Regulation 258/2012 implementing Article 10 of the UN Firearms Protocol

Background

On 8 March 2012, the Council adopted Regulation 258/2012 to combat illicit arms trafficking through improved tracing and control of exports of civilian firearms from the European Union, including measures for imports and transit. This Regulation brings the EU legislation into line with Article 10 of the UNFP.¹

The Regulation is aimed at completing the process of transposition into EU law of the provisions of the ‘Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (UNFP), supplementing the United Nations Convention against Transnational Organised Crime’. The Commission has since 2005 (communication on measures to ensure greater security in explosives, detonators, bomb-making equipment and firearms²) been committed to implementing Article 10 of the UNFP as part of the transposition work³ that would allow the Union to conclude (ratify) the Protocol following the signing of it by the Community in 2002. The Conclusion of the Protocol represents one of the principal aims of the Commission’s policy on firearms.

Summary

This Regulation is based on the principle that firearms and related items should not be transferred between states without the knowledge and consent of all states involved. It does not apply to firearms intended for military purposes. It only addresses trade with and transfers from or to countries outside the European Union.

The Regulation applies only to firearms, their parts and essential components and ammunition for civilian use and not to those intended specifically for military purposes. Furthermore, it only addresses trade with third countries. It does not concern transfers within the Union.

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

² COM(2005) 329 final,
³ 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.
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. Article 7 and 8 on the conditions for issuing the export authorisation also include some of the mitigation measures, for example: maximum processing period, possible use of electronic documents and tacit consent for transit. Article 9 concerns simplified procedures for verifiable lawful purposes for temporary exports, implementing the non-binding provision of Article 10(6) UNFP. Articles 12 and 13 address respectively the correspondent provisions of Article 10(4) and (5) UNFP on verification of the authorisation procedure. This chapter also includes provisions on general criteria to be taken into account by Member States when assessing a request for export authorisation (Articles 10 and 11) and on powers of national competent authorities (Article 15), which are similar to those laid down in other commercial policy legislation, namely the ‘Dual Use’ Regulation. Article 10 focuses on the need for record-keeping. Article 14 reproduces a standard formula on penalties.

Chapter III, on ‘customs procedures’ (Articles 17 and 18), and Chapter IV on ‘administrative cooperation’ (Article 19), include standard provisions commonly used in a commercial policy instrument.

Chapter V refers to ‘general and final provisions’. Besides the establishment of Coordination Group (Article 20), it includes in particular a review clause (Article 21(3)), and provisions on the entry into force of the Regulation (Article 22).

---