

INCEPTION IMPACT ASSESSMENT

Inception Impact Assessments aim to inform citizens and stakeholders about the Commission's plans in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Citizens and stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options.

TITLE OF THE INITIATIVE	<i>Review of rules of export authorisation, and import and transit measures for firearms</i>
LEAD DG (RESPONSIBLE UNIT)	DG HOME, Unit D5
LIKELY TYPE OF INITIATIVE	<i>Legislative proposal – Regulation</i>
INDICATIVE PLANNING	Q1 2022
ADDITIONAL INFORMATION	

The Inception Impact Assessment is provided for information purposes only. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by the Inception impact assessment, including its timing, are subject to change.

A. Context, Problem definition and Subsidiarity Check

Context

Current EU legislation on exports, imports and transit of civilian firearms, Regulation (EU) No 258/2012¹ is part of an overall legal and operational framework aiming to prevent, detect, investigate and prosecute firearms trafficking and implement Article 10 of the UN Firearms Protocol. The UN Protocol is a key international agreement adopted in 2000 to ensure firearms traceability and was ratified by the EU. The EU also has rules on the acquisition, possession and transfers of firearms within the EU² but these are not being addressed in this initiative.

Preventing diversion from the legal trade to the black market remains a priority in international trade and the legislation needs to be adapted to current threats (for instance the increasing use of converted alarm and signal weapons, the import of unmarked essential components firearms), as recognised by the European Union's 2021 Serious and Organised Crime Threat Assessment (SOCTA).³

In 2017, the Commission carried out an evaluation of the Firearms Regulation⁴ which concluded that while the Regulation has reached to a large extent its objectives, its effectiveness and added value would improve if its content was further specified and updated, reflecting also the evolution of the arms trafficking rules. After the evaluation the Commission made a recommendation on to improve security of export, import and transit measures for civilian firearms, their parts and essential components and ammunition.⁵

Problem the initiative aims to tackle

The evaluation conducted identified a number of shortcomings in the Regulation, which impact negatively on its objectives and added value. The major issues encountered are that the regulation is too vague (which notably creates administrative burden and inconsistent national approaches) and that there are still legal loopholes that

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R0258>

² Directive (EU) 2021/555 of 6 April 2021, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32021L0555>

³ https://www.europol.europa.eu/sites/default/files/documents/socta2021_1.pdf

⁴ COM(2017)737 final, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2017:0737:FIN:EN:PDF>

⁵ C(2018)2197 final, https://ec.europa.eu/home-affairs/sites/default/files/what-we-do/policies/european-agenda-security/20180417_commission-recommendation-immediate-steps-improve-security-firearms-ammunition_en.pdf

create security risks. More specifically, the evaluation identified the following issues.

Problems of scope and definitions

The scope of the Regulation (type of weapons and persons concerned) is not yet aligned with the Revised Firearms Directive,⁶ which means that there are no common EU rules on imports, exports and transit of some weapons (e.g. salute and acoustic weapons, or deactivated firearms), although those weapons are regulated inside the EU.

The scope of the Regulation appears to be unclear, and is often mixed with that of the Common Position⁷ defining common rules governing control of exports of military technology and equipment. As a consequence, the possibility given to Member States to apply a single procedure often leads to national authorities subjecting civilian firearms to procedures applied to military-grade firearms.

Heterogeneous application of procedures

The evaluation showed that due to the vague nature of the regulation's provisions, Member States have divergent approaches in many respects: import procedures, coordination between customs and licensing authorities, whether or not a firearm is considered to be military-grade or not, what type of simplified procedures to apply (notably for temporary imports and exports), use of electronic documents, whether or not to use the option of implied consent of the third countries of transit, which impacts on the length of procedures, whether or not to require the translation of supporting documents.

Furthermore, stakeholders pointed out that express and detailed rules are needed for the exchange of information between competent authorities for intelligence purpose and risk analysis, and to guarantee a uniform interpretation of the import and export rules on the customs territory of the Union. The general principles established by the Regulation are considered to be insufficient in that respect.

Risks of smuggling and of diversion

The evaluation demonstrated that import markings often do not comply with the requirements of the UN Firearms Protocol. Besides, law enforcement and customs authorities continue to have divergent approach to the import of convertible alarm and signal weapons, as well as of semi-finished unmarked essential components, for which smuggling constitutes a high risk, and which the Regulation does not address. The tracing of seized firearms is made complex by the fragmentation of different databases. At export, the absence of diversion is rarely checked after the weapon has left the EU territory.

Uncoordinated controls and risk assessment

The provisions related to exchanges of information between national competent authorities have failed to deliver the expected results: export authorisations are granted although similar transactions (same weapon, same destination) were prohibited in other Member States. Besides, not all refusals (or their grounds) are accessible to competent authorities in other Member States. 43% of national competent authorities mention having granted an export authorisation in cases where similar transactions had been refused by other Member States.

Barriers to trade

Overall, as explained above, the Regulation did not sufficiently harmonise national rules and procedures to provide traders with an added value: companies have not felt the economic benefits of EU legislation or a reduction of administrative burden because they were faced with continuing regulatory heterogeneity at national level.

Another issue raised during the evaluation was the lack of use of some of the simplifications introduced by the Regulation, while stakeholders complained at the same time about burdensome procedures. This indicates that the simplifications of the Regulation are not adapted to the needs of companies and of national authorities.

Basis for EU intervention (legal basis and subsidiarity check)

The legal basis for acting in this area is Article 207 of the Treaty on the Functioning of the European Union (TFEU) on common commercial policy. Provisions adopted in this area fall under the exclusive competence of the EU. In 2012, the adoption of Regulation 258/2012 was necessary for the EU to be a party to the United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.⁸

Addressing the issues mentioned can only be done at EU level, as Member States may not exercise this external competence, since this would directly affect the effectiveness and uniform interpretation of internal EU law (the Firearms Directive). It would also create regulatory divergences and legal loopholes which criminals could avail themselves of.

⁶ Directive (EU) 2021/555

⁷ 2008/944/CFSP of 8 December 2008 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008E0944>

⁸ Resolution 55/255 of 31 May 2001

B. Objectives and Policy options

The strategic and specific objectives of the Regulation should remain to combat firearms trafficking, by (1) ensuring a uniform implementation of the UN Firearms Protocol in the EU, (2) ensuring an effective tracing of firearms in international transactions (import, export and transit), (3) improving the exchange of information between national authorities while (4) facilitating the legitimate international trade of firearms and support the European industry by providing a sound regulatory environment with as little regulatory burden as possible. This initiative aims to ensure that the objectives of the Regulation are better achieved, considering options, their potential impacts and the way they could be combined.

The baseline scenario lies on the maintenance of the current legal framework (including the 2018 recommendation on immediate steps to improve security of export, import and transit measures for firearms).

For each of the above objectives, the following policy options could be envisaged :

1. Non-legislative, for instance:

- sharing best practices / adopting guidelines
- adapting the conventional arms export system to make it more relevant for civilian firearms
- increasing reporting and exchanges in the Firearms export coordination group
- increasing cooperation with non-EU countries of transit and publishing a list of competent authorities in third countries

2. Legislative clarifications, for instance:

- modifying definitions and the substantive scope of the Regulation and bringing them into line with definitions and scope of Directive (EU) 2021/555 (notably deactivated firearms, alarm and signal weapons and salute and acoustic weapons)
- identifying objective criteria making it easier to differentiate between civilian and military firearms/ or having the same procedure for civilian and military firearms
- better controls of imports of alarm and signal weapons by the clarification of their customs classification and by increased exchanges of information with national authorities in charge of conformity checks
- clarifying the role of customs authorities (in particular in relation to transit inside the European Union)
- clarifying the role and responsibilities of competent authorities (focal points)
- specifying the nature of "simplified procedures" other than for hunting or sport-shooting; linking simplified procedures to the status of Authorised Economic Operator Safety/Security
- fully digital import and export licence procedures

3. New legislative provisions, for instance:

- giving the Commission the possibility to publish "binding weapon classification information" along the lines of binding tariff information in the customs field
- improving risk assessment by harmonising the management of requests for authorisations (systematic checks of criminal records in other Member States, compulsory upload of refusals in a common database, generalised computerisation of applications and authorisations)
- making marking of the first country of import compulsory
- better controls of "semi-finished" unmarked components, by import prohibitions, or authorising imports only to arms dealers
- computerised data-filing systems for import and export authorisations of firearms
- stepping up controls on the actual end-use of exported firearms (end-use certificates, systematic confirmation of reception in the third country of destination, post-shipment controls)
- sharing and analysing general statistics on authorisations, refusals, imports, exports and seizures of firearms, in order to analyse global trends and routes
- systematic exchange of information by electronic means on refusals
- setting up a "white list" list of non-EU countries for which the agreement to the transit is assumed in the absence of an express refusal
- replacing the possibility to request translation of supporting documents by direct information exchange between customs authorities and licencing authorities

4. A mix of the above, for instance:

- adapting the conventional arms export system
- increased cooperation with non-EU countries of transit
- having the same procedure for civilian and military firearms (including more stringent controls of the actual end-use of exported firearms)
- clarification of the classification of alarm and signal weapons
- clarification of the roles of customs authorities, of licencing authorities, and of exchanges of information between them
- clarification of the applicable types of "simplified procedures"
- fully digitalised licensing procedures

- sharing of statistics

C. Preliminary Assessment of Expected Impacts

Likely economic impacts

The way export and import procedures of firearms are carried out varies between Member States. The UN⁹ stressed the importance of standardised procedures and documents, "measures" that "may also increase the degree of security as required by Art. 10, paragraph 5 [of the UN Firearms Protocol], and reduce cost". The 2010 Commission Impact Assessment (SEC/2010/0662 final) had already identified the positive economic impact of implementing by a single uniform way, different provisions such as the export authorisation, authorisation to the transit in third countries, additional information to the applicant before issuing an authorisation, delay for issuing an authorisation, similar application of simplified procedures. Similar positive impact can be expected since current procedures are still not standardised.

In the current situation, the differences in rules that exist between Member States regarding the above mentioned procedures potentially create a distorted competition. A set of transparent and uniform rules in the EU for the transfer of firearms for civilian use would offer a level playing field for economic operators and have a positive impact on the EU's trade by mitigating the impact of different administrative procedures and costs related to import or export of the same kind of weapons from or to the same Third Country by each Member State.

Likely social impacts

The options envisaged should enhance internal security and security for citizens in the EU and third countries, because they will contribute to reducing the availability of illegal firearms and ammunition.

Likely environmental impacts

No environmental impact.

Likely impacts on fundamental rights

By contributing to the fight against the trafficking of firearms, the initiative should reduce access to weapons to criminals and terrorists and contribute to the right to security (Article 6 of the Charter of Fundamental Rights of the EU). The right to protection of personal data (Article 8) should be fully respected when improving exchanges of information between national authorities for law enforcement purposes.

Likely impacts on simplification and/or administrative burden

The revision of the Regulation is unlikely to increase the administrative burden on companies: changes to existing procedures would only lead to further simplifications and clarification and less regulatory heterogeneity.

Improved import controls and marking requirements, improvement of databases and exchange of information and of statistical data may have an impact on the workload of public authorities. On the other hand, some simplifications might also reduce the burden placed on administrations.

D. Evidence Base, Data collection and Better Regulation Instruments

Impact assessment

An Impact Assessment will be conducted in 2021.

Evidence base and data collection

Evidence of the problems to be addressed have been identified in the Commission's Evaluation of the Regulation (COM(2017) 737 final), supported by a study on the implementation of Regulation 258, by Ernst&Young and SIPRI, 2017.¹⁰ Other data and evidence gathered by the Commission will feed into the analysis.

Consultations (detailed questionnaires, phone interviews) with Member States authorities and of stakeholders will enable the update of the problems identified in 2017, additional identification of costs and savings of the various options, as well as their feasibility and relevance. These will support the impact assessment of the Commission.

Consultation of citizens and stakeholders

Targeted additional consultation will take place with all stakeholders on the various options identified, including an evaluation of the costs and benefits attached to each of them (detailed questionnaires, phone interviews).

The Commission will carry out a public consultation in order to consult the citizens on this initiative, which will be available in all 24 official EU languages, via the Commission's central [public consultations page](#) "Have your say" and via the website of DG HOME.

⁹ Legislative guide for the implementation of the UN Firearms Protocol, chapter 4, p.441, paragraph 103 D.

¹⁰ https://ec.europa.eu/home-affairs/sites/default/files/e-library/documents/policies/organized-crime-and-human-trafficking/general/docs/20180308_study-report-evaluating-implementation-regulation-258-2012-final-report_en.pdf

The present Inception Impact Assessment is also open to comments for the public and all stakeholders for 4 weeks.

A synopsis report of the consultations carried out will be included in the Commission's impact assessment, and a summary will be published on the consultation page.

Will an Implementation plan be established?

The Regulation, once adopted, will be directly applicable, therefore no implementation plan is scheduled.