

Control of the acquisition and possession of weapons

2006/0031(COD) - 27/07/2010 - Follow-up document

This report on the placing on the market of **replica firearms** is drafted by virtue of Article 17 of Council Directive 91/477/EEC on the control of the acquisition and possession of weapons, as amended by Directive 2008/51/EC of the European Parliament and of the Council.

The issue of replica firearms which arose during the legislative work leading to the adoption of Directive 2008/51/EC is largely due to the integration of security concerns in a Directive which was initially merely a Directive intended to simplify, with the requisite security guarantees, the circulation of firearms owned by civilians in the internal market. However, during the discussion of the amended Directive in the European Parliament, a number of policy experts who had been invited by MEPs explained the potentially criminal use of, for example, alarm guns (or guns designed for firing blanks), when converted into real firearms by delinquents.

As a direct consequence of this concern, the definition of firearm in the amended Directive, extracted almost word-for-word from the "Firearms Protocol", includes objects "capable of being converted to expel a shot, bullet or projectile by the action of a combustible propellant if it has the appearance of a firearm, and as a result of its construction or the material from which it is made, it can be so converted."

The Directive therefore does not apply to other products which have the appearance of a firearm, such as replica firearms, for which **no definitions** are contained in the Directive.

The report states that nine Member States do not, or not really, include the concept of a replica in their legislation and do not have any major problems relating to public order caused by the use of replicas, whereas 15 others do not report any particular or significant problems with transfers or imports from other countries. Only a few Member States with more restrictive national legislation on replicas sometimes express concerns linked to cross-border movements of replica firearms. In these conditions, **there is very little to suggest that European harmonisation of national legislation on replicas would improve the functioning of the internal market** by removing barriers to the free movement of goods or by eliminating distortions of competition.

Furthermore, the Member States already have a real degree of discretion in issuing rules on the placing on the market and use of replicas. These national rules governing the marketing and use of replicas must respect the principle of the free movement of goods (Articles 34 to 36 of the Treaty on the Functioning of the European Union, TFEU) and of course be without prejudice to any specific police cooperation measures.

However, it is equally clear that **such regulations can**, this time in compliance with Article 36 TFEU, **be justified for reasons of public safety and the protection of the health and life of persons**, albeit provided that the regulations in question do not undermine the principle of proportionality. In particular, it must not be possible for the pursued objective to be achieved by measures less restrictive to intra-Community trade. With regard to replica firearms, various aspects therefore need to be taken into consideration when judging the proportionality of the measure: in particular, we must examine whether bans are absolute or whether derogations exist, the limitation of bans on sale to minors, Internet- or simply distance-selling, and the limitation of the ban on using or exhibiting replicas in public places.

Moreover, the free movement of replica firearms within the EU is also provided for by Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC. This Regulation is applicable as of 13 May 2009. It establishes the rules and procedures to be followed by the competent authorities of a Member State when they make or intend to make a decision referred to in Article 2(1) which would impede the free movement of a product legally placed on the market in another Member State and which falls within the scope of Article 34 TFEU.

Consequently, Articles 34 and 36 TFEU and Regulation (EC) No 764/2008 already facilitate the free movement of these products within the EU, while taking account of the security concerns of the Member States.

The inclusion of all replicas in the field of application of Directive 91/477/EEC would automatically make them subject to all the provisions of the Directive. However, it should be remembered that, since its amendment by Directive 2008/51/EC, the Directive already applies to replicas which can be converted into firearms, namely certain alarm guns (or certain replicas intended simply to shoot blanks) which, due to their appearance and how they were produced, are so similar to a firearm that all the requirements of the Directive (marking, traceability, firearms register in particular) are easily applicable.

Extending the Directive to other types of replica would be much more difficult, since this would mean that manufacturers, dealers and owners of these replicas would be subject to all the obligations of the Directive. However, at present, the Member States can already require authorisation for any possession, acquisition or transfer of a replica in accordance with Article 36 TFEU. Moreover, and still on the basis of the above assumption, sensitive issues undoubtedly arise regarding in particular the breakdown of replicas included in the nomenclature set out in Annex I to Directive 91/477/EC, which divides firearms into different categories.

It is for these reasons that replicas, with their various characteristics and purposes, should not be included in the field of application of Directive 91/477/EC, especially as those which can be converted to a firearm and therefore treated as one are now covered by Directive 2008/51/EC.