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EUROPEAN COMMISSION

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COM(2010)273 final

2010/0147 (COD)

Proposal for a

**REGULATION (EU) No .../... OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL**

**implementing Article 10 of the United Nations' Firearms Protocol and establishing  
export authorisation, import and transit measures for firearms, their parts and  
components and ammunition**

SEC(2010)663  
SEC(2010)662

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

Specifically, Union action is needed to complete the process of transposition into Union (formerly Community<sup>1</sup>) legislation of the provisions of the *‘Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition’*<sup>2</sup>, supplementing the *United Nations Convention against Transnational Organised Crime*, hereinafter referred to as the ‘UN Firearms Protocol’ or ‘UNFP’.

In its Communication of 18 July 2005 on measures to ensure greater security in explosives, detonators, bomb-making equipment and firearms<sup>3</sup>, the Commission made clear the need and intention to implement Article 10 of the UNFP as part of the overall transposition work<sup>4</sup> that would allow the Commission to meet its obligation to make a proposal for conclusion of the UNFP on behalf of the Union, which represents one of the principal aims of the Commission’s current policy on firearms.

The present legislative proposal is aimed at finalising that work, by transposing the relevant provisions of Article 10 UNFP on *‘General requirements for export, import and transit licensing or authorization systems’*.

- **General context**

As authorised by the Council, the Commission negotiated on behalf of the European Community the articles of the UNFP falling within Community competence and eventually signed it on 16 January 2002 on behalf of the European Community<sup>5</sup>.

The Council and Commission Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the European Union<sup>6</sup> listed among its relevant actions a proposal on the conclusion — on behalf of the European Community — of the UN Firearms Protocol. The successor Stockholm Programme for *‘an open and secure Europe, serving and protecting citizens’*<sup>7</sup> highlights trafficking in arms as one of the illegal activities that continue to challenge the internal security of the EU and reaffirms that the Union should continue to promote ratification of international Conventions (and their Protocols), in particular those developed under the auspices of the United Nations.

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<sup>1</sup> When historical reference is made to the ‘European Community’ the reader should bear in mind that the European Union replaced and succeeded the European Community on the date of entry into force of the ‘Lisbon Treaty’ on 1 December 2009, pursuant to Article 1 third paragraph of the Treaty on European Union (OJ C115 of 9 May 2008, p. 13).

<sup>2</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-c&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-c&chapter=18&lang=en)

<sup>3</sup> COM(2005) 329 final.

<sup>4</sup> Work that included the update of Directive 91/477/EEC on possession and transfers of firearms within the EU, as amended by Directive 2008/51/EC, addressing other parts of the UNFP from the internal market perspective.

<sup>5</sup> Council Decision 2001/748/EC of 16 October 2001 (OJ L 280 of 24 October 2001).

<sup>6</sup> OJ C 198, 12.8.2005, point 4.2, International legal Order, (o), p.20.

<sup>7</sup> EU Council Document 17024/09, CO EUR-PREP 3 JAI 896 POLGEN 229 of 2 December 2009.

Article 207 of the Treaty on the Functioning of the European Union (TFEU)<sup>8</sup> provides the legal basis for the envisaged proposal. (common commercial policy, an exclusive competence of the Union according to Article 3 TFEU, within which Article 10 UNFP provisions fall). The proposal applies only to firearms, their parts and essential components and ammunition for civilian use and not to firearms that are intended specifically for military purposes. Pursuant to Article 207 of the Treaty on the Functioning of the European Union, the common commercial policy should be based on uniform principles, inter alia as regards exports. Common rules should therefore be established for exports from the Union.

This proposal only addresses trade in/transfers of firearms to third countries and consequently does not concern intra-Community transfers of firearms, their parts and essential components and ammunition.

- **Existing provisions in the area of the proposal**

There are no existing EU provisions in the area of the proposal (common commercial policy).<sup>9</sup>

- **Consistency with the other policies and objectives of the Union**

Conclusion of the UNFP by the European Union is still pending and represents an international commitment for the EU. The action ties in with the current EU policies on measures to counter transnational crimes, stepping up the fight against illicit trafficking in firearms — including export control and tracing — and on measures aimed at reducing the proliferation and spread of small arms around the world.

## **2. RESULTS OF CONSULTATION WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENT**

- **Consultation of interested parties**

### *Consultation methods, main sectors targeted and general profile of respondents*

The stakeholders were consulted by means of questionnaires and invitations to meetings addressed to Member States and interested private parties (representatives of European associations of manufacturers of firearms and ammunition for civilian use, those engaged in civil commerce of weapons, hunters, collectors, NGOs, research institutions, etc.), the opening of a specific e-mail account (JLS-FIREARMS@ec.europa.eu) for permanent consultation and an external study to support the preparation of the Impact Assessment. Moreover, an ‘Inter-Service group’ was established within the Commission.

### *Summary of responses and how they have been taken into account*

Member States and NGOs agreed that implementing Article 10 would be useful for preventing diversion of firearms from the legal market to the illegal market. The private parties argued that Member States already had strict regulations covering this aspect and were concerned about possible negative consequences for small and medium-sized enterprises.

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<sup>8</sup> OJ, C115 of 9 May 2008, p 47.

<sup>9</sup> From the Internal Market perspective, Directive 91/477 is applicable to transfers within the EU (see also footnote 4).

Many private stakeholders were concerned in particular that the transit measures and the possible non-cooperation of a transit State could delay all procedures. All private stakeholders were of the opinion that simplified procedures should be used for temporary export or import of firearms. There was no consensus on the activities to which the simplified procedures should apply. According to some of the Member States and NGOs, simplified procedures should be limited to hunters and sport shooters only (while the UNFP includes consideration also for other activities such as exhibitions or repairs). Authorizations for multiple shipments and maximum duration for processing requests for licences were seen as an advantage by private parties and NGOs.

The Commission has considered the opinions expressed by public and private stakeholders. This proposal is designed to bring about a higher degree of security/effectiveness and efficiency. The combination of the two aspects is also based on the outcomes of the stakeholders' consultation.

- **Collection and use of expertise**

Scientific/expertise domains concerned

Article 10 of the UN Firearms Protocol is part of an international instrument whose provisions were previously approved by the Community at the time of the negotiations and at a later stage by means of signature of the Protocol.

Methodology used

Questionnaire to Member States and private stakeholders and NGOs, two separate meetings with representatives of Member States and private stakeholders, questionnaires in connection with an external study, opening of a specific e-mail account (JLS-FIREARMS@ec.europa.eu) for permanent consultation.

Main organisations/experts consulted

The questionnaire and invitations to meetings were sent to the relevant national authorities, representatives of European associations of manufacturers of firearms and ammunitions for civilian use, those engaged in civil commerce of weapons, hunters, collectors, NGOs, research institutions and other European Associations (Chambers of Commerce; Industries; Craft, Small and Medium- sized Enterprises).

Summary of advice received and used

Besides what reported under '*Summary of responses and how they have been taken into account*', it is appropriate to further specify here the following.

One solution advocated during the consultation was to use tacit consent for the transit measures, which private stakeholders were in favour of while some Member States and NGOs were not.

There was in essence unanimity on the fact that the burden to acquire the required information (import authorisation and notice of no objection to transit) should be on the private parties.

The possibility of hunters/sport shooters using the European Firearms Pass and an official invitation to an event outside the EU was also suggested.

This proposal in particular takes into account the need for simplified measures for temporary export, mitigation of the possible negative impact of the transit measures required by the UN Firearms Protocol by making in particular use of tacit consent under certain conditions, the use of multiple authorisations for multiple shipments and the maximum duration of the process for issuing the authorisation. At the same time this proposal takes into account the existing practices of the Member States.

Means used to make the expert advice publicly available

Impact Assessment accompanying this proposal.

• **Impact Assessment**

The Impact Assessment accompanying this proposal developed four policy options.

Policy option 1 was to refrain from taking EU action. This was identified as a theoretical option due both to the legal international obligation entered into by the Community (now Union) by means of signature of the Protocol and to the lack of uniform principles in a matter falling under the common commercial policy, an exclusive competence of the Union.

The other three policy options were selected according to their focus on security or efficiency, where efficiency means the extent to which objectives can be achieved for a given level of resources or at the least possible cost. In this case, efficiency refers to keeping the burden to a minimum for private parties and national administrations.

Policy option 2 aimed at optimal achievement of the objective of contributing to the improvement of security with regard to export, import and transit of firearms for civilian use and prevention of possible diversion from the legal market.

Policy option 3 aimed to achieve efficient implementation of Article 10 of the UNFP for private parties.

Policy option 4 focused on efficiency for national administrations.

Option 3 was the preferred one and is reflected in this proposal. It fulfils the objectives of implementing Article 10 UNFP in the most comprehensive manner and is the best way forward by combining the ‘shall’ (i.e. mandatory) provisions — adapted to the type of products (for civilian use) — with the ‘may’ (i.e. optional) ones, which would match stakeholders’ legitimate expectations.

It combines different aspects of the various policy options on the basis of the main advantages and disadvantages identified for each one of them, in order to achieve a higher degree of both effectiveness and efficiency. This combination of effectiveness/security and efficiency appears to offer the highest potential for significant benefits for the interest groups involved and is — among other things — based on the outcomes of the stakeholders’ consultation.

The envisaged simplified procedure for temporary exports for ‘*verifiable lawful purposes*’ and in particular the proposed transit measures will reduce the possible administrative burdens for those lawful purposes listed by the UNFP itself.

With regard to the specific issue of the proposed tacit consent, it was structured with the aim of balancing the interest in speeding up the process (business) with that of ensuring a feasible deadline for allowing the transit State to react (security).

### 3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

Article 10 of the UNFP on '*General requirements for export, import and transit licensing or authorisation systems*' requires '*each State Party to establish or maintain an effective system of export and import licensing or authorisation, as well as of measures on international transit, for the transfer of firearms, their parts and components and ammunition*', thereby improving scrutiny of transfers and allowing better enforcement of laws.

Article 10 UNFP is based on the principle that firearms and related items should not be transferred between States without the awareness and consent of all States involved. Firearms should not be exported to or through countries that have not authorised the transfer. The content of the documents used for legal export and import should be sufficient to ensure tracing. Besides the above-mentioned 'Shall' provisions, Article 10 UNFP also allows the Parties to adopt simplified procedures for temporary export, import and transit of small numbers of firearms for '*verifiable lawful purposes*', such as recreational, repair, exhibition. The latter are referred to as 'May' provisions.

Chapter I of this proposal addresses 'Subject, Definition and Scope'. Definitions (Article 2) take into account — where appropriate — the parallel provisions of the UN Firearms Protocol, but are tailored to or directly invoke other existing EU legislation, for the sake of clarity: for example, the definitions of firearms, parts and essential components and ammunition mirror those of Directive 91/477 or direct reference is made to the Community Customs Code. Article 3 lists the specific exceptions to which the Regulation does not apply.

Chapter II deals with 'export authorisation, procedures and controls'. The relevant articles transpose the concepts mandatorily established by Article 10 UNFP. Article 4 establishes the general obligation for requiring export authorisation, refers to the list of products to which the proposal applies (in Annex to the proposal) and provides for updates. Articles 5 and 6 on the conditions for issuing the export authorisation also include some of the mitigation measures resulting from the advice received from stakeholders during the consultation, for example: maximum processing period, possible use of electronic documents and tacit consent for transit. Articles 11 and 12 address respectively the correspondent provisions of Article 10(4) and (5) UNFP on verification of the authorisation procedure. Article 7 concerns simplified procedures for verifiable lawful purposes for temporary exports, implementing the non-binding provision of Article 10(6) UNFP. This chapter also includes provisions on general criteria to be taken into account by Member States when assessing a request for export authorisation (Articles 8 and 9) and on powers of national competent authorities (Article 13), which are similar to those laid down in other commercial policy legislation, namely the 'Dual Use' Regulation<sup>10</sup>. Article 10 focuses on the need for record-keeping. Article 14 reproduces a standard formula on penalties.

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<sup>10</sup> OJ L 134 of 29.5.2009, p 1.

Chapter III, on ‘customs procedures’ (Articles 15 and 16), and Chapter IV on ‘administrative cooperation’ (Article 17), include standard provisions commonly used in a commercial policy instrument.

Chapter V refers to ‘general and final provisions’. Besides the establishment of a Coordination Group (Article 18), it includes in particular a review clause (Article 19(3)), and provisions on the entry into force of the Regulation (Article 20).

- **Legal basis**

Article 207 of the Treaty on the Functioning of the European Union.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Union. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s):

Proportionality is ensured by limiting the content of the proposed option to the provisions of Article 10 UNFP, which previously received EU approval during the negotiations on the Protocol. On the whole, this proposal does not go beyond what is necessary to achieve the objective. Besides standard provisions of a commercial policy nature, in order to take into account the concerns and comments of private stakeholders the proposal implements the ‘May’ provisions of Article 10 UNFP, plus others aimed at reducing the burden of administrative rules, in particular those related to the transit measures.

- **Choice of instruments**

Proposed instrument: Regulation.

Other means would not be adequate. A Regulation is the legislative instrument foreseen by Article 207(2) for commercial policy matters.

#### **4. BUDGETARY IMPLICATION**

The proposal has no implication for the Union budget.

#### **5. OPTIONAL ELEMENTS**

- **Review/revision/sunset clause**

The proposal includes a review clause.

Proposal for a

**REGULATION (EU) No .../... OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of[...]**

**implementing Article 10 of the United Nations' Firearms Protocol and establishing export authorisation, import and transit measures for firearms, their parts and components and ammunition**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In accordance with Council Decision 2001/748/EC of 16 October 2001<sup>11</sup> concerning the signing on behalf of the European Community<sup>12</sup> 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, the Commission signed that Protocol (hereinafter referred to as the 'UN Firearms Protocol' or 'UNFP') on behalf of the Community on 16 January 2002.
- (2) The UN Firearms Protocol - the purpose of which is promote, facilitate and strengthen cooperation among States Parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition - entered into force on 3 July 2005.
- (3) In order to facilitate the tracing of firearms and efficiently combat illicit trafficking in firearms, their parts and ammunition, it is necessary to improve the exchange of information between Member States.

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<sup>11</sup> OJ L 280 of 24.10.2001, p.5.

<sup>12</sup> The European Union replaced and succeeded the European Community on 1 December 2009, date of entry into force of the Treaty on European Union, pursuant to Article 1, third paragraph thereof (OJ C115 of 9 May 2008, p. 13).

- (4) Personal data must be processed in accordance with the rules laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the movement of such data<sup>13</sup> and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>14</sup>.
- (5) In its Communication on measures to ensure greater security in explosives, detonators, bomb-making equipment and firearms<sup>15</sup>, the Commission announced its intention to implement Article 10 of the UN Firearms Protocol as part of the measures which need to be taken in order for the Union to be in the position to conclude that Protocol.
- (6) The UN Firearms Protocol requires all parties in particular to put in place or improve administrative procedures or systems to exercise effective control over the manufacturing, marking, import and export of firearms.
- (7) Compliance with the UN Firearms Protocol also requires that the illicit trafficking in firearms their parts and components or ammunition be established as criminal offences and that measures be taken to enable their confiscation.
- (8) This Regulation should not apply to firearms, their parts and essential components or ammunition that are intended specifically for military purposes. The need to meet the requirements of Article 10 of the UN Firearms Protocol should be adapted to provide for simplified procedures for firearms for civilian use. Consequently, some facilitation with regard to authorisation for multiple shipments, transit measures and temporary exports for lawful purposes should be ensured.
- (9) This Regulation does not affect the application of Article 346 of the Treaty on the Functioning of the European Union, which refers to essential interests of the security of the Member States, and has no impact to Directive 2009/43/EC of the European Parliament and of the Council simplifying terms and conditions of transfers of defence-related products within the Community<sup>16</sup>. Moreover, the UN Firearms Protocol and consequently this Regulation do not apply to State-to-State transactions or to State transfers in cases where the application of the Protocol would prejudice the right of a State Party to take action in the interest of national security consistent with the Charter of the United Nations.
- (10) Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons<sup>17</sup> addresses transfers of firearms for civilian use within the territory of the Union while this Regulation focuses on measures in respect of movements from the territory of the European Union to or through third countries.

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<sup>13</sup> OJ L 281, 23.11.1995, p. 31.

<sup>14</sup> OJ L 8, 12.1.2001, p. 1.

<sup>15</sup> COM (2005) 329 final. The Communication also announced the technical modification of Directive 91/477 aimed at integrating the appropriate provisions required by the UN Protocol as regards intra-Community transfers of weapons concerned by the Directive, finally amended by Directive 2008/51/EC published on OJ.L 179, 8.7.2008, p 5.

<sup>16</sup> OJ L 146, 10.6.2009, p.

<sup>17</sup> OJ L 256, 13.9.1991, p.51

- (11) Firearms, their parts and essential components and ammunition when imported from third countries are subject to Union legislation and, in particular, to the requirements of Council Directive 91/477/EEC.
- (12) Consistency should be ensured with regard to record-keeping provisions in force under Union legislation.
- (13) In order to ensure that this Regulation is properly applied, each Member State should take measures giving the competent authorities appropriate powers.
- (14) For reasons of expediency, the Commission should be empowered to maintain the list of firearms, their parts and essential components and ammunition for which an authorisation is required under this Regulation and to amend it on the basis of any subsequent amendment to Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff<sup>18</sup>.
- (15) The Union has adopted a body of customs rules, contained in Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code<sup>19</sup> and its implementing provisions as laid down in Commission Regulation (EEC) No 2454/93<sup>20</sup>. Consideration should also be given to Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code)<sup>21</sup> whose provisions are applicable in different phases according to its Article 188. Nothing in this Regulation constrains any powers under and pursuant to the Community Customs Code and its implementing provisions.
- (16) Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.
- (17) This Regulation is without prejudice to the Union regime for the control of exports, transfer, brokering and transit of dual-use items established by Council Regulation (EC) No 428/2009 of 5 May 2009<sup>22</sup>.
- (18) The Commission and the Member States should inform each other of the measures taken under this Regulation and other relevant information at their disposal in connection with this Regulation.

HAVE ADOPTED THIS REGULATION:

## CHAPTER I

### SUBJECT, DEFINITIONS AND SCOPE

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<sup>18</sup> OJ L 256, 7.9.1987, p.1.

<sup>19</sup> OJ L 302, 19.10.1992, p. 1.

<sup>20</sup> OJ L 253, 11.10.1993, p. 1.

<sup>21</sup> OJ L 145, 4.6.2008,p.1

<sup>22</sup> OJ L 134, 29.5.2009, p.1.

## *Article 1*

This Regulation lays down rules governing export authorisation, and import and transit measures for firearms, their parts and essential components and ammunition, for the purpose of 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 (hereinafter referred to as "the UN Firearms Protocol").

## *Article 2*

For the purposes of this Regulation:

1. 'firearm' means 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.

An object is 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;

2. 'parts and essential components' means 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 component' means the breach-closing mechanism, the chamber and the barrel of a firearm which, being separate objects, are included in the category of the firearms on which they are or are intended to be mounted;

3. 'ammunition' means 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;

4. 'deactivated firearms' means objects corresponding to the definition of a firearm which have been rendered permanently unfit for use by deactivation, ensuring that all essential parts of the firearm have been rendered permanently inoperable and incapable of removal, replacement or modification that would permit the firearm to be reactivated in any way;

5. 'export' means:

(i) an export procedure within the meaning of Article 161 of Regulation (EEC) No 2913/92;

(ii) a re-export within the meaning of Article 182 of Regulation (EEC) No 2913/92 but not including items in transit;

6. 'exporter' means any natural or legal person on whose behalf an export declaration is made, that is to say the person who, at the time when the declaration is accepted, holds the contract with the consignee in the third country and has the power for determining the sending of the item out of the customs territory of the Union. If no export contract has been concluded or if the holder of the contract does not act on its own behalf, the exporter shall mean the person who has the power for determining the sending of the item out of the customs territory of the Union;

Where the benefit of a right to dispose of firearms, their parts and essential components or ammunition belongs to a person established outside the Union pursuant to the contract on which the export is based, the exporter shall be considered to be the contracting party established in the Union;

7. 'customs territory of the Union' means the territory within the meaning of Article 3 of Regulation (EEC) No 2913/92;
8. 'export declaration' means the act whereby a person indicates in the prescribed form and manner his intention to place firearms, their parts and essential components, and ammunition under an export procedure;
9. 'temporary export' means the movement of firearms leaving the customs territory of the Union and intended for re-importation.
10. 'transit' means the operation of transport of goods leaving the customs territory of the Union and passing through the territory of one or more third countries with final destination in another third country;
11. 'transshipment' means transit involving the physical operation of unloading goods from the importing means of transport followed by reloading, generally onto another means of transport;
12. 'export authorisation' means an authorisation granted to one specific exporter for one end user or consignee in a third country and covering one or more firearms, their parts and components and ammunition;
13. 'multiple export authorisation' means an authorisation granted to one specific exporter for multiple shipments to the same end user or consignee in a third country and covering one or more firearms, their parts and components and ammunition;
14. 'illicit trafficking' means the import, export, sale, delivery, movement or transfer of firearms, their parts and essential components or ammunition from or across the territory of one Member State to that of a third country, if:

(i) the Member State concerned does not authorise it in accordance with the terms of this Regulation, or

(ii) the firearms are not marked in accordance with Article 4(1) of Directive 91/477/EEC, or

(iii) the imported firearms are not marked at the time of importation at least with a simple marking permitting identification of the first country of import within the European Union, or, where the firearm does not bear such a marking, a unique marking identifying the imported firearms;

15. 'tracing' means the systematic tracking of firearms and, where possible, their parts and essential components and ammunition from manufacturer to purchaser for the purpose of assisting the competent authorities of Member States in detecting, investigating and analysing illicit manufacturing and trafficking.

### *Article 3*

1. This Regulation shall not apply to:
- (a) State to State transactions or State transfers;
  - (b) firearms, their parts and essential components and ammunition if specially designed for military use and, in any case, firearms of the fully automatic firing type;
  - (c) firearms, their parts and essential components and ammunition when destined for armed forces, the police, and the public authorities of the Member States;
  - (d) collectors and bodies concerned with cultural and historical aspects of firearms, their parts and essential components and ammunition and recognised as such by the Member State in whose territory they are established, provided that tracing measures are ensured;
  - (e) deactivated firearms;
  - (f) antique firearms and their replicas as defined in accordance with national legislation, provided that antique firearms do not include firearms manufactured after 1899;
  - (g) shipments by sea and through ports of third countries, provided that there is no transshipment or change of means of transport.
2. This Regulation is without prejudice to the body of customs rules contained in Council Regulation (EEC) No 2913/92 (Community Customs Code) and Commission Regulation (EEC) No 2454/93 (implementing provisions of the Community Customs Code), in Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the "Modernised Customs Code" and to the regime for the control of exports, transfer, brokering and transit of dual-use items established by Council Regulation (EC) No 428/2009 (Dual Use Regulation).

## CHAPTER II

### **EXPORT AUTHORISATION, PROCEDURES AND CONTROLS**

#### *Article 4*

An export authorisation or a multiple export authorisation shall be required for the export of firearms, their parts and essential components and ammunition listed in Annex I. Such authorisation shall be granted by the competent authorities of the Member State where the exporter is established or is resident.

The Commission shall amend Annex I on the basis of the amendments to Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff.

#### *Article 5*

1. Before issuing an export authorisation or a multiple export authorisation for firearms, their parts and components and ammunition, the Member State concerned shall verify that:
  - (a) the importing third country has issued the relevant import authorisation and,
  - (b) the third countries of transit, if any, have given notice in writing — and at the latest prior to shipment — that they have no objection to the transit.
2. If no objections to the transit are received within twenty working days from the day of the written request for no objection to the transit submitted by the exporter, the consulted third country of transit shall be regarded as having no objection and as having given its tacit consent to the transit
3. The exporter shall supply the competent authority of the Member State responsible for issuing the export or multiple export authorisation with the necessary documents proving that the importing third country has authorised the import and that the transit third country had no objection to the transit or has given its tacit consent to it.
4. The Member States shall process requests for exports authorization or multiple export authorization within a period of time to be determined by national law or practice, which in all cases shall not exceed ninety working days.
5. The period of validity of an export or a multiple export authorisation shall be decided by the Member States, but shall not be less than twelve months.
6. Member States may decide to make use of electronic documents for the purpose of processing the requests for authorisation.

#### *Article 6*

1. For the purpose of tracing, the export authorization or multiple export authorisation, and the import authorisation and accompanying documentation shall together contain information that includes:
  - (a) the dates of issuance and expiry of authorisations;
  - (b) the place of issue of authorisations;

- (c) the country of export;
  - (d) the country of import;
  - (e) whenever applicable, the third countries of transit;
  - (f) the consignee;
  - (g) the final recipient, if known at the time of the shipment;
  - (h) a description and the quantity of the firearms, their parts and components and ammunition, including the marking applied to the firearms.
2. The information referred to in paragraph 1, if contained in the import authorisation, shall be provided by the exporter in advance to the third countries of transit, at the latest prior to the shipment.

#### *Article 7*

1. The simplified procedures set out in paragraphs 2, 3 and 4 shall apply for the temporary export of firearms for verifiable lawful purposes, which include hunting, sport shooting, evaluation, exhibitions and repair.
2. The transit measures as established by this Regulation will not apply to temporary exports.
3. When leaving the customs territory of the Union through a point of crossing of the external border of the Member State of their residence, for the temporary export of one or more firearms during a journey to a third country, hunters and sport shooters may produce the European firearms pass pursuant to Articles 1 and 12 of Directive 91/477/EEC, a national firearms licence, a national hunting permit, or other valid national document issued by the competent authority of the Member State of their residence.
4. When leaving the customs territory of the Union through a point of crossing of the external border of a Member State other than that of their residence, for the temporary export of one or more firearms during a journey to a third country, hunters and sport shooters may produce a valid European firearms pass issued pursuant to Articles 1 and 12 of Directive 91/477/EEC by the competent authority of the Member State of their residence.

The competent authority of the Member State in which the point of crossing of the external border of the Union is situated shall notify the competent authority of the Member State of residence of the hunter or sport shooter that issued the European Firearms pass of the date of the temporary export, the quantity of firearms temporarily exported and the prospective date of return, as declared by the hunter or sport shooter at the time of the temporary export.

5. Hunters and sport shooters who intend to make use of the simplified procedure referred to in paragraphs 3 and 4 of this Article shall substantiate the reasons for their

journey, in particular by producing an invitation or other proof of their hunting or target shooting activities in the third country of destination.

#### *Article 8*

1. In deciding whether or not to grant an export authorization or a multiple export authorisation under this Regulation, the Member States shall take into account all relevant considerations including, where appropriate:
  - (a) the obligations and commitments they have each accepted as members of the relevant international export control arrangements, or by ratification of relevant international treaties;
  - (b) their obligations under sanctions imposed by decisions adopted by the Council or by a decision of the Organisation for Security and Cooperation in Europe (OSCE) or by a binding resolution of the Security Council of the United Nations, in particular on arms embargoes;
  - (c) considerations of national foreign and security policy, including those covered by Council Common Position 2008/944/CFSP<sup>23</sup>;
  - (d) considerations about intended end use, consignee and the risk of diversion.
2. In addition to the criteria set out in paragraph 1, when assessing an application for a multiple export authorisation Member States shall take into consideration the application by the exporter of proportionate and adequate means and procedures to ensure compliance with the provisions and objectives of this Regulation and with the terms and conditions of the authorisation.

#### *Article 9*

1. Member States shall:
  - (a) refuse to grant an export or a multiple export authorisation if the natural or legal person applying for such authorisation has any previous criminal records concerning illicit trafficking in firearms, their parts and essential components or ammunition, or to other serious crimes;
  - (b) annul, suspend, modify or revoke an export or a multiple export authorisation if the conditions for granting it are no longer met.
2. Where Member States refuse, annul, suspend or revoke an export or a multiple export authorization they shall notify the competent authorities of the other Member States thereof and share the relevant information with them. In case the competent authorities of a Member State have suspended an export authorization, the final assessment shall be communicated to the Member States at the end of the period of suspension.

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<sup>23</sup> OJ L 335, 13.12.2008, p. 99.

3. Before the competent authorities of a Member State, acting under this Regulation, grant an export or multiple export authorisation they shall examine all denials taken under this Regulation they have been notified of to ascertain whether an authorisation has been denied by the competent authorities of another Member State or States for an essentially identical transaction (meaning an item with essentially identical parameters or technical characteristics to the same importer or consignee). They shall first consult the competent authorities of the Member State or States which issued such denial(s) as provided for in paragraphs 1 and 2. If following such consultation the competent authorities of the Member State decide to grant an authorisation they shall notify the competent authorities of the other Member States, providing all relevant information to explain the decision.
4. All information shared in accordance with the provisions of this Article shall be in compliance with the provisions of Article 17, (2) concerning the confidentiality of such information

#### *Article 10*

In accordance with their national law or practice in force, Member States shall keep - for not less than twenty years - all information relating to firearms and, where appropriate and feasible, their parts and essential components and ammunition, which is necessary to trace and identify those firearms, their parts and essential components and ammunition, and to prevent and detect illicit trafficking of those products. Such information shall include the place, date of issue and expiry of the export authorisation; the country of export; the country of import; where applicable, the third country of transit; the consignee; the final recipient if known at the time of export; and the description and quantity of the articles, including the marking applied to them.

This Article shall not apply to temporary exports effected by hunters and sport shooters referred to in Article 7.

#### *Article 11*

1. Member States may request the importing third country to confirm receipt of the dispatched shipment of firearms, their parts and essential components or ammunition.
2. Upon request, Member States shall inform the exporting third country of the receipt within the customs territory of the Union of the dispatched shipment of firearms, their parts and essential components or ammunition. Such confirmation shall be ensured in principle by producing the relevant customs importation documents.

The first subparagraph shall apply only if the requesting third country of export was already a State Party to the UN Firearms Protocol at the time of the exportation to the Union.

3. Member States shall comply with paragraphs 1 and 2 in accordance with their national laws or practice in force. In particular, with regard to exports to third countries, the competent authority of the Member State may decide either to address the exporter or to contact the importing third country directly.

### *Article 12*

Member States shall - to the extent possible - take such measures as may be necessary to ensure that the authorisation procedures are secure and that the authenticity of authorisation documents can be verified or validated.

Verification and validation may also be ensured where appropriate via diplomatic channels.

### *Article 13*

In order to ensure that this Regulation is properly applied, each Member State shall take necessary and proportionate measures to enable its competent authorities:

- (a) to gather information on any order or transaction involving firearms, their parts and essential components and ammunition;
- (b) to establish that the export control measures are being properly applied, which may include in particular the power to enter the premises of persons with an interest in an export transaction.

### *Article 14*

Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

## CHAPTER III

### **CUSTOMS PROCEDURE**

### *Article 15*

1. When completing the formalities for the export of firearms, their parts and essential components or ammunition at the customs office responsible for handling the export declaration, the exporter shall furnish proof that any necessary export authorisation has been obtained.
2. The exporter may be required to provide a translation of any documents furnished as proof into an official language of the Member State where the export declaration is presented.
3. Without prejudice to any powers conferred on it under, and pursuant to, regulation (EEC) No 2913/92, a Member State may for a period not exceeding ten working days suspend the process of export from its territory or, if necessary, otherwise prevent firearms, their parts and essential components or ammunition which are covered by a valid export authorisation from leaving the Union through its territory, where it has grounds for suspicion that:

- (a) relevant information was not taken into account when the authorisation was granted, or
  - (b) circumstances have materially changed since the grant of the authorisation.
4. Within the period referred to in paragraph 3, the Member State shall either release the firearms, their parts and essential components or ammunition or take action pursuant to Article 9(1)(b) of this Regulation.

#### *Article 16*

1. Member States may provide that customs formalities for the export of firearms, their parts and essential components or ammunition can be completed only at customs offices empowered to that end.
2. Member States availing themselves of the option set out in paragraph 1 shall inform the Commission of the duly empowered customs offices or of subsequent changes. The Commission shall publish and update this information on a yearly basis in the C series of the *Official Journal of the European Union*.

### CHAPTER IV

#### **ADMINISTRATIVE COOPERATION**

#### *Article 17*

1. Member States, in cooperation with the Commission, shall take all appropriate measures to establish direct cooperation and exchange of information between competent authorities with a view to enhancing the efficiency of the measures established by this Regulation. Such information may include:
  - (a) details of exporters whose application for an authorization is refused or of exporters who are the subject of decisions taken by Member States pursuant to Article 9;
  - (b) data on consignees or other actors involved in suspicious activities, and, where available, routes taken.
2. Council Regulation (EC) No 515/97 of 13 March 1997<sup>24</sup>, and in particular the provisions in that Regulation on the confidentiality of information, shall apply *mutatis mutandis*, without prejudice to Article 18 of this Regulation.

### CHAPTER V

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<sup>24</sup> OJ L 82, 22.3.1997, p. 1.

## GENERAL AND FINAL PROVISIONS

### *Article 18*

1. A Firearms Exports Coordination Group chaired by a representative of the Commission shall be set up. Each Member State shall appoint a representative to this Group.

The Firearms Exports Coordination Group shall examine any question concerning the application of this Regulation which may be raised either by the Chair or by a representative of a Member State. It shall be bound by confidentiality rules of Council Regulation (EC) No 515/97.

2. The Chair of the Firearms Exports Coordination Group or the Coordination Group shall, whenever it is considered to be necessary, consult any relevant stakeholders concerned by this Regulation.

### *Article 19*

1. Each Member State shall inform the Commission of the laws, regulations and administrative provisions adopted in implementation of this Regulation, including the measures referred to in Article 14.
2. By the date of entry into force of this Regulation, each Member State shall inform the other Member States and the Commission of the national authorities competent for implementing Articles 5, 7, 9 and 15. Based on the information supplied by the Member States, the Commission shall publish and update a list of these authorities on a yearly basis in the C series of the *Official Journal of the European Union*.
3. Every five years the Commission shall review the implementation of this Regulation and present a report to the European Parliament and the Council on its application, which may include proposals for its amendment. Member States shall provide the Commission with all appropriate information for the preparation of the report.

### *Article 20*

This Regulation shall enter into force on the hundred and twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 10(2) of this Regulation shall apply from the date from which the European Union becomes Party to the UN Firearms Protocol, following its conclusion pursuant to Article 218 of the Treaty.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

ANNEX<sup>25</sup>

List of firearms, their parts and essential components and ammunition as referred to in Article 2(1) and 4(1):

**Combined Nomenclature Code and Description**

Code CN	Description
<b>A: Firearms</b>	
9302 00 00	<b>Revolvers and pistols, other than those of heading 9303 or 9304</b>
9303	<b>Other firearms including sporting shotguns and rifles.</b>
9303 20	<b>Other sporting, hunting or target-shooting shotguns, including combination shotgun-rifles:</b>
9303 20 10	- Single-barrelled, smooth bore
9303 20 95	- Other
9303 30 00	<b>Other sporting, hunting or target-shooting rifles.</b>
9303 90 00	<b>Other.</b>
9304 00 00	<b>Other arms (for example, spring, air or gas guns and pistols).</b>
<b>B: Parts and essential components</b>	
9305	<b>Parts and accessories of articles of headings 9302 to 9304:</b>
9305 10 00	- Of revolvers or pistols
	- Of shotguns or rifles of heading 9303:
9305 21 00	-- Shotgun barrels
9305 29 00	-- Other
9305 99 00	- Other
<b>C: Ammunition</b>	
9306	<b>Cartridges and other ammunition and projectiles and parts thereof, including shots</b>
	- Shotgun cartridges and parts thereof:

<sup>25</sup>

Based on the Combined Nomenclature of goods as laid down in Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff.

<b>9306 21 00</b>	-- <b>Cartridges</b>
<b>9306 29</b>	-- <b>Other:</b>
<b>9306 29 40</b>	---Cases
<b>9306 29 70</b>	---- Other
<b>9306 30</b>	- <b>Other cartridges and parts thereof:</b>
<b>9306 30 10</b>	-- For revolvers and pistols of heading 9302
	--- Other:
<b>9306 30 91</b>	---- Centrefire cartridges
<b>9306 30 93</b>	---- Rimfire cartridges
<b>9306 30 97</b>	---- Other
<b>9306 90</b>	- <b>Other:</b>
<b>9306 90 90</b>	-- Other