

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(90) 453 final -SYN 98

Brussels, 27 September 1990

Amended proposal for a

COUNCIL DIRECTIVE

on control of the acquisition and
possession of weapons

(presented by the Commission pursuant to Article 149 (3)
of the EEC Treaty)

EXPLANATORY MEMORANDUM

On 6 August 1987 the Commission submitted to the Council a proposal for a Directive on the control of the acquisition and possession of weapons.¹ This proposal formed part of the work on the abolition of internal Community frontiers, in particular the work on the proposals whereby, in 1992, a stage will be reached when police checks on the identity of individuals and the safety of articles transported by them will be abolished at borders between EEC Member States.

The European Parliament and the Council began consideration of the proposal in 1988. As discussion progressed it became clear that the initial proposal could usefully be expanded by the addition on the one hand of provisions intended partially to harmonize national legislation and on the other of provisions to facilitate travel by hunters and marksmen, two categories where public security is not as pressing a consideration, on the basis of a harmonized document. The Commission accordingly presented an amended proposal along those lines on 13 November 1989.²

Parliament approved the proposal on 11 July of this year, subject to a number of amendments. This amendment by the Commission to the proposal for a Directive is intended to incorporate those of the amendments adopted by Parliament which the Commission can accept. The Commission has accepted those amendments which are not at variance with the purpose of the Directive, namely the abolition of checks on individuals at Community frontiers, and which do not fundamentally alter the balance of the proposal. It leaves its proposal as it stands, however, first of all - in the light of the guidelines laid down by the five Schengen countries - as regards the classification of weapons, and secondly as regards the more flexible provisions concerning hunters and marksmen included in the amended proposal following the preliminary discussions in Parliament.

¹ COM(87)383 final; OJ No C 235, 1.9.1987, p. 8.

² COM(89)446 final; OJ No C 299, 28.11.1989, p. 6.

Amended proposal for a
COUNCIL DIRECTIVE

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission,¹

In cooperation with the European Parliament,²

Having regard to the Opinion of the Economic and Social Committee,³

Whereas Article 8a of the Treaty provides that the Community is to adopt measures with the aim of progressively establishing the internal market, which is to comprise an area without internal frontiers in which the free movement of goods and persons is ensured;

Whereas, at its meeting in Fontainebleau on 25 and 26 June 1984, the European Council expressly approved the objective of abolishing all police and customs formalities at internal Community frontiers;

Whereas the total abolition of controls and formalities at internal Community frontiers entails the fulfilment of certain fundamental conditions; whereas in its White Paper "Completing the internal market" the Commission stated that the abolition of controls on the safety of objects transported and on persons entails, among other things, the approximation of weapons legislation;

Whereas abolition of controls on the possession of weapons at internal Community frontiers necessitates the adoption of effective rules enabling controls to be carried out within Member States on the acquisition and possession of firearms and on their transfer into another Member State; whereas systematic controls must therefore be abolished at internal Community frontiers;

Whereas the mutual confidence in the field of the protection of the safety of persons which these rules will generate between Member States will be the greater if they are underpinned by partially harmonized legislation; whereas it would therefore be useful to determine categories of firearms whose acquisition and possession by private persons are to be prohibited, or subject to authorization, or subject to declaration;

1 OJ No C, 235, 1.9.1987, p. 8; OJ No C 299, 28.11.1989, p. 6.

2 Opinion delivered on 11.7.1990 (not yet published in the Official Journal of the European Communities).

3 OJ No C 35, 8.2.1988, p. 5.

Whereas passing from one Member State to another while in possession a weapon should, in principle, be prohibited; whereas a derogation therefrom is acceptable only if a procedure is adopted that enables Member States to be notified that a firearm is to be brought into their territory;

Whereas, however, more flexible rules should be adopted in respect of hunting and target-shooting in order to avoid impeding the free movement of persons more than is necessary;

Whereas the Directive is intended only to abolish all controls on the possession of weapons when passing from one Member State to another, and does not affect the right of Member States to take measures to prevent illegal trade in weapons,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER 1 - SCOPE

Article 1

1. For the purposes of this Directive "weapons" and "firearms" shall have the meanings ascribed to them in Annex I. Firearms shall be classified in the four categories defined in section 2 of Annex I.

2. For the purposes of this Directive "dealer" shall mean any natural or legal person whose trade or business consists wholly or partly in the manufacture, storage, sale, export, import, purchase, exchange, hiring out, repair or conversion of firearms.

3. For the purposes of this Directive a person shall be deemed to be a resident of the country indicated by the address appearing on a document establishing his place of residence, such as a passport or an identity card, which, on a check on possession or on acquisition, is submitted to the authorities of a Member State or to a dealer.

4. The "European firearms pass" is a document which is issued on request to a person lawfully in possession of a firearm or to a person contemplating the acquisition of a firearm by the authorities of a Member State. It shall be valid for a maximum period of five years. It shall contain the sections set out in Annex II. Where more than one person may possess the same firearm, their particulars shall be entered upon the pass. The pass must always be in the possession of the person using the firearm.

Article 2

1. This Directive is without prejudice to the application of national provisions concerning the carrying of weapons, hunting or target-shooting.

2. This Directive shall not apply to the acquisition or possession of weapons by the armed forces, the police, the public authorities or bodies concerned with the cultural and historical aspects of weapons and recognized as such by the Member State in whose territory they are established.

Article 3

Without prejudice to the rights conferred on residents of the Member States by Article 12(2), and subject to Article 15(1), Member States may adopt in their weapons legislation provisions which are more stringent than those provided for in this Directive.

CHAPTER 2 - HARMONIZATION OF LEGISLATION
CONCERNING FIREARMS

Article 4

Each Member State shall make the pursuit of the activity of dealer within its territory conditional upon authorization. Examination of an application shall involve at least a check on the good character and professional competence of the dealer or, in the case of a legal person, of the person who directs the undertaking.

Each dealer must be required to keep a register in which information concerning all firearms classified in categories A, B or C received or disposed of by him shall be recorded, including such particulars as enable the weapon to be identified, in particular the type, make, model, calibre and serial number thereof and the names and addresses of the supplier and the person acquiring the weapon. The Member States shall regularly check dealers' compliance with this obligation.

Article 5

Without prejudice to Article 3, Member States shall allow the acquisition and possession of firearms classified in category B only by persons who have good cause and who:

- (a) are 18 years old or more;
- (b) have the necessary mental and physical capacity;
- (c) are not likely to be a danger to public order or public safety.

Without prejudice to Article 3, Member States shall allow the possession of firearms classified in category C only by persons satisfying the tests in points (a), (b) and (c) of the first paragraph.

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

Article 6

Member States shall take all appropriate steps to prohibit the acquisition and the possession of the firearms classified in category A.

Article 7

1. No one may acquire a firearm classified in category B within the territory of a Member State unless that Member State has so authorized him.

No such authorization may be given to a resident of another Member State without the latter's prior agreement; such agreement may be indicated by a statement to that effect on a European firearms pass.

2. No one may be in possession of a firearm classified in category B within the territory of a Member State unless that Member State has so authorized him. If he is a resident of another Member State that other Member State shall be informed accordingly.

3. An authorization to acquire and an authorization to possess a firearm classified in category B may take the form of a single administrative decision.

Article 8

1. No one may be in possession in a Member State of a firearm classified in category C which that Member State has not made subject to authorization unless he has declared it to the authorities of that Member State.

The Member States shall provide for the compulsory declaration of all firearms classified in category C at present held within their territories but not previously declared within one year of the entry into force of the national provisions transposing this Directive.

2. Dealers shall inform the Member State in which it takes place of every acquisition of a firearm classified in category C except where that firearm is subject to authorization. If the person acquiring such a firearm is a resident of another Member State, that other Member State shall be informed of the acquisition by the Member State in which it took place and by the person acquiring the firearm.

3. If a Member State prohibits the acquisition and possession within its territory of a firearm classified in category C or D, it shall so inform the other Member States, who shall expressly include a statement to that effect on any European firearms pass they issue for such a firearm, with a view to the application of Article 12(2).

Article 9

1. Every Member State shall prohibit the handing over of firearms classified in categories A, B or C within its territory, by a dealer or by any other person, to any person who is not a resident of that Member State.

2. Notwithstanding paragraph 1 the handing over of a firearm classified in category B or C to a person who is not resident in the Member State in question shall be permitted, subject to compliance with the obligations laid down in Articles 7 and 8:

- where the person acquiring it has been authorized in accordance with Article 11 himself to effect a transfer to his country of residence;
- where the person acquiring it submits a written declaration testifying to his intention to be in possession of the firearm in the Member State of acquisition, provided that he fulfils the legal conditions for possession in that Member State.

Article 10

No ammunition for a firearm may be handed over in a Member State to a person who is not a resident of that Member State unless that person establishes by producing a European firearms pass that he lawfully possesses a weapon of a calibre for which that ammunition is intended.

CHAPTER 3 - FORMALITIES FOR THE MOVEMENT
OF ARMS WITHIN THE COMMUNITY

Article 11

1. Firearms may, without prejudice to Article 12, be transferred from one Member State to another, or to or from a third country, only in accordance with the procedure laid down in paragraphs 2 to 4 hereinafter. These provisions shall also apply to transfers of firearms following a mail order sale.

2. Where a firearm is to be transferred to another Member State or to a third country, the person concerned shall before it is taken there supply the following particulars to the Member State in which such firearm is situated:

- the names and addresses of the person selling or disposing of the firearm and of the person purchasing or acquiring it or, where appropriate, of the owner;
- the address to which the firearm is to be consigned or transported;
- the number of firearms to be consigned or transported;
- the particulars enabling the firearm to be identified;
- the means of transfer;
- the date of departure and the estimated date of arrival.

The Member State shall examine the conditions under which the transfer is to be carried out, in particular with regard to security.

Where the Member State authorizes such transfer, it shall issue a licence incorporating all the particulars referred to in the first subparagraph. Such licence shall accompany the firearm until it reaches its destination; it shall be produced whenever so required by the authorities of the Member States.

3. Each Member State may grant dealers the right to effect transfers of firearms from its territory to another Member State or to a third country without the prior authorization referred to in paragraph 2. To that end it shall issue a licence. The licence shall be valid for no more than three years and may at any time be suspended or cancelled by reasoned decision.

A certified copy of the licence must accompany the firearm until it reaches its destination; it must be produced whenever so required by the authorities of the Member States.

This procedure may be used for transfer to a Member State only if the recipient is a dealer.

Before transfer the dealer shall communicate to the authorities of the Member State from which and the Member State to which the transfer is to be effected all the particulars listed in the first subparagraph of paragraph 2.

4. Each Member State may supply the other Member States with a list of firearms whose transfer to its territory may not be authorized without its prior consent.

Such lists of firearms shall be communicated to dealers who have obtained licences to transfer firearms without prior authorization under the procedure laid down in paragraph 3; these dealers shall effect the transfers referred to in paragraph 3 only after obtaining the prior agreement of the Member State of destination.

5. Where a firearm is to be imported from a third country, the person concerned shall supply the Member State of importation with all the particulars referred to in the first subparagraph of paragraph 2. Where it authorizes importation, the Member State of importation shall issue an import licence. The import licence must accompany the firearm until it reaches its destination; it must be produced whenever so required by the authorities of the Member States.

Article 12

1. If the procedure provided for in Article 11 is not employed the possession of a firearm during a journey through two or more Member States shall not be permitted unless the person concerned has obtained the authorization of each of those Member States.

Member States may grant such authorization for one or more journeys for a maximum period of one year, subject to renewal. Such authorizations shall be entered on the European firearms pass which the traveller must produce whenever so required by the authorities of the Member States.

2. Notwithstanding paragraph 1, hunters and marksmen may without prior authorization be in possession of one or more firearms classified in categories C and D during a journey through two or more Member States with a view to engaging in hunting or taking part in a target-shooting event provided that for each firearm they possess a European firearms pass and that they are able to substantiate the reasons for their journey, in particular by producing an invitation.

However, this shall not apply to journeys to a Member State which prohibits the acquisition and possession of the firearm in question; in that case an express statement to that effect shall be entered on the European firearms pass pursuant to Article 8(3).

3. Under agreements for the mutual recognition of national documents two or more Member States may provide for arrangements more flexible than those prescribed in this Article for movement with firearms within their territories.

Article 13

1. Each Member State shall communicate all useful information at its disposal concerning definitive transfers of weapons to the Member State to the territory of which such a transfer has been effected.

2. All information that Member States receive by way of the procedures laid down in Article 11 for transfers of firearms and in Article 7(2) and Article 8(2) for the acquisition and possession of firearms by non-residents shall be communicated, before the relevant transfers begin, to the Member States of destination and, where appropriate, to the Member States of transit.

3. Member States shall set up, by 31 December 1991 at the latest, a network for the exchange of information for purposes of the application of this Article. They shall inform the other Member States and the Commission of the national authorities responsible for transmitting and receiving information and for applying the formalities referred to in Article 11(4).

Article 14

Entry into the territory of a Member State with a firearm shall be prohibited except in the cases defined in Articles 11 and 12 and provided the conditions laid down therein are met.

Entry into the territory of a Member State with a weapon other than a firearm shall be prohibited unless the national provisions of the Member State in question are complied with.

CHAPTER 4 - FINAL PROVISIONS

Article 15

1. Member States shall, without prejudice to paragraphs 3 and 4, abstain from carrying out controls on the possession of weapons at internal Community frontiers from 31 December 1992 at the latest.

2. Member States shall intensify controls on the possession of weapons at external Community frontiers.

They shall in particular ensure that travellers from third countries who intend to proceed to another Member State comply with Article 12.

3. This Directive shall not preclude the carrying out of controls by Member States or by the carrier at the time of boarding of a means of transport.

4. Member States shall inform the Commission of the manner in which the controls referred to in paragraphs 2 and 3 are carried out. The Commission shall collate this information and make it available to all Member States.

Article 16

Member States shall render failure to comply with the provisions of this Directive subject to the same criminal and administrative sanctions as failure to comply with comparable national provisions.

The loss of a firearm, for whatever reason, shall automatically result in the European firearms pass issued in respect of that firearm being withdrawn.

Article 17

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 1991. They shall forthwith inform the Commission and the other Member States of the measures taken.

The provisions adopted pursuant to the first paragraph shall make express reference to this Directive.

Article 18

This Directive is addressed to the Member States.

Done at

For the Council

ANNEX I

(1) For the purposes of this Directive "weapon" means:

- any firearm within the meaning of section 2 of this Annex;
- any object listed in section 3 of this Annex;
- ammunition for firearms unless it is included in the definition of a firearm;
- any weapon with a gas propellant mechanism, any weapon with a compressed air propellant mechanism and any weapon propelling projectiles by means of springs only;
- any bow or crossbow;
- any cutting or stabbing weapon whose blade has more than one cutting edge, any bayonet, stiletto, dagger, flick-knife, or swordstick;
- any mace, club, truncheon, knuckleduster, cosh, sling or catapult.

(2) For the purposes of this Directive "firearm" means:

- any object which falls into one of the following categories excluding those which meet the definition but which are excluded for one of the reasons listed in section 3 of this Annex:

CATEGORY A - PROHIBITED FIREARMS

1. Firearms usually used as military weapons;
2. Automatic firearms, even those which are not military weapons;
3. Firearms disguised as other objects;
4. Ammunition with penetrating, explosive and incendiary projectiles, and the projectiles for such ammunition;

5. Pistol and revolver ammunition with soft-nosed or hollow projectiles, and the projectiles for such ammunition.

CATEGORY B - FIREARMS SUBJECT TO AUTHORIZATION

1. Short firearms with semi-automatic or repeating mechanisms;
2. Short firearms with single-shot mechanisms and centre-fire percussion;
3. Short firearms with single-shot mechanisms and rimfire percussion whose overall length is less than 28 cm;
4. Long firearms with semi-automatic mechanisms whose magazine and chamber can together hold more than three rounds;
5. Long firearms with semi-automatic mechanisms whose magazine and chamber cannot together hold more than three rounds, where the magazine is removable or where it is not certain that the weapon cannot using tools ordinarily available be converted into a weapon whose magazine and chamber can together hold more than three rounds;
6. Long firearms with repeating and semi-automatic mechanisms and smooth-bore barrels, the barrel not exceeding 60 cm in length;
7. Firearms with semi-automatic mechanisms for civilian use which resemble military weapons with automatic mechanisms.

CATEGORY C - FIREARMS SUBJECT TO DECLARATION

1. Long firearms with repeating mechanisms;
2. Long firearms with single-shot mechanisms and rifled barrels;
3. Long firearms with semi-automatic mechanisms other than those in category B, points 4 to 7;
4. Short firearms with single-shot mechanisms and rimfire percussion whose overall length exceeds 28 cm.

CATEGORY D - OTHER FIREARMS

Long firearms with single-shot mechanisms and smooth-bore barrel.

- and any component of any such firearms.

The breach-closing mechanism, the magazine and the barrel of a firearm as separate objects are included in the category in which the firearm to which they belong are classified.

(3) For the purposes of this Annex objects which correspond to the definition of a "firearm" shall not be included in that definition if they:

- (a) have been rendered permanently unfit for use;
- (b) are designed for alarm, signalling, life-saving, animal slaughtering, harpoon-hunting or -fishing or industrial or technical purposes provided that they can be used for the stated purpose only;
- (c) were manufactured before 1 January 1870 or to a design dating from before 1 January 1870 provided they cannot fire ammunition intended for prohibited weapons or weapons subject to authorization.

(4) For the purposes of this Annex:

- (a) a "short firearm" means a firearm with a barrel not exceeding 30 centimetres or whose overall length does not exceed 60 centimetres;
- (b) a "long firearm" means any firearm other than a short firearm;
- (c) an "automatic mechanism" means a mechanism which returns automatically to a ready-to-fire position each time a round is fired and can fire more than one round from the same barrel each time the trigger is operated;

- (d) a "semi-automatic mechanism" means a mechanism which returns automatically to a ready-to-fire position each time a round is fired, and can fire only one round from the same barrel each time the trigger is operated;
- (e) a "repeating mechanism" means a mechanism which after a round has been fired is designed to be reloaded from a magazine by means of a manually-operated action;
- (f) a "single-shot mechanism" means a mechanism which is designed to be loaded manually by the insertion of ammunition into the chamber or a loading recess before each shot.

ANNEX III - EUROPEAN FIREARMS PASS

The pass must include the following sections:

- (a) identity of the holder
- (b) identification of the firearm
- (c) period of validity of the pass
- (d) section for use by the Member State issuing the pass (type and references of authorizations, etc.)
- (e) section for entries by other Member States (authorizations to enter their territory, etc.)
- (f) - for firearms classified in category B, the following statement:

"This pass confers no entitlement to travel to another Member State with the firearm here referred to without the authorization of the authorities of that Member State. Such authorization may be recorded on this pass."

- for firearms in categories C and D, the following statement:

"This pass confers no entitlement to travel to another Member State with the firearm here referred to without the authorization of the authorities of that Member State. Such authorization may be recorded on this pass."

However, prior authorization is not required for a journey with a view to engaging in hunting or taking part in a target-shooting event, on condition that the reason for the journey can be established at the request of any authority in the Member State visited."

Where a Member State has informed the other Member States in accordance with Article 8(3) that the possession of certain firearms in categories C or D is prohibited within its territory, the following statement shall be added:

"The firearm here referred to may not be taken to [name of Member State]."

DOCUMENTS

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