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Guidance document¹

The application of the Mutual Recognition Regulation to weapons and firearms

1. INTRODUCTION

This document seeks to provide ‘user-friendly’ guidance on the application of Regulation (EC) No 764/2008² (the ‘Mutual Recognition Regulation’ or ‘the Regulation’) to weapons and firearms. It will be updated to reflect experience and information from the Member States, authorities and businesses.

The products specifically concerned are:

- Firearms, meaning 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 of Directive 2008/51/EC³. For the purposes of this Directive, an object is considered 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.
- Weapons other than firearms as defined in the national legislation of Member States.

¹ This document is not legally binding. Neither the European Commission nor any person acting on its behalf may be held responsible for the use to which information contained in this publication may be put, nor for any errors which may appear despite careful preparation and checking. This guidance document does not necessarily reflect the view or the position of the European Commission.

² Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC, OJ L 218, 13.8.2008, p. 21.

³ Directive 2008/51/EC of the European Parliament and of the Council of 21 May 2008 amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons, OJ L 179, 8.7.2008, p. 5.

Transfers of ammunition are harmonised by Directives 91/477/EEC⁴ and 2008/51/EC, in association with Directive 93/15/EEC. Provisions relating to the placing on the market and supervision of explosives for civil uses are dealt with by Directive 93/15/EEC⁵, but in 11 Member States the control of ammunition itself is subject to the rules laid down by the CIP Convention⁶.

2. THE MUTUAL RECOGNITION REGULATION (EC) 764/2008

The Regulation applies to administrative decisions addressed to economic operators, on the basis of a technical rule, in respect of any product lawfully marketed in another Member State, where the direct or indirect effect of that decision is the prohibition, modification, additional testing or withdrawal of the product (Article 2.1). Any authority intending to take such a decision must follow the procedural requirements in the Regulation.

The Regulation will apply when all the following conditions are met:

2.1. The (intended) administrative decision must concern a product lawfully marketed in another Member State

The principle of mutual recognition applies where a product lawfully marketed in one Member State is placed on the market in another Member State. It says that a Member State cannot forbid the sale on its territory of products which are lawfully marketed in another Member State, even if they were manufactured according to different technical rules. Both actual and possible denials of mutual recognition are governed by the Regulation. Hence, any Member State intending to ban access to its market it should follow the procedure in Article 6.

2.2. The (intended) administrative decision must concern a product which is not subject to harmonised EU law

The Regulation operates in the non-harmonised area, in relation to products for which there is either no harmonisation of laws at EU level, or for aspects not covered by partial harmonisation.

2.3. The (intended) administrative decision must be addressed to an economic operator

Any restrictive decisions taken by a national authority and addressed to any natural or legal person who is not an economic operator do not fall within the scope of the Regulation.

⁴ Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons, OJ L 256, 13.09.1991, p. 51.

⁵ Council Directive 93/15/EEC of 5 April 1993 on the harmonisation of the provisions relating to the placing on the market and supervision of explosives for civil uses, OJ L 121, 15.5.1993, p. 20.

⁶ Rules adopted by the Commission Internationale Permanente pour l'Epreuve des Armes à Feu Portatives — Ständige Internationale Kommission für die Prüfung von Handfeuerwaffen — Permanent International Commission for Small Arms Testing. See <http://www.cip-bp.org/>.

2.4. The (intended) administrative decision must be based on a technical rule

Under the Regulation⁷ a technical rule is any provision of a law, regulation or other administrative provision of a Member State, not harmonised at EU level:

(1) which prohibits in its territory the marketing of a product (or type of product) lawfully placed on the market in another Member State, or compliance with which is compulsory for that product to be marketed in the Member State where the administrative decision is or will be taken, and

(2) which lays down the characteristics required of that (type of) product, such as levels of quality, performance or safety, or dimensions, including requirements as regards the name under which it is sold, terminology, symbols, testing and test methods, packaging, marking or labelling, or

(3) which imposes on the (type of) product, for the purpose of protecting consumers or the environment, any other requirement which affects the life-cycle of the product after it has been placed on the market, such as condition of use, recycling, re-use or disposal, where such conditions can significantly influence the composition, nature or marketing of the (type of) product.

2.5. The direct or indirect effects of the (intended) administrative decision must be any of the following:

- (a) prohibition of the placing on the market of that (type of) product;
- (b) modification or additional testing of that (type of) product before it can be placed or kept on the market;
- (c) withdrawal of that (type of) product from the market.

Any such (intended) decision must be taken in accordance with the Regulation⁸.

3. THE APPLICATION OF THE MUTUAL RECOGNITION REGULATION TO WEAPONS AND FIREARMS

The Mutual Recognition Regulation should apply to weapons and firearms only if all conditions set out under points 3.1 to 3.4 are met:

3.1. The (intended) administrative decision must concern weapons or firearms lawfully marketed in another Member State

The Regulation should apply only to weapons and firearms lawfully marketed in another Member State (Article 2(1)). That means that weapons or firearms which have not previously been marketed on the territory of the EU fall outside the scope of the Regulation. They will have to comply with the technical rules applicable in the Member State where they are put on the market for the first time in the EU.

⁷ Article 2(2) of the Regulation.

⁸ Article 2(1) of the Regulation.

Certain types of firearms cannot be lawfully marketed in the EU since they are prohibited by Council Directive 91/477/EEC (as amended by Directive 2008/51/EC)⁹:

- (1) explosive military missiles and launchers;
- (2) automatic firearms;
- (3) firearms disguised as other objects;
- (4) ammunition with penetrating, explosive or incendiary projectiles, and the projectiles for such ammunition;
- (5) pistol and revolver ammunition with expanding projectiles and the projectiles for such ammunition, except in the case of weapons for hunting or for target shooting, for persons entitled to use them.

3.2. The (intended) administrative decision must be addressed to an economic operator

Under Article 2(1), the Regulation it applies to administrative decisions addressed to economic operators, whether taken or intended, on the basis of a ‘technical rule’, in respect of weapons and firearms lawfully marketed in another Member State, where the direct or indirect effect of that decision is the prohibition, modification, additional testing or withdrawal as set out under point 3.1.

It follows that the Regulation will only apply to intended administrative decisions and administrative decisions taken by competent authorities with effect as set out above, provided that they are addressed to:

- a dealer or a manufacturer, i.e. 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;
- a broker, i.e. any natural or legal person, other than a dealer, whose trade or business consists wholly or partly in buying, selling or arranging the transfer of weapons.

Thus - and without prejudice to Art. 36 TFEU – any restrictive decisions taken by competent authorities (including the police) and addressed to any natural or legal person who is not an economic operator (citizens, associations, etc.) do not fall within the scope of the Mutual Recognition Regulation.

⁹ The Directive does not apply to the acquisition or possession of weapons and ammunition, in accordance with national law, by the armed forces, the police, the public authorities or by collectors and bodies concerned with the cultural and historical aspects of weapons and recognised as such by the Member State in whose territory they are established. Nor does it apply to commercial transfers of weapons and ammunition of war.

National provisions on the carrying of weapons for hunting or target shooting likewise fall outside the scope of the Regulation.

3.3. The (intended) administrative decision must be based on a technical rule

3.3.1. The notion of ‘technical rule’

The Mutual Recognition Regulation applies to (intended) administrative decisions taken on the basis of a ‘technical rule’ (Article 2(2)).

As regards weapons and firearms specifically, a technical rule is any provision of a law, regulation or other administrative provision of a Member State:

- (d) which prohibits the marketing of any weapon or firearm lawfully marketed in another Member State in the territory of the Member State where the administrative decision is or will be taken or compliance with which is compulsory when that weapon or firearm is marketed in the territory of that Member State, and
- (e) which lays down either:
 - the characteristics required of that (type of) weapon or firearm, such as levels of quality, performance or safety, or dimensions, including requirements as regards the name under which it is sold, terminology, symbols, testing and test methods, packaging, marking or labelling; or
 - any other requirement which is imposed on that (type of) weapon or firearm for the purposes of protecting consumers or the environment, and which affects its life-cycle after it has been placed on the market, such as conditions of use, recycling, reuse or disposal, where such conditions can significantly influence the composition, nature or marketing of the weapon or firearm.

3.3.2. Is a prior authorisation a technical rule?

The obligation to submit a firearm for prior authorisation before it is marketed in a Member State falls outside the scope of the Regulation, whereas the Regulation does apply if certain technical rules have to be complied with before marketing is authorised. In this case, any intended decision to reject the application should be taken in accordance with the Regulation, so that the applicant can enjoy the procedural protection which this legal tool provides.

3.3.3. The marking of firearms at EU level

According to Directive 2008/51/EC, Member States must ensure, by 28 July 2010, either that any firearm or part placed on the market has been marked and registered in compliance with the Directive, or that it has been deactivated. The purpose of this is to render each assembled firearm identifiable and traceable.

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

This marking is the ‘subject of harmonisation at EU level’ and does not therefore fall within the definition laid down in Article 2(2)(a) of the Regulation. Consequently, such marking will fall outside the scope of the Regulation.

Several Member States apply the Convention on Reciprocal Recognition of Proof Marks on Small Arms¹⁰. The Convention determines the nature and manner of the official tests the arms will be subjected to. It incorporates standards of measurement, standardisation of chamber dimensions of commercial firearms and methods of inspection and testing. The proof marks of the official proof house of each contracting party must be recognised in the territory of the other contracting parties. The members of the Convention recognise foreign official proof marks as being equivalent to the proof mark affixed in their national proof houses.

3.4. The (intended) administrative decisions must prohibit the marketing of a weapon or firearm lawfully marketed in another Member State

The direct or indirect effect of the (intended) administrative decision should be any of the following:

- prohibition of the placing on the market of that (type of) weapon;
- modification or additional testing of the (type of) weapon before it can be placed or kept on the market;
- withdrawal of that (type of) weapon from the market.

4. THE ACQUISITION AND POSSESSION OF FIREARMS AND WEAPONS

4.1. Firearms

The acquisition and possession of firearms is governed by Directive 91/477/EEC, as amended by Directive 2008/51/EC.

The national rules implementing these provisions are the ‘subject of harmonisation at EU level’. Therefore, they do not fall within the definition of a ‘technical rule’ laid down in Article 2(2) of the Regulation, and decisions based on them will not be subject to the Regulation.

4.2. Other weapons

The acquisition and possession of other weapons is not the ‘subject of harmonisation at EU level’.

National rules on the possession of weapons other than firearms do not prohibit the marketing of a weapon lawfully marketed in another Member State. Consequently, such rules do not fall within the definition laid down in Article 2(2)(b) of the Regulation, which will not apply to them.

¹⁰ See Note 6 above.

National rules restricting the acquisition of weapons other than firearms do not constitute a technical rule as specified in Article 2(2)(b) of the Regulation since they do not lay down the characteristics required of that product or type of product, nor any other requirement affecting the life-cycle of the product after it has been placed on the market.