

# Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Directive 91/477 on control of the acquisition and possession of weapons

## FACE Position (as of 15 December 2015)

FACE, Federation of Associations for Hunting and Conservation of the EU, represents national hunters' associations from 35 European countries including the EU-28. FACE is also supported by 7 Associate Members and has its Secretariat in Brussels.

Established in 1977, it represents the interests of Europe's 7 million hunters as an international non-profit-making non-governmental organisation (INGO).

This makes FACE the largest democratically representative body for hunters in the world and is probably one of the largest European civil society organisations.

### General considerations

1. The existing threat of terrorist attacks on EU citizens has highlighted the existence of an EU market for illegal military assault weapons. FACE therefore welcomes the Commission Action Plan against the **illegal** trafficking in and use of firearms and explosives, adopted on 2 December 2015 (COM(2015) 624 final).
2. FACE also favours adequate control of **legal** civilian firearms, including justified and proportionate restrictions to their acquisition and possession that ensure their safe use, transportation and traceability throughout the European Union. Directive [91/477/EEC](#) on control of the acquisition and possession of firearms provides for an appropriate legal framework in this respect. It is, however, not the right instrument to address terrorist and other illegal activities involving firearms.
3. FACE subscribes to the Commission's initiatives aimed at reinforcing the current framework by means of authorised methods for deactivation, common rules on marking (of firearms manufactured in the EU and on imported firearms) and improved traceability of firearms through the national computerised filing systems of the Member State authorities. FACE also welcomes the introduction of a system of sharing information between Member States on the refusal of firearms authorisations and on authorisations granted for transfers of firearms to another Member State.

4. FACE is very much concerned that the EU Commission is presenting this proposal without an impact assessment, given the expected adverse economic impact on firearms trade, the loss of jobs, the loss in value of collections of deactivated firearms, the major sums which will be owed in compensation for loss of property and the administrative costs of the sequestration of some deactivated small arms and the registration of others. In this regard, FACE questions the timing of the proposal which was supposed to be presented in 2016 according to the European Commission Work Programme, and the European Agenda on Security COM(2015) 185. As acknowledged publicly by a European Commission representative in front of the European Parliament's Internal Market and Consumer Protection Committee on 7 December 2015, this proposal "*is not focusing on the illegal traffic of arms*". FACE is therefore questioning why the Commission rushed the proposal in 2015 by linking it to the terrorist attacks in Paris where illicit firearms were used.
5. FACE strongly objects to the proposed restrictions to the lawful possession of firearms, which impose unnecessary and burdensome limitations on hunters and sports shooters and collectors, but also directly infringe on their fundamental rights of property and to equal treatment. The Commission has not produced any evidence to justify that such restrictions would be necessary or even appropriate to reach the Commission's objective: to tackle illicit trafficking and to prevent future terrorist attacks.
6. FACE denies the Commission's repeatedly heard statement that the proposal **will not change anything for hunters and sport shooters**. A more stringent framework would, indeed, deeply impact legal users – one of the most law-abiding and controlled group in the EU. FACE deeply regrets that by proposing these restrictions, the European Commission implies that legal ownership and trade of civilian firearms is somehow linked to terrorism and radicalisation and that cross-supply takes place.

## Amendments proposed by FACE

### **Preamble – recital 2**

#### *Proposed text*

Recent terrorist acts which demonstrated gaps in the implementation of Directive 91/477/EEC especially with regard to deactivation of weapons, convertibility and marking rules.

#### *Amendment*

***The safe and secure movement of lawfully owned civilian firearms would benefit from clear harmonised rules on the marking, traceability and deactivation of firearms.***

#### *Justification*

The background studies produced by the Commission do not justify the conclusion that legal ownership of civilian firearms is in any way linked to the recent terrorist attacks within the Union borders. However, the Evaluation of the Implementation did indicate that the current, in some respects poorly implemented framework could benefit from clearer common rules on the marking, traceability and deactivation (now adopted) of legal firearms in circulation within the EU. Focus should therefore be on improvements in these areas.

### **Preamble – recital 7**

#### *Proposed text*

Taking into consideration the high risk of reactivating badly deactivated weapons and in order to enhance security cross the Union, deactivated weapons should be covered by this Directive. Additionally, for the most dangerous firearms stricter rules should be introduced in order to ensure that those firearms are not allowed to be owned or traded. Those rules should also apply to firearms of that category even after they have been deactivated. Where those rules are not respected, Member States should

#### *Amendment*

Deleted

take appropriate measures including the destruction of those firearms.

*Justification*

Firearms that have been deactivated in compliance with the belated Commission regulation XX/XX establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are ‘rendered irreversibly inoperable’ cannot be reactivated, so that a total ban on the acquisition and possession of such firearms would be unjustified, disproportionate and in contradiction with the protection of legitimate expectations, which is a fundamental principle of EU law.

**Preamble – recital 9**

*Proposed text*

Some semi-automatic firearms can be easily converted to automatic firearms, thus posing a threat to security. Even in the absence of conversion to category ‘A’, certain semi-automatic firearms may be very dangerous when their capacity regarding the number of rounds is high. Such semi-automatic weapons should therefore be banned for civilian use.

*Amendment*

Deleted

*Justification*

The Commission has not produced any evidence that would sustain that lawfully owned semi-automatic firearms are regularly converted to automatic firearms or that any lawfully owned civilian semiautomatic firearm *de facto* poses a threat to the security of the EU citizens. The Commission’s criterion for considering some semiautomatic firearms to be more dangerous than others is unclear, ambiguous and is likely to lead to legal uncertainty.

## Preamble – recital 12

### *Proposed text*

Selling arrangements of firearms and their components by means of distance communication may pose a serious threat to security as they are more difficult to control than the conventional selling methods, especially as regards the on line verification of the legality of authorisations. It is therefore appropriate to limit the selling of arms and components by means of distance communication, notably internet, to dealers and brokers.

### *Amendment*

Deleted

### *Justification*

The Commission has not substantiated its claim that “selling arrangements of firearms and their components by means of distance communication may pose a serious threat to security”. On the contrary, the [Evaluation of the Firearms Directive of December 2014](#) which the Commission refers to in the explanatory memorandum to the proposal states that “new sales channels (e.g. internet) may challenge in the future the scope of the Directive **which, for the moment, seems to be adequate to face the current concerns**” (p. 4 of the Evaluation). Moreover, every purchase or sale via electronic means is still subject to physical carriage and police transfer procedures. The introduction of a total ban of the use of distance communication between private persons in relation to the acquisition of firearms goes much further than the prevention of (future) obstacles to trade and affects purely internal issues, such as advertising in local magazines, phone and e-mail messages between inhabitants of a member states, etc. Such total ban constitutes a disproportionate infringement of the right of property of the legal owners of civilian firearms in the EU, including the right to use and sell such property. The burden on Member States police and security agencies to enforce this law would be immense, as would it be for the courts. Police and security agencies have sufficient powers to target communications and take action where current procedures are circumvented.

## Article 1 – litra b

### *Proposed text*

For the purposes of this Directive, ‘essential component’ shall mean the barrel, frame, receiver, slide or cylinder, bolt or breach block **and any device designed or adapted to diminish the sound caused by firing a firearm** which, being separate objects, are included in the category of the firearms on which they are or are intended to be mounted.

### *Amendment*

For the purposes of this Directive, ‘essential component’ shall mean the barrel, frame, receiver, slide or cylinder, bolt or **breech-block** which, being separate objects, are included in the category of the firearms on which they are or are intended to be mounted.

### *Justification*

The Commission proposal is unclear and leads to legal uncertainty. Following a strict interpretation of the rules concerning “essential components” would subject sound moderators to the requirements of an authorisation or declaration on the same basis as the firearm to which they are mounted. Moreover, sound moderators would need to be deactivated together with the firearm to which they are mounted, so that they can no longer be separately used for different firearms. This creates an anomaly, because, as it is possible to use the same sound moderator on a rimfire rifle or on an air rifle, the moderator may change from being uncertificated to being a firearm subject to authorisation. Consequently, one particular sound moderator can be mounted on firearms from various categories and can therefore not be classified as suggested.

The proposal is technically erroneous because sound moderators do not affect the functionality of firearms nor do they, as such, pose a danger to the security of EU citizens. Sound moderators serve to protect the hearing of hunters and sport shooters (and their dogs) by reducing a firearm’s peak (harmful) noise by 15-30dB and are therefore increasingly used and allowed in the EU Member States.

A further issue is that, because moderators would be registered as “firearms”, the number of recorded firearms is artificially inflated by a substantial proportion.

## Article 5 – point 1 – subparagraph 1

### *Text proposed by the Commission*

1. Without prejudice to Article 3, Member

### *Amendment*

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States shall *authorise* the acquisition and possession of firearms only by persons who have good cause and who:

States shall *permit* the acquisition and possession of firearms only by persons who have good cause and who:

### *Justification*

The Commission has not provided for an explanation of its proposal to change the wording of this provision by deleting “permit” and adding “authorise”. The proposal is unmotivated and unclear. Moreover, it creates legal uncertainty because the concept of “authorisation” is reserved for category B firearms in Directive 91/477. It is unclear whether the Commission proposes to create an additional authorisation or wishes to add new requirements to the existing category of firearms subject to authorisation.

### **Article 5 – point 1 – litra a**

#### *Text proposed by the Commission*

- (a) are at least 18 years of age, except in relation to the possession of firearms for hunting and target shooting, provided that in that case persons of less than 18 years of age have parental permission, or are under parental guidance or the guidance of an adult with a valid firearms or hunting licence, or are within a licenced or otherwise approved training centre;

#### *Amendment*

- (a) are at least 18 years of age, except in relation to the *acquisition, other than through purchase, and* possession of firearms for hunting and target shooting, provided that in that case persons of less than 18 years of age have parental permission, or are under parental guidance or the guidance of an adult with a valid firearms or hunting licence, or are within a licenced or otherwise approved training centre;

### *Justification*

The Commission has not provided an explanation and/or justification for its proposal to ban the acquisition as gifts or through inheritance (purchase is already prohibited within the current framework) of hunting and sport shooting firearms by persons younger than 18 years of age. Under the current rules, firearms possession among young hunters is already subject to very stringent rules. The Commission has not produced evidence that these rules do not work

or would be insufficient or that young hunters would pose a particular threat to the security of EU citizens.

The consequence of the Commission proposal would be that firearms ownership among young hunters and sport shooters will be phased out. This will have a very serious impact on young hunters and on schools that teach about hunting and wildlife as well as shooting sport disciplines. For example; the UK model is contained in UK Government guidance which says; “It is in the interests of safety that a young person who is to handle firearms should be properly taught at a relatively early age”. Ownership is sometimes a prerequisite for the use. It can be linked to other legal requirements, such as storage (in several Member States, firearms need to be stored at the premises of the legal owner and cannot be lent to other persons).

Inversely, ownership does not create legal possession and should not be regulated in the Firearms Directive. The fact that a person has ownership, or title to a firearm, is of no consequence if they are not permitted to possess that firearm. Thus a young person may, for example, inherit a valuable shotgun from a relative. If the young person does not hold a certificate from the police authorising him or her to possess the firearm, then it must be stored appropriately – for example it could be transferred into the possession of another relative or stored with a Registered Firearms Dealer – until such time as the young person obtains a certificate enabling him or her to possess the firearm or to dispose of it as he or she sees fit. Title to the firearms, i.e. ownership, remains with the young person even though they may not possess it.

#### **Article 5 – point 2 – subparagraph 1**

##### *Text proposed by the Commission*

2. Member States ***shall provide for standard medical tests for issuing or renewing authorisations as referred to in paragraph 1 and*** shall withdraw authorisations if any of the conditions on the basis of which it was granted is no longer met.

##### *Amendment*

2. Member States shall withdraw authorisations if any of the conditions on the basis of which it was granted is no longer met.

##### *Justification*

The Commission has not produced any explanation or justification for the requirement of medical tests linked to the issuing and renewal of authorisations for category B firearms.



Standard medical checks would mean burdensome, non-risk based requirements being introduced which would provide no additional benefit for public safety. It could further hinder the development of better systems and stifle continuous improvements based on sound risk management.. The current system, where licenses can be withdrawn if there is reason to believe that a person is unfit to possess a firearm is effective and proportionate.

Moreover, to impose standards for medical checks on the Member States, the EU would obstruct the competence of the Member States, as this can be better regulated at national level in accordance with the subsidiarity principle.

## Article 6 – subparagraphs 1 & 2

### *Text proposed by the Commission*

Member States shall take all appropriate steps to prohibit the acquisition and the possession of the firearms and ammunition classified in category A ***and to destroy those firearms and ammunition held in violation of this provision and seized.***

Member States may authorise bodies concerned with the cultural and historical aspects of weapons and recognised as such by the Member State in whose territory they are established to keep in their possession firearms classified in category A ***acquired before [the date of entry into force of this Directive] provided they have been deactivated in accordance with the provisions that implement Article 10(b).***

### *Amendment*

Member States shall take all appropriate steps to prohibit the acquisition and the possession of the firearms and ammunition classified in category A.

Member States may authorise collectors and bodies concerned with the cultural and historical aspects of weapons and recognised as such by the Member State in whose territory they are established to keep in their possession firearms classified in category A.

### *Justification*

Recital 5 of the Preamble to the proposal states: “Since collectors have been identified as a possible source of traffic of firearms, they should be covered by this Directive.” Any person or entity, including national armed forces, is a potential source of traffic of firearms. However, the Commission has not produced any evidence that, in reality, this happens. There exists absolutely no justification for bringing collectors under the Directive on the basis of an unsubstantiated accusation. It is incomprehensible how the Commission could possibly expect to force Member States to destroy national heritage that is legally owned by law-abiding citizens and furthermore

oblige museums to deactivate and hence destroy their Category A firearms when both perform the important task of documenting and conserving heritage artefacts for posterity.

The exemption of collectors in the current Directive was entered for a valid reason. This allows Member States to legislate according to national requirements and to grant authorised collectors the possibility to contribute to the conservation of heritage artefacts. FACE supports FESAC's recommendation that collectors remain outside the scope of the Directive while a proper definition of "collector" be included in the narrative.

### **Article 6 – subparagraph 3**

#### *Text proposed by the Commission*

#### *Amendment*

The acquisition of firearms and their parts and ammunition concerning categories A, B and C by means of distance communication, as defined in Article 2 of Directive 97/7/EC of the European Parliament and of the Council(\*), shall be authorised only with respect to dealers and brokers and shall be subject to the strict control of the Member States.

Deleted

#### *Justification*

The Commission has not substantiated its claim that "selling arrangements of firearms and their components by means of distance communication may pose a serious threat to security". On the contrary, the [Evaluation of the Firearms Directive of December 2014](#) which the Commission refers to in the explanatory memorandum to the proposal, clearly states that "new sales channels (e.g. internet) may challenge in the future the scope of the Directive which, for the moment, seems to be adequate to face the current concerns" (p. 4 of the Evaluation).

It appears the focus has slipped from the criminal darknet to wider internet use and other distance communication methods. The introduction of a total ban of the use of distance communication between private persons in relation to the acquisition of firearms goes much further than the prevention of (future) obstacles to trade and affects purely internal issues, such as advertising in local magazines, phone and e-mail messages between inhabitants of a member states, etc. The EU is not competent to regulate such issues. Finally, a total ban constitutes a disproportionate infringement of the right of property of the legal owners of civilian firearms in the EU, including the right to use and sell such property, which may result in the confiscation and destruction without any compensation of firearms that were purchased and registered by law-abiding citizens in good faith.

## Article 7 – paragraph 4

### *Proposed by the Commission*

Member States may consider granting persons who satisfy the conditions for the granting of an authorisation for a firearm a multiannual licence for the acquisition and possession of all firearms subject to authorisation, without prejudice to:

- (a) the obligation to notify the competent authorities of transfers;
- (b) the periodic verification that those persons continue to satisfy the conditions; and the maximum limits for possession laid down in national law.

***The maximum limits shall not exceed five years. The authorisation may be renewed if the conditions on the basis of which it was granted are still fulfilled.***

### *Amendment*

Member States may consider granting persons who satisfy the conditions for the granting of an authorisation for a firearm a multiannual licence for the acquisition and possession of all firearms subject to authorisation, without prejudice to:

- (a) the obligation to notify the competent authorities of transfers;
- (b) the periodic verification that those persons continue to satisfy the conditions; and the maximum limits for possession laid down in national law.
- (c) ***The maximum limits for possession laid down in national law.***

### *Justification*

The Commission proposal limits the multi-annual license for the possession of a category B firearm to a maximum of 5 years, after which the owner must renew his or her license. This measure means a radical breach with the current framework where Member States decide upon the periodicity of authorisations based on subsidiarity. The Commission has not provided a justification for this restriction, which is unnecessarily bureaucratic, burdensome and costly for hunters, as well as for licence issuing authorities. The current legal framework provides for an adequate system of control and for the possibility for Member States to “withdraw authorisations for possession of a firearm if any of the conditions on the basis of which it was granted are no longer satisfied”. Continuous risk based assessment and monitoring is essential to any length of authorisation and allows for the development of systems and the adoption of the principle of continuous improvement.

Additionally it is obvious that this provision would not have prevented terrorist attacks.

## Article 12 – paragraph 3

### *Original text – no Amendment proposed by the Commission*

2. Notwithstanding paragraph 1, hunters, in respect of categories C and D, and marksmen, in respect of categories B, C and D, may, without prior authorisation, be in possession of one or more firearms during a journey through two or more Member States with a view to engaging in their activities, provided that they are in possession of a European firearms pass listing such firearm or firearms and provided that they are able to substantiate the reasons for their journey, in particular by producing an invitation or other proof of their hunting or target shooting activities in the Member State of destination.

Member States may not make acceptance of a European firearms pass conditional upon the payment of any fee or charge.

### *Amendment*

2. Notwithstanding paragraph 1, hunters, in respect of categories C and D, and marksmen, in respect of categories B, C and D, may, without prior authorisation, be in possession of one or more firearms during a journey through two or more Member States with a view to engaging in their activities, provided that they are in possession of a European firearms pass listing such firearm or firearms and provided that they are able to substantiate the reasons for their journey, in particular by producing an invitation or other proof of their hunting or target shooting activities in the Member State of destination.

Member States may not make acceptance of a European firearms pass, ***directly or indirectly***, conditional upon the payment of any fee or charge ***or prior authorisation***.

### *Justification*

Article 3 of the Directive clarifies that Member States have no discretion to impose requirements stricter or less flexible than those rights conferred on residents of the Member States by Article 12(2). Despite this, in four Member States out of the 28, stricter measures are in place requiring additional control, even directly or indirectly charging fees. This adds administrative delay and cost for the authorities, tax payers and visitors with firearms. There is no evidence that these procedures are of any gain for the interest of public security.

In its Evaluation of the Firearms Directive of December 2014, the Commission has recommended that the problem of the restrictive interpretation of some rules related to the use of the European Firearms Pass be addressed.

## ANNEX I – part II – subparagraph A

### *Text proposed by the Commission*

Any object which falls into one of the following categories, unless it meets the definition but is excluded for one of the reasons listed in section III.

#### Category A — Prohibited firearms

1. Explosive military missiles and launchers.
2. Automatic firearms.
3. Firearms disguised as other objects.
4. Ammunition with penetrating, explosive or incendiary projectiles, and the projectiles for such ammunition.
5. Pistol and revolver ammunition with expanding projectiles and the projectiles for such ammunition, except in the case of weapons for hunting or for target shooting, for persons entitled to use them.
6. ***Automatic firearms which have been converted into semi-automatic firearms;***
7. ***Semi-automatic firearms for civilian use which resemble weapons with automatic mechanisms;***
8. ***Firearms under points 1 to 7 after having been deactivated.***

### *Amendment*

Any object which falls into one of the following categories, unless it meets the definition but is excluded for one of the reasons listed in section III.

#### Category A — Prohibited firearms

1. Explosive military missiles and launchers.
2. Automatic firearms.
3. Firearms disguised as other objects.
4. Ammunition with penetrating, explosive or incendiary projectiles, and the projectiles for such ammunition.
5. Pistol and revolver ammunition with expanding projectiles and the projectiles for such ammunition, except in the case of weapons for hunting or for target shooting, for persons entitled to use them.

### *Justification*

The Commission proposes to move the vaguely defined “semi-automatic firearms for civilian use which *resemble* weapons with automatic mechanisms”, currently falling under category B7, to category A. This change would result in a sudden and immediate ban of a whole sub-category

of firearms, which have been obtained and registered in full compliance with the legal requirements for possession, including a thorough authorisation procedure.

Such a ban, as well as the introduction of the new category of prohibited firearms A6, is based on unclear criteria, while their prohibition is disproportionate and not technically justified. The criterion of “resemblance” is subjective and very much dependent on the person who has to make this judgement. Decisions will mostly be made afterwards and with hindsight, resulting in legal uncertainty.

Category B7 and the proposed A6 firearms possess the same technical specifications as any other category B firearm. They are therefore not “more dangerous”, which is the logic and technical rationale for firearms categorisation. To justify a total ban of a certain category of firearms solely based on the unclear and subjective criterion of their “resemblance” with automatic weapons is not only disproportional, but also leads to legal uncertainty and the unequal treatment of citizens.

Finally, the consequential confiscations and destruction of the firearms in question would constitute an unjustified infringement of the fundamental right of property of legal owners, who acquired these firearms in compliance with the law and in good faith and who now will be confronted with a considerable loss.

Firearms that have been deactivated in compliance with the belated Commission Regulation XX/XX establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable cannot be reactivated, so that a total ban on the acquisition and possession of such firearms (for example by collectors) would be disproportionate.

## **ANNEX I – part II – subparagraph B**

### *Text proposed by the Commission*

### *Amendment*

Category B — Firearms subject to authorization

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1. Semi-automatic or repeating short firearms.
2. Single-shot short firearms with centre-fire percussion.
3. Single-shot short firearms with rimfire percussion whose overall length is less than 28 cm.
4. Semi-automatic long firearms

1. Semi-automatic or repeating short firearms.
2. Single-shot short firearms with centre-fire percussion.
3. Single-shot short firearms with rimfire percussion whose overall length is less than 28 cm.
4. Semi-automatic long firearms

whose magazine and chamber can together hold more than three rounds.

5. Semi-automatic long firearms whose magazine and chamber cannot together hold more than three rounds, where the loading device is removable or where it is not certain that the weapon cannot be converted, with ordinary tools, into a weapon whose magazine and chamber can together hold more than three rounds.
6. Repeating and semi-automatic long firearms with smooth-bore barrels not exceeding 60 cm in length.

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5. Semi-automatic long firearms whose magazine and chamber cannot together hold more than three rounds, where the loading device is removable or where it is not certain that the weapon cannot be converted, with ordinary tools, into a weapon whose magazine and chamber can together hold more than three rounds.
6. Repeating and semi-automatic long firearms with smooth-bore barrels not exceeding 60 cm in length.
7. *Semi-automatic firearms for civilian use which resemble weapons with automatic mechanisms.*

### *Justification*

The Commission proposes to move the vaguely defined “semi-automatic firearms for civilian use which *resemble* weapons with automatic mechanisms”, currently falling under category B7, to category A. This change would result in a sudden and immediate ban of a whole sub-category of firearms, which have been obtained and registered in full compliance with the legal requirements for possession, including a thorough authorisation procedure.

FACE objects to such a ban, as the definition is based on unclear criteria, while a sudden ban is disproportionate and not technically justified.

Category B7 firearms possess the same technical specifications as any other category B firearm. They are therefore not “more dangerous”, which is the logic and technical rationale for firearms categorisation. To justify a total ban of a certain category of firearms solely based on the unclear and subjective criterion of their “resemblance” with automatic weapons is not only disproportional, but also leads to legal uncertainty and the unequal treatment of citizens.

Finally, the consequential confiscations and destruction of the firearms in question would constitute an unjustified infringement of the fundamental right of property and the principle of legitimate expectations of legal owners who acquired these firearms in compliance with the law and in good faith and who now will be confronted with a considerable loss. Additionally it is obvious that this provision would not have prevented terrorist attacks.

### *Additional notes*

#### **Replicas**

Replicas (including airsoft) are of no practical use to terrorists. Banning them or making them subject to registration is of no practical use whatsoever while registration would only eat up valuable police resources for no gain whatsoever.

#### **Alarm Weapons**

We are in agreement with the proposal to produce such weapons in a way that they cannot be converted to fire ammunition. However, once they conform they do not need to be registered. Alarm and signal weapons are important to hunters for dog training, chasing away of birds and safety. On the other hand, acoustic and salute weapons converted from real firearms should be classified under Category B.