



OPINION OF THE ASSOCIATION OF EUROPEAN MANUFACTURERS OF SPORTING FIREARMS (ESFAM Aisbl) ON TECHNICAL SPECIFICATIONS FOR THE MARKING OF FIREARMS AND THEIR ESSENTIAL COMPONENTS

PUBLIC CONSULTATION ON THE DRAFT IMPLEMENTING DIRECTIVE

Please find below the position of ESFAM, the Association of European Firearms manufacturers, on the Draft Commission Implementing Directive submitted to the public consultation (the "Draft").

More details on this position can be found on the site of ESFAM www.esfam.eu):

ESFAM considers essential to harmonize marking rules at European level (and even at worldwide level whenever possible) taking into account the following parameters:

- **marking system/rules must be unique/the same and simultaneously applied in all Members States** in order to achieve the objective of traceability of firearms and essential components at European level in a consistent and efficient way
- **marking must be technically possible and safe:** marking the head of the bolt of a firearm is critical and may be dangerous because of the impact of the explosion of the ammunition; for this reason ESFAM considers that head of bolt should certainly not be marked
- **marking rules must be efficient and useful:** it is not useful to mark 2 essential components which are linked to each other and cannot be separated from each other (eg., when the barrel and the receiver are jointly assembled (bolt rifle), marking the barrel should be sufficient)
- **technical specifications on marking** should be consistent with existing international standards (eg., BATF rules).



The position of ESFAM on the Draft is as follows:

The technical specifications set forth in the Draft does not impose the same unique marking system of firearms and essential components to all Members States

Article 4 of the Annex to the Draft provides that *“the alphabet used in the marking is as laid down by the member State. The alphabet or alphabets laid down by each Member State shall be Latin, Cyrillic or Greek”*. Article 5 provides that *“the numeral system used in the marking shall be as laid down by the Member State. The numeral system or systems laid down by each Member State shall be Arabic or Roman”*. It results from those 2 articles and more generally speaking from the lack of one unique marking system imposed to all Member States by the Draft that each Member State may adopt different marking system of firearms or essential components imported or manufactured on its territory.

Such a situation is in contradiction with Article 4(1) of the Council Directive 91/477/EEC of 18 June 1991, as amended by Directive 2017/853 of the European Parliament and of the Council of 17 May 2017 (the “Directive”), which obliges Member States to ensure that firearms and essential components *“have a clear, permanent and unique marking applied to them”*.

In addition, it raises a number of practical issues if, for instance, a firearm manufactured in one Member State A (having opted for Arabic numeral system and Latin alphabet) is transferred to another Member State B (having opted for Roman numeral system and Cyril alphabet). The question would then arise whether Member State B would accept the marking made pursuant to the legislation of Member State A.

Such a situation shall also create huge difficulties to manage the traceability of the firearms and essential components at European level.

Finally, by allowing several marking rules to be applied in each Member State where firearms or essential components are imported or manufactured, it will be an obstacle to the free movement of product within EU territory.

Whereas 1 of the Draft gives a questionable legal interpretation of article 4(1) of the Directive

Whereas 1 of the Draft provides that *“...Article 4(1) of Directive 91/477/EEC obliges Member States to ensure that firearms and their essential components, whether part of a firearm or placed separately on the market, have a clear, permanent and unique marking applied to them”*.



ESFAM considers that such interpretation of article 4 (1) of the Directive is not legally valid by adding and/or modifying the wording of article 4(1) of the Directive.

Indeed, article 4 (1) of the Directive does not explicitly provides that all essential parts of a firearm, whether part of a firearm or placed separately on the market, must be marked; article 4(1) provides that “*With respect to firearms manufactured or imported into the Union on or after 14 September 2018, Member States shall ensure that any such firearm, or any essential component, placed on the market has been:*

(a) provided with a clear, permanent and unique marking ...”

Pursuant to the text of article 4(1) the Members States are obliged to adopt legislation under which either the firearms (but not necessarily all the essential components being part of one assembled firearm) or essential components must be marked with a clear, permanent and unique marking.

According to ESFAM only one or two essential components of a firearm should be marked when assembled in one firearm (ie, the barrel and/or the receiver).

This approach is in line with the UN requirements on the matter.

During the Third Review Conference on the Programme of Action (RevCon3), held in New York 18-29 June 2018, it was indeed reiterated that only the frame/receiver of an assembled firearm should be marked, as reported in chapter III B, points 5 and 6 at page 14 and F, point 24 at page 15 of the final outcome document (att.2). (cfr position de IEACS)

By imposing the marking of all essential components, the Draft is not consistent with the European Firearms Pass provisions according to which when registering the European Firearms Pass, competent authorities register only the serial number on the frame; all the other essential components are not registered and, therefore, not contributing to the improved traceability and monitoring of the movement of firearms (cfr position de FACE).

The Draft exceeds the empowerment given to the EU Commission to adopt technical specifications for the marking of firearms

ESFAM considers that by adding to the text of article 4(1) of the Directive “whether part of a firearm or placed separately on the market” and by replacing “or” by “and” to interpret said article 4(1), the “Whereas 1” of the Draft exceeds the empowerment given to the EU Commission to adopt technical specifications for the marking of firearms.



The Commission is not allowed to modify the requirements or to enlarge the scope of application of the Directive, but only to adopt “technical specifications for the marking”.

The Draft should address possible contradictions resulting from technical specifications set forth under other international standards (eg., the CIP Convention)

Contrary to article 4(2) of the Directive, the Draft does not chose for the application of the technical specifications set forth under the provisions of the Convention for the reciprocal recognition of proof marks on small arms of 1 July 1969 (CIP Convention). Possible contradictions and/or overlaps between the technical specifications set forth in the Draft and CIP provisions could provoke unnecessary obligations to remark firearms entering into the EU market.

For instance, there could be an obligation to remark a firearm purchased in the United Kingdom (a third country from March 2019 where CIP provision are applicable) when entering into the EU market.

ESFAM recommends to specify in the draft that marking under CIP would validly replace the marking imposed by the Draft. For example, the year of proof marking could replace the year of production, and the Proof Houses' marks could replace the place or countries of production for the manufactured firearms.

Delay of 12 months to implement the Draft

Article 3 of the Draft provides that “*Member States shall bring into force the laws, regulations and administrative provision necessary to comply with the Draft 12 months after publication of such Draft in the Official Journal of the European Union*”.

On the other hand, article Article 2 of the Directive provides that « *Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 14 September 2018*».

A number of Members States have already started amending their national legislation on firearms marking without waiting for the entry into force of the Draft (eg., Denmark).

ESFAM considers that it is essential for European manufacturers and consumers to implement harmonised rules for marking firearms and essential components. Those rules should be applicable simultaneously on the whole European territory in order to avoid any timing discrepancies and/or contradictions between national legislations.



ESFAM asks the EU and national authorities to coordinate their legislative initiatives to better achieve such harmonisation and to cooperate with manufacturers to ensure a smooth and cost efficient process.

Lack of rules on the visibility of the marking

The Draft does not provide any specification concerning the visibility of the markings of essential components assembled in one firearm.

Due to the purpose of such marking (ie, reinforce the traceability of essential components when disassembled from a firearm), the Draft should provide that not all markings of assembled essential components should be visible without disassembling such essential components.

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