

Discussion paper

Firearms trafficking initiative

Expert group on firearms trafficking and the implementation of the Firearms Directive

13 – 14 November 2024

Introduction

In 2020 the Commission adopted the 2020-2025 EU Action Plan on firearms trafficking¹. This EU Action Plan contains 4 priorities: (1) safeguarding the licit market and limiting diversion, (2) building a better intelligence picture, (3) increasing pressure on criminal markets and (4) stepping up international cooperation. Within priority 3, the Commission announced that it would examine if gaps existed in the legislative framework and assess the need for establishing common criminal law standards, in line with Article 83 of the Treaty on the Functioning of the European Union.

Article 83(1) of the Treaty on the Functioning of the European Union provides for the legal basis to establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension. The Article also lists the crimes concerned. Illicit arms trafficking is listed as a Euro Crime in this Article. It is also the last crime, which does not yet have EU minimum rules established.

Under the French Presidency of the Council, Council conclusions were adopted, calling upon the Commission to start to assess the need of establishing minimum rules on offences and sanctions in the field of illegal firearms trafficking².

In 2023/24, the Commission has conducted a study to map and compare the way firearms-related offences are criminalised in Member States. The study focused on four core-offences: illicit trafficking, illicit manufacturing, modification of markings and illicit possession³. The results show multiple inconsistencies and instances of incompleteness in the way that Member States' national laws deal with the offences mentioned in the UN Firearms Protocol⁴. For instance, in many Member States, the definitions and classifications of the UN Firearms Protocol are not fully reflected in national criminal law. The mapping study also shows that there is a large divergence between Member States in how firearm

¹ COM/2020/608 final

² Council Conclusions of 9 June 2022 on Protecting Europeans from Terrorism: Achievements and Next Steps, point 47 (Council doc. 9997/22).

³ Article 5 of the UN Firearms Protocol requires the criminalisation of illicit trafficking, illicit manufacturing and modification of markings. The rules of Directive (EU) 2021/555 indirectly require Member States to criminalise illicit possession.

⁴ 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.

offences are defined and sanctioned, with national penalties for firearm offences varying greatly in their severity (e.g. the maximum prison sentence for illicit firearms trafficking, by the Member States who transposed the definition, ranges from just 4 months to 15 years). The study also focused on how Member States are criminalising the illicit manufacturing of firearms and essential components by means of 3D printing or the creation, possession and dissemination of the intellectual materials (blueprints) needed for 3D printing. It became clear that no Member States has specific legislation on this upcoming threat.

The inconsistent and incomplete criminal law situation in the EU regarding firearms-related offences could potentially harm cross-border operational cooperation between law enforcement authorities and between prosecutors. In particular, the inconsistencies and gaps between Member States' criminal laws provide opportunities for criminals to hide behind borders or to take advantage of the differences for their criminal operations. Therefore, the Commission has launched the firearms trafficking initiative to amend these problems.

Impact Assessment

Whenever the Commission prepares a legislative initiative, it is a good practice to start with an impact assessment proving the need for legislative action. An impact assessment contains a problem description and multiple policy options designed to address the problem identified. To prepare such an impact assessment, the Commission always tries to consult as many interested stakeholders as possible.

The aim of the initiative is to promote effective detection, investigation, prosecution and sentencing of firearms-related offences.

The following issues were identified and need to be addressed:

1. Inconsistent enforcement and gaps in transposition

The UN Firearms Protocol requires State Parties to criminalize illicit trafficking, illicit manufacturing and modification of markings. Additionally, the Directive (EU) 2021/555⁵ (hereafter the Firearms Directive) sets out rules on the acquisition and possession of firearms, including the requirement for authorisation and the prohibition on certain categories of firearms. These rules form an implicit basis requiring Member States to criminalise illegal possession of firearms. The study mentioned above discovered multiple inconsistencies and instances of incompleteness in the way that Member States' national laws deal with these offences. This might lead to criminals exploiting the discrepancies between Member States.

2. Unclear definitions and lack of focus on 3D printing of firearms

There are currently 3 different definitions of illicit trafficking due to the different legislations (the UN Firearms Protocol, the Firearms Directive and the Regulation (EU) 258/2012⁶). Most Member States have

⁵ Directive (EU) 2021/555 of the European Parliament and of the Council of 24 March 2021 on control of the acquisition and possession of weapons, OJ L 115, 06/04/2021, p. 1–25.

⁶ 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

transposed the definition of the Firearms Directive, but due to its scope this means that only trafficking between Member States is criminalised not from or to third countries. Additionally, the need has increased in the last years to focus on the issue of 3D printing. This is linked to the definition of illicit manufacturing. It has become necessary to understand why judges require finalised 3D printed essential components to be tested and why some do not allow unfinished components to be part of court cases. Additionally, there are multiple countries in the world that criminalise the possession of blueprints as an answer to this threat. However, no EU Member State has taken similar action.

3. Limited scope of current obligatory criminalization

The UN firearms protocol obliges only 3 firearms-related offences to be criminalised. However, in the legislative guidebook to implement this protocol⁷, the UN suggests multiple others: illicitly reactivating deactivated firearms, illicit brokering, arms embargo violations, illicit possession and carrying, and misconduct in the context of record-keeping and licensing. It is important to investigate the need for harmonized criminalization of these additional offences. As not criminalizing them might lead to practitioners not investigating a particular incident.

4. Sanction types and levels

The study has shown that criminal sanctions imposed for the different firearms-related offences are often very low and appear not to be proportionate to the severity of firearms crime. A broader toolbox of sanctions and accessory sanctions may have to be provided to criminal judges to give them more flexibility to impose adequate sanction types and levels in individual cases and thus foster effective, proportionate and dissuasive punishment of firearms crime. The lack of harmonised minimum sanctions between Member States affects impunity. A preliminary assessment of the data gathered by UNODC shows that there is a statistical relevant correlation between the levels of firearms incidents in a Member State and their levels of sanctions. Furthermore, low sanction levels also influence the usage of special investigation measures.

5. Statistical data

Collection, sharing and reporting of statistical data on detection, investigation, prosecution and sanctioning of firearms crime has been found to be very limited. This lack of accurate, complete and consistent statistical data entails a lack of insight in scale and scope of firearms crimes necessary for effective and targeted action but also for the visibility of the harmfulness of these crimes. In recent years, the Commission has funded various research projects to amend this gap. However, data on investigations, prosecution and sanctioning remains limited.

6. Cross-border cooperation

Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition, OJ L 94 30/03/2012, p. 1-15* A recast to this Regulation was agreed and is currently under the corrigendum procedure to be adopted by the end of 2024.
⁷ Legislative guide for the implementation of the 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

Firearms-related crimes often have cross-border effects and often involves cross-border criminal activities. Therefore, cross-border cooperation between Member States law enforcement and prosecution authorities is important. However, in practice, Member States' authorities do not systematically cooperate with each other and with EU bodies and agencies. Rather, firearms are often detected linked to other crimes, such as drugs, and are therefore treated as an add-on offence, rather than deserving their own investigations.

Policy options

DG HOME seeks the views of the Expert Group on firearms trafficking and the implementation of the Firearms Directive on 3 of the above described 6 issues and options.

1. Unclear definitions and lack of focus on 3D printing of firearms and essential components

Options:

- a) Official recommendations from the Commission on the definitions and how illicitly 3D printed firearms fit within the definition of illicit manufacturing, including on how to deal with 3D printed parts detected during investigations.
- b) Legislative initiative to harmonize the various definitions and give guidance and examples of best practices on how to implement the definition of illicit manufacturing related to illicitly 3D printed firearms in non-binding guidelines.
- c) Legislative initiative to harmonize the various definitions, including the criminalization of the illicit creation, possession and dissemination of the intellectual materials (blueprints) needed for 3D printing.

These options have advantages and downsides: Option 1 would raise awareness to the problems of the definitions and on how to deal with 3D printed firearms. It contains however a risk that these recommendations will not be taken up by all Member States. Option 2 would solve the problems of definitions and raise awareness on 3D printed firearms. Option 3 would solve both the problem of definitions and put an additional focus on 3D printed firearms. However, it opens the question on how to define the blueprints of firearms and how to distinguish them from other blueprints that are designed for example for toy guns.

Questions:

- i. *Are you experiencing difficulties to cooperate with some Member States due to differences in definitions of firearms-related offences?*
- ii. *Are the options equally suitable to improve the clarity of the definitions for both practitioners and duty holders?*
- iii. *Which problems do you encounter in your Member State when detecting illicitly 3D printed firearms, essential components or illicit 3D printing workshops?*
- iv. *How can blueprints of firearms be distinguished from blueprints for toy guns? And how should this be reflected in the legislation?*
- v. *Which option would be the best for addressing the threat of illicitly 3D printed firearms and essential components (combinations of options are possible)?*

2. Limited scope of current obligatory offences

Options:

- a) Enforcement of the 3 obliged firearms-related offences as defined in the UN Firearms Protocol (illicit trafficking, illicit manufacturing and modification of markings) by addressing those Member States which have gaps in the transposition of the Protocol.
- b) Legislative initiative to further harmonize the definitions of the obligatory offences, including illicit possession.
- c) Legislative initiative to further harmonize the definitions of the obligatory offences (including illicit possession) and give guidance and examples of best practices in the Member States in non-binding guidelines of the Commission or in the recitals to the Directive on the additional offences.
- d) Legislative initiative focused on all firearms-related offences as suggested by the legislative guidelines of the UN (illicit trafficking, illicit manufacturing, modification of markings, illicit possession and carrying, illicitly reactivating deactivated firearms, illicit brokering, arms embargo violations, and misconduct in the context of record-keeping and licensing)

The EU has ratified the UN Firearms Protocol in 2014 and most of the Member States have also individually ratified the Protocol. However, the study has shown that 14 of the 27 Member States do not criminalize the modification of markings. Furthermore, there are issues with the scope of illicit manufacturing and illicit trafficking in multiple Member States. All Member States should at least adhere to the international obligations as established by the UN Firearms Protocol. Even though illicit possession is not an obliged offences under the UN Firearms Protocol, the rules of the Firearms Directive do imply that this should be criminalized. However, there is no harmonized definition available. Proving illicit trafficking, with a cross-border element, is often considered difficult. Therefore, it would be interesting to understand how Member States criminalize illicit trade of firearms within their Member State. Furthermore, the UN guidelines suggest to also criminalize other offences. Nevertheless, it is important to first understand the need for this before the EU should act. Additionally, this approach might lead to a lower focus on the 'core' offences (illicit manufacturing, illicit trafficking, illicit possession and modification of markings)

Questions:

- i. *What is your definition of illicit possession and carrying of firearms, essential components and ammunition?*
- ii. *How is illicit trade of firearms within your Member State, so without cross-border movement, criminalized?*
- iii. *Which of the firearms-related offences mentioned in option d would you prefer to address from a criminal law point of view and which from an administrative point of view?*
- iv. *Do you have specific cases that show the need to address the wider set of firearms-related offences in option d from an EU level?*
- v. *Which of the above options the wider problem of firearms-related incidents better (combinations of options are possible)?*

3. Sanction types and levels

Options:

- a) Introduce provisions on harmonising minimum maximum levels of sanctions (“maximum penalty of at least...”).
- b) Include a provision on aggravating circumstances (for example the number of firearms involved, if more dangerous firearms are involved, if cases relate to organised crime or terrorism; use of corruption; systematic repeated offences).
- c) Include a provision on a broad range of accessory sanctions and measures such as the confiscation of the firearms, the withdrawal or refusal of the firearms authorisation/license, deprivation of rights linked to the possession and use of firearms (e.g. hunters permit), prohibition to engage in certain professional activities.
- d) Include a provision on attempts, when someone takes intentionally significant steps towards committing a crime but ultimately does not complete the act.
- e) Link the level of imposed penalties to the profits expected or generated and to the financial situation of businesses involved in committing the crime (for instance by taking a percentage of the annual turnover as yardstick).
- f) Include provisions in the Directive to oblige Member States to better coordinate their administrative and criminal sanctioning systems to improve adequate sanctioning in the individual cases.

Our preliminary analysis of UNODC data has shown a correlation between low sanctions and number of firearms incidents. Introducing minimum maximum fines can help prevent criminals misusing the discrepancies between Member States. The introduction of aggravating circumstances that must be taken into account by criminal courts might contribute to a more adequate level of sanctioning in practice than minimum maximum sanctions alone. A broad range of accessory sanctions at the disposal of the criminal judge might even be more of a deterrent than financial fines alone, especially regarding legal persons/industry/businesses. Taking account of the financial situation of businesses or illegal profits generated or expected can also help to achieve more proportionate sanction levels that undo the benefits of the crime committed, but might conflict with legal traditions in the Member States. Today, most of the Member States do not link the level of financial penalties to these criteria. Finally, a better coordination of existing administrative and criminal sanction systems in the Member States might be sufficient to create a more deterrent sanction system in the Member States.

Questions:

- i. *Are the envisaged provisions – individually or in combination – suitable to obtain more effective, dissuasive and proportionate sanctioning in practice?*
- ii. *To what extent is it necessary to introduce minimum sanctions to ensure that national authorities may use special investigation measures?*
- iii. *Are there other suitable measures not mentioned here?*