

Report

Second Meeting of the Group of Experts of Firearms Trafficking

DG HOME — 'Falcone-Borsellino' Meeting Room

27 May 2014

Morning Session

(1) Introduction to the works of the Group of Experts

Mr Fabio Marini (DG Home) introduced the Second Meeting of the Group of Experts of Firearms Trafficking. He explained that three studies were being undertaken in parallel – an evaluation of the Directive (Ernst Young), a study on 'Combatting Illicit Arms Trafficking in the European Union' (Centre for Strategy & Evaluation Services), and a third study on 'Alarm weapons, replicas and deactivation, destruction and marking procedures of firearms' (EY). Final reports are due by the end of June 2014. The purpose of the workshop was to review the findings, conclusions and recommendations of the draft final reports on the two studies commissioned by DG Home.

(2) Presentation by CSES of the draft final report 'Combatting Illicit Arms Trafficking in the European Union'

Jack Malan (CSES) provided an overview of the study 'Combatting Illicit Arms Trafficking in the European Union', describing the research objectives, key elements of the work plan and methodological approach, the key issues that had been investigated and the overall findings and conclusions.

The research confirms that Europe faces a serious illicit firearms trafficking ('IFT') problem. This is a problem in its own right but also as a driver of other criminal activities. However, the nature and scale of illicit firearms trafficking in the EU is difficult to quantify precisely because of the largely hidden nature of the problem. The main sources of illicit weapons are the reactivation of neutralised weapons, burglaries and thefts (e.g. of legal firearms), legal firearms sold in the illegal market, firearms retired from service by the army or police, and the conversion of gas pistols. There is already extensive cross-border cooperation to combat illicit firearms trafficking but differences in legal frameworks and other factors place constraints on what can be done.

With regard to the existing legal frameworks at an international level, UN instruments are limited in scope and applicability (e.g. ATT not yet entered into force and Protocol signed by 18 of the 28 EU Member States). Moreover, the Protocol is not prescriptive as to the form of IFT criminalisation in state parties' national laws. The Directive defines IFT in similar terms to the Protocol but does not include criminalisation provisions (the Directive only makes general reference to Member States laying down penalties that are effective, proportionate and dissuasive). As a result of the non-prescriptive approach at the international/EU level, there is a diversity of legal frameworks at the national level. Differences exist with regard to the definition of offences, sanctions, the existence of aggravating or mitigating circumstances, and the possibility of a negligent IFT offence.

Overall, differences in laws have a negative effect on the capacity to tackle illicit firearms trafficking. Minimum, EU-wide rules on illicit firearms trafficking would reduce legal uncertainty produced by the divergences in national legal frameworks for police and investigating authorities, facilitate prosecutions, ensure that criminals are unable to exploit loopholes, and reduce incentives for criminals forum shop. However, the research also suggests that practical issues such as lack of resources, conflicting policy priorities and variable enforcement of existing laws can be as significant as differences in national legal frameworks in impeding cross-border to combat illicit firearms trafficking. Overall, there is a case for EU intervention (the legal basis derives from Article 83 (1) TFEU) and various policy options exist.

(3) Presentation by EY of the study on 'Study to support an Impact Assessment on a possible initiative related to improving rules on deactivation, destruction and marking procedures of firearms in the EU, as well as on alarm weapons and replicas

Claudia Gallo (EY) presented an overview of the latest version of the 'Study to support an Impact Assessment on a possible initiative related to improving rules on deactivation, destruction and marking procedures of firearms in the EU, as well as on alarm weapons and replicas' by explaining the overall structure of the study.

Before identifying the solutions, the problem definition was articulated in terms of security, the legislative framework among Member States, and the market imbalances in the EU internal market. With regard to security, it was explained that this is endangered by the threats for European citizens posed by the conversion of alarms and signal weapons, the risks associated with the use of replicas, the cases of reactivation, and the emerging threats due to the internet sales and the 3D printed firearms. For what concerns the legislative framework, it was highlighted that the differences in the definition of certain categories of firearms among Member States hinders the implementation of EU Directive by law enforcement authorities and also alter the EU internal market by creating imbalances.

(4) Discussion

In the subsequent discussion, doubts were expressed about the accuracy and usefulness of the statistics on illicit firearms trafficking. In particular, the EU manufacturing associations noted that the number of legally held firearms is considered as a relevant indicator by which it is possible to derive the number of illicit firearms, although this is not reflected in the data available. CSES acknowledged this but argued that some discussion of existing estimates was needed, if only to underline the difficulty in quantifying the extent of the problem. A number of other points were made: it was argued that there is danger of linking illicit firearms directly to criminal activity without taking into account some of the complications in the cause-and-effect relationship. Another participant said that ambiguities in the Directive, and the fact that some weapons are excluded from its scope, was the reason for complications arising from different legal frameworks at the Member State level. It was suggested that the Directive should be revised to clarify definitions and that the European Firearms Group's glossary could act as a guide.

A question was asked on whether the Commission had had to take any action against any Member States for not implementing the Directive. DG ENTR indicated that several inquiries were underway relating to possible non-compliance but no other action has so far been undertaken. It was noted that the Directive is based on the principle of minimum harmonisation. The EU manufacturer associations noted that the non-compliance of the Directive might be addressed through an ad-hoc Regulation to be made legally binding and self-executive in order to provide a minimum level of safety and without prejudice to the measures undertaken by individual Member States.

With regard to deactivation, it was noted by many Member States that the limited information poses some difficulties in quantifying the scale of the problem. In certain Member States (Sweden, Estonia, Poland, Portugal), there are deactivation standards that facilitate the tracking of deactivated weapons. In this regard it was noted that some definitions, such as ammunitions, parts and essential components need to be clarified. The Commission noted that it is working on common standards for deactivation in order to harmonize the different standards among Member States.

Other issues that were raised included a question on the extent to which the security of non-EU citizens should be taken into account in seeking to tackle firearms trafficking (it was mentioned that parts and components are sent to non-EU countries where they are reassembled and used for criminal purposes). One participant argued that some weapons are being reactivated in Russia and then trafficked back into the EU but it is difficult to know the scale of the problem. Another participant stated deactivated firearms from China were a problem in his country. The Commission indicated that it was working on guidelines for the deactivation of different types of weapons. Security markings could be made obligatory for European manufacturers but this was not possible with firearms originating from outside the EU. Several comments were made with regard to 3D printing but there was agreement that this is unlikely to be a serious problem for some time to come.

Afternoon Session

Two presentations were made on the policy options set out in the DG Home studies, followed by a discussion.

(5) Presentation by CSES of policy options and final recommendations of the study "Combatting Illicit Arms Trafficking in the European Union"

Jack Malan (CSES) suggested that the overall policy objectives of any EU-level initiative should be to combat illicit firearms trafficking more effectively, thereby enhancing the common area of freedom, security and justice. There are various more specific operational objectives, principally to minimize the differences in definitions of firearms offences and levels of sanctions across the EU.

Turning to the policy options, Policy Option 1 is a situation where no new EU action is taken to tackle illicit firearms trafficking. If no action is taken at EU level, the scale of illicit firearms trafficking is likely to increase in the coming years. The study's conclusion is that additional measures are needed to effectively tackle the problem.

Policy Option 2(a) would aim to promote closer operational collaboration between Member States' law enforcement agencies with responsibility for tackling illicit firearms trafficking. This would include: improving the exchange information on illicit firearms trafficking; facilitating special investigative techniques and the capacity building needed for more effective action to combat cross-border aspects of the problem; strengthening the regulatory framework for legal firearms to reduce the transfer of weapons into the illicit market; and other measures such as improved monitoring and data collection tools, strengthening the role of the EU agencies. Policy Option 2(b) would involve a minimum level of legislative intervention at the EU level to strengthen cross-border cooperation by taking elements of Policy Option 2(a) and making them legally binding. Policy Option 3 would involve EU action to introduce legally-binding common minimum standards across Member States with regard to the definition of criminal offences and sanctions related to illicit firearms trafficking.

The recommended option is a combination of Policy Options 2 and 3 ('Policy Option 4'). This would be the most comprehensive means of tackling the problem of illicit firearms trafficking.

However, should any political feasibility constraints arise, the Commission may decide to adopt a staged approach, adopting Policy Option 2(a) first before moving on to more interventionist Policy Options, i.e. 2(b) and 3.

(6) Presentation by EY of policy options and recommendations of the study on "alarm weapons, replicas and deactivation, destruction and marking procedures of firearms"

Francesca and Valentina (EY) presented the policy options by explaining that they were selected according to the criteria of relevance, feasibility, and main impacts (i.e. social impacts, economic impacts, and impacts on fundamental rights).

Once they were selected, it was explained that an assessment of the different policy options was carried out as well as a comparison among the different alternatives. This analysis was instrumental for the identification of the preferred policy option that is the revision of the Firearms Directive. The revision of the Directive will serve to harmonize the rules covering marking, deactivation and destruction of firearms, alarm weapons and replicas. For the estimation of the economic burdens implied by the preferred policy option at the EU and Member States level, it was explained that the administrative costs were calculated based on the standard cost model.

(7) Discussion

A number of points were made in relation to the policy options: improved information sharing at the EU level was felt to be very important but certain issues need to be clarified (e.g. if there is a database of legal firearms – already foreseen by the existing Directive - who would run it and who would have access to the database?). It was also pointed out that the cause-effect relationship for the different policy options should be better explained in the studies. Any new initiative to improve the availability of data at the EU level should be complementary to existing systems. It was mentioned that the Commission is already working with Europol to improve compatibility between different systems and access to them by law enforcement authorities.

It was pointed out that the availability of data at the EU level on firearms depends very much on national systems. For this reason, the EU manufacturer associations suggested to undertake an overview of the applications of sanctions in the EU comparative Law regarding the illicit trafficking of firearms to understand where the main loopholes of the system are. One participant mentioned that in their country, many records are paper-based which makes it impossible to easily transfer information to the EU level. The secrecy of some investigations was mentioned by another person as a reason why data is not always available. It was suggested that there needs to be a clearer picture of how different systems work at the Member States level, what type of information is being collected, etc.

Another participant argued that UN experience did not support the case for buy-back schemes and any suggestion that these should be included in a new measure should therefore be treated with caution. It was also argued that there was no need to strengthen the framework for legally held firearms because there is no real evidence that this is the source of illicitly-trafficked weapons that fall into the hands of criminals. The EU manufacturer associations noted that the compliance with existing standards against illicit firearms should be addressed through joint actions on border control and information exchange. The Commission made the point that much could be achieved by improved guidelines (e.g. with regard to deactivation) rather than having to amend the Directive.

(8) Close

Fabio Marini thanked the participant for their contributions to the discussions which he said had been very useful. He asked for any written comments on the two reports to be forwarded to DG Home within a week or so of the meeting. He announced that a High-level panel on firearms trafficking will take place in October. Finally, he reminded that another meeting among the firearms experts group will be scheduled at the end of the year.