

Stephen A. Petroni - FESAC

From: Stephen A. Petroni - FESAC <chairman@fesac.eu>
Sent: 11 March 2016 13:37
To: 'Alain.Alexis@ec.europa.eu'; 'thierry.buttin@ec.europa.eu'; 'Sylvia.Kainz-Huber@ec.europa.eu'
Cc: 'vicky.ford@europarl.europa.eu'; 'TRAUNG Peter'; 'jvd@fareconsultants.com'
Subject: FOLLOW-UP TO MEETING HELD ON 29 FEBRUARY RE COLECTORS' EXEMPTION

Tracking:	Recipient	Read
	'Alain.Alexis@ec.europa.eu'	Read: 12/03/2016 08:03
	'thierry.buttin@ec.europa.eu'	Read: 11/03/2016 14:15
	'Sylvia.Kainz-Huber@ec.europa.eu'	Read: 13/03/2016 23:38
	'vicky.ford@europarl.europa.eu'	Read: 11/03/2016 13:42
	'TRAUNG Peter'	
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Dear Mr. Alexis,

I refer to our cordial meeting on 29 February on the subject of the Collectors' exemption for the scope of the Directive. As promised and in response to your request, I am now sending you below our reasons why we firmly believe that this exemption should not be removed. These notes were drafted with the assistance of independent Court Expert Jas van Driel and I am copying in Rapporteur Vicky Ford and Mr Peter Traung.

Reasons why collectors and museums should remain outside the scope of the Directive.

The experts who drafted the 1991 Directive took the decision to exclude collectors and museums concerned with cultural and historical aspects of weapons from the scope of the directive. One of the main objectives of their decision was to delegate the regulation of museums and collectors to the Member States who are in a better position to decide on matters relating to the conservation of national heritage. Another objective was to avoid unworkable rules arising from trying to regulate a much specialised sector via a Directive mainly aimed at regulating the movement of goods throughout Europe and which could inadvertently result in the loss of important heritage pieces.

Studies conducted during the preparatory phase of Directive 2008/51/EC concluded that recognised collectors and museums are not a threat to public order and safety because they would still be subject to Member State regulation in order to acquire and possess Category A and B firearms. Thus, in the absence of any proof to the contrary, the preamble of the Directive included a statement underscoring the importance of exempting museums and collectors from the scope of the Directive.

The situation has not changed since then and the exempt status was reconfirmed in the 2008 amendments. However it is known some police officials have been drawing attention to "collectors" who abuse their exempt status in order to trade illegal firearms. Further investigation reveals that the Police are actually referring to persons who are not recognised as Collectors by their Member State. Therefore we prefer to call such persons "pseudo-collectors" who, when caught trading or possessing firearms illegally, generally claim to be collectors in an attempt to get more lenient sentencing. Thus it should be noted that these persons cannot be considered to be "recognised collectors" as defined by the Directive and as such be exempt from the scope of the Directive.

Taking this into consideration it should be noted that:

1. Law-enforcement agencies in Member States do not consider recognised collectors to be a problem – they are concerned about illegal "collectors".

2. During the drafting of Directive 2008/51/EC it was not deemed necessary to withdraw the exempt status of museums and collectors and no need has arisen since then.
3. Recognized collectors are exempt from the scope of the Directive but they are NOT exempt from national legislation. Member State authorities are empowered to grant recognition to persons who qualify as collectors because they play an important role in conserving and researching heritage. Only then would such recognised collectors be permitted to acquire and possess licensed Category A and B firearms.
4. Museums and collectors are not above the law. They have to be fully compliant with their national laws and regulations (which may also cover items not included in the directive such as cannons) as well as EU customs regulation and all other regulations on dual-use goods.
5. The exemption of museums and collectors from the scope of the directive grants them the possibility to acquire/import and possess firearms that do not (fully) conform to the rules on marking. This is particularly important in the case of older historic firearms. Many pre-WWII firearms lack the obligatory marking that is enforced in the manufacture of new firearms. The addition of new marks on such old firearms is considered to be very damaging to a firearm's originality and historical integrity.
6. The Directive makes it mandatory on Member States to remark such firearms on import. Such remarking will damage the historical integrity and the value of the firearm because it loses its authenticity. It is not any different to adding an artist's full name and date of painting below the artist's original signature on an old painting. Retroactive marking on a firearm intended for collection and conservation purposes is unacceptable.
7. As long as museums and collectors remain outside the scope of the Directive they will not be subject to its categorisation mechanism. They are however subject to national law. Some Member States do not allow recognised collectors to acquire or possess Category A firearms but do give them the chance to acquire and possess such firearms if they have been permanently converted to semi-auto.
8. Museums and collectors acquire firearms for long term ownership in excess of fifty years. Collecting firearms is a very long term investment and their collections generally only come back onto the market when the collector passes away. If museums and collectors are included into the Directive they will have to struggle to protect their collections and investment every time Brussels decides to consider changes to the Directive. Remember that a recognised collector who started building a collection before 1991 has already been through three EU-level changes in legislation that could have threatened his possessions. It is not fair that law-abiding EU citizens are subjected to such an ordeal. Continuity is therefore advisable.
9. Being outside the scope of the directive also protects collections from unintended collateral damage when changes are made to the Directive. A good example is the current proposal to limit magazine capacity. Many important pieces have larger magazines so a ban on capacity would lead to incomplete museum pieces.

While it has been suggested that special rules and exceptions could be offered to protect museums and collectors if they were to be included in the scope of the Directive, keeping them exempt as they are at present is by far the better option for reasons stated above. Moreover museums and collectors are complimentary to one another, often exchanging artefacts and information, and this necessitates a combined solution for both in order that they may proceed with their mission.

It is recommended that the Commission seriously considers FESAC's proposal since serious, recognised collectors share a common objective with the Commission: keeping firearms out of reach of persons with a criminal intent. FESAC proposes an effective solution through the adoption of a common definition of museums and collectors in Article 1 and the obligation for recognition under Article 2.2 as a prerequisite to acquiring and keeping category A, B and C firearms.

Article 1

For the purpose of this directive "museums" and "collectors" shall mean legal or natural persons dedicated to the gathering and conservation of arms and associated artefacts for their heritage, historical, cultural, technical,

scientific, aesthetic or educational value and/or for display and/or for their use in academic or practical research or study.

Article 2.2

This Directive shall not apply to..... the acquisition or possession of those firearms and ammunition which are subject to authorisation, registration or declaration in accordance with national law, by museums and collectors that are recognised as such by the Member State in whose territory they are established.

FESAC's proposal is based on legislative models that are working well in a number of Member States. We further propose a few key measures, taken from such models, that guarantee security whilst allowing serious collectors to get on with their legitimate activity.

- a) MS legislation includes a provision for issuing Collector Licences based on the definition of a collector as established in the Directive;
- b) MS recognise properly-constituted collector organisations or independent experts in their territory as partners in the process of vetting and qualifying suitable persons as collectors and in recommending such persons for a Collector Licence;
- c) MS authorities consider applications for Collector Licences provided that such applications are accompanied by a recommendation from a collector organisation or independent expert that are recognised by the MS;
- d) Persons issued with Collector Licences are exempted from the provisions of the Directive and permitted to acquire and keep firearms from all categories of the Directive provided that this activity is carried out in accordance with national law;
- e) Licensed Collectors are subject to obligations concerning record keeping and secure storage of their collections.

FESAC is in a position to advise the EU Institutions and MS governments in achieving an appropriate level of due diligence in granting Collector Licences. The key to positive results lies in accepting FESAC's advice as a responsible partner in the fights against illicit firearms and their trafficking.

Please do not hesitate to contact me should you require any additional clarification.

Best regards,

Stephen A. Petroni

Chairman

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