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COMMISSION RECOMMENDATION

of 17.4.2018

**on immediate steps to improve security of export, import and transit measures for
firearms, their parts and essential components and ammunition**

(Text with EEA relevance)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) International trafficking of firearms is a major concern for the security of European citizens. Firearms, their parts and essential components and ammunition can be in circulation for many years once they have been legally manufactured and traded. Without appropriate tracing measures, they can be diverted away from the legal market. Regulation (EU) No 258/2012¹ ensures harmonised and reinforced controls of imports, transit and exports of firearms for civilian use, their parts and essential components and ammunition to and from third countries.
- (2) This Recommendation, by providing guidance to Member States to that effect, should contribute to ensuring the application of export and import control procedures for optimal security and to improving information exchange between national authorities to facilitate cooperation and prevent diversion of civilian firearms to the illegal market. Therefore the aim is to achieve a more efficient implementation of Regulation (EU) No 258/2012 which lays down rules governing export authorisation, and import and transit measures for firearms for civilian use only and to improve traceability and cooperation in the fight against firearms trafficking.
- (3) Instability in European Union's immediate neighbourhood justifies the need for Member States to continue to improve adequate controls of firearms as they enter and leave the Union.
- (4) Improving national practices on tracing firearms and the exchange of information, as well as the proper application of Regulation (EU) No 258/2012 by all Member States is necessary to achieve its objective of improving the control of legal firearms, their parts and essential components and ammunition, especially between the point of export and the point of import, while ensuring a high level of security for the general public. Divergent national practices in applying that Regulation hamper law enforcement authorities in their efforts to counter and prevent firearms trafficking and create significant security risks in Europe.

¹ Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition OJ L94, 30.3.2012, p.1.

- (5) Since the adoption of Regulation (EU) No 258/2012, the Commission has monitored and facilitated its application in close collaboration with the Firearms Exports Coordination Group set up pursuant to Article 20 of that Regulation.
- (6) In its 2017 report², the Commission concluded that, although progress has been made towards achieving the objectives of Regulation (EU) No 258/2012, it nevertheless suffers from a lack of precision and its complex interaction with other instruments of Union law such as Directive 91/477/EEC³. While some of these issues could only be addressed through a revision of Regulation (EU) No 258/2012, Member States can take immediate steps to improve the implementation of Regulation (EU) No 258/2012 and thus enhance the security and safety of the general public. Furthermore, improving national practices in areas such as marking of firearms and customs procedures will help to further safeguard public security and safety.
- (7) The Report of 2017 identified a lack of available data in Member States on the exact number of authorisations, refusals, annulments, modifications or suspensions of authorisations. Some Member States were also unable to provide export and import statistics of civilian firearms. Such statistics are necessary to enable both Member States and the Commission to better assess the implementation of that Regulation, and notably identify possible security risks linked to inconsistencies between Member States.
- (8) Article 11(1)(a) of Regulation (EU) No 258/2012 obliges competent national authorities to refuse to grant an export authorisation if the applicant has a criminal record concerning conduct constituting an offence listed in Article 2(2) of Council Framework Decision 2002/584/JHA⁴. The existence of such criminal record should be systematically checked before issuing an export authorisation. Systematic consultation of the European Criminal Records Information Exchange System (ECRIS) established by Council Decision 2009/316/JHA⁵ would enable a proper threat assessment of the background of the applicant by ensuring the absence of a criminal record in all Member States and improving security in the exports of firearms.
- (9) Member States do not always have established procedures to check whether the conditions to grant an export authorisation under Regulation (EU) No 258/2012 continue to be met, which obstructs the efficient application of that Regulation and meeting its security objectives. As a consequence, export authorisations may not be modified or withdrawn, even if the applicant commits an offence registered in the criminal record, or if new risks of diversion arise.
- (10) Marking of firearms increases their traceability and provides an effective way to counter illicit firearms trafficking. Directive 91/477/EEC requires all firearms or their

² Report from the Commission to the Council and to the European Parliament in accordance with Article 21(3) of Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition, Brussels, 12.12.2017 COM(2017) 737 final.

³ Directive 91/477/EEC of 18 June 1991, on control of the acquisition and possession of weapons (OJ L256 13.9.1991, p. 51).

⁴ Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L190, 18.7.2002, p.1).

⁵ Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA (OJ L 93, 7.4.2009, p. 33).

essential components to be marked with a clear, permanent and unique marking and defines what information should be included in this marking. The UN Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition⁶ also requires appropriate simple marking on each imported firearm, permitting identification of the country of import and, where possible, the year of import. As the marking defined under Directive 91/477/EEC does not include the information on country and year of import, Member States are encouraged, where appropriate and possible and in line with the UN Protocol, to make an additional and simple marking that includes this information.

- (11) Ensuring that all firearms deactivated in the EU and exported to third countries as deactivated firearms are marked and that the owner has a deactivation certificate in accordance with the requirements of Commission Implementing Regulation (EU) 2015/2403⁷, would allow for the traceability of such firearms. The Member States should therefore systematically verify the presence of such marking and certificate before the export takes place.
- (12) National competent authorities do not systematically notify other Member States of refusals, modifications, suspensions or annulments of export authorisations under Regulation (EU) No 258/2012 in the Conventional arms export control information system (COARM database)⁸, thus making exchanges of information between Member States burdensome, lowering the overall utility of checks by Member States in the system, and rendering reliable risk analysis by competent national authorities difficult to achieve. Besides, the COARM database is not accessible to all competent authorities in Member States. Few positive hits on refusals are found when a check is performed. Consequently, 43% of national authorities report having already granted an export authorisation to exporters for essentially identical transactions which had been refused by another Member State. This demonstrates that a risk identified by a competent authority of a Member State might be overlooked by the authorities of other Member States, and shows significant security gaps in the overall framework.
- (13) Directive 91/477/EEC provides for an electronic data-filing system and a systematic exchange of information by electronic means between competent authorities on the authorisations granted for the transfer of firearms to another Member State and information with regard to refusals to grant authorisations. No such system is specifically envisaged for the implementation of Article 7(6) of Regulation (EU) No 258/2012 concerning the processing the applications for export authorisation. However, a broader and systematic use of electronic systems can reduce the risk of documentary fraud and diversion of firearms and improve security of the legal trade of firearms.

⁶ Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, adopted by UN Resolution 55/255 of 31 May 2001.

⁷ Commission Implementing Regulation (EU) 2015/2403 of 15 December 2015 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable, OJ L333 19/12/2015 p. 62.

⁸ The COARM database was set up to implement Council Common Position 2008/944/CFSP of 8 December 2008, defining common rules governing control of exports of military technology and equipment, OJ L335 of 13.12.2008 p.99. Information can be entered in the COARM database also for notification concerning Regulation (EU) No 258/2012. However, between July 2016 and June 2017, only 44 notifications were entered corresponding to Regulation (EU) 258/2012 by only three Member States.

- (14) To ensure safe export, import and transit measures of firearms, customs authorities exchange risk information pursuant to Article 46(5) of Regulation (EU) No 952/2013⁹, using the customs risk management system (CRMS) mentioned in Article 36 of Implementing Regulation (EU) 2015/2447.¹⁰ This enables Member States to simultaneously target the same risk and share their knowledge, thus increasing the effectiveness of the control systems. Member States do not always have established harmonised procedures on the place and time of the customs controls of firearms, leading to different practices, which create risks to their diversion into illicit trade. This makes the systematic use of CRMS for firearms even more necessary,

HAS ADOPTED THIS RECOMMENDATION:

1. By 1st July each year, Member States should collect detailed statistics of the preceding year about the number of authorisations, refusals, the quantities and values of firearms exports and imports, by origin or destination, and submit these statistics to the Commission.

Improving export and import control procedures

2. When implementing Article 11(1)(a) of Regulation (EU) No 258/2012, Member States should systematically check the background of the individual applying for an export authorisation, and in particular verify the criminal records of the applicant in the Member State of origin and all Member States of residence during the preceding five years, through the use of the European Criminal Records Information Exchange System (ECRIS);
3. When implementing Article 11(1)(b) of Regulation (EU) No 258/2012, Member States should establish inspection systems and processes to check whether the conditions for granting an export authorisation are still met;
4. When implementing Article 11(3) of Regulation (EU) No 258/2012, Member States should, before granting an export authorisation, systematically verify in the Conventional arms export control information system (COARM) the existence of refusals, annulments, suspensions, modifications or revocations of an export authorisation by other Member States;
5. When ensuring that all firearms, their parts and essential components are provided with a clear, permanent and unique marking pursuant to Article 4(1) of Directive 91/477/EEC, Member States are also encouraged, where appropriate and possible and in line with the UN Protocol against the illicit manufacturing of and trafficking in firearms, to make an additional and simple marking with the identification of the country of import and year of import;
6. Member States should systematically verify that all firearms which are deactivated in the EU and are exported to third countries as deactivated firearms are marked and that owners are issued a deactivation certificate in accordance with Commission Implementing Regulation (EU) 2015/2403.

Improving cooperation and information exchange between Member States to better fight illegal firearm trafficking

⁹ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code.

¹⁰ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code.

7. When implementing Articles 11(2) of Regulation (EU) No 258/2012, Member States should systematically notify all refusals or suspensions, annulments, modifications or revocations of export authorisations to all other Member States by using the Conventional arms export control information system (COARM). Regulation (EU) No 258/2012 should always be stated as the relevant legal basis for such entries in the COARM information system;
8. Member States should ensure the direct access of all national competent authorities to information concerning the refusals of export authorisation of other Member States in the COARM information system;
9. When implementing Article 7(6) of Regulation (EU) No 258/2012, Member States should establish an electronic system for submitting applications for export authorisations and a single national database of authorisations and refusals, if possible the same as the one provided for by Directive 91/477/EEC;
10. When implementing customs procedures and checks under Regulation (EU) No 258/2012, customs authorities of all Member States should exchange risk information related to the movement of firearms by using the system referred to in Article 36 of Commission Implementing Regulation (EU) 2015/2447, with a view to fighting illicit trade.

Done at Strasbourg, 17.4.2018

For the Commission
Julian KING
Member of the Commission