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concerns: Change to directive 91/477/EG
document: COM(2015)0750

Rotterdam, December 2, 2015

To whom it may concern,

With much interest I studied document COM(2015)0750, *'Proposal for a directive of the EP and of the Council amending Council Directive 91/477/EEC on control and acquisition and possession of weapons'*.

I will gladly take this opportunity to provide feedback on this important matter. My input is based on my experience as expert to the courts in matters concerning national and international weapons legislation.

The concept proposal is presented as a measure aimed at preventing terrorists from acquiring firearms. Many references are made to the incidents in Paris. This proposal does, however, not introduce any measures that are specifically aimed at this goal. The main reason for this proposal, as stated in point (3) of the considerations, is that the directive needs "further improvement".

In fact, this is a proposal that has been in the works for some time and was, on basis of research, reports and surveys, declared to be unnecessary, ineffective and harmful. It is surprising that it is now presented as a panacea against terrorism and will be pushed through the EP with top speed. The benefits of this measure are minimal, the cost substantial and the collateral damage big.

It should be noted that measures that could have prevented these incidents were already added to the directive in 2008, setting rules for deactivation. However, these measures were never enforced and much needed regulations were delayed until early 2015. It seems that much harm could have been prevented by enforcing the existing directive rather than by changing it again.

The costs of these changes will run into many billions that will be diverted from the real fight against terrorism. Alas it is suggested that the economic impact assessment that should bring this to light is to be skipped.

The proposal also negates the beneficial effects of the recently adopted EU regulation on deactivation of firearms. This regulation was specifically created to close the loophole of through which badly deactivated firearms that were used in the recent Paris attacks were obtained. The proposal, however, creates a new

loophole with the introduction of “acoustic weapons” (converted real firearms), that are to be registered only.

It is my opinion as an expert that this proposal should be reviewed thoroughly. It contains too many measures that have few if any benefits but have strong unwanted side effects. Also an EU regulation, similar to the deactivation regulation, should be created to set the standards to which construction of alarm and gas/alarm weapons will have to conform.

Attached is a document that analyses the proposal and proposes changes, simplifications and cost reductions. Added is a text of the proposal in which the changes mentioned in the first document have been incorporated.

I hope you will take the contents of this document into consideration during your discussions. Should you have any questions, please do not hesitate to contact me.

With kind regards,

A handwritten signature in black ink, appearing to be 'J. van Driel', written in a cursive style.

Ing. J. van Driel
Registered expert to the courts on the subject of
Weapons and weapons' legislation
NRGD nr. 1106.222

Analysis of document COM(2015)0750, comprising a proposal for amendments to EU directive 1991/477/EG

Analysis of the Explanatory Memorandum

Context of the proposal

1.

With some surprise I read the chapter on the context of the proposal. A recount is given of the recent incidents that prompted the introduction of this concept proposal for change to the directive. On page 4 it is stated that one of the reasons is the need for coordination between the Member States on the subject of rules for deactivation. Indeed, this is vital because most, if not all, of the attacks on Charly Hebdo, the Thalys and the Bataclan theater were performed with firearms that had been deactivated but were, rather simply, restored by an illegal dealer in Germany.

My surprise concerned the fact that this lack of coordination has existed since 1993 and that this problem was well known. It is the reason why the directive 2008/51/EC included paragraphs on deactivation, obliging the Member States to include in their national legislation rules for deactivation that made sure all essential parts of firearms were destroyed before they could be declared deactivated. These rules were to be introduced no later than July 18 2010.

Also a commission was formed (consisting of members of CIP) to work out the details of these rules. This took till 2015.

However, the implementation of these mandatory deactivation requirements was not enforced by the European Committee and Member States could continue to deactivate in whatever way they pleased.

This all means that deactivation rules have been in place since 2010 but because they were not enforced firearms remained available that could easily be repaired. If the rules are in place already, why is it necessary to change the directive again? Would it not be more appropriate to enforce the rules that already exist.

Besides that we now have, since November 18, the *Commission Regulation establishing an administrative procedure and technical specifications for the deactivation of firearms as defined by Directive 2008/51/EC (document C(2015)9100/1*, referred to as "deactivation regulation". This regulation (that has direct application without having to be implemented) is recent and will effectively make it impossible to deactivate weapons in an inappropriate way.

So why exchange a regulation that works for one that, most probably, does not?

Legal basis, subsidiarity

2.

The same is true for the deficiencies in cross-border exchange of information. These have also been known for a long time and were addressed in directive 2008/51/EC. It seems that even here enforcement was lacking so that the problem remained. Enforcing the existing rules may be a better option than writing new ones. Proper enforcement is vital.

Legal basis, proportionality

3.

In the chapter Proportionality it is stated that the measures should be taken without unnecessarily restricting the internal market. In fact, the restrictions that the proposal puts onto that market are massive while the positive effects are practically nil. They are aimed at the wrong targets.

Results of evaluations

4.

On page 6 reference is made to the studies performed during the run-up towards possible changes to the directive. In all studies and all contacts with stakeholders and all surveys it emerged that the only real need was to provide uniform rules for deactivation and for blank-firing guns. On all other subjects the uniform opinion was that there needed to be no changes to the directive.

The present proposal mandates many more changes that are of questionable value. Why move some weapons that are already on license in all Member States to category A? They are already fully controlled as it is now. There was no problem with non-shooting replica's so why include them? This will completely destroy the airsoft industry and overload the registration systems, with no benefits.

The fact that a harmonized approach is needed does not necessarily mean that a general ban is required. The case might be that some Member States ban some items (like replicas) while in fact, as the other Member States testify, there is not really a problem, they form no real threat. Then why go for draconian measures? Why introduce a unmanageable registration system for items (remember that replicas do not shoot) that are not considered a problem?

As said, the only really necessary measures were those that targeted deactivation and blank firing guns. And only the former will be a hindrance to terrorism. The latter and most of the other proposed measures will have no deterring effect on terrorism at all.

Other Elements

5.

In the paragraphs concerning the "Detailed explanation of the specific provisions of the proposal" a number of statements is made that are not in any way supported by the findings of any research.

A remark is made that including collectors within the scope of the directive is necessary because the collectors are a possible source of traffic. There is no statistical evidence that recognized collectors are a source that provides arms to criminals or terrorists. This is pure speculation.

The paragraph recounts that collectors are not within the scope of the directive and that is assumed to be a problem. Collectors are, however, fully within the scope of the national legislation of the Member States and can only function when they are recognized by those states. To indicate that collectors are uncontrolled is incorrect. As rapporteur Kallenbach stated during the drafting of directive 2008/51: "Collectors are not part of the problem".

There is no need to change their status. In fact, changing that status will have many unwanted side effects, including the destruction of cultural goods.

6.

In the same paragraph it is stated that deactivated weapons should be registered. This is unnecessary and even counterproductive. Proper deactivation will remove functional guns from the market. If there is no (financial) incentive to deactivate firearms they will be kept in working condition until a buyer is found. That may be for many years and all that time the chance of them being diverted to the illegal market exists.

If deactivated guns have to be registered or are even banned, there will be no incentive to deactivate them, considering that in working condition they are also registered or forbidden. There will be no buyers.

In November 18 2015 the new regulation on deactivation was created , the “*Commission Regulation establishing an administrative procedure and technical specifications for the deactivation of firearms as defined by Directive 2008/51/EC (document C(2015)9100/1*”. The deactivation measures in this regulation are so thorough that deactivation is impossible without having to do as much work as would normally be needed to create a firearm from scratch. There is no need to register such deactivated weapons (from whatever category) as there is no risk of reactivation.

Registering deactivated weapons has very unwanted side-effects. A very large registration system will have to be set up, considering that in a Member State like Great Britain alone there are about 230.000 deactivated firearms in circulation.

The positive effect of registration is nil and registration of transfers (of items that cannot and will never shoot) useless.

The side-effect will be that they clutter up the firearm registration systems and take away the incentive to deactivate, so firearms will be kept in working condition. Also the measure will divert vital police resources from the fight against (real) terrorists towards the maintaining of an ineffective registration system. It is an unnecessary and unwanted measure to take.

The best solution to the mentioned problem caused by badly deactivated weapons is by making sure the new deactivation regulation is properly implemented. Registration is the worst of all possible choices.

7.

Placing deactivated cat A weapons in cat A is also counterproductive. If the deactivation was performed in accordance with the new deactivation regulation the items can no longer be repaired, as all essential parts will be unusable. They therefore pose no more a threat than a deactivated cat B weapon. They are useless but look real. That is all.

Putting them into cat A will make it impossible for re-enactors , theater companies or movie producers to recreate military situations as all deactivated fullauto weapons and all deactivated weapons that look like fullauto weapons will be out of reach, having been put into cat A. Also it will remove, as said before, the incentive to deactivate this kind of weapons. Every deactivation means one live gun less.

The categorization of deactivated weapons as cat A has no beneficial effects and creates many unintended problems. As long as the deactivation regulation is enforced, this categorization is not necessary.

8.

A rather remarkable statement is made about semiauto weapons. It states that certain semiauto firearms can be easily transformed to fullauto. This concerns a miniscule part of the firearms market, being the firearms that, on transfer from the military, were converted to semiauto and could possibly be reconverted.

This is a non-issue. These weapons are all classified as Cat B, which means they can only be held on a government issued license. They are registered and under full control of the

government. There is no need to put these in cat A. In a number of Member States these weapons are used in sportshooting competition and others are held on licenses of cat B collectors.

As these weapons are already under full control, there is no case to be made for introduction of a total ban.

A statement is also made about semiauto auto firearms with large magazine capacity. There is no indication whether that will be a factor as the proposal only mentions a ban on firearms that resemble fullauto firearms. Is a large magazine typical for fullauto firearms? Limiting the number of rounds a magazine can hold has few, if any, positive effects. In several nations (including the USA) bans on high-capacity magazines have been in place and most, if not all, have been repealed because of lack of benefits and problems in enforcement. Remember that magazines are not essential parts of firearms and are not controlled. Hi-cap magazines will always be available on the black market.

Many firearms, particularly pistols, have relatively large magazines and those are used in competition. Collectors have historic weapons with large capacity magazines. Where weapons can be held for self-defense, limiting magazine capacity could cost lives of law-abiding citizens.

If the magazine capacity is part of the definition “weapon that resembles a weapon with full automatic mechanism” this should be explicitly stated to prevent confusion. However such a measure seems futile.

9.

Data are to be kept until the destruction of the weapon. How is the destruction of the weapon to be confirmed? Weapons can be destroyed in accidents or fires or be lost without a trace. Hunting firearms will sometimes linger for decades, rusting away, forgotten in a damp attic.

Will the data storage devices that are in use a hundred years from now be able to read the USB sticks we use today? How are mistakes in the data system to be corrected before the system gets totally contaminated with old, badly registered guns?

10.

Alarm weapons exist in a vast number of variations and sizes from caliber 2mm to .45. Some of these, particularly those imported from Turkey and sold in Bulgaria, can indeed be easily converted to fire live ammunition. With most types, particularly those produced in Germany with recent PTB marking, that is not possible. There are even types of alarm weapons that can impossibly be converted.

It seems futile to require ALL alarm weapons to be registered as some of them can never be converted. It would seem fair to create two situations.

a.

Alarm weapons that cannot be converted to fire live ammunition as verified by a state controlled organization like a proofhouse and marked accordingly, similar to the German PTB marking. The technical specifications for these approved alarm weapons should be part of a European regulation, similar to the new regulation on deactivation.

b.

Other alarm weapons.

Alarm weapons of type a. could be excluded from the directive

Alarm weapons of type b. would be considered firearms of category b, requiring authorization.

11.

A different situation exists with firearms that have been converted to fire only blanks, so-called salute and acoustic weapons. There the risk of convertibility is much higher than with the blank firing weapons.

It should be realized that these weapons share many essential parts, like breechblock, bolt and frame, with the original live version. These parts are interchangeable. In principle it is possible to re-convert these acoustic weapons into live firing guns. Remember that this is what happened to the weapons used in the Thalys and the Paris attacks.

The conversion to blanks is a completely different procedure than deactivation. Conversion to blanks can sometimes be reversed while deactivation cannot.

It should also be realized that essential parts of firearms, as separate items, fall in the category of the original weapon. This means that while an essential part of a live fullauto firearm falls in category A and is forbidden, the same part for an acoustic version of the same weapon (which is fully interchangeable with the cat A part) falls in cat C and only requires registration.

This is not logical, just as it is not logical to put cat A weapons that have been converted to acoustic in cat C while a deactivated cat A weapon remains in cat A.

It would be better if cat A and cat B weapons after conversion to acoustic weapon were placed in cat B. Thus, for the possession of them, an authorization of the government of the Member State will be required.

Analysis of the text of the proposal itself

References are to the paragraph numbers in the text of the proposal

Proposal for a directive of the European Parliament and of the council Amending Council Directive 91/477 on control of the acquisition and possession of weapons

Whereas

12.

(2)

It is not correct and rather cynical to claim that this directive was written in response to the recent terrorist attacks. This proposal has been in the works for at least two years and is not constructed to prevent terrorist attacks. Most of the changes are meant to suit a political goal. It will not do anything to prevent future terrorist attacks as it is only aimed at regulating the legal weapons market while almost no measures are proposed to fight the illegal trade.

(4)

There is no justifiable reason for this measure. Weapons of Category A (including semiauto weapons that only look like fullauto) that are held in private or museum collections do not at all play a role in any terrorist activity. Destroying (indeed, deactivation is akin to destruction) them will only destroy the artefacts that are part of the European Heritage. It will have no positive effects whatsoever, only negative.

The proposal will even include the destruction of all cannons that are presently placed as ornaments next to the gates of museums, memorial sites, castles and war-cemeteries.

(5)

The statement that collectors are a possible source of traffic is not in any way substantiated and seems to be no more than an assumption. To base the change in status on this assumption is not realistic and will lead to the destruction of heritage.

(7)

The proposed measure should be applied only to firearms that have indeed been badly deactivated. They could, for purposes of transfer between Member States, be considered to remain in their original category.

However, firearms that have been deactivated according to the new deactivation regulation cannot be reactivated and should no longer be considered firearms. They are in fact no more of a threat than a picture of a gun and need not be covered by the directive. This should apply to all properly deactivated and marked firearms of all categories.

(8)

Traceability is only of use when it is applied to real firearms. There is no purpose in tracing firearms that were properly deactivated in accordance with the deactivation regulation as they can never be repaired. Tracing properly deactivated firearms will only clog up the registration system, cause errors in registration and make the registration system unwieldy big. It is better to trace the items that pose a real threat, including salute and acoustic weapons, and essential parts of weapons.

(9)

Magazines are uncontrolled and therefore impossible to trace. The same is true for drums, belts, links and hoppers used in machineguns. Small magazines can be easily exchanged during use, negating the effect of any limitation. There are enormous numbers of such magazines in circulation so enforcing any ban will be a futile effort.

Experiences in other countries (including the USA) show that limiting the access to large capacity magazines will not have any positive effect.

Also it is unclear why this statement is made in this part of the proposal as no actual proposal for changes to the text are included in the paragraphs of the proposed directive change.

(11)

How will destruction be verified? What happens when a firearm is lost, destroyed in an accident or left forgotten in an attic? What about firearms of category C or D that were never registered?

(12)

Banning the sale of firearms via distance communications will make it impossible for auction houses to publish catalogs of sales online, even when the weapons concerned are pure collectors' pieces.

Also the term should not be "components" but "essential parts" as only those fall under the working of the directive.

(13)

The arms that were used in the Paris terrorist acts were not converted alarm weapons but converted salute or acoustic weapons. It does not make sense to ban alarm weapons for this reason. There should be a differentiation in this aspect of the proposal:

- a. Alarmweapons designed and constructed as such and in accordance with technical guidelines (an alarm, gas/alarm weapon EU regulation) preventing them from being converted to live fire and marked accordingly. The directive should not apply to these objects.
- b. Alarmweapons that are not constructed in that manner and/or not marked should be put into category B
- c. Salute and acoustic weapons that were created by the permanent conversion of cat A or cat B firearms to blank-firing should be put into category B. Conversions from other categories should remain in their category.

Categorization of essential parts of these weapons should be in category B in order to control them but still make repairs possible.

There seems to be no realistic justification for putting controls on signal weapons (that were designed and constructed specifically for that purpose). They do not feature in any terrorist activity but are, on the contrary, essential for life saving purposes. Restricting them will keep people who might have a need for them e.g. for ships, windsurfers, gliders, mountain climbers, rescue teams etc, from acquiring them because of the paperwork. This might cost lives with no benefits whatsoever.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

(1).(a)

This is an important improvement. However it should be made sure that this listing of essential parts is limitative and the same list is used in all Member States, without additions on national level. That would be in conflict with article 34 TFEU.

(1).(c)

1f

Here a differentiation should be made between

- a. alarm weapons that are produced in accordance with the European Regulation assuring that it cannot be converted to fire a live cartridge and that are marked accordingly and
- b. alarm weapons that do not have such marking

A definition of signal weapon should be returned to the statement in annex I. B. III (b) and these weapons should retain the exempt status. As said, signal guns have never featured in any terrorism incidents but are necessary when lives are in danger.

1g

In the list of activities (theatre performance, movies etc) re-enactment should be added

1h

This definition should not be introduced. There is no real need for it. From all surveys and all reports the universal opinion is that replicas do not pose a realistic threat and are never used in terrorist acts.

The first problem is that it is not defined when an object resembles a firearm. What criteria are used in this analysis? In fact, it is impossible to predict when exactly an item will be considered to resemble a firearm as that is very much dependent on the person who has to make this judgement: A police officer, a judge or a lawyer. It is a purely subjective matter. Most of times this decision will be made afterwards and with hindsight and that is a violation or article 7 of the European Convention on Human Rights.

The way this part of the proposal is worded means that included are items like cigarette lighters, paperweights, stressballs, bathfoam dispensers, umbrellas, toilet brushes, airsoft guns, toys and many more things made to resemble a firearm.

The text is probably even in conflict with the EU Toy directive 2009/48/EC, which forbids the hindering of the sales of toys that conform to that directive. Toy guns are just that: Toys, whatever they look like.

Apart from that, this definition includes airsoft weapons, low power airguns that closely resemble firearms and are used in the fast growing airsoft sport. This sport is actively practiced in all Member States by large numbers of competitors. The number of airsoft weapons that would have to be registered will run into the hundreds of thousands, maybe even a million, with no benefits whatsoever. Terrorists do not use airsoft guns. They have real ones.

The introduction of replicas into the directive will result in all kinds of problems (including many courtcases, compensation claims running into the millions and burgeoning registration systems) while it does not solve any known problem. The end result will definitely be negative.

1i

To this paragraph should be added that the deactivation and marking of deactivated weapons will have to be in accordance with the *“Commission Regulation establishing an administrative procedure and technical specifications for the deactivation of firearms as defined by Directive 2008/51/EC of the European Parliament and of the Council amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons”*, presently registered as document C(2015)9100/1.

It should be emphasized that weapons that have not been deactivated and marked properly will, in the context of the directive, be considered to remain in their original category.

1.(d) (ii)

This should only apply to essential parts, not all parts.

(2)

Collectors should definitely retain their present status, as confirmed in article 2 of directive 91/477/EG as confirmed in item 20 of the considerations of directive 2008/51/EC. In fact the text of article 2 of the original directive should not be changed, or the risk will exist that important pieces of National and European Heritage will be lost forever. Museums and collectors should also not be forced to deactivate their collections. It serves no purpose.

(3) sub 2.

This is an important improvement that will remove uncertainty and confusion. The frame of the firearm (respectively its receiver) is the best place to put the markings, also in international context. However, there should be no requirement for retroactive marking.

(4) sub (a)

Deactivated weapons need not be registered as long as the deactivation has taken place in accordance with the new deactivation regulation. Registration will only clutter the databases without any positive effect. Weapons deactivated according to the regulation cannot be made to work again so no longer pose a realistic threat.

Article 6

In the present directive 91/477/EG a possibility exists for governments of Member States to issue licenses for cat A weapons in special cases on condition there is no threat to security and public order. In this proposal this possibility has been removed.

This will create problems. It means that private persons or organisations have no possibility at all to possess such a weapon, even if their government wants, for good reason, to grant them that permission (remember that this includes many weapons that now are in cat B). There are private persons and organisations who need to be able to have access to such cat A weapons. A few examples are: weapon specialists that work in court cases as expert witnesses, private forensic institutions, companies that produce weapons for government use, organisations that do research in the field of weapon development and many more. It would be contrary to the principle of equality of arms in penal court if the defence lawyers have no access to experts who can do the necessary research.

Another matter concerns the museums who, should a very rare, historically very important weapon be seized and presented to them for preservation as heritage artefact, cannot take in this item, not even in deactivated state.

As discussed earlier, the collectors and museums are brought into the directive and in this article it literally states that all cat A weapons in their possession (including weapons that are now still in cat B) will have to be destroyed (collectors) or deactivated (museums). This

amounts to destruction of national heritage and will result in enormous claims for compensation as there is no proof that this measure will, in any way, make society safer or stop terrorism. As said earlier, museums and collectors are not part of the problem. They can, through the utilization of their specialized expertise, be part of the solution. If this destruction of museum and collectors' pieces takes place an enormous amount of technical information will be lost and cannot be replaced. This will negatively influence the fight against crime and terrorism. Already all police departments complain that the knowledge about weapons is disappearing and often they have to depend in collectors and museums to answer technical questions. That will no longer be possible.

As for the acquisition of weapons, essential parts and ammunition via distance communication: This proposal will cause problems for auction houses who cater to collectors and hunters and sport shooters who live in remote areas. Criminals and terrorists will find other ways of long distance purchases. This move will therefore only cause problems for legal weapon owners and not in any way stop terrorism. Most probably weapon owners will have to travel more to choose, purchase and pick up their sporting equipment, thus increasing the climate and environmental problems we already have.

Article 10a

This is indeed the proper way to tackle the problem of convertible blank or gas/alarm weapons. This kind of weapons serve a purpose in society for things like sporting competition, theatre, dog training, traditional end of year feasts and limited self-protection. This should be available to citizens of Member States that allow this. For that purpose an EU regulation should be created, similar to the deactivation regulation, that prescribes exactly what the construction of a blank firing weapon has to be so that it is sure it cannot be converted. Regulations already exist and function well in Germany (the PTB specification). Such a weapon should be marked (like in Germany) and certificated, either on production or on import. These weapons should not fall under the workings of the directive. However, all other blank firing weapons (the ones that are not marked and are not constructed in accordance to the alarm, gas/alarm weapon regulation) should be placed in category B. This means that these convertible alarm weapons are only available with government authorization and not to the general public.

Deactivation should indeed take place in accordance with the new deactivation regulation. Firearms that are deactivated in this manner cannot be reactivated and can no longer be considered firearms. They should therefore be excluded from the scope of the directive, as they are now.

However, firearms that have been deactivated in different ways (so not in accordance to the deactivation regulation) should remain in their original category.

Firearms of category A and B that have been permanently converted to blank firing only (not being the alarm, gas/alarm weapons mentioned above) should be placed in category B so that they can be used for re-enactment, theatre etc. This is necessary to keep control of these weapons of which certain essential parts are interchangeable with live firing weapons. It means that possession will require a government authorization and they will not be available to the general public. This is necessary to avoid the risk of reconversion.

Article 17

The categories of the directive have been discussed extensively in the past seven years. It seems superfluous to state that these must be revisited within two years. Five years should be sufficient with the possibility to review them earlier, should the need arise. Considering that the proposed changes are very far reaching and in order to properly implement them stability is necessary.

(13) a (i) 6

All semiautomatic firearms that were converted from fullauto are already in category B. It is not specified what exactly makes the difference between a semiauto firearm that is converted from a full auto firearm and a firearm that is produced from scratch as a semiauto firearm, using certain parts taken from a fullauto firearm. This should be specified.

Any conversion will have to be done in such a way that reversion is not possible. If that is the case, there is no reason why such a weapon should be placed in cat A. When it is placed in cat B it requires a governmental authorization so they stay under full control and will not be available to the general public.

(13) a (i) 7

There is no reason why a weapon that is (designed and produced as a) semiautomatic that looks like a full auto weapon should be in cat A. These weapons function only as semiauto and cannot be converted to full auto. Externally they may resemble a full auto firearm like an M 16 but internally they have a completely different mechanism that is the same as any other civilized looking semiautomatic. We are only looking at the outward appearance and not at what the weapon does. It is like banning red cars because Ferraris are often caught speeding. It makes no sense and it will definitely do nothing to reduce the threat of terrorism. Terrorists use real military firearms from the black market, not civilian legal lookalikes.

Another problem that arises here is the criterion. What decides whether a semiauto firearm resembles a fullauto firearm? That differentiation must be clear but the matter is totally subjective. The lack of definition means that always the (subjective) decision about whether a firearm is legal or not will have to be taken by a judge in penal court. That means that the effects of the law are unpredictable and that would be in conflict with article 7 of the ECHR, being a retroactive criminalization.

(13) a (i) 8

This measure is superfluous now that we have the deactivation regulation. The only weapons that are to be considered properly deactivated should be the ones deactivated in accordance with this deactivation regulation. All other firearms will remain in their original category.

Properly deactivated firearms, of whatever category, are no longer firearms and cannot be reactivated. There is no reason to put them in cat A. They can remain outside the directive as they no longer pose any sort of threat.

(13) a (ii)

Point 7 should be retained in category B. There is no need to put these weapons in category A as they are already fully under control, requiring a governmental authorization for possession.

Salute and acoustic weapons converted from cat A or B firearms should be added to this category (cat B) requiring a governmental authorization for possession.

Alarm and gas/alarmweapons that do not conform to the EU regulation for alarm, gas/alarm weapons should be placed in cat B, requiring a governmental authorization for possession.

(13) a (iii) 5

As stated above, salute and acoustic weapons should be placed in cat B.

Alarm weapons should be outside of the scope of the directive as long as they are designed, constructed and marked in accordance with the EU regulation for alarm and gas/alarm weapons.

(13) a (iii) 6

This measure is superfluous now that we have the deactivation regulation.

The only weapons that are to be considered properly deactivated should be the ones deactivated in accordance with the deactivation regulation. All other firearms will remain in their original category.

Properly deactivated firearms, of whatever category, are no longer firearms and cannot be reactivated. There is no reason to put them in cat B. They can remain outside the directive as they no longer pose any sort of threat.

(13) b

This is an important improvement, however a statement should be added that essential parts are not considered firearms but all restrictions of the category in which the particular essential part is placed apply. This is necessary to avoid confusion, particularly where marking is concerned.

(14) (a)

Point (a) should not be deleted but a line should be added that this applies only to firearms that were deactivated in accordance with the EU deactivation directive.

(14) (a)

Point B should again include signal weapons as they are needed for life saving.

Alarm and gas/alarm weapons should be added again, with the condition that they are designed, constructed and marked in accordance with the EU regulation for alarm and gas/alarm weapons (*to be written*).

Article 2

1.

Three months is much too little for the implementation of this changed directive, considering the time needed for translation, for the democratic process to take its course in the Member states and the enormous number of weapons that have to be destroyed. An implementation period of at least two years will be necessary.

Final remark

Because of the short time available and the perceived urgency of this measure no economic impact assessment was made. It was suggested that this should be skipped as the proposed measure will have no impact on the EU budget.

This seems a unrealistic standpoint.

The economic impact of this measure is enormous (with few, if any, benefits). A large number of weapons is to be destroyed. There is ample jurisprudence that the loss of these weapons will have to be compensated, a figure that will run into the many hundreds of millions, if not billions.

Also extra manpower will be required for the destruction of weapons, for registration of all kinds of items, including non-firing items like cigarette lighters, toys and airsoft guns. Manpower that will be diverted from the fight against terrorism that this directive was supposed to be created for. Many commercial companies will lose a lot of business and many irreplaceable objects of great value will be destroyed. Shooting clubs will lose members, repairshops and ammunition producers will lose business. It is impossible to calculate the impact that this measure will have. The total cost of the 1997 handgun ban in Great Britain (including compensation paid, administrative costs, cost of destruction) is estimated to have been almost two billion and that was only for one country. The benefits, if any, were minimal, with criminal firearm use actually increasing. This ban, which spans the whole EU, will be many times more costly.

The question is what will be received in return. Terrorists do not use legally obtained firearms.

Remark concerning the deactivation regulation:

The *Commission Regulation establishing an administrative procedure and technical specifications for the deactivation of firearms as defined by Directive 2008/51/EC (document C(2015)9100/1* was created on November 18 2015. This regulation applies only to weapons up to the size of machineguns. No rules have been set for the deactivation of large weapons like cannons, howitzers and mortars. It is important that rules for these particular weapons are added so that they remain available for re-enactment, theatre and display purposes but also to be able to keep the large weapons (e.g. cannons) that are used as monuments and are placed at memorial sites and war-cemeteries all over Europe.

Attached is an proposal for an alternative wording of the proposed change of the directive.

Text of the proposal

I which the above mentioned suggestions have been incorporated

Proposal for a
**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Council Directive 91/477/EEC on control of the acquisition and possession of
weapons**

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 114 thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Council Directive 91/477/EEC¹⁷ established an accompanying measure for the internal market. It created a balance between on the one hand the undertaking to ensure a certain freedom of movement for some firearms within the Union, and on the other the need to control this freedom using security guarantees suited to this type of product.

(2) As a response to recent terrorist acts which demonstrated gaps in the implementation of Directive 91/477/EEC especially with regard to deactivation of weapons, convertibility and marking rules, the "European Agenda on Security" adopted in April 2015 and the Declaration of the Home Affairs Ministers Council of 29 August 2015 called for the revision of that Directive and for a common approach on the deactivation of firearms to prevent reactivation and use by criminals.

(3) Certain issues in Directive 91/477/EEC need further improvement.

(4) Since brokers provide services similar to those of dealers, they should also be covered by this Directive.

(5) Taking into consideration the high risk of reactivating badly deactivated weapons and in order to enhance security across the Union, deactivated firearms should be deactivated in accordance with the EU directive on deactivation. Where this regulation is not respected, Member States should take appropriate measures including the destruction of those firearms.

(6) To avoid that markings are easily erased and to clarify on which components the marking should be affixed, common Union rules on marking should be introduced.

(7) Firearms may be used for far more than 20 years. In order to ensure their traceability, records of them should be kept for an indeterminate period of time until destruction is certified.

(8) Selling arrangements of firearms and their components by means of distance communication may pose a serious threat to security as they are more difficult to control than the conventional selling methods, especially as regards the on line verification of the legality of authorisations. It is therefore appropriate to limit the selling of arms and components by means of distance communication, notably internet, to dealers and brokers.

(9) Furthermore, the risk of alarm weapons and other types of blank firing weapons being converted to real firearms is high, and in some of the terrorist acts reconverted acoustic arms were used. It is therefore essential to address the problem of converted firearms being used in criminal offences, notably by including them in the scope of the Directive. Technical specifications for alarm and signal weapons as well as for salute and acoustic weapons should be adopted in order to ensure that they cannot be converted into firearms.

(10) In order to improve the functioning of the information exchange between Member States, the Commission should assess the necessary elements of a system to support such exchange of information contained in the computerised data-filing systems in place in Member States. The Commission's assessment may be accompanied, if appropriate, by a legislative proposal taking into account existing instruments regarding exchange of information.

(11) In order to ensure appropriate exchange of information between the Member States on authorisations granted and on refusals, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of adopting an act to enable the Member States to create such a system of exchange of information on authorisations granted and on refusals. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(12) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council

(13) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

(14) Since the objectives of this Directive cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(15) Directive 91/477/EEC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 91/477/EEC is amended as follows:

(1) Article 1 is amended as follows:

(a) Paragraph 1b is replaced by the following:

"1b. For the purposes of this Directive, "essential component" shall mean the barrel, frame, receiver, slide or cylinder, bolt or breach block and any device designed or adapted to diminish the sound caused by firing a firearm which, being separate objects, are included in the category of the firearms on which they are or are intended to be mounted."

(b) Paragraph 1e is replaced by the following:

"1e. For the purposes of this Directive, "broker" shall mean any natural or legal person, other than a dealer whose trade or business consists wholly or partly in buying, selling or arranging the transfer within a Member State, from one Member State to another Member State or exporting to a third country fully assembled firearms, their parts and ammunition."

(c) In paragraph 1, the following paragraphs are added:

"1f. For the purposes of this Directive, "alarm weapons" shall mean portable devices with a cartridge holder having a gas exit to the front, aside or on the top, which are specifically designed and constructed for the purpose of raising alarm which are only designed to fire blanks, irritants, other active substances or pyrotechnic ammunition. These weapons should be designed and constructed in accordance to the EU regulation for alarm and gas/alarm weapons.

1g. For the purposes of this Directive, "salute and acoustic weapons" shall mean firearms specifically and permanently converted for the sole use of firing blanks, for use in theatre performances, re-enactment, photographic sessions, movies and television recordings etc.

1i.

For the purposes of this Directive, "deactivated firearms" shall mean firearms that have been modified with the purpose of rendering them permanently unfit for use by deactivation, in accordance with the "*Commission Regulation establishing an administrative procedure and technical specifications for the deactivation of firearms as defined by Directive 2008/51/EC (document C(2015)9100/1)*"

(d) Paragraph 2 is replaced by the following:

"2. For the purposes of this Directive, "dealer" shall mean any natural or legal person whose trade or business consists wholly or partly in any of the following:

(i) the manufacture, trade, exchange, hiring out, repair or conversion of firearms;

- (ii) the manufacture, trade, exchange, hiring out, repair or conversion of essential parts of firearms;
- (iii) the manufacture, trade, exchange or conversion of ammunition."

(3) In Article 4, paragraphs 1, 2 and 3 are replaced by the following:

1. Member States shall ensure that any firearm or part placed on the market has been marked and registered in compliance with this Directive.
2. For the purposes of identifying and tracing each assembled firearm, Member States shall, at the time of manufacture of each firearm or at the time of import to the Union, require a unique marking including the name of the manufacturer, the country or place of manufacture, the serial number and the year of manufacture, if not already part of the serial number. This shall be without prejudice to the affixing of the manufacturer's trademark.

The marking shall be affixed to the receiver of the firearm.

Member States shall ensure that each elementary package of complete ammunition is marked so as to provide the name of the manufacturer, the identification batch (lot) number, the caliber and the type of ammunition.

Furthermore, Member States shall ensure, at the time of transfer of a firearm from government stocks to permanent civilian use, the unique marking permitting identification of the transferring government.

3. Member States shall make the pursuit of the activity of dealer or broker within their territory conditional upon authorization on the basis of at least a check of the private and professional integrity and of the abilities of the dealer or broker. In the case of a legal person, the check shall be on the legal person and on the person who directs the undertaking."

(4) In Article 4, paragraph 4 is amended as follows:

(a) in the first subparagraph, the second sentence is replaced by the following:

"This filing system shall record each firearm's type, make, model, caliber and serial number, as well as the names and addresses of the supplier and the person acquiring or possessing the firearm. The record of firearms, including deactivated firearms, shall be maintained until destruction of the firearm has been certified by the competent authorities."

(b) the second subparagraph is replaced by the following:

"Throughout their period of activity, dealers and brokers shall be required to maintain a register in which all firearms subject to this Directive and which are received or disposed of by them shall be recorded, together with such particulars as enable the firearm to be identified and traced, in particular the type, make, model, caliber and serial number thereof and the names and addresses of the persons supplying and acquiring it.

Upon the cessation of his activities, the dealer or broker shall deliver the register to the national authority responsible for the filing system provided for in the first subparagraph.

Each Member State shall ensure that the registries of the dealers and brokers established in their territory are connected to the computerized data-filing system of firearms."

(5) Article 4b is replaced by the following:

"Article 4b

1. Member States shall establish a system for the regulation of the activities of brokers and dealers. Such a system may include one or more of the following measures:

- (a) registration of brokers and dealers operating within their territory;
- (b) licensing or authorization of the activities of brokers and dealers.

2. The system referred to in paragraph 1 shall include at least a check of the private and professional integrity and of the abilities of the dealer or broker. In the case of a legal person, the check shall be on the legal person and on the person who directs the undertaking."

(6) Articles 5 and 6 are replaced by the following:

"Article 5

1. Without prejudice to Article 3, Member States shall authorize the acquisition and possession of firearms only by persons who have good cause and who:

(a) are at least 18 years of age, except in relation to the possession of firearms for hunting and target shooting, provided that in that case persons of less than 18 years of age have parental permission, or are under parental guidance or the guidance of an adult with a valid firearms or hunting license, or are within a licensed or otherwise approved training center;

(b) are not likely to be a danger to themselves, to public order or to public safety; having been convicted of a violent intentional crime shall be considered as indicative of such danger.

2. Member States shall provide for standard medical tests for issuing or renewing authorizations as referred to in paragraph 1 and shall withdraw authorizations if any of the conditions on the basis of which it was granted is no longer met.

Member States may not prohibit persons resident within their territory from possessing a weapon acquired in another Member State unless they prohibit the acquisition of the same weapon within their own territory.

Article 6

Member States shall take all appropriate steps to prohibit the acquisition and the possession of the firearms and ammunition classified in category A and to destroy those firearms and ammunition held in violation of this provision and seized.

The acquisition of firearms and their parts and ammunition concerning categories A and B by means of distance communication, as defined in Article 2 of Directive 97/7/EC of the European Parliament and of the Council, shall be authorized only with respect to dealers and brokers and shall be subject to the strict control of the Member States.

(7) In Article 7, the following subparagraph is added to paragraph 4:

"The maximum limits shall not exceed five years. The authorization may be renewed if the conditions on the basis of which it was granted are still fulfilled."

(8) The following Articles 10a and 10b are inserted:

"Article 10a

Member States shall take measures to ensure that alarm and signal weapons as well as salute and acoustic weapons cannot be converted into firearms.

The Commission shall adopt technical specifications for alarm weapons as well as for salute and acoustic weapons to ensure they cannot be converted into firearms.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13b(2).

Article 10b

Member States shall make arrangements for the deactivation of firearms to be verified by a competent authority in order to ensure that the modifications made to a firearm render it irreversibly inoperable. Member States shall, in the context of this verification, provide for the issuance of a certificate or record attesting to the deactivation of the firearm and the apposition of a clearly visible mark to that effect on the firearm.

The Commission has adopted deactivation standards and techniques to ensure that deactivated firearms are rendered irreversibly inoperable (C(2015)9100/1). Those implementing acts are adopted in accordance with the examination procedure referred to in Article 13b(2)."

(9) In Article 13, the following paragraphs 4 and 5 are added:

"4. The competent authorities of the Member States shall exchange information on the authorizations granted for the transfers of firearms to another Member State as well as information with regard to refusals to grant authorizations as defined in Article 7.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 13a concerning the modalities of exchange of information on authorizations granted and on refusals."

(10) Article 13a is replaced by the following:

"Article 13a

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Article 13 shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Directive.
3. The delegation of power referred to in Article 13 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 13 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council."

(11) Article 13b is inserted:

"Article 13b

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

"Article 17

The Commission shall submit every five years a report to the European Parliament and the Council on the application of this Directive, accompanied, if appropriate, by proposals in particular as regards the issues related to new technologies such as 3D printing. The first report shall be submitted two years after the entry into force of this Directive."

The Commission shall, by [date], assess the necessary elements of a system for the exchange of information contained in the computerized data-filing systems referred to in Article 4(4) between the Member States. The Commission's assessment shall be accompanied, if appropriate, by a legislative proposal taking into account existing instruments regarding exchange of information."

(13) in Annex I to Directive 91/477/EC part II is amended as follows:

(a) point A is amended as follows:

(ii) in category B should be added:

8. Salute and acoustic weapons converted from cat A or B firearms
9. Essential parts of acoustic weapons converted from cat A or B firearms

10. Alarm and gas/alarm weapons that do not conform to the EU regulation for alarm and gas/alarm weapons

(iii) in category C should be added:

5. Salute and acoustic weapons converted from cat C firearms

(iii) in category D should be added:

plus salute and acoustic weapons converted from cat D firearms.

(b) in point B the first line is replaced by:

Essential parts are not considered firearms, however all the restrictions that apply to firearms of a certain category also apply to essential parts of that category.

in point B, the following text is deleted.

"The breech-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."

(14) in Annex I to Directive 91/477/EC part III is amended as follows:

(a) point (a) is changed to

"have been rendered permanently unfit for use by deactivation, in accordance with the *Commission Regulation establishing an administrative procedure and technical specifications for the deactivation of firearms as defined by Directive 2008/51/EC (document C(2015)9100/1)*"

(b) point (b) is replaced by the following:

"are designed for life-saving, animal slaughter or harpoon fishing or for industrial or technical purposes or signaling, provided that they can be used for the stated purpose only and

Alarm and gas/alarm weapons that are designed, constructed and marked in accordance with the EU regulation for alarm and gas/alarm weapons."

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive 24 months after publication to the OJ. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

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

Article 4

This Directive is addressed to the Member States.