

THE EXAMINATION OF NEW-TYPE SECURITY CHALLENGES CONCERNING THE EUROPEAN UNION WITH REGARD TO COMMUNITY DIRECTIVES OF STRICTER GUN CONTROL

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Abstract: *The degree of need for security and the means of creating it change from era to era. Generations of different eras formulate their security aspiration from different perspectives, but the protection of human life has always been brought to the forefront. This aspiration finds its expression at the individual and social levels. The individual, during the process of his so-cialisation, expresses clear expectations that the state shall satisfy his need for security as a basic demand. This is a common social objective, established between the citizen of the state and the state to make sure that security, order, and liberty be fulfilled. In recent years, the need for both individual and society security has undergone radical changes. In the EU member states and in its decision-making organisations, the strengthening of citizens' security is a key objective. New security challenges such as international terrorism, proliferation of arms of mass destruction, unstable states, global environmental problems, the emergence and intensification of international irregular migration, have resulted in the extension of the concept of security. Following sudden and unexpected changes in the security components affecting the entire territory of the European Union concerns have arisen on the part of both individuals and societies. Increasing security challenges and risks today require more and more intensive state intervention and effort to maintain public safety and public order. Terrorist and criminal acts committed in the European Union over the past period enhanced the need for such a law enforcement system, which so far has been practically un-known, existing mostly in theoretical models. The decision-making bodies of governments facing new security challenges have applied the introduction of available legal, economic and law enforcement regulations to address emerging emergency situations. Several Member States of the European Union have adopted a number of measures and legal regulations that have not even been brought to the attention of decision-makers in recent years. These changes, which have been supported by a number of research projects, can also be seen as reform efforts that should have already been enforced by lawmakers in an earlier period, as relevant available data were available on the strengthening of the European terrorist threat and the transformation of its development dynamics. The research described in this paper, through reviewing issues of the weapons policy domain of the European Union, analyses the questions formulated by the European Council in relation to such new security challenges as the suppression of illegal acquisition of fire-arms, the increasing of security risks relating to the transport, import and export of civilian firearms in the European Union, the improvement of traceability of legally held firearms (hunting, sports, self-defense) and ensuring that deactivated firearms are rendered inoperable. Giving the professional analysis of the background of the directive on stricter firearms possession foreseen by the European Commission in 2015, the study seeks to highlight the need for EU action to tackle the new security challenges in the weapons possession policy.*

Keywords: WEAPONS POLICY, ARMS CONTROL, SECURITY POLICY, WEAPONS ACT, NEW SECURITY CHALLENGES, POLICE.

1. Introduction

On 13 November 2015, terrorist acts were carried out at several locations in Paris, where in several waves around two hundred people were killed by concerted attacks. In order to address the new security challenges (with focus on the illicit acquisition and trade of firearms) affecting the European Union, the European Commission has launched the negotiating phase on the preliminary control of legal norms of the draft envisaging stricter firearms regulation. Following terrorist acts, the Member States of the European Union have decided to introduce minimum rules to prevent the illegal acquisition of firearms. The purpose of the measure was to tighten up the legal framework for restricting the acquisition of firearms used in terrorist acts. Subsequently, the European Commission presented its professional concepts and guidelines for tightening the existing Firearms Directive (in force since 1991) to be the basis of a security protocol that shall be elaborated in future (where armament interests will be a secondary priority). According to the document, the European Commission, in the whole spectrum of its planning and decision-making system, has revised the existing weapons categories and reclassified them according to its own concepts. The result of this re-structuring was that civilian semi-automatic firearms similar in their operation system to fully automatic military weapons were intended to be reclassified from the 'B' weapons category (subject to authorisation) into the 'A' weapons category (banned). The changes intended to be introduced gave rise to a great indignation in the European Union's Member States having traditions with some civilian firearms. Many criticisms have been made in respect of the creation of rules for the introduction of measures to re-regulate civilian possession of firearms. The European Commission reasoned the need for stricter firearms regulation to address the new types of security challenges. The firearms concepts formulated in

the draft directive deal with more stringent controls on hunting clubs and shooting clubs, the reclassification of firearms categories, the ban on semi-automatic weapons, the development of a technical standard system for deactivated weapons, and the transformation of the systems of rules on museum weapons.

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

In the course of my investigations, I sought answers for three issues:

- Is it justified on the part of the European Commission to tighten up the existing firearms control principles in order to address the new security challenges facing the European Union?

- To what extent does stricter firearms regulation affecting the Member States of the European Union influences the development of professional areas of sport hunting and shooting sports and the market situation of the European firearms manufacturers and distributors sector?

- Are the future revision of the European Commission's Firearms Directive and the formulation of proposals for its amending justified and necessary?

To answer the questions I used the method of literature research and analysis of legal regulations.

2. Presentation of the background

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

3. Amendments to the rules on firearms possession adopted by the European Commission

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

The planned revision includes the following:

- Adopting stricter (national) legal regulations prohibiting civilian possession of semi-automatic firearms. The measure states that semi-automatic firearms may not be in the possession of private persons under any circumstances, even if the deactivation of those firearms has previously been implemented in practice (in officially regulated way);
- Creation of stricter rules on the online sale of firearms to prevent the purchase of firearms, firearm pieces and ammunition on the Internet;
- Uniform regulation at Community level for the designation of firearms and the more effective traceability of weapons;
- More effective coordination and exchange of information between Member States. This productive contact and information system may provide assistance in cases when an authorisation issued by a national authority for the possession of a firearm is not recognised by another Member State's authority as a valid authorisation. Problems arising from such situations can be

eliminated by compulsorily linking Member States' official databases of weapons;

- Establishing common minimum criteria for specific weapons (e.g. signalling and starter pistols) so that they cannot be converted into fully functional firearms;
- Determination of stricter requirements for the dissemination and sale of deactivated firearms;
- Determination of stricter requirements for weapon collectors in order to reduce the risks of selling to potential offenders.

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

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

4. Revision of the European Commission's Firearms Directive

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

- normativism: the norms adopted by the European Commission regarding the tightening of the rules on firearms (taking into account the value content) should be subjected to a critical examination of their compatibility with the interests of Member States, market actors (arms manufacturers, distributors, professional interest organisations) and arms holders;
- suitability: the legislative mechanism of the European Commission should take into account both the security policy

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

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

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

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

The Firearms Directive 91/477 of the European Commission has highlighted the legislative issue caused by the absolute absence of professional coordination, as well as impact assessments. Making the necessary impact assessments, those environmental, social, governmental, security and economic impacts may become identifiable that can provide a strategic overview of who may be involved in the legislative process. After having analysed the security problems identified based on the impact assessment results, the European Commission provides for the policy objectives and the decision-making system and then, through examining the possible effects of the solution structures, defines a complex strategic action plan to address the security challenges effectively and quickly.

4. Conclusion and Findings

The European Commission's package of measures to tighten firearms control also includes an implementing regulation laying down common minimum standards for the deactivation of firearms, which make re-activation much more difficult in case of deactivated firearms. The Firearms Directive stipulates that properly converted deactivated firearms are no longer considered firearms but pieces of metal that can freely move within the European Union's internal market without a firearm license. However, the experiences and conclusions of recent terrorist acts show that deactivated firearms may be illegally re-activated, either by using home-made firearm pieces or by using firearm pieces available through the Internet. These factors cover complex issues that require complex responses to identify and solve the problems. It is a fact that there is no single legal source with regard to the deactivation of firearms in the European Union, and this deficiency significantly increases the level of security risks. In order to address this problem, the European Commission has prepared a proposal package that sets out rigorous and harmonised criteria how Member States shall include in their National Firearms Acts the deactivation criteria for

firearms to become unfit for use as a firearm. The outlined measure is complemented by the prohibition of the pos-session of firearms of category 'A', which also imposes obligations on firearms holders in cases where firearms of category 'A' were deactivated. The European Commission's Implementing Regulation is based on the criteria for firearms deactivation developed by the Permanent International Commission for the Proof of Small Arms (the CIP)

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

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

Currently there are significant differences in the legal frameworks of the EU Member States in relation to the fight against illicit trade in firearms. This concerns the definition of offenses, the type and extent of sanctions to be applied to legal and natural persons, the aggravating or mitigating circumstances and the degree of neglect and intent. The international and EU legal frameworks affecting the illicit trafficking in firearms are widely defined and give the signatories considerable discretion as regards the implementation of key provisions. The adoption, at the European Union level, of minimum rules against illicit firearm trafficking would be beneficial for the police and the investigative authorities of the Member States allowing to reduce the legal uncertainty generated by differences in national legal systems, which would facilitate prosecution and greatly reduce the possibilities of criminals to use loopholes.

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

A number of stakeholders (and Members of the European Parliament) reacted negatively to the ban on some semi-automatic firearms proposed in the package of measures by the European Commission, which measures are deemed to be an unnecessary and burden-some limitation by hunter and sports shooter societies objecting the lack of data from preliminary impact studies that could support expected legal, economic and professional implications. The conclusion can be drawn that the amendment to

the Firearms Directive is necessary to address terrorist acts committed with firearms and the new security challenge affecting the European Union. It should be noted that the regulation may adversely affect the conditions of competition both within the internal market and the international market in a number of professional and economic fields closely linked to the legal possession of fire-arms (pushing back the online trade; weapons-related cultural heritage; historical weapon collections; research in connection with firearms; paid hunting).

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