

## EXAMINATION OF THE NEED FOR A DIRECTIVE TO STRENGTHEN THE CONTROL OVER POSSESSION OF FIREARMS ENVISAGED BY THE EUROPEAN COMMISSION IN THE CONTEXT OF NEW TYPES OF SECURITY CHALLENGES AFFECTING THE EUROPEAN UNION

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#### Abstract

*The research described in this paper, through reviewing issues of the weapons policy domain of the European Union, analyses the questions formulated by the European Council in relation to such new security challenges as the suppression of illegal acquisition of firearms, the increasing of security risks relating to the transport, import and export of civilian firearms in the European Union, the improvement of traceability of legally held firearms (hunting, sports, self-defense) and ensuring that deactivated firearms are rendered inoperable. Giving the professional analysis of the background of the directive on stricter firearms possession foreseen by the European Commission in 2015, the study seeks to high-light the need for EU action to tackle the new security challenges in the weapons possession policy. The work was created in commission of the National University of Public Service under the priority project KÖFOP-2.1.2-VEKOP-15-2016-00001 titled „Public Service Development Establishing Good Governance” in the Győző Concha Doctoral Program*

**Keywords:** *weapons policy, security policy, Weapons Act, new security challenges, police.*

#### Absztrakt

*Jelen tanulmányban szereplő kutatás az Európai Unió fegyverrendészeti szakterületének problémáit elemezve vizsgál olyan az Európai Tanács által megfogalmazott új típusú biztonsági kihívásokra vonatkozó kérdéseket, mint az illegális lőfegyverek beszerzésének a korlátozása, a polgári célú tűzfegyverek szállítására, importjára és exportjára vonatkozó biztonsági kockázatok erősödése az Európai Unió területén, a jogszerűen (vadászat, sport, önvédelem) tartott lőfegyverek nyomon követésének a szigorítása, valamint a hatástalanított lőfegyverek működésképtelenségének a biztosításával kapcsolatos kihívások. A tanulmány az Európai Bizottság által 2015-ben előirányzott szigorúbb lőfegyvertartásról szóló irányelv háttérének a szakmai elemzésével kívánja megvilágítani a fegyvertartás rendszetére vonatkozó új biztonsági kihívások kezelése érdekében tett uniós lépések szükségességét.*

**Kulcsszavak:** *fegyverigazgatás, biztonságpolitika, fegyvertörvény, új biztonsági kihívások, rendőrség.*

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## INTRODUCTION

On 13 November 2015, terrorist acts were carried out at several locations in Paris, where in several waves around two hundred people were killed by concerted attacks. To address the new security challenges (with focus on the illicit acquisition and trade of firearms) affecting the European Union, the European Commission has launched the negotiating phase on the preliminary control of legal norms of the draft envisaging stricter firearms regulation. Following terrorist acts, the Member States of the European Union have decided to introduce minimum rules to prevent the illegal acquisition of firearms. The purpose of the measure was to tighten up the legal framework for restricting the acquisition of firearms used in terrorist acts. Subsequently, the European Commission presented its professional concepts and guidelines for tightening the existing Firearms Directive (in force since 1991) to be the basis of a security protocol that shall be elaborated in future (where armament interests will be a secondary priority). The result of this restructuring was that civilian semi-automatic firearms similar in their operation system to fully automatic military weapons were intended to be reclassified from the 'B' weapons category (subject to authorisation) into the 'A' weapons category (banned). The changes, intended to be introduced, have given rise to a great indignation in the European Union's Member States having traditions with some civilian firearms. Many criticisms have been made in respect of the creation of rules for the introduction of measures to re-regulate civilian possession of firearms. The European Commission reasoned the need for stricter firearms regulation to address the new types of security challenges. The firearms concepts formulated in the draft directive deal with more stringent controls on hunting clubs and shooting clubs, the reclassification of firearms categories, the ban on semi-automatic weapons, the development of a technical standard system for deactivated weapons, and the transformation of the systems of rules on museum weapons.<sup>1</sup> [1]

The present study intends to carry out a background analysis (and also a legal analysis) in the context of the stricter firearms control strategy of the European Commission, seeking the answer to whether the recent arms control proposals provide for the European Union appropriate responding measures to the new security challenges posed by terrorist acts.

In the course of my investigations, I sought answers for three issues:<sup>2</sup>

- Is it justified on the part of the European Commission to tighten up the existing firearms control principles to address the new security challenges facing the European Union?
- To what extent does stricter firearms regulation affecting the Member States of the European Union influences the development of professional areas of sport hunting and shooting sports and the market situation of the European firearms manufacturers and distributors sector?
- Are the future revision of the European Commission's Firearms Directive and the formulation of proposals for its amending justified and necessary?

To answer the questions I used the method of literature research and analysis of legal regulations.<sup>3</sup>

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<sup>1</sup> The author of the study explains his professional point of view that the EU draft on firearms would totally prohibit the use of semi-automatic weapons, as they can easily be converted into automatic firearms. In their view, changing the regulation would mean, from a professional point of view, that semi-automatic firearm types such as AR, AK, SKS, G3, or SL08 would be banned.

<sup>2</sup> These competences have been highlighted during the investigation, as these questions can answer (1) in what direction is it necessary to move towards a more uniform European firearms control, (2) whether the security challenges facing the European Union justify stricter firearms control in respect of civilian firearms.

<sup>3</sup> The primary tool of the research was the PubMed search engine and the online search in Scopus publications database. The PubMed allows you to search the MedLine database of publications based on search queries. The

## **THE SYSTEM OF RULES RELATING TO THE AMENDMENT OF THE REGULATION AND CONTROL OF FIREARMS BY THE EUROPEAN COMMISSION**

The European Union's Member States are primarily themselves responsible for maintaining and effectively securing the internal order and public security of the Member States, but the new cross-border security challenges require coordination of independent capacities to act of individual Member States and the efficient use of the EU funds to build trust and cooperation, and to facilitate information exchange and joint action. In order to strengthen cooperation on security issues in the European Union, Jean-Claude Juncker, the president of the European Commission, in his statement explained that according to the policy guidelines the European Union's security program should be addressed as a matter of priority, in connection with which the European Commission (in line with the 2015 Commission work programme) is committed to restrictions relating to safe transportation of firearms in order to enhance the implementation of the European Union's security policy concept. [2] On 28 April 2015, the European Commission set out a European Agenda on Security for the period 2015-2020 to support cooperation between Member States and to identify and address security threats. In the Agenda on Security, the European Commission has defined tackling of security challenges such as fight against terrorism, organised crime, and cybercrime. The European Commission has laid down the concrete tools and measures that can be taken by the Member States in their mutual work to improve public order and public security to address the three most serious threats more effectively. In the 2016 schedule and work programme, the European Commission envisaged to revise existing firearms legislation in 2016 to improve information sharing, strengthen traceability, standardise firearms marking and establish common standards for the firearms deactivation. [3] To prevent terrorist attacks and persistent threats affecting the Member States of the European Union, the European Commission has decided to speed up work processes in connection with civilian firearms significantly. The European Commission has taken significant steps to implement the elements of the Agenda. Measures and initiatives taken to strengthen security complement on-going work to combat the illegal trafficking of firearms, including, including in particular the operational action plan between the European Union and Western Balkans, and the joint investigations and the police cooperation, which have been in place since 2013.

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database was set up in 1963, it became searchable on-line in 1971, then in 1997, the PubMed search engine was installed, and currently it contains more than 20 million publications from thousands of journals. During the literature research I used the following search terms: arms control, firearms delivery, arms law, administration order, police. Based on the contents of the abstracts, I deleted the non-topic articles from the list. From the remaining studies, I selected those, which specifically contained social sciences research in connection with the transport, import and export of firearms in the European Union and the transformation of the European Commission's system of rules related to the firearms control. I did not take into account the studies not dealing with the transport of firearms and the European Union's position on the firearms. I have excluded studies that have relevance to the transport, import and export activities and the field of firearms, but not on the basis of law enforcement, public health, statistical and legislative considerations. During the search activity outlined, forty studies have been identified, and I have also studied their research content and literature list for the full and effective processing of the research topic of this study. During the evaluation of the examined problems, the full texts of the studies were reviewed and I examined the details contained therein. The reviewed and used sources materials are generally suitable for secondary analysis to highlight the security policy risks associated with the transport of firearms and export-import activities in the European Union, with the focus on the risks interrelated with the trade in weapons and explosives in the context of weapons policy, and on its role to be played in identifying new security challenges from the viewpoint of restructuring the weapons rules.

## **AMENDMENTS TO THE RULES ON FIREARMS POSSESSION ADOPTED BY THE EUROPEAN COMMISSION**

The European Commission has set up a package of proposals to amend a firearms directive to tighten the acquisition and possession of firearms by private individuals and the transfer of firearms to another European Union Member State.

The planned revision includes the following:<sup>4</sup>

- Adopting stricter (national) legal regulations prohibiting civilian possession of semi-automatic firearms. The measure states that semi-automatic firearms may not be in the possession of private persons under any circumstances, even if the deactivation of those firearms has previously been implemented in practice (in officially regulated way);
- Creation of stricter rules on the online sale of firearms to prevent the purchase of firearms, firearm pieces and ammunition on the Internet;
- Uniform regulation at Community level for the designation of firearms and the more effective traceability of weapons;
- More effective coordination and exchange of information between Member States. This productive contact and information system may assist in cases when an authorisation issued by a national authority for the possession of a firearm is not recognised by another Member State's authority as a valid authorisation. Problems arising from such situations can be eliminated by compulsorily linking Member States' official databases of weapons;<sup>5</sup> [4]
- Establishing common minimum criteria for specific weapons (e.g., signaling and starter pistols) so that they cannot be converted into fully functional firearms;
- Determination of stricter requirements for the dissemination and sale of deactivated firearms;
- Determination of stricter requirements for weapon collectors to reduce the risks of selling to potential offenders.

During the review, the European Commission has envisaged further additional restrictions on the use and circulation of deactivated firearms. [5] The amendment (taking into account the methods of perpetration of terrorist acts committed in the past) is primarily aimed to additionally restrict the civilian possession of firearms no longer authorising to possess, as is currently allowed, any of the most dangerous firearms falling under category 'A' – even if they have been deactivated. The European Commission delegates the implementation of the regulation to the national authority and also obliges the Member States to implement the destruction of illegally held weapons using all available forces and tools. The European Commission has identified collectors of weapons as a possible source of traffic of firearms, as persons ensuring the acquisition of firearms. According to the draft, firearms collectors should still have the possibility to acquire firearms, but under the same authorisation and declaration requirements as private persons.<sup>6</sup>

In order to improve the effective traceability of firearms, the European Commission has envisaged introducing stricter rules on the marking of firearms to avoid markings from being

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<sup>4</sup> Amendments proposed by the European Commission shall also be approved by the European Parliament and the European Council.

<sup>5</sup> As an international example I would like to present the study explaining that the transfer of registered data on persons and organisations holding a firearm did not work effectively between Australia and New Zealand until the early 1990s. To resolve this problem, a provision was made to set up an inter-state information database, which helped to improve cooperation (in relation to firearms) between government agencies and criminal intelligence of the two countries, while maintaining the right of both countries to change or re-regulate the armaments regulation.

<sup>6</sup> Brokers will also be brought into the scope of the Firearms Directive, as they provide services similar to those of traders. Member States shall introduce regulations covering the registration of brokers and dealers operating within their territory.

easily erased or changed (e.g., as opposed to the markings on the label), and therefore extending the obligations in relation to imported firearms and clarifying on which elements new markings shall be placed. [6] A new regulatory element has been included in the draft saying that Member States will have to keep records of firearms for an indefinite period until the destruction of the firearm and not only for 20 years as is currently the case. Regarding tracing firearms, the European Economic and Social Committee has been seeking to submit a proposal for a directive of the European Parliament and the Council amending the Council Directive 91/477/EEC on control of the acquisition and possession of weapons. In its working document on the single market, production, and consumption, the Committee has formulated the objective of the Directive to ensure the security of citizens and to promote the functioning of the internal market by laying down rules for all stages of the life cycle of the firearm, ranging from production to destruction. [7]

### **REGULATION ON COMMON MINIMUM STANDARDS FOR DEACTIVATION OF FIREARMS**

The Regulation lays down single criteria for the deactivation of firearms by Member States to render them inoperable for use as a firearm, which are much more stricter than the current regulations. In the context of the new security challenges affecting the European Union, the draft law proposes to tighten further up the possession of firearms classified in the most dangerous category and, at the same time envisages to strengthen the special capabilities of the police. [8] The regulation is based on the criteria for deactivating firearms developed by the Permanent International Commission for the Proof of Small Arms (the CIP). The proposed package of measures envisages an enhanced control over the firearm categories restricting the effective management of new security challenges<sup>7</sup> in the European Union, the strategic implementation of which is intended to be transferred by the European Commission (in order to ensure the effectiveness of the programme) into the legislative phase (REFIT) to ensure that the EU legislation meets the set objectives within the foreseeable future. The European Commission regularly reviews and updates the technical specifications set out in the regulation to ensure the effective deactivation of firearms in all cases.

### **REVISION OF THE EUROPEAN COMMISSION'S FIREARMS DIRECTIVE**

The first part of the study presents and analyses the background of Directive 91/477 adopted by the European Commission on 18 November 2015, which contains proposed amendments to the control of the acquisition and possession of firearms. In this chapter, the solution structures are outlined in connection with the new security dilemmas justifying the tightening of the rules on firearms by the European Commission and affecting the European Union, which we are seeking to determine using a cooperative security model that operates with a complex toolbox.<sup>8</sup>

-normativism: the norms adopted by the European Parliament regarding the tightening of the rules on firearms (taking into account the value content) should be subjected to a critical

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<sup>7</sup> Bulk irregular migration, asymmetric methods and terrorist offenses in developed countries, militarization of law enforcement agencies, strengthening of self-defense for specific areas of the private security sector, strengthening of self-defense capability, protection of key infrastructure for the care of the population, issues of entertainment place security.

<sup>8</sup> Using this model we analyse the directive and the outlined problems in an approach that the adoption and implementation of the criteria set out in the directive require a common professional consensus, with the involvement of all the actors that could be linked to lawful possession and distribution of firearms.

examination of their compatibility with the interests of Member States, market actors (arms manufacturers, distributors, professional interest organisations) and arms holders; [9]

-suitability: the legislative mechanism of the European Commission should take into account both the security policy challenges affecting the Member States of the European Union and the expectations and needs formulated in connection with the strengthening of people's confidence. In this context, the European Union's security policy concept needs to outline such solution structures in connection with new security challenges and risks, as mass irregular migration, terrorist acts committed using asymmetrical methods and special tools in developed countries, issues of necessity of militarisation of law enforcement agencies, the enhancement of self-defense in specific areas of the private security sector, the protection of infrastructures of high priority for supplying the population, issues of the security of places of public entertainment, or the addressing of challenges connected with firearms;

-complexity and comprehensive approach: new security challenges affecting the European Union require the use of complex systems of tools, including public, civilian and law enforcement solutions;

-multi-level approach: the complex system of secure stability of the European Union is shaped by state and non-state actors. Following the identification of new complex security challenges, it becomes indispensable and inevitable (following the logic of the multi-level approach model) that the strategy to be followed takes into account the interests of state and non-state actors associated with the identified security risk. Looking at this issue from another perspective: To address the new security challenges, the European Commission as a decision-making body defines in a coherent decision-making framework the interests along which a multi-level approach can be developed for efficiency, thereby reducing the injury to the interests of non-state (professional) actors;

-multilateralism: against the new security challenges facing the European Union, it is only possible to act effectively through the ongoing, intensive and effective multilateral cooperation between state and non-state actors.

Making the necessary impact assessments, those environmental, social, governmental, security and economic impacts may become identifiable that can provide a strategic overview of who may be involved in the legislative process. [10] After having analysed the security problems identified based on the impact assessment results, the European Commission provides for the policy objectives and the decision-making system and then, through examining the possible effects of the solution structures, defines a complex strategic action plan to address the security challenges effectively and quickly.

## CONCLUSION

The European Commission's package of measures to tighten firearms control also includes an implementing regulation laying down common minimum standards for the deactivation of firearms, which make re-activation much more difficult in case of deactivated firearms. The Firearms Directive stipulates that properly converted deactivated firearms are no longer considered firearms but pieces of metal that can freely move within the European Union's internal market without a firearm license. However, the experiences and conclusions of recent terrorist acts show that deactivated firearms may be illegally re-activated, either by using homemade firearm pieces or by using firearm pieces available through the Internet. These factors cover complex issues that require complex responses to identify and solve the problems. It is a fact that there is no single legal source with regard to the deactivation of firearms in the European Union, and this deficiency significantly increases the level of security risks. To address this problem, the European Commission has prepared a proposal package that sets out rigorous and harmonised criteria how Member States shall include in their National Firearms Acts the deactivation criteria for firearms to become unfit for use as a firearm. The outlined measure is complemented by the prohibition of the possession of firearms of category 'A', which also imposes obligations on firearms holders in cases where firearms of category 'A' were deactivated. The European Commission's Implementing Regulation is based on the criteria for firearms deactivation developed by the Permanent International Commission for the Proof of Small Arms (the CIP). [11]

The European Commission has examined the role of the Internet in the illicit arms trafficking. The analysis of the Firearms Directive and preparatory studies investigating the policy field has shown that the firearms manufacturers and distributors are increasingly using the Internet as a firearm sales channel. This information was backed up by police reports analysing recent terrorist attacks in the European Union. In some cases, firearms used to commit terrorist offenses were assembled from firearm parts legally purchased via the Internet. The European Commission proposes to prohibit the sale of firearms, firearm components, and ammunition via teleshopping (especially via the Internet), and the proposal provides a possibility to facilitate this for licensed traders, distributors, and brokers.

The overall finding and conclusion of the research is that illicit trafficking in firearms is a serious problem in itself and poses a security risk that significantly contributes to social insecurity caused by the perpetration of violent or compulsive offenses and other crimes (such as drug smuggling, trafficking in human beings, as well as terrorist attacks). [12] These security risks pose a significant threat to the security of the EU Member States and their citizens. In the European Union, the nature and scale of illicit firearm trafficking are difficult to assess due to the hidden nature of the problem. Within the framework of crossborder cooperation, the Member States and law enforcement agencies of the European Union take joint actions in combating illicit firearm trafficking in a number of cases. [13] We can also identify significant issues in dealing with crossborder illicit trade in illegal firearms. [14]

The provisions of the Directive are met by Member States on a uniform basis, but different structures have been used in the Member States with regard to the legislative framework for the fight against illegal firearms. This concerns the definition of offenses, the type and extent of sanctions to be applied to legal and natural persons, the aggravating or mitigating circumstances and the degree of neglect and intent. The international<sup>9</sup> and EU legal frameworks affecting the

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<sup>9</sup> The United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of 15 November 2000, is the main international instrument in the fight against transnational organized crime. It opened for signature by Member States at a High-level Political Conference convened for

illicit trafficking in firearms are widely defined and give the signatories considerable discretion as regards the implementation of key provisions. The adoption, at the European Union level, of minimum rules against illicit firearm trafficking, would be beneficial for the police and the investigative authorities of the Member States allowing to reduce the legal uncertainty generated by differences in national legal systems, which would facilitate prosecution and greatly reduce the possibilities of criminals to use loopholes. [15]

The fight against illicit firearms trafficking requires the Member States to adopt a uniform and effective EU-wide legislation. Nevertheless, it is essential for the European Union, the Member States and the competent authorities to initiate cooperation and dialogue, at the national level and the EU level on policy issues, with financial and economic analysts, firearms manufacturers and traders, further with hunting clubs, sporting associations and professional chambers to reduce illicit firearm trade and to combat illicit online weapons trafficking.

A number of stakeholders reacted negatively to the ban on some semi-automatic firearms proposed in the package of measures by the European Commission, which measures are deemed to be an unnecessary and burdensome limitation by hunter and sports shooter societies objecting the lack of data from preliminary impact studies that could support expected legal, economic and professional implications. The conclusion can be drawn that the amendment to the Firearms Directive is necessary to address terrorist acts committed with firearms and the new security challenge affecting the European Union. It should be noted that the regulation may adversely affect the conditions of competition both within the internal market and the international market in a number of professional and economic fields closely linked to the legal possession of firearms (pushing back the online trade; weapons-related cultural heritage; historical weapon collections; research in connection with firearms; paid hunting).

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that purpose in Palermo, Italy, on 12-15 December 2000 and entered into force on 29 September 2003. The Convention is further supplemented by three Protocols, which target specific areas and manifestations of organized crime: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition. Countries must become parties to the Convention itself before they can become parties to any of the Protocols.

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