

COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT

pursuant to Article 149.2(b) of the EEC Treaty

Common position adopted by the Council on 4 February 1991 with a view to the adoption of a Directive on control of the acquisition and possession of weapons.

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Subject: Common position adopted by the Council on 4 February 1991 with a view to the adoption of a Directive on control of the acquisition and possession of weapons

1. INTRODUCTION

On 6 August 1987 the Commission presented to the Council a proposal for a Directive on control of the acquisition and possession of weapons.

The aim of this proposal was to give Member States the necessary guarantees for them to agree to the abolition of police checks on the possession of weapons by persons crossing the Community's internal frontiers. The proposal contained a series of procedural rules enabling weapon movements to be monitored.

The Economic and Social Committee delivered its opinion on this proposal on 16 December 1987.

The amended proposal presented on 13 November 1989 added a number of provisions aimed at partial harmonization of Member States' legislation and allowing persons engaged in hunting or target-shooting to move more easily within the Community on the basis of a uniform document.

Further to the opinion issued by Parliament (first reading) on 11 July 1990, the Commission presented a new amended proposal on 27 September 1990.

2. LEGAL BASIS

The proposal is based on Article 100a of the Treaty. This legal basis was defended by the Commission throughout discussions within the Council and has now been confirmed in the common position adopted by the latter.

3. COMMENTS ON THE COMMON POSITION

3.1 Amendments proposed by Parliament and incorporated into the common position

The amendments proposed by Parliament and taken up in the Commission's amended proposal of September 1990 have been incorporated into the common position verbatim or subject to minor rewording. They concern the following:

- the five-year validity of the firearms pass; the requirement that the user be in possession of the pass (Article 1(4));
- exclusion from the scope of the Directive of organizations concerned with the culture and history of weapons (Article 2);
- the obligation on the part of the person acquiring a category C firearm who is resident in another Member State to inform the authorities of that State himself of such acquisition (Article 8(2));
- the presentation by the person acquiring a firearm who is not resident in the Member State of acquisition of a written declaration testifying to his intention to be in possession of the firearm in that State (Article 9(1));
- the application of the transfer formalities to mail-order sales (Article 11(1));
- the issue to dealers of a licence valid for three years which may at any time be suspended or cancelled by reasoned decision (Article 11(3)).

3.2 Essential differences between the common position and the Commission's amended proposal

(a) Scope

The text of the common position excludes trade in weapons and ammunition intended for military purposes (Article 2).

Also excluded from the scope of the transfer procedures (Article 12) are imports from and exports to third countries.

(b) Dealers

Instead of obtaining a licence, it will be sufficient for dealers which sell only weapons classified in categories C and D to make a declaration.

Registers of weapon movements must be kept for at least five years, even after the activity has ceased (Article 4).

(c) European firearms pass (Article 1(4))

The system adopted in the common position differs from the mechanism initially envisaged in that the pass will be a personal document specifying the weapon(s) possessed by the holder.

A ten-year period of validity is introduced where only weapons classified in category D are indicated on the pass.

The former second subparagraph of Article 16, which required automatic withdrawal of the pass in the event of the weapon being lost, is deleted because the new system allows several weapons to be mentioned on the pass. However, Article 1(4) now stipulates that any loss or theft must be indicated on the pass.

(d) Acquisition and possession of weapons

Category A weapons (prohibited)

The common position (Article 6) provides for a derogation which opens up the possibility of authorizing these weapons provided this is consistent with public safety and order.

Category B weapons (subject to authorization)

The age-limit of 18 for the acquisition and possession of weapons is now subject to a derogation for persons engaged in hunting or target-shooting.

The requirement of mental and physical capacity has been deleted in the new text.

Category C weapons (subject to declaration)

The new wording of Article 8(2) obliges not only the dealer who sells a weapon but also anybody who passes on a weapon to inform the authorities.

(e) Handing-over of firearms

A new second subparagraph added to Article 9 allows Member States to authorize the temporary handing-over of firearms according to rules which they determine.

(f) Movement of persons engaged in hunting or target-shooting (Article 12)

The arrangements laid down for this category of persons will also apply in the case of category B weapons used by persons taking part in target-shooting.

The second subparagraph of paragraph 2 is amended in such a way that the ease of movement for persons engaged in hunting or target-shooting under cover of the European weapons pass does not apply where the Member States to which such a person is travelling makes weapons subject generally to prior authorization.

(g) Classification of weapons

Without amending the content of the four categories of firearm listed in Annex I, the text of the common position introduces a number of clarifications and corrections which help to improve the text.

In particular, the definitions of three types of ammunition ("with penetrating projectiles", "with explosive projectiles" and "with incendiary projectiles") have been added to point IV.

None of the amendments which the common position makes to the amended proposal (see points (a) to (g) above) gives rise to any objections on the part of the Commission. This is because they are either technical adjustments which improve the text without altering its substance, or amendments as to substance which the Commission is unable to oppose because, in the final analysis, it is up to the Member States to judge, in the light of their security requirements, whether the text should be amended in a more liberal or restrictive direction on a given point.

(h) Final provisions

Article 15(1), which lays down that Member States are to abstain from carrying out controls on the possession of weapons at internal Community frontiers, has been deleted in the common position.

Since it is not disputed that the Directive contains compensatory measures in the area of weapons which will enable Member States to abolish checks in that area on persons crossing the Community's internal frontiers, the Commission is able to agree to deletion of this paragraph. The provision in question described in fact the objective of the Directive and so was, if anything, declaratory.

New Article 17 lays down that the Commission will, within a period of five years, draw up a report on the situation resulting from application of the Directive, together with any proposals it might have.

Because of the unanimous opposition of the Member States, the common position does not incorporate the implementation deadline of 31 December 1991 originally included in the proposal. The Commission has issued a Declaration on the subject, regretting the position taken by the Member States.

4. CONCLUSIONS

All things considered, the Commission is able to accept the common position.

- (1) O.J. No C 235 of 1 September 1987, p. 8
- (2) O.J. No C 35 of 8 February 1988, p. 5
- (3) O.J. No C 299 of 28 Novembre 1989, p. 6
- (4) O.J. No C 231 of 17 September 1990, p. 62
- (5) O.J. No C 265 of 20 October 1990, p. 6