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EUROPEAN COMMISSION

Brussels, 31.5.2010
SEC(2010) 663 final

COMMISSION STAFF WORKING DOCUMENT

Accompanying document to the

Proposal for a

**EUROPEAN PARLIAMENT and COUNCIL REGULATION implementing Article 10
of the United Nations' Firearms Protocol and establishing export authorisation, import
and transit measures for firearms, their parts and components and ammunition**

SUMMARY OF THE IMPACT ASSESSMENT

{COM (2010) 273}
{SEC(2010) 662}

1. INTRODUCTION

1.1. Background

The Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the European Union listed among its actions¹ a proposal on the conclusion — on behalf of the European Community² — of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (hereinafter referred to as the 'UN Firearms Protocol' or 'UNFP')³, supplementing the UN Convention against Transnational Organised Crime. Recently, the Stockholm Programme on *an open and secure Europe, serving and protecting citizens*⁴, highlighted trafficking in arms as one of the illegal activities that continue to challenge the internal security of the EU and reaffirmed that the Union should continue to promote ratification of international Conventions (and their Protocols), in particular those developed under the auspices of the United Nations.

The Commission's Communication *on measures to ensure greater security in explosives, detonators, bomb-making equipment and firearms* of 18.07.2005⁵ informed the public of the need to implement Article 10 of the UNFP (hereinafter referred to as Art. 10), as part of the overall transposition work⁶, with the final aim of concluding (to ratify) the UNFP on behalf of the Union as one of the principal aims of the Commission's current policy on firearms. The proposal that this Impact Assessment accompanies would finalise that work.

Art. 10 requires contracting parties to put in place/improve procedures or systems to exercise effective control over export, import and transit of firearms, their parts and components and relevant ammunition.

The Commission negotiated and signed the UNFP on behalf of the European Community⁷ under Articles 95 (internal market) and 133 of the EC Treaty⁸ (common commercial policy⁹, exclusive competence of the Union, within which Art. 10 provisions fall). The conclusion of the UNFP by the Union is pending, represents an international commitment for the EU and is

¹ OJ C 198, 12.8.2005, point 4.2, International legal Order, (o), p.20..

² When historical reference is made to the 'European Community' the reader should bear in mind that the European Union replaced and succeeded the European Community on the date of entry into force of the 'Lisbon Treaty', 1 December 2009, pursuant to Article 1 third paragraph of the Treaty on European Union/TEU (OJ, C115 of 9 May 2008),.

³ http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-c&chapter=18&lang=en

⁴ EU Council Document 17024/09, CO EUR-PREP 3 JAI 896 POLGEN 229 of 2 December 2009.

⁵ COM(2005) 329 final,.

⁶ Work that included the update of Directive 91/477/EEC on possession and transfers of firearms within the EU, as amended by Directive 2008/51/EC, addressing other parts of the UNFP from the internal market perspective.

⁷ (Council Decision 2001/748/EC of 16 October 2001. OJ European Communities, L 280 of 24 October 2001).

⁸ Now respectively Art. 114 and 207 of the Treaty on the Functioning of the European Union /TFEU (OJ C115 of 9 May 2008).

⁹ According to Article 207 TFEU, the common commercial policy 'shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements.... the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies....'.

consistent with the current EU policy on measures aimed at reducing the proliferation and spread of small arms around the world.

Art. 3 and 207 TFEU provide the framework for the proposal, that which should only apply to firearms (parts and components, and ammunition) for civilian use (no military purposes).

1.2. Consultation and expertise

The consultation of stakeholders included questionnaires, invitations to meetings addressed to all EU Member States (MSs) and interested private parties (associations of manufacturers, those engaged in civil commerce of weapons, hunters, collectors, NGOs, research institutions, etc.), the opening of a specific e-mail account (JLS-FIREARMS@ec.europa.eu), an external study to support the IA¹⁰ and a Commission Inter-Service Group.

2. POLICY CONTEXT

2.1. Article 10

The United Nations Guide on the UNFP points out that: *The Protocol requires (Shall – i.e. mandatory - provisions) States parties to establish a system to ensure that firearms are not exported to or through countries that have not authorised the transfer; to ensure that the content of the documents used for legal import and export is sufficient to support the offence of trafficking; and to enhance the accountability and security associated with the import and export system*, thereby improving scrutiny of transfers and allowing better enforcement of laws. Art. 10 also allows (May – i.e. optional - provisions) the adoption of simplified procedures for *verifiable lawful purposes*, such as recreational, repair, exhibition.

The Commission legislative initiative would address trade/transfers to **third countries only**. Intra-community trade/transfers are excluded.

2.2. Definition of firearms

The UNFP does not distinguish between firearms for civilian or military use. The IA only refers to firearms for civilian use. Hence the IA refers to the relevant codes of the Combined Nomenclature and the categories B, C and D as mentioned in Annex I, part II of Directive 91/477/EC.

2.3. Scale of imports/exports¹¹

Firearms for civilian use, their parts and components and ammunition to and from third countries in 2007¹²

	Export quantity	Export value	Import quantity	Import value
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¹⁰ Ernst and Young/Regioplan.
¹¹ The following data are extracted from the Combined Nomenclature dataset of the Eurostat database.
¹² Analysis of Regioplan Policy Research (2008) of data extracted from the Combined Nomenclature dataset of the Eurostat database. Other detailed tables on firearms for recreational purposes, revolvers and pistols, ammunition, and parts and components are included in the IA.

EU 27	10.359.214	€ 693.877.545	2.789.587	€ 221.552.424
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3. DEFINING THE PROBLEM

3.1. Status quo

National legislations do not fully comply with the provisions of Art. 10. The requirements on import licence, transit measures and simplified procedures are not in place in all MSs.

3.2. Legal aspects linked to UNFP

The Union should fulfil the international obligations following the signature of the UNFP and conclude it. The harmonisation required by the common commercial policy in the field of export of firearms for civilian use has not yet been achieved. It is the duty of the Commission to transpose provisions falling within Union (formerly Community) exclusive competence into Union legislation.

3.3. Security problems

Combating firearms trafficking is crucial in the fight against insecurity and criminality. Preventive activities include monitoring legal transfers of firearms, stepping up controls and enhancing cooperation between EU national authorities.

Improving firearms tracing — from manufacturer to last legal purchaser — is a key prevention objective. The majority of firearms on the illegal market (or used in illegal activities) originate in the legal market. Implementation of Art. 10 is one of the ways to meet that need, as requested by the international community. Firearms-related crimes constitute serious problems for society. The public also has concerns about the misuse of legally owned firearms, as shown in recent tragic events with the loss of human lives.

3.4. Economic problems

Export and import procedures for firearms vary between MSs. The UN has stressed the importance of standardised procedures and documents, that *may also increase the degree of security as required by Art. 10, paragraph 5, and reduce costs*¹³. Consideration should also be given to the costs of crime, expressible or not in cash terms: for law enforcement, insurance, health care, injury, loss of lives, reduction of job opportunities in high-crime areas, emotional and physical impacts of crime.

3.5. Defining the problem and its underlying drivers/causes

General problems:

- The Union has not yet fulfilled its international obligations with regard to Art. 10.
- The Union has not yet accomplished the common commercial policy with regard to the establishment of uniform principles on export, import and transit.

¹³ Legislative guide for the implementation of the UNFP, chapter 4, p.441, paragraph 103 D.

- The risks to security linked to export, import and transit.

Specific problems:

- Diversion from the legal market.
- Inefficient cooperation between MSs on tracing firearms.
- Inequalities between businesses acting in different MSs.
- Costs of crime.

3.6. Subsidiarity

The subsidiarity principle does not apply in the case of Art. 10 due to the exclusive competence of the Union.

4. SETTING THE OBJECTIVES

General objectives:

- To fulfil international obligations of the Union with regard to implementation of Art. 10.
- To ensure accomplishment of the Common Commercial Policy, exclusive competence of the Union.
- To contribute to the improvement of security.

Specific objectives:

- To ensure uniform principles of approach in all MSs regarding Art. 10.
- To limit (possible) diversion from the legal market and to ensure tracing.
- To contribute to counteracting inequalities for EU businesses with regard to export, import and transit procedures.

Operational objectives:

- To ensure an efficient and safe export-import regime.
- To ensure efficient and safe transit.
- To ensure a certain level of harmonisation in the least burdensome way.

With regard to security, the objective of limiting diversion and of ensuring better tracing is the objective of the UNFP as a whole.

5. DEVELOPING POLICY OPTIONS

Option 1) No EU action (status quo): The identified problems would not be addressed, Art 10 would not be implemented and the UNFP would not be concluded (ratified). The Union would not honour its political and international commitments. **Option 2) Regulation focusing on effectiveness to achieve optimal security:** Establishment of a strict effective system. Only the ‘Shall’ provisions of Art. 10 would be implemented (no simplified procedures). **Option 3) Regulation focusing on efficiency for private parties:** Privilege given to the efficiency of the system, with a view to keeping the burden for private parties to a minimum. The ‘May’ provisions on simplified procedures would be allowed. **Option 4) Regulation focusing on efficiency for States’ authorities:** focus on the efficiency of the system, with a view to keeping the burden for public authorities to a minimum.

6. COMPARATIVE ASSESSMENT OF POLICY OPTIONS

	Assessment criteria ¹⁴	Policy Option 1	Policy Option 2	Policy Option 3	Policy Option 4
Relevance	To fulfil international obligations of the Union with regard to implementation of Art. 10 of the UNFP	0	√√	√√	√√
	To ensure accomplishment of the Common Commercial Policy as a matter of exclusive competence of the Union with respect to export, import and transit measures for firearms for civilian use	0	√√	√√	√√
	To contribute to the improvement of security with respect to firearms for civilian use	0	√√	√	√
Feasibility	The difficulty/risks of transposition	Not applicable	-	-	0
Social/Security impacts	Impacts on crime, terrorism and security	0	√√	√	√
Economic Impacts	The financial and administrative costs	0	--	-	-

¹⁴ Policy options assessed according to a ranking: more positive (√√), positive (√), neutral (0) and negative (-) or more negative impacts (- -), for each of the assessment criteria. Some options could imply trade-offs and thus have both positive and negative impacts with regard to an assessment criterion. The definition of net impact used here is positive impact minus negative impact.

	Impacts on competitiveness, trade and investment flows	0	-	√	-
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6.1. Assessment of stakeholders' consultations

MSs and NGOs believe that Art. 10 is useful for preventing diversion of firearms from the legal market. The private parties say that legislation is sufficiently strict in the MSs and that implementation of Art. 10 would have negative consequences for SMEs. Concerns were expressed with regard to transit measures. Licences for multiple shipments and maximum duration for processing applications were seen as an advantage by private parties and NGOs. Private stakeholders favoured simplified procedures for temporary imports/exports. Some of the MSs would prefer the simplified procedures to be limited to hunters and sport shooters.

7. THE PREFERRED POLICY OPTION

The preferred policy option is based on an assessment of the identified policy options and the consultations with private and public stakeholders..

Main field of the EU intervention	Key features of the preferred policy option
Scope of the authorisations	Regulation implementing the 'Shall' provisions of Art. 10/UNFP throughout the EU
	Simplified procedures ('May' provisions) for temporary import/export, for verifiable lawful purposes such as hunting, sport shooting, evaluation, exhibitions and repairs
Conditions for application of authorisations	The private parties to acquire 'notice of no objection' of the transit State and provide it to the exporting State
	Use of open licence for multiple shipments
	Use of silent consent with regard to transit requirements
Conditions for processing authorisations	MSs to appoint an official/office/department for the authorisation procedures
	Limited duration of the licensing process
	Electronic documents may be introduced
	Documents may be standardised

7.1. Assessment of the preferred option

Relevance/Objectives to achieve: International obligations of the EU; a coherent EU trade regime; enhanced cooperation between MSs; a common commercial policy in the field; stronger control of exports/imports; fewer opportunities for diversion. **Feasibility:** Due to the ‘Shall’ provisions, some MSs could find it necessary to adapt their national of the work. **Social/Security impacts:** The ‘Shall’ provisions have a positive security impact since the risk of diversion from the legal market would be diminished. The silent consent would slightly mitigate that positive impact. The preferred option is likely to enhance internal security and security of citizens in the EU and third countries. **Administrative burden and financial costs:** The ‘Shall’ requirements could impose administrative costs on businesses, mitigated by the ‘May’ provisions and other proposed measures such as: silent consent, authorisations for multiple shipments; maximum duration for processing requests. The silent consent would neutralise the risk of delays in cases of transit. Small negative impact on MSs’ public authorities that do not already apply the ‘Shall’ provisions is foreseen. **Impacts on competitiveness, trade and investment flows:** The implementation of uniform provisions can have a positive impact due to reduction of the number of diverging rules now in place in the MSs, which potentially create distorted competition. The simplified procedures could have a positive impact as well. **Impact on third countries:** A positive security impact can also be expected on third countries. Security is a precondition for economic and social development.

8. ASSESSMENT OF FINANCIAL AND ADMINISTRATIVE COSTS OF THE PREFERRED POLICY OPTION

The assessment is based on the (limited) data made available by public authorities and private parties, plus figures extracted from the EUROSTAT database.

A. Current situation

I. Estimation of the number of licences

Based on the a) licences issued in the MSs that provided data (approx. 14 000), b) the quantity of imports and exports in those Member States (5 806 736) and c) the quantity of imports and exports in the entire EU = 13 148 801¹⁵, and assuming that the 16 other MSs have similar licensing procedures, the total number of licences in the 27 MSs would be around 35 000 (14 000 x 2.5).

The estimation of the yearly number of licences would therefore add up to **25/30 000**, a figure indirectly confirmed by a private party who referred to 15/20 000 licences for exports and 5 000 licences for imports, per year.

II. Estimation of current costs for businesses

The preparation of an application takes between 1 and 4 man-hours, i.e. **2 hours on average**. If a standard **tariff of 50 euros/hour** is used, the total administrative burden is 100 euros/licence. The estimation of current administrative costs for businesses ranges from **€2 500 000 to €3 000 000 per year**.

¹⁵ Taking into account that the Member States that replied to the consultation account for more than 40 percent of the import and export total.

III. Estimation of current costs for public authorities of Member States

None of the interviewed authorities could provide an estimation of the necessary capacity in man-hours per licence, due to a lack of available data.

B. Future situation

- **Estimation of impacts of the ‘Shall’ provisions of the preferred policy option**

Estimation based on total duration for applying the provisions is between 5 and 10 hours depending on the involvement of transit countries, which corresponds to an administrative burden per licence of 250 to 500 euros.

- **Impacts of implementing the ‘Shall’ provisions on Member States**

The majority of the MSs believed that the impact on the structural administrative costs would be slight.

- **Estimation of impacts of ‘May’ provisions and other mitigating measures**

Implementation of the ‘May’ provisions and of the other accompanying measures would mitigate the financial and administrative costs as shown in the estimations that follow.

- **Estimation of total costs of the preferred policy option for businesses**

Transit apparently involves only 10% of shipments; the use of standardised or electronic documents and open licences for multiple shipments would result in a decrease by approximately 30%¹⁶ in the number of licences issued. The total cost of the preferred policy option would therefore range from €3 850 000 to €4 620 000 per year.

- **Estimation of total costs of the preferred policy option for public authorities**

Each policy option would entail a series of ‘no recurring’ costs (implementation of the new Regulation, familiarisation with the new provisions, training of staff). Most of the consulted representatives of MSs believed that no immediate or long-term budgetary consequences would occur.

C. Comparison of estimated costs for businesses and public authorities between current and future situation

Based on the above-mentioned estimations the increased administrative costs for all EU businesses due to the preferred policy option would range from €1 350 000¹⁷ to €1 620 000. Financial costs for businesses getting accustomed to the new Regulation will probably increase as well. Only a small increase (if any) in costs for public authorities of MSs is expected.

¹⁶ Prudent estimation that takes into account comments by representatives of the EU private stakeholders who stated that the total amount of licences is that of the shipments.

¹⁷ This estimation would mean that the increase in financial and administrative costs would represent only 0.19% of the total value of exports in 2007.

Proportionality. A Regulation is the legislative instrument needed to address commercial policy matters. Proportionality is ensured by limiting the proposal to the mandatory provisions of Art. 10 UNFP. The preferred option takes account of the existing legislations of the MSs and does not go beyond what is necessary to achieve the objective with the exception of those measures aimed at addressing - where possible - the concerns of private stakeholders.

9. MONITORING AND EVALUATION

Based on an identified list of indicators aimed at assessing the progress and the effectiveness of the preferred option in achieving the main policy objectives, monitoring could involve reporting activities (Commission and MSs). The Commission could report on the status of implementation after five years. An overall evaluation of the measures adopted could follow. Comparing ‘results achieved’ against ‘objectives’ would allow the Commission to decide whether proposals for amendments should be put forward.