

## PRELIMINARY REMARKS ON THE PROPOSAL FOR AMENDMENT OF REGULATION 258/2012

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### ABOUT ESSF

In gathering EU manufacturers of civilian firearms and ammunition, dealers, collectors, hunters and sport-shooters, the European Shooting Sports Forum (ESSF)<sup>1</sup> represents a substantial socio-economic sector (including many thousands of small and medium-sized enterprises) with the participation of over 10 million law-abiding and responsible citizens.

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on import, export and transit measures for firearms, their essential components and ammunition, 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) (recast)**

### Main evolutions

**a) The scope of the Regulation seems broader than the 2012 version:**

- It includes a **new Chapter pertaining to import** - Chapter II: Entry and import requirements (Articles 4-11) – which was not foreseen previously as import requirements were set in the Firearms Directive. In particular importation marking rules are replicated in Art.6 and create evident problems (better described in point 2 below) and simplified procedures are provided in Art. 4.
- Introduces a new definition of “**identical weapons**” in Art. 2, not further used elsewhere in the Regulation.
- It provides rules about **deactivated weapons** (Art.7)
- Includes a different definition of “**semi-finished firearms**” and “**semi-finished essential components**” if compared to the Firearms Directive in Art. 2
- It includes prescriptions about “**signal and alarm weapons**” (Art.8)
- It concerns rules **about museums and collectors** (Art. 10,14,17,28)

**b) Problematic provisions concerning export were introduced:** Art. 14 par. 2 requires that, in order to issue an export license, the authorities of the Member States must first obtain an **end-user certificate**. Art. 21 also provides that the State issuing the authorization can check, after export, that the commitments undertaken with the EU are respected. (More in detail below). Additionally, it is requested that Firearms are marked according to the Directive even if destined to export (Art. 16).

**c) Missed chances for simplification:**

- No shorter the **maximum release times** provided for by art. 7, par. 4;
- No better **simplified procedures** provided for by art. 17;

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<sup>1</sup> The ESSF is composed of the *European Association of the Civil Commerce of Weapons* (AECAC), the *Association of European Sporting Ammunition Manufacturers* (AFEMS), the *European Shooting Confederation* (ESC), the *Association of European Manufacturers of Sporting Firearms* (ESFAM), the *Federation of Associations for Hunting and Conservation of the EU* (FACE), the *Foundation for European Societies of Arms Collectors* (FESAC), and the *Institut Européen des Armes de Chasse et de Sport* (IEACS).

- The so-called "**Tacit consent**" for the authorization to transit through the territory of third countries is ruled out, and the provision is instead placed in par. 5 of art. 17 (current art. 9). The two parts must be integrated.

**d) Positive improvements in the Proposal:**

- A new **EU electronic licensing system** for firearms manufacturers and dealers to apply for import and export authorization, will replace the diverse national systems. This new paperless system will also connect to the EU Single Window Environment for Customs.
- Art. 15 par. 8 establishes that transit through the territory of member countries for export purposes **cannot be subject to the payment of taxes or tariffs.**
- **General authorizations are provided** ("Union general") for import or export, which apply to all operators who meet certain criteria.
- Art. 10 introduces a simplified procedure concerning import authorizations for hunters travelling with their firearms into the EU.

**More in detail**

**(a) The scope of the Regulation seems broader than the 2012 version:**

1. Although the current text of the regulation contains minimum provisions on measures about this discipline, the matter of the importation of civilian firearms and the definition of the characteristics of firearms imported into the Union is already fully governed by [Directive \(EU\) 2021/555](#). That is the correct piece of legislation to be used, since import is not about the implementation of an international treaty, but about the regulation of the single market. The regulation, in fact, has the function of implementing art. 10 of the United Nations Protocol against the illicit manufacturing and trafficking of firearms, their parts and components and ammunition, and has no jurisdiction over the regulation of the EU Internal Market. Precisely because the matter is already fully regulated by the Firearms Directive, expanding the competence of the Regulation to the import matters, thus overlapping the directive, would be useless and harmful. **It should be emphasized that the legislative antinomy between the directive and the European regulation sees the prevalence of the latter, since it is a source that is generally applicable and directed towards all subjects of Union law, and results in the non-application of the national rules implementing the Directive. As a matter of fact, the Union, with the enactment of the regulation, has claimed competence to itself, thus removing it from the legislative power of the member states. If the specific reference to the directive by the regulation does not cause its implicit repeal, it does not, however, prevent the relative national instruments for implementing the Firearms Directive from being considered null and void due to supervening incompetence, which ultimately become inapplicable.**
2. Precisely with reference to the overlapping of powers between regulation and directive, **the proposed wording of art. 6 appears very problematic, and if implemented, it would generate serious vulnerability to companies in the sector.** As well known, imported firearms often do not have the markings required by the Union law, especially those coming from non-CIP countries such as the USA, and after importation (but before being placed on the market), the marking is completed and regularized by the importer and/or a Proof House. **According to the proposed provision, however, imported firearms with marking that is not compliant with the European Directive but with a marking compliant with the UN Protocol would be subject to special customs procedures, but could not be imported and placed on the market, due to the provisions of art. 5, par. 1, lett. a) of the text, which requires operators to import only fire-**

**arms or parts that bear a marking in accordance with the provisions of art. 4 of the Directive.** Therefore, firearms imported into the EU should first pass through a non-EU proof house and be marked at the origin according to the directive in order to be transferred, with obvious damage to the operators in the sector, who would see the costs rising. Those firearms without marking in accordance with the UN Protocol should be seized and destroyed. Therefore, if a firearm had the manufacturer's trademark and serial number but did not bear the initials of the country of origin, it would have to be destroyed, even if it were perfectly traceable. This is an irrational proposal.

It remains to be seen how art. 6 will impact hunters and sport shooters travelling to the EU and whose firearms are not marked according to the Firearms Directive. This issue was raised with the Commission in a meeting with FACE on 19 January 2023. The Commission stated that it has not yet considered the impact of art.6 on the temporary admission of hunters and sport shooters travelling with their firearms to the EU. They will check this point with the DG for Taxation and Custom Unions (the DG responsible for the custom union provisions in the proposal) and let come back to FACE with further clarity.

3. **Art. 4 lays down a series of exceptions to the Union customs legislation in relation to the importation of firearms. The provision is diametrically opposed to the declared objective of simplification, and results in significant increases in administrative costs, in a lengthening of export times and, in general, in the discrimination of internal operators.** The derogation from the customs provisions has no basis, since firearms for the civil market are subject to registration and control, therefore to a differentiated surveillance regime from other types of goods that makes further differentiations unnecessary and excessive and would nonetheless violate the principle of proportionality.
4. Most of the **definitions referred to in art. 2 should be revised or simplified in relation to their relevance**, as some appear pleonastic as they are already contained in other EU legislation - for example those concerning customs-related activities.
5. **The definitions should be perfectly consistent with those of the Directive**; the proposal introduces instead the definition of "**identical weapons**", which is absent in the rest of the text of the Regulation and thus totally unusable because it is not referred to by any other piece of legislation.
6. **The provisions on deactivated weapons and related certifications appear useless - because the Directive already provides rules in this regard – and to some extent even harmful – with regard to the overlap between regulation and directive.** Pursuant to Annex I of the Directive, deactivated weapons belong to the cat. C, and thus inserting a rule that requires an authorization to import deactivated weapons in the regulation appears inoperable, because to hold a deactivated weapon it is necessary that the weapon has been deactivated according to the technical standards and that this deactivation has been certified. Therefore, pursuant to the directive, art. 15, certification is still required for the import of the deactivated weapon. It should also be considered that art. 4 of the Directive, which contains the provisions on marking and registration, also applies to weapons of cat. C, therefore, also to deactivated weapons. As they are subject to declaration, deactivated weapons can be subject to import authorization depending on the applicable national law.
7. The definitions of "**semi-finished firearms**" and "**semi-finished essential components**" are problematic. First of all, it is necessary to clear the field of a basic misunderstanding that

conditions the whole issue: **what is expressed on page 2 of the proposal, namely that the "semi-finished firearms and components can be used to manufacture firearms at home" is unrealistic**, as mechanical processing requires professional equipment and heat treatments, for which specialized and expensive equipment is needed. Furthermore, the definitions are functional to the provision contained in par. 3 of art. 9, which states that "Only arms dealers and brokers shall be authorized to import semi-finished firearms and semi-finished essential components". **But if, as required by the Directive, only finished parts and assembled firearms are subject to registration, how could it be possible to limit the import of unfinished parts and firearms that are not subject to registration?** In practice, it is impossible to apply. The whole relative approach appears to be the result of a basic misunderstanding deriving from a non-specialist point of view.

8. A further element of widening of the field of application is the new competence on "**signal and alarm weapons**". **As already known, the UN protocol refers only to firearms, therefore this kind of objects should remain outside the competence of the regulation.** Here too, the prohibition on importing signal and alarm weapons that do not comply with the directive and the implementation act is an unnecessary repetition of art. 14 of the directive and overlaps with the implementing regulations, which would end up being disapplied. This part should also be deleted.
9. **The inclusion of the rules concerning museums and collectors within the scope of application of the Regulation is a source of concern;** imports and exports for cultural reasons only concern firearms of significant historical and collectible interest and have nothing to do with illegal trafficking. Although collectors have been included in the scope of Directive (EU) 2021/555 for the purpose of detention, a common EU discipline for export and import for the purpose of preventing illicit trafficking has no motivation. The draft regulation conflicts with exemptions in place in several countries for post 1900 collectible firearms (besides pre-1900). It would cause irreversible damage to important pieces imported for collection purposes for individuals and museums. Moreover, firearms produced in this period are with a few exceptions well marked and easily identifiable, making additional marking superfluous. Whatever the case, the marking of these firearms should be left to Member States' competence as they are the beneficiaries of the enrichment of their heritage.

**(b) Problematic provisions concerning export were introduced:**

10. **Art. 14 par. 2 requires that, in order to issue an export license, the authorities of the Member States must first obtain an end-user certificate. Art. 21 also provides that the State issuing the authorization can check, after export, that the commitments undertaken with the EU are respected.** These are unattainable forecasts. First of all, the EUC is an institution relating to the export of military weapons, a document issued by a government that serves to certify that the recipient of the export of a weapon is also an end user. This is a document in no way applicable to civilian firearms, since they are imported in order to be placed on the market, and their final recipient is not usually known at the time of issue of the export license, a circumstance recognized by the same regulation in art. . 8, par. 1, lett. g). Furthermore, the EUC is completely useless for a civil firearm, which is likely to be repeatedly marketed and even re-exported. In fact, there is no prohibition on transferring civilian firearms to third parties, a prerequisite for the issuance of an EUC. **Behind this proposal there is still an ideological confusion between civil and military products;** a civil firearm has no military interest, and the EUC only makes sense when the recipient is a public body. Basically, it is the destination State that should certify the end-user and can do so only if this end-user is a public entity, because otherwise the certification is completely

random, since this State cannot prevent the private individual who buys a firearm to sell or export it.

At the request of the EU, there may be a need to ensure that the exported firearms are actually transferred to the recipient provided for in the export license, consequently, to prevent diversions. **What is called "end-user certificate" therefore in reality would be nothing more than a declaration from the transferring state certifying that the shipment is directed to the recipient. Therefore, "end-user" should not mean the end user, but the importer, who would then be free to hand over the firearms to retailers or end users.** Also in this sense, the certificate would be useless, because, pursuant to art. 7 par. 3 of the regulation, the export authorization is issued only following the presentation of the corresponding import authorization with the name of the recipient. Additionally, pursuant to art. 13 of the regulation, Member States may still request the third country of import to confirm receipt of the materials, a provision reinforced in the proposal in art. 20, which always requires proof of receipt. **Finally, the country of destination may refuse to issue such a declaration, deeming it an unnecessary repetition of what is already contained in the import authorization. The EU provisions, in fact, have no effect on the authorities of non-EU states.**

11. According to Art. 16 par. 3 “Firearms, their essential components and ammunition shall be exported provided that they are marked in accordance with Article 4 of Directive (EU) 2021/555.” The obligation to mark firearms and essential components pursuant to EU marking rules could raise serious issues if marking rules of the third importing non-EU countries are not the same as EU Rules. It could also put EU industry in unfavorable competitive position in non- EU market. For example, EU rules imposes the obligation to mark the year of manufacture which could be a commercial disadvantage in comparison with non-EU products whose date of manufacture would not be marked. Needless to say, this would entail an unnecessary higher cost for manufacturers. Export to third countries should meet the requirements of the importing countries legislation and of the UN Firearms protocol.

**(c) Missed chances for simplification:**

12. **It appears very disappointing that the maximum release times provided for by art. 7, par. 4 were not reduced, since they are evidently incompatible with the very short delays of current international trade.** This appears even more paradoxical if we consider that the proposal provides for the dematerialization of applications and the use of an electronic system for the management of authorizations. Similarly, it seems improper that the times referred to in art. 9, par. 1, lett. c) and art. 17 par. 3 are even increased.
13. **It seems strange that from par. 2 of art. 7 of the regulation – art. 15 in the Proposal – the so-called "Tacit consent" for the authorization to transit through the territory of third countries is ruled out, and the provision is instead placed in par. 5 of art. 17 (current art. 9).** The two parts must be integrated.
14. The art. 28 of the proposal requires the Commission to set up and maintain an electronic licensing system. **However, it is not clear what the functions of this system will be, since the authorizations fall within the competence of the Member States and the operators must forward the applications to the Member States to obtain them.** Furthermore, it is not equally clear what are the criteria for defining the risk profile of economic operators, envisaged by letter d) of par. 1 of the article, nor what would be the criteria for defining the risk profile of the goods. **The definition of these risk profiles would be destined to have a very significant impact on**



**the economic activities and on the operations of the stakeholders, and such a broad discretion risk opening the door to arbitrariness.**

**(d) Positive improvements in the Proposal:**

15. It is very positive that, in art. 15 par. 8, it is clearly established that transit through the territory of member countries for export purposes **cannot be subject to the payment of taxes or tariffs.**
16. Equally positive is the fact that general authorizations are provided ("Union general") for import or export, which apply to all operators who meet certain criteria. The fact that the Union general export authorizations are valid only for certain countries betrays a vision that is still too tied to military equipment. The country of destination has a relative importance in the export of civilian firearms, because the most important criteria are the type of items exported, and its quantity, and the reliability of the recipient, which can disregard the reliability of the country in which he/she is established. However, it seems understandable that particular situations may be subject to more careful scrutiny.
17. Art. 10 introduces a simplified procedure concerning import authorizations for hunters travelling with their firearms into the EU. This was done to cover the legal loophole in the current version of Reg. 258/2012, which does not contain any simplified procedure for imports. While non-EU hunters still have to comply with national laws on firearms licensing requirements, this clarification is important to prevent certain Member States from introducing additional bureaucracy for hunters and sport shooters in the form of "import authorization".

In addition to what is specifically stated above, in general it must be considered that a **greater effort of simplification and clarity should be carried out**, also to reduce the **possible problems of interpretation and application difficulties, bearing in mind that, especially in the current difficult economic situation, every bureaucratic fulfillment represents a cost to operators, and each additional cost implies a loss of competitiveness of the whole EU system.** Due to the complexity and intertwining of the proposed provisions with each other, we reserve the right to submit further assessments.