



FACE'S RESPONSE TO THE EUROPEAN COMMISSION'S COMMUNICATION ON FIREARMS: AIMING AT THE WRONG TARGET

10th February 2014

Executive Summary

FACE, the European Federation for Hunting and Conservation, represents the interests of Europe's 7 million hunters and therefore the largest group of law-abiding users of civilian firearms in the EU. FACE, which is not a "gun-rights" organisation, supports an adequate control of firearms in order to meet public security demands in the EU and globally. FACE is in favour of a set of evidence-based EU rules on legal civilian firearms that complements national legislation.

At EU level, the Firearms Directive, which is an instrument of the internal market, currently provides a coherent framework on legal civilian firearms. It creates mutual confidence amongst Member States whilst both respecting differing national sensibilities and allowing the introduction of stricter measures. The Directive was adopted in 1991 and thoroughly amended, with a broad political agreement, in 2008. FACE does not see at this stage the need for tabling a legislative proposal to amend the Directive but considers in any event that the final decision whether or not to amend the Directive should only be taken by the European Commission following due process, after a proper assessment of the situation on the basis of facts and transparent data.

Unfortunately, through a number of initiatives that FACE considers very questionable from a democratic point of view, the Commission seems to hold the predetermined view that the Directive needs to be rewritten. The basis for this amendment would be the **Commission's unsubstantiated claim that legal firearms feed the illegal market.**

In its Communication "Firearms and the internal security of the EU: protecting citizens and disrupting illegal trafficking", presented by Commissioner Malmström in October 2013, the Commission lists a number of priorities and tasks at EU level that concern both legal and illegal firearms. FACE welcomes the initiatives laid down in the Communication that pertain to illicit activities. **FACE, however, contests the method of mixing up throughout the Communication legal and illegal activities and, above all, the arguments and altered data put forward by the Commission to establish a link between the two.**

The Commission claims that differences in national legislation on firearms are exploited by criminals, as these "*may seek to acquire firearms where national procedures are regarded as most flexible*". **However, the Commission does not provide any evidence to substantiate this claim.** Furthermore, under the Directive, criminal record checks are already part of the conditions to acquire any firearm, so criminals are already barred from acquiring them.

The Commission suggests a number of changes in the Directive, including the classification of firearms in different categories, which is the Directive's cornerstone as regards harmonisation of national legislation. In doing so, **the Commission gives the wrong impression that, under current EU rules, many types of firearms can be sold over the counter or with very little formalities, makes technical mistakes and dismisses (and even misquotes) a 2012 Commission Report on the same topic.**

However, under the Directive, the acquisition and possession of *any* firearm (including the typical hunting rifle and shotgun) is at least subject to a number of controls, with the possibility for Member States to introduce stricter measures. Firearms are registered and "*linked to their owner at any moment*" and Member



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States can only permit the acquisition and possession of firearms to persons who have “*good cause*”, are at least 18 years of age and “*are not likely to be a danger to themselves, to public order or to public safety*”.

The Commission does not only fail to substantiate the need for further and large harmonisation of national legislation. The plans laid out in the Communication also impinge unnecessarily on **the competences of the Member States and the principles of subsidiary and proportionality**, as recently pointed out by the German *Bundesrat*.

The Communication also alters statistics on legal ownership, homicide and suicide, incorrectly listing, as the percentage of legally-held firearms, the estimated percentage of *both* legal and illegal firearms.

Furthermore, **the Commission uses obscure data about stolen and lost firearms** in an attempt to justify the introduction of EU common standards on the home storage of firearms. The Commission resorts to a figure with the broadest scope and does not even allow the possibility to break it down and have a peer review. Paradoxically, even in the hypothetical situation that all the unsubstantiated figures and estimations invoked by the Commission were true, the percentage of legally-held firearms that were stolen or lost would still be insignificant and would only represent an extremely low percentage of the illegal market. As a worrying sign of its misrepresentation of figures, **the Commission provides one single example** of the exact number of firearms stolen in a given period in one Member State (the UK) **and**, by making a selective reading of the national source, **multiplies by almost four the real number** of firearms.

According to the Commission, firearms that have been deactivated are being illegally reactivated and diverted to criminals. However, the Directive already lays down precise and strict requirements concerning the deactivation of firearms, including that deactivated firearms be “*rendered permanently unfit for use*”. The Commission has even failed to issue common guidelines on deactivation, as required by the Directive. Similarly, **the Commission argues that items such as air weapons and blank-firing pistols are being converted into firearms.** However, the Directive also contains specific provisions to deal with potential problems with convertible weapons and requires that Member States treat them as firearms. If there is a problem with deactivated firearms and convertible weapons, **the Commission should fulfil its obligation by ensuring that Member States correctly implement the Directive, instead of advocating additional regulation.**

Finally, **the Commission conducted in 2013 a misleading process to gather public opinion** about firearms. The Commission first launched a public consultation which received an overwhelming response from EU citizens (over 81 000) against further EU action on legal firearms. The Commission, however, dismissed the results of that consultation and subsequently conducted a Eurobarometer survey with completely misleading questions that induced respondents to believe that there are not already EU common standards on legal firearms. On the basis of the results of this survey, Commissioner Malmström argued that “*there is a clear need for EU action, and encouragingly, most Europeans agree that something needs to be done*”. **FACE considers that the Commission has misused public opinion in this process.**

Despite having being excluded, without explanation, from the recently created **Firearms Expert Group**, FACE is eager to engage constructively in an open debate on legal civilian firearms.

Nevertheless, **FACE is convinced that the Commission is aiming at the wrong target, since legal firearms owners are not the problem. The EU should not divert public resources from actions specifically aimed at fighting illegal activities.**

Decisions should be based on evidence, respect the principle of subsidiary and not serve as an excuse for failures to enforce existing rules. Unfortunately, the Commission's initiatives do not fulfil any of these criteria.



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I. SETTING THE CONTEXT

1. What is FACE and whom does it represent?

FACE is the European Federation for Hunting and Conservation, representing the interests of Europe's 7 million hunters, as an international non-profit-making non-governmental organisation (INGO). FACE is made up of its Members: national hunters' associations from 36 European countries, including the EU-28.

FACE has its Secretariat in Brussels and is fully signed up to the EU Transparency Register¹.

2. What is FACE's general stance on firearms?

FACE represents the largest group of users of legal civilian firearms in the EU. We are not, however, a "gun-rights" organisation. In fact, we support an adequate control of firearms in order to meet public security demands in the EU and globally and, to that end, we do not oppose justified and proportionate restrictions on their acquisition and possession. FACE strongly believes that restrictions on the legitimate activities of an estimated number of over 10 million law-abiding European citizens (of whom 7 million are hunters²) should be based on evidence and objective criteria, not on emotions, ideological prejudices or personal political agendas.

FACE is in favour of a set of evidence-based EU rules on legal civilian firearms. FACE also believes that, in accordance with the principles of subsidiarity and proportionality³, the EU should take action only when Member States alone cannot achieve the pursued objective and, thus, that the most detailed elements of the regulation of firearms should be left to the Member States.

3. Are there already EU rules on legal civilian firearms?

At EU level, there are two legal instruments that deal with civilian firearms. There is a Regulation that deals with the export of civilian firearms from the EU to countries outside of the EU and with imports into the EU from those countries⁴. However, the main EU legal instrument on civilian firearms is Directive 91/477/EEC, as amended by Directive

¹ FACE at the EU Transparency Register:

<http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=75899541198-885>

² Our estimation is mainly based on the figures transmitted by our Members, usually on the basis of firearms and/or hunting licences:

http://www.facelive.2foo.com/sites/default/files/attachments/data_hunters-region_sept_2010.pdf

³ Article 5 of the Treaty on European Union:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0013:0046:en:PDF>

⁴ Regulation 258/2012 implementing Article 10 of the UN Firearms Protocol:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:094:0001:0015:EN:PDF>



2008/51/EC, on the control of the acquisition and possession of weapons, usually known as the "Firearms Directive"⁵

4. What is the basic content of the Firearms Directive?

The Directive is a legal instrument of the internal market and its adoption followed the abolition or reduction of controls at intra-EU frontiers. The Directive's provisions, as is typically the case of the internal market legal instruments, are of two types. Firstly, at national level, in order to achieve mutual confidence amongst Member States, the Directive introduces partial harmonisation of the rules on the acquisition and possession of and trade in civilian firearms⁶, allowing Member States to introduce more stringent rules⁷. These rules mandate, for instance, that firearms be marked and registered and their acquirers and possessors must not be likely to be a danger to public safety (see question 13). Secondly, on the basis of the achieved mutual confidence, the Directive lays down common rules for the cross-border movement of firearms⁸ by both the industry (mainly manufacturers and dealers) and civilian users (mainly hunters and sport-shooters, since the Directive does not apply to the police and the public authorities).

Although it is self-evident, it is worth stressing that the Directive exclusively deals with legal firearms.

5. Does the Firearms Directive need to be amended or replaced?

Contrary to other legal texts that have remained unchanged for decades, the Directive (initially adopted in 1991) was thoroughly amended in 2008. This amendment reflected a broad political agreement, illustrated by its adoption by an overwhelming majority in the European Parliament (588 votes in favour, 14 against) and the EU Council (all Member States – except one that abstained – were in favour). Contrary to what could be inferred from a statement of the Commission, the Parliament has not asked in the present term for an amendment of the Directive⁹.

⁵ Consolidated version of the Firearms Directive:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1991L0477:20080728:EN:PDF>

⁶ Chapter 2 of the Firearms Directive

⁷ Article 3 of the Firearms Directive.

⁸ Chapter 3 of the Firearms Directive.

⁹ The Commission's Communication on firearms (see questions 7-37 of this document) states that "*This communication responds to the call by the European Parliament for more action to identify and to address vulnerabilities in the lifecycle of firearms, to safeguard lawful production, sale and possession of firearms, to disrupt criminal supply chains and to deter illicit use*" (Section 1, Introduction). In a footnote to the previous sentence (number 17), the Communication further indicates that "*The Interim Report on Organised Crime, CRIM Committee European Parliament highlights in particular more action on marking and illicit trafficking*". FACE has only found in the referenced Interim Report and in the Final Report (links below) general references to the risk (among many others) posed by illegal trafficking in firearms and one call on "*the Commission, the Member States and businesses to take practical steps to improve the traceability of products (e.g. country of origin labelling for agricultural products, C.I.P. proof marks on firearms (...))*". Unless the Commission can refer to other official documents from the Parliament, we fail to see how the Commission can argue that this Communication, and in particular its wide range of suggestions on legal firearms, responds to a call by the Parliament.

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FNONSGML%2BREPORT%2BA7-2013-0175%2B0%2BDOC%2BPDF%2BV0%2F%2FEN>

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FNONSGML%2BREPORT%2BA7-2013-0307%2B0%2BDOC%2BPDF%2BV0%2F%2FEN>



FACE is generally satisfied with the text of the Directive. Our only regret is that a few Member States, by making a wrong interpretation of one provision of that text¹⁰, unduly restrict the cross-border movement rights of hunters and sport-shooters that use the European firearms pass. This is an internal market problem that could simply be solved with better implementation by the few Member States and/or better enforcement by the Commission.

As far as we know, the Member States are not generally dissatisfied with the Directive and thus do not advocate amending the current text.

The Directive provides that the Commission should submit by July 2015 a report on its application, "*accompanied, if appropriate, by proposals*"¹¹. FACE believes that some non-legislative proposals, like guidance documents on how to interpret current provisions, may be warranted. FACE does not see at this stage the need for tabling a legislative proposal to amend the Directive but considers in any event that the final decision whether or not to amend the Directive should only be taken by the Commission following due process, after a proper assessment of the situation on the basis of facts and transparent data.

6. What are the Commission's views about whether the Directive should be amended?

As a clarification, it is worth noting that, within the Commission, the Directorate-General for Enterprise and Industry (DG ENTR) and Commissioner Antonio Tajani are responsible for legal trade in and the acquisition and possession of civilian firearms within the EU, so the Firearms Directive is within their area of competence. The Directorate-General for Home Affairs (DG HOME) and Commissioner Cecilia Malmström are however responsible for criminal and illegal activities and mainly deal with the illicit trafficking aspect of firearms and police cooperation.

Since October 2012, DG HOME and Commissioner Malmström have taken a number of initiatives, including: the launch of a misleading public consultation on firearms and subsequently an equally misleading Eurobarometer survey (see questions 38-49); the setting up of a firearms expert group, which, unlike other organisations, FACE was not allowed to join (see question 50); and unsubstantiated public statements about the link between legal ownership of firearms and illicit trafficking in firearms (see question 9).

On 21st October 2013, Commissioner Malmström presented the Commission Communication "Firearms in the internal security of the EU: protecting citizens and disrupting illegal trafficking" (see questions 7-37). This Communication already lays out plans to completely review the EU rules on the legal acquisition and possession of firearms.

That declaration of intent already indicated a predetermined view that the Directive needs to be rewritten and this in the absence of a proper assessment of the situation on the basis of facts and transparent data.

¹⁰ Article 12 of the Firearms Directive.

¹¹ Article 17 of the Firearms Directive.



II. COMMISSION'S COMMUNICATION ON FIREARMS

COMMISSION'S STATEMENTS ABOUT LEGAL FIREARMS FEEDING THE ILLEGAL MARKET

7. What is the scope of the Commission's Communication on firearms?

The Communication's alleged objective is embedded in its title: "*Firearms and the internal security of the EU: protecting citizens and disrupting illegal trafficking*"¹².

The Communication asserts the need for further action at EU level "*to address the threats posed by the illegal use of firearms*"¹³. To that end, it lists a number of priorities and tasks that concern both legal and illegal firearms¹⁴.

FACE welcomes the initiatives laid down in the Communication that pertain to illicit activities. FACE, however, contests the method of mixing up throughout the Communication legal and illegal activities and, above all, the arguments put forward by the Commission to establish a link between the two.

8. Doesn't the Commission seek to safeguard legal activities with civilian firearms?

The Communication repeatedly states that firearms can be owned for lawful purposes¹⁵. It also sets as one of its priorities "*safeguarding the licit market for civilian firearms*" (although, surprisingly, the specific measures proposed to attain that objective consists in a large tightening up of the EU rules on legal firearms¹⁶). Commissioner Malmström has also publicly stated that the Commission does not wish to disrupt legal activities¹⁷. DG HOME has also made similar statements to FACE and other stakeholders.

However, those statements are in blatant contradiction of the plans laid out in the Communication to completely review the EU rules on legal firearms (see questions 11-37).

¹² Communication from the Commission to the Council and the European Parliament – Firearms and the internal security of the EU: protecting citizens and disrupting illegal trafficking.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0716:FIN:en:PDF>

¹³ Communication's section "The need for action at EU level" as well as the Commission's press release on the Communication.

http://europa.eu/rapid/press-release_IP-13-980_en.pdf

¹⁴ See a summary of these priorities and tasks in Annex I of the Communication.

¹⁵ "*Firearms have lawful and responsible civilian uses, and their manufacture, sale and purchase are a part of the EU's internal market*" (Section 1, "Introduction", of the Communication). "*It proposes integrated policy for both improving the internal market in firearms to the benefit of lawful users and also limiting the adverse impact on the EU's internal security caused by criminal misuse*" (Conclusions of the Communication).

¹⁶ See Section 3, "Priority 1, Safeguarding the licit market for civilian firearms", of the Communication.

¹⁷ "*Most legally-held firearms are used for legitimate purposes by law-abiding people, who own them for hunting, sports shooting and other recreational activities. We will not interfere with these traditions*" (Commissioner Malmström's speech of presentation of the Communication).

http://europa.eu/rapid/press-release_SPEECH-13-842_en.pdf



They are also in contradiction with the Communication's tendency to mix up legal and illegal firearms (see in particular question 20).

Another example of this contradiction is the reply given by Commissioner Malmström, at the press conference where the Communication was presented, to a question from the Swedish newspaper *Svenska Dagbladet* about the impact of the Communication on hunters. The Commissioner, after maintaining that these initiatives only concern illegal weapons, stated: "I can't really see how Swedish hunters would be affected if we obliged French hunters to lock in their weapons, because it is not obligatory today to have them locked in"¹⁸. This statement is not entirely accurate¹⁹ and we also question the wisdom of this divide-to-conquer strategy, all the more coming from an EU Commissioner.

FACE urges the Commission to have a more transparent attitude and acknowledge that in fact it seeks to propose far-reaching legislative measures that would have consequences for millions of legal owners of civilian firearms – and of course duly justify the need for those measures.

9. Why does the Communication deal with legal firearms?

Already in October 2012, Commissioner Malmström declared that "legally owned weapons in the EU continue to feed the illegal market"²⁰. Similarly, the Commission considers that "firearms which are legally registered, held and traded get diverted into criminal markets or to unauthorised individuals"²¹. Furthermore, the Communication states that "While there are no precise statistics, the many firearms in illegal circulation are often the result of theft or diversion from their lawful lifecycle, of being illegally imported from third countries and of the conversion of other objects into firearms"²². Therefore, according to the Commission, the strong link that exists between legal and illegal firearms would justify addressing both in the Communication and in particular laying out a wide range of stricter measures with regard to legal firearms.

FACE believes that the Commission's true reasoning is the opposite: the EU rules on legal firearms should be completely reviewed; and in order to attain that objective it is necessary to claim that legal firearms feed the illegal market.

¹⁸ Press conference on the presentation of the Communication:

<http://ec.europa.eu/avservices/video/player.cfm?ref=I082676>

¹⁹ Under French laws, handguns and other firearms that fall under category B of the Directive have to be stored in a safe, while most hunting shotguns and rifles can be stored, unloaded, (1) in a safe, or (2) having removed an essential part that is kept in a separate place, or (3) using a measure (like a chain) that prevents its removal, in all three cases with the ammunition stored in a separate place that prevents free access to it (see Article 113 of Decree 2013-700 – link below). See also our general comments about storage of firearms in question 21 of this document.

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027792819&fastPos=1&fastReqId=1692533651&categorieLien=cid&oldAction=rechTexte>

²⁰ Speech by Commissioner Malmström at the Conference "Fight against illicit trafficking in firearms. Where do we stand", 19 November 2012: http://europa.eu/rapid/press-release_SPEECH-12-841_en.pdf

The same statement was included in a speech of DG HOME at a hearing held at the EP CRIM Committee of 23 April 2013: <http://www.europarl.europa.eu/document/activities/cont/201304/20130425ATT65090/20130425ATT65090EN.pdf>

²¹ Communications' memo:

http://europa.eu/rapid/press-release_MEMO-13-916_en.pdf

See also Questions and Answers: the UN firearms protocol and the EU:

http://europa.eu/rapid/press-release_MEMO-13-271_en.htm?locale=en

²² Section 1, "Introduction", of the Communication.



10. How does the Commission establish the link between legal and illegal firearms?

The Commission puts forward a number of arguments to justify its claim that legally owned firearms in the EU feed the illegal market, the main being:

- access to firearms by criminals in Member States with “flexible” rules;
- theft or loss of legal firearms due to the absence of EU common standards on their storage;
- reactivation of firearms previously deactivated in Member States with low deactivation standards and, similarly, conversion of certain weapons into firearms.

Each one of these claims warrants a separate analysis (see questions 11-37).

CONDITIONS FOR ACQUIRING AND POSSESSING FIREARMS: COMMISSION'S UNSUBSTANTIATED CLAIMS AND MISREPRESENTATION OF EU RULES

11. According to the Commission, what is the problem with the current EU rules for acquiring and possessing firearms?

The Commission states that “*According to firearms experts, differences in national legislation on firearms are exploited by criminals, increasing the risk of illicit circulation across borders. That calls for approximation of national firearms legislation*”²³. The Commission also considers that “*Criminals may seek to acquire firearms where national procedures are regarded as most flexible*” and thus “*will consider addressing possible gaps in definitions*”²⁴.

The Commission does not provide any evidence to substantiate these claims. However, it announces already some changes to the current EU rules for acquiring and possessing civilian firearms that should be considered, including: a complete change in the current classification of firearms in four categories under the Directive (with blanket bans on certain types of firearms)²⁵, the introduction of the requirement of medical checks and criminal record checks, the establishment of time-limited licences subject to renewal and the establishment of common EU standards on the legitimate purposes for owning or using a firearm and on when a licence should be refused²⁶.

²³ Section 2, “The need for EU action”, of the Communication. The experts to whom the Commission refers are those of the European Firearms Expert group (EFE), which gathers law enforcement authorities, EU agencies and DG HOME. This group is not to be confounded with the recently created Firearms Expert Group (see question 50 of this document).

²⁴ Section 3.3, “Task 3: Simplifying the rules for firearms licensing”.

²⁵ Section 3.1, “Task 1: Clarifying which firearms are banned and which require a licence”.

²⁶ Section 3.3, “Task 3: Simplifying the rules for firearms licensing”.



12. What are the current categories of firearms under the Directive?

One of the cornerstones of the Directive is the classification of firearms in four categories²⁷:

- Firearms in category A, which mainly covers fully-automatic ones, are prohibited.
- Firearms in category B, which includes most handguns and most semiautomatic rifles and shotguns, are subject to authorisation.
- Firearms in categories C and D, which include most non-semiautomatic rifles and shotguns, are subject to declaration²⁸.

13. What are the specific conditions for acquiring and possessing any firearm under the Directive?

The acquisition and possession of firearms in categories B, C and D, regardless of whether they are subject to authorisation or declaration under the Directive, is at least subject to a number of controls, with the possibility for Member States to introduce stricter measures:

- Firearms are registered and “*linked to their owner at any moment*”²⁹.
- Member States can only permit the acquisition and possession of firearms to persons who³⁰:
 - o “*have good cause*”;
 - o “*are at least 18 years of age*”, except, under some conditions, for hunting and target shooting;
 - o and “*are not likely to be a danger to themselves, to public order or to public safety. Having been convicted of a violent intentional crime shall be considered as indicative of such danger*”.

Under the Directive, the difference between firearms in category B and those in categories C/D is that persons that wish to acquire and possess the former must obtain an authorisation (which usually takes the form of an administrative decision), whilst persons that wish to acquire and possess the latter must be specifically permitted to do so in accordance with national law and declare those firearms³¹. In practical terms, the declaration regime for firearms in categories C and D merely constitutes a simplified administrative procedure, mainly for holders of a valid hunting or sport-shooting licence. This is so because categories C and D only include firearms that are difficult to conceal, have a low rate of fire, are mainly used for hunting and sport-shooting activities and have limited appeal for criminals.

²⁷ Annex I.II of the Directive.

²⁸ The distinction in Annex I.II of the Directive between category C, “Firearms subject to declaration” (e.g. bolt-action and single-shot rifles) and category D, “Other firearms” (basically, double-barrelled shotguns), merely constitutes a transitional arrangement (2010-2014) for the declaration or registration of the latter. In practical terms, there is no longer difference between the two, since pursuant to Article 4 all firearms are registered and linked to their owner at any moment. Furthermore, the requirements under Article 5 (explained in question 13 of this document) also apply to firearms in category D.

²⁹ Article 4, paragraphs (1) and (5), of the Firearms Directive

³⁰ Article 5 of the Firearms Directive.

³¹ Articles 4a and 7 of the Firearms Directive.



It should be stressed that the Directive specifically allows Member States to introduce stricter measures³², for instance to establish a wider list of prohibited firearms or to require authorisation for any firearm.

14. What does the Communication say about the categories of firearms and the conditions to acquire and possess them?

In the relevant section of the Communication³³, the Commission addresses the different categories of firearms under the Directive.

After clarifying that firearms in category A are prohibited, the Communication indicates the firearms in category B are subject to authorisation. However, the Communication does not mention the controls which that authorisation entails (see question 13). Furthermore, the Communication wrongly lists in this category B single-shot rifles, which in fact fall under category C. In this respect, it is worrying that an institution that is supposed to have technical knowledge and, furthermore, seeks to change the current system, has difficulties in understanding the categories of firearms.

The Communication merely indicates that firearms under category C are subject to declaration, although, once again, it does not mention the controls which this declaration entails.

Finally, according to the Communication, firearms in category D are subject to “no restriction”, which is not true³⁴.

This description of the categories, combined with the statement that “*criminals may seek to acquire firearms where national procedures are regarded as most flexible*”, gives the wrong impression that, under EU rules, many types of firearms can be sold over the counter or with very little formalities, which, as has been explained, is certainly not the case.

15. Has the Commission traditionally been in favour of a change in the classification of firearms?

During the amendment of the Firearms Directive in 2007-2008, the Commission was not in favour of changing the classification of firearms laid down in the Directive.

In July 2012, the Commission adopted a specific Report on the classification of firearms, which included a consultation with Member States and stakeholders. The Commission pointed out that the Directive allows a certain level of discretion to the Member States since it does not attempt full harmonisation. The Commission also found that most Member States did not think

³² Article 3 of the Firearms Directive.

³³ Section 3.1, “Task 1: Clarifying which firearms are banned and which require a licence”, and Section 3.3, “Task 3: Simplifying the rules for firearms licensing”, of the Communication.

³⁴ See footnote 28 of this document.



that reducing the classification to two categories of firearms would be of clear benefit to the functioning of the internal market³⁵.

The Communication, however, tactfully dismisses the finding of the Report adopted only one year earlier: *“Building on its recent assessment of the scope for simplifying these rules, where it was concluded not to propose a reduction in the number of categories, the Commission has begun reviewing this issue in a wider context including the potential for reducing illicit trade between Member States which apply different rules, and for facilitating cross-border law enforcement cooperation”*³⁶.

It should also be noted that the English (and, probably, original) version of the Communication misquotes this Report³⁷.

16. What is the Commission's position on the current classification of firearms?

As just explained, the Commission seems to be interested in a complete change of the current classification of firearms. This is also illustrated by the content of Task 1, “Clarifying which firearms are banned and which require a licence”, and Task 3, “Simplifying the rules for firearms licensing”, of the Communication. In 2012, Commissioner Malmström also publicly referred to this issue³⁸. The Commission's objective seems to be to move some or all firearms from category B to category A, and to move all firearms in categories C and D (which would then disappear) to category B.

The Commission is thus planning to change the cornerstone of the part of the Directive that deals with the harmonisation of the conditions for the acquisition and possession of civilian firearms.

17. Wouldn't the Commission's suggestions improve public security?

As already mentioned (see question 11), the Commission claims that its proposals are needed because differences in national legislation on firearms are exploited by criminals, thus increasing the risk of illicit circulation across borders. The Commission, however, neither provides any evidence to substantiate this claim, nor does it explain how its proposals (such as the change in the classification of firearms) are suitable to tackle that alleged problem. The Commission

³⁵ Report from the Commission to the European Parliament and the Council: Possible advantages and disadvantages of reducing the classification to two categories of firearms (prohibited or authorised) with a view to improving the functioning of the internal market for the products in question through simplification. COM(2012)415 final. See in particular paragraphs 1.4, 2.5, 6.6 and 9.5.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0415:FIN:EN:PDF>

³⁶ Section 3.1, “Task 1: Clarifying which firearms are banned and which require a licence”, of the Communication.

³⁷ According to the Report (paragraph 9.5), “It can therefore be concluded that there would be no clear benefit in a compulsory restriction of the classification at EU level to only two firearms categories. In any case, this issue should not be treated in isolation (...)”. However, the Communication (in its footnote 38) indicates, as a quote, that “the report concluded that ‘there would be no clear benefit in a compulsory restriction of the classification at EU level to only two firearms categories if treated in an isolated way.’” It is not the same to state that the issue of the possible reduction in the number of categories should not be treated in isolation (as the Report indicated) as to state that there would not be a clear benefit in such reduction if treated in an isolated way (as the Communication claimed). The latter statement conveys the impression that the reduction would bring benefits if treated in combination with other elements. In any event, the Commission should not alter previous documents and even less should it present them so altered as a quote.

³⁸ See her speech in footnote 20.



should explain, for instance, what it means by stating that criminals may seek to acquire firearms where the procedures are regarded to be more flexible. In fact, under the Directive, criminal record checks are already required and criminals are barred from acquiring firearms falling in any of the current categories (see question 13).

18. Why do you oppose further EU action on legal firearms?

We do not oppose further EU action on legal firearms as a matter of principle. As already indicated (see questions 2 and 5), FACE agrees that a set of common EU rules on legal firearms is needed. However, these rules and any possible amendments should be based on evidence, be proportionate and respect the competences of the Member States. FACE believes that the plans laid out in the Commission's Communication do not comply with these criteria.

Regarding the Member States, they must comply with the requirements laid down in the Firearms Directive, but are themselves in the best position to determine the specific conditions that acquirers and possessors of firearms must fulfil in order to ensure public security. For instance, some Member States may consider that a medical check (which the Commission wants to impose) should be part of the requirement under the Directive that persons acquiring and possessing firearms "*are not likely to be a danger to themselves, to public order or to public safety*", while other Member States may instead favour interviews with the police or other procedures. Similarly, there is no reason to impose common EU standards on the legitimate purposes for owning or using a firearm or on when a licence should be refused – it should be for the Member States to decide what constitutes "*good cause*" and which persons can be licensed.

It is worth noting that the Upper House of the German Federal Parliament (*Bundesrat*) on 29th November 2013 adopted a specific Decision on the Commission's Communication on firearms³⁹. That Decision stresses that the EU does not have competence to largely harmonise national legislation on firearms and deal with issues without cross-border implications. In the light of the Commission's Communication, the Decision also raises doubts about the compliance of a potential legislative proposal from the Commission with the principles of subsidiarity and proportionality under Article 5 of the Treaty on European Union.

19. What about the possibility that a legal firearm owner commits a crime with it?

According to the Communication, "*In the first decade of the 21st century there were over 10 000 victims of murder or manslaughter, killed by firearms, in the 28 Member States of EU*"⁴⁰. In the same section, the Communication refers to shootings in recent years involving licensed individuals and acts committed by terrorists/extremists. However, the Communication does not provide distinct figures of victims of legal and illegal firearms.

³⁹ *Beschluss des Bundesrates 732/13 – Mitteilung der Kommission an den Rat und an das Europäische Parlament: Schusswaffen und die innere Sicherheit der EU: Schutz der Bürger und Unterbindung des illegalen Handels*
[http://www.bundesrat.de/eln_319/SharedDocs/Drucksachen/2013/0701-800/732-13_28B_29.templateId=raw.property=publicationFile.pdf/732-13\(B\).pdf](http://www.bundesrat.de/eln_319/SharedDocs/Drucksachen/2013/0701-800/732-13_28B_29.templateId=raw.property=publicationFile.pdf/732-13(B).pdf)

⁴⁰ Section 1, "Introduction" of the Communication.



No human activity presents zero risk, and FACE does not deny that legal firearms ownership therefore involves some potential risks. Every violent death is tragic and firearms legislation should thus aim at minimising the risk that atrocities occur. The Firearms Directive rightly requires that persons acquiring and possessing firearms “*are not likely to be a danger to themselves, to public order or to public safety*”, while the specific conditions to implement this requirement are – also rightly – decided at national level.

FACE is convinced that an absolutely insignificant percentage of the 10 million estimated legal owners of civilian firearms in the EU has used or would ever use them to commit an intentional crime⁴¹. Given that persons having criminal convictions are barred from acquiring and possessing firearms, the possibility of the criminal use of a firearm by its legal owner mainly arises in the exceptional and unfortunate cases of either insanity or crimes of passion. We do not have access to specific data in this domain (which may exist in some Member States), but the number of this type of incidents reported in the media (which is always keen to publicise them) is statistically extremely low.

Legislation should not be based on isolated incidents but on a thorough analysis of the risks, the pursued objectives and the proportionality of the possible measures. Member States periodically conduct this analysis and decide whether changes in their national legislation are warranted or not. If the Commission wishes to prevail over the Member States in this role it should explain why the EU is in a better position to fulfil it than them.

20. Doesn't the Commission provide statistics about legal ownership and crime?

The Communication includes in Annex 2 statistics of the Small Arms Survey on legal ownership, homicide and suicide by firearms in the 28 EU Member States.

However, the Communication grossly misquotes the Small Arms Survey, listing, as the percentage of “*Legally held firearms per 100 population*” in each Member State, the estimated percentage of *both* licit and illicit firearms. For instance, in the case of Germany, the percentage quoted in the Communication would lead to the figure of 25 million legally-held firearms (which, as has just been explained, actually corresponds in the Small Arms Survey to both legal and illegal firearms) and is very far from the official figure of 5.5 million legally-held firearms⁴². This misquotation shows, once again, the Communication's worrying tendency to incorrectly mix up legal and illegal activities.

Furthermore, it is difficult to understand why the Commission did not seek this type of information, directly and according to standard parameters, from the Member States.

⁴¹ Hunting accidents, which normally involve other hunters, may constitute a crime if they involve negligent behaviour, but they are non-intentional.

⁴² See information provided by the German authorities in question 27 and footnote 64 of this document.



The *true* statistics of the Small Arms Survey⁴³, be they correct or not, do not provide any evidence that legally held firearms feed the illegal market, or that legal firearms ownership results in an increase in firearms-related crime. In fact, these statistics do not seem to show any meaningful trend and the Commission should explain the purpose of their inclusion – and their distortion.

STOLEN AND LOST FIREARMS: COMMISSION'S MISUSE OF OBSCURE DATA

21. Wouldn't it be reasonable to have common standards on storage of firearms?

FACE believes that responsible firearms owners must store them in a way that minimises the risk of their theft, loss or misuse by unauthorised persons.

The Firearms Directive does not lay down rules on the storage on firearms, but it does not in any way prevent Member States from adopting the strictest of rules on this matter. Member States already have rules on how private individuals who own firearms (mainly hunters and sport-shooters) should store them. These rules differ across the EU: typically, some Member States require that all firearms be stored in a safe, while other Member States require a safe for certain type of firearms or for the holding of certain number of them, but in other cases accept measures such as disassembling the firearm and keeping it locked up and separated from its ammunition. FACE believes that national authorities are in the best position to determine the most suitable measures on the storage of firearms.

Member States do not seem to believe that the absence from the Firearms Directive of EU common standards on storage undermines their mutual confidence. Furthermore, an EU action on storage of firearms covered by the Directive (which are for the most part those owned by hunters and sport-shooters) would be warranted only if their theft or loss were statistically significant and had a cross-border dimension. If these conditions are not met, the EU cannot justify that the introduction of common standards complies with the principles of subsidiarity and proportionality.

22. Doesn't the Commission provide data about stolen firearms?

The Communication vaguely states that “*Almost half a million firearms lost or stolen in the EU remain unaccounted for, the overwhelming majority of which are civilian firearms, according to the Schengen Information System*”⁴⁴. The Communication thus argues that the introduction of common EU standards on storage of civilian firearms is necessary to reduce diversion of firearms into criminal hands⁴⁵.

⁴³ As indicated in footnote 72 of the Communication, the statistics can be found at www.gunpolicy.org

⁴⁴ Section 1, “Introduction”, of the Communication.

⁴⁵ Section 1, Introduction, and Section 4.2, “Task 2: Preventing theft and loss”.



Commissioner Malmström was only slightly more specific in reply to a parliamentary question on this topic in July 2013⁴⁶. According to her answer (on behalf of the Commission), the Second Generation Schengen Information System (SIS II) includes, among other objects, firearms, “*generally those that have been stolen or lost or are searched for as evidence in criminal proceedings*”, and as of 1st January 2013 there are 421 194 entries of firearms in it. She further stated that “*We can say without great risk of error that most of the reports of firearms come from declarations made to the police by people who were lawfully in possession of the firearm in question and who have either lost them or have been victims of crime*”.

FACE believes that the Commission is using isolated and obscure figures that can be easily misinterpreted or misused in order to justify the introduction of EU common standards on storage of firearms and thus the reopening of the Directive.

23. What is wrong with the Commission's figure?

We do not contest the Commission's statement that there have been 421 194 entries of firearms in the Schengen Information System. However, instead of being deliberately vague, the Commission should clarify:

- The period of time which this figure covers: for instance, does it cover firearms lost or stolen across the EU as from 1995?
- The origin of these firearms: police, dealers, legal civilian owners (mainly hunters and sportshooters), criminals, etc. The Commission claims that most of them came from legal owners, so if it can make such a statement it should also be able to break down the figure in a convincing manner.
- How many of these firearms have been lost or stolen, as opposed to those searched for as evidence in criminal proceedings.
- Whether firearms that are subsequently found are then deleted from the database.
- Ideally, if such information is available, the Commission should clarify how many of these firearms were stolen from or lost at their civil owner's home, since the measure that the Commission intends to introduce would specifically be aimed at that kind of storage.

In short, the Commission should allow peer-review of the information embedded in that figure. The Commission should not try to hide behind public security arguments to deny the possibility to analyse a mere figure and break it down.

Furthermore, the number of stolen or lost firearms should be assessed in the wider context of the estimated number of legal and illegal firearms (see hypothetical scenario in question 24).

⁴⁶ Question for written answer to the Commission E-006539-13, by MEP V. Mathieu Houillon. At the time of preparing this document the answer is only available in French, so the English translation of the quoted text is ours.

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2013-006539+0+DOC+XML+V0//EN>



A proper assessment of the situation across the EU should have involved a request from the Commission to the Member States for reliable information about the number of legally held firearms that are stolen or lost (see question 27).

In conclusion, the Commission is seeking to justify the introduction of a very specific measure (common standards on home storage of firearms that would only apply to civilian owners covered by the Directive) by referring to a figure with the broadest scope, and this denying the possibility of a peer review. This process runs against objective and transparent law-making and does not demonstrate the suitability of that measure to attain the pursued objective.

24. What *if* all the figures put forward by the Commission were correct?

For the purpose of argument, we are willing to accept a chain of assumptions. Under this hypothesis, the analysis of the figure of 421 194 would have shown that: all firearms were lost or stolen (and are not just searched for as evidence in criminal proceedings); that figure does not include firearms that were subsequently found; and, above all, these firearms only came from legal civilian owners, to whom the Directive applies. After having made all these assumptions, the figure of 421 194 would be compared to the estimated number of legal and illegal firearms in the EU according to the Commission.

The Commission states in its Communication that “*there are an estimated 80 million legally-held civilian firearms in the EU*”⁴⁷. The Commission does not specify the source for that estimation⁴⁸, which seems high to us, but, once again for the purpose of argument, we are also willing to take it at face value. Even in such fictional scenario, the *accumulative* number of legally held civilian firearms that were stolen or lost over a period of many years would represent (on the basis of the Commission’s own estimations) 0.5% of the current number of legally held civilian firearms in the EU – which would be the same as to say that 99.5% of legally held firearms over a period of many years have not been stolen or lost. In conclusion, the hypothetical (and, in our opinion, untrue) percentage of legal firearms that are lost or stolen would be very low (although every single firearm lost or stolen is a cause of concern) and would not carry the same connotation as the Commission’s generic reference to “*almost half a million firearms*”.

The Communication does not provide any estimation of the number of illegal firearms in the EU but according to Commissioner Malmström they probably exceed by far 10 million⁴⁹, which, in our opinion, still seems to be a low estimation – in fact, other figures and sources mentioned in the Communication would lead to a much higher number of illegal firearms⁵⁰.

⁴⁷ Section 1, “Introduction”, of the Communication.

⁴⁸ This estimation is most likely taken from the Small Arms Survey (see link below and question 20 of this document).
<http://www.gunpolicy.org/firearms/region/european-union>

⁴⁹ See her speech, in footnote 20 of this document.

⁵⁰ As explained in question 20 of this document, the Communication relies on (misquoted) percentages of the Small Arms Survey regarding statistics on legal ownership and homicide by firearm in each Member State. Similarly, as explained in footnote 48 of this document, the Communication relies on (uncredited) figures of the Small Arms Survey regarding the total number of legally-held firearms in the EU. Nevertheless, the Communication does not provide an estimation of the number of illegal firearms. We are not aware of whether or not the Small Arms Survey has this kind of estimation, but even assuming that it does not (and that this would explain the omission of this kind of estimation in the Communication), the other estimations in the Small



However, if once again we took all this to be true, the *accumulative* number of civilian firearms that were stolen or lost during a period of several years would currently represent 4% of the number of illegal firearms. If this were true (which we believe is not), the Commission should probably devote its efforts to tackling the source of the remaining (on the basis of its own estimations) 96% of illegal firearms, rather than to proposing additional regulation of lawful ownership.

Even with these purely *hypothetical* percentages, using the Commission's own obscure figures, it would be difficult to justify Commissioner Malmström's statement that "*legally owned weapons in the EU continue to feed the illegal market*". Our calculations may have flaws but we are willing to discuss them openly with the Commission, which, unlike us, proposes the rules that will apply to millions of EU citizens. We are also convinced that the *true* percentages are much lower (see some indicators in question 27).

25. Aren't you too sceptical about the credibility of the Commission's figures?

First of all, we think that asking for the disclosure of the evidence invoked by the Commission to substantiate its statement is not only reasonable but also warranted in a democracy.

Furthermore, the alteration of the percentages in the Communication's Annex (see question 20) and the methods used by the Commission during the public consultation and the Eurobarometer survey on firearms that preceded the Communication (see questions 38-49) already showed a tendency to misrepresent facts and ignore undesired figures in order to justify an EU action.

The Communication itself shows another worrying sign of the Commission's inclination to use data misleadingly. The Communication provides one single example of the exact number of stolen firearms during a specific period in a Member State – the UK: "*In UK in 2010/11 63% of the 2534 stolen firearms were stolen from residential premises*"⁵¹. A quick analysis of the referenced (and publicly available) UK document shows, however, a more nuanced reality⁵². In fact, the Communication conveniently omits that the following sentence in the same UK document clarifies that "*Air weapons accounted for around a half (46%) of the thefts (Table 2.14)*". A further analysis of table 2.14 of the UK document shows that the figure of 2534 "firearms" does not only include air weapons but also starting guns, imitation firearms (such as BB guns and soft air weapons) and other unspecified weapons. However, shotguns, handguns and rifles, which are the items that truly correspond to the EU and UN definition of firearm⁵³, account for a total of

Arms Survey would necessarily lead to a figure much higher than 10 million illegal firearms in the EU (for instance, in Germany alone, there would be 25 million firearms – both legal and illegal combined). We are not assessing here the correctness or incorrectness of the estimations of the Small Arms Survey – we are only stressing that the Commission should be consistent in its references.

⁵¹ See footnote 12 of the Communication.

⁵² See section 2.9, page 67. See also tables 2.13 and 2.14, in page 81.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/116483/hosb0212.pdf

⁵³ See Article 1 of the Directive.



696 misappropriated firearms. This figure is still a cause for concern but is certainly far from the figure of 2534, portrayed by the Communication as actually referring to firearms.

The Commission cannot use as an excuse for the selective use of a quote the specific terminology used in the UK or the fact that for statistical or for any other purposes the UK included air weapons and other weapons in its official document⁵⁴. The Commission knows very well that the concept of firearm, under EU law and as understood throughout the Communication⁵⁵, is precise and does not include, for instance, air weapons. The Communication also omits the fact that the UK ceased collecting information centrally on stolen firearms in 2012 due to the statistically small numbers involved and to reduce the burden on police forces⁵⁶.

FACE is not resorting to subtleties to put into question the methods used by the Commission. The Commission is making a very serious allegation (that legally held firearms in the EU feed the illegal market) and should not seek to substantiate it on the basis of misrepresented figures. If the Commission is taking such a questionable approach with a document that is publicly available, it is legitimate to ask what the Commission could do with undisclosed data that it kept under its control.

26. Why don't you provide your own data?

In a democracy, the institution or body that seeks to introduce restrictions and/or new rules should substantiate the need for them.

FACE is not a research institute and does not have the means to conduct a full review of the situation with regard to firearms across the EU. However, following the publication of the Commission's Communication, FACE sought to obtain data through its Members about the situation at national level with regard to legal firearms and the numbers that are stolen or lost. FACE could only get some data from a few Member States where the information is publicly available or where the authorities replied to the request for information. Furthermore, in several cases, the data was incomplete or imprecise (for instance, with regard to the periods it covered) so it was very difficult to draw conclusions from it.

27. Did you obtain any meaningful data?

Some of the data obtained by FACE Members concerning a few Member States give an indication of the percentage of legally held civilian firearms that are being stolen or lost per year

⁵⁴ The term "firearm" in the UK can be used with different meanings. In the quoted document it has a wide sense but in other contexts it has a much narrower sense and does not even apply to the typical double-barrelled shotgun. The equivocal nature of the term firearm in the UK does not diminish the fact that the Commission omitted the reference to air weapons (which it was impossible to overlook) and the clear data laid out in the relevant table of the UK document.

⁵⁵ See for instance footnote 14 of the Communication, which includes the EU definition of firearm.

⁵⁶ Focus on: Violent Crime and Sexual Offences, 2011/12, Office for National Statistics (see page 62).

http://www.ons.gov.uk/ons/dcp171778_298904.pdf



FACE'S RESPONSE TO EUROPEAN COMMISSION'S COMMUNICATION ON FIREARMS: AIMING AT THE WRONG TARGET

in these Member States. FACE claims neither that this data (on which a peer review would be welcome) is perfect nor that it provides a comprehensive and detailed vision of the situation across the EU. This data, however, is still more transparent than the vague (and, in the case of the UK example, totally misleading) information provided so far by the Commission.

- **Spain.** In 2012, there were over 3.5 million civilian firearms (of which 2.8 million were shotguns). The number of civilian firearms that were stolen or lost in 2012 and in the preceding years is not publicly available. However, official data exists for 2005 and 2006. In 2005, a total of 279 shotguns, rifles and handguns were stolen or lost, out of over 3 million that were legally owned at that time. In 2006, the figure was 313 out of almost 3.4 million. These figures for 2005/2006 represent an annual percentage of 0.009% firearms stolen or lost⁵⁷.
- **UK.** In March 2012, in England and Wales, there were 1 806 535 civilian firearms (of which 1 328 647 were shotguns)⁵⁸. During the preceding year, a total of 607 shotguns, handguns and rifles in England and Wales were misappropriated⁵⁹, which represents 0.03%. In 2012, in Scotland, there were 213 564 civilian firearms (of which 141 569 were shotguns)⁶⁰. A total of 5 firearms were stolen in Scotland during 2011/2012⁶¹, which represents an annual percentage of 0.002%.
- **Sweden.** There are at present almost 2 million civilian firearms in Sweden⁶². According to a research study based on police reports on burglaries during the period 2003-2010, an average of 269 firearms were stolen annually during that period from the their owner's home, which represents an annual percentage of 0.013%⁶³.
- **Germany.** There are at present over 5.5 million civilian firearms in Germany⁶⁴. In 2012, a total of 835 firearms were stolen⁶⁵, which represents an annual percentage of 0.015%.

⁵⁷ See the Statistical Annual Reports of the Spanish Ministry of Home Affairs, in particular year 2005 pages 338-341, year 2006 pages 318-320, and year 2012 pages 331-332. At the time of issuing this document, the Spanish central firearms registry had not answered yet the request for information from FACE Spanish Member RFEC concerning stolen and lost firearms during 2012 and the preceding years.

<http://www.interior.gob.es/publicaciones-descarga-17/publicaciones-periodicas-anuarios-y-revistas-979/anuario-estadistico-del-ministerio-del-interior-985>

⁵⁸ See UK Home Office's Statistical Bulletin – Firearms and Shotgun Certificates in England and Wales 2011/2012,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/115775/hosb1012.pdf

⁵⁹ See Office for National Statistics' Statistical Bulletin Focus on: Violent Crime and Sexual Offences, 2011/2012, in particular table 3.14:

http://www.ons.gov.uk/ons/dcp171778_298904.pdf

<http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/focus-on-violent-crime/rft-appendix-tables.xls>

⁶⁰ See Scottish Government's Firearm Certificate Statistics, Scotland, 2012

<http://www.scotland.gov.uk/Resource/0042/00423374.pdf>

⁶¹ See, Scottish Government's Statistical Bulletin Recorded Crimes and Offences Involving Firearms, Scotland, 2011-12, in particular table 14:

<http://www.scotland.gov.uk/Resource/0040/00409280.pdf>

⁶² The latest figure communicated by the National Police Board (*Rikspolisstyrelsen*) to the press is 1 955 478 firearms.

⁶³ See the Stockholm School of Economics research paper "Safe Storage of Firearms in Sweden: An Empirical Study", 2012, Erik Lakomaa, PhD. This research paper only deals with firearms stolen as a consequence of a burglary and does not include firearms unaccounted for (for instance, firearms missing from the homes of deceased owners). The percentage of 0.013% of firearms stolen from their owners' homes is calculated under the assumption that during the period 2003-2010 the number of civilian firearms remained stable and is similar to the current number.

http://www.pistolsskytteforbundet.se/objfiles/2/Safekeepingandnt_-921530583.pdf

⁶⁴ Information provided by the German Federal Ministry of Interior to FACE German Member DJV. The same figure is available, for instance, in a press release of the Bavarian Government:

<http://www.bayern.de/Pressemitteilungen-1255.10430488/index.htm>

⁶⁵ Police Crime Statistics 2012, German Federal Ministry of Interior, page 55.

<http://www.bka.de/SharedDocs/Downloads/DE/Publikationen/PolizeilicheKriminalstatistik/2012/pks2012ImkKurzbericht.templateId=raw.property=publicationFile.pdf//pks2012ImkKurzbericht.pdf>



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It should be noted that in Spain shotguns (by far the most common firearm there) have to be stored “in a secure place” but, unlike rifles and handguns, do not require an approved safe⁶⁶. In the UK, Sweden and Germany all firearms have to be stored in a safe. However, despite these differences, the percentage of stolen or lost firearms is generally extremely low.

FACE believes that *thorough* research across the EU (which in some cases would only imply pulling together data stored by national authorities) would confirm that the percentage of civilian firearms that are stolen or lost from their owners is generally extremely low.

FACE would also welcome *thorough* research (as opposed to anecdotal evidence) concerning the origin of firearms seized from criminals. We very much doubt that such research would show that firearms stolen from or lost by legal owners represent a significant source of supply for criminals.

DEACTIVATED FIREARMS AND CONVERTIBLE WEAPONS: COMMISSION'S FAILURE TO FULFIL ITS OBLIGATIONS

28. What is the problem with deactivated firearms?

According to the Commission, firearms that have been deactivated are being illegally reactivated and diverted to criminals⁶⁷.

The Commission thus suggests considering the following actions: regulation of the sale and possession of deactivated firearms which may readily be converted into or used as firearms; introduction of legally binding common standards after an assessment of the effectiveness of national standards; and support and promotion of destruction instead of deactivation⁶⁸.

29. What is your interest in deactivated firearms?

FACE and its Members have no particular interest in deactivated firearms, which are obviously unsuitable for hunting.

⁶⁶ See Articles 100(5), 133 and 144(1) of the Spanish Weapons Regulation. Virtually all shotguns are registered under licence E (for hunting purposes), to which Article 144(1) applies.

<http://www.interior.gob.es/normativa-89/reales-decretos-1275/real-decreto-137-1993-de-29-de-enero-1458>

⁶⁷ “Law enforcement authorities in the EU are concerned that firearms which have been deactivated are being illegally reactivated and sold for criminal purposes” (1. Introduction). “Reducing diversion of firearms into criminal hands through the development of effective standards on safe storage of civilian firearms and on how to deactivate civilian and military firearms” (1. Introduction). “At any of the intervening stages of sale, possession, trade, storage and deactivation the weapon is susceptible to diversion into criminal hands” (2. The need for EU action). “There is also evidence that a deactivated firearm can be assembled using non-marked parts, which then become difficult or impossible to trace” (3.2 Establishing an EU standard on marking).

⁶⁸ (...) “the Commission will assess the need to go beyond the current scope of the Firearms Directive and to address, in the light of Member States' experiences, the need for regulation of the sale and possession of items such as air guns, replicas, antique weapons and deactivated weapons which may readily be converted into or used as firearms” (3.1 Task 1: Clarifying which firearms are banned and which require a licence). “The Commission is aware of significant differences in deactivation standards between Member States and there have been reports of homicide by means of illegally reactivated firearms. This may be the result of inappropriate implementation of the Firearms Directive, such as where parts which were deactivated in accordance with one Member State's rules are transferred to other Member State applying more stringent standards. The Commission, in reviewing guidelines on deactivation in accordance with the Firearms Directive, will assess the effectiveness of national standards on deactivation for civilian and military arms and evaluate the necessity of legally binding common standards for the whole EU. The Commission considers that destruction is the most effective and cheapest method of eliminating the risk of firearms. It will examine how best to support and to promote destruction instead of deactivation” (4.4: Promoting destruction as the preferred means of disposal of surplus firearms).



However, FACE believes that, as in the case of stolen or lost firearms, the Commission is trying to use an alleged problem with deactivated firearms, without providing data, as a pretext to reopen the Directive. This is even less warranted than in the case of stolen or lost firearms, considering that the Directive already provides the Commission with legal tools to address potential problems with deactivated firearms.

30. What are the current EU rules on deactivated firearms?

The Directive stipulates that “*Member States shall ensure either that any firearm or part placed on the market has been marked and registered in compliance with this Directive, or that it has been deactivated*”⁶⁹.

Pursuant to the Directive, “*objects which correspond to the definition of a ‘firearm’ shall not be included in that definition if they (a) have been rendered permanently unfit for use by deactivation, ensuring that all essential parts of the firearm have been rendered permanently inoperable and incapable of removal, replacement or a modification that would permit the firearm to be reactivated in any way*”. (...) “*Member States shall make arrangements for the deactivation measures referred to in point (a) to be verified by a competent authority in order to ensure that the modifications made to a firearm render it irreversibly inoperable. Member States shall, in the context of this verification, provide for the issuance of a certificate or record attesting to the deactivation of the firearm or the apposition of a clearly visible mark to that effect on the firearm*”⁷⁰. Therefore, deactivated firearms that do not comply with these requirements under the Directive should still be treated like firearms and be subject to the same rules as firearms.

The Directive further stipulates that “*The Commission shall, acting in accordance with the procedure referred to in Article 13a(2) of the Directive, issue common guidelines on deactivation standards and techniques to ensure that deactivated firearms are rendered irreversibly inoperable*”⁷¹. The Commission has not issued these common guidelines yet.

31. Is the current text of the Directive strong enough?

We believe that the clear language of the Directive (see question 30) speaks for itself. This text is not a set of recommendations or vague suggestions but a set of legally-binding requirements addressed to the Member States.

If there is, as the Commission states, a serious problem with deactivated firearms being reactivated by criminals, it is surprising that the Commission is not fulfilling its obligation as Guardian of the Treaties by ensuring that Member States comply with the relevant provisions of the Directive. After all, the Commission launches infringement proceedings in all areas of EU competence virtually every week.

⁶⁹ Article 4 of the Firearms Directive.

⁷⁰ Annex I.III of the Firearms Directive

⁷¹ Annex I.III of the Firearms Directive.



32. Wouldn't the Commission's suggestions be more appropriate to tackle potential problems?

The Commission suggests regulating the sale and possession of deactivated firearms "*which may readily be converted into or used as firearms*". However, as has been explained (see question 30), deactivated firearms which may (readily or not) be converted into or used as firearms are already regulated under the Directive and subject to the same rules as fully-functioning firearms.

The Commission also suggests the introduction of legally binding common standards after an assessment of the effectiveness of national standards. However, the current provisions of the Directive on deactivation are already legally binding and the Commission should have already ascertained the compliance of the Member States' legislation with them. The Commission has even failed to fulfil its obligation under the Directive to issue common guidelines, which, regardless of their legal value, would provide Member States with meaningful information about how to avoid legal actions from the Commission⁷².

Finally, the Commission advocates destruction instead of deactivation of firearms. This represents a complete change in policy and its necessity and proportionality should therefore be substantiated. Why is destruction necessary if deactivation is carried out in conformity with the Directive?

We would like to reiterate that it is the Commission's obligation to ensure the correct implementation of EU law in force. On the basis of the Commission's own statements⁷³, however, it seems that the Commission has failed to do so. It is thus very questionable that the Commission advocates a change of the existing rules before fulfilling its own obligations.

33. What is the problem with convertible weapons and what is your interest in them?

As in the case of deactivated firearms, the Commission refers to concerns by the police that "*items such as alarm guns, air weapons and blank-firers are being converted into illegal lethal firearms*"⁷⁴. The Commission thus suggests considering the EU regulation of these items⁷⁵, which is surprising considering that the Firearms Directive already covers convertible weapons (see question 34). It might be the case, however, that the Commission is in fact more interested in an EU-wide ban, since it only provides this kind of national examples⁷⁶.

⁷² The Commission should not seek to justify this failure, after several years, by arguing that the Member States in the relevant Committee oppose the Commission's draft. In such scenario, the Commission can still submit a formal proposal to the Council and the Parliament.

⁷³ See footnotes 67 and 68 of this document.

⁷⁴ Section 1, "Introduction", of the Communication.

⁷⁵ See footnote 68 of this document.

⁷⁶ "E.g. the UK imposed a general handgun ban in 1997 and in 2006 restrictions on the sale of air weapons and a prohibition on import and sale of 'realistic' imitation weapons; Lithuania imposed a ban on gas pistols in 2012" (footnote 39 of the Communication).



Similarly to our reply with regard to deactivated firearms (see question 29), EU hunters generally have very little interest in air and blank-firing weapons (regardless of whether or not they can be converted to shoot like a real firearm). However, we believe that the Commission is once again using an alleged problem with them as a pretext to reopen the Directive.

34. What are the current EU rules on convertible weapons?

The Firearms Directive includes under the definition of firearm “*any portable barrelled weapon that (...) may be converted to expel a shot, bullet or projectile by the action of a combustible propellant*”. The Directive further indicates that “*an object shall be considered as 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*”⁷⁷.

It is clear that, under the Directive, convertible weapons are considered firearms and are thus subject to the same rules as firearms. Member States can only allow the acquisition and possession of items such as air weapons and blank-firing pistols outside of the controls imposed by the Directive if those items are not capable of being converted into firearms.

35. What about replica firearms that cannot be converted into real firearms?

The Communication fails to make any reference to the 2010 Commission Report on replica firearms⁷⁸. This Report describes the relevant EU legal framework and stresses that replicas that can be converted into firearms should be treated as firearms⁷⁹. At that time, and based mainly on the element that has just been mentioned, the absence of problems of public order with non-convertible replicas in the majority of the Member States and the possibility for Member States to restrict or ban their acquisition and possession, the Commission concluded that non-convertible replicas should not be included in the scope of the Directive⁸⁰.

36. What should the Commission do with regard to convertible weapons?

As in the case of deactivated firearms, if the Commission considers that some Member States are not properly implementing the Directive by not making convertible weapons subject to the same rules as firearms, then the Commission should launch legal action against them. Possible problems with weapons and other objects being illegally converted to shoot live ammunition can thus already be addressed under the current Directive.

Once again, the Commission should fulfil its obligations and monitor the correct implementation of existing EU legislation before advocating additional regulation.

⁷⁷ Article 1(1) of the Firearms Directive. See also its Annex I.III.

⁷⁸ Report from the Commission to the European Parliament and the Council: The placing on the market of replica firearms.
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0404:FIN:EN:PDF>

⁷⁹ See paragraphs 1.1, 1.2, 1.3 and in particular 9.8 and 9.11 of the Report.

⁸⁰ Section 9, “Conclusions”, in particular paragraphs 9.1, 9.2 and 9.11, of the Report.



37. Aren't there gaps in the EU rules, for instance regarding marking of firearms and 3D printers, that allow for the illegal manufacturing of firearms?

The Communication sets as one of its tasks “*Establishing an EU standard on marking*”. It also states that “*Many problems have been identified with illicit weapons and marking requirements. Markings may be erased or tampered with. There is also evidence that a deactivated firearm can be assembled using non-marked parts, which then become difficult or impossible to trace*”⁸¹.

FACE is not involved in the manufacturing of firearms so it does not claim to have expertise in this domain. It should however be pointed out that the Directive already contains a number of provisions concerning manufacturing and marking of firearms.

The examples of problems or conduct mentioned in the Communication already fall under the definition of illicit manufacturing and/or illicit trafficking in the Firearms Directive⁸². FACE is not aware of whether it is possible to prevent markings from being erased or tampered with, but in any event the Directive already lays down common standards on marking for the purpose of identifying and tracing each assembled firearm and requires, amongst those measures, that the marking be “*affixed to an essential component of the firearm, the destruction of which would render the firearm unusable*”⁸³. As regards the reactivation of deactivated firearms using non-marked parts, we fail to see how this would be possible if the deactivation were done correctly in conformity with the Directive⁸⁴ – and even if the deactivation of these firearms were done in breach of the Directive the illegal manufacturer would still need to get hold of essential components, which, marked or not, are still subject to the same controls as the firearm for which they are intended⁸⁵.

The use of so-called 3D printers for the home manufacture of firearms would also fall under the definition of illicit manufacturing⁸⁶, leaving aside the question of the feasibility of this method, the strength of the end-product and the appeal to criminals.

⁸¹ Section 3.2, “Establishing an EU standard on marking”, of the Communication.

⁸² Article 1, paragraphs (2a) and (2b), of the Firearms Directive.

⁸³ Article 4(2) of the Firearms Directive.

⁸⁴ We reproduce, once again the text in Annex I.III of the Firearms Directive: “*objects which correspond to the definition of ‘firearm’ shall not included in that definition if they have been rendered permanently unfit for use by deactivation, ensuring that all essential parts of the firearm have been rendered permanently inoperable and incapable of removal, replacement or a modification that would permit the firearm to be reactivated in any way*”.

⁸⁵ Annex I.II.B of the Firearms Directive.

⁸⁶ Article 1(2a) of the Firearms Directive.



III. PUBLIC CONSULTATION AND EUROBAROMETER SURVEY ON FIREARMS: COMMISSION'S MISUSE OF PUBLIC OPINION

38. Was the Commission's Communication on firearms preceded by a public consultation?

DG HOME ran from March to June 2013 the online public consultation "A common approach to reducing the harm caused by criminal use of firearms in the EU". Despite the title of the consultation, most of the questions concerned EU rules on legal firearms.

FACE considers that most of the questions pertaining to legal activities in that consultation were misleading, since they induced the respondent to believe that the Firearms Directive does not already regulate a wide range of areas, such as the conditions for persons that produce and/or sell firearms⁸⁷, sales over the internet and at "arms fairs"⁸⁸, the acquisition and possession of ammunition⁸⁹, the conditions such as minimum age and absence of criminal record for persons that acquire and possess firearms⁹⁰, etc.

Furthermore, all questions failed to mention that national legislation on the issues addressed in them already exists, thus confronting the average respondent with the false dilemma "EU regulation or nothing". In conclusion, most of the questions were worded in such a way as to predestine the answer by compelling the average respondent to agree that some or further EU action was needed.

39. What were the results of the public consultation?

According to DG HOME's report⁹¹, a total of 85 673 responses were received – of which over 95% came from individual citizens.

Despite the formulation of the questions, the overwhelming majority of the respondents opposed further EU action on legal firearms (the percentage usually ranging from 70 to 90%). Most respondents also opposed further EU action on illegal activities (although to a lesser degree). According to DG HOME's report, respondents who contested the need for stricter legislation and/or further harmonisation were hunters and target shooters and advocated tackling illegal – instead of legal – activities, implementing existing laws and the taking of decisions by national parliaments – instead of the EU.

⁸⁷ Article 4 of the Firearms Directive.

⁸⁸ With regard to sales over the Internet, see Article 6 (2nd paragraph) of the Firearms Directive. The Directive does not lay down any exemption for sales in "arms fairs", which are thus subject to the same rules as any other acquisition.

⁸⁹ Article 10 of the Firearms Directive.

⁹⁰ Article 5 of the Firearms Directive.

⁹¹ http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2013/docs/consultation_026/report_on_consultation_including_annex_en.pdf



40. Was DG HOME satisfied with the results of the public consultation?

DG HOME and Commissioner Malmström disavowed the results of their own consultation, notably by claiming that most of the responses came from hunters and target shooters, making disparaging comments about the respondents, dismissing the consultation as non-scientifically based and, above all, disregarding in their public communications the consultation while giving much more prominence to the subsequent, and apparently more favourable to their wishes, Eurobarometer survey.

41. Why does DG HOME state that most replies came from hunters and target shooters?

DG HOME's report claims that most of the responses that opposed more EU action or further harmonisation came from hunters and target shooters⁹². In response to a parliamentary question, Commissioner Malmström, on behalf of the Commission, also stated that "*a large proportion of respondents to this consultation declared their membership of associations related to firearms use*"⁹³. However, it is unclear how DG HOME came to this conclusion given that the public consultation did not require respondents (of which 95 %, i.e. 81 900, were individual citizens) to indicate their status. According to DG HOME, 2600 French respondents declared themselves as hunters or target shooters but that number only represents 3% of the total responses.

It is true that FACE informed its Members about the existence of this public consultation and encouraged them to participate but so could (and certainly did) other organisations that are ideologically opposed to firearms and that were probably in regular contact with the Commission in this process. Had the majority of the responses indicated that further EU action on legal and/or illegal firearms was needed, would DG HOME assume that they were coming from anti-firearms/anti-hunting groups and then dismiss them?

42. According to DG HOME, what is wrong with the public consultation's methodology?

During a meeting between the Commission (DG HOME and DG ENTR) and several stakeholders held in Brussels on 23rd July 2013, DG HOME announced that most of the responses to the public consultation had opposed further EU action on legal firearms. DG HOME, however, indicated that the consultation was not representative of a cross-section of the general public and was not scientifically based, so it announced that a Eurobarometer survey would also be launched. At a later stage, in reply to the abovementioned parliamentary question about the public consultation⁹⁴, Commissioner Malmström similarly argued that the

⁹² "Responses against more EU action on firearms largely involved either citizens (hunters and target shooters) or their associations, i.e. private organisations". (...) "Participants who contested the need for stricter legislation and / or further harmonisation were mainly private citizens or hunters' and target shooters' organisations from France, Finland and Sweden who emphasised the distinction between the legal and the illegal possession of firearms". "Hunting and target shooting associations were well mobilised to participate in the survey: for example 2600 French respondents openly declared themselves to be either a representative or member of such an organisation".

⁹³ Question for written answer to the Commission E-012523-13, asked by MEP V. Mathieu Houillon.

<http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2013-012523&language=EN>

⁹⁴ See footnote 93 of this document.



Eurobarometer survey “used a random sample of EU citizens, and is therefore broadly representative of views across the EU”.

It would be legitimate to ask why DG HOME, which could and should have thought of these shortcomings when designing its consultation, questioned its own methodology only when it received an overwhelming negative response. As already indicated above, FACE also seriously doubts that DG HOME would be questioning this methodology if the consultation's results had been the opposite.

43. What is Commissioner Malmström's opinion about the respondents to the public consultation?

In an article published in the Swedish press in reply to criticism from the local hunting and sport-shooting community⁹⁵, Commissioner Malmström stated that the public consultation had mainly attracted firearms owners (although this could only be an assumption on her side – see question 41). She also stressed that many of the respondents had even expressed their opposition to an EU action on smuggling of firearms and fight against terrorism. She further concluded that the results of the consultation only represented the views of a specific group and not those of the EU people, hence the need to launch a Eurobarometer survey in order to obtain a more comprehensive picture.

Similarly, in reply to the parliamentary question mentioned above⁹⁶, Commissioner Malmström enumerated in detail the percentages of respondents to the public consultation that had opposed EU action to tackle illegal activities. Surprisingly, she failed to mention the percentages regarding the respondent's replies to the questions about EU action on legal firearms, which was in fact the substance of the parliamentary question.

FACE considers that the abovementioned statement and reply from Commissioner Malmström sought to discredit respondents by presenting them as extremist and unreasonable. It could however be the case that these respondents considered that the Member States are in a better position than the EU to act or they simply mistrusted the general tone of the consultation. In any case, it is not for Commissioner Malmström to make moral judgements about the responses to this consultation. By definition, consultations seek to gather views and have no “good” or “bad” answers – unless, of course, the entire process is launched only to attain predetermined objectives. It seems, however, that for Commissioner Malmström and DG HOME *any* answer to the public consultation would lead to the same conclusion – that further EU action is needed (see question 48).

⁹⁵ Article published by *Svenska Dagbladet* on 25 October 2013:

http://www.svd.se/opinion/brannpunkt/cecilia-malmstom-handlar-inte-om-att-forsvara-for-jagare_8654988.svd

⁹⁶ See footnote 93 of this document.



44. What coverage did the Commission give to the results of the public consultation and the Eurobarometer survey?

The public consultation is incidentally mentioned in the Commission's Communication, but without giving any information about its results⁹⁷.

Commissioner Malmström, in her speech presenting the Communication⁹⁸, only referred, enthusiastically, to the Eurobarometer survey.

The memo that accompanied the publication of the Commission's Communication⁹⁹ devoted almost an entire page to the survey and its results, but it only included a small paragraph (without any meaningful information – let alone a short summary of its results) to the public consultation. Similarly, the Commission's press release¹⁰⁰ mentioned some results of the survey but it provided none for the public consultation. The memo and the press release included Internet links to both the survey and the public consultation, for those that wanted to make their own analysis.

45. What was the objective of the Eurobarometer survey?

As already indicated, DG HOME argued that the survey was necessary to address the shortcomings of the public consultation and obtain the view of the EU population. However, FACE infers from all the elements mentioned above (see questions 41-44) that the survey was aimed at obtaining a public opinion justification for further EU action on firearms and at sidelining the results of the public consultation.

46. What was asked in the Eurobarometer survey?

The survey¹⁰¹ was carried out on behalf of DG HOME in the EU 28 Member States between 16 and 18 September 2013, with 26 555 respondents being interviewed by telephone.

The nine questions that were asked related to: the level of firearm ownership; the perceptions of firearms-related crime; the role of the EU in cooperating with non-EU countries and in dealing with illegal trade in firearms to the EU from outside of the EU; and the rules on legal ownership and trade. This last aspect was addressed in three of the survey's questions, one of which was at the same time subdivided in five questions. As with the public consultation, FACE is very critical of the formulation of the three questions pertaining to legal activities, which induced respondents to believe that there are no common EU rules on legal firearms.

⁹⁷ See page 7 and general (not specific) link in footnote 16 in the Communication. The Eurobarometer survey is also incidentally mentioned in Annex 2.

⁹⁸ See her speech in footnote 17 of this document.

⁹⁹ See page 5: http://europa.eu/rapid/press-release_MEMO-13-916_en.pdf

¹⁰⁰ (...) "the European Commission is publishing the results of a Eurobarometer survey showing that six in ten Europeans actually believe that the level of crime involving firearms is likely to increase over the next five years; it also shows that overall 55 percent of Europeans want stricter regulation on who is allowed to own, buy or sell firearms".

http://europa.eu/rapid/press-release_IP-13-980_en.pdf

¹⁰¹ See full report at http://ec.europa.eu/public_opinion/flash/fl_383_en.pdf



47. What were the questions concerning legal activities with firearms?

Question number 3 (Q3) sought to obtain the respondents' opinion about whether stricter regulation on who is allowed to own, buy or sell firearms in their country was the most effective way to reduce the level of crime using firearms or whether this would be more effectively achieved in other ways. The result was that 53% of respondents opted for stricter regulation. It is true that this percentage, even in a highly emotional and controversial topic, cannot be ignored. This question, however, did not ask whether the EU should introduce this stricter legislation – only whether that legislation should exist in the respondent's country. Therefore, DG HOME cannot claim that this 53% percentage gives it legitimacy to introduce stricter rules at EU level.

Question number 4 (Q4) began by informing respondents that firearms laws differ from one to another in the EU and then asked them whether there should be common minimum standards in all EU countries, if each EU country should make its own laws, or both. The result was that 58% of respondents opted for common minimum standards. This question, however, is completely misleading: there are already common minimum standards, which are precisely the object of the Firearms Directive. In conclusion, this question first failed to mention a fundamental element to respondents (that there are already common minimum standards), then confronted them with the existence of regulatory differences between countries and finally asked them whether the EU should have something that, in fact, it already has. Like 58% of the respondents, FACE also agrees that there should be common minimum standards on firearms, as is already the case. FACE, however, challenges the method used by DG HOME to obtain that response.

Question number 5 (Q5), complementing the previous one, sought to ascertain the level of support for EU common minimum standards in five different fields. However, in four out of five of these fields, the EU already has common minimum standards: marking each firearm to identify its owner¹⁰², licensing the possession of firearms¹⁰³, the types of firearms that can be sold for private use¹⁰⁴ and the selling of firearms on the Internet¹⁰⁵ (the level of support was, respectively, 84%, 69%, 52% and 45%). The issue of how illegal trafficking is punished (which obtained a level of support of 69%) was the only field, out of the five, for which there are not at present common minimum standards, although the Directive already requires that penalties applicable to infringements of the national laws implementing the Directive be effective, proportionate and dissuasive¹⁰⁶. In conclusion, as with Q4, DG HOME asked EU citizens a set of completely misleading questions (i.e. whether there should be EU rules on specific areas, without telling them that they already exist), as part of the objective of justifying further EU action.

¹⁰² Article 4 of the Firearms Directive.

¹⁰³ Articles 4a, 5, 7 and 8 of the Firearms Directive.

¹⁰⁴ In particular Article 6 and Annex I.II of the Firearms Directive.

¹⁰⁵ Article 6 (2nd paragraph) of the Firearms Directive.

¹⁰⁶ Article 16 of the Firearms Directive.



48. What is the Commission's reading of the results of the Eurobarometer survey?

In addition to the reiterated references to the survey in the memo and the press release that accompanied the presentation of the Communication, the speech given by Commissioner Malmström probably summarises her reading of the results of the survey: *“There is a clear need for EU action, and encouragingly, most Europeans agree that something needs to be done. In a Eurobarometer poll released today, around six in ten European think that there should be common minimum standards across the EU concerning laws on firearms”*¹⁰⁷.

As we have underlined, there are already *“common minimum standards across the EU concerning laws on firearms”*, and they are strict. The Commission cannot omit this fundamental element while using the survey to ask for EU citizens' opinions and then claim that *“most Europeans agree that something needs to be done”* – which sounds like a blank cheque for the Commissioner to propose anything she desires. If the Commission truly believes that *“there is a clear need for EU action”*, that is to say, to change the current common minimum standards, it should substantiate that need, instead of asking similar misleading questions twice (first in the public consultation and then in the survey), until it gets the replies it wants. This is, simply put, an unacceptable misuse of public opinion and the finite resources of the European public service.

49. Should a public consultation or a survey be the basis for legislation?

As already indicated, FACE believes that firearms legislation should be based on evidence.

Public consultations and surveys can be taken into consideration, although the use of these methods for sound policy-making is questionable. Furthermore, the conduct of DG HOME in this process has been more than questionable, so it should not invoke public opinion to justify the introduction of new EU rules.

It is particularly telling that, despite its repeated misuse of public opinion, DG HOME could not get overwhelming support for its initiatives.

50. Has FACE been involved in the reflection or work of DG HOME?

Like other organisations, we had during 2013 the opportunity to meet with DG HOME to express our views about the EU rules on legal firearms¹⁰⁸. We were also contacted by consultants conducting research on behalf of DG HOME, for instance on deactivated firearms and blank-firing weapons. However, we feel that DG HOME ignored our comments (see the section of this document on the Commission's Communication, questions 7-37).

¹⁰⁷ See link to her speech in footnote 17 of this document.

¹⁰⁸ FACE issued in August 2013 a position paper on the possible reopening of the Directive.

http://www.face.eu/sites/default/files/documents/english/face_position_on_reopening_firearms_directive_final_en.pdf



In April 2013, the Commission published a Decision setting up a European Firearms Expert Group, supposedly to deal with illicit trafficking in firearms¹⁰⁹. However, by that time, DG HOME and Commissioner Malmström had repeatedly expressed their view that there is a strong link between legal firearms and illicit trafficking¹¹⁰. FACE inferred that on the basis of their own statements an extensive knowledge of and experience in issues related to legal firearms was fully relevant for the work and objectives of the Group and thus participated in the open call for applications in order to join it. In July 2013, DG HOME turned down, without any explanation, FACE's reasoned application, even if DG HOME left open the possibility that FACE be "*invited as expert from outside the group on an ad hoc basis*". In turning down FACE's application, DG HOME excluded from the Group the organisation that represents the majority of the legal owners of civilian firearms in the EU.

IV. CONCLUSIONS: FACT-BASED DECISIONS, RESPECT FOR THE MEMBER STATES' COMPETENCES, IMPLEMENTATION OF CURRENT RULES, AIMING AT THE RIGHT TARGET AND DEMOCRATIC DEBATE

- The Firearms Directive, which is an instrument of the internal market, currently provides a coherent framework on legal civilian firearms. The Directive creates mutual confidence amongst Member States whilst both respecting differing national sensibilities and allowing the introduction of stricter measures. The Directive already imposes extensive controls on legal activities, but its aim has never been the full harmonisation of national legislation on firearms.
- Any possible amendment of the Directive should be based on an objective and proper assessment of its functioning, on the basis of facts and transparent data. Regrettably, the Commission uses obscure data and vague statements in an attempt to substantiate its claim that legal firearms feed the illegal market.
- The EU has only those competences conferred upon it by the Treaties (i.e. by the Member States) and must exercise them in accordance with the principles of subsidiarity and proportionality. The plans laid out by the Commission seem to unnecessarily impinge on the competences of the Member States and could amount to the full harmonisation of the rules on legal civilian firearms, regardless of whether these rules have cross-border implications or not.
- Before seeking the amendment of the Directive, the Commission should fulfil its duty as Guardian of EU law by ensuring that Member States correctly implement and enforce its

¹⁰⁹ Commission Decision of 11 April 2013 setting up an expert group on measures against illicit trafficking in firearms to safeguard the EU's internal security (the Firearms Expert Group). The Decision (in Article 4) specifically empowers DG HOME to appoint the members from non-governmental organisations.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:107:0004:0006:EN:PDF>

¹¹⁰ See quotes in question 9 and footnotes 20 and 21 of this document.



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current provisions (for instance on deactivation) in order to minimise any possible loophole. The Commission should not use its own failures as a pretext to reopen the Directive.

- It is far easier to impose restrictions on lawful activities than to actually fight illegal activities. It is however erroneous to believe that by increasingly restricting legal trade in and use of hunting and sporting firearms illegal trafficking in firearms will be reduced. Such an approach would simply aim at the wrong target and would divert public resources from the truly important issues, the most pressing of which seems to be the illicit trafficking in firearms coming from post-conflict areas.
- The Commission should conduct a serious internal reflection about the methodology used in the preparation of its Communication on firearms and the public consultation and survey that preceded it. Citizens can legitimately expect not to be misled by the EU institutions. Only a transparent and open democratic debate can prevent the disaffection of many citizens towards the EU and its institutions.

FOR FURTHER INFORMATION

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