Firearms, their parts and components and ammunition: implementation of Article 10 of the United Nations Firearms Protocol and establishing export authorisation, import and transit measures

2010/0147(COD) - 31/05/2010 - Legislative proposal

PURPOSE: lays down rules governing export authorisation, and import and transit measures for firearms, their parts and essential components and ammunition, for the purpose of implementing Article 10 of the United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: In accordance with Council Decision 2001/748/EC concerning the signing on behalf of the European Community12 of the United Nations Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against transnational Organised Crime, the Commission signed that Protocol on behalf of the Community on 16 January 2002. The UN Firearms Protocol - the purpose of which is promote, facilitate and strengthen cooperation among States Parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition - entered into force on 3 July 2005.

This proposal aims to complete the process of transposition into Union legislation of the provisions of the Protocol.

It is also included in the broader framework of the Stockholm Programme for ‘an open and secure Europe, serving and protecting citizens’ highlights trafficking in arms as one of the illegal activities that continue to challenge the internal security of the EU and reaffirms 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.

IMPACT ASSESSMENT: the Impact Assessment accompanying this proposal developed four policy options:

- **Policy option 1**: refrain from taking EU action. This was identified as a theoretical option due both to the legal international obligation entered into by the Community (now Union) by means of signature of the Protocol and to the lack of uniform principles in a matter falling under the common commercial policy, an exclusive competence of the Union;
- **Policy option 2**: this option aimed at optimal achievement of the objective of contributing to the improvement of security with regard to export, import and transit of firearms for civilian use and prevention of possible diversion from the legal market;
- **Policy option 3**: this option aimed to achieve efficient implementation of Article 10 of the UNFP for private parties;
- **Policy option 4**: this option focused on efficiency for national administrations.

Option 3 was the preferred one and is reflected in this proposal. It fulfils the objectives of implementing Article 10 UNFP in the most comprehensive manner and is the best way forward by combining the 'shall' (i.e. mandatory) provisions — adapted to the type of products (for civilian use) — with the 'may' (i.e. optional) ones, which would match stakeholders' legitimate expectations. It combines different aspects of the various policy options on the basis of the main advantages and disadvantages identified for each one of them, in order to achieve a higher degree of both effectiveness and efficiency. The envisaged simplified procedure for temporary exports for 'verifiable lawful purposes' and in particular the proposed transit measures will reduce the possible administrative burdens for those lawful purposes listed by the UNFP itself.

LEGAL BASIS: Article 207 of the Treaty on the Functioning of the European Union (TFEU) (Common Commercial Policy which is an exclusive competence of the Union according to Article 3 TFEU, within which Article 10 UNFP provisions fall). The proposal applies only to firearms, their parts and essential components and ammunition for civilian use and not to firearms that are intended specifically for military purposes. Pursuant to Article 207 of the Treaty on the Functioning of the European Union, the common commercial policy should be based on uniform principles, inter alia as regards exports.

CONTENT: Article 10 of the UNFP on 'general requirements for export, import and transit licensing or authorisation systems' requires 'each State Party to establish or maintain an effective system of export and import licensing or authorisation, as well as of measures on international transit, for the transfer of firearms, their parts and components and ammunition', thereby improving scrutiny of transfers and allowing better enforcement of laws.

Principles: Article 10 UNFP is based on the principle that **firearms and related items should not be transferred between States without the awareness and consent of all States involved**. Firearms should not be exported to or through countries that have not authorised the transfer. The content of the documents used for legal export and import should be sufficient to ensure tracing. Besides the above-mentioned 'Shall' provisions, Article 10 UNFP also allows the Parties to adopt simplified procedures for temporary export, import and transit of small numbers of firearms for 'verifiable lawful purposes', such as recreational, repair, exhibition. The latter are referred to as 'May' provisions.

In application of Article 10 of the Protocol, the proposal is structured as follows :

Subject, definition and scope: this proposal only addresses **trade in/transfers of firearms to third countries** and consequently does not concern intra-Community transfers of firearms, their parts and essential components and ammunition. Definitions (Article 2) take into account — where appropriate — the parallel provisions of the UN Firearms Protocol, but are tailored to or directly invoke other existing EU legislation, for the sake of clarity: for example, the definitions of firearms, parts and essential components and ammunition mirror those of Directive 91/477 or direct reference is made to the Community Customs Code. Article 3 lists the specific exceptions to which the Regulation does not apply.

Export authorisation, procedures and controls: the relevant articles transpose the concepts mandatorily established by Article 10 UNFP. Article 4 establishes the **general obligation for requiring export authorisation**, refers to the list of products to which the proposal applies (in Annex to the proposal) and provides for updates. Articles 5 and 6 on the conditions for issuing the export authorisation also include some of the mitigation measures resulting from the advice received from stakeholders during the consultation, for example: **maximum processing period (90 working days)**, possible use of electronic documents and tacit consent for transit. Articles 11 and 12 address respectively the correspondent provisions of Article 10(4) and (5) UNFP on verification of the authorisation procedure.

Simplified procedures: this proposal in particular takes into account the need for simplified measures for temporary exports for verifiable lawful purposes, implementing the nonbinding provision of Article 10(6)

UNFP. Simplified procedures should be limited to hunters and sport shooters only (while the UNFP includes consideration also for other activities such as exhibitions or repairs).

Criteria applicable to export authorisation, procedures and controls: this chapter also includes provisions on general criteria to be taken into account by Member States when assessing a request for export authorisation (Articles 8 and 9) and on powers of national competent authorities (Article 13), which are similar to those laid down in other commercial policy legislation, namely the 'Dual Use' Regulation10. Article 10 focuses on the need for record-keeping. Article 14 reproduces a standard formula on penalties.

Customs procedures and administrative cooperation: Chapter III, on 'customs procedures' (Articles 15 and 16), and Chapter IV on 'administrative cooperation' (Article 17), include standard provisions commonly used in a commercial policy instrument.

General and final provisions: besides the establishment of a Coordination Group (Article 18), it includes in particular a **review clause** (Article 19(3)), and provisions on the entry into force of the Regulation (Article 20).

BUDGETARY IMPLICATION: this proposal has no implication for the European Union's budget.