, Policy Option 2(b) would involve the development of a list of eligible investigation tools available for firearms trafficking offences. This list could be included in the Directive to harmonize techniques in all Member States. This harmonization of special investigative techniques would be important to establish mutual trust between law enforcement agents and has relevance to the ultimate success of operations. Mutual trust and alignment of investigative procedures is also particularly relevant for the success of controlled deliveries, which has already been mentioned in Policy Option 2(a). Especially for controlled deliveries, harmonization via a Policy Option 2(b) instrument might be advantageous because Member States would be obliged to adopt the same procedures.

Various ways to strengthen the regulatory framework for legal firearms would also be included in Policy Option 2(b), thereby helping to prevent a transfer of weapons from the licit to the illicit market. In respect of **firearms dealers**, a Policy Option 2(b) legislative instrument under this option would require Member States to:

¹⁴⁹ Article 88 (2a)

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- Adopt a common registration procedure for firearms dealers;
- Check any new dealers against the proposed EU-wide database of convictions (discussed in Section 4.2.2);
- Ensure entries on the national register are included on a new EU-wide register of firearms dealers.

For **firearms owners**, the comprehensive and up-to-date national lists of licence holders of firearms referred to as a soft law measure for Policy Option 2(a) would be subject to legal approximation at the EU level. The form and content of such lists, as well as the obligations on national authorities with regard to maintaining and sharing the list with other Member States, would be prescribed in the legislative instrument developed under Policy Option 2(b). In addition to the further development and integration of EU-level databases discussed above (covering legal and illegal possession of firearms, firearms dealers, etc.), these some other relevant **data collection activities** could be put on a statutory footing. This might include, for example, data in relation to national prosecution and conviction rates.

The argument in favour of including data collection obligations in a Policy Option 2(b) legislative instrument is that it would add momentum to existing Member State-level and non-statutory EU-level initiatives, and ensure that new initiatives are more effective and timely than they would be if they had no legislative basis. Similarly, **strengthening the roles of EU agencies (notably Europol and Eurojust) by setting their new data collection responsibilities out in a Policy Option 2(b) legislative instrument** would reaffirm their centrality in the illicit firearms trafficking information-sharing network to national authorities.

A caveat in considering the options for minimum legislative intervention under Policy Option 2(b) is the importance, where necessary, of preserving a degree of flexibility and/or informality in information-sharing arrangements. A representative of police authorities in the Netherlands told us that in his experience the most successful cross-border information exchange networks are those which grow organically. The ones which are implemented and run along more formal lines are often not conducive to the same free-flow of information. Therefore Policy Option 2 (b) requires adequate monitoring mechanisms to ensure its effectiveness and efficiency. One option would be to fix regular assessment requirements of the formalized networks in the Directive.

The main benefit of Policy Option 2(b) is that it would be easier to develop a political consensus around relatively modest proposals than the more ambitious Policy Option 3 and this could be the starting point of a step-by-step approach to strengthening the legal framework for combatting illicit firearms trafficking in the EU. The drawback with Policy Option 2(b) could be that, despite the operational and practical advantages it offers, by itself it is not sufficiently ambitious or comprehensive given the seriousness of the problem of illicit firearms trafficking. Some stakeholders in favour of an EU legislative measure believe that this option would have a limited impact, while others in favour of Policy Option 2(a) do not see the need to set this measure in a legally-binding instrument.

4.4.1 Assessment of Policy Option 2 Impacts

In this section we analyse the anticipated impacts of Policy Option 2(a) and (b). This analysis measures the impacts against the policy objectives and other criteria, namely:

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social impacts; financial impacts; fundamental rights impacts; as well as other considerations such as the subsidiarity and proportionality principles.

Impact on achieving the policy objectives

Policy Option 2 (a) would contribute to most of the policy objectives, specifically by strengthening the operational basis for cross-border cooperation between the law enforcement agencies. This contribution would be especially evident with Policy Option 2 (b) insofar as there would be a legally binding requirement on EU Member States underpinning certain elements of Policy Option relating to information sharing and the marking of firearms. (However, the legal dimension would not of course be as pronounced and comprehensive as under Policy Option 3.)

The following table summarises our assessment of the **contribution of Policy Option 2 to the policy objectives** set out earlier.

Table 4.1: Summary - Contribution of Policy Option 2 to Policy Objectives (Note: -5 = very negative contribution/+5 = very positive contribution)

<u>Policy Objectives</u>	<u>Impact</u>
Overall objective	
To contribute to an enhanced level of security and to less firearms-related crime in the EU by reducing the number of firearms illicitly trafficked to, from and within the EU.	+3
Strategic objectives	
To deter the committing of criminal offences related to firearms.	+3
To improve the cooperation between law enforcement authorities in preventing detecting, disrupting, investigating and prosecuting illicit arm trafficking.	+4
To provide a model which can be promoted in discussions with third countries on firearms risk reduction.	+4
Operational objectives	
To minimize the differences in definitions of firearms offences and levels of sanctions across the EU.	0
To put in place a system for regular monitoring the effectiveness of efforts to disrupt firearms crime including generation of comparable statistics.	+3 (PO 2a) +5 (PO 2b)
To further encourage the sharing of information and intelligence on illicit firearms trafficking and the links with other criminal activities.	+3 (PO 2a) +5 (PO 2b)

Turning to the **impact on key target groups (drivers of the problem)**, unlike Policy Option 1 which would have no impact and Policy Option 3 which would have a direct effect on the target groups/drivers by harmonising key aspects of the legislative framework, the impact of Policy Option 2 on the drivers would be essentially indirect. In other words, Policy Option 2 would impact on the drivers insofar as it should increase the capacity of the law enforcement authorities to tackle the illicit firearms trafficking problem by improving cross-border cooperation between the agencies, and insofar as it achieves this, should then lead to more effective actions in relation to the perpetrators of illicit trafficking.

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The most immediate impact would be on those engaged in firearms trafficking (i.e. Problem driver 2) as the capacity cooperate more closely on operations to intercept shipments would directly affect those who organise the trafficking of weapons. Insofar as this should lead to a reduced supply of illicit firearms, there would then be an impact on end users. Suppliers are a more heterogeneous category than traffickers. There are numerous sources of illegal firearms, such as former conflict zones, the reactivation of neutralised weapons; burglaries and thefts; embezzlement of legal arms; legal arms sold in the illegal market; firearms retired from service by the army or police; and the conversion of gas pistols. To the extent that some of these sources (e.g. former conflict zones, reactivated weapons) are more important as others (e.g. domestic burglaries and theft) in terms of the cross-border dimension of illicit firearms trafficking, Policy Option 2 would have varying impacts.

The following table provides a summary of impacts in relation to the various target groups/drivers.

Table 4.2: Likely impacts of Policy Option 2 on Problem Drivers

Drivers	Impact
End users	+4
Traffickers and other intermediaries	+5
Suppliers	+3

Financial, economic and social impacts

There would be financial costs associated with Policy Option 2 but also economic and social effects. Possible financial, economic and social impacts of Policy Option 2 include:

- **Financial costs** would be incurred by law enforcement authorities, especially in EU Member States where actions need to be taken to improve information on illicit firearms, to improve training and capacity building, and to strengthen marking systems and measures to make it easier to control licit market. These costs are very difficult to quantify but are unlikely to be excessive, especially if spread over several years. For other countries, the costs of Policy Option 2 should be minimal.
- Turning to the **direct economic and social effects**, the financial costs associated with Policy Option 2 should be more than offset by indirect savings from lower crime rates from tackling firearms trafficking more effectively and thus reducing the supply of illicit firearms to potential offenders.
- There should also be **wider societal impacts** such as a reduction in the number of victims of homicide and other violent crimes featuring illicitly trafficked firearms. Vulnerable groups would benefit from a possible diminution in other criminal activities supported by illicit firearms trafficking, such as human trafficking and drugs smuggling.

The following table provides a summary of the financial, economic and social impacts of Policy Option 2.

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Table 4.3: Likely financial, economic and social impacts of Policy Option 2

Drivers	Impact
Financial costs	- 2 for MS where actions needed - 0 for other Member States
Economic impacts	+3
Social/societal impacts	+2

Impacts on fundamental rights

Policy Option 2 would have limited impacts on fundamental rights. The most obvious effect would be in relation to taking steps to improve the availability and sharing of information on illicit firearms trafficking, and potentially from an extension of special investigative techniques (e.g. wire-tapping) under Policy Option 2b.

More specifically, there are **implications for Article 48** (Presumption of innocence and right of defence). But offset against this are the positive societal effects highlighted above and **Article 6 (right to liberty and security)**. This right stands to be enhanced by Policy Option 2. Policy Option 2a measures with regard to information sharing could also have implications for **Article 8 (data protection)** although there is a provision for actions to be taken in the public interest and Policy Option 2 measures would fall within the scope of this provision. In the table below the anticipated fundamental rights impacts of Policy Option 2 are summarised:

Table 4.4: Likely impacts of Policy Option 2 on fundamental rights

Fundamental rights	Impact
Article 2 (right to life)	+2
Article 6 (right to liberty and security)	+2
Article 8 (data protection)	0
Article 48 (presumption of innocence and right of defence)	0

Subsidiarity, proportionality, EU added value and political feasibility

The legal basis for any EU measure in this area (Article 83(1) TFEU), as well as the principles of **subsidiarity and proportionality** (Article 5(3) and 5(4) TEU), are described in Section 3 where it is explained that two tests apply in respect of the subsidiarity principle: the **necessity test** and the **EU value added test**.

As regards necessity, there would be operational advantages resulting from Policy Option 2 with regard to cross-border investigations. Joint investigations are at present hampered and/or delayed and sometimes abandoned because of shortcomings with regard to the factors addressed by this policy option (e.g. difficulties in adopting special investigative techniques because of differing laws or judicial procedures in different EU Member States). In relation to subsidiarity, there are no particular issues while EU added value should be considerable as Member States are unlikely to bring about the Policy Option 2 improvements in cross-border cooperation between law enforcement on the geographical scale, or within the timeframe envisaged, without EU intervention. The question of **political feasibility** is also relevant and Policy Option 2 (a) would probably be easier than Option 2 (b) to reach agreement on and to implement.

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In the table below the anticipated 'other factors' impacts are graded on a scale from minus 5 (very weak impact) to plus five (very strong impact). Zero represents a neutral impact.

Table 4.5: Subsidiarity, proportionality, EU added value and political feasibility

Other considerations	Impact
Subsidiarity principle – i.e. the extent to which the EU should act in certain areas only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States.	0
Proportionality principle - extent to which EU actions do not go beyond what is necessary in order to achieve the objectives of the Treaty.	0
EU added value - extent to which EU action needed achieves desired outcomes	+3
Other factors - political feasibility, enforceability of the option, synergies/complementarity with other EU policies	+3 (2a) +2 (2b)

4.5 Policy Option 3 - Comprehensive legislative solution at the EU level

Policy Option 3 would involve EU action to introduce legally binding common minimum standards across Member States with regard to the definition of criminal offences and their sanctions related to illicit firearms trafficking and linked offences. Policy Option 3 is more interventionist than Policy Option 2(b), which is limited to giving the non-legislative options described at Policy Option 2(a) statutory, EU-wide force by means of a directive.

4.5.1 Introduction

We begin by restating the relevant **UNODC Model Law** articles criminalising illicit firearms trafficking in line with the Protocol and Convention, before proposing how these articles could be tailored and expanded as provisions in an EU directive. A table of the key elements of a measure on the criminalisation of illicit firearms trafficking is included in which we summarise how these elements might be incorporated in a comprehensive legislative solution. The anticipated impacts of Policy Option 3 are then described in Section 4.5.4. In the same section we present the preferred 'sub-options' relating to the contents of the proposed legislative solution on the basis of the anticipated impacts as well as the identified policy objectives and other criteria.

4.5.2 Suggested illicit firearms trafficking offences: the UNODC Model Law

The comparative legal analysis at Section 3 identified **legislative divergences between Member States in relation to the definitions of 'firearms', 'illicit firearms trafficking' (and the scope of the trafficking conducts), 'illicit firearms manufacturing' as well as the existence of a marking requirement.** These definitions and the marking obligation are already provided at international (UN Protocol) and EU level (Directive 91/477/EEC, as amended).

It should be clarified at the outset that the comprehensive legislative solution at Policy Option 3 replicates these already-existing definitions. To the extent that **national definitional divergences** persist, however, these must be addressed via non-

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legislative options of the kind described at Policy Option 2, such as sharing of best practice and discussions with national legislators and policymakers. In the last resort, action can be taken by the Commission against non-compliant Member States by bringing proceedings before the CJEU.

Policy Option 3 is focussed on the possibility of introducing new EU criminalisation measures for illicit firearms trafficking and manufacturing offences. Unlike the definitions referred to above, these offences are not presently set out in EU law. At the international level, Article 5 of the Protocol essentially leaves it to individual countries to determine the form and scope of their illicit firearms trafficking and manufacturing offences ("Each State Party shall adopt such legislative and other measures as shall be necessary to establish as offences...").

Criminalising reprehensible illicit firearms trafficking and manufacturing conducts in a uniform, EU-wide manner has theoretical advantages. While these will be analysed in more detail in the discussion on impacts at Section 4.5.4, in general terms an EU measure in this area would allow for approximation in the important areas of sanctions, requisite criminal intent, the existence of attempted trafficking and complicit offences, and liability of legal as well as natural persons.

Such action would, in turn, further the identified specific objectives, notably by deterring the committing of criminal offences related to firearms by for example establishing minimum levels of custodial sentences in all Member States and widening the scope of offenders' potential liability (for example in relation to attempted trafficking offences or aiding and abetting firearms trafficking and manufacturing). Police and judicial cooperation would be boosted by (i) increased legal certainty and clarity as to national laws, and (ii) the establishment of approximated sanctions thresholds at a level that would enable the use of special investigative techniques. In addition, an EU measure would further the operational objective of minimising differences in the definition of the crime of illicit firearms trafficking and manufacturing across the Union.

The benefit of using the suggested Model Law articles as a basis for EU provisions criminalising illicit firearms trafficking and manufacturing is chiefly that the Model Law is drafted with a view to assisting signatory countries implementing the Protocol. The latter is the key instrument at international law intended to establishing as a criminal offence the illicit manufacturing of and trafficking in firearms. Furthermore, the existing EU legislative framework on firearms largely derives from the Protocol, which was negotiated and signed by the Commission in 2002 on behalf of the EU. In this way, basing any new EU legislative measures on the model provisions for implementing the Protocol ensures continuity and the natural evolution of, rather than a radical departure from, the existing UN and EU legal framework regarding firearms. As at April 2014, 18 Member States have signed the Protocol and a further 20 Member States have approved/ratified it. The Commission signed and (on 21 March 2014) ratified the Protocol on behalf of the EU.¹⁵⁰ This has the effect for those Member States that have not yet ratified the Protocol of becoming legally binding for them.¹⁵¹

¹⁵⁰ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsq_no=XVIII-12-c&chapter=18&lang=en.

¹⁵¹ [http://europa.eu/rapid/press-release MEMO-13-271 en.htm](http://europa.eu/rapid/press-release_MEMO-13-271_en.htm).

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A further practical benefit of adapting the Model Law precedent is that the applicable wording (set out in full below) replicates the illicit firearms trafficking conducts of import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition set out in the Protocol. As noted in Section 3.2 this is wider than the conducts included in Directive 91/477/EEC, as amended, which make to reference to import or export of firearms.

As regards the definition of 'firearm', it is proposed that as part of Policy Options 3 any EU measure should replicate the Protocol definition rather than the substantially similar but marginally narrower definition in Directive 91/477/EEC, as amended. The latter contains certain carve-outs, notably in relation to antique weapons that are essentially covered by national laws. By contrast in the Protocol there is a blanket prohibition of any firearms manufactured after 1899 from being classified as 'antique'.¹⁵²

4.5.3 UNODC Model Law

The Model Law was developed after many signatory states to the Convention and Protocol indicated their need for model legislation or guidelines in order to harmonise domestic legislation with the requirements of these U.N. instruments. Suggested provisions for the criminalisation of illicit firearms trafficking are set out at articles 35 and 36:

Model Law – Illicit firearms trafficking offences

Article 34. Transnational transfers without legal authorization

1. Every person who [*specify level of intent, as appropriate*] imports, exports or otherwise acquires, sells, delivers, moves or transfers any firearm or its parts and components or ammunition from or across the territory of [*name of State*] to another State without legal authorization [a licence] issued in accordance with [*name of this Law*] commits an offence.

2. A person guilty of an offence under paragraph 1 of this article shall upon conviction be subject to [imprisonment for ...] and/or [a fine of/up to ...] [a fine of the ... category].

Article 35. Transnational transfers of unmarked/improperly marked firearms

1. Every person who [*specify level of intent, as appropriate*] imports, exports or otherwise acquires, sells, delivers, moves or transfers any firearm from or across the territory of [*name of State*] to another State that have not been marked at the time of manufacture, at the time of import or at the time of transfer from government stocks to civilian use in accordance with chapter IV of this Law commits an offence.

2. A person guilty of an offence under paragraph 1 of this article shall upon conviction be subject to [imprisonment for ...] and/or [a fine of/up to ...] [a fine of the ... category].

¹⁵² Part III of Annex 1 provides: "For the purposes of this Annex objects which correspond to the definition of a 'firearm' shall not be included in that definition if they: (a) have been rendered permanently unfit for use by the application of technical procedures which are guaranteed by an official body or recognized by such a body; (b) are designed for alarm, signaling, life-saving, animal slaughter or harpoon fishing or for industrial or technical purposes provided that they can be used for the stated purpose only; (c) are regarded as antique weapons or reproductions of such where these have not been included in the previous categories and are subject to national laws. Pending coordination throughout the Community, Member States may apply their national laws to the firearms listed in this Section."

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As noted in Section 3, the Model Law is an advisory document and has no binding force on EU Member States. The scope of the illicit firearms trafficking ("IFT") offence takes in the various conducts (acquisition, sale, delivery, *et cetera*) identified in Directive 91/477/EEC, as amended, plus the conducts of import and export. This is sufficiently wide to capture all IFT-related activity, including developing threats identified by stakeholders during the Phase II research, such as the rise of 'e-trafficking' and the sale and purchase of illicit firearms over the internet.

However, perhaps unsurprisingly given its limited remit, the drafters have avoided a prescriptive approach and left it to national legislators to determine important aspects of an illicit firearms trafficking offence, such as the level of penalties and sanctions; the existence of aggravating or mitigating circumstances; and the relevant level of intent for committing a firearms trafficking offence.

4.5.4 Proposed IFT articles for a possible EU instrument: Policy Option 3

A table is set out below examining for each principal element of the IFT offences possible modifications, clarifications or additions to the Model Law articles that could be included in an EU legislative instrument. In each case the rationale is summarised for the relevant amendment to the Model Law provision or the suggested additional provision.

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Table 4.6: Summary of amendments to Model Law articles on IFT for inclusion in a possible EU measure

Element of IFT criminalisation	Description of suggested new provision / amendment to existing Model Law provision	Rationale for new provision or amendment to existing Model Law provision
Liability of natural and legal persons	<p>Include in definitions of EU instrument:</p> <p>“Person’ shall mean a natural or a legal person.”</p> <p>This amendment reflects the position in the Model Law, which provides at article 4(o) that <i>“Person’ shall mean a natural or a legal person”</i>.</p>	<ul style="list-style-type: none"> The research shows that a number of EU Member States presently do not extend liability for illicit firearms trafficking to legal as well as natural persons. This legislative divergence could encourage forum shopping on the part of traffickers and, for police and judicial authorities, give rise to practical obstacles to cross-border investigations and prosecutions. The Protocol is clear that sanctions should extend to legal persons (see row on penalties and sanctions below). As the Model Law states in its preamble to chapter 2, <i>“In general it is advisable for States to adopt definitions that are consistent with the Convention and the Protocol in order to facilitate cooperation with other countries in the investigation, prosecution or other procedures relating to activities under the scope of the Convention and its Protocol and to ensure compliance with the various international cooperation requirements.”</i>
Required level of intention (including negligence)	<p>Amendments (in bold) to Articles 34(1) and 35(1):</p> <p>‘Every person who intentionally imports, exports (. . .) commits an offence. Each Member State shall adopt such legislative and other measures as may be necessary to establish as an offence the acts referred to above, in either or both of the following cases where the offender (i) suspected or (ii) ought to have assumed that his actions resulted in the commission of an offence under this section.’</p>	<ul style="list-style-type: none"> Negligent commission of illicit firearms trafficking is not criminalised in a significant minority of Member States. There are also disparities in what constitutes ‘lower’ level intent in jurisdictions where something less than pure knowledge can be a requisite <i>mens rea</i> for IFT. The wording (or equivalent) in the previous column would create legislative certainty by establishing, as a minimum, the lower knowledge threshold of ‘suspicion’ in all EU jurisdictions. Member States are also given the option of establishing a uniform, ‘ought-to-have-assumed’ standard. By making this non-mandatory, questions of subsidiarity and political feasibility are addressed given the general reluctance to introducing a standard of negligence in the criminal law, notably in Member States with a common law legal tradition.
Penalties and sanctions	<p>Amendments (in bold) to Articles 34(2) and 35(2):</p> <p>‘A person guilty of an offence under paragraph 1 of this article shall upon conviction be subject to imprisonment for a maximum of at least four years and/or a fine of a maximum of at least</p>	<ul style="list-style-type: none"> The maximum custodial sanction varies from two years in EL to 12 years in Portugal. The maximum financial penalty varies from €1,500 in Bulgaria to €1.8M in the Czech Republic. This legislative divergence could encourage forum shopping on the part of traffickers. Establishing a ‘minimum maximum’

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Element of IFT criminalisation	Description of suggested new provision / amendment to existing Model Law provision	Rationale for new provision or amendment to existing Model Law provision
	€10000. Legal persons shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions (civil or administrative), including monetary sanctions. Such sanctions could include dissolution, disqualification from participation in public procurement, publicising the decision, or freezing of assets.'	<p>custodial sanction of 4 years would be in line with the position in the Convention and Protocol as regards the minimum sanction for 'serious' IFT offences. There are in addition practical advantages to establishing an EU-wide 4-year 'minimum maximum' (i.e. the upper limit of imprisonment must be at least 4 years) in that the 4-year threshold is key in the EU legal framework to facilitate police and judicial cooperation.</p> <ul style="list-style-type: none"> • Member States would be free to establish a ceiling for the offence higher than the 4-year minimum in line with their legal cultures and any political considerations. • The 'minimum maximum' financial penalty could be set at €10,000 or a similar amount likely to be considered more than merely trivial for an individual or a criminal organisation. In setting an alternative threshold the Commission may wish to take further advice from experts in the field (practitioners or academics).
Attempted IFT and complicit activities	New provision covering: (a) attempting to commit or participating as an accomplice in one of the acts listed above; and (b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of an act listed above.	<ul style="list-style-type: none"> • A significant minority of Member States do not expressly cover attempted trafficking or aiding and abetting in their IFT legislation. • These ancillary offences are criminalised in Article 5(2) of the Protocol. Their inclusion in an EU measure would thus ensure compliance with the Protocol. Perhaps more significantly, on a practical level it would also facilitate cross-border investigations and prosecutions by widening the available range of IFT offences.
Aggravating / mitigating circumstances	New provision covering aggravating and mitigating circumstances for IFT and related offences. These could include factors relating to the factual circumstances of the offender or the offence, e.g. (aggravating factors): Participation in organised criminal gang; Recidivism; State of emergency / war / crisis situation; and Large scale / grave consequences.	<ul style="list-style-type: none"> • Aggravating or mitigating circumstances, like sanctions, have an effect on police and judicial cooperation. For example, where the existence of mitigating circumstances is likely to lower the possible penalty or sanction for a suspected offence, incentives may be reduced for sustained, coordinated investigation by investigating authorities in two or more EU jurisdictions. • It is noted that the Model Law leaves aggravating and mitigating circumstances to the applicable existing national legislation / criminal code.
Illicit firearms	New provision proscribing illicit firearms	<ul style="list-style-type: none"> • Article 5 of the UN Protocol requires State Parties to adopt

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Element of IFT criminalisation	Description of suggested new provision / amendment to existing Model Law provision	Rationale for new provision or amendment to existing Model Law provision
manufacturing	<p>manufacturing. This would take a similar form to Model Law articles 34 and 35 as amended in this table. In other words, the illicit manufacturing offence would include the following elements:</p> <ul style="list-style-type: none"> • Legal/natural persons – liability would extend to both corporate entities and individuals • Intent/negligence – include direct knowledge, suspicion and ought-to-have-assumed standard • Sanctions/penalties – ‘minimum maximum’ custodial sentence of 4 years and/or financial penalty of €10K • Attempted offence/complicit activities – ensure ancillary offences for illicit manufacturing also criminalised • Aggravating/mitigating circumstances – to include factors relating to the offender or offence, such as organised crime dimension and scale of the crime. 	<p>necessary legislative measures criminalising the conduct of illicit manufacturing of firearms, their parts and components and ammunition. Including a provision on illicit manufacturing in an EU measure would this guarantee Member States are conform to the standard at international law.</p> <ul style="list-style-type: none"> • From the Phase II research there is some evidence that illicit firearms manufacturing is not consistently defined and in some cases not specifically criminalised in EU Member States. An EU-wide offence of illicit firearms manufacturing based on the definition of that activity set out in the Protocol and Directive 91/477/EEC, as amended, would create legal certainty for investigating authorities and ensure that criminals are unable to exploit and gaps or loopholes in national legal frameworks.
Notes: Definitions of ‘firearm’, ‘legal authorization’ and ‘chapter IV of this law’ in the Model Law	<p>In any EU legislative instrument on the criminalisation of illicit firearms trafficking and related offences, references in the Model Law sample articles 34 and 35 should be amended or clarified such that:</p> <ul style="list-style-type: none"> • ‘<i>Firearm</i>’ (Model Law, articles 34(1) and 35(1)) to follow the definition in the Protocol. • ‘<i>Legal authorization [a licence] issued in accordance with [name of this Law] commits an offence Legal authorization</i>’ (Model Law, Article 34(1): The relevant ‘Law’ is the Member State’s national law implementing Directive 91/477/EEC, as amended. • ‘<i>...in accordance with chapter IV of this Law</i>’ (Model Law, Article 34(2)) amended in accordance with Member States’ national laws implementing Directive 91/477/EEC, as amended. 	<ul style="list-style-type: none"> • These modifications and clarifications would render the Model Law provisions applicable (in the context of existing EU and national law) if replicated in an EU legislative instrument.

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4.5.6 Conclusion – comprehensive legislative solution

A comprehensive legislative solution introducing legally-binding common minimum standards across Member States with regard to IFT and related offences and sanctions could be based on the existing Model Law provisions put forward by the UNODC for State Parties for the effective implementation of the Protocol and parent Convention. The amended and expanded Model Law provisions would:

- Ensure that EU Member States' national laws for illicit firearms trafficking were in line with UN and international law standards;
- Bring legal certainty for police and judicial authorities, with the potential to increase operational effectiveness in cross-border firearms trafficking cases;
- Act as a deterrent to criminals who would otherwise seek to exploit divergences – and this varying levels of stringency – in Member States national laws; and
- Widen the current definitions of 'firearms' and 'illicit firearms trafficking' in EU law as set out in Directive 91/477/EEC, as amended.

A comprehensive legislative solution is focused on ensuring minimum EU-wide rules in line with Article 83(1) TFEU. Where the proposed provisions go beyond the UN standard (for example, in establishing minimum custodial sentences, or prescribing aggravating circumstances for IFT offences) some or all of these may not be politically feasible, or may have only limited impact measured against the policy objectives and other criteria. This is assessed further in Section 4.5.4 below. Similarly to Policy Option 2 (b), the most suitable way to monitor the effectiveness of the measure is to include a regular assessment requirement in the EU legislative instrument.

4.5.7 Assessment of Policy Option 3 Impacts

In this section we analyse the anticipated impacts of the comprehensive legislative solution under Policy Option 3. As with Policy Option 2, this analysis measures the impacts against the policy objectives and other criteria, namely: social impacts; financial impacts; fundamental rights impacts; as well as other considerations such as the subsidiarity and proportionality principles.

Before turning to the impact assessment of Policy Option 3, the key aspects of a comprehensive legislative solution set out in the previous section 4.5.3 are summarised in the box below:

Policy Option 3: summary of contents of a legislative solution at EU level

- **Key legislative provisions adapted from articles 34/35 of UNODC Model Law covering:**
 - Offence of illicit intra-EU firearms transfers without legal authorization
 - Offence of illicit intra-EU transfers of unmarked/improperly marked firearms
 - Offence of illicit firearms manufacturing
- **Key elements of abovementioned legislative provisions:**

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- Liability of natural and legal persons
- Factor of intent: mandatory suspicion or 'ought-to-have-known' negligence standard
- 'Minimum maximum' 4-year custodial sanction plus 'minimum maximum' (e.g. €10,000) financial penalty for trafficking/manufacturing offences
- Attempted trafficking and complicit activities (aiding/abetting etc.) offences
- Aggravating and mitigating circumstances defined (e.g. participation in organised criminal gang, recidivism, large scale of offence)
- **Definitions of 'firearms' and 'illicit firearms trafficking'**
 - The definitions of '**firearm**' in the proposed legislative provisions will replicate that of the Protocol instead of the marginally narrower definition in the Directive. This will have the benefit in particular of removing a possible 'loophole' in national legislation whereby some post-1899 weapons are classified as 'antiques' in some EU Member States and thereby do fall outside the definition of 'firearm'.
 - The Model Law provisions replicate in full the conducts identified in the definition of '**illicit firearms trafficking**' found in the Protocol, some of which are missing from the current EU law definition. In this way an EU measure would bring the scope of conducts into line with the international standard.

Impact on achieving the policy objectives

As the most interventionist option, the comprehensive legislative solution is well placed to meet a number of the identified general, specific and operational objectives:

- An approximating EU directive is in line with the **operational objective** of minimising the differences in definitions of firearms offences and levels of sanctions across the EU.
- It would also correspond with the **specific objective** of providing a model – in the form of EU legislative provisions on illicit firearms trafficking – which could be promoted in discussions with third countries on firearms risk reduction.
- The **specific and operational policy objectives** would be furthered in other respects. Extending liability to legal as well as natural persons would reflect the definition of 'person' in the Protocol. This would in turn bolster the ability to promote the EU law on illicit firearms trafficking and manufacturing with other states, as well as, by widening the scope of potential liability, deterring offenders and facilitating cross-border cooperation between investigating authorities.
- Further measures such as:
 - Lowering the 'intent' requirement to mandatory suspicion or an 'ought-to-have-known' negligence standard;
 - Introducing minimum EU-wide sanctions; and
 - Introducing attempted trafficking and complicit activities offences, are, by harmonising constituent elements of firearms trafficking and

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manufacturing offences at EU-level and widening potential liability for such offences, equally expected to have the effect of deterring the committing of criminal offences related to firearms (**specific objective**), improving the cooperation between law enforcement authorities (**specific objective**) and minimising the differences in definitions of firearms offences and levels of sanctions across the EU (**operational objective**).

- The combination of the above impacts of Policy Option 3 would further the **general policy objective** of contributing to an enhanced level of security and to less firearms-related crimes in the EU by reducing the number of firearms illicitly trafficked to, from and within the EU.

The likely impact is now discussed in further detail by the problem drivers.

Impacts on problem drivers

On the demand-side, criminals, members of Organised Crime Groups (OCGs), or terrorists and extremists would be adversely affected by the introduction of EU-level provisions criminalising illicit firearms trafficking. The criminalisation of traffickers and suppliers (see further below), as well as illicit manufacturers, is likely to reduce the flow of firearms. Furthermore, the suggested wording of the EU trafficking provisions refers to every person who “imports, exports or otherwise acquires” illicit firearms or their parts or components. This means end-users themselves would be liable for prosecution and conviction for EU-wide trafficking offences carrying a minimum custodial sanction for serious offences (i.e. a ‘minimum maximum pursuant to which all Member States are required to set a maximum custodial term of at least 4 years, with the option to set a higher maximum limit if they wish).

The prospect of a maximum prison term of at least four years could contribute to deterring the commission of criminal offences related to firearms in EU jurisdictions where the maximum sanction is currently lower than this four-year threshold. On a practical level, the existence of approximated illicit firearms trafficking offences would facilitate cross-border investigations where a four-year custodial sanction threshold is required for the use of special investigative techniques (such as wire-tapping) in one or more Member States. The uniform, EU-wide extension of liability to legal as well as natural persons would also negatively affect sophisticated criminal or terrorist organisations that are end-users.

The table below summarises the likely impacts on problem driver 1, broken down by the elements of the contemplated trafficking offences.

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Table 4.7: Likely impacts of elements of legislative provisions for illicit firearms trafficking and manufacturing on demand side of problem

Element of illicit trafficking/manufacturing offence	Likely impact on end-users
<i>Liability of natural and legal persons</i>	Negative impact anticipated, whether because end-users are themselves caught by an EU measure or those further up the supply chain.
<i>Mandatory suspicion or 'ought-to-have-known' negligence standard</i>	Negative impact anticipated. Lowering the threshold of the <i>mens rea</i> requirement – either by the 'lesser' knowledge of suspicion or the introduction of a negligent standard – will make it easier for police and judicial authorities to prosecute and convict illicit arms trafficking and related offences.
<i>4 year custodial sanction and/or administrative sanction (financial penalty of at least €10000 for serious trafficking / manufacturing offences)</i>	Negative impact anticipated. Maximum sentences of at least four years in all Member States will discourage forum shopping and have a deterrent effect for end-users and their suppliers. If suppliers are incarcerated they will have limited or no capacity to sell illicit firearms to end-users.
<i>Attempted trafficking and complicit activities (aiding/abetting etc) offences</i>	Negative impact anticipated. Widening the range of available offences will make it easier for police and judicial authorities to prosecute and convict illicit arms trafficking and related offences
<i>Aggravating and mitigating circumstances defined (e.g. participation in organised criminal gang, recidivism, large scale of offence)</i>	Small negative impact anticipated. Longer sentences for aggravated offences will have a deterrent effect for end-users and their suppliers. If suppliers are incarcerated they will have limited or no capacity to sell illicit firearms to end-users.

The likely impacts in respect of the supply side, i.e. traffickers and other intermediaries, are summarised below:

Deterrent effect for criminals: Illicit firearms trafficking is almost always not the primary source of income for those OCGs active in this crime area. It follows that these traffickers and other intermediaries may be disincentivised from carrying out illicit activities if the risk of financial and/or custodial punishment outweighs the marginal benefit of engaging in firearms trafficking. Dissuasive elements of an EU measure would include minimum sanctions thresholds in all Member States; the lower 'intent' requirement of either suspicion or negligence; and the creation of attempted and complicit activities offences (see table below).

Operational benefits for police and judicial authorities: The proposed scope of an EU legislative instrument would facilitate prosecutions and convictions of offenders. In addition, the establishment of a minimum sanctions threshold would ensure that the offence is of a sufficient gravity to qualify for the special investigative measures discussed at Option 2, improving cooperation between law enforcement authorities in preventing detecting, disrupting, investigating and prosecuting illicit arm trafficking. Increased collaboration and joint investigations between Member States' police and judicial authorities would, in turn, foster

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information and intelligence sharing on illicit firearms trafficking and the links with other criminal activities.

Table 4.8: Likely impacts of elements of legislative provisions for illicit firearms trafficking and manufacturing on supply side (traffickers)

Element of illicit trafficking/manufacturing offence	Likely impact on traffickers
<i>Liability of natural and legal persons</i>	Negative impact anticipated, whether because traffickers themselves or their customers (end-users) or suppliers further up the chain are caught by an EU measure criminalising corporate entities as well as individuals.
<i>Mandatory suspicion or 'ought-to-have-known' negligence standard</i>	Negative impact anticipated. Lowering the threshold of the <i>mens rea</i> requirement – either by the 'lesser' knowledge of suspicion or the introduction of a negligent standard – will make it easier for police and judicial authorities to prosecute and convict illicit arms traffickers.
<i>4 year custodial sanction and/or administrative sanction (financial penalty of at least €10000 for serious trafficking / manufacturing offences)</i>	Negative impact anticipated. 'Minimum maximum' sentences will discourage forum shopping and have a deterrent effect for traffickers and their customers/suppliers. If traffickers and suppliers are incarcerated they will have limited or no capacity to sell illicit firearms to end-users. The 'minimum maximum' financial penalty should be set at a level which is economically punitive and further deter prospective traffickers.
<i>Attempted trafficking and complicit activities (aiding/abetting etc) offences</i>	Negative impact anticipated. Widening the range of available offences will make it easier for police and judicial authorities to prosecute and convict illicit arms trafficking and related offences. Traffickers and their associates are arguably more vulnerable to these offences than suppliers or end-users.
<i>Aggravating and mitigating circumstances defined (e.g. participation in organised criminal gang, recidivism, large scale of offence)</i>	Small negative impact anticipated. Longer sentences for aggravated offences will have a deterrent effect for traffickers as well as their customers (end-users) and suppliers. If suppliers are incarcerated this will impeded traffickers' capacity to source illicit firearms to sell on to end-users.

Suppliers are a more heterogeneous category than traffickers. There are numerous sources of illegal firearms, such as the reactivation of neutralised weapons; burglaries and thefts; embezzlement of legal arms; legal arms sold in the illegal market; firearms retired from service by army or police; and the conversion of gas pistols. However, as with traffickers the major incentive of suppliers remains most likely to be financial gain. As a consequence the anticipated impacts on suppliers of illicit firearms are not dissimilar to those referred to in Problem Driver 2.

The specific effects of the various elements of an EU legislative measure under Policy Option 3 on Problem Driver 3 are described in the table below.

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Table 4.9: Likely impacts of elements of legislative provisions for illicit firearms trafficking and manufacturing on supply side (suppliers)

Element of illicit trafficking/manufacturing offence	Likely impact on suppliers
<i>Liability of natural and legal persons</i>	Negative impact anticipated, whether because suppliers themselves or their immediate customers (traffickers) or end-users are caught by an EU measure criminalising corporate entities as well as individuals.
<i>Mandatory suspicion or 'ought-to-have-known' negligence standard</i>	Negative impact anticipated. Lowering the threshold of the <i>mens rea</i> requirement – either by the 'lesser' knowledge of suspicion or the introduction of a negligent standard – will make it easier for police and judicial authorities to prosecute and convict illicit arms traffickers and their suppliers. Furthermore, in EU jurisdictions where the present intention threshold is direct knowledge it will be easier for prosecuting authorities to establish that suppliers of illicit firearms suspected or ought to have known that the purchaser was a trafficker.
<i>year custodial sanction and/or administrative sanction (financial penalty of at least €10000 for serious trafficking / manufacturing offences)</i>	Negative impact anticipated. 'Minimum maximum' sentences will discourage forum shopping and have a deterrent effect for traffickers and their customers/suppliers. If suppliers and traffickers are incarcerated this will have a disruptive effect on their business, as will the establishment in EU law of minimum financial penalties for serious offences. These should be set at a level which is economically punitive.
<i>Attempted trafficking and complicit activities (aiding/abetting etc) offences</i>	Negative impact anticipated. Widening the range of available offences will make it easier for police and judicial authorities to prosecute and convict illicit arms trafficking and related offences. Suppliers will be adversely affected by any increase in investigations and convictions.
<i>Aggravating and mitigating circumstances defined (e.g. participation in organised criminal gang, recidivism, large scale of offence)</i>	Small negative impact anticipated. Longer sentences for aggravated offences will have a deterrent effect for suppliers. On a practical level, custodial sentences will disrupt the selling of illicit firearms to traffickers and end-users.

Conclusion – impacts of Policy Option 3 on policy objectives and problem drivers

In the table below the anticipated impacts of Policy Option 3 measured against the policy objectives are graded on a scale from minus 5 (very weak impact on realising the policy objectives) to plus five (very strong impact on realising the policy objectives).

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Table 4.10: Summary – Policy Option 3 Impacts on policy objectives

Policy Objectives	Impact
Overall objective	
To contribute to an enhanced level of security and to less firearms-related crime in the EU by reducing the number of firearms illicitly trafficked to, from and within the EU.	+4
Strategic objectives	
To deter the committing of criminal offences related to firearms.	+4
To improve the cooperation between law enforcement authorities in preventing detecting, disrupting, investigating and prosecuting illicit arm trafficking.	+4
To provide a model which can be promoted in discussions with third countries on firearms risk reduction.	+5
Operational objectives	
To minimize the differences in definitions of firearms offences and levels of sanctions across the EU.	+5
To put in place a system for regular monitoring the effectiveness of efforts to disrupt firearms crime including generation of comparable statistics.	0
To further encourage the sharing of information and intelligence on illicit firearms trafficking and the links with other criminal activities.	+3

Financial, economic and social impacts

Possible economic and social impacts of EU action to introduce legally-binding common minimum standards across Member States with regard to the definition of criminal offences and their sanctions related to illicit firearms trafficking and linked offences include:

- **Financial costs to public authorities** (law enforcement authorities and the judiciary) – i.e. training and operational cost of enforcing EU legislative provisions criminalizing illicit firearms trafficking and manufacturing. These costs are impossible to quantify but need to offset against any indirect savings from lower crime rates from tackling firearms trafficking more effectively and thus reducing the supply of illicit firearms to potential offenders. It is, however, impossible to estimate these indirect savings.
- **Wider societal impact** - these could be direct or indirect. For example, an EU measure covering illicit firearms trafficking could have **direct effects** such as a reduction in the number of victims of homicide and other violent crimes featuring illicitly trafficked firearms. These offences may be perpetrated by either individuals (e.g. in domestic disputes), OCGs or terrorist and extremist groups. **Indirect effects** could include a reduction in the number of indirect victims such as EU citizens who under the current arrangements feel less safe and consequently have a lower quality of life. Vulnerable groups would benefit from a possible diminution in other criminal activities supported by illicit firearms trafficking, such as

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human trafficking and drugs smuggling. Though not the primary focus of this study, outside the EU the trafficking of illicit firearms originating from regions such as the Western Balkans can also have undesirable destabilising effects in external conflicts zones such as North Africa or the Middle-East. Reducing the flow of illicit firearms from the EU would have a beneficial impact in these parts of the globe.

The possible social impacts of a comprehensive legislative solution under Policy Option 3 are summarised in the table below.

Table 4.11: Likely social impacts of elements of legislative provisions for illicit firearms trafficking and manufacturing

Element of illicit trafficking/manufacturing offence	Likely social impacts
<i>Liability of natural and legal persons</i>	Small positive impact expected. Extending liability to corporate entities, combined with the aiding/abetting offences (see below), will have a positive social impact by potentially deterring or securing the arrest and conviction of advisers (accountants, lawyers) to crime lords and OCGs. This will in theory contribute to fewer illicit firearms trafficking and related offences that in turn support other criminal activities such as money laundering and drug/people trafficking.
<i>Mandatory suspicion or 'ought-to-have-known' negligence standard</i>	Small positive impact expected. Reducing the <i>mens rea</i> requirement will in principle make it easier to secure prosecutions and convictions for illicit firearms trafficking and manufacturing – albeit the increase in conviction rate is likely to be modest. Stemming the availability of lethal weapons will benefit wider society by reducing the risk of violent crime by individuals, OCGs or terrorists/extremists. Some financial costs to public authorities (e.g. to court system, lawyers, police time resulting from increase in number of investigations prosecutions).
<i>4 year custodial sanction and/or administrative sanction (financial penalty of at least €10000 for serious trafficking / manufacturing offences)</i>	Positive social impact expected. Minimum sentences will discourage forum shopping and have a deterrent effect on criminals. Financial costs to public authorities (e.g. increase in prison population resulting from longer custodial sentences in a number of Member States).
<i>Attempted trafficking and complicit activities (aiding/abetting etc) offences</i>	Positive social impact expected. Widening the range of available offences will make it easier for police and judicial authorities to prosecute and convict attempts to commit as well as indirect assistance with the commission of illicit arms trafficking and related offences. Some financial costs to public authorities (e.g. to court system, lawyers, police time resulting from increase in number of investigations prosecutions).
<i>Aggravating and mitigating circumstances defined (e.g. participation in organised criminal gang, recidivism, large scale of offence)</i>	Small positive social impact anticipated. Longer sentences for aggravated offences could be expected to have a deterrent effect for those particularly involved in large scale or terrorism/organised crime related trafficking, and protect the public by incarcerated such offenders for a longer period. Some financial costs to public authorities (e.g. increase in prison population resulting from longer custodial sentences in a number of Member States).

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In the table below the anticipated social impacts of Policy Option 3 are graded on a scale from minus 5 (very weak social impact) to plus five (very strong social impact).

Table 4.12: Summary of Financial, economic and social impacts

Specific impacts	Impact
Costs to public authorities (law enforcement authorities and the judiciary), and the potential to reduce indirect costs by reducing the supply of illicit firearms by combatting firearms trafficking more effectively.	+2
Impacts on wider society : for example, reduction in the number of direct victims of violent crimes featuring illicitly trafficked firearms, as well as indirect victims such as business owners and ordinary citizens feeling unsafe.	+3

Impacts on fundamental rights

The Charter of Fundamental Rights of the European Union ('the EU Charter') entrenches: all rights found in the case law of the Court of Justice of the EU; the rights and freedoms enshrined in the European Convention on Human Rights ('ECHR'); and other rights and principles resulting from the common constitutional traditions of EU countries and other international instruments.

We anticipate only limited impacts of a comprehensive legislative solution under Policy Option 3 on fundamental rights issues. However, articles of possible relevance to an EU measure criminalising of illicit firearms trafficking and manufacturing (and related offences) include the following:

Article 2 (Right to Life): By reducing the trafficking of illicit firearms, the comprehensive legislative solution would in principle decrease the risk of such firearms being used by individuals, OCGs and/or terrorists and extremists which would otherwise have violent and even lethal consequences for EU citizens.

Article 6 (Right to liberty and security): This right stands to be enhanced by the proposed EU legislative measure under Policy Option 3. Under such a measure, EU citizens would benefit from additional legislative protection from illicit trafficking activities perpetrated by individuals, OCGs and/or terrorists and extremists and from the risk of violent crimes resulting from those activities which presently compromise citizens' liberty and security.

Article 48 (Presumption of innocence and right of defence): The EU Charter article in question guarantees the defence rights of the suspect or accused. Generally, for most serious criminal offences proof is required both of a guilty act (*actus reus*) and a guilty mind (*mens rea*). This is of possible relevance to the introduction of a negligence threshold of liability for illicit firearms trafficking, which would not require any *mens rea* (in the form of knowledge or intent) on the part of the accused, merely a failure to meet an objective standard of reasonable behaviour. However, this is very unlikely to create any legal difficulties in practice, not least as the European Court of Human Rights (ECtHR) has already ruled that certain strict liability offences for which there is no need

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for the prosecution to prove *mens rea* do not conflict with the ECHR (*Salabiaku v. France*)¹⁵³ provided they are kept “*within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence*” (in other words a test of proportionality applies).

Article 49 (Principles of legality and proportionality of criminal offences and penalties) provides inter alia that the ‘*severity of penalties must not be disproportionate to the criminal offence*’. The potential introduction of a new legally-binding instrument at EU level such as a directive could, once transposed into national legislation, require changes in criminal justice legislation and to rules on sentencing for illegal firearms trafficking offences. It is only proposed, however, that the directive would establish ‘minimum maximum’ (4-year) custodial sentences: in other words, the maximum period of imprisonment for the most serious offences should be of at least 4 years in all Member States, with national legislators free to set a higher upper limit if they wish. As such it is highly improbable that there would be any question that such a length of incarceration would be disproportionate under the EU Charter.

The possible fundamental rights impacts of the various elements of a comprehensive legislative solution under Policy Option 3 are summarised in the table below.

Table 4.13: Likely fundamental rights impacts of elements of legislative provisions for illicit firearms trafficking and manufacturing

Element of illicit trafficking/manufacturing offence	Likely fundamental rights impacts
<i>Liability of natural and legal persons</i>	Small positive fundamental rights impact anticipated. Provision likely to be supportive of EU citizens’ rights to life and security (Articles 2 and 6) as a consequence of extending criminal liability to corporate entities, which will contribute to tackling the problem of illicit firearms trafficking in the EU.
<i>Mandatory suspicion or ‘ought-to-have-known’ negligence standard</i>	Small effect on fundamental rights impact (Articles 2 and 6) anticipated. Very unlikely that the introduction of a negligence standard would give rise to Article 48 concerns, not least as under the proposed drafting Member States would have the choice between introducing an offence of suspected illicit firearms trafficking or manufacturing (i.e. where some knowledge is required on the part of the accused) or a negligence standard. The ECtHR is in any case prepared to accept no <i>mens rea</i> requirement for certain strict liability offences provided that a test of proportionality is met. It is extremely improbable that the CJEU would depart from that approach.
<i>4 year custodial sanction</i>	Small effect on fundamental rights impact anticipated as

¹⁵³ (1988) 13 EHRR 379. This case concerned a passenger who had passed through the green light at customs with cannabis in his suitcase; he was convicted under the relevant provision of the Customs Code, which deems anyone carrying in contraband goods (consciously or not) guilty of an offence. Here the Strasbourg Court accepted the respondent state’s argument that the strict liability offence was not disproportionate.

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<i>and/or administrative sanction (financial penalty of at least €10000 for serious trafficking / manufacturing offences)</i>	a result of deterring/incarcerating illicit firearms traffickers and thus boosting EU citizens' security (Article 6). Very unlikely that a 'minimum maximum' 4-year sentence would raise any concerns vis-à-vis Article 49(2) principle of proportionality in sentencing offenders.
<i>Attempted trafficking and complicit activities (aiding/abetting etc.) offences</i>	Small positive Article 2/6 impact would be expected.
<i>Aggravating and mitigating circumstances defined (e.g. participation in organised criminal gang, recidivism, large scale of offence)</i>	As above. Low positive Article 2/6 impact would be expected.

In the table below the anticipated fundamental rights impacts of Policy Option 3 are graded on a scale from minus 5 (very weak fundamental rights impact) to plus five (very strong fundamental rights impact).

Table 4.14: Summary - likely fundamental rights impacts of elements of legislative provisions for illicit firearms trafficking and manufacturing

Specific impacts	Impact
Fundamental rights	
Article 2 (right to life)	+2
Article 6 (right to liberty and security)	+2
Article 48 (presumption of innocence and right of defence)	0
Article 49 (Principles of legality and proportionality of criminal offences and penalties)	0

Subsidiarity, proportionality, EU added value and sustainability

The legal basis for any EU measure in this area (Article 83(1) TFEU), as well as the principles of **subsidiarity and proportionality** (Article 5(3) and 5(4) TEU), are described in Section 3. There it is explained that two tests apply in respect of the subsidiarity principle: the **necessity test and the EU value added test**.

As regards necessity, it is the case that, at the level of international law, the UN Protocol already criminalises illicit firearms trafficking and manufacturing. While the Protocol leaves considerable discretion to Contracting States as to the precise form and scope of these trafficking offences, the associated Model Law contains guidance provisions for national legislators to use as a precedent when enshrining their Protocol obligations in their national law.

What, then, is the need for an EU legislative measure, not least when: (i) key components of illicit firearms trafficking and manufacturing offences (including the definitions of 'firearms', 'illicit firearms trafficking' and 'illicit firearms manufacturing'), have already been set out in the Protocol and Directive 91/477/EEC, as amended; and (ii) as of March 2014, with the ratification of the Protocol by the EU Commission on behalf of the EU, all Member States are now bound by this international instrument? The key arguments in favour of an EU

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measure in this area, notwithstanding the already existing international and EU legislation, are summarised below.

Firstly, as noted at Section 2.3, according to expert opinion and feedback from key stakeholders in Member States, **almost all illicit firearms circulating in the EU originate from cross-border trafficking activities**. There is therefore a logic to tackling the problem at supranational (EU) level in a manner that does not exceed the objectives ('principle of proportionality') of Article 83(1) TFEU. The latter mandates the establishment of minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime (including illicit firearms trafficking) with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

Secondly, particular benefits from tackling the problem of illicit firearms trafficking and manufacturing by means of a comprehensive legislative solution at the EU level ('test of EU added value') include:

- **Operational advantages resulting from increased legal certainty for police and judicial authorities in cross-border investigations.** Joint investigations can be hampered, delayed and sometimes abandoned by confusion and lack of knowledge regarding the relevant national laws in other Member States: Policy Option 3 would eliminate this in the area of illicit firearms trafficking and related offences. In addition, approximating minimum sanctions for illicit firearms trafficking and manufacturing would allow special operational techniques to be used across Member States, facilitating the investigation and eventual prosecution of these offences.
- **Deterrent effect:** as well as the operational benefit for investigations and prosecutions of approximating key elements of the offences (notably introducing mandatory minimum sanctions and including attempted and aiding/abetting offences), harmonizing the scope of illicit firearms trafficking offences across all EU Member States would eliminate the possibility for offenders to exploit legal loopholes arising from divergences in national laws on illicit firearms trafficking. A unified and robust legal framework at the EU level covering both offences and sanctions could be expected to deter criminals from engaging in illicit trafficking.
- **Improved detection of intra-EU flow**

Other factors - political feasibility, enforceability of the option, synergies/complementarity with other EU policies

The question of political feasibility is relevant to those elements of a comprehensive legislative solution which may be inconsistent with national legal cultures, case law or constitutional court rulings. Where applicable, issues of feasibility will be examined in the table below; subject to these no enforceability issues present themselves in relation to Policy Option 3.

There is scope for complementarity with other serious crimes referred to in Article 83(1) TFEU. By way of example, CSES is presently undertaking a separate study for DG HOME, this time for an Impact Assessment on a proposal for a directive on the criminalisation of money laundering in the EU. The constituent elements of such a legislative instrument (notably concerning the

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criminalisation of the offence itself, as well as the relevant *mens rea* requirement and the question of penalties and sanctions) are similar in scope and nature to Policy Option 3 in the area of illicit firearms trafficking and related offences.

Table 4.15: Likely impacts of 'other factors' on proposed legislative provisions for illicit firearms trafficking and manufacturing

Element of illicit trafficking/manufacturing offence	Likely impact of 'other factors'
<i>Liability of natural and legal persons</i>	No significant impacts from other factors. Extending liability to corporate entities is unlikely to give rise to issues regarding political feasibility given that 'person' is already defined in the Protocol and Convention to include legal persons, and EU Member States are bound by the Protocol.
<i>Mandatory suspicion or 'ought-to-have-known' negligence standard</i>	No significant impacts from other factors. It is the case that in certain EU jurisdictions (notably those with a common law legal tradition) negligence is only rarely sufficient for criminal liability to arise. However, under Policy Option 3 Member States with reservations about negligence standards would have the option of introducing instead a lower level of intent (i.e. suspicion).
<i>4 year custodial sanction and/or administrative sanction (financial penalty of at least €10000 for serious trafficking / manufacturing offences)</i>	No significant impacts from other factors. While matters of criminal sentencing can be sensitive, in part crossing over into matters of sovereignty and national politics, Policy Option 3 would not interfere with Member States ability to set whatever maximum sentence they preferred for illicit firearms trafficking and related offences (provided it was at least 4 years).
<i>Attempted trafficking and complicit activities (aiding/abetting etc.) offences</i>	No impact envisaged.
<i>Aggravating and mitigating circumstances defined (e.g. participation in organised criminal gang, recidivism, large scale of offence)</i>	Possible difficulties regarding political feasibility. In several Member States the applicable aggravating and mitigating circumstances are those pertaining to a broader category of criminal offences set out in the criminal code. There is some question of encroaching on national legal traditions to relatively marginal benefit in terms of tackling the problem of illicit firearms trafficking.

In the table below the anticipated 'other factors' impacts are graded on a scale from minus 5 (very weak impact) to plus five (very strong impact). Zero represents a neutral impact.

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Table 4.16: Summary - Likely impacts of 'other factors' on proposed legislative provisions for illicit firearms trafficking and manufacturing

Specific impacts	Impact
Social and related impacts	
Subsidiarity principle – i.e. the extent to which the EU should act in certain areas only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States.	0
Proportionality principle - extent to which EU actions do not go beyond what is necessary in order to achieve the objectives of the Treaty.	0
Other factors - political feasibility, enforceability of the option, synergies/complementarity with other EU policies	-2 (see discussion on aggravating/mitigating circumstances)

Financial, economic and social impacts

It is exceedingly difficult to assess the financial and economic impacts of a legislative option. Illicit firearms trafficking has ramifications for numerous offender categories, from domestic offenders to large scale Organised Crime Groups and terrorist/extremist networks, as well as for other crimes such as drug and people trafficking. A recent European Parliament publication¹⁵⁴ assessed the cost of organised crime to be the following: Human trafficking - € 30 billion and fraud against EU individuals – € 97 billion. The report further highlights that there are no comprehensive studies of the impacts of illegal drugs themselves in the EU. However, the report estimates at least 500 organised crime-related homicides, very unevenly distributed across the EU. **If Policy Option 3 were responsible for even a 1% reduction in organised crime, it would save the EU economy over € 1 billion.**

In light of the above, the impacts of the elements of the proposed offences related to illicit firearms trafficking and manufacturing can be summarised as being:

¹⁵⁴ The Economic, Financial & Social Impacts of Organised Crime in the European Union, 2013.

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Table 4.17: Impacts of the key elements of Policy Option 3

Key: ✓ positive impact; X negative impact; ○ neutral impact; ? extent of impact uncertain

Element of Presumption of Innocence	Effectiveness in achieving policy objective	Social Impact	Fundamental Rights	Financial and economic impact	Other factors (subsidiarity / proportionality / feasibility)
Liability of natural and legal persons	✓✓	✓	✓	✓?	○
Mandatory suspicion or 'ought-to-have-known' negligence standard	✓✓	✓	✓	✓?	○
'Minimum maximum' 4 year custodial sanction and administrative sanction (financial penalty)	✓✓	✓✓	✓	✓?	○
Attempted trafficking and complicit activities offences	✓✓	✓✓	✓	✓?	○
Aggravating and mitigating circumstances defined for firearms trafficking offences	✓	✓	✓	✓?	X

The element of Policy Option 3 that has a low or marginal positive impact in relation to policy objectives, social and fundamental rights and (to the extent these are known) financial impacts, but a negative impact in terms of feasibility, is that of defining in a legislative instrument the aggravating and mitigating circumstances for illicit firearms trafficking and related offences. On this basis it is not recommended that this element be retained in Policy Option 3. Instead the general system of aggravating or mitigating circumstances existing within a Member State's national legislation should continue to apply to the proposed illicit firearms trafficking and manufacturing offences.

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The other elements discussed in this section and set out in the summary table above are considered suitable for inclusion in a proposed EU measure.

4.6 Policy Option 4 - Combination of Policy Options

In addition to the individual Policy Options set out above, a further possibility is to combine elements of different options. Clearly, this only applies to Policy Options 2 and 3, i.e. a combination of non-legislative and legislative measures. As noted earlier, this approach is quite widely supported amongst those we consulted.

A variation on Policy Option 4 as outlined above would involve adopting a phased approach to the introduction of measures, e.g. starting with the less controversial non-legislative measures and moving on after a further period of consultation to introduce legally-binding common minimum standards across all Member States with regard the definition of criminal offences and their sanctions related to illicit arms trafficking and linked offences with a cross-border dimension. Equally, a sub-option could involve only some Member States setting up enhanced cooperation mechanisms as per Art. 83(3) of the TFEU if consensus in favour of the measure cannot be reached and this again would involve a phased approach.

4.7 Evaluation of the Policy Options

In this section we combine the scoring of the various Policy Options against the key IA criteria used in Section 4.2 to 4.5 and identify the preferred option. For this purpose, a number of criteria (taken from the Commission IA guidance) are used:

- Contribution to EU policy objectives;
- Financial, economic and social impacts;
- Impacts on fundamental rights;
- Proportionality, subsidiarity and European added value;

The assessment of the Policy Options against these criteria leads into an overall assessment towards the end of this sub-section. The overall assessment draws on the results of the analysis of the extent to which the option are successful in achieving the policy objectives as well as financial and economic, social and other impacts to help assess which Policy Option (or combination) is likely to have the most advantageous effect on the problem and on promoting EU policy aims. Based on this assessment, a rating system is used in Section 4.4 to identify the preferred option.

4.7.1 Contribution to EU policy objectives

In assessing the impact of the Policy Options on achievement of the policy objectives, it is important to differentiate between the general objective, specific objectives and operational objectives.

In regard to the **overall objective** of reducing the number of firearms illicitly trafficked to, from and within the EU, Policy Option 1 would have no effect at all. The impact of Policy Option 2 (a) depends on how committed Member States are

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to implementing soft law instruments. Thus, soft law instruments are in some cases characterized by slow and uneven progress in the different Member States. In regard to Policy Option 2 (b) legal obligations would exist which should enhance the likelihood of soft law tools being implemented. As the most interventionist option, the comprehensive legislative solution put forward under Policy Option 3 is well-placed to meet a number the general objective by approximating and strengthening the legal regime for illicit firearms trafficking in the EU.

Turning to the **strategic objectives**, Policy Option 2 (a) would be a suitable tool to improve the cooperation between law enforcement authorities in preventing detecting, disrupting, investigating and prosecuting illicit arm trafficking. This is because Policy Option 2 (a) is based on identifying good practices and the promotion of convergence of practices. While doing so, the focus is on information exchange frameworks. In the long-term the success of information sharing will then most likely lead to the deterrence of criminal offences related to firearms. The reason for this is that the exchange of investigation results would help Member State authorities to understand where weapons come from, their uses, etc. Furthermore, sharing data on convictions in relation to firearms should help police authorities to conduct targeted searches. Nevertheless, Policy Option 2 (a) will most likely not be suitable to serve as a model that can be used in discussions with third countries since its structures are too loose to work in a wider context. However, Policy Option 2 (b) would establish a stricter regulatory framework that could be used as model of international data sharing. The advantage is that minimum regulation would make it easier to regulate among different legal systems.

The comprehensive legislative solution considered for Policy Option 3 would correspond with the strategic objective of providing a model that could be promoted in discussions with third countries on firearms risk reduction. The elements of a legislative instrument criminalising illicit firearms trafficking would widen the potential liability of offenders compared with the present patchwork of national legal that could be expected to have the effect of deterring the committing of criminal offences related to firearms. An approximated pan-EU would also be likely to improve the cooperation between law enforcement authorities.

With the **operational objectives**, Policy Option 2 (a) and Option 2 (b) would not contribute to the minimization of differences in definitions of firearms offences and levels of sanctions across the EU since they do not include the adoption of new legislation or definitions. However, it could be the first step towards the convergence of definitions since information sharing and capacity building lead to mutual learning processes encouraging future harmonization efforts. Additionally, it would enhance greatly the sharing of information and intelligence on illicit firearms trafficking through establishing more efficient cooperation channels. For Option 3, an approximating directive is clearly in line with the operational objective of minimising the differences in definitions of illicit firearms trafficking and levels of sanctions across the EU.

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4.7.2 Financial, Economic and Social Impacts

Policy Option 1 would have no effect on the costs incurred by EU Member States' law enforcement agencies involved in tackling illicit firearms trafficking.

As indicated earlier, the financial cost of **Policy Option 2** would mainly arise for those EU Member States where action would be needed to improve the capacity to engage in cross-border cooperation (insofar as some of the actions involve EU agencies, i.e. CEPOL's involvement in capacity building and EUROPOL's involvement in promoting the exchange of information, some costs would be borne by the EU budget).

For any legislative option (**Policy Option 3**), there would some costs associated with the transposition of measures into national legislation and implementation (e.g. training). Set against the costs would be the economic and social benefits of Policy Options 2 and 3 outlined earlier. Quantifying these benefits in terms of reduced criminality and an enhanced sense of security felt by citizen will also be taken into account.

4.7.3 Impacts on Fundamental Rights

In line with the Operational Guidance on fundamental rights in impact assessments, impacts should be assessed in qualitative terms. In analysing the impact on fundamental rights, there is a need to check that each of the policy options is compatible with the Charter on Fundamental Rights¹⁵⁵ and the European Convention of Human Rights (ECHR). Among the issues that need to be considered in relation to fundamental rights are:

- The **rights of EU citizens to security**, protection from organised crime and other fundamental rights;
- The fundamental **rights of those charged with illicit firearms trafficking** offences (which could be compromised by excessively lengthy sentences);
- Interference with and **restriction on the lawful use of firearms** for activities such as shooting and hunting.

More specifically, there could be impacts on EU citizens' right to life (Art. 2 ECHR), liberty and security (Art. 6 CFREU and Article 5 ECHR), freedom of movement and residence (Art. 45 CFREU), on firearms producers and SMEs' freedom to conduct a business (Art. 16 CFREU) and on both citizens and SMEs (e.g. protection of personal data (Art. 8 and 7 CFREU and Art. 8 CFREU)). The trade-off between these areas is complex: while Article 6 of the Charter states that everyone has the right to liberty and security of person, Article 49 deals with the principles of legality and proportionality of criminal offences and penalties. Art. 1(3) states that '*The severity of penalties must not be disproportionate to the criminal offence*'. The potential introduction of a new legally-binding instrument at EU level such as a Directive could, once transposed into national legislation, require changes in criminal justice legislation and to rules on sentencing for illegal firearms trafficking offences.

¹⁵⁵ Charter of fundamental rights of the EU (2010 C /83/02) (CFREU)

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Policy Option 1 (status quo) would leave the position with regard to fundamental rights at best unchanged but could leave the victims of illicit firearms trafficking in a worse position if the problem becomes more serious. Consequently, Policy Option 1 could have a negative impact on Member State's compliance with Article 6 CFREU, Article 5 ECHR and Article 2 ECHR.

Both **Policy Option 2 (a) and 2 (b)** focus on increased collaboration between Member States sharing through the establishment of databases, development of special investigative techniques and capacity building. These measures increase the likelihood of successful illicit firearms trafficking investigations. Consequently, in the long-term this could lead to the reduction of illicit firearms trafficking and circulation. Evaluating these effects from the fundamental rights perspective of EU citizens a positive conclusion can be drawn. First, Article 2 ECHR and Article 2 CFREU stipulate the positive obligation of states to ensure the right to life to everyone. Since in the long-term fewer illicit firearms will circulate in the EU due to Policy Option 2, there will be most likely fewer deaths due to the use of illicitly possessed firearms. In this way, Policy Option 2 would help EU Member States to comply with their obligations under Article 2 ECHR. Furthermore, Policy Option 2 would also have a positive impact on Member State obligations under Article 5 ECHR and Article 6 CFREU. These articles lay down the obligation of states to ensure the right to security to its citizens. By limiting the circulation of illicit firearms in the EU, this provision is better complied with than without regulatory intervention.

It is also necessary to assess Policy Option 2 in terms of the fundamental rights of offenders and persons suspected of illicit arms trafficking, as well as firearms owners and dealers who would also be affected by measures suggested in Policy Option 2. Here the most critical part is Article 8 ECHR and Article 7 and Article 8 CFREU stipulating the right of citizen to privacy and data protection and Article 8 CFREU on the right of EU citizen to data protection. The establishment and sharing of partly sensitive personal information through databases could lead to an infringement of the above-mentioned rights. Furthermore, special investigative techniques such as wire-tapping might also intrude on privacy and data protection rights. However, as elaborated elsewhere in this report a certain limitation of rights under these articles is allowed when public security is at stake and when the rights-limitation serves the prevention of crime and disorder.¹⁵⁶

With regard to other special investigative techniques like controlled deliveries, the regulation has to ensure sufficient safeguards and monitoring of the procedures to avoid any interference with Article 5 (right to liberty) and Article 6 (right to a fair trial). Consequently attention to detail is crucial when establishing a regulatory framework for special investigative techniques.

Turning to **Policy Option 3**, a comprehensive legislative solution could be expected to have some positive impacts in respect of Articles 2 (right to life) and 6 (right to liberty and security) resulting from a reduction in the trafficking of illicit firearms benefitting the safety of EU citizens. Possible Article 48

¹⁵⁶ This notion was confirmed in *Klass and Others v. Germany* where the European Court of Human Rights (ECtHR) ruled that certain wiretapping techniques by the authorities were justified for the prevention of crime even though they limit rights under Article 8 ECHR.

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(presumption of innocence and right of defence) concerns relating to a negligence standard of criminality are unlikely, as are Article 49 (principles of legality and proportionality of criminal offences and penalties) issues relating to 'minimum maximum' custodial sentences. These issues are discussed in more detail at Section 4.5.4.

4.7.4 Proportionality, Subsidiarity and European Added Value

The Commission has argued (e.g. in its 2010 EU Budget Review) that the concept of European added value should be used as a "key test to justify intervention at the EU level". It argued that EU intervention could add value because it "can plug gaps left by the dynamics of national policy-making, most obviously addressing cross-border challenges". There are various aspects that need to be considered:

- The **additionality principle** which means that the EU should act only when there are clear additional benefits from collective efforts.
- Closely related to this is the **principle of subsidiarity**, i.e. that the EU should only act when objectives cannot be achieved satisfactorily by Member States alone and can be better achieved at the EU level.
- **Proportionality** requires that EU actions should not go beyond what is necessary in order to achieve the objectives of the Treaty.

There are also a number of other factors that are relevant such as political feasibility, enforceability of preferred option, synergies/complementarity with other EU policies.

In relation to **Policy Option 1**, the position with regard to the principles outlined above would be unchanged.

According to Article 5 TEU all action taken on the EU level has to comply with the subsidiarity principle that implies that the EU shall only regulate in the case that it adds value to the actions taken by the single Member States. **Policy Options 2 and 3** are in accordance with this principle since illicit arms trafficking requires actions taken at the EU level due to its transnational nature and the insufficiency of current EU legislation to address the problem. In this regard it can even be stated that EU legislation does not only add value but is essential to tackling the problem. As shown in Section 2, in most cases, firearms trafficking involves more than one Member State. Consequently, to successfully convict traffickers and/or confiscate illicit firearms it is essential to establish regulated information exchange frameworks between Member States.

Another requirement of Article 5 TEU is the proportionality principle. This means that while the EU is allowed to act (conferral principle) and if it adds value to the regulatory framework of the respective policy field (subsidiarity principle), EU action may not go beyond what is necessary (proportionality principle). In case of **Policy Option 2**, the proportionality principle is not violated with option (a) and most likely neither with option (b). This is because Policy Option 2 only suggests minimal regulatory action via either soft law or a directive. On the substantial side, Policy Option 2 is limited to enhancing already existing legislative frameworks, institutional set-ups and implementation structures to increase efficiency and effectiveness. Consequently, there are no essential new measures which need to be analysed in light of proportionality. With regard to **Policy**

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Option 3, since almost all illicit firearms circulating in the EU originate from cross-border trafficking activities, there is a clear rationale for tackling the problem at supranational (EU) level in a manner that does not exceed the objectives of Article 83(1) TFEU. The latter mandates the establishment of minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime (including illicit firearms trafficking) with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

Besides the above-mentioned it is also worth evaluating matters of political feasibility and enforceability. According to the research, **Policy Option 2 (a)** seems to be favoured by a high proportion of key stakeholders. This can be considered as an indication for no feasibility problems with this Policy Option. While this is mostly the case with soft law instruments, Policy Option (2(a)), it is slightly more challenging when a Directive comes into play (2(b)).¹⁵⁷ In addition to feasibility, it is also relevant to consider other policy areas with linkages to arms trafficking. While not necessarily includable in Policy Option 2, drug trafficking is a policy field with similar structures. Thus it could be considered to draft similar policy options for that field. With regard to **Policy Option 3**, earlier we highlighted concerns regarding the political feasibility in particular of approximating aggravating and mitigating circumstances relating to illicit firearms trafficking and related offences and sanctions. This element of the IFT offence was finally deemed unsuitable for inclusion in a proposed legislative instrument for Policy Option 3.

Overall, there are various ways in which EU Added Value could be demonstrated: firstly, there could be 'coordination gains'. For example, under Policy Option 2, steps would be taken to improve networking between Member States and information sharing. There could also be 'scope effects' – thus, Policy Option 3 would involve extending scope of harmonisation to the definition of illicit firearms trafficking, offences, sanctions, etc. Scope effects of this type would be almost certainly impossible to achieve through purely bilateral cooperation between Member States but are necessary to facilitate cooperation in tackling cross-border aspects of the problem.

Linked to this are possible 'scale effects' where introducing a stronger cross-border framework through adoption of Policy Option 3, but also elements of Policy Option 2, could be a clear demonstration of the scale effects associated with EU intervention. Last but not least, European Added Value could be demonstrated by 'synergy effects': both Policy Options 2 and 3, by promoting closer cooperation between EU Member States, should promote greater effectiveness in achieving policy objectives and complementarities between actions to combat illicit firearms trafficking.

4.7.5 Overall Assessment

The most fundamental criterion to measure the appropriateness of otherwise of the different Policy Options is that any intervention should promote EU policy

¹⁵⁷ This is due to higher administrative efforts and due to more struggles to find an agreement between Member States.

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objectives. The 'global' criteria required for the assessment at this level are outlined below:

Global Criteria for Assessing Policy Options

- **Relevance** – how relevant different Policy Options (and sub-options) are given the problem assessment, specifically aspects relating to the cross-border dimension of illicit firearms trafficking and effectiveness of existing measures.
- **Effectiveness** - in terms of risk reduction from the security and law and order perspective. The extent to which different Policy Options support law enforcement agencies and other stakeholders in taking action to prevent illicit firearms trafficking is clearly a key consideration.
- **Efficiency** – i.e. the extent to which the financial and human resources required to implement different Policy Options can be justified given the likely impacts of the problem of illicit firearms trafficking. For example, EU Member States could face additional costs if additional procedures and structures resulting from new EU legislation are introduced to combat illicit firearms trafficking. But set against this are the possible 'gains' from reducing the problem (confiscation of assets, reduced social and other costs, etc).
- **Likely impacts** on the problem of illicit firearms trafficking, specifically the cross-border dimension, and **EU added value**.

In essence, Policy Option 1 entails a continuation of the status quo as defined in the problem assessment (or even a potential worsening of the problem caused by illicit firearms trafficking) with the 'advantageous effect' of Policy Options 2 and 3 being measured against this baseline. The research suggests that it will be difficult to quantify what impact different Policy Options might have on the current level of illicit firearms trafficking. As such, the assessment will be essentially qualitative.

Relevance

Policy Option 1 has no bearing on relevance because our research suggests that it would leave the problem unchanged. Policy Option 2 would be of most relevance to the operational priorities of law enforcement agencies involved in tackling illicit firearms trafficking.

Turning to **Policy Option 3**, a comprehensive legislative solution can be said to be of relevance to improving the fight against illicit firearms trafficking, thus contributing to the general policy objective of an enhanced level of security and to less firearms-related crime in the EU by reducing the number of firearms illicitly trafficked to, from and within the EU. **In particular Policy Option 3 addresses the policy objective of minimising the differences in definitions of firearms offences and levels of sanctions across the EU.** The comparative legal analysis has revealed that, notwithstanding the existing international and EU legislation in this area, considerable variation at the national level remains between the definitions of the illicit firearms trafficking and related offences. Divergences have likewise been shown to exist regarding the key

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elements of these crimes including the sanctions, liability of legal and natural persons, notions of intent, negligence and aggravating or mitigating circumstances.

Effectiveness

Policy Option 1 has no bearing on effectiveness because it would leave the problem unchanged. Policy Option 2 would be effective in promoting cross-border cooperation by improving the exchange of information on illicit firearms trafficking, improving the capacity of law enforcement agencies to work together on operations, and strengthening controls on the movement of firearms from the legal to the illegal market.

Practical and operational advantages would also prospectively accrue to police and judicial authorities under **Policy Option 3**. Joint investigations can be hampered, delayed and sometimes abandoned by confusion and lack of knowledge regarding the relevant national laws in other Member States. Minimum harmonised EU-wide offences of illicit firearms trafficking and manufacturing would create legal certainty for law enforcement agencies and other stakeholders. In addition, approximating minimum sanctions of possibly 4 years for serious offences relating to illicit firearms trafficking and manufacturing would allow special operational techniques to be used by the police in Member States where the relevant sanctions threshold is currently too low for those techniques to be legally permissible, facilitating the investigation and eventual prosecution of these offences.

Efficiency

Policy Option 1 would not involve any direct costs to national authorities although 'no action' would lead according to our assessment to a continuing upward trend in the use of illicit firearms for criminal purposes with the consequent social and economic costs to EU Member States.

EU action under **Policy Option 2 and 3** are likely to entail **financial costs to public authorities** as a result of the training and operational expense of enforcing EU legislative provisions criminalizing illicit firearms trafficking and manufacturing. In some Member States there would be further costs to the court and penal system as a consequence of widening the prospective liability of offenders (for example by including ancillary offences and negligent trafficking) and raising the maximum sanction for serious illicit firearms trafficking offences. These would be offset against indirect savings from lower crime rates (and fewer offenders) as a result of tackling firearms trafficking more effectively and thus reducing the supply of illicit firearms to potential offenders. Other anticipated **benefits to wider society** include a reduction in the number of victims of homicide and other violent crimes featuring illicitly trafficked firearms, as well as the intangible positive effect of EU citizens feeling safer.

Likely impacts and added value

Policy Option 1 would self-evidently have no impacts and there would be no EU added value. Policy Option 2 would have direct impacts at the operational level on the Member States' ability to combat cross-border firearms trafficking with the proposed measures (especially under Policy Option 2b) demonstrating a high degree of EU added value.

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EU added-value arising from **Policy Option 3** is likely to include advantages flowing from increased legal certainty for police and judicial authorities in cross-border investigations. Approximating the scope of illicit firearms trafficking offences across all EU Member States would eliminate the possibility for offenders to exploit legal loopholes arising from divergences in national laws on illicit firearms trafficking. A unified and robust legal framework at the EU level covering both offences and sanctions could be expected to deter criminals from engaging in illicit trafficking.

4.8 Preferred Policy Option

We now proceed to identifying the preferred policy option. The assessment is made using a series of scoring tables in which the policy options of status quo, non-legislative action, minimum legislative intervention, comprehensive legislative solution at the EU level, and combination of options 2 and 3 are measured against:

- **Contribution to policy objectives** of the identified actions within the policy options (Table 4.18(a)).
- The various **impacts of the Policy Options** (Table 4.18(b)).
- Policy Options and **criteria of relevance, efficiency, effectiveness, EU added value, etc.** (Table 4.18(c)).

Finally, overall scores for the policy options are awarded at Table 4.19 and the preferred policy option identified.

Table 4.18(a): Scoring - Contribution of the identified actions with the Policy Options to Policy Objectives

Key: 0 = Policy option makes no contribution to objective; 5 policy option makes a very significant contribution to objective.

Policy Objectives	Policy Options/Scores			
	2(a)	2(b)	3	4
General objective				
To contribute to an enhanced level of security and to less firearms-related crime in the EU by reducing the number of firearms illicitly trafficked to, from and within the EU.	3	4	4	5
Specific objectives				
To deter the committing of criminal offences related to firearms.	3	4	4	5
To improve the cooperation between law enforcement authorities in preventing detecting, disrupting, investigating and prosecuting illicit arm trafficking.	3	4	4	5
To provide a model which can be promoted in discussions with third countries on firearms risk reduction.	2	4	5	5
Operational objectives				
To minimize the differences in definitions of firearms offences and levels of sanctions across the EU.	0	0	4	5
To put in place a system for regular monitoring the	2	4	3	4

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effectiveness of efforts to disrupt firearms crime including generation of comparable statistics.				
To further encourage the sharing of information and intelligence on illicit firearms trafficking and the links with other criminal activities.	4	5	3	5

Table 4.18(b): Scoring - Policy Objectives and Specific Impacts

Key: 0 = Policy option makes no contribution to specific factor; 5 policy option makes a very significant contribution to specific factor.

Impacts	Policy Options/Scores				
	1	2(a)	2(b)	3	4
Financial and economic impacts:					
- EU level	0	-	-	-	-
- Member States		-	-	-	-
- Target groups		-	-	-	-
Social and related impacts - the costs of law enforcement and the judiciary, and the potential to reduce indirect costs by reducing the supply of illicit firearms by combatting firearms trafficking more effectively.	0	2	3		
Fundamental rights - i.e. compatibility with the Charter on Fundamental Rights	0	3	4	4	4
Subsidiarity principle - i.e. the extent to which the EU only act where there are clear additional benefits from collective efforts.	0	3	4	4	4
Proportionality principle - extent to which EU actions do not go beyond what is necessary in order to achieve the objectives of the Treaty.	0	4	3	4	3
Other factors - political feasibility, enforceability of the option, synergies/complementarity with other EU policies	0	5	3	2	4

Table 4.18(c): Scoring - Policy Objectives and Global Impacts

Key: 0 = Policy option makes no contribution to global criterion; 5 policy option makes a very significant contribution to global criterion.

Global Criteria for Assessing Policy Options	Policy Options/Scores				
	1	2(a)	2(b)	3	4
Relevance - how relevant different Policy Options (and sub-options) are given the problem assessment	0	3	3	4	4
Effectiveness - in terms of risk reduction from the security and law and order perspective.	0	3	4	4	4
Efficiency - i.e. the extent to which the financial and human resources required to implement different Policy Options can be justified given the likely impacts of the problem	0	4	4	3	4
Likely impacts on the problem of illicit firearms trafficking, specifically the cross-border dimension, and EU added value.	0	3	3	4	4

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Table 4.19: Overall Scores and Preferred Policy Option

Key: 0 = Policy option makes no contribution to global criterion; 5 policy option makes a very significant contribution to global criterion.

Global Criteria for Assessing Policy Options	Policy Options/Scores				
	1	2(a)	2(b)	3	4
(1) Contribution of Policy Options to Policy Objectives	0	3	3	4	5
(2) Policy Objectives and Specific Impacts	0	3	4	4	4
(3) Policy Objectives and Global Impacts	0	3	3	4	4
Overall scores and preferred policy option		9	10	12	13

The recommended option is Policy Option 4 (combination of Policy Options 2 and 3). Overall we consider this the most comprehensive means of tackling the problem of illicit firearms trafficking. However, should political feasibility constraints arise, the Commission may decide to defer or stagger the introduction of more interventionist Policy Options, i.e. 2(b) and 3.

4.9 Monitoring and evaluation

Assuming Policy Option 4 is chosen, Member States will be required to implement a range of legislative and non-legislative actions. A distinction can be made between:

- In the **short-term**, monitoring of actions taken by Member States to implement Policy Option 4;
- In the **medium-term**, evaluating the effect of implementing Policy Option 4 on the specific objective of reducing illicit firearms trafficking;
- In the **longer-term**, evaluating the impact of a reduction in illicit firearms trafficking on the general objective of promoting the interests of EU citizens and businesses in the armaments sector.

Thus, 18 months after its adoption, the Commission should conduct an assessment of the extent to which the various aspects of Policy Option 4 have been/are being implemented by the Member States. In addition to an assessment of the extent to which non-legislative measures are being taken (e.g. improved sharing of information, increase in use of special investigative techniques, increased use of firearms marking), the focus is likely to be on the extent to which national authorities have passed legislation to harmonise the definitions and criminal sanctions relating to illicit firearms trafficking. The Commission's firearms expert group could be asked to help coordinate this exercise.

In the medium and longer term, e.g. after five years, the Commission should also assess, most likely on the basis of an external study, the effectiveness of the actions that Member States will be taking in terms of achieving the objectives set out earlier (Section 4.1). In particular, an evaluation should be undertaken of the extent to which Policy Option 4 measures are thought to have increased the quantity of illicit firearms seized by law enforcement authorities (especially where this resulted from cross-border collaboration) and an indicator of the effect on the illicit firearms trafficking problem. Statistics on firearms-related crime and

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deaths should also be analysed to determine whether the adoption of Policy Option 4 measures is having a positive effect.

Member States should be asked to provide annual statistical data on a number of indicators relating to Policy Options 4, and to this end, to take steps to improve the availability and quality of data. The Commission's firearms expert group could again be involved in this exercise.

On the basis of the monitoring and evaluation work, the Commission should decide on the appropriate follow-up.

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In this final section we summarise the overall findings and conclusions of the research. The key findings and conclusions are summarised below under three sub-headings - the problem of illicit firearms trafficking, existing legal frameworks to combat illicit arms trafficking, and policy objectives and evaluation of policy options.

5.1 The problem of illicit firearms trafficking

Overall, the research confirms that Europe faces a serious illicit firearms trafficking problem. This is a serious problem in its own right but also as factor contributing to the lethality and insecurity from a wide range of violent or coercive crimes and also as a driver of other criminal activities such as drugs smuggling and human trafficking as well as terrorist-related activities that threaten the security of EU Member States and their citizens.

The nature and scale of illicit firearms trafficking in the EU is difficult to assess given the hidden nature of the problem. A range of approaches could be used, of which we have used two approaches in order to establish a range of estimates within which the actual quantities probably lie. A broad indicator based on the number of unregistered firearms and a narrower measure based on firearms seizures – but they give widely differing estimates (67 million unregistered firearms in the EU or 79% of the 81 million total licit and illicit firearms; seizures are estimated to account for around 1% or 81,000 of the total). The first of these is likely to be very much an overestimate of the quantity of illicit firearms whilst the second calculation is almost certainly an underestimate. The conclusion is that the illicit firearms trafficking cannot be accurately estimated and quantified on the basis of existing databases: only a relatively wide range of estimates could be established. Notwithstanding the methodological complications in measuring the phenomenon, most of the literature suggests however that illicit arms trafficking takes place on a considerable scale – a view endorsed and supported by EU Member State national experts.

In many respects, the scale of the illicit firearms trafficking problem is best measured by the number of firearms-related homicides. It is estimated that illicit firearms trafficking has been directly responsible for at least 10,000 firearms-related deaths in EU Member States over the past decade. Some other estimates (e.g. by the UNODC) put the deaths at a higher level than this (around 1,200 p.a.). In addition to murders committed by individuals, illegally held firearms are often used by organised crime groups to coerce and to intimidate their victims. Moreover, the use of illicit firearms in organised crime activities such as drug trafficking, prostitution, and money laundering leads to further deaths (e.g. from drugs use). Terrorists and extremists have also used firearms to carry out attacks.

In terms of the drivers of illicit firearms trafficking, three main players can be identified on the demand and supply sides of the problem. End users are criminal or terrorist individuals and groups that procure firearms illegally to use in the pursuit of their goals. Secondly, traffickers and other intermediaries are involved in the actual trafficking of firearms either for profit or some other reason. Lastly, suppliers are individuals and organisations that provide a source of

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illicit firearms (either intentionally or unintentionally) who are again likely to be motivated by financial considerations.

The main sources of illegal weapons within the EU are the reactivation of neutralised weapons, burglaries and thefts, embezzlement of legal arms, legal arms sold in the illegal market, firearms retired from service by army or police, and the conversion of gas pistols. Most illicit firearms originate from cross-border trafficking, often as noted above from outside the EU. Since the early 1990s, the firearms illicitly trafficked have originated from three main sources that have replaced each other: first of all the former Soviet Union and Warsaw Pact bloc because a source of illicit firearms following the collapse of the iron curtain; then, during the wars of Yugoslav succession, the Western Balkans became an important source of illicit firearms; and more recently, North Africa has superseded the former, with a pool of weapons available and following some of the main drug trafficking routes into the EU. According to Europol, the amount of heavy firearms and SALW in circulation in the EU seems to satisfy much of the demand at present and suppliers in south-eastern Europe have the capacity to meet any rise in demand in the foreseeable future.

There are already many examples of cross-border cooperation between EU Member States and their law enforcement agencies to combat illicit firearms trafficking. Whilst there are many examples of successful operations to intercept weapons before they can be used, there are also cases where police and/or judicial cooperation has been made more difficult because of differences in legal frameworks in different countries. There are also significant complications of tackling cross-border illicit firearms trafficking of a non-legal nature.

5.2 Existing legal frameworks to combat illicit arms trafficking

At present, there are significant differences with regard to EU Member States' legal frameworks for combatting illicit firearms trafficking. This applies to the definition of offences, the types and levels of penalties applicable to legal and natural persons; the treatment of aggravating or mitigating circumstances, and the factor of negligence and degrees of intent.

International and EU legal frameworks that have a bearing on illicit firearms trafficking leave signatories are broadly defined and leave signatories with considerable discretion on how key provisions are implemented. Example provisions on the criminalisation of illicit firearms trafficking are included in the UNODC's Model Law. However, the Model Law itself has no binding force on EU Member States. What is more, to leave a 'margin of discretion' for national legislators to implement the instruments in the most appropriate manner in line with their legal traditions, neither the Model Law clauses nor the other international or EU instruments are prescriptive as regards the various legal elements of an illicit firearms trafficking offence.

As a result of the different legal cultures and the non-prescriptive approach at international/EU level, there is a diversity of legal frameworks in relation to illicit firearms trafficking at the national level. Differences exist with regard to the definition of offences, penalties and sanctions,

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the existence of aggravating or mitigating circumstances and the possibility of a negligent illicit firearms trafficking offence. Other important issues where there are differences relate to the ways in which firearms trafficking offences are prosecuted (as mere possession in some instances) and seizure in transit (and tracing issues). However, divergences in national legislation are not per se a rationale for EU intervention. The relevant issue is whether, pursuant to Article 83(1) TFEU, there is a need to establish minimum rules concerning the definition of criminal offences and sanctions in the area of illicit firearms trafficking with a cross-border dimension resulting from the nature or impact of this offence or from a special need to combat such trafficking on a common EU basis.

Minimum, EU-wide rules on illicit firearms trafficking would have the benefit of reducing legal uncertainty produced by these divergences for national police and investigating authorities, facilitate prosecutions, ensure that criminals are unable to exploit loopholes, and reduce incentives for criminals forum shop between EU jurisdictions. The research indicates that divergences do indeed affect cross-border police and judicial cooperation – and that, given the intrinsically cross-border nature of illicit firearms trafficking, there is a strong need to combat the offence on an EU-wide basis.

However, the evidence also suggests that practical issues such as lack of resources, conflicting policy priorities (for example with anti-terror legislation) and lack of enforcement of existing laws are equally significant impediments to cross-border efforts to combat illicit firearms trafficking than differences in national legislation in this area. Feedback from the research indicates that cooperation between the police and other law enforcement agencies on cross-border cases is generally good; however, at the judicial stage, e.g. in seeking permission for controlled deliveries or asking for a prosecutor to take up a case following an investigation, that differences in legal frameworks can cause complications. In considering any EU initiative, however, it should be acknowledged that there are likely to be political sensitivities in approximating some elements of the illicit firearms trafficking offence given that questions of aggravating or mitigating circumstance, sanctions and penalties, and the factor of negligence and degrees of intent touch on fundamental principles of criminal law at the national level.

5.3 Policy Objectives and Evaluation of Policy Options

The overall policy objectives of any new EU-level initiative to combat illicit firearms trafficking should be to combat illicit firearms trafficking in the EU more effectively and by doing so, enhancing the common area of freedom, security and justice. More specific goals include deterring criminal offences related to firearms, improving cooperation between law enforcement authorities in preventing detecting, disrupting, investigating and prosecuting illicit arm trafficking; and providing a model which can be promoted in discussions with third countries on firearms risk reduction. Operational goals are defined as being to minimize the differences in definitions of firearms offences and levels of sanctions across the EU; to put in place a system for regular monitoring the effectiveness of efforts to disrupt firearms crime, and to further encourage the sharing of information and intelligence.

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Three Policy Options have been defined and in the report. To summarize:

- **Policy Option 1: Status Quo** – continuation of the current situation with no new EU intervention.
- **Policy Option 2(a): Non-legislative action** - promoting closer collaboration between Member States rather than introducing new EU-level initiatives (although these may be necessary to promote close collaboration). This option would include non-statutory intervention, either as a first step or supporting action for implementing EU legislation in the future.
- **Policy Option 2(b): Minimum legislative intervention at the EU level** - a minimum level of legislative intervention at EU level that would aim to strengthen cross-border cooperation between law enforcement agencies.
- **Policy Option 3: Comprehensive legislative solution at EU level** - EU action to introduce legally-binding common minimum standards across Member States with regard the definition of criminal offences and their sanctions related to illicit arms trafficking and linked offences.
- **Policy Option 4 – Combination of legislative and non-legislative actions**, i.e. Policy Options 2 and 3.

In essence, Policy Option 1 entails a continuation of the status quo as defined in the problem assessment (or even a potential worsening of the problem caused by illicit firearms trafficking) with the 'advantageous effects' of Policy Options 2 and 3 being measured against this baseline. Because it is difficult to quantify what impact different Policy Options might have on the current level of illicit firearms trafficking, the assessment of the merits and drawbacks of different Policy Options is essentially qualitative.

Drawing on the results of the analysis of financial and economic, social and other impacts, including the implications for fundamental rights, the conclusion is that Policy Option 4 (i.e. a combination of Policy Options 2 and 3) will have the most advantageous effect on the problem and on promoting EU policy aims. Policy Option 4 is therefore the recommended option.

Supporting Information – Definitions & Policy Context

A

This appendix contains and edited and further developed section on key definitions and the policy background that was originally contained in the inception report.

B.1 Definitions

The following table provides an overview of various illicit firearms trafficking definitions. The table shows that there is currently no common definition of illicit firearms trafficking among EU Member States and international organisations such as the UN and OSCE. One of the key differences between the definitions appears to be the extent to which military arms are included in the collective term 'firearm'.

Definitions of Illicit Arms Trafficking			
Level	EU	UN	OSCE
Law	Directive 2008/51/EC and Regulation (EU) No 258/2012	UN Firearms Protocol	Forum for Security Cooperation (FSC) Decision 15/02
Term used	Firearm	SALW	SALW
Countries covered	28 Member States	85	57 participating States
Military arms covered	No	Yes	Yes

At the EU level there are two similar but distinct definitions of weapons. Firstly, a firearm is defined in **Directive 2008/51/EC and Regulation (EU) No 258/2012** as '...any portable weapon that expels, is designed to expel or may be converted to expel shot, bullet or projectile by the action of a combustible propellant ' Firearms designed for military use are excluded from the scope of the legislation to which this definition applies.¹⁵⁸

Secondly, the term '**small arms and light weapons**' (SALW) is generally used in United Nations fora and in the field of the EU's Common Foreign and Security Policy. Although there is no agreed international definition for this term, the EU considers that it covers automatic and semi-automatic machine guns and rifles which are designed specifically for military use (**Council Joint Action of 12 July 2002 on the European Union's contribution to combatting the destabilising accumulation and spread of small arms and light weapons and repealing Joint Action 1999/34/CFSP**). Generally speaking, the term "firearm" is used in internal EU security aspects, while SALW is used at the international level and by the EU in Common Foreign and Security Policy matters.

Although there is not yet an internationally agreed definition of small arms and light weapons, the **Organisation for Security Cooperation in Europe (OSCE)** defines small arms and light weapons to be man-portable weapons made or modified to military specifications for use as lethal instruments of war. Small arms are broadly categorized as those weapons intended for use by individual members of armed or security forces.

¹⁵⁸ 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 94/1, 30.3.2012.

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They include revolvers and self-loading pistols; rifles and carbines; sub-machine guns; assault rifles; and light machine guns.

Light weapons are broadly categorized as those weapons intended for use by several members of armed or security forces serving as a crew. They include heavy machine guns; hand-held under-barrel and mounted grenade launchers; portable anti-aircraft guns; portable anti-tank guns; recoilless rifles; portable launchers of anti-tank missile and rocket systems; portable launchers of anti-aircraft missile systems; and mortars of calibres less than 100 mm.¹⁵⁹ The definition of SALW adopted in the EU Strategy to combat illicit accumulation and trafficking of SALW and their ammunition is that set out in the Annex to the **Council Joint Action of 12 July 2002 on the EU's contribution to combatting the destabilising accumulation and spread of small arms and light weapons**.¹⁶⁰

This study will consider criminal trafficking in all weapons whether understood to be 'firearms' or 'small arms and light weapons' (SALW). The box below provides definitions of other key words used in relation to this study as defined in Directive 2008/51/EC

Terminology used in Directive 2008/51/EC

Parts - 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

Essential components - each-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

Ammunition - 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.

Illicit trafficking - 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)

Illicit manufacturing - 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)

Tracing - the systematic tracking of firearms and, where possible, their parts and

¹⁵⁹ OSCE, Document on small arms and light weapons, FSC.DOC/1/00/Rev.1, 20 June 2012

¹⁶⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:191:0001:0004:EN:PDF>

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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

Dealer - 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.

Broker - 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.

B.2 International Legal framework on combatting illicit firearms trafficking

Perhaps not surprisingly given the political and other interests at stake, until very recently there has been no internationally binding treaty to combat the problem of illicit firearm trafficking, no agreed international standard of marking and tracing weapons and no real transparency in arms export and the transfer of arms to 'high risk' regions. These and other shortcomings mean that many loopholes exist. A key aim of any EU initiative should be to try and rectify this, at least as far as EU Member States is concerned.

At the international level, the **UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition** ('UN Firearms Protocol') was adopted in May 2001 as the third supplementary Protocol to the United Nations Convention against Transnational Organized Crime, by General Assembly resolution 55/255. The Protocol entered into force on 3 July 2005. The objective of the UN Firearms Protocol, which is the first legally binding instrument (but not a treaty) on small arms adopted at the global level, is to promote, facilitate and strengthen cooperation among States in preventing, combatting and eradicating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

In 2011, another international initiative, the **Model Law against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition** was developed by the United Nations Office on Drugs and Crime (UNODC) in response to the request of the General Assembly to the Secretary-General to promote and assist the efforts of Member States to become party to and implement the United Nations Convention against Transnational Organized Crime and the Protocols thereto. It was developed in particular to assist States in implementing a legislative regime consistent with the provisions contained in the UN Firearms Protocol, supplementing the United Nations Convention against Transnational Organized Crime.

On 2 April 2013, the General Assembly voted in favour of the landmark **Arms Trade Treaty**, regulating the international trade in conventional arms, from small arms to battle tanks, combat aircraft and warships. Article 6 of the Treaty prohibits the transfer of, or illicit trafficking in, conventional arms:

"A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if the transfer would violate its relevant international obligations under international

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agreements to which it is a Party, in particular those relating to the transfer of, or illicit trafficking in, conventional arms.”

The treaty commits State Parties to assess all exports with a view to the eradication of illicit trade in weapons and so to contribute to peace and security and to prevent serious violations of international humanitarian or international human rights law.

In terms of external action, the EU in 2005 adopted a strategy to combat the illicit accumulation and trafficking of small arms and light weapons and their ammunition. The strategy sets down three principles underpinning the EU’s action in the field of small arms and light weapons – prevention, cooperation with partners and support to multilateralism. This complements and contributes to the implementation of the UN Programme of Action on the Illicit Trade in Small Arms and Light Weapons and the International Tracing Instrument¹⁶¹ by combining all the instruments and policies available to the EU for tackling all facets of the firearms issue. A total of around 21m EUR from different EU budget lines was deployed in 2011-13 to support disarmament, demobilisation and reintegration and to counter illicit trafficking in firearms and small arms and light weapons around the world.

For example, the EU is supporting physical security and stockpile management activities in Libya and the wider region¹⁶², the South-Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons, regional centres for firearms control in Central America (CASAC) and Africa (RECSA), the OSCE Secretariat, the United Nations Office for Disarmament Affairs, several civil society organisations¹⁶³ and INTERPOL’s firearms tracing system (see below). The Commission with the European External Action Service has developed a proposal¹⁶⁴ for the Instrument for Stability covering the period 2014-2020 under which further funding for tackling firearms trafficking could be directed towards partner countries, supplemented by assistance from Member States law enforcement. Candidate countries for accession to the EU, meanwhile, are required to align national legislation with existing instruments¹⁶⁵ concerning the export, brokering, acquisition, possession and trafficking of weapons.

¹⁶¹ The 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects is a politically binding document which was adopted by all UN Member States by consensus and provides for a global commitment to a comprehensive approach to promote, at the local, national, subregional, regional and global level the prevention, reduction, and eradication of the illicit trade in small arms and light weapons in all its aspects as a contribution to international peace and security. It encompasses a wide variety of activities, including stockpile management and security, transfer controls, record-keeping, destruction, information-sharing mechanisms and DDR. It does not seek to control transfers to non-state actors or civilian small arms possession. Implementation is reviewed at Biennial Meetings of States and regular Review Conferences (the last Review Conference took place in August – September 2012 in New York). The International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, adopted by the United Nations General Assembly on 8 December 2005.

¹⁶² Council Decision 2013/320/CFSP; this is part of the EU’s comprehensive approach to support the transition process to democracy, sustainable peace and security in Libya; EU Border Assistance Mission in Libya.

¹⁶³ Examples of organisations supported by the EU are the Stockholm International Peace Research Institute and Saferworld.

¹⁶⁴ Regulation scheduled for adoption in autumn 2013.

¹⁶⁵ Firearms Directives (1991 and 2008), Council Decision 2011/428/CFSP of 18 July 2011 in support of United Nations Office for Disarmament Affairs activities to implement the United Nations Programme of Actions to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.

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The EU has also taken several initiatives in the framework of its **Common Foreign and Security Policy** to address illicit arms trafficking at the international level. In particular, the EU has developed a Code of Conduct for exporting conventional weapons, a Common Position on arms brokering and an EU Strategy to combat illicit accumulation and trafficking of SALW. The purpose of the SALW Strategy is to contribute to an integrated, coherent and visible EU action against the accumulation and spread of such arms and weapons. The political aim is to implement and strengthen the United Nation Programme of Action on Small Arms and Light Weapons (UNPoA).

B.3 EU Legal Framework on combatting illicit arms trafficking

The misuse of firearms, be it legally-owned civilian weapons or civilian or military weapons which have been illicitly manufactured or obtained, is a serious threat to the EU's security from both an internal and an external perspective¹⁶⁶.

Article 83 (1) TFEU includes "illicit arms trafficking" in the list of crimes for which there is a legal basis for adopting a directive on minimum rules concerning the definition of criminal offences and sanctions in the area of illicit arms trafficking with a cross-border dimension.

Several particularly important EU-level measures have been adopted to complement EU Member States' initiatives to reinforce controls on the legal sale and holding of firearms in the EU. The aim is to properly monitor the movement of firearms within the EU and to develop cooperation between national administrations in charge of controls.

In **Directive 2008/51/EC of the European Parliament and of the Council of 21 May 2008 amending Council Directive 91/477/EEC of 19 June 1991 on control of the acquisition and possession of weapons**, measures are laid down for the improvement of the marking and registration of firearms within Member States, including possible common guidelines on deactivation standards and techniques to ensure that deactivated firearms are rendered irreversibly inoperable.

Under the Directive firearms and related items should not be transferred between EU Member States without the knowledge and consent of all the authorities involved. To give EU law enforcement authorities better tools to combat illicit arms trafficking, the directive sets out strong rules for exports and imports of firearms. The European Commission aims to make exports of firearms subject to export authorisations that must contain the necessary information for tracing the firearms, including the country of origin and of export, the consignee and the final recipient, as well as a description of the quantity of the firearms, their parts, components and ammunition.

There are a number of limitations. Firstly, the legislation does not apply to firearms intended for military purposes. Secondly, it only concerns trade and transfers of firearms with non-EU countries. Transfers of firearms within the Union are regulated by the Directive on the control of the acquisition and possession of weapons (91/477/EEC). It integrates the appropriate provisions required by the UN Firearms Protocol as regards intra-Community transfers of weapons. The Directive establishes rules on controls by the Member States on the acquisition and possession of firearms and their transfer to another Member State. Whilst it is prohibited to acquire and possess Category A

¹⁶⁶ Council Report on the Implementation of the European Security Strategy - Providing Security in a Changing World; The EU Internal Security Strategy in Action: Five steps towards a more secure Europe, COM(2010) 673.

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firearms (explosive arms, automatic weapons), for Category B weapons (semi-automatic weapons) an authorization is necessary and for Category C and D a declaration suffices. The Directive requires authorities in the Member States to issue a European firearms pass to any person lawfully entering into possession of and using a firearm. The pass must always be in the possession of the person using the firearm or firearms listed on it. For identification and tracing purposes, each firearm and elementary package of ammunition must be marked upon manufacturing.

To this end, EU Member States may apply the provisions of **the Convention of 1 July 1969 on Reciprocal Recognition of Proofmarks on Small Arms**. A computerised data-filing system into which these firearms are to be registered must be set up by EU countries no later than 31 December 2014. Only authorised authorities can access the register. In addition, EU countries may set up a system to regulate the activities of arms brokers. Arms dealers must keep a register for firearms they receive or dispose of throughout their period of activity. On 11th April 2013, the Commission decided to set up a group of experts on the risk of firearms to help identify what action should be taken while at the same time launching a wide public consultation on the issue.

Problems with the ratification of the UN Fire Arms Protocol

One of the main objectives of the Commission's current policy on firearms is to complete the process of **transposition into EU legislation of all the provisions of the UN Fire Arms Protocol**. However, in the absence of EU legislation covering criminalisation, the Protocol has only been partially signed and ratified. To date, 18 Member States have signed the Protocol while further 20 Member States have ratified/approved it and the Commission signed/ratified it on behalf of the EU.

Although the Commission ratified the Protocol leading to its legal effect in all Member States, there are still differences in the scope of the crime and sanctions for illicit arms trafficking that exist at the national level in the EU. There is also considerable flexibility available to Member States in the implementation of both Recital 16 of Regulation 258/2012 and Art. 16 of the Directive on control of the acquisition and possession of weapons, which has led to more diverse legal frameworks in the EU (Firearms Directive).

In some cases the lack of a common EU legal framework on illicit firearms trafficking may impede effective cross-border police and judicial cooperation. For example, by preventing Law Enforcement Authorities from sharing information with LEAs in other Member States where a different set of legal rules apply to illicit arms trafficking. The lack of a common legal framework may also prevent judicial authorities from prosecuting cases which involve a cross-border dimension.

In March 2013, the EU proposed that the Protocol should be ratified after all the provisions of the protocol that fall under the Union's competence had been fully transposed into EU legislation. The Commission is now in a position to launch the ratification procedure for the EU. This will require Member States that have not yet ratified the Protocol to ensure its provisions are made legally binding under their national law. These international agreements, although essential, represent the first step towards a fully effective response to combatting illicit firearms trafficking.

Commission Communication on Firearms and the internal security of the EU

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The Commission recently (October 2013) produced a communication named 'Firearms and the internal security of the EU: protecting citizens and disrupting illegal trafficking'¹⁶⁷, which noted that differences in national legislation on firearms are exploited by criminals, increasing the risk of illicit circulation across borders. To address this situation, firearms experts have called for the approximation of national firearms legislation. A lack of solid EU-wide statistics and intelligence hampers effective policy and operational responses, and has contributed to firearms being downgraded in relation to other serious crimes, despite recognition of firearms as a key facilitator for crimes such as drug trafficking. The last joint customs operations focused on firearms was in 2006¹⁶⁸, and it was unable to make any seizures due to a lack of investigative leads and precise knowledge of routes of firearms trafficking. Action at an EU level can help build that basis of intelligence and statistics to address knowledge gaps and to inform dialogue between Member States on best practices.

The Commission's Communication highlighted the need for the EU to look at what can be done to disrupt the illicit trade in firearms more directly. For example, the lifecycle of a weapon begins with its manufacture and ends with its destruction. At any of the intervening stages of sale, possession, trade, storage and deactivation the weapon is susceptible to diversion into criminal hands. The Commission believes that stronger action targeting the most vulnerable areas in the lifecycle of the firearm, from production through to destruction, would facilitate both legal trade in the internal market and law enforcement cooperation in identifying and disrupting organised criminal groups, which is a priority for the EU Internal Security Strategy and the 'policy cycle' for fighting serious and organised crime.

The Communication proposes an integrated policy for addressing the threat of illicit firearms trafficking, through legislation, operational action, training and EU funding. Building on steps already taken at international, EU and national level, it focuses on the following four priorities.

- Safeguarding the licit market for civilian firearms through new EU standards on which firearms can be sold for civilian use, how firearms should be marked, and how to license persons who wish to possess and to use firearms.
- Reducing diversion of firearms into criminal hands through the development of effective standards on safe storage of civilian firearms and on how to deactivate civilian and military firearms, and greater efforts to reduce illicit trafficking of firearms (whether civilian or military) from outside the EU.
- Increasing pressure on criminal markets through better cross-border cooperation between police, customs and border guards and by assessing the need for common EU rules on which offences linked to firearms should be criminalised and what level of criminal sanctions should be imposed by Member States.
- Building better intelligence by gathering and sharing more information on firearms crimes, and by targeted training of law enforcement officers.

¹⁶⁷ COM(2013) 716 final. Communication from the Commission to the Council and the European Parliament Firearms and the internal security of the EU: protecting citizens and disrupting illegal trafficking.

¹⁶⁸ Operation Fireball targeted lorries originating in the Western Balkans and entering the EU through its eastern border.

Supporting Information – Definitions & Policy Context A

These priorities draw on discussions with law enforcement authorities, the views of victims of gun violence, NGOs and authorised manufacturers retailers and users, as well as responses to a public consultation conducted by the Commission in March-June 2013¹⁶⁹.

The communication responds to the call by the European Parliament for more action to identify and to address vulnerabilities in the lifecycle of firearms, to safeguard lawful production, sale and possession of firearms, to disrupt criminal supply chains and to deter illicit use¹⁷⁰. It complements the EU's actions in other key security areas, including the fight against organised crime and terrorism, and the EU's 2005 strategy on illicit accumulation and trafficking of small arms and light weapons and their ammunition¹⁷¹.

The EU has therefore sought a balanced approach to regulating the lawful circulation of civilian (i.e. non-military) firearms in the internal market, to disrupting the illicit circulation and use of civilian firearms, and to standards on the transfer and brokering of conventional military arms.

¹⁶⁹ Consultation on a common approach to reducing the harm caused by criminal use of firearms in the EU; http://ec.europa.eu/yourvoice/index_en.htm

¹⁷⁰ The Interim Report on Organised Crime, CRIM Committee European Parliament highlights in particular more action on marking and illicit trafficking.

¹⁷¹ EU Strategy to combat illicit accumulation and trafficking of SALW and their Ammunition, Council document 5319/06.

Supporting Data – Problem Definition

B

EU Member States	Total - privately owned firearms (licit and illicit)	Number of licensed firearms holders	Number of registered firearms	Number of illicit firearms	% Illicit firearms	Number of unregistered firearms	% all firearms
Austria	2,500,000	330,000	n/a	n/a	n/a	n/a	n/a
Belgium	1,800,000	458,000	870,000	n/a	n/a	930,000	51.7
Bulgaria	480,000	n/a	275,690	93,200	19.4	204,310	42.6
Croatia	969,000	n/a	376,000	152,850	15.8	593,000	61.2
Czech Rep	1,600,000	180,170	632,000	n/a	n/a	968,000	60.5
Cyprus	275,000	n/a	104,600	n/a	n/a	170,400	62.0
Denmark	650,000	21,000	n/a	n/a	n/a	n/a	n/a
Estonia	123,000	31,000	47,000	n/a	n/a	76,000	61.8
Finland	2,400,000	672,700	1,580,000	n/a	n/a	820,000	34.2
France	19,000,000	n/a	2,802,000	n/a	n/a	16,198,000	85.3
Germany	25,000,000	2,000,000	n/a	17,000,000	68.0	n/a	n/a
Greece	2,500,000	3,180	100,000	n/a	n/a	2,400,000	96.0
Hungary	560,000	84,000	211,100		0.0	348,900	62.3
Italy	7,000,000	n/a	n/a	n/a	n/a	n/a	n/a
Ireland	383,500	n/a	233,120	150,000	39.1	150,380	39.2
Latvia	280,000	n/a	57,500	n/a	n/a	222,500	79.5
Lithuania	135,000	n/a	77,600	n/a	n/a	57,400	42.5
Luxembourg	70,000	18,000	n/a	n/a	n/a	n/a	n/a
Malta	48,000	27,000	49,400	n/a	n/a	-1,400	-2.9
Netherlands	510,000	n/a	330,000	n/a	n/a	180,000	35.3
Poland	500,000	131,200	314,600	400,000	80.0	185,400	37.1
Portugal	2,600,000	n/a	1,400,000	1,200,000	46.2	1,200,000	46.2
Romania	160,000	61,100	61,100	40,000	25.0	98,900	61.8
Slovakia	450,000	n/a	170,100	n/a	n/a	279,900	62.2
Slovenia	270,000	n/a	102,700	n/a	n/a	167,300	62.0
Spain	4,500,000	2,500,000	3,051,000	n/a	n/a	1,449,000	32.2
Sweden	2,800,000	781,500	2,096,000	n/a	n/a	704,000	25.1
United Kingdom	4,060,000	839,800	2,160,900	n/a	n/a	1,899,100	46.8
Total	81,623,500	8,138,650	17,102,410	19,036,050	23.3	64,521,090	79.0

Source: gunpolicy.org

Analysis of Survey Responses

C

Member State:

Country	Nº	%	Country	Nº	%
Austria	1	1.3	Latvia	0	0.0
Belgium	3	3.8	Lithuania	2	2.5
Bulgaria	0	0.0	Luxembourg	1	1.3
Croatia	0	0.0	Malta	0	0.0
Cyprus	2	2.5	Netherlands	2	2.5
Czech Rep.	0	0.0	Poland	2	2.5
Denmark	1	1.3	Portugal	1	1.3
Estonia	0	0.0	Romania	0	0.0
Finland	7	8.8	Slovakia	0	0.0
France	0	0.0	Slovenia	1	1.3
Germany	1	1.3	Spain	18	22.5
Greece	1	1.3	Sweden	0	0.0
Hungary	0	0.0	UK	1	1.3
Ireland	1	1.3	Not given	22	27.5
Italy	13	16.3	Total	80	72.5

What is the scale of illicit firearms trafficking in your country? Please estimate the number of illicit firearms in circulation:

Options	Nº	%
Less than 10,000 weapons	3	3.8
10,001 to 50,000 weapons	1	1.3
50,001 to 100,000 weapons	0	0.0
100,001 to 250,000 weapons	1	1.3
250,001 to 500,000 weapons	0	0.0
500,001 to 1,000,000 weapons	1	1.3
More than 1,000,000 weapons	1	1.3
Don't know/no answer	73	91.2
Total	80	100.0

Please estimate the annual growth rate of illicit firearms in your country

Options	Nº	%
Less than 0%	0	0.0
0%	4	5.0
1% to 5%	6	7.5
5% to 10%	0	0.0
More than 10%	0	0.0
Don't know/no answer	70	87.5
Total	80	100.0

Analysis of Survey Responses

C

Compared with illicit firearms trafficking that takes place purely within your country, how significant is the cross-border dimension?

Options	Nº	%
Very significant - accounts for most of the illicit firearms trafficking problem	7	8.8
Quite significant - accounts for some but not most of the problem	3	3.7
Not significant at all - does not account for a significant proportion of illicit firearms trafficking at all	3	3.7
Don't know/no answer	67	83.8
Total	80	100.0

What are the main drivers for illicit firearms trafficking?

Options	Most important		Some importance		Least important		Don't know / no answer		Total	
	Nº	%	Nº	%	Nº	%	Nº	%	Nº	%
Legally manufactured firearms falling into the hands of criminals	2	2.5	0	0.0	16	20.0	62	77.5	80	100
Illicitly manufactured firearms	1	1.3	4	5.0	10	12.5	65	81.3	80	100
Demand from organised criminals and/or terrorist groups	8	10.0	1	1.3	3	3.8	68	85.0	80	100
Surplus firearms from recent conflicts (in Europe)	5	6.3	4	5.0	4	5.0	67	83.8	80	100
Demand for firearms from conflicts (outside the EU)	8	10.0	1	1.3	5	6.3	66	82.5	80	100
Firearms which are legal/illegal in another Member State	2	2.5	3	3.8	12	15.0	63	78.8	80	100

Who are the main groups involved in illicit firearms trafficking in your country?

Options	Most important		Some importance		Least important	
	Nº	%	Nº	%	Nº	%
Terrorists	3	3.8	2	2.5	8	10.0
Organised criminal groups	12	15.0	3	3.8	1	1.3
Non-organised criminal groups	4	5.0	6	7.5	5	6.3
No answer	61	76.3	69	86.3	66	82.5
Total	80	100.0	80	100.0	80	100.0

To what extent are existing national offences and corresponding sanctions effective in tackling the problem of illicit firearms trafficking?

Options	Nº	%
Large extent (very effective)	5	6.3
Some extent	9	11.3
Neutral	2	2.5
Small extent	3	3.8

Analysis of Survey Responses

C

No extent (not effective at all)	1	1.3
No answer	60	75.0
Total	80	100.0

How effective are the notions of negligence, aggravating or mitigating circumstances in tackling the problem of illicit firearms trafficking?

Options	Nº	%
Large extent (very effective)	4	5.0
Some extent	5	6.3
Neutral	3	3.8
Small extent	3	3.8
No extent (not effective at all)	2	2.5
No answer	63	78.8
Total	80	100.0

Are there any national obstacles to securing illicit firearms trafficking convictions in relation to the offences outlined in national legislation?

Options	Most important		2		3		Not an obstacle		No answer		Total	
	Nº	%	Nº	%	Nº	%	Nº	%	Nº	%	Nº	%
The legislation is poorly designed to secure convictions	3	3.8	2	2.5	2	2.5	11	13.8	62	77.5	80	100
The enforcement systems are weak	6	7.5	6	7.5	3	3.8	3	3.8	62	77.5	80	100
There is insufficient resources to tackle the full scale of the problem	8	10.0	5	6.3	3	3.8	2	2.5	62	77.5	80	100
There is insufficient cross border police and judicial cooperation to tackle the full scale of the problem	11	13.8	4	5.0	2	2.5	0	0.0	63	78.8	80	100

Have existing EU legislation, and wider international measures helped in tackling cross-border aspects of illicit firearms trafficking? To what degree?

Options	Nº	%
Large extent	2	2.5
Some extent	10	12.5
Neutral	2	2.5
Small extent	2	2.5
Not helped at all	2	2.5
No answer	62	77.5
Total	80	100.0

In your country, does the law and the practice differ in respect of the prosecution of illicit firearms trafficking offences? To what degree?

Options	Nº	%
Large extent	1	1.3
Some extent	3	3.8

Analysis of Survey Responses

C

Neutral	2	2.5
Small extent	3	3.8
Does not differ at all	11	13.8
No answer	60	75.0
Total	80	100.0

To what extent are Member State procedures for judicial cross-border cooperation effective?

Options	Nº	%
Large extent	3	3.8
Some extent	2	2.5
Neutral	4	5.0
Small extent	3	3.8
No extent (not effective at all)	0	0.0
No answer	68	85.0
Total	80	100.0

What are the key barriers to judicial cooperation?

Options	Lack of mutual assistance obligations		Poorly developed procedures		Legal barriers e.g. differences in legal		Lack of approximation of legislation		Limited resources	
	Nº	%	Nº	%	Nº	%	Nº	%	Nº	%
Most important	4	5.0	7	8.8	6	7.5	5	6.3	8	10.0
Some importance	4	5.0	4	5.0	2	2.5	2	2.5	5	6.3
Least important	2	2.5	3	3.8	3	3.8	4	5.0	0	0.0
Not a barrier	5	6.3	2	2.5	5	6.3	5	6.3	2	2.5
No answer	65	81.3	64	80.0	64	80.0	64	80.0	65	81.3
Total	80	100.0	80	100.0	80	100.0	80	100.0	80	100.0

To what extent is cross-border police cooperation effective?

Options	Nº	%
Large extent	0	0.0
Some extent	8	10.0
Neutral	1	1.3
Small extent	4	5.0
No extent (not effective at all)	0	0.0
No answer	67	83.8
Total	80	100.0

What are the key barriers to police cooperation?

Analysis of Survey Responses

C

Options	Lack of mutual assistance obligations		Poorly developed procedures		Legal barriers e.g. differences in legal systems		Lack of approximation of legislation		Limited resources	
	Nº	%	Nº	%	Nº	%	Nº	%	Nº	%
Most important	2	2.5	3	3.8	4	5.0	3	3.8	6	7.5
Some importance	5	6.3	11	13.8	4	5.0	4	5.0	7	8.8
Least important	2	2.5	0	0.0	3	3.8	4	5.0	0	0.0
Not a barrier	6	7.5	2	2.5	5	6.3	5	6.3	1	1.3
No answer	65	81.3	64	80.0	64	80.0	64	80.0	66	82.5
Total	80	100.0	80	100.0	80	100.0	80	100.0	80	100.0

Which of the following policy options do you favour?

Options	Nº	%
Policy Option 0	2	2.5
Policy Option 1	17	21.3
Policy Option 2	1	1.3
Policy Option 3	5	6.3
None of the above	1	1.3
No answer	54	67.5
Total	80	100.0

In your opinion, to what extent would each option have an impact on each of the following aspects?

Availability of illicit firearms:	Positive impact		No impact		Negative impact		Don't know/ no answer		Total	
	Nº	%	Nº	%	Nº	%	Nº	%	Nº	%
Policy Option 0	1	1.3	7	8.8	3	3.8	69	86.3	80	100.0
Policy Option 1	10	12.5	4	5.0	0	0.0	66	82.5	80	100.0
Policy Option 2	9	11.3	1	1.3	3	3.8	67	83.8	80	100.0
Policy Option 3	6	7.5	1	1.3	4	5.0	69	86.3	80	100.0

Ease of trafficking illicit firearms within the EU:	Positive impact		No impact		Negative impact		Don't know/ no answer		Total	
	Nº	%	Nº	%	Nº	%	Nº	%	Nº	%
Policy Option 0	0	0.0	7	8.8	2	2.5	71	88.8	80	100.0
Policy Option 1	9	11.3	1	1.3	2	2.5	68	85.0	80	100.0
Policy Option 2	7	8.8	2	2.5	2	2.5	69	86.3	80	100.0
Policy Option 3	3	3.8	1	1.3	6	7.5	70	87.5	80	100.0

Analysis of Survey Responses

C

Ease of trafficking illicit firearms from outside the EU:	Positive impact		No impact		Negative impact		Don't know/ no answer		Total	
	Nº	%	Nº	%	Nº	%	Nº	%	Nº	%
Policy Option 0	1	1.3	7	8.8	2	2.5	70	87.5	80	100.0
Policy Option 1	8	10.0	3	3.8	1	1.3	68	85.0	80	100.0
Policy Option 2	8	10.0	1	1.3	3	3.8	68	85.0	80	100.0
Policy Option 3	3	3.8	1	1.3	6	7.5	70	87.5	80	100.0

Rate of prosecution of illicit firearms trafficking:	Positive impact		No impact		Negative impact		Don't know/ no answer		Total	
	Nº	%	Nº	%	Nº	%	Nº	%	Nº	%
Policy Option 0	1	1.3	7	8.8	2	2.5	70	87.5	80	100.0
Policy Option 1	10	12.5	2	2.5	0	0.0	68	85.0	80	100.0
Policy Option 2	8	10.0	1	1.3	3	3.8	68	85.0	80	100.0
Policy Option 3	5	6.3	1	1.3	6	7.5	68	85.0	80	100.0

Comparative Tables for Legal Analysis

D

Comparative tables:

- (A) Key elements of illicit firearms trafficking in UN Firearms Protocol, UNODC Model Law, UN Arms Trade Treaty and Directive 91/477/EEC
- (B) National provisions criminalising illicit firearms trafficking (including marking of firearms and illicit firearms manufacturing)
- (C) Definitions of 'firearms' in national law
- (D) Aggravating or mitigating circumstances in Member States' national laws on illicit firearms trafficking

Comparative Analysis of Legal Issues

D

A. Key elements of illicit firearms trafficking in UN Firearms Protocol, UNODC Model Law, UN Arms Trade Treaty and Directive 91/477/EEC

Element of legal analysis	UN Firearms Protocol	UNODC Model Law	UN Arms Trade Treaty	Directive 91/477/EEC, as amended
Definition of 'firearm'	'Firearm' shall mean any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas. Antique firearms and their replicas shall be defined in accordance with domestic law. In no case, however, shall antique firearms include firearms manufactured after 1899 (Article 3(a)).	Same definition as UN Firearms Protocol (see previous column) – article 4(h). ¹⁷²	No reference to 'firearms'. The ATT refers to 'small arms and light weapons' (SALW), but the precise meaning of these is not given.	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. Note: Certain carve-outs are set out in Part III of Annex I, with the effect that the EU definition is narrower than that of the Protocol. The most notable carve-out is for antique weapons or replicas not included in other categories in Annex I and which are already subject to national laws: such weapons are excluded from the definition of 'firearm' in the Directive. By contrast, in the Protocol there is a blanket prohibition of any firearms manufactured after 1899 being classified as 'antique'. ¹⁷³

¹⁷² The commentary accompanying this provision notes that "The definition of "firearm" will be a critical element of domestic implementing legislation. States will in many cases already have one or more domestic legal definitions. States that do not already have a definition in domestic law should include one that at a minimum complies with the definition in the Protocol in order to ensure the application of the various forms of cooperation under the Protocol and the Convention".

¹⁷³ Part III of Annex 1 provides: "For the purposes of this Annex objects which correspond to the definition of a 'firearm' shall not be included in that definition if they: (a) have been rendered permanently unfit for use by the application of technical procedures which are guaranteed by an official body or

Comparative Analysis of Legal Issues

D

Element of legal analysis	UN Firearms Protocol	UNODC Model Law	UN Arms Trade Treaty	Directive 91/477/EEC, as amended
				<p>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:</p> <ul style="list-style-type: none"> - 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. (Article 1(1))
Definition of 'illicit firearms trafficking'	'Illicit trafficking' shall mean the import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition from or across the territory of one State Party to that of another State Party if any one of the States Parties concerned does not authorize it in accordance with the terms of this Protocol or if the firearms are not marked in accordance with article 8 of	Same definition as UN Firearms Protocol (see previous column) – article 4(l)	'Illicit trafficking' not defined.	<p>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). (Article 1(2))</p> <p>Note: the Protocol conducts of "import, export" are not included in</p>

recognized by such a body; (b) are designed for alarm, signaling, life-saving, animal slaughter or harpoon fishing or for industrial or technical purposes provided that they can be used for the stated purpose only; (c) are regarded as antique weapons or reproductions of such where these have not been included in the previous categories and are subject to national laws. Pending coordination throughout the Community, Member States may apply their national laws to the firearms listed in this Section."

Comparative Analysis of Legal Issues

D

Element of legal analysis	UN Firearms Protocol	UNODC Model Law	UN Arms Trade Treaty	Directive 91/477/EEC, as amended
	this Protocol (Article 3(e))			the EU definition.
Criminalisation of illicit firearms trafficking	Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct, when committed intentionally (...) illicit trafficking in firearms, their parts and components and ammunition (Article 5(1)(b))	Suggested wording provided to criminalise illicit firearms trafficking in the form of prohibition on (i) any transnational transfer [of firearms] without legal authorization; and (ii) Any transnational transfer [of firearms] if firearms are not marked. (Articles 34 and 35 of Model Law, corresponding to Article 5(1)(b) and Article 3(e) of the Protocol respectively). Suggestions for optional firearms-related offences a State can also consider for inclusion in their national legislation are included in annex I (articles 64-72).	No reference.	No reference.
Level and type of penalties and sanctions (including administrative sanctions)	Generally up to individual States to determine, but for "serious" offences to be compliant with the Convention (parent instrument of the Protocol) the minimum sanction must be custodial sentences of at least 4 years for both	See previous column.	No reference as such. Article 14 provides that "Each State Party shall take appropriate measures to enforce national laws and regulations that implement the provisions of this	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 for natural and legal persons must be effective, proportionate and

Comparative Analysis of Legal Issues

D

Element of legal analysis	UN Firearms Protocol	UNODC Model Law	UN Arms Trade Treaty	Directive 91/477/EEC, as amended
	natural and legal persons. ¹⁷⁴ in addition to any other sanctions deemed appropriate		Treaty.”	dissuasive. (Article 16) but there is no approximation of minimum sanctions at the EU level.
Penalties and sanctions applicable to legal as well as natural persons	Yes, for “serious” offences: “Article 10, paragraph 4, of the Convention sets out additional provisions regarding legal entities, requiring that legal persons held liable for “serious” crimes be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions (civil or administrative), including monetary sanctions. Such sanctions could include, for example, dissolution, disqualification from participation in public procurement, publicizing the decision or freezing of assets.” (Model Law Section B commentary, p.46)	Yes, for “serious” offences. See previous column.	No reference.	Not applicable.
Reference to aggravating or	No reference.	For individual States to decide. “The general	No reference.	No reference.

¹⁷⁴ “Each of the offence provisions in the Protocol must be established as offences in criminal law. This principle applies unless the accused is a legal person, in which case the offence may be a criminal, civil or administrative offence. It is up to States to determine the appropriate sanction depending on their existing national sanctions regime. However, sanctions adopted in domestic law for the offences must take into account and should be proportionate to the gravity of the offences (Convention, article 11, paragraph 1). Penalties for offences, including “serious” crimes under domestic law, are left to the discretion of national drafters. However, to have the Convention applied to such offences, the sanction must be for a maximum penalty of at least four years’ deprivation of liberty. This requirement is general and applies to both natural persons and legal entities.” Model Law Section B commentary, p.45.

Comparative Analysis of Legal Issues

D

Element of legal analysis	UN Firearms Protocol	UNODC Model Law	UN Arms Trade Treaty	Directive 91/477/EEC, as amended
mitigating circumstances		system of aggravating or mitigating circumstances existing within a State's national legislation would be applicable to the offences provided for under the Model Law. Given the range of sanctioning practices within national jurisdictions, the Model Law leaves it to the discretion of the State to decide the appropriate form and level of sanction, in line with existing national practice." (Model Law Section B commentary, p.45)		
Negligent illicit firearms trafficking criminalised	No – the offence must be committed intentionally. See row above on criminalisation of illicit firearms trafficking.	Intention only – see previous column. (Section B commentary, p.45).	No reference.	No reference.

Comparative Tables for Legal Analysis

D

Comparative Table B: National provisions criminalising illicit firearms trafficking (including marking of firearms and illicit firearms manufacturing)

Key for column 3: C = Compliant with standard in UN Protocol / EU Directive 91/477/EEC, as amended; LC = Largely compliant; PC = Partially compliant; N = Non-compliant; NA = Not applicable

Member State	Provision on the criminalisation of illicit firearms trafficking	Compliant with UN standard / Directive?
Protocol	<p>" 'Illicit trafficking' shall mean the import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition from or across the territory of one State Party to that of another State Party if any one of the States Parties concerned does not authorize it in accordance with the terms of this Protocol or if the firearms are not marked in accordance with article 8 of this Protocol." (Article 3(e))</p> <p>" 'Illicit manufacturing' shall mean the manufacturing or assembly of firearms, their parts and components or ammunition:</p> <p>(i) From parts and components illicitly trafficked;</p> <p>(ii) Without a licence or authorization from a competent authority of the State Party where the manufacture or assembly takes place; or</p> <p>(iii) Without marking the firearms at the time of manufacture, in accordance with article 8 of this Protocol"</p> <p>(Article 3(d))</p>	NA
Directive 91/477/EC, as amended	<p>"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)." (Article 1(2))</p> <p>"For the purposes of this Directive, 'illicit manufacturing' shall mean the manufacturing or assembly of firearms, their parts and ammunition:</p> <p>(i) from any essential component of such firearms illicitly trafficked;</p> <p>(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</p>	NA

Comparative Tables for Legal Analysis

D

Member State	Provision on the criminalisation of illicit firearms trafficking	Compliant with UN standard / Directive?
	<i>(iii) without marking the assembled firearms at the time of manufacture in accordance with Article 4(1)."</i> (Article 1(2))	
AT	N/A	N/A
BE	N/A	N/A
BG	Under Articles 156-212 of the new Law in cases of violations fines may be imposed from 100 to 2500 euro, property sanctions from 500 to 15,000 euro and withdrawal of the issued license for manufacture, acquisition or trade with SALW up to 1 year. In case of a repetitive infringement property sanction up to 25,000 euro and withdrawal of the issued license up to 2 years can be imposed. Articles 338 and 339 of the Penal Code were amended in 2010 imposing more severe punishments concerning safety precautions, occurrence of average or severe bodily injury or death, or a substantial damages of a property. The terms of imprisonment have been prolonged with regard to acquisition, keeping, submission, alienation, or taking explosives, firearms or munitions without due permit. According to Article 338 a person who "manufactures, processes, repairs, works out, stores, trades, carries, imports or exports explosives, firearms, chemical, biological or nuclear weapons or munitions without having the right according to a law or a permit by the respective body of the authority, or does not carry it out according to the given permit, shall be punished by imprisonment of one to six years".	LC (no reference to marking)
CY	Law 113(i)2004. "Illicit firearms trafficking means the purchase, sale, delivery, transportation or transfer of firearms, their parts and ammunition from the territory of the Republic [of Cyprus] , or through it, to the territory of another Member State or from the territory of another Member State towards the Republic of Cyprus, in the case that the Republic of Cyprus or the Member State concerned does not authorize the purchase, sale, delivery, transportation or transfer of or if the assembled firearms are not marked in accordance with the provisions of paragraph 1 of Article 4 of Directive 91/477/EEC, as amended by Directive 2008 / 51/EK." According to the Law on Firearms and non- Firearms N113 (I) / 2004 , 'illicit manufacturing' means the manufacture or assembly of firearms, their parts and ammunition - (a) by illicitly trafficked essential component of such firearms (b) without, in accordance with Article 7 of this Law, being granted permission (c) without marking the assembled firearms at the time of manufacture in accordance with the provisions of paragraph 1 of Article 4 of Directive 91/477/EEC, as amended by Directive 2008/51/EC. Article 7 (1) states that: "construction or import or repair or exchange and marketing of firearms or non-firearms by any person is illegal, unless this person has a dealer license issued by the Chief of Police".	LC (no reference to export)

Comparative Tables for Legal Analysis

D

Member State	Provision on the criminalisation of illicit firearms trafficking	Compliant with UN standard / Directive?
	<p>For the above offense no specific penalty is provided but there is a general penalty according to Article 51 (1), which states that:</p> <p><i>"A person, who either in person or via its employer or other representative of, fails to comply with the provisions of this Act, shall, if no other penalty is provided in another provision of this Act, be considered guilty of an offense and shall be liable on conviction to imprisonment not exceeding 15 years or to a fine not exceeding forty two thousand seven hundred and fifteen euro (€ 42,715), or to both. Any weapons on which the offense was committed shall be seized and confiscated or destroyed with the consent of that person."</i></p> <p>Also in regards to illegal tampering Article 42 states that :</p> <p>(1) <i>"The processing firearm or firearm not to the point that substantially alter the characteristics of the weapon or weapon turns into a different category than that for which the license was granted .</i></p> <p>(2) <i>A person who fails to comply with the provisions of subsection (1) is guilty of an offense and is liable on conviction to imprisonment not exceeding three years or to a fine not exceeding eight thousand five hundred forty-three euro (€ 8543) ."</i></p>	
CZ	<p>There are several legislative acts focusing on different types/aspects of improper or illicit trafficking of firearms. The relevant definition of crime which concerns illicit trafficking of firearms is Sec.279 of the Criminal Code No. 40/2009 Coll.</p> <p><i>"Section 279 Illegal Possession of Weapons</i></p> <p><i>(1) Whoever manufactures, procures for themselves or another person, or possesses a firearm or its main part or parts, or large quantities of ammunition or a prohibited weapons complement without authorisation, shall be punished by a prison sentence of up to two years, punishment by disqualification, or forfeiture of items or other assets.</i></p> <p><i>(2) The same punishment shall be imposed, upon those who render a non-functioning firearm usable or perform a design adjustment of the firearm aimed at its functioning state, or whoever performs design changes to increase the efficiency of the firearm, or whoever counterfeits, alters, deletes, or removes the unique marking of firearms, which enable its identification.</i></p> <p><i>(3) Whoever, without authorisation a) produces, procures for themselves or another person, or possesses explosives at an amount larger than small, weapon of mass efficiency, or components that are necessary for such weapon, or b) accumulates, manufactures, or procures for themselves or another person weapons or ammunition in large quantities, shall be punished by a prison sentence of six months to five years.</i></p>	PC (no reference to sale, import/export or movement/transfer)

Comparative Tables for Legal Analysis

D

Member State	Provision on the criminalisation of illicit firearms trafficking	Compliant with UN standard / Directive?
	<i>(4) An offender shall be punished by a prison sentence of two to eight years, if , a) they committed an act referred to in Subsection 3 as a member of an organised group, b) they committed such act to a large extent, or c) they committed such act during a state of national emergency or war."</i>	
DE	<p>In German law there is no definition of illegal arms trafficking as such. According to Chapter 21 of the Weapons Act the commercial trade in firearms and ammunition requires a licence. According to chapters 29 to 31 of the Weapons Act the same applies to the act of moving a weapon (defined as arranging for a weapon or ammunition to be transported over the border into, through or out of the territory governed by this Act in Annex 1 (to Section 1 (4)), Part 2, No. 5). Trading in weapons or moving a weapon without a licence constitutes a criminal offence punishable by fine or imprisonment of up to ten years (depending on the kind of weapon and further circumstances). For details please see Chapters 21, 29 to 31, 51 and 52 of the Weapons Act (attachment 1).</p> <p>The Foreign Trade Act provides for further criminal offences with regard to illegal trafficking. For further information please contact the Federal Ministry for Economic Affairs and Energy.</p>	C (NB No specific offence but illicit firearms trafficking conducts under the Protocol are nonetheless offences under German law – see previous column)
DK	<p>Section 10 of the Weapons and Explosives Act and section 44 of the Order on Weapons and Ammunition establishes illegal manufacture, import, export, acquisition, possession, carrying, use and trade of weapons and explosives as criminal offences. [Text of legislation required.]</p> <p>The Penal Code Section 192a: Those who breach the law on weapons and explosives, import, introduce, possess, carry, use or entrust weapons or explosives which, because of their extremely hazardous nature are capable of causing considerable damage can be sentenced up to 6 years imprisonment... The relevant weapon is typically weapons designed for war, as anti-tank rockets, mortars, grenades, bombs, mines and automatic firearms including submachine guns and machine guns.</p>	LC (no reference to marking)
EE	<p>Penal Code § 392. <i>Illicit import and export of prohibited goods or goods requiring a special permit</i></p> <p><i>(1) Carriage of prohibited goods, or radioactive substances, explosive substances, narcotic drugs or psychotropic substances, precursors for narcotic drugs or psychotropic substances, non-narcotic medicinal products, dangerous chemicals or waste, strategic goods, firearms or ammunition without a mandatory document or without an entry in the state register across the frontier of the European Union customs territory or state border shall be punished by a pecuniary punishment or up to 5 years' imprisonment.</i></p> <p><i>(2) The same act, if: 1) committed by an official taking advantage of his or her official position; or 2)</i></p>	PC (no reference to acquisition or marking)

Comparative Tables for Legal Analysis

D

Member State	Provision on the criminalisation of illicit firearms trafficking	Compliant with UN standard / Directive?
	<p><i>committed by a group, is punishable by 2 to 10 years' imprisonment.</i></p> <p><i>(3) An act provided for in subsection (1) of this section, if committed by a legal person, is punishable by a pecuniary punishment.</i></p> <p><i>(4) The court shall confiscate the substance or object which was the direct object of commission of an offence provided for in this section.</i></p> <p><i>(5) For the criminal offence provided for in this section, the court shall impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 832 of this Code.</i></p> <p>Weapons Act § 891. <i>Violation of requirements for handling of or procedure for keeping records and registration of weapons, essential components of firearms or ammunition</i></p> <p><i>(1) Violation of the requirements for the carrying, storage, conveying, manufacture, conversion, repair, sale, rental or transport of weapons, essential components of firearms or ammunition, or violation of other requirements for the handling of weapons, essential components of firearms or ammunition, or violation of the procedure for keeping records and registration of weapons, essential components of firearms or ammunition is punishable by a fine of up to 300 fine units or by detention.</i></p> <p><i>(2) The same act, if committed by a legal person, is punishable by a fine of up to 3200 euros.</i></p>	
EL	<p>Law 2168/93 (amended by 3944/2011) provides that any transaction that takes place with weapons without authorisation constitutes a criminal offence. Law 2168/93 was amended by N.3944/2011 in 2011 to transpose the provisions of Directive 2008/51/EC. Article 7 of the same law makes provision for falsifying or illicitly obliterating, removing or altering the marking(s) on firearms (6 months imprisonment and fine as above) [Full statutory reference required to confirm provisions on manufacturing]</p>	C
ES	<p>The Royal Decree 137/1993 of 29th January, BOE 55/1993 ("R.A.") provides for administrative sanctions and fines for violations of its provisions, and the Criminal Code establishes a number of crimes related to firearms, including criminal penalties for those who possess or carry illegal weapons or carry weapons without the proper license or authorisation.</p> <p>Article 2.22 of RA defines illicit manufacture as "<i>The manufacture or assembly of firearms, their fundamental parts or essential components and ammunition, provided that occurs some of the following circumstances:</i></p> <ul style="list-style-type: none"> - <i>Made from fundamental parts or essential components of such firearms illicitly trafficked.</i> - <i>Without an authorisation by a competent authority.</i> - <i>Without marking the assembled firearms at the time of manufacture in accordance with the provisions of Article 28 of this Regulation."</i> 	C

Comparative Tables for Legal Analysis

D

Member State	Provision on the criminalisation of illicit firearms trafficking	Compliant with UN standard / Directive?
	<p>Article 2.31 of the Arms Regulation (RA) defines illicit arms trafficking in the EU as <i>"the acquisition, sale, delivery, movement or transfer of firearms, their essential parts and ammunition from or across the territory of one Member State of the European Union to that of another Member State if any one of the Member States concerned does not authorise it or if the assembled firearms are not marked in accordance with article 28 of this Regulation."</i></p> <p>Article 4.1 of the RA prohibits, among others, "the manufacture, importation, circulation, advertising, sale, possession and use of weapons or imitations:</p> <p>a) Firearms which are a result of significant changes to the manufacturing specifications or origin of other weapons without regulatory authorization of the model or prototype. "</p> <p>Art. 30.1 of the RA states that <i>"it shall be prohibited to sell, acquire, possess or use firearms without marks corresponding to the regulatory testing, official test stands, whether Spanish or foreign recognized. Weapons included in category 6^a and 7^a.4 which are held or, if applicable, using the conditions of article 107, are excluded."</i></p> <p>Chapter V of the Criminal Code "On owning, trafficking and deposit of weapons, ammunition or explosives":</p> <p>Article 564 provides that <i>"Possessing regulated firearms while lacking the necessary licences or permits shall be punished:</i></p> <ol style="list-style-type: none"> <i>1. With a sentence of imprisonment from one to two years for handguns;</i> <i>2. With a sentence of imprisonment of six months to one year for long firearms;</i> <p><i>2. The felonies defined in the preceding Section shall be punished, respectively, by prison sentences of two to three years and from one to two years, when any of the following circumstances concurs:</i></p> <ol style="list-style-type: none"> <i>1. When the weapons lack factory marks or serial numbers, or have these altered or obliterated;</i> <i>2. Which have been unlawfully imported into Spain;</i> <i>3. Which have been transformed, modifying their original characteristics."</i> <p>Article 566 states that <i>"Those who manufacture or market arms or ammunition or set up depots for these that are not authorised by law or the competent authority shall be punished ..."</i></p> 	
FI	There is no legal definition of "trafficking in fire arms": legal sanctions are divided into several laws and regulations.	N/A
FR	<p>Code Pénal, Code de la Défense et Code de la Sécurité Intérieure modifiés par la Loi n° 2012-304 du 6 mars 2012</p> <p>Ainsi que le Décret n° 2013-700 du 30 juillet 2013 article 1er – III – 11° (see infra)</p>	C (EU/UN standard incorporated

Comparative Tables for Legal Analysis

D

Member State	Provision on the criminalisation of illicit firearms trafficking	Compliant with UN standard / Directive?
	<p>Décret n° 2013-700 du 30 juillet 2013 article 1er – III – 11° Trafic illicite: “acquisition, vente, livraison, transport d’armes à feu, d’éléments d’arme, de munitions ou d’éléments de munitions, d’outils ou matériels spécifiques à la fabrication des armes, sans autorisation ou en violation d’une réglementation européenne ou internationale, à partir, à destination ou au travers du territoire national ou vers le territoire d’un autre Etat.”</p> <p>Article L2339-11-1 du code de la Défense: Répression : 5ans de prison et amende de 75.000 pour les personnes physiques.</p> <p>Article 131-38 Code Pénal: Répression : amende de 3.750.000 € pour les personnes morales.</p>	into FR provision – trafficking criminalised if it is “en violation d’une réglementation européenne ou internationale”)
HR	N/A	N/A
HU	N/A	N/A
IE	There is no specific legal definition of Firearms Trafficking. Firearms Importation Licensing Laws cover offences of Trafficking and sales without a permit. There is no historic, present or expected future firearms manufacturing industry in this state. The impact of Firearms Trafficking has as a result only been an inward phenomenon from other European and international States. Legislation has not been required to regulate a non-existent Firearms industry in Ireland.	NC
IT	N/A	N/A
LT	<p>Illicit arms trafficking as a criminal offence is provided for in the Article 253 of the Criminal Code of the Republic of Lithuania. Please note, that illicit trafficking is included into a concept of “handling”:</p> <p><i>“Article 253. Unauthorised Possession of Firearms, Ammunition, Explosives or Explosive Materials</i></p> <p><i>1. A person who, without an authorisation, acquires, stores, carries, transports or handles a firearm, ammunition, explosives or explosive materials shall be punished by arrest or by imprisonment for a term of up to five years.</i></p> <p><i>2. A person who, without an authorisation, produces, acquires, stores, carries, transports or handles at least three firearms, the ammunition, explosives or explosive materials of a large explosive power or in a large quantity shall be punished by imprisonment for a term of four up to eight years.”</i></p> <p>The conditions of lawful sale, supply or any other form of possession of firearm are set forth in the Law of the Republic of Lithuania on Control of Weapons and Ammunition (i. e. a licence should be issued). A</p>	PC (no reference to sale of firearms or marking; illicit manufacturing appears to be covered by “produces ... at least three firearms”)

Comparative Tables for Legal Analysis

D

Member State	Provision on the criminalisation of illicit firearms trafficking	Compliant with UN standard / Directive?
	<p>license means an official document issued by a state institution granting the right to engage in the activities specified in the license, complying with the set conditions. Economic commercial activities subject to licensing are as follows:</p> <p>1) manufacture of weapons, accessories of weapons classified in Category A, ammunition, their components; 2) import and export of weapons, weapon accessories, their components; 3) trade in civil circulation in weapons, weapon accessories, ammunition, their components; 4) repair of weapons, conversion of weapons and ammunition; 5) operation of firing ranges and shooting galleries; 6) hire of weapons. A licence to engage in these activities may be issued to legal persons registered in the Republic of Lithuania in accordance with the procedure established by laws and other legal acts. A natural person is entitled to acquire, carry or hold a firearm if a respective permit to him or her is issued.</p>	
LV	<p>Criminal Law Section 233 on Unauthorised Manufacture, Repair, Acquisition, Storage, Carrying, Transportation, Forwarding and Sale of Firearms, Firearm Ammunition, High-powered Pneumatic Weapons, Explosives and Explosive Devices, and Violation of Selling Regulations. [Text of legislation needed to confirm manufacturing, acquisition/sale are criminalised.] EU Directives are transposed by the Law on the Handling of Weapons and Special Means.</p> <p>According to the national legislation (Criminal Law Section 190.1) such offences are punishable as Movement of Goods and Substances the Circulation of which is Prohibited or Specially Regulated across the State border of the Republic of Latvia, respectively,</p> <p>(1) For a person who commits the moving of narcotic or psychotropic substances or the source materials (precursors) for the preparation of such substances, as well as radioactive or hazardous substances, goods of strategic importance or other valuable property, explosives, weapons and ammunition across the State border of the Republic of Latvia in any illegal way, the applicable punishment is deprivation of liberty for a term not exceeding five years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property.</p> <p>(2) For a person who commits the same acts, if they have been committed by a group of persons pursuant to prior agreement, or if they have been committed on a large scale, the applicable punishment is deprivation of liberty for a term not exceeding ten years, with or without confiscation of property.</p> <p>(3) For a person who commits the same acts where committed in an organised group, the applicable punishment is deprivation of liberty for a term of not less than two years and not exceeding eleven years, with or without confiscation of property, with or without probationary supervision for a term not exceeding three years, with deprivation of the right to engage in entrepreneurial activity of a specific type or of all</p>	LC (no reference to marking)

Comparative Tables for Legal Analysis

D

Member State	Provision on the criminalisation of illicit firearms trafficking	Compliant with UN standard / Directive?
	types or to engage in specific employment or the right to take up a specific office for a term not exceeding five years.	
LU	N/A	N/A
MT	N/A	N/A
NL	N/A	N/A
PL	N/A	N/A
PT	<p>National Definition of Illicit Firearms trafficking:</p> <p>Article 86.1 Lei das Armas nº5/2006 de 23 de Fevereiro, as amended by Lei nº 17/2009 de 6 de Maio (Law 17/2009, 6 of May) (the "Weapons Law"):</p> <p><i>"Whoever, without being authorized, outside legal or against the requirements of the competent authority, possess, transport, import, keep, buy or acquire any title, or by any means, obtain for manufacturing, processing, import, transfer or export, use or carry:</i></p> <p>a) <i>Equipment, military means and war material, biological weapon, chemical weapon, radioactive or susceptible of nuclear explosion weapon, automatic firearm, civil explosive, explosive or incendiary device improvised is punishable with imprisonment from 2 to 8 years;</i></p> <p>b) <i>Products or substances which are intended or may be used in whole or in part, for the development, production, handling, operation, maintenance, storage or dissemination of biological weapons, chemical weapons or radioactive or nuclear weapons capable of delivering such weapons, is punished with imprisonment from 2 to 5 years;</i></p> <p>c) <i>Class B, B1, C and D weapons, shotgun or carbine with parts easily detachable and of small dimension to its concealment, unmodified smooth-bore weapon of less than 46cm, simulated firearm in the form of another object, or transformed or modified firearm, is punished with imprisonment for 1 to 5 years or a fine of up to 600 days;</i></p> <p>d) <i>Class E weapon, concealed weapon in the form of another object, automatic opening knife, dagger, butterfly knife, throwing knife, throwing star, boxers, and other knives or instruments or devices without a defined application that can be used as a weapon of assault, or its carrier does not justify his possession, defence sprays not listed in letter a) nº7 of Article 3º, any device or instruments built exclusively for the purpose of being used as a weapon of aggression, silencer, essential parts of the firearm, ammunition, either as ammunition with expansive penetrating, explosives or incendiary projectiles, is punished with imprisonment up to 4 years or a fine of up to 480 days."</i></p>	C

Comparative Tables for Legal Analysis

D

Member State	Provision on the criminalisation of illicit firearms trafficking	Compliant with UN standard / Directive?
	<p>Article 87: <i>"Nº 1 - Who, without being authorized, out of legal conditions or in contradiction to the prescriptions of competent authority, sell, borrow under any circumstance or by any means, intermediate a transaction, or with the intention of transmitting its detention, possession or property, adopt any of the procedures previewed on the previous article (Art.86º), evolving any equipment, military means and warfare material, weapons, devices, instruments, mechanisms, ammunitions, substances, or products there referred, is punished with imprisonment from two to ten years"</i> <i>Nº 2 – The imprisonment on Nº1, is from four to twelve years, if:</i> <i>a) the agent, is a functionary who is responsible in prevention or repression of any of the Illicit activities previewed by this Law</i> <i>b) That thing or things are destined, with the knowledge of the agent, to groups, organizations or criminal associations; Or</i> <i>c) The agent makes from these conducts his way of living</i> <i>Nº 3 – The Penalty can be specially attenuated, or not give place to punishment, if the agent voluntarily abandons its activity, put away or makes diminish considerably the danger produced by it. To stop that the result which the Law pretends to avoid, does take place or effectively assists on the gathering of evidence decisive for the identification or capture of other responsible."</i> Under the Portuguese legislation, the Illicit firearms trafficking, is a criminal offence, and consequently appreciated by Judicial Authorities, as such. Complementary, there has been a constant "upgrading" of this Law, in order to define, make restrictions and criminalize certain uses or possessions of Firearms, namely due to the technological developments of these items, and also, to incorporate International Legislation or Regulations into our national Legal System. As regards the national Jurisprudence produced accordingly to the application of this national legislation, there are basically two Judgment Sentence of Superior Courts, regarding this matter, both produced in 2009, which in general terms are focused on the qualification of the penal matter and the measure of the sentence, and also, on the censorship of the error on the wrongfulness of the criminal fact. These references, regard and are specially focused on the concept of criminalizing Firearms trafficking, but this very Law in its fullness – and complemented by other different regulations – does in a very accurate and extensive manner, preview, regulate and defines unlawful behaviours which are punished either as criminal offences, as also as administrative offences.</p> <p>Marking:</p>	

Comparative Tables for Legal Analysis

D

Member State	Provision on the criminalisation of illicit firearms trafficking	Compliant with UN standard / Directive?
	Article 2.1. (V). 'Modified firearm', the firearms that by an unauthorized intervention of any type is altered from their essential parts, marks and the original numbers, or one whose cylinder head has been substantially reduced in size to a handle or replaced by another telescopic or folding;	
RO	N/A	N/A
SE	<p>When importing a weapon to Sweden, an import permit issued by the Swedish police is needed, cf Chapter 2, Section 11, in the Weapons Act. If a weapon is, or is attempted to be, unlawfully imported, i.e. without permit, the Act on Penalties for Smuggling (SFS 2000:1225) is applicable, cf Chapter 9, Section 4, in the Weapons Act. In the Act on Penalties for Smuggling it is stated that a person who, in connection with the import into Sweden of goods that are subject to a specific prohibition against or condition for import, intentionally contravenes the prohibition or condition by failing to report the goods for customs clearance, shall be sentenced for smuggling to a fine or imprisonment for at most two years (Section 3, paragraph 1).</p> <p>In Chapter 9, Section 1 in the Weapons Act is stated that a person who intentionally possess a firearm without having the right to it, or transfer or lend a firearm to someone who is not entitled to possess the firearm shall be sentenced for weapons crime (vapenbrott) to imprisonment for at most one year. Should the offence be judged grave, a sentenced shall be imposed for grave weapons crime to imprisonment for at least six months and at most four years. Should the offence be committed by negligence or be judged to be petty, fines or imprisonment for at most six months shall be imposed.</p> <p>It is also a criminal offence according to the Weapons Act to e.g. transfer ammunition to someone who is not entitled to possess the ammunition or to be engaged in trading in firearms without a license.</p>	PC (no reference to export, acquisition, sale, delivery or movement of firearms, or illicit manufacturing or reference to marking of firearms.)
SI	<p>Illicit firearms trafficking is a criminal offence (Illegal Manufacture of and Trade in Weapons or Explosive Materials) and is regulated in the Criminal Code (Official Gazette of the Republic of Slovenia, n. 50/12). Note that the Firearms Act, which is in the competency of the Ministry of Interior, regulates conditions for import and export of legally acquired firearms and proscribes fines in case the conditions are not met (the mentioned act also defines firearms etc.)</p> <p>Illegal Manufacture of and Trade in Weapons or Explosive Materials, Article 307:</p> <p><i>"(1) Whoever unlawfully assembles, manufactures, offers, sells, barters, delivers, imports, exports, enters in the country or takes out from the country firearms, chemical, biological or nuclear weapon, ammunition or explosive materials or military weapons and military equipment, which individuals, legal persons and individual entrepreneurs are prohibited or restricted from trading, purchase or possess, or whoever intermediates therein, or whoever unlawfully acquires or keeps such weapons, ammunition or explosive</i></p>	C

Comparative Tables for Legal Analysis

D

Member State	Provision on the criminalisation of illicit firearms trafficking	Compliant with UN standard / Directive?
	<p><i>materials, except for the firearms for which weapons certificate may be issued, shall be sentenced to between six months and five years in prison.</i></p> <p><i>(2) If the offence under the previous paragraph involves a large quantity of or very valuable or dangerous firearms, ammunition, explosive substances or other means of combat, or if it poses threat, or if the act has been committed within a criminal association, the perpetrator shall be sentenced to imprisonment for not less than one and not more than ten years.</i></p> <p><i>(3) If the act under paragraph 1 of this Article involves an individual firearm or a small quantity of ammunition for such a firearm or if the perpetrator, with the purpose to illegally sell, acquires or keeps firearms or ammunition for which a weapon certificate may be issued or if he keeps them in a large quantity or high value, the perpetrator shall be punished by imprisonment of up to one year.</i></p> <p><i>(4) The same sentence as that referred to in the previous paragraph shall be imposed on a person who falsifies, or without authorization destroys, removes, or changes marks on firearms.</i></p> <p><i>(5) Whoever unlawfully manufactures, acquires, offers, sells, barter, sends, delivers, imports, exports, enters in the country or takes out of the country composite and/or spare parts of firearms, ammunition, explosive materials, explosive devices and explosive weapons, or military weapons and military equipment, a substance, ingredients, software or technology, of which he knows to be used for the manufacture or operation of the items referred to in the previous paragraphs, and keeps them for such a purpose or intermediates therein, shall be sentenced to up to five years in prison."</i></p>	
SK	<p>Criminal offence by Penal Code no. 300/2005. § 294, 295 - Illegal possession of firearms and firearms trafficking</p> <p>"§ 295</p> <p><i>(1) Any person who for himself or another, manufactures, imports, exports, transits, transports, procures or possesses ammunition without authorization or mediates such activity , shall be punished by imprisonment of one to five years.</i></p> <p><i>(2) Any person who for himself or another, manufactures, imports, exports, transports, procures or possesses a firearm, any part or component without permission or without marking the firearms intended to be identified under an international treaty by which the Slovak Republic is bound, or mediates such activity, shall be punished by imprisonment of three to eight years .</i></p> <p><i>(3) As in paragraph 2, the offender, if the firearm falsifies, looks illegally, removed or otherwise alters the marking intended to identify and track under an international treaty by which the Slovak Republic is bound.</i></p>	C (no explicit reference to sales)

Comparative Tables for Legal Analysis

D

Member State	Provision on the criminalisation of illicit firearms trafficking	Compliant with UN standard / Directive?
	<p><i>(4) The imprisonment of four to ten years, the offender commits the criminal offense referred to in paragraph 1 , 2 or 3</i> <i>a) in a serious manner, b) the specific motivation, or c) to a greater extent.</i> <i>(5) The imprisonment of eight to fifteen years the offender commits the criminal offense referred to in paragraph 1 , 2 or 3</i> <i>a) as a member of a dangerous grouping, b) large-scale , or c) a crisis situation .</i> § 295 <i>(1) Any person who without authorization</i> <i>a) manufactures, imports, exports, transits, transports, procures or possesses for himself or another weapon of mass destruction or part, or component, b) accumulating firearms, weapons of mass weapons, ammunition or explosives, or c) any of the activities referred to in a) or b) to provide, shall be punished by imprisonment of three to eight years .</i> <i>(2) As in paragraph 1, the offender, if a) anti-personnel landmine himself or another, develops, manufactures, imports, exports, transits , transports , procures , possesses, stores or uses, or b) Projects for the construction or operation used to produce chemical weapons or biological weapons.</i> <i>(3) imprisonment of seven to ten years, the offender commits the criminal offense referred to in paragraph 1 or 2</i> <i>a) in a serious manner, b) the specific motivation, or c) to a greater extent.</i> <i>(4) imprisonment of ten to fifteen years the offender commits the criminal offense referred to in paragraph 1 or 2</i> <i>a) as a member of a dangerous group , or b) a considerable extent .</i> <i>(5) The imprisonment of fifteen to twenty years, the offender shall be punished if he commits the offense referred to in paragraph 1 or 2 a) a large scale, or b) in a crisis situation."</i></p>	
UK	<p>Firearms Act 1968 (as amended) Section 3 Business and other transactions with firearms and ammunition. "(1) A person commits an offence if, by way of trade or business, he— (a) manufactures, sells, transfers, repairs, tests or proves any firearm or ammunition to which section 1 of this Act applies, or a shot gun; (b) exposes for sale or transfer, or has in his possession for sale, transfer, repair, test or proof any such firearm or ammunition, or a shot gun,</p>	PC (no reference to marking)

Comparative Tables for Legal Analysis

D

Member State	Provision on the criminalisation of illicit firearms trafficking	Compliant with UN standard / Directive?
	<p><i>(c) sells or transfers an air weapon, exposes such a weapon for sale or transfer or has such a weapon in his possession for sale or transfer, without being registered under this Act as a firearms dealer.</i></p> <p><i>(2) It is an offence for a person to sell or transfer to any other person in the United Kingdom, other than a registered firearms dealer, any firearm or ammunition to which section 1 of this Act applies, or a shot gun, unless that other produces a firearm certificate authorising him to purchase or acquire it or, as the case may be, his shot gun certificate, or shows that he is by virtue of this Act entitled to purchase or acquire it without holding a certificate (...)</i></p> <p><i>(5) A person commits an offence if, with a view to purchasing or acquiring, or procuring the repair, test or proof of, any firearm or ammunition to which section 1 of this Act applies, or a shot gun, he produces a false certificate or a certificate in which any false entry has been made, or personates a person to whom a certificate has been granted, or knowingly or recklessly makes a statement false in any material particular."</i></p>	

Comparative Table C: Definition of 'firearms' in national law

Key for column 3: W = Wider definition than the UN Protocol / EU Directive 91/477/EEC standard; C = Conforms to, or in line with, Protocol / Directive; N = Narrower definition than Protocol / Directive

Member State	Provision on the definition of firearms	Compliant with UN standard / Directive?
UN Protocol	<i>" 'Firearm' shall mean any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas. Antique firearms and their replicas shall be defined in accordance with domestic law. In no case, however, shall antique firearms include firearms manufactured after 1899." (Article 3(a)).</i>	
Directive 91/477/EEC,	<i>"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</i>	

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Member State	Provision on the definition of firearms	Compliant with UN standard / Directive?
as amended	<i>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:</i> - 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." (Article 1(1))	
AT	N/A	N/A
BE	N/A	N/A
BG	Under Article 4 of the Law on the Control of Explosives, Firearms and Ammunitions , firearms are defined as: <i>"technical devices that, using the energy of explosives, can eject hard objects causing the mechanical destruction of the target."</i> The Law on Arms, Ammunitions, Explosive Substances and Pyrotechnical Articles replaces the previous Law on the Control of Explosives, Arms and Ammunitions (2010).	W (not necessary that object must be designed or may be readily converted to shoot)
CY	Law 113(I)/2004 concerning firearms and non-firearms, as amended in 2013 by Law 7(I)/2013. <i>"Firearm means any portable barrelled weapon that expels, is designed to fire, or may be converted to fire a bullet or missile by the action of an explosive, and which falls within any of the categories set out in point I the First Schedule of this Act unless it is excluded for one of the reasons listed in section III of this Annex."</i>	C
CZ	Firearms Act No. 119/2002 Coll., on firearms and ammunition, as amended, effective as of 1 Jan 2003 defines a firearm as <i>"1. a weapon the function of which is derived from the immediate release of energy during discharge; designated for a required effect at a defined distance" and "2. a weapon the function of which is derived from the immediate release of chemical energy."</i>	W (not necessary that object must be designed or may be readily converted to shoot)
DE	See Annex 1 (to Section 1 (4)), Part 1, Chapter 1, No. 1,2 and 6 of Weapons Act of 11 October 2002 (Federal Law Gazette I, p. 3970, 4592; 2003 I p. 1957), most recently amended by Article 2 of the Act of 4 March 2013 (Federal Law Gazette I, p. 362). Annex 1 (to Section 1 (4)): <i>"1.1 Guns shall mean objects designed for attack or defence, for signalling, for hunting, for firing darts, for sport or for recreation which propel a projectile through a barrel."</i>	N (no reference to convertible weapons and unlike Protocol/ Directive must be designed for specific purposes of attack

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Member State	Provision on the definition of firearms	Compliant with UN standard / Directive?
	<i>2.1 Firearms... shall mean guns as defined in no. 1.1 which use hot gas to propel a projectile through or out of a barrel."</i>	or defence, for signalling, for hunting, for firing darts, for sport or for recreation)
DK	The term 'firearm' is defined as a lethal barrelled weapon of any description from which any shot, bullet or other missile can be [Text missing from legal fiche; however this wording appears to follow the UK definition as set out at section 67 of the Firearms Act 1968]	N (no reference to convertible weapons) [Assuming DK provision same as UK]
EE	Weapons Act: "§ 11. Classification of weapons <i>Weapons are classified as follows:</i> <i>1) a firearm is a weapon intended to hit or damage objects by way of a projectile where a charge of propellant is used for the directed discharge thereof;</i> <i>2) a gas weapon is a weapon intended to cause short-term damage to living objects by means of irritant gases.</i> § 12. Classification of firearms <i>(1) Firearms are classified on the basis of their length and the length of their barrels as follows:</i> <i>1) a gun is a firearm with an overall length of over 600 mm and a barrel length of over 300 mm;</i> <i>2) a pistol is a firearm with an overall length of up to 600 mm (inclusive) and a barrel length of up to 300 mm (inclusive) and in which cartridges may be located in the magazine in one or more rows;</i> <i>3) a revolver is a firearm with a cylinder and with an overall length of up to 600 mm (inclusive) and a barrel length of up to 300 mm (inclusive), and in which the cylinder simultaneously serves as a magazine and a chamber.</i> <i>(2) Firearms are classified on the basis of their calibre and the cartridges used as follows:</i> <i>1) a full-calibre firearm is a firearm where centre-fire cartridges are used as ammunition;</i> <i>2) a rimfire firearm is a .22 or 5.6 mm calibre firearm where rimfire cartridges are used as ammunition.</i> <i>(3) Firearms are classified by the characteristics of their bore as follows:</i>	N (no reference to convertible weapons)

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Member State	Provision on the definition of firearms	Compliant with UN standard / Directive?
	<p>1) a firearm with a smoothbore barrel is a firearm with a smooth bore without rifling;</p> <p>2) a firearm with a rifled barrel is a firearm with a bore with rifling;</p> <p>3) a combination rifle-shotgun is a firearm with a combination of smoothbore and rifled barrels."</p>	
EL	<p>According to the definition contained in Article 1 paragraph 1 of Law 2168/1993, "A weapon shall be any device which, as a result of its construction, conversion or modification, can, through impulsive force produced in any manner, launch a projectile, harmful chemical or other substances, beams or flames or gases, and which may cause an injury or damage to the health of people or to things or cause fire, as well as any other device that may cause the above effects in any manner whatsoever. Weapons shall also include any firearm and, in particular, military rifles, submachine guns, pistols, revolvers, sound-gas guns, heavy weapons, artillery weapons and ... weapons, as well as grenades and mines of any type."</p>	C (but arguably narrower definition than Protocol / Directive as in EL definition firearm must be capable of causing injury)
ES	<p>According to article 3 of Royal Decree 976/2011 of 8th July amending Royal Decree 137/1993 of 29th January, "Regulated weapons and firearms, whose acquisition, possession and use can be authorised or allowed in accordance with the provisions of the Arms Regulation (RA) (Royal Decree 137/1993 of 29th January, BOE 55/1993), are the objects that, taking into account its characteristics, degree of danger and purpose or use, are listed and classified in the following categories:"</p> <p>Category 1: Short firearms (pistols and revolvers).</p> <p>Category 2: Long firearms with rifled barrels for security and surveillance.</p> <p>Category 3: Long firearms with rifled barrels for sports shooting, shotguns, air guns with muzzle energy in excess of 24.2 joules.</p> <p>Category 4: Compressed air rifles and pistols</p> <p>Category 5: Edged weapons, and knives or machetes.</p> <p>Category 6: Antique or historic firearms.</p> <p>Category 7: Crossbows, bows, blank firing guns, and flare guns.</p> <p>Article 2 includes the definition of arms and firearms.</p> <p>"1. Firearm: 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. For these purposes, 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.(...)</p> <p>5. Automatic firearm: Firearm which reloads automatically each time a round is fired and can fire</p>	C

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Member State	Provision on the definition of firearms	Compliant with UN standard / Directive?
	<i>more than one round with one pull on the trigger.</i> <i>6. Semi-automatic firearm: Firearm which reloads automatically each time a round is fired and can fire only one round with one pull on the trigger."</i>	
FI	Definition not provided in legal fiche.	N/A
FR	Décret n° 2013-700 du 30 juillet 2013 article 1er – I et II (see infra). I. — Armes par nature et munitions : 1° Accessoires: <i>pièces additionnelles ne modifiant pas le fonctionnement intrinsèque de l'arme, constituées par tous dispositifs destinés à atténuer le bruit causé par le tir de l'arme. Les accessoires suivent le régime juridique des éléments d'arme;</i> 2° Arme : tout objet ou dispositif conçu ou destiné par nature à tuer, blesser, frapper, neutraliser ou à provoquer une incapacité ; 3° Arme à canon lisse: <i>arme dont l'âme du canon est de section circulaire et ne peut donner aucun mouvement de rotation à un projectile unique ou multiple;</i> 4° Arme à canon rayé: <i>arme dont l'âme du canon n'est pas de section circulaire et présente une ou plusieurs rayures conventionnelles ou polygonales destinées à donner un mouvement de rotation à un projectile unique ou multiple;</i> 5° Arme à feu: <i>arme qui tire un projectile par l'action de la combustion d'une charge propulsive;</i> 6° Arme à répétition automatique: <i>toute arme qui, après chaque coup tiré, se recharge automatiquement et qui peut, par une seule pression sur la détente, lâcher une rafale de plusieurs coups;</i> 7° Arme à répétition manuelle: <i>arme qui, après chaque coup tiré, est recharge manuellement par introduction dans le canon d'une munition prélevée dans un système d'alimentation et transportée à l'aide d'un mécanisme;</i> 8° Arme à répétition semi-automatique: <i>arme qui, après chaque coup tiré, se recharge automatiquement et qui ne peut, par une seule pression sur la détente, lâcher plus d'un seul coup;</i> 9° Arme à un coup: <i>arme sans système d'alimentation, qui est chargée avant chaque coup par introduction manuelle de la munition dans la chambre ou dans un logement prévu à cet effet à l'entrée du canon;</i> 10° Arme blanche: <i>toute arme dont l'action perforante, tranchante ou brisante n'est due qu'à la force humaine ou à un mécanisme auquel elle a été transmise, à l'exclusion d'une explosion;</i>	N (No reference to convertible weapons and, unlike Protocol / Directive, in FR definition firearm must be capable of causing harm)

Comparative Tables for Legal Analysis

D

Member State	Provision on the definition of firearms	Compliant with UN standard / Directive?
	<p>11° Arme camouflée: toute arme dissimulée sous la forme d'un autre objet, y compris d'un autre type d'arme;</p> <p>12° Arme d'épaule: arme que l'on épaulé pour tirer. La longueur hors-tout d'une arme d'épaule à crosse amovible ou repliable se mesure sans la crosse ou la crosse repliée. La longueur de référence du canon d'une arme d'épaule se mesure de l'extrémité arrière de la chambre jusqu'à l'autre extrémité du canon, les parties démontables non comprises;</p> <p>13° Arme de poing: arme qui se tient par une poignée à l'aide d'une seule main et qui n'est pas destinée à être épaulée. La longueur de référence d'une arme de poing se mesure hors tout;</p> <p>14° Arme incapacitante agissant par projection ou émission: arme ayant pour effet de provoquer une incapacité et agissant par projection à distance ou émission du procédé ou moyen incapacitant;</p> <p>15° Arme incapacitante de contact: arme de défense ayant pour effet de provoquer une incapacité et agissant à bout touchant;</p> <p>16° Arme neutralisée: arme qui a été rendue définitivement impropre au tir de toute munition par l'application de procédés techniques définis assurant que tous les éléments de l'arme à feu à neutraliser ont été rendus définitivement inutilisables et impossibles à modifier;</p> <p>17° Douille amorcée: douille qui comporte une amorce sans autre charge de poudre;</p> <p>18° Douille chargée: douille qui comporte une charge de poudre ;</p> <p>19° Élément d'arme: partie d'une arme essentielle à son fonctionnement: canon, carcasse, culasse, système de fermeture, barillet, conversion, y compris les systèmes d'alimentation qui leur sont assimilés; (...)</p>	
HR	N/A	N/A
HU	N/A	N/A
IE	<p>Firearm Act 1925</p> <p>"firearm" means—</p> <p>(a) a lethal firearm or other lethal weapon of any description from which any shot, bullet or other missile can be discharged,</p> <p>(b) an air gun (including an air rifle and air pistol) with a muzzle energy greater than one joule or any other weapon incorporating a barrel from which any projectile can be discharged with such a muzzle energy,</p> <p>(c) a crossbow,</p> <p>(d) any type of stun gun or other weapon for causing any shock or other disablement to a person</p>	N (no reference to convertible weapons and unlike Protocol/Directive weapon must be "lethal" unless it falls under any of (b) to (g))

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D

Member State	Provision on the definition of firearms	Compliant with UN standard / Directive?
	<p><i>by means of electricity or any other kind of energy emission,</i></p> <p><i>(e) a prohibited weapon,</i></p> <p><i>(f) any article which would be a firearm under any of the foregoing paragraphs but for the fact that, owing to the lack of a necessary component part or parts, or to any other defect or condition, it is incapable of discharging a shot, bullet or other missile or projectile or of causing a shock or other disablement, as the case may be,</i></p> <p><i>(g) except where the context otherwise requires, any component part of any article referred to in any of the foregoing paragraphs and, without prejudice to the generality of the foregoing, the following articles shall be deemed to be such component parts:</i></p> <p><i>(i) telescope sights with a light beam, or telescope sights with an electronic light amplification device or an infra-red device, designed to be fitted to a firearm specified in paragraph (a), (b),(c) or (e),</i></p> <p><i>(ii) a silencer designed to be fitted to a firearm specified in paragraph (a), (b) or (e), and</i></p> <p><i>(iii) any object—</i></p> <p><i>(I) manufactured for use as a component in connection with the operation of a firearm, and</i></p> <p><i>(II) without which it could not function as originally designed, and 1 As substituted by the Criminal Justice Act 2006, s.26.</i></p> <p><i>(h) a device capable of discharging blank ammunition and to be used as a starting gun or blank firing gun, and includes a restricted firearm, unless otherwise provided or the context otherwise requires."</i></p>	
IT	N/A	N/A
LT	<p>According to the provisions of Article 2 of the Law on Control of Weapons and Ammunition (http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=430623):</p> <p>" 'Firearm' means a device or a thing designed or suited as a weapon from which barrel, by force of pressure of combustion products of explosive agents, bullets, projectiles or harmful to health, irritant agents may be launched to affect a target from a distance mechanically, thermally, chemically or otherwise, or a sound or light signal may be made. Essential components of firearms as well as gas (alarm) pistols (revolvers) shall also be regarded as firearms.</p> <p>'Essential components of a weapon' means a barrel, a cylinder, a breechblock (lock), a breechblock (lock) carrier, the chamber (when it is separate object), as well as an adapter inserted into the barrel of a firearm (a barrel of a smaller calibre).</p> <p>'Deactivated weapon' means a weapon which is converted or affected in such a manner that all its</p>	N (no reference to convertible weapons)

Comparative Tables for Legal Analysis

D

Member State	Provision on the definition of firearms	Compliant with UN standard / Directive?
	<p><i>essential components are irreversibly damaged or broken and it is impossible to restore, repair or change them so that it would again become suitable for proper use.</i></p> <p><i>'Antique firearm' means a firearm a model of which was designed before 1870.</i></p> <p><i>'Pneumatic weapon' means a non-fire weapon a direct motion of a bullet or another projectile launched from it starts because of the power of compressed air or another gas."</i></p>	
LV	<p>According to the Law On the Handling of Weapons and Special Means section 1 clause 38: <i>"firearm – a portable weapon, with or without a barrel, in which a shell receives the energy for directional movement as a result of the gas pressure from the burning of gunpowder"</i></p> <p>Other related definitions:</p> <p>According to Law On the Handling of Weapons and Special Means section 1 clause 1 <i>'antique firearms' – "firearms which have been manufactured until 1899";</i></p> <p>According to Law On the Handling of Weapons and Special Means section 1 clause 5 <i>'automatic firearm' – "a firearm that loads automatically for a new shot after each shot and, if its firing mechanism has once been actuated, can make several shots";</i></p> <p>According to Law On the Handling of Weapons and Special Means section 1 clause 34 <i>'semi-automatic firearm' – "a firearm, which after each shot loads automatically for a new shot and if the firing mechanism thereof has once been actuated, only one shot can be made";</i></p> <p>According to Law On the Handling of Weapons and Special Means section 1 clause 43 <i>'single-shot firearm' – "a firearm, which does not have a magazine or a cylinder and in which the ammunition (a cartridge) is loaded manually before each shot";</i> and</p> <p>According to Law On the Handling of Weapons and Special Means section 1 clause 3 <i>'non-automatic firearm' – "a firearm in which a new cartridge from a magazine or a cylinder is loaded by a hand-operated mechanism after each shot";</i></p> <p>According to Law On the Handling of Weapons and Special Means section 1 clause 6 <i>'service firearms' – "firearms belonging to State and local government authorities and legal persons governed by private law, which have the right to acquire, possess and utilise in the operations thereof firearms allocated in accordance with the law, intended for the fulfilment of service or work duties;</i></p> <p>According to Law On the Handling of Weapons and Special Means section 1 clause 28 <i>'military firearms and special means' – "firearms and special means manufactured specially for military purposes, for the destruction or damage of live or inanimate targets, and the ammunition, parts and accessories of these weapons and special means";</i></p>	<p>W (unlike Protocol/Directive no requirement for weapon to be barrelled)</p>

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D

Member State	Provision on the definition of firearms	Compliant with UN standard / Directive?
	<p>According to Law On the Handling of Weapons and Special Means section 1 clause 9 'long firearm' – "a firearm with a barrel not exceeding 300 millimetres or with the overall length exceeding 600 millimetres";</p> <p>According to Law On the Handling of Weapons and Special Means section 1 clause 20 'short firearm' – "a firearm with a barrel not exceeding 300 millimetres or with the overall length not exceeding 600 millimetres";</p> <p>According to Law On the Handling of Weapons and Special Means section 1 clause 13 'smooth-bore firearm' – "a firearm of which at least two thirds of the bore is smooth, measuring from the cartridge chamber";</p> <p>According to Law On the Handling of Weapons and Special Means section 1 clause 44 'rifled firearm' – "a firearm in the muzzle bore of which spiral grooves have been formed along its entire length, which cause the rotation of a bullet, except for firearms which are intended for shooting with smooth-bore firearm ammunition and which are classified in Latvia as smooth-bore firearms";</p> <p>According to Law On the Handling of Weapons and Special Means section 1 clause 42 'traumatic firearm' – "a firearm whose construction is intended solely for cartridges with a reduced amount of gunpowder or other propellant, whose cartridge shell is manufactured from such material which reduces the likelihood of causing bodily injuries hazardous to human or animal life, and which is classified in Latvia as a traumatic firearm";</p> <p>According to Law On the Handling of Weapons and Special Means section 1 clause 39 'essential components of a firearm' – "the barrel, lock, cartridge compartment (cartridge cylinder, mechanism box or frame), which is included in the firearm category";</p> <p>According to Law On the Handling of Weapons and Special Means section 1 clause 40 'firearm part' – "any element or replacement element specifically designed for a firearm and essential to its operation, including a barrel, frame, receiver, mechanism box or frame, cartridge cylinder, bolt or breech block, and any device which has been designed or adapted to diminish the sound caused by firing a firearm, as well as a flame dowsers."</p>	
LU	N/A	N/A
MT	N/A	N/A
NL	N/A	N/A
PL	N/A	N/A
PT	Article 2 – Law 5/2006:	N (must be designed

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Member State	Provision on the definition of firearms	Compliant with UN standard / Directive?
	<p>c) "Double Action Weapon" the firearm that is activated by performing the unique action of pulling the trigger;</p> <p>d) "Simple action Weapon» the firearm that is triggered by two operations that consist of the manual arming of the firing mechanism and the trigger actuation;</p> <p>e) ' Alarm Weapon" device with the configuration of a firearm intended solely to produce a sound effect similar to that produced at the time of the shooting;</p> <p>f) "Compressed air weapon" gun driven by air or other compressed gas, intended to launch projectile;</p> <p>g) "Compressed air sport weapon" weapon of compressed air suitable for practicing sport shooting, purchase free or conditioned;</p> <p>h) "Compressed air recreation weapon » the compressed air weapon, calibre up to 5.5 mm, which speed of the projectile out of the muzzle is less than 360 m/s and with a barrel exceeding 30 cm;</p> <p>i) "Automatic firearm" means a firearm that makes a series of several shots by a single action on the trigger;</p> <p>(...)</p> <p>(m) "Muzzle-loading firearms" the firearm in which the cylinder cannot be opened manually and loading of the propellant and projectile can be made only by the muzzle, in the case of weapons of one or more barrels, and the mouth of the chambers, for guns equipped with drum, considering equivalent to Muzzle-loading firearms having a mobile chamber that cannot shoot fuel cartridge, and the ignition system placed separately in outside of the chamber;</p> <p>(...)</p> <p>(o) 'Firearm' any portable machine or mechanism intended to cause the firing of a propelling charge generator of a mass of gases whose expansion propels one or more projectiles;</p> <p>(p) 'Short firearm' firearm with a barrel not exceeding 30 centimetres or whose overall length does not exceed 60 centimetres;</p> <p>(q) 'Unusable firearm' the firearm that has been withdrawn or unused its essential part to get firing the projectile and is accompanied by a certificate of destruction issued or recognized by the National Directorate of Public Security Police (PSP)."</p>	to expel a projectile; no reference to readily convertible weapon)
RO	N/A	N/A
SE	According to the Swedish Weapons Act (1996:67) a firearm is defined as "a weapon that can	N (no reference to

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D

Member State	Provision on the definition of firearms	Compliant with UN standard / Directive?
	<i>expel bullets, shot, harpoons or other projectiles by the action of powder charges, carbonic acid, compressed air or other similar means of expel</i> " (Chapter 1, Section 2). The Weapons Act also applies to ammunition and objects that the law equated with firearms (Chapter 1, Section 1).	convertible weapons)
SI	Firearms are not defined in the Criminal Code, but in the Firearms Act. No definition provided in legal fiche.	[Further information from country expert required]
SK	No definition provided in legal fiche.	[Further information from country expert required]
UK	<p>Section 57, Firearms Act 1968</p> <p><i>"(1) In this Act, the expression "firearm" means a lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged and includes—</i></p> <p><i>(a) any prohibited weapon, whether it is such a lethal weapon as aforesaid or not; and</i></p> <p><i>(b) any component part of such a lethal or prohibited weapon; and</i></p> <p><i>(c) any accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing the weapon;</i></p> <p><i>and so much of section 1 of this Act as excludes any description of firearm from the category of firearms to which that section applies shall be construed as also excluding component parts of, and accessories to, firearms of that description."</i></p> <p>NB "Prohibited weapon" in section 5 of the Act defined as:</p> <ul style="list-style-type: none"> - any firearm which is so designed or adapted that two or more missiles can be successively discharged without repeated pressure on the trigger; - any self-loading or pump-action rifled gun other than one which is chambered for .22 rim-fire cartridges; - any firearm which either has a barrel less than 30 centimetres in length or is less than 60 centimetres in length overall, other than an air weapon, . . . a muzzle-loading gun or a firearm designed as signalling apparatus; - any self-loading or pump-action smooth-bore gun which is not an air weapon or chambered for .22 rim-fire cartridges and either has a barrel less than 24 inches in length or . . . is less than 40 inches in length overall; 	N (must be 'lethal', no reference to convertible weapons)

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D

Member State	Provision on the definition of firearms	Compliant with UN standard / Directive?
	<ul style="list-style-type: none"> - any smooth-bore revolver gun other than one which is chambered for 9mm. rim-fire cartridges or a muzzle-loading gun; - any rocket launcher, or any mortar, for projecting a stabilised missile, other than a launcher or mortar designed for line-throwing or pyrotechnic purposes or as signalling apparatus; - any air rifle, air gun or air pistol which uses, or is designed or adapted for use with, a self-contained gas cartridge system; - any weapon of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing; and - any cartridge with a bullet designed to explode on or immediately before impact, any ammunition containing or designed or adapted to contain any such noxious thing as is mentioned in paragraph (b) above and, if capable of being used with a firearm of any description, any grenade, bomb (or other like missile), or rocket or shell designed to explode as aforesaid; - any firearm which is disguised as another object; - any rocket or ammunition not falling within paragraph (c) of subsection (1) of this section which consists in or incorporates a missile designed to explode on or immediately before impact and is for military use; - any launcher or other projecting apparatus not falling within paragraph (ae) of that subsection which is designed to be used with any rocket or ammunition falling within paragraph (b) above or with ammunition which would fall within that paragraph but for its being ammunition falling within paragraph (c) of that subsection; - any ammunition for military use which consists in or incorporates a missile designed so that a substance contained in the missile will ignite on or immediately before impact; - any ammunition for military use which consists in or incorporates a missile designed, on account of its having a jacket and hard-core, to penetrate armour plating, armour screening or body armour; - any ammunition which incorporates a missile designed or adapted to expand on impact; - anything which is designed to be projected as a missile from any weapon and is designed to be, or has been, incorporated in— <ul style="list-style-type: none"> (i) any ammunition falling within any of the preceding paragraphs; or (ii) any ammunition which would fall within any of those paragraphs but for its being specified in subsection (1) of this section. 	

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Comparative Table D: Aggravating or mitigating circumstances in Member States' national laws on illicit firearms trafficking

Member State	Aggravating or mitigating circumstances
AT	N/A
BE	N/A
BG	N/A
CY	N/A

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Member State	Aggravating or mitigating circumstances
CZ	<p>Sec. 15 and sec. 42 of the Criminal Code</p> <p>Section 15 Intent</p> <p>(1) A criminal offence is committed intentionally if the offender</p> <p>a) sought to violate or endanger, in a manner specified under criminal law, any interest protected by this Code, or</p> <p>b) was aware that his/her conduct may cause such violation or endangering, and for the case he/she causes it, he/she understood it.</p> <p>(2) Such understanding shall be understood also as reconciliation of the offender with the fact that he/she may violate or endanger an interest protected by the Criminal Code in the manner stipulated in this Code.</p> <p>Section 42 Aggravating Circumstances</p> <p>The Court may consider following circumstances as aggravating, particularly when the offender:</p> <p>a) committed the criminal offence with premeditation or after previous deliberation,</p> <p>b) committed the criminal offence out of greed, for revenge, due to hatred relating to nationality, ethnic, racial, religious, class or another similar hatred or out of another particularly condemnable motive,</p> <p>c) committed the criminal offence in a brutal or agonizing manner, insidiously, with special deceit or in a similar manner,</p> <p>d) committed the criminal offence by exploiting another person's distress, duress, vulnerability, dependence or subordination,</p> <p>e) breached a special duty by the criminal offence,</p> <p>f) abused his occupation, position or function when committing the criminal offence,</p> <p>g) committed the criminal offence against a person participating in saving life and health or in protection of property,</p> <p>h) committed the criminal offence to the harm of a child, close person, person pregnant, ill, disabled, of high age or impuissant,</p> <p>i) led another person, especially a child under the age of fifteen, a juvenile or a person of an age close to the legal age of juveniles, to commit an act otherwise criminal, into misconduct or to commit a criminal offence,</p> <p>j) committed the criminal offence during an emergency situation, natural disaster or another event seriously threatening life, public order or property, or at the territory where evacuation is in progress or has been carried out,</p> <p>k) caused higher damage or another larger harmful effect by the criminal offence,</p> <p>l) acquired higher profit by the criminal offence,</p> <p>m) committed the criminal offence in a larger extent, on more things or more persons, was committing the criminal offence or continued in its commitment for a longer time,</p> <p>n) committed more criminal offences,</p> <p>o) committed the criminal offence as an organizer, a member of an organized group or a member of a conspiracy, or</p> <p>p) had already been sentenced for a criminal offence; the court is authorized not to consider such a fact as an aggravating circumstance according to the nature of the previous conviction, particularly in respect of the significance of a protected</p>

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	<p>interest affected by such an act, the manner of commission of such an act and its consequences, the circumstances under which it was committed, the offender's personality, the extent of his culpability, his motives and the period which has passed since his last conviction; concerning an offender of the criminal offence committed in a state induced by a mental disorder, or an offender who indulges in abuse of an addictive substance and has committed the criminal offence under its influence or in connection with its abuse, also when he/she commenced treatment or took other necessary measures for its commencement.</p> <p>Note: some special aggravating circumstances can also be found in some of the definitions of crimes: Sec.279 of the Criminal Code No. 40/2009 Coll (...) (3) Whoever, without authorisation a) produces, procures for themselves or another person, or possesses explosives at an amount larger than small, weapon of mass efficiency, or components that are necessary for such weapon, or b) accumulates, manufactures, or procures for themselves or another person weapons or ammunition in large quantities, shall be punished by a prison sentence of six months to five years. (4) An offender shall be punished by a prison sentence of two to eight years, if , a) they committed an act referred to in Subsection 3 as a member of an organised group, b) they committed such act to a large extent, or c) they committed such act during a state of national emergency or war.</p>
DE	<p>There is no definition of aggravating circumstances in German criminal law. According to Chapter 46 of the Criminal Code the guilt of the offender is the basis for sentencing. Chapter 46 denominates circumstances to which particular consideration shall be given.</p> <p>Sections 51(2) and 52(2) (sanctions) of the Weapons Act: <i>"A particularly serious instance shall generally be deemed to apply when the offender acts for gain or as a member of a gang formed for the purpose of committing such offences on a continuing basis, with the involvement of another gang member."</i></p>
DK	N/A
EE	N/A
EL	Whoever imports, possesses, manufactures, assembles, sells, delivers, transfers or supplies military rifles, automatic guns, machine guns, pistols , revolvers , grenades , ammunition , explosives , explosive devices and other types of war material with

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	the intention to make the available for the commitment of a felony or for the supply of illegal groups, organizations, clubs or associations of persons shall be punished with imprisonment if the offense is not punished more heavily by another legal provision. The same penalty shall be imposed to someone who for the same purpose, receives, conceals or in any way accepts the above objects. With the same penalty are also punished the members of the board of directors or of steering committee or managers or leaders in the previous case of groups, organizations, clubs and associations, if they are aware that any of their members has been illegally acquired or possesses any of the above objects, as well as of their objectives pursued and do not the report it to the competent authorities. The same penalty shall be imposed to anyone who is illegally armed with an assault rifle or machine gun or submachine gun or grenade or heavy artillery gun or firearm or carries them anywhere.
ES	According to Art. 22 of the Criminal Code , the following are aggravating circumstances are recognised: <ol style="list-style-type: none"> 1. Perpetrating the act with premeditation. 2. Perpetrating the act using a disguise, abuse of superiority, or taking advantage of the circumstances of the place, time or aid from other persons that weaken the defence of the victim or facilitate impunity of the convict. 3. Perpetrating the act for a price, reward or promise. 4. Committing the offence for racist or anti-Semitic reasons, or another kind of discrimination related to ideology, religion or belief of the victim, ethnicity, race or nation to which he belongs, his gender, sexual orientation or identity, illness suffered or disability. 5. To deliberately and inhumanely increase victim's suffering, causing unnecessary suffering while committing the crime. 6. Acting with abuse of confidence. 7. When the convict avails himself of his public status. 8. Having a criminal record.
FI	N/A
FR	Les circonstances aggravantes doivent être spécifiquement prévues par les textes. En matière d'infraction relatives aux armes on peut trouver comme causes d'aggravation : L'action en bande organisée La récidive Le cas du terrorisme est prévu par ailleurs.
HR	N/A
HU	N/A
IE	Not specified in relation to illicit firearms trafficking.
IT	N/A
LT	Aggravating circumstances of criminal liability are provided for in the Art. 60 of the Criminal Code : "1. The following shall be considered as aggravating circumstances:

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	<p>1) the act has been committed by a group of accomplices. Taking into consideration the nature and extent of participation of each accomplice in the commission of the criminal act, a court shall have the right not to recognise this circumstance as aggravating;</p> <p>2) the act has been committed by an organised group;</p> <p>3) the act has been committed by reason of disorderly conduct or for mercenary reasons;</p> <p>4) the act has been committed by torturing the victim or subjecting him to taunting;</p> <p>5) the act has been committed against a young child;</p> <p>6) the act has been committed against a person in a helpless state owing to an illness, disability, old age or for other reasons, in the absence of the person's request;</p> <p>7) the act has been committed against a woman known to be pregnant;</p> <p>8) the act has been committed by taking advantage of a public or other person's disaster;</p> <p>9) the act has been committed by a person under the influence of alcohol, narcotic, psychotropic or other psychoactive substances, where these circumstances influenced the commission of the criminal act;</p> <p>10) the act has been committed in a publicly dangerous manner or by using explosives, explosive materials or firearms;</p> <p>11) the committed act has caused grave consequences;</p> <p>12) the act has been committed in order to express hatred towards a group of persons or a person belonging thereto on grounds of age, sex, sexual orientation, disability, race, nationality, language, descent, social status, religion, convictions or views.</p> <p>2. When imposing a penalty, a court shall not take into consideration an aggravating circumstance which is provided for in a law as constituting the body of a crime.</p>
LV	N/A
LU	N/A
MT	N/A
NL	N/A
PL	N/A
PT	<p>In general, under Portuguese criminal law, the intent is defined and appreciated in levels of "guilty"(In Portuguese DOLO). This graduation is basically produced, on the capacity of the person who produces the criminal offence to foresee and make a hypothetical judgment on the danger produced by its action.</p> <p>The aggravating circumstances, are specially used under criminal provisions of the national Criminal Law, mostly when the criminal offence, also does produce an increase of the danger on the result of its practice, either they regard a criminal offence against property, "the life in society" conducts, and most of all, on the physical integrity and the life of the person.</p>
RO	N/A

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SE	<p>The Act on Penalties for Smuggling defines “aggravating circumstances” in Section 5, paragraph 2: “When assessing whether an offence is grave, particular consideration shall be given to whether the act formed part of a step in criminality that has been exercised systematically or on a large scale, whether the act having regard to the circumstance surrounding the import, export or control, was of a particularly dangerous nature, or if the act otherwise involved a serious violation of an important public interest”.</p> <p>The Weapons Act defines aggravating circumstances in Chapter 9, Section 1, paragraph 2: When assessing whether an offence is grave, particular consideration shall be given to whether the firearm was held in a public place, if the firearm was of a particularly dangerous nature or if the act involved several firearms.</p>
SI	<p>According to the Criminal Code, they are defined, as it follows:</p> <p>General Rules on Sentencing Article 49 (1) The perpetrator shall be sentenced for a criminal offence within the limits of the statutory terms provided for such an offence and with respect to the gravity of his offence and his culpability. (2) In fixing the sentence, the court shall consider all circumstances, which have an influence on the grading of the sentence (mitigating and aggravating circumstances), in particular: the degree of the perpetrator's guilt; the inclinations, for which the offence was committed; the intensity of the endangerment or injury caused to the protected legal value; the circumstances, in which the offence was committed; the perpetrator's previous life; his personal and pecuniary situation; his conduct after the committing of the offence and especially, whether he recovered the damages caused by the committing of the criminal offence, and other circumstances referring to the personality of the perpetrator and the expected effect of the punishment on the future life of the perpetrator in the social environment. (3) In fixing the sentence of a perpetrator who committed a criminal offence after he had already been convicted with the effect of finality or had served his sentence, or after the implementation of his sentence had been barred by time, or after his sentence has been withdrawn (recidivism), the court shall consider especially whether the earlier offence is of the same type as the new one, whether both offences were committed for the same inclinations and the amount of time, which has lapsed since the former conviction or since the serving, withdrawing or barring of the sentence.</p> <p>Guilt Article 24 The perpetrator shall be found guilty if, when committing a criminal offence, he was of sound mind and acted with intent or through negligence, while he was aware or should and could have been aware that he is acting against the law, and if no grounds exist to exclude his guilt.</p> <p>Intent Article 25 A criminal offence shall be deemed to have been committed with intent if the perpetrator was aware of his act and wanted to perform it (direct intent), or was aware that he can perform such act and consented to it (contingent intent).</p>
SK	§ 37 of Penal Code

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	<p>Aggravating circumstance is that the offender:</p> <ul style="list-style-type: none"> a) committed an offense of a particularly despicable reason , b) committed the crime in retaliation against another for being against the offender fulfills the obligation under the Act or other generally binding legal regulation , in particular, the teaching staff or professional staff , c) committed an offense , therefore, that another defeat or make more difficult the exercise of fundamental rights and freedoms , or so as to facilitate or conceal another offense d) committed the offense as a natural disaster or other emergency that seriously threatens the life or health of humans , other fundamental rights and freedoms, the constitutional system , property, public order and morality , e) abused its employment, occupation, job title or position to attain undue or improper advantage , f) publicly committed the crime , g) committed the offense on enjoying their place in accordance with generally binding legal regulation special protection, especially in a house or apartment of another , h) committed more crimes i) misused to commit the offense a person who is not criminally responsible , j) seduced to commit the offense juvenile a) committed the offense as an organizer , l) committed an offense in association with a foreign power or foreign official , or m) has been convicted of an offense , the court may, depending on the nature of prior convictions to disregard that fact . <p>§ 138 Serious misconduct Serious manner means the commission of an offense</p> <ul style="list-style-type: none"> a) with a weapon except for offenses or intentional murder under § 144, murder under § 145, slaughter under § 147 and § 148, killing under § 149, bodily injury under § 155, § 156 and § 157, b) a longer period of time, c) brutal or cruel manner, d) violence, the threat of imminent violence or the threat of other serious injury e) burglary, f) deceit, g) use of distress, inexperience, dependency or subordination, h) violation of the essential obligations arising from the offender's employment, position or function or imposed on him under the Act, i) organized group or j) for several persons.

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UK	N/A