

# **The Proposal of the European Parliament and Council amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons (Firearms Directive)**

## **A summary and critical appraisal of the proposed amendments in the context of research on the association between firearm legislation and rates of homicide, suicide and violent death in Europe**

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### Introduction

The European Union (EU) Commission is proposing that the European Parliament ratifies numerous drastic changes to the Firearms Directive 91/477/EEC,<sup>1</sup> which was last modified in 2008. The stated aim of the fast-tracked proposal is to control illicit firearm trafficking and use, and thus reduce criminal and terrorist activities, by closing perceived loopholes in the current Directive. A further justification is that the proposals shall help prevent thousands of homicides and suicides in the European Union.<sup>2</sup> The proposals were published on 18<sup>th</sup> November 2015 in the wake of the terrorist attacks in Paris, which involved the use of illegal fully automatic firearms. However the "Firearms Task Force" set up by former Commissioner Mrs. Cecilia Malmstrom, and headed by Mr. Fabio Marini, has been drafting the proposals since 2014. The timing of the release of the proposals, and the wording of the official justification for the urgency, was an alleged link between legally registered firearms authorised for good cause (hunting, sports and collection) and criminal, and specifically terrorist, activities.<sup>2</sup>

### Proposals for amendments of the Firearms Directive

The proposals<sup>2</sup> include measures which are balanced and which have received widespread support from National Governments, associations of sports shooters and firearms collectors, and museums. These include:

1. Common European rules on the marking of newly-manufactured firearms in order to improve traceability
2. Improved exchange of information between EU Member States, especially any refusal of authorisation to own a firearm by any National Authority
3. An obligation to interconnect EU Member State National Registers of firearms and weapons
4. Common criteria concerning the definition of distress and alarm firearms, such as flare and starter pistols, to deter transformation into fully functioning firearms
5. Stricter conditions for the circulation of deactivated firearms, and harmonisation of deactivation standards across EU Member States<sup>2</sup>

However, if there has been general acceptance of the above clauses, one must also note the significant and strong opposition of many proposals which are widely acknowledged to be ineffective in preventing crime, including terrorism, and which will clearly have an impact on

legitimate sports shooting and the academic study and collection of historical firearms. These highly controversial proposals include:

1. The inclusion in the Firearms Directive of all private collections and museums that are currently exempt, but subject to national regulation
2. Mandating all EU Member States to impose a retroactive ban on the possession of automatic firearms, without exception, including those which have been permanently deactivated and those in museums and private collections
3. Mandating all EU Member States to ban semi-automatic firearms that resemble automatic or military firearms, which will have to be deactivated or destroyed
4. A ban on the online acquisition of firearms, key parts, or ammunition through the internet
5. Limitations of magazine capacity
6. Restrictions on air-soft (BB, or plastic pellet) firearms
7. Other administrative restrictions on the certification and licensing of sports shooters and hunters<sup>2</sup>

### Impact of the proposed changes to the Firearms Directive

The latter seven proposals have received precious little support from EU Member States National Authorities. This leads one to question both the source and the utility of these specific proposals. Additionally one must question the process of drafting them, and again what assessment has been performed on their potential impact, both intentional and unintentional. Will they impact illicit firearms, or shall they impact exclusively legitimate firearms?

Serious concerns regarding these proposals have been expressed in official Committee meetings of the European Parliament, and in the reactions the EU Commission has received formally from the technically competent authorities of EU Member States.<sup>3</sup> The latter seven proposals have been debated and refused outright by Member State National Governments and Parliaments. There has also been a strong and consistent chorus of negative reactions from National and International associations and organisations of museums, collectors, sports shooters, hunters and firearm manufacturers. This is not surprising, considering that the consultation process which led to the proposals has been seriously criticised, and a number of stakeholders have publicly declared that they were not consulted at any time. The results of numerous and costly evaluations and surveys commissioned by the Firearms Task Force have evidently also been ignored.

**The Commission has also formally admitted that it did not have sufficient time to commission an impact assessment, justifying such by the alleged urgency of concluding this process immediately.**

The following statement is typical of the alleged motivation for these radical proposals, and the Commission's resistance to any amendments: "In Article 2 the proposal newly includes collectors within the scope of the directive. Collectors have been identified as a possible source of traffic of firearms by the evaluation carried out." However, in the meeting of the Committee on Civil Liberties, Justice and Home Affairs on the 14<sup>th</sup> January 2016, the fact that there was never any terrorist attack in Europe where such museum or collection pieces were used was repeatedly highlighted by Members of the European Parliament present, with consensus being expressed by the general applause of Committee members. Thus, the statement is incorrect and in fact not supported in any way by the evaluation financed by the European Commission (see below), which raises serious concerns on the whole process of drafting these proposals.

**In fact the general consensus of all the stakeholders above, including EU Member State National Governments, is that the individual and collective impact of the latter proposals shall be to irreversibly change the face of sports shooting and firearm collection and preservation. The general consensus is that these latter proposals shall not have the desired impact on the illicit trafficking of arms. The fact that these proposals are being prioritised over any actions to control illegal firearms is also a matter of serious concern.**

The European Commission is now newly perceived by many EU citizens as to be severely endangering many legal pastimes and sports. Moreover, there is general anxiety amongst stakeholders that an important part of European history and heritage is under imminent threat of permanent destruction.

When one considers the estimated 18 million civilian firearms authorised for hunting, sports shooting and collection purposes in the European Union, the financial impact of the proposals on EU Member States would be astronomical. The long-term impact on the academic study of historical firearms is incalculable. The impact on the manufacturers of sports and hunting firearms, while hugely significant in financial and employment terms, may potentially lead to unintended long-term consequences, such as the potential closure of businesses which are essential suppliers of other legitimate firearms users, such as security forces and the police. Member States such as Finland and the Czech Republic have stated that the proposals may limit their national security, since many military reserve units are expected to legally register, store and maintain the semi-automatic and fully automatic weapons they are expected to field in case of a National disaster or conflict.

There is general concern that the administrative and financial impact of the proposals will also serve to divert police resources away from the fight against illegal arms trafficking, certainly at least in the massive task of implementing the changes, destroying hundreds of thousands of legally-registered firearms, and verifying such firearms as being completely destroyed. The permanent loss of reference museum and private collections may also severely obstruct police providing necessary evidence for successful prosecution in cases of illegal firearm use. This would occur should the need arise to prove that a bullet found at a crime scene was shot from a specific firearm type, which would require an example of such a firearm to be available for study. Member State police forces often refer to museums or private collections when such is not available in the relevant police reference collection.

The only indication of any consideration of this consolidated criticism is an indication that the absolute ban on category A firearms may be amended by the European Commission, in a new draft proposal, to a ban from which a Member State may grant exceptions to authorised individuals. However, in principle, firearms collectors shall still be subject to this ban. As such, very little has changed and the Commission has not reacted positively to the extensive feedback it has received, including that from Member States.

### **Evidence to support the proposals**

The basis of the proposals is a perceived real and present danger to the security of the EU Member States.<sup>2</sup> As such, one would expect hard evidence for the core assumptions leading to the proposals, namely that the proposals will:

1. control the illicit trafficking of arms

2. prevent thousands of homicides and suicides

throughout all EU Member States. The justification of the proposal for a change to the Directive should also be that EU Member States' national legislation would not be sufficient to implement the above two objectives.

What evidence is available to support the statements made by the European Commission, and specifically of the impact these proposals will or will not have on illegal and legal firearms possession, and on the reduction of criminal and terrorist activity?

A report on the proposals to amend Directive 91/477 prepared by the European Parliamentary Research Service offers significant insights on the process of preparing these proposals.<sup>4</sup> On page 6 of the report it is noted that the evaluation of the current firearms directive commissioned by the Commission noted, with respect to conversion of semi-automatic firearms to automatic firearms, that "**no specific evidence was collected during the study to further support this concern.**"<sup>4</sup> On pages 9 to 11, it further states that the evaluation prior to the drafting of the proposals noted that:

1. with respect to the alleged danger of conversion of automatic firearms to semi-automatics, and vice-versa, an **in-depth analysis needs to be conducted** and then the European Commission may evaluate a revision of the rules for ownership, acquisition and transfer of such firearms
2. with respect to on-line sales of firearms and their parts, the evaluation provided **non-legislative recommendations to strengthen knowledge on new technologies**<sup>4</sup>

The European Parliament Research Service also highlights concerns raised by Members of the European Parliament about the evidence for any links between legally owned firearms, terrorism and criminal activities, the lack of an impact assessment for these proposals, the (negative) impact on legal firearm owners, and the (negative) impact on national defence capabilities, as well as issues with unclear terminology in the proposals, specifically about banning firearms which *resemble* military firearms.<sup>4</sup>

The European Parliament Research Service report also identifies *procedural breaches* in the process of preparing the proposals.

**In fact the lack of an impact assessment is a departure from the Commissions Better Regulation Guidelines, and the proposal draws on the findings of the external evaluation of the Firearms Directive but the modifications go beyond the recommendations of the evaluation.**<sup>4</sup>

The report also raises concerns that in timing the release of the proposals so soon after the terrorist attacks in Paris, the European Commission may have undermined the perceived legitimacy of the otherwise necessary revision of the directive.<sup>4</sup>

Duquet and Van Alstein<sup>5</sup> of the Flemish Peace Institute have prepared an exploratory analysis of the association between gun ownership, firearms legislation and violent death in Europe. The report is very informative, but is based on observational studies which do not allow one to draw conclusions on cause and effect and, moreover, intentionally ignores much research performed outside Europe, specifically in the United States of America. This report's findings have been used to support the

European Commission's proposals for the revision of the Firearms Directive, and they are thus summarised in some detail below. The report comes to the following conclusions:

1. Most research about firearms and violence are conducted outside Europe, and there is a lack of European research which the report aims to address. However this is only possible to a limited, exploratory degree due to the absence of any high quality studies (Introduction)
2. Approximately 10,000 people were victims of manslaughter or murder by firearms over the years between 2000 and 2010 in the 28 European Union Member States, and there were an additional 4,000 suicides by firearm per year. This translates to a rate of 0.24 homicides and 0.9 suicides by firearm per 100,000 Europeans per annum (Introduction). However, **the total rate of gun-related deaths** (including accidents, some of which may be misclassified suicides) **estimated from World Health Organisation data** is higher, **at about 6,700 deaths per annum in the European Union**, with a significant downward trend of 20% in the period between 2000 and 2012 (Chapter 2)
3. **The vast majority of firearms-related deaths are suicides and only about 15% of firearms-related deaths are homicides.** However only 9% of all suicides are related to firearms, mostly shotguns, mostly legally-registered, and these are almost exclusively male suicides with a higher proportion of older men. The European homicide rate is one of the lowest in the world. The World Health Organisation reports about 12,000 homicides in the period between 2000 and 2012, from which the report (substituting missing national data) extrapolates a figure of 1,000 gun homicides a year in the European Union. **Firearms are used in only about 20% of homicides, and handguns are more often used than rifles or shotguns. Unfortunately there is little information of the proportion of illegal firearms used in such homicides,** but available research indicates that the majority of homicides are conducted with illegal firearms. Legally-registered firearms are possibly more prevalent in cases of inter-personal domestic violence which represented the majority of homicides in studies from Finland, the Netherlands and Sweden. **Terrorist attacks in Europe are rare and not representative for homicides in Europe** (Chapter 2)
4. Some methodologically weak studies (case-control studies) have found associations between firearm possession and risk of dying from suicide or homicide, but this may be the effect of other risk factors which were not controlled for in such studies. Stronger evidence associates firearm ownership with the risk of suicide *by firearm*, with one study finding that shotguns are mostly used by civilians and handguns by members of security forces. A 2005 review of the available literature by the National Research Council of the United States, together with a study by Killias, Kesteren and Rindlisbacher in 2001 analysing the International Crime Survey and World Health Organisation data, both concluded that there was, however, **no consistent association between gun ownership and the total suicide rates across countries.** The availability of a firearm thus seems to increase the risk of a firearm being used to complete a suicide, but there is no consistent evidence that limiting such access has an effect on total suicide rates (Chapter 3)
5. High quality research on the association between firearm ownership and homicides, especially in Europe, is scarce. A review in 2014 by Anglemeyer *et al* of individual-level data found an association between ownership of a firearm and being a victim of a homicide, but this was not corrected for confounders, and the association was nevertheless weaker than that between firearm access and the risk of suicide. Killias *et al* found an association

between firearm ownership rates and both total and fire-arm related homicide rates in a study of country data in 1993, but **their updated study of 2001 did not find any significant relationship between firearm ownership rates and total homicide rates** (Chapter 3)

6. In chapter 4, Duquet and van Alstein performed an analysis of gun ownership and violent deaths in 33 European countries. Again, they were not able to control for confounders. They report finding a strong positive correlation between national gun ownership rates and rates of firearms-related deaths and firearms-related suicides, but **no significant association between gun ownership rates and overall national suicide and homicide rates**. It therefore follows that **lower rates of firearm ownership do not systematically translate into lower levels of violent deaths** (Chapter 4)
7. In 2005, the United States National Research Council found that stricter gun laws (*N.B. this may be incorrect, as the association is reported to be with lower levels of firearm availability-author's note*) were associated with lower firearm suicide rates but not total suicide rates, but the studies reviewed were dated and cross-sectional. In 2013, Fleeger *et al* also found that in the United States lower rates of firearms-related fatalities were associated with stricter gun laws. **In the study, only background checks were significantly associated with lowering firearm fatalities across all outcomes studied**. However these findings were not replicated in another 2005 study by the Task Force on Community Preventive Services which did not confirm any positive effect of firearm regulation on violent outcomes. **A number of studies analysed the effect of the strict firearm restrictions imposed in Australia in 1996, and most found no significant positive effect on firearm-related fatalities, total homicide and suicide rates**. The impact of firearm restrictions in Belgium, Austria and Switzerland were inconsistent. The background checks introduced in Austria in 1997 seem to be associated with an increased fall in rates of *firearm* suicides and (less so) *firearm* homicides. However, there was no significant effect on total suicide or homicide rates. The stricter firearms regulations introduced in Belgium in 2006 were reported to be followed by reductions in firearms deaths and suicides, but no regression analysis was performed. The reforms of military service in Switzerland in 2003, with a reduction in the size of the army and restrictions on service personnel purchasing their service rifles, were reported to be followed by significantly reduced firearm suicide and total suicide rates, but an increase in railway suicides was noted. Homicide rates were not analysed (Chapter 5)
8. The number of **illegal firearms in Europe is unknown, but is estimated to be between 81,000 and 67 million units**. The number of legally held firearms is also difficult to estimate precisely, but it is reported from survey data that 5% of European Union citizens own a firearm and thus **there are approximately 25 million gun owners and 79.8 million firearms in the European Union**. One-third of firearm ownership is for professional use (police, army and security services), 23% for sports and only 5% of firearms are owned for collection purposes. Rates of gun ownership show a decreasing trend over time. (Chapter 1)<sup>5</sup>

Ms. Katja Triebel is a well-known author and researcher of studies about the relationship between crime and firearms. She has recently performed a detailed study of publicly available, and verifiable, data, together with numerous official documents and reports, to objectively analyse the relationship between firearms and crime with a specific focus on European Union Member States. Her 83-page report is publicly available, and deals with accidents, homicides, suicides and violent crime, and the

effect of firearms. It addresses knowledge gaps identified by the European Commission's evaluation reports on the current Firearms Directive.<sup>6</sup>

In summary, her report evidences the following:

1. **there is no correlation between legal access to firearms and fatal injury rates**; total interpersonal violence is a very minor contributor to the total fatal injuries rate (Chapter 2)
2. **there is no correlation between legal access to firearms and total homicide rates** (Chapter 7, Section 1); in the United Kingdom, homicide rates with firearms have doubled after the implementation of the strict firearms control laws of 1997 (Chapter 7, Section 3)
3. **there is no correlation between legal access to firearms and overall suicide rates**, and firearms are one of the least used suicide methods in Europe (Chapter 5, Section 2)
4. **there is a strong correlation between legal firearm ownership and method of suicide** (by firearm); legislation change would probably influence a change in the suicide method, but not the overall suicide rate (Chapter 5, Section 2)
5. **there is no evidence that legislative measures to control legal firearm ownership has any impact on crime rates**; in some cases reductions in firearms ownership have been associated with increases in crime rates (Chapter 6, Sections 4 and 5; Chapter 7, Section 2)
6. there are important gaps in the evidence quoted by the European Commission in the "Evaluation of the Firearms Directive" (Chapter 8, Sections 1 and 2)
7. **there are important case studies (Germany, United Kingdom) which show that measures very similar, in many cases identical, to the EU Commission proposals have failed in their objective to reduce crime, firearms crime, illegal firearms use, homicides, and/or suicides**<sup>6</sup>

Considering all the evidence above, it emerges that:

1. There is a lack of research about the relationship between legal firearm ownership and accidental or violent deaths, especially in Europe, and especially regarding the legal status of firearms used in crime
2. There is strong observational evidence that restricting access to firearms may help to reduce the rate of *firearm* suicide, and limited evidence that background checks may be specifically associated with such a positive effect
3. **There is no evidence that any restriction of legal access to firearms for good cause has any effect on overall rates of homicide, criminal violence or suicide. In a number of cases, when a country introduced firearm registration restrictions, there was no positive effect on total homicide and suicide rates**
4. **There is no evidence of any effect of any restriction of legal access to firearms on reducing terrorist attacks**

## Conclusion

In the process to review the Firearms Directive, the European Commission commissioned an external evaluation. This in turn recommended that minor changes were desirable, but that nevertheless these should be supported by further research in areas such as sales over the internet and the possible conversion of semi-automatic firearms into fully automatic ones. A number of surveys were also conducted, as well as rather limited consultation with relevant stakeholders. Independently from the emerging recommendations, the European Commission proceeded to propose major changes to the Firearms Directive far beyond the original scope of the review.

In the context of the available evidence, including the external evaluation and reviews of the relationships between legitimately registered firearms and terrorism and crime, the support for an extensive revision of the Firearms Directive seems very weak to non-existent. It seems that the European Commission is aware of this discrepancy, and is making strong and broad statements in an attempt to replace hard evidence with catchphrases and anecdotes. The statements attempting to link firearms in private collections and museums and terrorism and crime, or to extoll major reductions in homicides and suicides through new regulations have been shown to be unsubstantiated, misleading and incorrect.

The proposals are thus highly likely to fail to achieve their stated objectives to control illicit firearm use in crime and terrorism. The fact that the proposals target exclusively legitimate firearms registered by European citizens for good cause is seen by many as a failure to act on illegal firearms trafficking, which should be the real priority of the European Commission and its Firearms Task Force. Furthermore, the legitimacy of the restriction of Member State from their liberty to licence private citizens to purchase firearms for good cause is highly doubtful given the available evidence which does not show any significant links between legitimate firearm possession and organised crime and terrorist acts.

Thus the proposals go against the principles of subsidiarity and proportionality.

The proposals are also technically flawed, not least in their lack of any form of impact assessment, which goes against the European Commission's own Better Regulation Guidelines. As such, they are highly likely to have major negative effects and high costs, should they be implemented.

The proposals include measures which shall be ineffective in limiting criminal and terrorist activity, including increased administrative hurdles and burdens to the free availability of spare parts and firearm accessories to sports shooters and hunters. Categories of semi-automatic firearms used regularly and widely in hunting and sports shooting throughout the European Union, but which have never been used in terrorist attacks in Europe, are proposed to be abolished on the basis of purely subjective criteria such as resemblance to another class of firearms. Besides the evident major negative impact on legitimate firearms possession for good cause, they will have a significant negative impact on the internal security of many EU Member States where such firearms are held by security and reserve military units.

The proposals are politically motivated and have been formulated without the support of technical experts and essential legitimate stakeholders. This shall cause problems in their implementation, not least since they fail to correctly define many of the measures they wish to impose, such as precisely which firearms should be better controlled. The long-term damage which will very likely result is impossible to reliably quantify.

The proposals include some good ideas for combatting abusive, hazardous and fraudulent firearms possession and licensing requests, such as implementing EU-wide registers of firearms and firearm owners, and of licence refusals and revocations, and conducting background checks before issuing licences. These measures have been associated with small but significant reductions in incidents of self-harm in some studies. It would be a pity should such positive ideas be lost due to a rejection of the proposals being forced by the European Commission's refusal to remove the totally unacceptable clauses therein.



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