

PROJECT DIVERT: REPORT

# Trick and treat: Firearms fraud in the European Union



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# Executive Summary

## Project DIVERT

Project DIVERT is an international research project that aims to contribute to the fight against illicit firearm trafficking in Europe. In its 2020–2025 action plan on firearms trafficking, the EU commission has named safeguarding the legal firearms market and the prevention of diversion a key priority, which, requires improving the intelligence picture of illicit and diverted firearms. In this framework, Project DIVERT has analysed various methods by which legal firearms are diverted from their legal status and become illegal. Because most firearms held illicitly in the European Union (EU) were produced legally, generating a better intelligence picture of firearm diversion is critical for the development of effective measures and tools to prevent diversion. Project DIVERT focused on three previously under-researched types of diversion in the EU: (1) the theft of firearms, ammunition and components, (2) firearms fraud, and (3) the non-regularization of firearms.

The Flemish Peace Institute coordinated Project DIVERT and implemented it in partnership with the Stockholm International Peace Research Institute (SIPRI). In addition, researchers from Arquebus Solutions contributed extensively to the first two research phases. Operational partners in this project were the Intelligence Centre Against Terrorism and Organized Crime (CITCO) of the Spanish Ministry of Interior Affairs, the Central Directorate for the Combat of Organised Crime (DJSOC) of the Belgian Federal Police and the EU Agency for Law Enforcement Cooperation (Europol). Project DIVERT was co-funded by the Internal Security Fund – Police of DG Migration and Home Affairs of the European Commission.

In the first phase of the project, we conducted desk research which resulted in 28 country mappings that explored the scope, characteristics and dynamics of firearm diversion in all the EU Member States. In the second phase of the project, we deepened our understanding of fraud and analysed the policy initiatives geared toward preventing it through in-depth analyses of eight EU Member States. These studies included extensive field research. In the third phase, the Flemish Peace Institute's research team conducted a systematic and comparative analysis of the studies carried out in the first and second phases of the project and arranged six expert meetings to discuss the findings and identify good practices. The results of the comparative analysis form the basis of this report. With the assistance of the operational partners, the research partners were able to collaborate extensively with national law-enforcement agencies during three EMPACT Firearms meetings and at other stages during the project.

This report examines firearm diversion through fraud, which is defined as '*the unlawful acquisition or possession of or trade in firearms or ammunition by tricking others and by intentionally concealing, omitting or perverting the truth*'. Two complementary reports focus on firearm diversion through non-regularisation<sup>1</sup> and theft<sup>2</sup>.

## Scope and characteristics of firearms fraud

Fraud as a diversion method is relatively unknown in the EU. No statistical evidence is available to show its exact annual scope. Our analysis suggests that very large amounts of firearms, components and pieces of ammunition have been diverted as part of the 46 cases of firearm fraud identified during our research. Some of these cases have resulted in the diversion of large numbers of firearms, components and substantial amounts of ammunition. Single cases of fraud can thus offer a voluminous supply of firearms on the illicit market. We believe the identified cases of firearms fraud represent only the tip of the iceberg. The so-called 'dark number' of undetected or unreported cases of firearms fraud is likely high. Although in many cases the perpetrators committed fraud in order to acquire or retain firearms for their own purposes, others did so to equip criminals and/or for financial gain. Firearm fraud can thus contribute significantly to the supply of firearms of criminals.

This report identifies a wide variety of *modi operandi* of fraud involving different types of actor with different kinds of motivation, that is, criminal, financial or leisure. Private individuals who wish to acquire or keep firearms but who do not meet the legal requirements have committed fraud to facilitate their (illegal) acquisition for personal purposes. This includes not only forging the documents required to obtain firearms, but also faking declarations of loss or theft (while in reality keeping or selling the firearms illicitly). The perpetrators involved in these types of scheme include both private individuals without criminal intentions as well as other professional criminals or other actors involved in the legal trade or control of firearms driven by pecuniary incentives. In addition, several insiders from the field of legal firearms trade or legal firearms control have forged various documents required to acquire or trade firearms. Others have tampered with arms dealers' or national arms registers to conceal their activities. Finally, fraud can be committed to diverting firearms even at the end of their life cycle, during deactivation or destruction.

## Challenges

A good intelligence picture, collaboration in data-exchange, mechanisms to safeguard the arms flow and sufficient operation capacity are the main challenges to prevent firearm fraud. A good intelligence picture is the starting point for a solid regulatory framework and effective operational action. A better understanding of firearm fraud can provide law-enforcement agencies with a vital tool with which to map the sources of diversion and the actors involved in schemes of diversion.

Our research indicates that national law-enforcement agencies are aware of several *modi operandi* of fraud in their respective countries. Little comprehensive research exists on firearm fraud in general, but several research reports have examined the role of fraud in the context of international arms transfers, with a focus on diversion to

conflict areas. Overall, few Member States have systematic knowledge of the impact and scope of other modes of fraud.

Policy responses to identified issues and cases of firearm fraud have been fragmented. This report identifies several challenges in preventing and combating firearm fraud:

- **Record-keeping and the quality of firearm documentation.** It is crucial to have better firearm data. International data-collection exercises can help in this regard, as can data training or cleaning existing databases. Verifying declarations against physical stockpiles can help ensure correct data-recording. Digitalising national firearms repositories can help to increase the accuracy of data, facilitate the interconnection of databases and detect fraud. National Firearms Focal Points can play a role by improving data-collection methods and the coordination of actors. It is important to raise awareness of the *modi operandi* of fraud and the vulnerabilities in the system of legal control of firearms. To this end, there is a need also for solid databases not only of legally-held firearms, but also of firearms seized in the context of criminal investigations.
- **International information-exchange on firearm issues.** Many tools allow for data-sharing, but they are not always used to their fullest capacity. It is important to feed existing platforms on operational and strategic crime-related information, using existing handbooks and databases listing cases of fraud, and exchanging information systematically on suspicious arms exports. Active participation in the EMPACT Firearms platform can raise awareness about risks and lead to joint operational activities.
- **Safeguarding arms flows.** Rules and norms already exist to regulate the international arms trade, but not all EU Member States comply fully with these rules. In addition, not all of the national licensing authorities, public prosecutors and other relevant actors are familiar with firearm fraud. Therefore it is crucial to build expertise in this issue among these actors and to strengthen cooperation and information-sharing between actors working on different aspects of firearms.
- **Operational capacities to prevent and combat firearm fraud.** Several tools exist at the EU level to combat illicit firearms trafficking and fraud. To maximise the success of their operations, it is important that Member States solicit the operational support of Europol on these issues when needed. Although many EU Member States have established National Firearm Focal Points to coordinate actors, not all these Focal Points are equipped with the right tools or have access to the right databases. It is essential to establish effective Focal Points in all the EU Member States to ensure smooth cooperation between all the actors against firearm fraud. To deal with the complexity of fraud, it is also important to develop a structured policy response and to adopt a more proactive approach towards fraud at the EU level.

# 1

## Introduction

This report studies the diversion of firearms, their components and ammunition in the EU using fraud. It also reviews the legal frameworks and policies developed to combat this security phenomenon. We define ‘firearm fraud’ as

*the unlawful acquisition or possession of or trade in firearms or ammunition by tricking others, and by intentionally concealing, omitting or perverting the truth.*

This describes a situation in which firearms are possessed or transferred legally on paper, but they are diverted from their legal status to the illicit sphere. It often arises when false information is provided or when documents are forged so that firearms can be obtained, kept or transferred unlawfully.

Several high-profile cases of diversion through fraud have gained attention in the international media in the past few decades. For example, tens of thousands of firearms were diverted when employees of the German manufacturers Heckler & Koch and SIG-Sauer used forged export documentation respectively during 2006–2009 and 2009–2011. These ca. 42,000 firearms (including automatic rifles, sub-machine guns and pistols) ended up in the hands of criminals or rogue security forces, which highlights the potential of firearm fraud to lead to firearms trafficking and gun violence.

Despite the attention of the media, no comprehensive research on the phenomenon of firearm fraud in all its facets exists in Europe. There is a particularly high risk that many firearms are diverted through fraud just because of low intelligence of the characteristics and scope of the phenomenon. This situation underscores the urgent need to build sound knowledge and a good understanding of firearm fraud.

Analysing firearm fraud is not an easy endeavour, since there is very little quantitative or qualitative information on the topic. At the time of writing, for instance, no EU Member State had collected systematic data on firearm fraud. Therefore, it was not

possible to grasp the nature of fraud through a purely quantitative lens. To remedy this issue, we built an explorative database that covers incidents of firearm fraud in many EU Member States. Owing to the covert nature of firearm fraud and the lack of systematic knowledge on the phenomenon, we also believe that a considerable, but unknown, number of firearms are diverted through fraud without being detected. In other words, we estimate the ‘dark number’ of firearms and ammunition diverted through fraud to be immense indeed. Another reason for this significant number is that firearms have an extended life cycle that often spans several decades. At any point in this life cycle, from manufacture to destruction, there are opportunities for all kinds of actor to commit fraud. These include actors involved in the legal trade in firearms and state actors, but also private individuals, some of them with connections to criminal groups.

This report on firearms fraud in the EU starts with an overview of the legislative framework that regulates arms possession and trade. We focus on the measures that play a role in preventing and combating firearm fraud (Chapter 2). Equipped with a better understanding of the legal framework, we delve into the scope of firearm fraud in the EU by reviewing the available quantitative data on individual cases of firearm fraud. We also consider how firearms diverted through fraud have circulated in illicit firearms trafficking networks and ended up at crime scenes. In the third chapter, we examine the particularities of different modes of firearm fraud identified, based on our empirical database of cases (Chapter 3). In this we identified five types of firearm fraud: (1) tampering with authorisations to acquire firearms, (2) tampering with authorisations to transfer and/or export firearms, (3) tampering with arms registers, (4) false declaration of theft or loss, and (5) forged deactivation or destruction of firearms. Challenges and policies to prevent and combat firearm fraud are discussed in Chapter 4, which focus predominantly on data-collection and -exchange, on compliance and safeguard mechanisms in the context of arms transfers and exports, and on the capacities of actors tasked with combating firearm fraud. Finally, Chapter 5 concludes the report by summarising our findings and discussing the remaining challenges to combating and preventing firearm fraud.

## Box 1 Research design

The findings of this report are based on three distinct research phases of Project DIVERT.

In the **first phase**, we conducted 28 country mappings through desk research to explore the scope, characteristics and dynamics of firearm diversion in the EU.<sup>1</sup>

In the **second phase**, we produced eight in-depth country studies analysing diversion and national policy initiatives to prevent and combat diversion. The eight countries ensure a representative geographical spread across the EU. The methodological approach combined a mixture of quantitative and qualitative methods and sources, including a literature review, an analysis of national statistics and media reports, and interviews with national experts.

Country report	Research team
<b>Belgium</b>	Flemish Peace Institute
<b>Croatia</b>	Flemish Peace Institute
<b>Estonia</b>	Arquebus Solutions
<b>Germany</b>	Flemish Peace Institute
<b>Latvia</b>	Arquebus Solutions
<b>Lithuania</b>	Arquebus Solutions
<b>Spain</b>	Flemish Peace Institute
<b>Sweden</b>	Stockholm International Peace Research Institute (SIPRI)

In the **third phase**, we conducted a systematic and comparative analysis of the country studies that were carried out in the first and second phases of the project. This third research phase aimed to integrate the broad findings from 28 country mappings with the specific insights of the eight country studies and to combine them into a final report. Lacking extensive quantitative data, we created a database of 46 cases of fraud that proved invaluable to the analysis (see Annex 2 of this report).

Throughout the project, the research team disseminated its findings on the characteristics, scope and policy responses on theft in the EU to a community of practitioners. This contributed to sharing information among the participating experts and to receiving their critical feedback. This included three EMPACT meetings and six online workshops. This approach maximised a comprehensive integration of the perspectives of the EU and the Member States on the realities of firearm diversion and on best practices to combat them.

<sup>1</sup> At the starting date of the project, the United Kingdom was still an EU Member State and was therefore included in the phase of the country mappings.

# 2



## Regulatory framework to prevent firearms fraud

Preventing the diversion of legal weapons into the illicit realm is one crucial objective of the EU legal framework regulating the acquisition of and (international) trade in firearms and ammunition. This framework governs all the major steps in the life cycle of a firearm: from the manufacture, acquisition and trade to the deactivation and destruction.

The acquisition and possession of and trade in **civilian firearms and ammunition within the EU** is regulated by Directive 91/477/CEE (hereafter ‘EU firearms directive’). This includes the trade in firearms and ammunition between private individuals (‘natural persons’) and private companies (‘legal persons’). In addition, the EU firearms directive lays out common guidelines for the deactivation and destruction of firearms and ammunition (EU/2015/2403). The EU firearms directive regulates the trade in firearms both within EU Member States and between EU Member States (hereafter ‘transfers’).

Different rules apply to **exports and imports of firearms to and from outside the EU** (hereafter ‘exports’ and ‘imports’). Exports and imports of firearms intended for civilian use by natural or legal actors are regulated by 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 Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition (hereafter Regulation 258/2012).

Regarding the **international trade in firearms and ammunition which are intended for military use**, specific rules apply. The trade in so-called defence-related goods within the EU is regulated by Directive 2009/43/EC. Other rules apply to the trade in defence-related products, including certain firearms, outside the EU (Common Position

2008/944/CFSP). These defence-related products are listed in the EU Common Military List, which includes certain types of firearm and ammunition.<sup>11</sup>

**Table 1 : Summary of the EU legislative framework**

General scope	Regulation	Specific scope	Legal status
<b>Civilian firearms, intra-EU trade</b>	Directive 91/477/CEE	Acquisition, possession of, and trade in <i>civilian</i> firearms and ammunition <i>within</i> EU Natural persons, private companies Transfers between EU Member States	Legally binding Must be incorporated into national law
<b>Civilian firearms, extra-EU trade</b>	Regulation 258/2012	Trade in <i>civilian</i> firearms Natural persons or private companies	Legally binding Directly enforceable as law in all EU Member States
<b>Defence products, intra-EU trade</b>	Directive 2009/43/EC	Trade in <i>defence material</i> , including certain firearms, ammunition and essential components State actors, private companies or natural persons <i>Transfers</i> between EU Member States	Legally binding Must be incorporated into national law
<b>Defence products, extra-EU trade</b>	Common Position 2008/944/CFSP	Trade in <i>defence material</i> , including certain firearms, ammunition and essential components State actors, private companies <i>Exports and imports</i> with Third Countries	Legally binding Not required to be incorporated into national law

In all of these regulatory frameworks various measures aimed at preventing fraudulent activities to acquire, possess of trade firearms and ammunition are included. As table 1 indicates, all four regulatory frameworks are legally binding for EU Member States. Differences in the types of legislation bring about different obligations for Member States: while a regulation is directly enforceable in national law, directives need to be incorporated into national law. This need for transposition often results in differences between Member States as to when and to what extent these directives are effectively incorporated and implemented in national law. A Common Position does not even need to be incorporated into national law; Member States however are in principle legally bound to adhere to the principles and obligations set out in a Common Position.

<sup>1</sup> ML1: Smooth-bore weapons with a calibre of less than 20 mm, other arms and automatic weapons with a calibre of 12,7 mm (calibre 0,50 inches) or less and accessories, as follows, and specially designed components (...)  
ML2: Smooth-bore weapons with a calibre of 20 mm or more, other weapons or armament with a calibre greater than 12,7 mm (calibre 0,50 inches), projectors and accessories, as follows, specially designed components (...)  
ML3: Ammunition and fuse setting devices, as follows, and specially designed (...)

Theoretically, there is no overlap between these four pieces of legislation. However, the categories of firearm defined in the EU firearms directive and the EU Common Military List overlap considerably but not wholly. A 2018 study by SIPRI and Ernst & Young of the implementation of Regulation 258/2012 found that:

*an area of ambiguity results from a comparison between the two lists as regards ML1, which contains firearms (mainly handguns and semi-automatic weapons) that fall also under items listed in Annex I of Regulation 258 (along with ammunition listed in ML3).<sup>2</sup>*

As a consequence, a grey area exists in which national competent authorities need to decide on which export control regime will be applied to a specific export request. These ambiguities can create overlaps between the four legislative instruments, since similar firearms can be classified as a defence product in one Member State and as a civilian firearm in another one.<sup>3</sup>

In this chapter, we discuss which provisions in these EU regulatory frameworks are relevant to preventing and combating firearm and ammunition fraud. We also discuss the way these provisions are implemented in the different EU Member States, what the loopholes in the implementation are, and where Member States go beyond EU regulation to fight against firearm fraud. For this second aim of this chapter, we will rely first on insights gathered throughout our own analysis of EU Member States' legal frameworks. Second, we will also make use of several studies conducted in recent years on the transposition and implementation of these provisions in national regulations.<sup>4</sup>

## 2.1 Marking and record-keeping of firearms and ammunition

Fraud is a specific diversion method which consists of the creation of false realities in which authorities think that they are able to track a firearm, whereas in fact their knowledge is based on fraudulent and inaccurate information. As stated in the EU firearms directive, **good traceability of firearms, their essential components and ammunition implies that the authorities are aware of their exact location and owner at any stage of its life cycle, from manufacture to destruction.**<sup>5</sup> Therefore, a good tracing system makes it easier for law-enforcement officials to resolve cases of diversion<sup>1</sup>. Equally, it may deter criminals from diverting firearms, since it increases the likelihood of being arrested.

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<sup>1</sup> Firearm tracing is defined by the International Tracing Instrument as 'the systematic tracking of illicit small arms and light weapons found or seized on the territory of a State from the point of manufacture or the point of importation through the lines of supply to the point at which they became illicit'. See: United Nations (2005). 'International instrument to enable states to identify and trace, in a timely and reliable manner, illicit small arms and light weapons', A/CONF.192/15 § (2005). [https://www.un.org/events/smallarms2006/pdf/international\\_instrument.pdf](https://www.un.org/events/smallarms2006/pdf/international_instrument.pdf), sec 2, par 5

Ensuring good traceability relies on the marking of firearms, ammunition and essential components and keeping accurate records of all transactions immediately after manufacture in or importation into the EU. This section briefly elaborates on the EU legislation on marking and record-keeping and its implementation into national legislation.

### 2.1.1 Marking

Directive 91/477/CEE and the UN Firearms Protocol (article 7)<sup>6</sup> stipulates that **all firearms manufactured or imported in the EU territory must be marked and registered accordingly**. If imported firearms do not bear a marking or if the marking does not correspond to EU standards, firearms must be marked before being placed on the EU market, for example by a national Proof House.

The marking on firearms and essential components must be ‘clear, permanent and unique’<sup>7</sup> and include several elements of information:

- Name of the manufacturer or brand
- Country or place of manufacture
- Serial number
- Year of manufacture (if not part of the serial number)
- Model (if feasible).

In cases where essential components are too small to bear the information above, they must at a minimum indicate either a serial number or an alphanumeric or a digital code.<sup>8</sup>

**In practice, Member States’ national laws diverge from the standards stipulated by EU regulation.** For example, an analysis by Ernst & Young and SIPRI of data from 2018 indicated that only nine Member States required the name of the manufacturer to be marked on firearms and essential components. Only five Member States imposed the marking of the country of manufacture. Ten Member States required the marking of the serial number. Only four Member States required the year of manufacture to be marked.<sup>9</sup>

An **implementing Directive** to the EU firearms directive was adopted by the EU Commission in January 2019 to establish new technical specifications for marking firearms and their essential components (excluding ammunition). As a result, many Member States needed to update their national marking standards. The implementation deadline of this directive was set for 17 January 2020 (article 3).<sup>10</sup> A recent search of the EurLex database indicated that this directive had been transposed (ie incorporated) in only 17 EU Member States at the time of writing,<sup>11</sup> but no data were available on the

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<sup>1</sup> Austria, Greece, Germany, Hungary, United Kingdom, Finland, Belgium, Czechia, Spain, France, Malta, Portugal, Lithuania, Slovakia, Netherlands, Latvia, Estonia.

effective implementation of the directive.<sup>1</sup> At the end of 2020, the EU had infringement procedures running against 18 member states and the UK,<sup>12</sup> and – at the time of finalizing this writing (February 2022), the European Commission was still inquiring about the implementation of the directive with investigating three member states in this respect (Bulgaria, Luxembourg and Sweden).<sup>13</sup>

**Marking ammunition** is a more difficult matter, given the small size of the individual cartridges. Generally, marks are applied to both the individual cartridges and the packaging of ammunition. Most marks are applied on the cartridges with a headstamp, although different rules apply to civilian and military ammunition. The EU firearms directive does not mention the requirement of marking each piece of ammunition, but it does refer to marking each batch of ammunition.

Batches of ammunition must bear the following information:

- Name of the manufacturer
- Identification number of the batch
- Calibre
- Type of ammunition.<sup>14</sup>

Ten EU Member States are members of the Permanent International Convention for Firearms Testing (*Commission internationale permanente pour l'épreuve des armes à feu portatives*; CIP for short), an international organisation which sets standards for firearms proof-testing.<sup>11</sup> All members of the CIP undertake to recognise each other's proof marks and to implement CIP decisions in legal form – for example, by establishing a national Proof House and ensuring that all ammunition manufactured or imported is measured and marked accordingly by the Proof House. The boxes of cartridges must be stamped with a CIP-approved number to guarantee their quality and traceability.<sup>15</sup> In the field of defence, the rules for marking ammunition for military use have been formalised in NATO standards in several standardisation agreements (STANAG).<sup>16</sup>

### 2.1.2 Record-keeping

After being marked, firearms, essential components and ammunition must be officially registered in the Member State of import or manufacture. Each of their subsequent movements must be accurately recorded in national registers as a way of keeping track of all firearms circulating on EU territory. EU legislation obliges Member States to develop (1) national registers on civilian firearms possession, (2) registers for arms dealers and (3) registers on exports and imports of firearms and ammunition. In this section, we analyse the specific obligations set out in the various EU legislative instruments and indicate to what extent these obligations are incorporated and implemented in national laws.

<sup>1</sup> 'Transposition' refers to the means by which a Member State incorporates an EU law into national law. 'Implementation' refers to the domestication of EU laws into national laws.

<sup>11</sup> Including Austria, Belgium, Czechia, Finland, France, Germany, Hungary, Italy, Slovakia and Spain.

## National registers on civilian firearms possession

Accurate and detailed information on legal firearms and broad and easy access to that information by all competent authorities (eg through electronic registers) is crucial to a good tracing system that can prevent firearm diversion and help authorities to resolve cases of diversion. Likewise, such system makes it more difficult for criminals to falsify information concerning legal guns.

For civilian firearms, **rules on record-keeping are set out in the EU firearms directive**. Data on civilian firearms possession, acquisition, use and trade within the EU must be accessible to licensing authorities and Customs authorities for at least 10 years after the destruction of firearms. In cases where some firearms are used to commit crimes, this duration can be extended to 30 years for the purposes of prosecution, investigation or penalisation.<sup>17</sup> The information kept in national registers must include:

- a description of the firearms (type, make, model, calibre)
- a serial number
- the identity of the owners or sellers
- and any modifications to the firearm (conversion, deactivation or destruction).<sup>18</sup>

In addition, it is mandatory for Member States to keep electronic national registers.<sup>19</sup> Keeping electronic records has multiple benefits for preventing diversion. For example, it minimises the circulation of the relevant paper documents that can be forged. It also allows wider access to data on legal firearms across competent public agencies. Finally, it may allow for databases to be interoperable, making it possible to check legal firearms registers against other databases, such as those on seized assets, or criminal data. This topic is discussed in depth in Chapter 4. No procedures for keeping records of ammunition are set out in the EU firearms directive.

We examined the implementation of these provisions in the EU firearms directive for eight of EU Member States that we studied in depth in the second phase of Project DIVERT. In the case of three Member States (Belgium, Croatia and Germany), we received extensive information on record-keeping requirements for civilian actors and compared them to the EU firearms directive. These three Member States comply with most (but not all) of the rules of record-keeping for civilian actors: they keep data on the types of firearm, their calibres and serial numbers; on the owner or seller, and this for more than 10 years; they do not always comply with other obligations, however. For example, it is mandatory to keep data on the model of firearms in Belgium and Croatia, but not in Germany. Croatia keeps data on any modification made to firearms, but not Belgium or Germany. None of the three Member States requires data to be recorded on the make of firearms. Finally, not all EU Member States have set up electronic systems for their national arms registers: Belgium and Germany have a fully electronic register, for example, but this is not the case in Croatia at the time of writing this report.<sup>20</sup>

## Registers for firearms dealers

In addition to a national register on firearm possession, the EU firearms directive prescribes that firearms dealers and brokers keep **up to date, electronic records** of their

transactions.<sup>21</sup> Adequately keeping such registers not only improves traceability but also makes it more difficult to tamper with such records.

According to the EU firearms directive, each firearm and essential component owned by dealers and brokers must be recorded together with a description of their type, make, model, calibre, serial number and the names and addresses of suppliers and buyers.<sup>22</sup> Since 2017, arms dealers' and brokers' registers also have to be connected electronically to national arms registers.<sup>23</sup> These data must be kept for at least 30 years, and arms dealers and brokers must deliver their registers to the authorities after they cease their activities.<sup>24</sup>

During the research, we examined the implementation of these provisions in the EU firearms directive for eight of EU Member States that we studied in depth in the second phase of Project DIVERT. For three Member States (Croatia, Spain and Sweden), we received extensive information on record-keeping requirements for arms dealers and compared them to the EU firearms directive. At the time of writing this report the three analysed countries did not comply fully with the required obligations. All three Member States comply with the obligation to keep data on the types of firearm and the identity of the owners or sellers.<sup>1</sup> Spain and Sweden, unlike Croatia, comply with many other requirements such as keeping data on the make, model, calibre and serial number of all firearms. Only Croatia requires firearm dealers to maintain electronic firearm repositories, a process which is being developed in Spain but is not yet complete. In Sweden, it is possible, but not mandatory, to keep electronic data for firearms dealers. Whereas Croatia and Spain respect the requirement to store data on legal firearms at least 20 years, in Sweden these data must be stored for only 10 years. Finally, none of these Member States requires data on modified firearms to be retained.<sup>25</sup> Given the recent issues encountered in the EU with large-scale cases of diversion of deactivated, acoustic and easy-to-convert weapons, this is an important shortcoming.

### Registers for exports and imports

Falsefied export or import documentation can result in the diversion of large quantities of firearms (also see Chapter 4). Good recording systems can contribute towards mitigating the risks of diversion and can provide relevant information for investigating and prosecuting cases of fraud.

Article 12 of **Regulation 258/2012** sets out several requirements for record-keeping of the export, import and transit of civilian firearms. Member States must record:

- the place, dates of issue and expiry of the export authorisation
- countries of export, import and transit (if applicable)
- the consignee
- the final recipient (if known) and

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<sup>1</sup> In Croatia, at manufacture or importation, it is obligatory to record data on the markings and types of model of firearms, together with the identity of the buyer and the seller (among other particulars). However, it is unclear whether such information is mandatory for arms dealers conducting sales within the country.

- a description and indication of the quantity of items, including markings.

These records must be kept for 20 years.<sup>26</sup> The results of a 2018 study of national legislation by Ernst & Young and SIPRI indicated that **almost all Member States comply with these requirements.**<sup>1 27</sup>

Regulation 258/2012 does not specify certain key aspects of data-recording on imports and exports. As demonstrated in the 2018 Ernst & Young and SIPRI study, this leads to **important differences between Member States in some crucial aspects of data-recording.** First, the authorities in charge of national record-keeping differ between countries: multiple actors, at various levels, can be in charge of the management of firearms repositories; in addition, recording methods differ between Member States (some maintain a single repository for firearm possession, transfer, import and export, others keep separate repositories, separate repositories not always being interconnected). Not all national competent authorities have access to firearms repositories. Finally, many Member States do not keep digital records of firearms exports and imports as this is not made mandatory.<sup>28</sup>

Regarding the exports of defence material, the **2008 EU Common Position** does not make it mandatory for each Member State to keep specific data.<sup>29</sup> Consequently, each Member State may apply its own standards for keeping records of exports in defence material.

**Directive 2009/43** does specify explicit minimum details of the information that needs to be reported by licence-holders and registered by the competent authorities. License-holders must submit a detailed overview of the effective use of the licences, including:

- a description of the products
- their number/volume and value
- the dates of transfer or export
- the name and address of the supplier and consignee
- the end use and end user (if known)
- and proof that the consignee has been informed of the export restrictions associated with the licence.

License-holders must retain this information at least three years.<sup>30</sup> Although these records need to be kept only for intra-EU transfers, a 2017 in-depth analysis of eight EU Member States indicated that almost all of them applied the same record-keeping principles for both intra-EU transfers and extra-EU exports of defence-related goods, both firearms and ammunition.<sup>31</sup> There were only considerable differences in the retention period envisaged for licence-users. This archiving requirement fluctuated between a minimum of three years (as in the UK) to seven years (as in Flanders) and even ten years (as in France and Wallonia).<sup>32</sup>

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<sup>1</sup> There are two exceptions: according to the study, Luxembourg does require data to be kept on the country of import of firearms; and Ireland does not make it compulsory to keep data on transit countries. Most Member States abide by the mandatory 20-year time span for keeping records on civilian arms exports, imports and transit.

## 2.2 Firearms authorisations

Once firearms are accurately marked and registered, they can be acquired by arms dealers and sold to private individuals, to other arms dealers or to state actors. These sales may be conducted in a Member State, between EU Member States (transfers) or to states outside the EU (exports). To prevent diversion, a stringent system of authorisation needs to be in place to ensure safe acquisition, sales and possession of firearms. In addition, the authorisation system needs to be resilient to attempts at fraud. Significant differences in the requirements to obtain firearms between Member States are to be avoided since such differences may create opportunities for illicit trafficking within the EU. As will be shown in later chapters, trafficking is often facilitated by fraud. In the next sections we discuss the authorisation systems for arms dealers and brokers (2.2.1) and for private individuals (2.2.2).

### 2.2.1 Authorisations for firearms dealers and brokers

The activities of legal firearms dealers involve the manufacture, trade, exchange, repair, modification or conversion of firearms or ammunition. Brokers are involved in negotiating or arranging transactions involving firearms or ammunition, but generally do not acquire, sell or possess the items involved themselves. These transactions may be conducted at a national level, between EU Member States, or with third countries.<sup>33</sup>

**The EU firearms directive imposes on each Member State the obligation to establish a system that regulates the activities of arms dealers and brokers, where their integrity is verified.** Dealers and brokers must be registered, licensed or authorised and their private and professional integrity must be checked.<sup>34</sup> Brokers must be certified by the Member State of their residency. Their criminal records must be verified to prevent those who have been convicted of certain offences in the past (including for misconduct with firearms) becoming arms brokers.<sup>35</sup>

The registration and certification of the arms dealers' private and professional integrity are implemented in most of the EU Member States that we analysed in depth (Belgium, Croatia, Estonia, Lithuania, Spain, Sweden<sup>1</sup>). Yet, **some differences continue to exist between the national authorisation procedures for arms dealers and brokers across the EU.**

In Lithuania, for example, dealers must undergo a two-step licensing procedure. First, all firearms dealers must obtain a time-unlimited licence from the police department. Second, they must obtain a five-year authorisation to operate a dealership in a specific location. In line with EU stipulations, the local police must verify the conditions of safe storage in that location. In addition, the criminal police conduct a background check on the dealers, their employees and all stakeholders owning more than one-third of the shares in the dealership. Both police units formulate a recommendation based on their

<sup>1</sup> The country reports of Germany and Latvia did not provide such information.

investigations, which is passed on to the licensing unit. This is this unit which decides to grant or deny the authorisation. The licensing system is similar for brokers.<sup>36</sup>

In Estonia, too, legal firearms dealers must first be registered as such before applying for authorisation to trade in firearms. A variety of conditions must be met before a firearms dealer can be authorised. These include a background check by the police to verify the criminal records and administrative violations of applicants and all employees working in the dealership. In addition, the police check that at least two persons in charge of handling firearms possess a valid firearms licence. An arms dealer licence is valid for five years, while authorisations for each export and import transaction are valid for one year. Broker's licences last for no longer than one year, but it is possible to extend the validity based on repeated genuine business usage.<sup>37</sup>

Similarly to Estonia and Lithuania, firearms dealers and brokers in *Belgium* must be authorised by the state before they may commence their activities; the authorities must also have verified that the applicants have not been convicted for certain criminal offences.<sup>38</sup> In addition, applicants in Belgium must also prove their knowledge of the legislation and of firearms by passing a test.<sup>39</sup> The authorisation is granted to a particular person and place, which means that their activities are bound to be conducted at one place only.<sup>40</sup>

### 2.2.2 Firearms authorisations for private individuals

**The rules for private individuals to acquire or possess depends on the type of firearm.** The EU firearm directive provides that the firearms considered most dangerous are classified in category A.<sup>I</sup> These firearms are generally prohibited for civilian users, but some exceptions can apply. The EU directive, for example, allows Member States to make exceptions, under certain conditions, to allow (some) category A firearms to be possessed by collectors, target shooters, arms dealers, museums or private companies in charge of the security of critical buildings or convoys.<sup>41</sup> The acquisition of category B firearms<sup>II</sup> is allowed if the person has received a specific authorisation (licence) from a competent authority. The licence may be valid for multiple years if the licence-holder continues to fulfil the conditions of ownership and informs the authorities about all new acquisitions and sales of firearms covered by this licence.<sup>42</sup> Category C firearms<sup>III</sup> must only be declared to the authorities.<sup>43</sup>

As a result of the 2017 revision of the directive certain firearms became more difficult to acquire legally (eg automatic firearms transformed into semi-automatic). In addition, salute and acoustic weapons became better regulated. Acoustic weapons are active weapons that were transformed to shoot blank for use in for example theatre or

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I This category includes: firearms disguised as other objects, expanding projectiles, automatic firearms or automatic firearms which have been converted into semi-automatic firearms, etc.

II This category includes: repeating short firearms, certain single-shot short firearms, certain semi-automatic long firearms and semi-automatic short firearms, etc.

III This category includes: long firearms with single-shot rifle or smooth-bore barrels (placed on the market after 14 September 2018), certain single-shot short firearms with rimfire percussion, deactivated firearms, etc.

cinema. Such weapons can sometimes easily be transformed into live-firing firearms. With the latest amendment to the directive, acoustic weapons must now be classified in the same category as before their transformation. Deactivated firearms, which were previously freely available, became subject to declaration.<sup>44</sup> Nevertheless, **various EU Member States have not yet fully transposed (ie incorporated) the 2017 amendments of the EU firearms directive into their domestic legislation.** As at July 2019, more than one year after the reporting deadline, only 10 of (at the time) the 28 Member States had communicated their incorporation measures to the EU Commission, whereas 8 Member States had only partially communicated their progress of implementing the amendments. Another 12 Member States had not communicated any progress on transposing the 2017 changes into their national law.<sup>45</sup> At the time of editing this part of the report (December 2021), almost all of the Member States (the exceptions being Luxembourg) had communicated their progress on incorporating the amendments.<sup>46</sup> This does not mean, however, that all the national firearms regulations of Member States are in line with the EU firearms directive. Our analysis below demonstrates that some Member States have failed to integrate certain requirements of the directive into their national laws. Czechia and Slovakia, in particular, had lagged behind significantly. This delay in implementing the EU firearms directive creates a situation in which the firearm classification system is not harmonised among Member States. This creates **significant opportunities for firearm diversion and illicit firearms trafficking.** Indeed, criminals can exploit differences in national legislation by purchasing firearms legally in certain Member States and then transferring them (illegally) to other Member States.

The EU firearms directive not only regulates the classification of firearms; it also specifies the **conditions for the legal acquisition of firearms subject to authorisation.** For example, it provides that the individuals who wish to acquire, possess or use firearms subject to authorisation (category B) are ‘not likely to be a danger to themselves or others, to public order or to public safety’.<sup>47</sup> To prevent the misuse of firearms by legal owners, recent changes to the directive have introduced the obligation to conduct a medical examination before handing out firearms authorisation for private possession. The prerequisites for such medical examination are specified in each Member State.<sup>48</sup> The directive also obligates Member States to **verify information and documentation** provided to obtain authorisation or to declare a firearm. This is an important provision to prevent individuals accessing legal firearms based on fake documentation and/or identities. For example, they must verify the place of residence of buyers based on their passport or their identity card.<sup>49</sup> In case the firearms are purchased remotely, the identity and, where required, the authorisation of the purchaser must first be checked by the dealer, broker or state authority.<sup>50</sup> Other pieces of information may be verified, but these are a national competency.

For this report we received detailed information on compliance with these rules in the case of six Member States (Lithuania, Latvia, Estonia, Belgium, Croatia and Sweden). They indicate that these are generally in line with the EU firearms directive’s requirement to verify the integrity, reliability and physical aptitude of firearms purchasers, although some differences do persist. All six Member States require having a good cause or reason to own a firearm, being at least 18 years of age and respecting

safe storage rules. Lithuania, Latvia, Estonia, Belgium and Croatia require firearm-owners to prove that they are not a danger to society and that they are medically and psychologically fit to operate guns.<sup>51</sup> At the time of writing this report, Sweden is an exception here since neither the Weapons Act or the Weapons Ordinance makes provision for any systematic medical examination or for a criminal background check before granting authorisations to acquire, possess or use firearms.<sup>52</sup> When the Swedish police suspect that an applicant for a licence, or a firearm-owner, is involved in criminal activities, they may examine their criminal records, but this type of control is not systematically conducted on all users. As for medical data, there is no systematic medical examination of firearm-owners. When a doctor examines a person who is also a firearm-owner and determines that this person is unfit to possess a firearm, the doctor must report this immediately to the police.<sup>53</sup>

**Some Member States apply stricter requirements than those provided for by the directive.** For example, whereas the minimum age required by the EU firearms directive is 18 years, the minimum age required in Croatia is 21 years old.<sup>54</sup> Interestingly, Croatia makes provision for increased security standards to secure the medical examination to ensure that no false information is provided pertaining to the health of applicants: it is conducted by two doctors instead of one, namely, a family doctor and one specifically licensed for this purpose.<sup>55</sup> Whereas in certain Member States, a mere certificate can prove that the applicants have a good reason to acquire firearms, in Lithuania, Latvia and Belgium additional tests are mandatory.<sup>56</sup>

## 2.3 Firearms transfers, exports and imports

A system of controls of arms exports, imports and transfers is crucial to preventing the diversion of shipments of firearms and ammunition into unauthorised hands. A well-functioning licensing system to authorise such transactions implies that Member States can monitor all transactions at all times. This is a critical precondition for tracing. Such a system also prevents criminals from participating in the legal trade of firearms and can play a crucial role in making sure that only those persons or arms dealers who are authorised to possess and acquire firearms legally can effectively import or export firearms or ammunition. Finally, a well-functioning licensing system must be resilient against attempted fraud such as using fake information or forging documents to divert firearms.

During the past few decades, the EU has introduced several pieces of legislation to harmonise such control mechanisms and to increase the convergence of national policies. The following section describes the central legal provisions in EU regulation to prevent or address fraud during the transfer, import and export of firearms, their components and ammunition. It also discusses how these provisions are implemented by different Member States and, where relevant, how some Member States have gone beyond these provisions. In the first instance, we consider the provisions regarding the intra-EU transfers of firearms and ammunition and their implementation at a national

level. Second, we analyse the existing provisions regarding extra-EU exports and imports of firearms and ammunition.

### 2.3.1 Firearms transfers within the EU

The transfer of firearms within the EU is regulated differently, depending on the characteristics and use of the firearms. Transfers of firearms intended for civilian use are regulated by the EU firearms directive whereas transfers of firearms intended for military use are regulated by Directive 2009/43/EC.

**The EU firearms directive contains several measures to prevent fraudulent transfers between two residents of different EU Member States.** These measures apply to both natural and legal persons. To begin with, transfers must be authorised by state authorities in accordance with a procedure laid out in article 11 of the directive. The Member State of origin must examine the transfer of firearms based on information provided about the seller, the buyer, the nature and number of firearms involved, and details of the effective shipment. In the case where a shipment is authorised, a licence is issued that must accompany the shipment at all times.<sup>57</sup> A legal firearm-owner may transfer firearms only to someone who is authorised to purchase such a firearm in their Member State.<sup>58</sup> In addition, before the date of the transfer, all transfers must be communicated electronically to all Member States involved, with detailed information on the origin, the types of firearm involved and, if relevant, transit countries.<sup>59</sup> Finally, the authorities must verify all documentation provided by the applicants and may conduct a physical inspection of the premises of the firearms dealers involved.<sup>60</sup>

There are some exceptions to this standard procedure. There is a simplified procedure for arms dealers which allows them to conduct transactions without prior authorisation, because they have been granted authorisation that is valid for three years maximum.<sup>61</sup> Another simplified procedure exists for Member States who enter into a bilateral arrangement involving the mutual recognition of national documents. In this case, transfer arrangements may be more flexible.<sup>62</sup> Exceptions also exist for temporary journeys outside of the Member State of residency. On the basis of such a temporary permit, it is possible under specific conditions, to transport firearms within the EU territory if they are in possession of a European Firearms Pass (EFP) and can substantiate the reasons for their journey (such as an invitation to participate in hunting, target shooting or historical activities).<sup>63</sup>

**The rules on transfers of firearms intended for civilian use are generally the same among EU Member States, although some differences exist.** For example, concerning temporary transfers, rules on the European Firearm Pass (EFP) are generally the same: Member States generally require similar documentation to obtain an EFP (a valid authorisation to own firearms), and EFPs are often valid for five years.<sup>64</sup> Differences exist concerning the maximum number of firearms that can be entered on an EFP (10 in France; 12 in Italy, Luxemburg and Sweden).<sup>65</sup> In addition, certain Member States go beyond the requirements of the EU firearms directive and ask for additional information to obtain an EFP, such as an additional prior authorisation (Portugal) or an

authorisation from the border police (Romania).<sup>66</sup> Finally, the delay in the national transposition of the EU firearms directive mentioned above has contributed to national differences in the classification system of firearms. In theory, the difference in classifications must be indicated on the EFP.<sup>67</sup> This provision exists to prevent situations in which an individual who holds a firearm classified in a lower category (eg category C) in the Member State of residency uses an EFP to transfer firearms to another Member State which classifies the same firearm in a higher category (eg category B). This would mean that the firearm would be illicitly transported in the second country. However, it is not always clear whether national authorities have the means to verify in a systematic manner that such differences are indicated on the EFP. It is also not always clear whether the authorities can always monitor firearms transported temporarily using an EFP. Indeed, the Spanish authorities have drawn attention to the fact that some EU firearm-owners have used EFPs to transfer firearms expressly to Spain.<sup>68</sup>

Transfers of firearms and ammunition intended for military use are regulated by Directive 2009/43/EC, which covers the rules for natural and legal persons and state actors. **Transfers of defence-purpose firearms must be authorised through a licensing system prior to their shipment.** According to the directive, Member States must assess the sensitivity of transfers based on certain mandatory criteria, including the nature of the goods and their end use. These criteria determine the conditions and possible limitations placed on transfer licences.<sup>69</sup> In a case where a Member State of origin detects a risk that the recipient may not comply with the conditions attached to a licence, it can request an investigation or suspend the licence.<sup>70</sup>

EU Member States can also decide to exempt specific trade flows from licensing obligations. This generally applies to trade flows that, because of their end use, are not considered to be problematic. Directive 2009/43/EC explicitly states that the transfer of defence-related products between EU Member States is permitted with prior approval only; but article 4 provides for the possibility that Member States may exempt certain transactions from the requirement to apply for a licence in a number of specific cases.<sup>1</sup> However, few Member States have incorporated these exemptions into their national law. Moreover, these exemptions do not function as systematic exemptions, but can be decided on case-by-case by the competent authorities.<sup>71</sup>

Directive 2009/43/EU provides for the possibility that EU Member States may implement different kinds of licence for the transfer of defence-related goods.

- A general transfer licence is published by the competent authorities and grants suppliers that fulfil the terms and conditions attached to the general transfer licence direct authorisation to transfer defence-related products to a category or categories of recipient located in another Member State.<sup>72</sup> These general licences

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<sup>1</sup> The cases provided for in the directive are: (1) the supplier or recipient is a government body or part of the armed forces within the EU; (2) the supplies are made by the EU, NATO, IAEA or other intergovernmental organisations to perform their tasks; (3) the transfer is necessary to implement a cooperative armament programme between EU Member States; or (4) the transfer is linked to humanitarian aid or as donation in an emergency.

therefore allow all competent companies to transfer goods without prior approval; they only need to report that such transfers have been made. In other words, in this case no prior government approval is required for the transfer of defence-related goods.<sup>73</sup>

- A second type of licence is a global transfer licence,<sup>74</sup> which is valid for three years. Prior approval for the transfer or export of defence-related equipment is still required, but a global (transfer) licence authorises a supplier to transfer (or export) an unspecified amount of specified defence-related goods to specified recipients in various countries.<sup>75</sup>
- A third type of licence permitted by Directive 2009/43/ED is a traditional individual licence, which allows for arms dealers to transfer a specified quantity of specified defence-related products to one recipient (in one or several shipments).<sup>76</sup>

A 2017 analysis of the ways in which eight EU Member States have implemented these provisions in their national systems indicated that firearms and ammunition (categories ML1 and ML3 on the EU Common Military List) are often excluded from the material scope of the general transfer licences because of the sensitivity of these products.<sup>77</sup> As a consequence, for transfers of firearms and ammunition to military recipients within the EU, individual (or global) licences still remain the most commonly available licence type, implying that prior approval by the competent authorities is needed.

### **Several information-sharing mechanisms exist to prevent the diversion of shipments.**

For example, suppliers must inform the recipients about the terms and conditions of their transfer licence, including any limitation relating to the end user or to the re-export. They must also inform the authorities of the Member State of origin when they intend to start the first shipment under a general transfer licence. Suppliers must also keep records of each transfer they conduct.<sup>78</sup> Furthermore, to enhance the detection of irregularities and fraudulent activities, national authorities are encouraged to set up measures which would allow direct cooperation and information exchange between the competent authorities.<sup>79</sup>

A study from 2014 revealed that most Member States are in line with this requirement and that applicants must provide details of the nature of the goods (a description, their quantities or value) and their end-use (description of the end user, country of final destination, signature, name and function of the end-user, indication on the end use of the goods, guarantee on the end-use).<sup>80</sup> **End use is mostly verified by asking for an end-use or end-user certificate (EUC).** An EUC is an official document issued by a competent authority of the importing State that identifies a government agency of the importing State as the ultimate recipient of an international transfer of small arms or light weapons (SALW).<sup>81</sup> It is used to certify that the shipment will not be diverted to unauthorised users. Some variations exist – for example, some Member States require the country of end-use or the types of end-user (eg armed forces or security forces) to be indicated. Some countries request additional elements that specify the identity and activities of intermediaries (Bulgaria, Denmark). In Finland, there are different types of EUC for firearms and for essential components. In addition, the translation of transfer

documents is not always required by Member States, which may hinder the detection of possible false or fake information in a foreign language. One good practice has been identified in Latvia, where a certified translation in English of EUCs provided in a foreign language is mandatory.<sup>82</sup> Even though the EU adopted common guidelines for EUCs in January 2021 (see below), it is unclear whether these will apply to military arms exports only or also to transfers.

Finally, **Member States must also conduct control measures.** First, they must verify regularly that arms exporters keep complete and accurate records of their transfers, which may be provided at the request of state authorities.<sup>83</sup> Second, they must check that the recipients of the transfers comply with the requirements at least every three years.<sup>84</sup> Third, in the case where transfers have limitations attached to them (for example, requesting the consent of the Member State of origin before re-exporting firearms), Member States must ensure that recipients have complied with these limitations.<sup>85</sup>

In addition, many Member States require optional elements such as a **clause of non-re-exportation**, which prohibits firearms, components or ammunition being re-exported without the prior written authorisation of the country of origin.<sup>1 86</sup> However, although most governments include re-export clauses systematically in their EUCs, they also allow for exemptions in the application of these re-export restrictions, based on geographical (specific countries) or material (specific types of product) criteria. In practice, most countries limit the use of non-re-export clauses for exports to non-EU and/or non-NATO member states.<sup>87</sup> In the case of intra-EU transfers of firearms, re-export clauses are therefore used only very rarely.

### 2.3.2 Firearms exports and imports to and from non-EU Member States

The EU regulatory framework is different for imports and exports of firearms for civilian or for military use. In the former case, the rules for exports and imports of firearms intended for civilian use are defined in Regulation 258/2012, while in the latter case the EU Common Position 2008/944 contains specific provisions for controlling the export of defence-related goods, including firearms and ammunition. As in the previous section, we discuss the relevant elements in both regulatory frameworks aimed at preventing the diversion of firearms and ammunition and the use of fraudulent documents. We discuss how these provisions are incorporated into and implemented in the Member States. In succession, the following aspects will be dealt with: (1) the licensing phase and pre-export controls; (2) controls during the transportation of the goods; and (3) controls after final delivery of the goods.

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<sup>1</sup> There might be exceptions to this clause. For example, Germany does not require any approval by the licensing authority for re-exports to certain countries (Australia, Canada, Japan, New Zealand, Norway, Switzerland and the United States). In the Walloon region, the non-re-export clause states that it does not apply to certain countries (Australia, Canada, Iceland, Japan, Lichtenstein, New Zealand, Norway, Switzerland and the United States).

## Pre-export controls: preventing diversion and fraud

**Firearm-owners who wish to export firearms intended for civilian use must request an export authorisation**, also called an export licence.<sup>1 88</sup> The export licence must provide precise information about the exporter and the recipient and also about possible transit countries. The firearms and ammunition must be described in a way that allows for their identification, including their marking and their quantities.<sup>89</sup> In addition, the end use of the items may be specified, but this is not mandatory. The export licence must indicate the date and place of authorisation and must be signed and stamped by the licensing authority.<sup>90</sup> The licensing authority must issue and deliver copies of the licence to each consignee before shipment.<sup>91</sup> The Regulation does not impose a time limit on the validity of export licences, but it provides that the validity of civilian arms export authorisations should not exceed the period of validity of the corresponding import licences; or, if not specified, a maximum period of nine months.<sup>92</sup> This is meant to prevent exports with outdated import licences being authorised. Just as with transfers, simplified procedures also exist for temporary exports of firearms intended for civilian use. Hunters or collectors who wish to participate in international events may use these simplified procedures.<sup>93</sup>

**Regulation 258/2012 provides for several measures to prevent the use of false information or forged documents to acquire export licences.** During the review of licence applications, Member States must, where appropriate, verify the information provided by the exporter and check the authenticity of documents.<sup>94</sup> The validity of end-use or end-user documentation is checked before authorising an export, but it can also be used after delivery to verify that the firearms have not been diverted.<sup>95</sup> Even though dedicated end-use or end-user documentation is not legally required for the export of civilian firearms, national authorities are obligated to consider the profiles of all the actors involved before granting a licence: for instance, the recipient, the end user and all consignees.<sup>96</sup> Second, to prevent exports being authorised based on invalid or outdated import licences, licensing authorities must verify that all export licences issued in the exporting country correspond to a valid import licence.<sup>97</sup> To add a further layer of security, the Regulation suggests (but does not make it mandatory) using electronic documents in the licence application process.<sup>98</sup> Using electronic documents removes the possibility of ill-intentioned actors forging paper documents. Export authorities may conduct additional onsite controls of the premises of the actors involved in export transactions.<sup>99</sup>

**To a certain extent, the EU legislation provides for standardised export documentation.** The added value of such documentation is to make it easier for foreign licensing authorities to detect suspicious documents and therefore to prevent fraud. Yet not all Member States use this model documentation. A study by Ernst & Young and SIPRI revealed that as at 2018, very few Member States used documentation that fully reflected that provided in Annex II of Regulation No 2012/258.<sup>100</sup> This documentation must be used by exporters of civilian firearms to submit their application to competent

<sup>1</sup> The Regulation does not apply to deactivated or antique firearms (article 3 of the Regulation).

licensing authorities (see Annex 1).<sup>101</sup> This is problematic, since such documentation is not systematically translated into the official language of the importing country and might be issued in a language which is not understood by the Customs personnel of the importing country. One important aspect of the licensing process is to limit the period of validity of licences. This helps control all kinds of activity conducted using these licences since there is a time limit attached to using them. In a context in which Regulation 258/2012 does not mention any specific time limitation for licence validity, it is not always clear whether national exporting authorities systematically verify the period of validity of the import licences provided.<sup>102</sup> This makes it more difficult to control the validity of exports.

One central requirement of the EU legislation is that Member States must refuse any licence application for civilian firearms exports submitted by an unreliable person. This means that **Member States must examine exporters before they grant licences. In practice, however, data from 2017 show that only a few Member States had adopted such control measures** (eg demanding copies of criminal records, checking exporters' registers, permits and storage conditions).<sup>103</sup>

**Export authorities must also examine the reliability of the end user in the importing country when they consider that there is a risk.** Most Member States do so by requiring some type of end-use certification<sup>104</sup> as a guarantee against firearm diversion after shipment. For exports of defence goods, end-user certification is mandatory and often includes information advised by the User's Guide to Common Position 2008/944/CFSP (see above).<sup>105</sup>

Finally, **cooperation and information-sharing may improve the chances of detecting and investigating cases of fraud.** Member States must exchange information on suspicious activities. For example, they must share details of the exporters whose licence applications have been refused and of the actors (including consignees) involved in suspicious activities.<sup>106</sup> To do this, Member States must keep records on arms exports for at least 20 years.<sup>107</sup> The topic of cooperation is discussed further in Chapter 4.

Just as with exports intended for civilian use, **the rules for the export of defence-purpose firearms set out in Common Position 944/2008 anticipate cases of diversion by identifying possible risks and cases of fraud in the licensing phase.** All exports of firearms intended for military use must be authorised in the first instance by the licensing authority in the exporting Member State. The application for an export licence must be supported with comprehensive documentation. The EU Common Position imposes minimum standards and procedures for authorising exports:

*Export licences shall be granted only on the basis of reliable prior knowledge of end-use in the country of final destination. This will generally require a thoroughly checked end-user certificate or appropriate documentation and/or some form of official authorisation issued by the country of final destination.*<sup>108</sup>

Importantly, Member States can apply more stringent rules, as the principles set out in the Common Position merely function as minimum standards.

The (non-binding) *User's Guide to the Council Common Position 2008/944/CFSP defining Common Rules governing the Control of Exports of Military Technology and Equipment* published in 2009 contains some **basic principles and good practices regarding the information an End-User Certificate (EUC) should include**: at a minimum, it should provide information on

- the exporter
- the end-user, together with a signature
- the country of final destination
- a description of the goods (characteristics and quantity or value)
- a guarantee on the end-use.

In addition, each EUC should be dated. A clause of non-re-exportation can also be included on the EUC. It may also contain optional information, such as details on intermediaries, proof of authenticity of the EUC and a commitment that the final consignee will provide a certificate of delivery upon request.<sup>109</sup> In general, most governments impose the use of an EUC, certainly for individual licences. The licence applicant is responsible for supplying this document. All governments have their own EUCs that end-users must complete. The document contains the contact details of the consignee and the end-user, the type of equipment, the quantity and the value.<sup>110</sup>

Some EU Member States impose additional conditions and accept only their own official EUC or place restrictions on the entities that may draw up an EUC. Sweden is the only country to accept only its own EUCs for supplies to non-EU armed forces or to companies that supply armed forces. These declarations of end-use (DEUs) are printed on banknote paper. They must be completed by recipients and returned via the local Swedish embassy. In Germany, applicants must always submit an EUC based on a licensing authority template. For two categories – weapons of war and small arms and light weapons (SALW) – the EUC must be issued only by a government body in the importing country.<sup>111</sup>

In general, substantial differences continue to exist in Member States' requirements regarding the purpose and content of an EUC. To reduce these differences and encourage convergence in Member States' EUC's, **the EU recently adopted a Council Conclusion for the further harmonisation of EUCs for the export of SALW**. Apart from outlining the content of an EUC, this Council Conclusion also sets out some additional principles to prevent diversion and fraud with these documents (see Box 2).

## Box 2 Future developments towards harmonising EUCs

To enhance the clarification and harmonisation of practices among the different types of EUC used by the 27 Member States, the EU adopted common standards for EUCs in January 2021 to reduce the risks of diversion. These common standards will enter into force in December 2021. With this decision, certain best practices identified in the area of EUCs in the User's Guide to the EU Common Position will become mandatory common elements to mention in each EUC. These include:

- Details of the exporter
- Details of the end-user
- Country of final destination
- Description of the goods and, if available, contract number of the transaction
- Quantity and value of the goods (if applicable)
- Signature, name and title of the end-user
- Certification by the national licensing authority (if applicable)
- Date of issue of the EUC
- A unique identifying number for the EUC (if applicable)
- Indication on the intended end-use and a commitment not to use the firearms for anything else
- Details on intermediaries (if applicable)
- Clause of non-re-exportation.<sup>112</sup>

Member States will be able to include optional guarantees on the end-use of firearms, such as guarantees on safe storage to prevent theft or loss. In case the exporter suspects a diversion, it may request a notification of delivery, including the exact quantity of firearms received. On the EUC, each exporter may include a clause allowing for onsite post-shipment controls. In addition, to prevent the unnecessary accumulation of surplus firearms and to reduce the risks of diversion of surplus stockpiles, an EUC may include a commitment to decommissioning all surplus firearms.<sup>113</sup>

Licensing authorities who doubt the genuineness of end-users or EUCs must verify the authenticity of the signature of the end-user.<sup>114</sup> Another important tool to prevent diversion is information-sharing on fraud. If Member States detect fraud in an EUC, they will be obligated to share it in the COARM database.<sup>115</sup> In addition, to support the verification of authenticity of foreign EUCs, Member States will be required to share samples of their EUC formats in the COARM database.<sup>116</sup> Such information-sharing and cooperation mechanisms are crucial for the detection of fraud, as elaborated on in chapter 4 below.

Based on this documentation, **national authorities must assess licence applications for arms exports using a shared set of criteria set out in the Common Position, including the risk of diversion.** The review of licence applications includes an assessment of whether there would be a clear risk that the export of the defence-related goods would

- contravene Member States' international commitments;
- contravene their respecting of human rights and international humanitarian law, or
- affect the internal stability of the country of destination and that of the neighbouring countries adversely.

In addition, risk assessments must take account of

- the possible effect of the export on their defence and security interests and that of the other EU Member States and allied countries, of
- the conduct of the country of destination towards the international community,
- *the risk of diversion* of the shipment to unauthorised countries and
- the economic situation in the country of destination.<sup>117</sup>

While the first three criteria contain explicit grounds for denial of a licence, the latter four criteria function merely as considerations for a licence application and do not contain explicit mandatory grounds for denying a licence. Whereas the new Council Decision outlines basic common criteria, some Member States have introduced additional criteria that can be regarded as best practices. Various EU Member States have formulated additional grounds for denial, with several EU Member States (such as the Flemish Region, Sweden and Germany) citing the risk of diversion as a ground for denial of an export licence.<sup>118</sup>

**Regulation 258/2012 equally provides for some criteria that licensing authorities should take into account in their decision-making process.** In addition to the obligation to refuse an export licence for persons who have been convicted of certain grave offences (including corruption and fraud),<sup>119</sup> Member States must consider the risk of diversion in the country of end-use.<sup>120</sup> Other criteria refer to their engagement in international treaties, or in international and regional cooperation, the EU foreign and security policy, or any European, Organization for Security and Co-operation in Europe (OSCE) or United Nations Security Council embargo.

In practice, the refusal to grant export licences for civilian firearms occurs rarely. On average, the annual number of reported refusals of such export licences ranges from one to ten in Bulgaria, Spain, Lithuania and Portugal, and between 11 and 20 in Germany and France.<sup>121</sup> In the absence of comprehensive figures covering the number of civilian firearms exports for these countries, we cannot compare the number of licences refused to the number of licences granted for civilian firearms exports. The 2018 analysis of the implementation of Regulation 258/2012 determined that the most frequent reasons for refusing export licences are:

- an insecure political situation in the destination country
- the presence of arms embargoes

- negative feedback received on the importing companies
- a risk of diversion, and
- human rights violations in the destination country.<sup>122</sup>

According to the same study, almost half of the competent national authorities indicated they have issued a licence for exports that were previously denied by another Member State.<sup>123</sup> **More systematic communication and information exchange on refused licences for the export of civilian firearms is therefore needed.**

Similar conclusions could be drawn regarding licence refusals for the export of military goods, which are also very limited in comparison to the number of licences issued each year. Formal denials constitute only about 1% of the applications for arms export licences across the EU.<sup>124</sup> An important explanation for this low number of denials is the existence of informal contacts between companies and national governments. Because commercial arms trade negotiations are time-consuming, companies and governments have such informal contacts very early on in the process to discuss how the authorities would assess a future licence application. Because companies' decisions on whether or not to proceed with the negotiation of a contract will firmly depend on such informal contacts, formal licence denials are in practice often prevented by such informal discussions.<sup>125</sup> This means that possible export licence applications which will most likely fail may never be submitted. The risk of the exported goods being illegally diverted is the main reason for Member States to deny licences: 30–50% of all formal denials by EU Member States since 2002 refer to the risk of diversion. Consequently, even though this criterion is merely a consideration in the EU Common Position and does not contain an explicit ground for denial, the risk of diversion is often used to deny an export licence. In the case of licences denied for exports of firearms and ammunition in particular, the risk of diversion is often mentioned as one of the reasons for denial.

In addition to examining end-user documentation, **Member States have set up various practices to verify the end-use of civilian exported firearms.** These practices range from using a risk-assessment system based on the information provided, and examining the application in the light of the eight criteria of the 2008 EU Common Position, to requesting information from the Ministry of Foreign Affairs, intelligence services or any other relevant national authorities.<sup>126</sup> There are different ways to determine the end-user of an arms export. Data from 2018 showed that, in general, the competent national authority determines the end-use alone and that only exceptionally do they cooperate with the exporter or the producer.<sup>127</sup>

In addition to examining the exporter, Member States must verify that the importing country has authorised the import of firearms in compliance with the export licence application. In practice, all Member States must verify that the import has been authorised in the destination country. This can be done by examining the import licence or an international import certificate (IIC).<sup>128</sup> Through an IIC, importing countries certify that they are aware of and agree to the export; it does not require the designation of an end-user.<sup>129</sup> IICs can be used for exports of both civilian and defence-

purpose firearms. Member States may conduct additional verification measures, but these are not implemented systematically. For example, they can contact the importer to verify the validity and authenticity of the import licence.<sup>130</sup>

Finally, one important anti-diversion measure that can be used in different phases of export control is the possibility of withdrawing, annulling or revoking export authorisations. Both Regulation 258/2012 and the EU Common Position 2008 provide for such a possibility.<sup>131</sup> The 2018 analysis of the implementation of Regulation 258/2012 confirmed that Member States have suspended or revoked licences, for example, after they realised that they had (incorrectly) granted licences based on false or incomplete information provided by the applicant or because the situation in the destination country had changed and the consignment could possibly endanger the national security, public order or foreign policy.<sup>132</sup>

### Controls during the shipment

Once the export licence has been granted, the exporter may start shipping the firearms. **During the shipment, exporting states are obliged to monitor firearms.** When the firearms reach the external borders of the EU, as provided for by Regulation 258/2012, Customs authorities must verify that the shipment has been authorised in the Member State of origin. They must also verify that the contents of the shipments match the information provided on the export licence.<sup>133</sup> One important problem is that once a shipment has left the external borders of the EU, the authorities cannot track the shipment any more. In a case where they suspect that the shipment will not arrive safely at its destination, Member States may request proof of delivery when it reaches the country of destination.<sup>134</sup>

The 2017 analysis of the implementation of Regulation 258/2012 demonstrated that in most Member States Customs formalities can be performed by all the national Customs offices, and that they may conduct additional checks such as physical inspections at the location of exporters.<sup>135</sup> The challenges facing Customs and their best practices are discussed further in Chapter 4.

Additional controls are provided for to verify that the firearms have reached their destination and have not been diverted during their shipment to the country of destination. **The modalities of these controls are a national competency and they are therefore different in each Member State.** One typical type of delivery confirmation is a **delivery verification certificate (DVC)** that can be requested from end-users. A DVC is a document certified by Customs or another competent authority in the importing state confirming that the shipment has arrived. Data from 2019 reveal that many Member States use this mechanism to verify that the firearms have not been diverted during shipment; however, not all of the Member States use it systematically.<sup>136</sup> DVCs are generally used in case of a particularly sensitive shipment or because the authorities suspect that the shipment may have been diverted.<sup>137</sup> EU Member States have set up different mechanisms to ensure that DVCs are delivered to them by importing

authorities. Some Member States impose a deadline for recipients to deliver the DVC. To oblige recipients to deliver a DVC for defence-purpose firearms, France requires a deposit to be paid, which is released upon presentation of a DVC.<sup>138</sup>

A second element to prevent the diversion of firearms and ammunition during shipment is the use of **transit controls**. In line with the principles set out in the Firearms Protocol, Regulation 258/2012 provides that an export licence may be granted only after authorisation by all the countries through which the goods will transit during their journey to the final end-user. The competent authorities also need to make sure that third countries of transit do not object to having the firearms transit through their territory at the latest before the actual shipment of the goods. Mere transit transactions (thus without unloading) and temporary export for specific reasons (hunting, research, repairs, etc) are exempted from this obligation.<sup>139</sup> It is the exporter's obligation to collect these transit authorisations and provide them to the competent national authority.<sup>140</sup>

Conversely, some Member States which import firearms into the EU provide the confirmation to the exporter that the firearms have reached their final destination. By doing so, they adhere to article 13(2) of Regulation 258/2012.<sup>141</sup> Member States generally send a DVC to the exporting country after the firearms have reached their destination.<sup>142</sup> Regulation 258/2012 does not mention any checks and controls during the importation of civilian firearms into the EU. These are a national competency and therefore they are different in each Member State. In practice, controls may be document-based or physical. When they conduct such controls, national authorities may verify different aspects of the firearms: they may verify the import authorisation, and the proof of purchase, but they may also physically check the firearms by verifying the markings and the dimensional and fire-testing results. These controls can be either random or based on a risk analysis.<sup>143</sup>

### Post-shipment controls

Post-shipment controls are important to prevent and respond to the diversion of firearms after the goods were effectively exported and delivered to the end-user, because they allow the correct end-use of the firearms to be identified, including that they have not been diverted or re-exported without due notification or authorisation. **Although post-shipment controls are not included in any of the relevant EU legislative frameworks, some Member States have set up (different) practices for post-shipment control.**

Many licensing authorities favour the ex ante controls mentioned above over post-shipment controls. A study from 2019 shows that in a few Member States there is a formal opportunity to conduct physical onsite controls (Belgium, Bulgaria, Finland, France, Portugal). A clause may be included in the contract of export or in the EUC to permit physical inspection in the country of end-use. However, in practice such clauses are used in only a very limited manner. In addition, physical controls are often limited

to the exporting companies of a Member State but do not occur in the destination country.<sup>144</sup>

In recent years, however, several EU Member States have put procedures in place to implement post-export controls in the country of end-use of the exported goods. One notable example is the pilot project for post-export controls started by Germany in 2015. This was an instance of diverted firearms in Mexico that were delivered to government forces in specific regions of the country to which delivery was forbidden according to the EUC issued by the German government. This incident was the main reason behind the development of this project. In particular, in cases of the export of firearms to non-EU and non-NATO countries (so called 'third countries'), the EUC contains a clause in which the recipient state has to grant the German government the right to perform on-the-spot checks.<sup>145</sup> The purpose of the controls is to inspect whether the weapons supplied are still present in the recipient country and in the possession of the end-user specified by the end-use certificate.<sup>146</sup> An important limitation is that the decision to conduct onsite post-shipment controls must be taken by consensus between all the members of the federal government. This means that if one Ministry does not agree to the post-shipment controls, they cannot be conducted. For example, the Ministry of Defence impeded the conduct of physical inspections of weapons delivered to the Peshmerga (military forces of the federal region of the Iraqi Kurdistan). Between May 2017 and February 2019, inspections had been conducted in India, the United Arab Emirates, Indonesia, Malaysia, Brazil, Jordan and South Korea.<sup>147</sup> Neither further control operations nor the results of the onsite controls had been released to the public at the time of writing.<sup>148</sup>

The German initiative was greatly inspired by the Swiss example. In Switzerland, the first physical inspections were conducted in 2013 to verify the compliance with EUCs within the countries of end-use. Controls are conducted based on a risk analysis that examines the type of war material, the geographic subdivision of these weapons and the result of previous controls. Between 2013 and 2019, Switzerland conducted 35 on-site inspections in several end-use countries (eg in Bosnia-Herzegovina, Malaysia, Singapore, Slovakia and Vietnam). No case of sanction following any onsite inspection has been observed.<sup>149</sup>

The possibility of developing such a system is currently being explored in other Member States. Sweden is conducting research on a programme to monitor post-delivery controls of military exports. However, the results of the study which were submitted to the government in 2018 were not in the public domain at the time of publication of this report.<sup>150</sup> Likewise, in 2018, the Spanish government has announced its willingness to set up post-export controls. In April 2020, a royal decree was published which provides for the possibility of including a specific clause in the Spanish EUC. In this instance, the end-user will be required to agree to this clause before the export licence will be granted.<sup>151</sup> At the time of writing, it is not known to what extent this clause has effectively been used.

## 2.4 Concluding remarks

Different EU regulatory frameworks regulate the trade in firearms in the EU. Even though in theory each framework regulates one type of transaction, depending on the type of user (civilian or military) and the destination of the firearms (in or outside of the EU), in practice these frameworks overlap. The military list of the EU that details the list of military firearms and ammunition covers certain firearms and ammunition controlled by Regulation 258/2012 and some of the firearms and ammunition covered by the EU firearms directive. In other words, there is no clearcut definition of which firearms fall under which legislation. In most EU Member States, however, different authorities are competent for the control of firearms transfers and exports, depending on the control system that applies. This could be a problem when different authorities are competent to authorise trade in military and civilian firearms.

Moreover, EU Member States differ in their interpretation of certain EU rules. This may create loopholes, because of different levels of obligation regarding the end-use and the thoroughness of the assessment for civilian or military use of firearms. This also creates situations in which EU control authorities must deal with non-harmonised procedures and documents which are more difficult to control. The system of control of firearm possession and trade should ideally function as a closed system in which the different national authorities relate to one another and exchange information in a systematic way. There is a need to connect competent national authorities not only within each country, but also between all the EU Member States. Even though, in general, existing legal frameworks provide for such linkages, at a national level several challenges exist regarding the way these provisions are incorporated into national systems, implemented and applied. In reality, competent national authorities do not necessarily have access to the electronic firearms registers, but in order to be effective tools in preventing fraud, these registers need to be both accessible and connected with each other.

Because controls are scattered over different authorities in the EU Member States, opportunities and practices of information-exchange are less than optimal. In this context, there is a need to strengthen information-exchange between competent authorities. This can be illustrated by the fact that not all the competent authorities have access to the COARM database. This highlights the need for more systematic information-exchange on arms exports within the EU. Besides operational aspects, information-exchange is also crucial to identifying good practices in national control systems and to disseminate these practices among the appropriate EU forums.

More generally, there is a need to identify existing loopholes in the legislative frameworks and to take action to deal with these issues. It is also crucial to control and follow up on the incomplete incorporation of the EU legislation into national law and to enhance the harmonisation of all the national legislation.

# 3



## Scope and characteristics of firearm fraud in the European Union

Firearms are durable goods that very often do not remain in the hands of one single owner after they have been manufactured. Instead, they often change ownership multiple times throughout their life cycle. They may be retailed by legal firearms dealers to private individuals, to other firearms businesses or to state actors. Firearms are generally transferred internationally after their production. They may remain within EU borders after production in an EU Member State, be exported from the manufacturing EU Member State to countries outside of the EU, or be imported from outside the EU to an EU Member State. When firearm-owners no longer comply with the rules for owning firearms (eg after legislative changes), they can surrender their firearms to the state. In addition, several scenarios exist at the end of the life cycle of a firearm: firearms may be permanently de-activated into non-live-firing arms or destroyed. Finally, at any stage of their life cycle, firearms can be seized, stolen or lost. Despite the control, verification and safeguard mechanisms aimed at dealing with firearm diversion, this chapter will demonstrate that at any step of their life cycle firearms can leave the realm of government control. During our empirical research we identified five main types of fraud which resulted in the diversion of firearms and/or ammunition:

- Tampering with authorisations for firearm possession
- Tampering with authorisations to transfer firearms (including export and import)
- Tampering with arms registers
- False declarations of theft or loss
- Forged deactivation or destruction.

In the following sections we shed light on the following questions:

- What is the scope of firearm fraud?
- What are the steps in the life cycle of firearms and ammunition where fraud usually occurs?
- What types of firearm and ammunition are involved?
- What types of actor are involved in cases of fraud?
- What modi operandi are used?
- Do the firearms end up in criminal circles and are they misused?

### Box 3 Research design for analysing the scope and characteristics of firearm fraud in the EU

The following analysis is based on a dataset of 46 cases of fraud identified in 20 EU Member States.<sup>1</sup> We retrieved these cases from the 28 country mappings and eight in-depth country studies produced by our research team (see also **Box 1 above**). To access these cases, our team conducted thorough desk research, focusing on reports from national authorities, previous studies from various research institutes and media reports. We also identified several cases during our discussions with key national and EU experts.

Data-collection was conducted between January 2019 and May 2020; therefore the most recent cases and updates may not be included in the analysis. For each Member State, we collected all the cases identifying fraud as a cause for the diversion of firearms, essential components or ammunition, and we included them in our dataset. We focused on live-firing firearms, although, where relevant, we also included a few cases involving non-live-firing firearms or other weapons – for example, when schemes of fraud, if replicated, could possibly involve firearms. Priority was given to the cases that occurred during the past decade, although when relevant we also included older cases. The dataset of cases is available in **Annex 2** of this report.

There were a few methodological biases in the dataset. First, unlike for other diversion phenomena such as theft, national authorities do not keep comprehensive and reliable data or statistics on firearm fraud. Not all cases of firearm fraud are reported in official reports or in the media. Second, the intrinsically covert nature of firearm fraud makes this phenomenon *per se* more difficult to detect than other diversion methods. Finally, fraud can be relatively complex, and details shared in the media are often scarce or incomplete. The combined covert and complex nature of firearm fraud also often reduces public awareness of it. As a direct consequence, cases are not always publicised in open-source reports. At the same time, police operations contain sensitive information that cannot be released in open source. As a result, in many cases, the specifics of certain schemes of fraud remain relatively vague.

To remedy these methodological caveats, we interviewed several national and EU experts to complement the desk research. Interviews were conducted for each of the eight in-depth country studies during phase 2 of the project. In parallel, we received additional information during three EMPACT meetings and six expert meetings throughout the project in which we also disseminated our research findings.

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<sup>1</sup> For the purposes of the analysis, we allocated a code to each case identified. The code consists of the name of the country in which we identified the case and a year (eg the year the fraud was committed or the year of the investigation). These cases are listed in Annex 2 of this report below the names of 16 different EU Member States. Because several transnational cases involving two EU Member States were also identified, this brings the total number of Member States involved to 20.

This chapter shows that in the EU there are a wide variety of ways and contexts in which firearms have been diverted through fraud. One way to consider the phenomenon is to isolate several stages in the life cycle of firearms which we identified as particularly vulnerable to fraud. Some *modi operandi of fraud* have typically resulted in the diversion of large quantities of firearms (eg tampering with arms registers, or forgeries in the context of large-scale arms transfers). The total number of firearms diverted through these individual cases of fraud is particularly large, but we suspect that many other cases have not been detected, reported or publicised. Although criminals have sometimes perpetrated firearm fraud, people involved in the legal system of firearms (eg state authorities or legal gun dealers) have also exploited their knowledge of firearms, the legislation (and its loopholes) to divert firearms. They have either used their criminal connections, or (more typically) used intermediaries to leak firearms into the illicit sphere, generating important financial benefits.

### 3.1 Scope of firearm fraud and linkages to trafficking and violence

This section describes the scope of firearm fraud in the EU. This is not an easy endeavour. Although most EU Member States keep criminal statistics on various categories of infraction and on firearms seizures, the nature of the data rarely allows cases of fraud to be differentiated from other types of infraction. Against this background, it is not possible to gain a reliable overview of the scope of fraud based on quantitative data. Given the lack of comprehensive quantitative data, we must rely equally on a more qualitative interpretation of the scope of fraud in the EU. In this section, we first review the number of firearms, essential components and ammunition involved in each case of fraud we identified (section 3.1.1). In the second part of this section (section 3.1.2), we analyse the impact of firearm fraud on illicit firearms trafficking and gun violence in the EU. To do so, we examine the extent to which, and the ways in which, firearms diverted through fraud have ended up in criminal circles. We also consider the types of crime committed with firearms acquired through fraud.

Our key findings are summarized in Box 4.

## Box 4 Key findings

It is impossible to estimate the scope of firearms fraud in the EU in a reliable manner due to the absence of quantitative data on the phenomenon, a lack of publicisation of the issue in open source documents and a general lack of policy attention to it. Our analysis suggests that EU Member States seem to be affected by fraud to various extents and the number of firearms involved and of cases identified in each country is very unequal. Because of difficulties in accessing the data, the number of cases identified is by no means comprehensive and it is likely that many more cases have gone undetected or unreported.

When firearms fraud is detected it often involves large quantities of diverted firearms, components and/or pieces of ammunition.. In 20 cases, the number of firearms involved reached the hundreds. In some cases, usually in the context of arms exports, it could involve over 100 tons of firearms (eg Bulgaria 1990s)

Significant quantities of firearms diverted through fraud have reached criminal circles, although some firearms were also acquired or kept by people without criminal intentions. Firearms that have been acquired through fraud (for example, by or from law-enforcement agents or legal arms dealers) are sometimes sold to intermediaries who have the right criminal connections to distribute them in criminal circles. Some cases could be linked directly to crime scenes, including those of murder and attempted murder, or found in the drug milieu or in outlaw motorcycle gangs (OMGs). Other cases were also connected to conflicts and human rights violations in unstable regions of the world.

### 3.1.1 Review of available quantitative data

Previous research has shed light on the problem of firearm fraud in the EU. According to Project SAFTE, the main sources of firearms on the illicit market include firearms which were legally manufactured but were diverted, including through theft or fraud.<sup>1</sup> The report further notes: *‘Individuals have diverted firearms from the licit to the illicit sphere through various types of embezzlement.’*<sup>2</sup> Project FIRE found that certain types of fraud are among the main sources of illicit firearms for criminals. For example, it states that *‘[s]hipping legally produced weapons to and through one country to another or a conflict zone may result [in vulnerabilities that are] attractive for criminal’* and that *‘[d]ifferent national legislations may induce criminals to exploit loopholes and gain profits from the black market for firearms’*.<sup>3</sup> Not only firearms but also parts and components are trafficked into and through Europe using false documentation. A 2020 report by the UNODC identified that, in particular, parts and components have been shipped from the US and trafficked through the EU: *‘In general, these parts and components are shipped to European Union Member States by using postal packages with false Customs declarations.’*<sup>4</sup> According to the report, whereas this type of diversion sometimes involves only a limited number of components, there have also been sophisticated large-scale cases of trafficking using that type of scheme.<sup>5</sup> Nevertheless, these studies did not provide estimates of the scope of the firearm fraud. In the following paragraphs we estimate the scope of firearm fraud by reviewing the quantitative data that relate to the cases of fraud that we identified as part of Project DIVERT.

A first observation from our analysis is that **firearm fraud seems to affect Member States differently**: there are important disparities in the number of firearms diverted through fraud in each Member State. In some Member States, thousands of firearms and/or ammunition were diverted through fraud, whereas in others the numbers are much lower. Yet we have to interpret this conclusion carefully as it is very difficult to compare these numbers. In some Member States we identified more cases of fraud than in others. In other Member States, information on firearm fraud was scarce, or even non-existent. But this is not necessarily because firearm fraud does not occur in these countries. Instead, it may not be detected because of a lack of awareness of certain risks and loopholes or to a lack of control and verification mechanisms. It is also possible that cases are not reported in open sources and official reports because of a lack of policy attention to the phenomenon.

One particular facet of fraud as a diversion method is that **it can result in the diversion of large number of firearms, essential components and ammunition**. During Project DIVERT, we identified 46 cases of fraud that occurred in 20 different Member States. In only 30 cases did the source indicate the exact number of items involved, but we noted high to very high numbers of firearms diverted.

**The number of firearms involved in some of the cases we identified was particularly large**. Apart from a few cases of fraud involving only a low-digit number of firearms, most cases of fraud identified involved several hundreds of firearms, sometimes reaching the thousands. We identified 20 cases in which at least a hundred firearms

were diverted to unauthorised users and six cases in which more than a thousand firearms were involved (see figure 1).

Figure 1 : Number of firearms diverted in identified cases of fraud



**Large differences in the number of firearms, components ammunition diverted through fraud can be observed between Member States.** For example, in Poland, 32,741 legal firearms disappeared in the illicit sphere as part of three separate cases of fraud, together with more than 36 million units of ammunition. In three of the countries which we studied in-depth during Project DIVERT (Germany, Spain and Belgium), we found large quantities of firearms diverted in fraudulent activities. In Germany, 48,331 firearms were involved in seven separate cases of fraud and nearly 1,800 components. In Spain, we detected the diversion of 10,300 firearms, at least 373 essential components and 65,300 pieces of ammunition and cartridges as part of 12 instances of fraud. Finally, in Belgium, we found that at least 1,239 legal firearms had disappeared because of fraudulent activities, as part of nine cases. Other countries which we studied in depth, such as the Baltic states and Sweden, were characterised by lower numbers of firearms diverted through fraud (317 firearms in Sweden, one firearm in Lithuania as part of one case each, and no cases in Estonia or Latvia). Besides these countries, we found two cases in the UK (280 firearms), one case of fraud in Portugal (402 firearms), one case in Austria (84 firearms) and one case each in Greece and in Luxemburg (one firearm each). In eight Member States, our research team did not identify any case of fraud (Czechia, Denmark, Hungary, Ireland, Latvia, Malta, Romania, Slovenia).

These numbers are by no means comprehensive and tell us little about the real scope of the phenomenon. We can assume that the actual number of firearms, essential

components and ammunition diverted through fraud is much larger than the minimum number that we calculated using our case dataset. These figures do not shed light on the dark number of firearms that are diverted through fraud but which are either not noticed or not declared to the authorities. We have to keep in mind that firearms fraud is a phenomenon that is difficult to detect: it requires heightened attention to the phenomenon and the right tools and resources to conduct the appropriate controls. As a consequence we have to stress that Member States in which we identified more cases of fraud do not necessarily have a bigger problem of firearm fraud than others. Instead, they may have better detection tools and resources at their disposal.

### 3.1.2 Illicit trafficking and criminal use of firearms acquired through fraud

Given the large numbers of firearms which have been diverted through fraud, several questions arise regarding the end-use of these firearms. To what extent, and in what ways, are these firearms trafficked? To what extent are these firearms used to conduct criminal activities? And for what types of crime are they misused?

Determining the routes taken by the firearms diverted through fraud is not easy, but crime data should – in theory – make it possible to identify what kinds of crime and misuse these firearms are involved in. Firearm registries can give important information, which keep records of legal ownership. A seized firearm can be traced in such a **national repository**, and so the legal gun owner can be identified. By doing so, the last legitimate owner of the firearm can be identified and start investigating how the firearm left the legal realm before ending up in a seizure or a crime scene. If the firearm is not found in a national repository, it can be **traced internationally** by the international database on stolen, lost and found firearms iARMS, managed by Interpol, or they may send a tracing request through bilateral contacts.<sup>6</sup>

There are some problems with these tracing mechanisms. First, **the number of international tracing requests is fairly low**. A recent report by UNODC has shown that almost 80% of all firearms found in crime scenes in Europe bear a unique serial number and can therefore be traced. Six EU Member States reported to UNODC that in 2017 they sent in a total 301 tracing requests, mainly to other European countries, in connection with a total of 1,137 firearms.<sup>7</sup> Although we do not know how often tracing requests were sent for firearms which were diverted through fraud, the systematic tracing of firearms seized is crucial to identifying the points of diversion in general, and of fraud in particular. Second, ballistic analyses allow to investigate diverted firearms,<sup>8</sup> but, in practice, **ballistic analyses are not done systematically in the EU**, mainly because of a lack of resources and personnel. Third, a number of Member States operate by means of **paper-based registers**, which makes it more difficult to trace firearms systematically.<sup>9</sup>

Based on our database of cases, we have been able to identify that **firearms been diverted through fraud have often been distributed in illicit circles** (28 out of 46

cases). In the following, we review some of these cases to determine whether and how they ended up in criminal circles. The takeaway is that firearms that happen upon the illicit market through fraud (1) can be put there through middlemen, legal arms dealers and even manufacturers; (2) are rarely acquired directly by criminals; (3) are difficult to tie specifically to criminal offences; (4) will be facilitated most likely through new technologies.

**Firearms acquired through fraud are often sold illicitly through middlemen who act as intermediaries on the criminal market.** These intermediaries make a connection between the perpetrators of fraud and the criminals who hope to acquire illicit firearms. In these scenarios, the perpetrators are generally actors who have legal access to firearms as part of their profession and who do not necessarily have the right connections to criminals. These can be **state officials** who have misappropriated otherwise legal guns (eg service weapons, firearms surrendered to the authorities, seized firearms). These people can sell these firearms to acquaintances or gun dealers, who supply them to criminals. For example, in Austria, a state official was accused of the diversion of 84 firearms confiscated by the authorities. They sold the weapons to an arms dealer and acquaintances, who distributed them in illicit circles<sup>10</sup> (Austria, 2013). In addition, in Cyprus, a grenade that belonged to the National Guard was found in an explosion in a police station in 2017. The grenade was probably stolen but had not been reported missing. The authorities believed it was sold to unauthorised users who provided them to the perpetrator of the explosion<sup>11</sup> (Cyprus, 2017). Although in this case, no firearm was used, this case shows the potential for diverted firearms or ammunition to be trafficked.

**Authorised arms dealers** involved in illicit firearms trafficking have also used intermediaries on the criminal market to supply firearms to various criminals. For example, a legal firearms dealer in Belgium was convicted for the sale of 779 firearms (including automatic rifles and riot guns) to illicit firearm users. Half of the firearms were sold to one single purchaser in the Netherlands<sup>12</sup> (Belgium, 2004–2006).

Finally, **authorised firearms manufacturers and exporters** have exported firearms to intermediate (legal) users, who then redirected the firearms to illicit users and criminals. In two cases explained in detail in the following sections, two different German manufacturers have exported firearms to authorised end-users abroad, who supplied the firearms to unstable and conflicted regions respectively in Colombia and Mexico<sup>13</sup> (Germany, 2009 and Germany, 2009–2011).

**Cases in which legal gun owners supply firearms acquired through fraud directly to criminals are quite rare, but have occurred in Europe.** This is not surprising since most actors involved in the legal system of firearms (eg state officials or legal gun dealers) are investigated by the national competent authorities to rule out criminals from these activities. Nevertheless, some cases were detected during Project DIVERT where state officials sold diverted firearms directly to local crime groups or militants abroad. For instance, in the mid-1990s, four Austrian police officers diverted service guns destined for retired officers and sold them to local criminal networks. They also transferred

them to Corsican militants (FLNC members) with whom they were personally acquainted<sup>14</sup> (Austria, 1990s). We have also observed the scenario in which legal gun dealers sold firearms directly to criminals, including outlaw motorcycle gangs abroad. In 2011 and 2012, a registered German firearms dealer exported 110 pistols and several components under a licence to a fictitious security company and firearms dealer in Australia. In fact, he knowingly destined the firearms to an Australian motorcycle gang<sup>15</sup> (Germany, 2011–2012). In 2019, a gun dealer registered in Spain supplied four (legal) firearms to criminals, and possibly to more organised crime groups. To conceal the deal, he pretended that the firearms had been stolen<sup>16</sup> (Spain, 2019). A third example comes from a legal firearms dealer registered in the United Kingdom, who directly supplied criminals with hundreds of firearms that he either acquired fraudulently in the United States or that he reactivated illicitly. Some 107 crime scenes were linked to his trade<sup>17</sup> (United Kingdom, 2017).

**It was not always possible to identify the exact criminal end-use of diverted firearms,** either because this information was not publicly available or because the authorities were not able to retrieve the firearms. The paragraphs above have made it clear that firearms which had been acquired through fraud were supplied to unidentified criminals, either directly or through intermediaries (Belgium, 2015, Belgium 2004–2006, Finland, 2018 and Spain, 2019). Because they have ended up in criminal circles, it is likely that these firearms may have been used to commit crimes, although we were unable to link them directly to any precise crime scene. In several cases, we identified precisely the criminals who obtained these firearms. In one case, several firearms which had been diverted through fraud in Austria were supplied directly to the FLNC, a militant group for the independence of Corsica whose *modi operandi* include assassinations and bomb attacks. The perpetrators were directly acquainted with some of the members of the FLNC<sup>18</sup> (Austria, 1990s). In another case, several Spanish criminals who diverted 21 legal firearms and cartridges and components supplied them to criminals, including those within the drug milieu<sup>19</sup> (Spain, 2020).

In a limited number of cases, **we were able to link specific crime scenes to firearms that had been diverted through fraud.** We could connect six cases of fraud to important crime scenes, including murders and attempted murders. For example, some of the 3,810 pistols diverted by the former owners of the firearms manufacture HS Produkt in Croatia and a Customs officer in 1998–1999 were connected to murders in Western Europe: in Madrid, Amsterdam, Leeds and London<sup>20</sup> (Croatia, 1998–1999). In a case mentioned above, among the 110 pistols shipped to Australia using false documentation, one pistol was connected to a murder in Australia<sup>21</sup> (Germany, 2011–2012). In a large-scheme case of fraud involving a Spanish sports shooting federation and a gun dealer, some of the many firearms which were diverted through this scheme were found in crime scenes, including one murder<sup>22</sup> (Spain, 2009). In addition, some of the 317 firearms diverted by a legitimate arms dealer in Sweden between 2015 and 2018 were found in different criminal settings: one was found on a wanted drug smuggler, another was used in an assault carried out in connection with the motorcycle club *Los Bandidos* and a third was used in an attempted murder in the summer 2017<sup>23</sup> (Sweden, 2019). In a case mentioned above, some of the 800 Flobert weapons of Slovak origin

that were acquired by German criminals and converted to live-firing firearms illicitly were used in several crimes in the Berlin area<sup>24</sup> (Germany, 2019). Finally, in 2017, a registered firearms dealer in the United Kingdom was found guilty of supplying firearms to criminal networks through an intermediary and 107 crime scenes could be connected to his trade<sup>25</sup> (United Kingdom, 2017).

In a few instances, **the perpetrators of fraud diverted firearms for their personal use.** Because of the important safeguard mechanisms that aim to exclude criminals from the legal firearm market (see Chapter 2 sections 2.2 and 2.3 above), one method often used by criminals to acquire legal guns is to use false identities (eg misappropriating the identities of authorised persons or using stolen or non-existent identities). For example, in Berlin, a group of perpetrators acquired several Flobert firearms (see Box 6) in Slovakia using false and stolen personal identity documents and converted them to live-firing calibres illicitly<sup>26</sup> (Germany, 2019). In Finland, criminals misused the identity of a legal Finnish gun dealer to purchase several firearms subject to authorisations<sup>27</sup> (Finland, 2018). In another example, a group of Belgian criminals misappropriated the identity of the Minister-President in charge of authorising arms exports to acquire approximately 200 to 250 firearms illicitly that they then supplied to other criminals<sup>28</sup> (Belgium, 2015).

**Fraud can also be a way for persons without criminal connections or intents to acquire or keep firearms** without going through the usual control and verification mechanisms. For example, we have observed several cases in which firearms were found in the hands of people who had declared them stolen previously. It is not always clear whether this is the result of an unintentional mistake or if this kind of fraud is committed on purpose. For example, during the investigation of a shooting club in Greece, police found that the accountant of the club possessed a firearm which had falsely been reported as stolen<sup>29</sup> (Greece, 2016). Similarly, during a search of the house of a deceased gun-owner, the Belgian police seized a firearm that had been reported as stolen years before. The owner believed the firearm to have been stolen following a burglary, although in reality the gun had remained in the house<sup>30</sup> (Belgium, 2006–2008). Finally, in 2016 an investigation was launched after firearms intended for destruction were found in the possession of the director of the national Proof House. It was not clear whether he kept the firearms for their historical value (which would have been legal) or with the intention to trade them illegally<sup>31</sup> (Belgium, 2016).

**The internet has likely boosted the opportunities for illicit firearms trafficking in firearms acquired through fraud.** For example, in a case identified in Germany, a formerly registered firearms dealer sold several hundreds of firearms online that he had acquired using the identify of a friend<sup>32</sup> (Germany, 2015). In addition, in 2018 two Spanish criminals claimed to sell shotguns to customers online using fraudulent documentation<sup>33</sup> (Spain, 2018b).

**Finally, large quantities of firearms which have been diverted in the EU using various schemes of fraud have been exported to unstable regions in the world, where they have been misused to fuel conflicts and human rights violation.** These export-related

scandals are not new. In 1990s, various Bulgarian arms manufacturers were involved in the diversion of hundreds of tons of surplus firearms to armed rebels in Sierra Leone, Angola, Yemen, Sudan and India<sup>34</sup> (Bulgaria, 1998). At the end of the 2000s, there were two cases of German arms exports which were diverted to unstable areas and regions of conflict through fraud. These cases revealed the destabilising potential of the use of fraud to divert large-scale arms shipments. At the end of the 2000s, there were two cases of German arms exports which were diverted to unstable areas and regions of conflicts through fraud. These cases revealed the destabilising potential of the use of fraud to divert large-scale arms shipments. Between 2009 and 2011, several thousands of firearms exported to the United States by the German manufacturer SIG-Sauer were redirected illegally to Columbia and diverted to paramilitary groups.<sup>35</sup> Several SP2022 pistols have been used in various crimes, including extrajudicial killings by the army. Some SP2022 were seized from criminal groups<sup>36</sup> (Germany, 2009–2011). In another case, between 2006 and 2009, the German company Heckler & Koch exported about 5,000 assault rifles, sub-machine guns and matching magazines to Mexico using fraudulent documentation. There, they were diverted and misused in an abusive shooting by police in which several students died and 43 others disappeared<sup>37</sup> (Germany, 2009). Our research team was not able to identify more recent cases of firearm fraud that resulted in the diversion of firearms in armed conflicts. Although there is evidence that many firearms of EU origin have been diverted to regions in conflict in the past decade, it is not always easy to determine the exact scheme of diversion, and whether fraud was involved.

With regard to the scope of firearms fraud and its impact on trafficking and criminal activities we can conclude that the number of firearms, components and ammunition involved in cases of fraud can be huge. The cases identified by our research team have shown that firearms acquired through fraud do circulate within the European illicit firearms sphere, although based on the available data it is not clear precisely to what extent. The lack of comprehensive data on firearm fraud is problematic because large-scale cases of the diversion of firearms through fraud can have far-reaching consequences. There is evidence that large quantities of these firearms have reached criminal circles. They have been found within the drug milieu, among outlaw motorcycle gangs (OMGs) and in various murders in the EU and abroad. In addition, fraud committed in the EU has led to the large-scale diversion of firearms abroad.

## 3.2 Characteristics of firearms fraud

It is difficult to grasp the scope of firearm fraud in the EU because of the hidden and unknown nature of the phenomenon and because of the lack of comprehensive data on firearm fraud in the EU. Another way to obtain insights into the phenomenon is to consider the different contexts in which firearms, components and ammunition have been diverted through fraud. This section explores these contexts and discerns some of their main characteristics.

Based on our empirical findings, we identified different types of firearms fraud:

- The supply of false information or forged documents while applying for authorisation to possess firearms. We refer to this type of fraud as *tampering with authorisations for firearm possession*.
- The supply of false information or the forging of documents to trade firearms (within a Member State, between two Member States or with non-EU Member States): *Tampering with authorisations to transfer firearms*.
- Registering false information in arms repositories, adding or erasing entries illicitly, which we refer to as *tampering with arms registers*. This can involve arm dealers' repositories, but also official repositories maintained by national competent authorities.
- Giving a false declaration of theft to law enforcement, which we label as *fake theft or loss of firearms*.
- Registering firearms as permanently deactivated or destroyed, while in fact keeping or selling the firearms in their original form. We refer to this type of fraud as *forged deactivation or destruction*.

These types of fraud are not mutually exclusive. Some of the cases below can be classified under several categories of fraud. For example, gun dealers forging documents to help their customers acquire firearms unduly could belong equally to the categories of 'tampering with authorisations for firearm possession' and 'tampering with authorisations to transfer firearms'. Cases of state officials falsifying information on the registers of deactivation or destruction could equally fall under 'tampering with arms registers' and 'forged destruction or deactivation', etc. The categories of fraud analysed in the sections below are meant to isolate certain *modi operandi* of fraud rather than to classify each case exclusively in a unique category.

In the following sections we will analyze the characteristics of different types of firearms fraud. The key findings can be found in Box 5.

## Box 5 Key findings

Firearms fraud can occur at various phases in the life cycle of a firearm:

- **During the authorisation to acquire, possess or use firearms.** This often involves people who do not qualify to own a legal firearm (eg weapon enthusiasts or criminals). Modi operandi involve the forgery of identities of authorised persons, the forgery of documents proving the 'good cause' or medical certificates.
- **During the transfer of firearms.** This can lead to the diversion of larger numbers of most dangerous types of firearms (eg assault rifles, semi-automatic pistols). Perpetrators are often insiders (eg state officials or registered firearms dealers) although we also found cases of straw purchasers. Perpetrators concluded lucrative sales of firearms to conflict regions.
- **During the registration of firearms in arms repositories.** These cases were conducted by insiders who can access registers and the corresponding stockpiles. A large number of firearms were involved in these cases. They included firearms of higher capacity such as semi-automatic Glock pistols or SP 2022 pistols. The perpetrators have falsified information to cover up thefts, to sell firearms without following the procedures or to obtain surrendered firearms. Many firearms were sold to criminals.
- **During declarations of the loss or theft of firearms.** This occurs often in the wake of major legislative changes restricting the conditions to own a gun and during surrender programmes. Each case often involves a few pieces of firearms.
- **At deactivation or destruction.** Firearms can be misappropriated during destruction procedures, often by insiders involved in the collection process. Cases have involved dozens, even hundreds, and up to several thousands of firearms. All kinds of firearm can be involved, including automatic weapons.

A key point of attention should be laid on the fact that the detected cases of fraud often involved higher-capacity firearms. In the cases described below, we found:

- Assault rifles (eg AK-47 pattern rifles, CETME assault rifles) and sub-machine guns
- Pistols (Glock 9 mm pistols, Flobert Glock pistols, Smith & Wesson pistols, Colt pistols, SP2022 pistols, Walther P64, some of which were police service weapons)
- Hunting rifles (shotguns, carbines)
- Homemade weapons

### 3.2.1 Tampering with authorisations for firearm possession

Various types of gun-owner have made various types of fake declaration or have forged documents, and for different reasons. Often, these are people who do not meet the legal criteria to acquire, keep or use a gun. For example, they do not have a legal reason to possess a firearm, they are not medically fit to operate a gun or they have criminal records. All of these reasons should prohibit them from legal access to guns, as explained in chapter 2 above. Nevertheless, to circumvent the rules and safeguard mechanisms, some people who do not qualify for legal firearm-ownership in the EU have submitted false declarations (so-called 'lying and buying') or have forged different types of document that are required to own a gun legally (eg by faking signatures or seals).

Our analysis demonstrates that both weapons enthusiasts who do not tend to misuse guns to commit crimes and criminals who use them for their unlawful activities have committed fraud to acquire firearms. Weapons enthusiasts include various types of actor, including collectors, hunters and sports shooters. These are, for example, people who have lost their licences because of their medical condition, or because they do not practise anymore. They also include unlicensed collectors. Depending on who acquires guns through fraud, the firearms involved will end up in two different types of milieu: that of gun enthusiasts or the criminal milieu. As we shall see, some firearms acquired through fraud do circulate in the criminal milieu (including narcotics) in the EU.

The types of firearms acquired through fraud are very diverse. They range from handguns (pistols, revolvers) to long guns (eg assault rifles, civilian versions of assault rifles, hunting weapons, shotguns). Given that fraud can be significantly more complicated and involve more people than simple theft, the perpetrators of fraud aim for higher-quality firearms. This is illustrated well by a 2020-case in Spain. The Guardia Civil Intelligence Service charged seven individuals for firearms trafficking in 2020 (Operation GAVIOTO). These individuals had acquired several firearms (from the very reputable manufacturers Glock, SIG-Sauer and Walther) using false documentation and sold the weapons to illicit users, including criminals connected to the drug milieu. The firearms involved were 12 pistols, 2 revolvers, 1 civilian version of an M4 assault rifle, 5 tactical shotguns and 1 CETME assault rifle. There was also ammunition involved, namely 8,300 cartridges, 30 assault rifle magazines and 45 pistol magazines, 73,200 euros in cash and drugs were seized during the investigation<sup>38</sup> (Spain, 2020). In the following paragraphs, we focus on three modi operandi of firearms fraud by tampering with authorisations for firearm possession: identity fraud, the forgery of documents proving that applicants to firearm-ownership have a 'good cause' (or legal reason) to acquire a gun, and the forgery of medical certificates proving that they are medically and psychologically fit to possess and use a gun. Our findings show that there is a wide variety of profiles among the perpetrators of fraud in this context. They are, for example, professional criminals but also hunters and sports shooters without criminal intentions but who were unable to purchase firearms legally. Not only that, insiders from the legal firearm system have also been involved in fraud, such as certified arms dealers and employees from the state authorities. Each case can involve

at least one firearm and some cases involved up to hundreds of firearms. Some of these guns have been found in criminal circles, among armed militants; others have been used to commit murders.

### Identity fraud

One way for people who do not necessarily qualify for legal gun ownership is to misappropriate the identity of someone else, for example by pretending that a transaction has been approved by the national authorities, which can involve faking documents, using fake seals, replicating or forging signatures from these official authorities. We found two illustrative cases of this occurring in Finland, but the practice is widespread in the EU.

*In the 2000s, the Finnish police reported several cases of fake firearms licences circulating in the country. The paper documents had been counterfeited and bore the forged signatures of the police services of Turku and Hämeenlinna. Several weapons were purchased using these counterfeit documents<sup>39</sup> (Finland, 2000s).*

In some cases criminals have misappropriated not only the identity of state officials, but also those of authorised gun dealers to purchase firearms on their behalf. On paper, firearms are acquired by a legal firearms dealer, but in reality the firearms end up in unauthorised hands and can be trafficked in illicit circles. In Finland, for example:

*The Finnish police have been investigating a case where criminals acquired more than ten firearms by forging the documentation required to purchase firearms subject to authorisation. The investigation revealed that they had obtained details about the trading licence of a legal Eastern–Finnish dealer. They used this information to purchase the firearms.<sup>40</sup> The source did not make clear how they obtained this information (Finland, 2018).*

### Fake or forged documents proving 'good cause'

An important safeguard mechanism against the diversion of legal firearms by criminals is the legal requirement to have a 'good cause' to acquire, possess or use a gun. In theory, this clause is meant to exclude automatically all those candidates who wish to acquire firearms who have other motives. This aims to reduce the risk that ill-intentioned gun-owners misuse their (legal) guns or divert them to the illicit sphere.

This does not mean that the legal reason for owning a firearm coincides with the actual reason. A 2021 study by the Flemish Peace Institute that examined the motives of firearm-ownership in the northern part of Belgium (Flanders) showed that there are only a very small amount of self-defence licenses (well below 1%: 187 out of 805.148 firearms), and yet 13% of respondents claimed to possess a firearm for self-defence.<sup>41</sup> While such overdetermination is in most cases harmless, it can give rise to problematic situation. This is illustrated in the below case.

*Between 2017 and 2019, the Belgian police investigated a cross-border case of fraud during which hundreds of firearms were diverted. A French armoury – where there was also a shooting range – would sell firearms to Belgian residents by providing forged documents. These firearms can be purchased in France legally without any specific authorisation upon the mere presentation of a certificate of shooting practice. Differently in Belgium, the law requires specific authorisation to purchase these firearms. The shooting range of the armoury issued certificates of shooting practice that had never taken place and gave them to the Belgian residents from a neighbouring town. Not only did they use forged documents to purchase firearms, but they also went back to Belgium with the firearms without the required transfer documents.<sup>42</sup> As part of the investigation, 205 people were interrogated. In total, 638 weapons were involved in that scheme, including semi-automatic firearms, small-calibre firearms and hunting firearms.<sup>43</sup> In one of the cases, uncovered in May 2017, the police discovered several firearms held illegally at the premises of a Belgian lawyer (and a cannabis plant).<sup>44</sup> (Belgium 2019)*

In this case, the French armoury provided the traffickers with documents of a legal cause to purchase certain firearms. In truth, the traffickers were not engaged with the armoury or the shooting range, but acquired the firearms in order to hold them (illicitly) in Belgium.

### Fake medical certificates

Medical certificates serve to prove that firearm-owners are psychologically and physically fit to operate firearms and that they will most likely not endanger others. We have detected a number of cases in Spain where gun owners or their physicians have forged the required medical certificates. This misleads the authorities about the capability and integrity of individuals to possess a firearm legally. This creates a risk that the authorities lose track of these firearms and increases the risk of misuse.

During Project DIVERT, we identified two cases of diversion using fake medical certificates in Spain, although we suspect that similar dynamics may play out in other countries but have not been detected or reported on in the sources we consulted. In the first case, people who were not fit to operate a gun received a fraudulent medical certificate so that they could (wrongfully) purchase a gun:

*In 2008, the Guardia Civil investigated a scheme in which a doctor signed psychological tests that are required to obtain a hunting permit, although in fact he never saw any of the patients in person. Those who paid for this service were mainly hunting enthusiasts who had lost their gun licence for committing some other offence or crime. Through this scheme, they tried to reinstate their right to hunt. The Guardia Civil arrested the doctor and 15 hunting enthusiasts<sup>45</sup> (Spain, 2008).*

Several years after that, the Spanish Guardia Civil arrested four people who were involved in a similar scheme:

*An investigation on illicit firearms trafficking revealed that a medical doctor would carry out fake psychological tests to provide fake medical certificates to customers. He attempted to conceal his activities by faking the signature of a colleague. The authorities detected the scheme because individuals in their 80s and 90s had successfully obtained new legal firearms licences – which is not typical in Spain. The prosecutors were able to charge 131 people upon the evidence that the customers were aware of the fraud<sup>46</sup> (Spain, 2011).*

In total 146 people were charged for buying guns using fraudulent documentation in these two cases. Although we do not know the exact number of firearms involved in both cases, the large number of perpetrators suggests that in total large quantities of firearms were likely diverted.

### 3.2.2 Tampering with authorisations to transfer firearms

**Firearm fraud committed in the context of arms transfers can result in the diversion of large quantities of firearms and ammunition.** Most cases we identified involved a few hundred firearms, although four cases involved several thousands of firearms. Large quantities of firearms and ammunition were particularly evident in cases of arms exports, including older cases from the 1990s, although there were also more recent cases from the late 2000s to the early 2010s.

In the context of (international) arms trade, **a wide variety of firearms have been diverted**, ranging from firearms that are typically available to hunters, sports shooters and collectors to military-grade material. Among the cases we retrieved, we found different types of hunting weapons, antique weapons, pistols (Glock pistols, Flobert Glock 9x19mm, Smith & Wesson pistols, Colt pistols, TT pistols, SP 2022 pistols), revolvers (eg Taurus revolvers), semi-automatic firearms, police service weapons, and automatic rifles including Kalashnikov-type assault rifles and sub-machine guns. The observation that many high-capacity firearms were retrieved from this category of fraud makes it an important challenge and should make it a key point of attention for law enforcement authorities.

The perpetrators generally involved in the cases identified were **often either criminals, employees of firearms manufacturers or legal dealerships** who took advantage of their position and knowledge to divert firearm shipments. The strategies were variably sophisticated and included:

- misappropriating the identity of others to trade firearms;
  - straw purchases;
  - the production of fake documents required to purchase firearms (eg proving that firearm-owners have a good reason to do so);
  - falsely describing firearms as other items;
  - forging export and import documents, indicating a false destination of end-use;
- or

- redirecting shipments through various intermediaries to conceal the real end-user.

In the following paragraphs we will describe the characteristics of the various modi operandi used to tamper with authorisations for firearms transfers.

### Identity fraud

Various types of people have misused the identity of others to conduct unauthorised arms trade. The perpetrators would typically appropriate the identities of state authorities or of certified arms dealers, or they have used stolen, lost or false identities. Illicit firearms **traffickers have forged the identities of authorised persons** to carry out their activities. In a case that occurred in 2015, Belgian criminals forged the signature of the regional licensing authority:

*In 2015, the Belgian police rounded up a number of individuals who pretended to be certified firearms dealers and ordered firearms from a German firearms manufacturer using forged transfer documents from the Walloon Region, which included a falsified signature of the Minister-President of Wallonia. The perpetrators are said to have acquired about 200–250 firearms illicitly (about 80 Glock type handguns) and sold them on the illicit firearms market<sup>47</sup>(Belgium, 2015).*

The perpetrators of fraud in the context of arms trade are not necessarily outsider criminals. Instead, **insiders can take advantage of their position and knowledge of procedures to misuse the identities of authorised persons** and divert firearms. People have misappropriated the identities of state officials who are legally entitled to possess a gun. For example:

*In the mid-1990s, a group of four accomplices diverted several police weapons by forging the documents required to obtain these guns. The law in Austria allows police officers who go in retirement to keep one firearm for their personal use. To do so, they must file a specific request to the authorities. But not all police officers who retire make the request to keep a firearm. The four accomplices would identify the police officers who did not file such a request and would issue false requests in their names. They not only sold the firearms to local criminal networks, but they also transferred them to Corsican militants (FLNC members) with which they were personally acquainted<sup>48</sup> (Austria, 1990s).*

Certified dealers have also been involved in firearm fraud. Precisely because of their knowledge of the firearm legislation and their expertise with firearms, and them being privy to knowledge on how to circumvent these rules, registered gun dealers sometimes become involved in the diversion of firearms, components and ammunition. They also have access to certain documents that are required to purchase a firearm. Among other malpractices, they have used fake seals to forge the authorisations delivered by the competent national authorities. In the following example, an Italian arms dealer would organise fraudulent sales using fake authorisations and seals:

*In April 2013, in the framework of operation Griso, an illicit firearms trafficking scheme was discovered from an armoury in San Marino (region of Puglia). The investigations revealed that the owner of the armoury would organise fake sales to fictitious people – all made with fake seals, fake authorisations for weapons carrying and transport and fake documents used to reproduce trading licences. With this method, he acquired a total of 247 firearms, ammunition and accessories between 2009 to 2011. All items were destined for 24 non-existent people.<sup>49</sup> (Italy, 2013).*

Another mode of identity fraud in the context of the arms trade is that of **‘straw purchases’**, in which someone agrees to acquire firearms for other individuals who are unable or unwilling to purchase the firearms for themselves. The official buyer of the firearms (the so-called ‘straw purchaser’) transfers the items to the real end-user. According to Braga et al, different kinds of profile can be involved in straw purchases: “Straw purchasers may be instruments of criminals or traffickers who obtain the straw purchaser’s services, or they may be unlicensed dealers who set out to use their nonprohibited status to sell guns illegally to other persons for profit. In those instances where straw purchasers were working for traffickers, they were often friends or relatives of the firearms traffickers.”<sup>50</sup> One practice of straw purchasers is to declare the firearms as stolen before passing them on to criminals, so that they cannot be held accountable for any further crime committed with the guns (see section 3.2.4 on fake thefts). This practice is known to be a prominent source of firearms for Italian organised crime groups,<sup>51</sup> but it has also been used by other criminals throughout the EU.

The perpetrators of firearm fraud have used **false or stolen identities** to conduct purchases in the names of fictitious customers. The idea behind this is to pretend that ‘clean’ customers purchase firearms, whereas, in reality, the firearms are shipped to illegitimate owners, including criminals. Criminals can use fake identities for these ‘clean customers’, but they have also used stolen or lost identification documents. Criminals have used this method relatively commonly to purchase firearms in Member States which have less stringent firearm legislation. In the EU, fraudulent identification documents have been often used to purchase salute, Flobert and percussion firearms and have contributed to spreading them throughout the overall European crime context in recent years.

## Box 6 Flobert calibres

Firearms modified to Flobert calibres are originally lethal firearms which have been modified to discharge a limited fire power and use ammunition of a particularly small calibre (4 mm, 6 mm or 9 mm).<sup>52</sup> Although the European Commission considers Flobert weapons to be firearms (as defined in Art 1.1), paragraph 19 of the EU firearms directive, which defines converted firearms, does not mention firearms downgraded to smaller calibres.<sup>53</sup> Given this legal uncertainty, there is a lack in harmonisation among EU Member States on the classification of Flobert firearms, with some countries classifying Flobert firearms as unrestricted, and others classifying them in category C.<sup>54</sup> Some Flobert firearms can easily be converted to larger calibres. Because of the easy access to Flobert firearms in some EU Member States, some of these weapons have been converted into their original calibres illicitly and trafficked to other EU Member States, where they would require authorisation. These illicitly re-converted firearms (including semi-automatic pistols) are widely available in EU criminal networks<sup>55</sup> and they have been used in crimes in several EU Member States.<sup>56</sup>

Many of the Flobert weapons (see Box 6) that can be found in the EU criminal sphere come from Slovakia.<sup>57</sup> In this Member State, the legislation allows individuals to purchase Flobert firearms with a mere proof of identity and the transaction must merely be registered by the firearms dealer. This has changed in February 2022. As a result, many Flobert weapons of Slovak origin have been circulating in illicit circles in the EU. These firearms are often purchased with fake or stolen identities to conceal the real (criminal) end-user.

*In 2020, in cooperation with Europol, the German police uncovered a large trafficking scheme involving 800 weapons purchased in Slovakia with a concealed identity. They monitored the circulation of these weapons through the Schengen Information System. In January 2020, a first hit was revealed in the Netherlands. A Glock pistol chambered 9x19 mm was seized. The pistol had been purchased in June 2019 at Hiltz in Slovakia by one individual together with a total of 208 Flobert weapons.<sup>58</sup>*

*According to the criminal prosecution authorities of Berlin, a group of perpetrators had acquired several Flobert weapons in the Slovak Republic using false personal IDs. These Flobert weapons were subsequently converted back into live-firing firearms (eg Glock 19 pistols and 9 mm Luger). Some of them were used in several crimes in the Berlin area. Investigations revealed that, between September 2017 and January 2019, approximately 800 of these firearms were circulating in the Berlin area. They had been acquired using ten different types of false ID. A total of 90 weapons were seized by December 2019. In the meantime, the Berlin Regional Court sentenced the perpetrators to several years in prison<sup>59</sup> (Germany, 2019).*

In addition, we have also observed the practice of conducting straw purchases using the identity of an authorised firearms dealer, as the following case illustrates:

*In 2015, a man was arrested in the German city of Schwerte on suspicion of illegal firearms trade.<sup>60</sup> The man had lost his own firearm trading licence 13 years earlier and had instead used a friend with a similar licence as a man of straw in order to continue his business from his home using several online platforms for weapons trading.<sup>61</sup> During the investigation, the authorities seized 700 firearms and vast quantities of ammunition and gunpowder that were stored unsecured in the premises of the suspect. Media reports indicated that the accused was selling firearms online illegally<sup>62</sup> (Germany, 2015).*

Although a few cases of fraud identified in our database have been committed by authorised firearms dealers, we believe that these people do not typically get involved in fraud. In general, such dealers prefer not to mingle with illicit firearms trafficking activities because they do not wish to jeopardise their authorisations to operate as legal dealers.<sup>63</sup>

### **Fake or forged documents proving a 'good cause'**

As mentioned above, not all gun owners in the EU have a 'good cause' that allows them to acquire and possess firearms. A small number of authorised firearms dealers have taken advantage of this situation and have knowingly conducted arms trade activities with forged documents.

Some of these cases have resulted in large numbers of firearms being diverted. In Spain, for instance, key persons within a sports shooting federation issued false certificates proving regular shooting practices to help people acquire guns. In reality, the shooting practices had never taken place:

*In Ávila, a sport shooting federation helped some of its members acquire licences for sport shooting unduly by issuing false certificates proving regular practice. These certificates are necessary to obtain or prolong sport shooting firearm licences. The scam was identified when the Guardia Civil discovered that not all members of the federation would buy ammunition for regular practising and competitions. In addition, only 193 of 1,190 members of the federation were registered in the commune of Ávila. Various employees of the sport shooting federation had cooperated with gun-dealers who requested licences and sold firearms based on the fake certificates. Some of the weapons were used in crime scenes and one was part of a murder investigation<sup>64</sup> (Spain, 2009).*

Also in other cases firearms acquired with forged documents have ended up in the hands of criminals:

*Between 2017 and 2019, the Belgian police investigated a cross-border case of fraud during which hundreds of firearms were diverted. A French armoury – where there was also a shooting range – would sell firearms to Belgian residents using forged documents. These firearms can be purchased in France legally without any specific authorisation, upon mere presentation of a certificate of shooting practice. Differently, in Belgium, the*

law requires a specific authorisation to purchase these firearms. The shooting range of the armoury issued certificates of shooting practice that had never taken place and gave them to the Belgian residents from a neighbouring town. Not only did they use forged documents to purchase firearms, but they also went back to Belgium with the firearms without the transfer documents required.<sup>65</sup> 205 people were interrogated as part of the investigation. In total, 638 weapons were involved in that scheme, including semi-automatic firearms, small calibre firearms, and hunting firearms.<sup>66</sup> In one of the cases, uncovered in May 2017, the police discovered several firearms held illegally at the premises of a Belgian lawyer and a cannabis plant<sup>67</sup> (Belgium, 2019).

In another case, this time in Portugal, the police uncovered a scheme in which licensed hunters used forged documents to renew their hunting licences:

*On 10 March 2020, the Portuguese Public Security Police (PSP) launched a 10-month investigation that resulted in operation GUN STORE. Following an anonymous complaint on unauthorised renewals of licences, the police identified a diversion scheme involving the forgery of the legal documents required to renew firearms hunting licences. One gunsmith was arrested, and police seized 402 firearms (incl 59 pistols and revolvers, 9 rifles and 149 shotguns), essential components and nearly 5,000 pieces of ammunition. Judgment was still pending at the time of writing<sup>68</sup> (Portugal, 2020).*

Even though in these last two cases there is no evidence that the firearms were diverted with the intention to sell them to unauthorised users or even criminals, the number of firearms and the amount of ammunition involved is particularly large. These single cases of fraud resulted in the diversion of several hundreds of firearms and thousands of pieces of ammunition. This means that in the case where the perpetrators would have criminal intentions, a strong risk exists that a large number of firearms and ammunition would end up in criminal circles.

### **False declaration of the types of firearm**

Another modus operandi involves the use of false declarations on the types of firearms involved in the transfer. In many jurisdictions of Europe, for example, antique firearms are not regulated as live-firing firearms and they can be traded without any restriction. They are not required to be declared or authorised. Such a case occurred in the United Kingdom:

*In 2017, a registered firearms dealer was found guilty of supplying guns and ammunition to criminals. Over a period of six years, he imported hundreds of both antique and modern prohibited firearms from the United States. He falsified customs papers to pretend that these were antique weapons, not subject to the 1968 Firearms Act. By fraudulently changing the dates of manufacture of some items, those firearms were considered antiques.<sup>69</sup> He bought and imported 280 guns into the United Kingdom, among which were Smith & Wesson pistols, 19th-century French and Russian guns and prohibited 1950s Colt pistols. He modified some deactivated weapons into live-firing*

*firearms, and hand-crafted ammunition. Police discovered that he also falsified entries in his firearms register. He also damaged the tools he used to craft the ammunition to make it more difficult to link his tools to the ammunition. The prosecution proved that he supplied weapons to criminal networks through an intermediary. Some 107 crime scenes were linked to his trade.<sup>70</sup> He was sentenced to 30 years in prison for ‘conspiracy to transfer prohibited weapons and ammunition, two counts of perverting the course of justice, transferring prohibited weapons, possession of prohibited weapons and importing firearms from America’<sup>71</sup> (United Kingdom, 2017).*

This case is illustrative of the dynamics of firearm fraud. First, it was committed by an insider, a registered firearms dealer with the right connections abroad, on the one hand, to acquire guns and, on the other hand, to intermediaries who could leak the firearms onto the criminal market inland. He also possessed knowledge of the legislation and of its loopholes concerning the trade in antique and deactivated firearms. The quantities of firearms involved were particularly large, since at least 280 firearms were diverted to the United Kingdom as a result of his activities. The consequences of his trade were particularly important, since at least 107 crime scenes could be linked to his activities. A severe penalty was applied to the perpetrator (30 years in prison).

### **Forged documentation to (nationally or internationally) transfer firearms**

As part of Project DIVERT we identified several cases in which people forged the documentation necessary to conduct arms transfers, exports and imports, but where the source did not provide sufficient details to identify the exact nature of the fraud. In an older case that occurred in Poland, for example, several people exported firearms to prohibited destinations by falsifying the documentation required to conduct the transaction. The source did not specify exactly how the documents were falsified and how the firearms ended up in prohibited destinations:

*In 1992, Polish citizens operating through different arms companies conducted a series of illegal arms sales to embargoed destinations. They falsified the documents required to conduct legal arms trade and obtained weapons and ammunition from military and police reserves to the value of nearly 10 million dollars. One company acquired 18,000 TT pistols, 100 Taurus revolvers, 5,000 PPS machine guns, 401 AK-47 type rifles, 660 RPG-2 launchers, 10 SMD sniper rifles, 100 grenades, 30 RPD machine guns and more than 35 million units of ammunition. A second company acquired 6,600 TT weapons, 3,000 PPS machine guns, and more than a million units of 7.62 mm ammunition<sup>72</sup> (Poland, 1992).*

More recently, between 2004 and 2006, a formerly registered arms dealer conducted large-scale sales of firearms (among other destinations to the Netherlands). Although he was no longer authorised to conduct legal arms trade, it remains unclear exactly which documents he forged, and how, based on the information available.

*During a Belgian investigation based on Dutch information on Glock guns seized in the south of the Netherlands, the serial numbers of some firearms made it possible to establish that they had been delivered by the Glock factory to a Belgian arms dealer. This dealer appeared (after closing his arms trade business) to have sold a total of 779 firearms, including automatic firearms and riot guns, in the illegal circuit. During the court case he indicated that more than half of these firearms were sold to a Dutchman. He also said that he had removed the serial numbers of some firearms before he sold them to his customers<sup>73</sup> (Belgium, 2004–2006).*

In another case, several Spanish citizens were suspected to have conducted unauthorised gun sales using fraudulent documentation. They used fake seals from official authorities and pretended that the transactions had been authorised, although they had not. Unfortunately, in that case, the lack of details provided makes it difficult to determine the exact nature of the forgery:

*In 2018, two Spanish criminals were investigated on suspicion of fraud against six people. They claimed to sell shotguns to customers on the internet. Customers would receive (fraudulent) documentation on the weapon before they would pay for the transaction, but in fact they would never receive the weapon. Searches in the home of the suspects found fake court seals and equipment to falsify documentation. The Guardia Civil discovered that the DNI related to the bank account where the money of the sales was stored belonged to a deceased person, although the photo was that of one of the suspects. The suspect had a history of similar crimes<sup>74</sup> (Spain, 2018b).*

Despite these ambiguities, what is important in this case is that the suspects used fake court seals. We assume that they did so to make their customers believe that the sales had been authorised by the competent national authorities. Even though in the latter case the suspects were released without being charged, the case is exemplary in illustrating a possible modus operandi of fraud.

### False declarations of destination or end-use

As mentioned above, declarations of the destination and/or the end-use are an important keystone for the prevention of firearms diversion during or after international transfers of these items. Yet, ‘when it comes to preventing diversion, end-user documentation is not a panacea as a 2019 report by Conflict Armament Research put it.<sup>75</sup> In practice, there is a lack of international consensus regarding the structure and scope of end-user documentation. Documents are not standardised and differences in national systems and definitions pose a problem to control the supply chain.<sup>76</sup> According to CAR’s research, even when documentation conforms to the highest standards, taken in isolation this is often insufficient to prevent diversion. Therefore, end-user documentation is a primary element of the due-diligence process to verify and authenticate information provided by state parties in the supply chain. It is meant to provide a framework in which exporting and importing authorities can share risk-assessment information and enable stronger and cooperative controls and oversight

throughout the supply chain. To summarise, *‘End-user documents are political tools, intended to build confidence between transfer parties; however, their effectiveness as accountability mechanisms is less clear.’*<sup>77</sup>

In the 1990s, before the adoption of an EU legal framework to regulate firearms exports, **several cases of diversion involved EU manufacturers who exported weapons to prohibited regions.** To do so, they would conceal the actual destination of the shipments. For example, they declared a different recipient than the one to which they really destined the shipments. As a result of these fraudulent exports, large quantities of firearms of EU origin ended up in the hands of armed groups in different conflict zones of the world. For instance, throughout the 1990s, several Bulgarian arms manufacturers supplied defence goods, including firearms, to various rebel groups involved in armed conflicts. Bulgarian manufacturers would forge the shipping certificates to conceal the actual destination and end-use of the guns. The perpetrators were mainly driven by commercial survival incentives after the collapse of the Soviet Union and the Warsaw Pact, and the consequent loss of secondary clients and markets:<sup>78</sup>

*In the 1990s, several Bulgarian arms manufacturers shipped 35 tons of firearms stating Nigeria as the final destination. In reality, the weapons were intended for rebels in Sierra Leone. Similarly, 77 tons of Kalashnikov rifles and other firearms were air-dropped over India to groups involved in violence with certified documents stating that the firearms were for the Bangladesh State<sup>79</sup> (Bulgaria, 1990s).*

Another practice we identified is to ship firearms to unauthorised users by indicating non-existent recipients on the export documentation. On paper, shipments are destined to various companies or people, but in reality, these actors do not exist. In practice, the firearms end up among unauthorised actors, sometimes criminals. For example:

*In 1998–1999, the former owners of HS Produkt, the main Croatian arms manufacturer, were accused of exporting 3,810 pistols in four illegal shipments to fictitious companies; some of the diverted guns were alleged to be linked to murders in Western Europe<sup>80</sup> (Croatia, 1998–1999).*

Since the end of the 1990s, the EU has worked towards developing a common framework for arms export policies and procedures both in the civilian sector and for the defence industry. Member States have set up common rules for assessing arms exports and have developed common procedures. Nevertheless, as pointed out in section 2.3.2 above, these procedures and documents are not sufficiently standardised in the EU. Because of a lack of systematic control and verification mechanisms, the destination and end-user documentation of EU firearms exports have been forged in various instances. These cases have resulted in large-scale firearm diversion to different regions of the world. One modus operandi is to indicate a false destination for arms shipments during the licensing process to obtain export authorisation. Once the shipment has arrived at its official destination, the firearms are then redirected to different destinations. The idea behind this scheme is to circumvent the oversight of

licensing authorities so as to export firearms to destinations which would have not been authorised. Two important European manufacturers were sued in the late 2000s and the early 2010s for using this type of scheme:

*Between 2006 and 2009, the German firearms manufacturer Heckler & Koch exported 4,219 assault rifles, 2 sub-machine guns and 1,759 magazines to Mexico with a licence from the German licensing authorities.<sup>81</sup> The end-use certificate that was provided to obtain the licence listed a limited number of Mexican states. Subsequent reports and investigations revealed that many firearms were retrieved in unstable regions of Mexico that were not listed in the end-use certificate.<sup>82</sup> A trial in a German court revealed that several employees and a sales representative of the company in Mexico had conspired to obtain the licence surreptitiously by knowingly omitting certain regions from the licence request. The original contract between Heckler & Koch and the Mexican government clearly showed the intent to deliver firearms to regions that were later listed as ‘prohibited’<sup>83</sup> <sup>1</sup> (Germany, 2009).*

*Between 2009 and 2011, German firearms manufacturer SIG-Sauer exported about 47,000 pistols of type SP 2022 from Germany, through a SIG-Sauer US subsidiary, to the US government. More than 38,000 of these pistols were then sold to the Colombian national police as part of a US government programme that shipped a total of 125,000 SP 2022 to support the Colombian government in its fight against drug cartels and regional instability.<sup>84</sup> The documents submitted to obtain the export licence for the export of the pistols, however, declared the United States as the destination. The company had informed the German authorities that the firearms were meant for private consumers in the United States. The licence did not allow for the re-export of the weapons to Colombia.<sup>85</sup> Charges were brought against three former SIG-Sauer managers, two from the company headquarters in Eckernförde and one from a SIG-Sauer subsidiary in the United States. The court case revealed that the managers had, at least in part, been aware that the export was ultimately destined for Colombia, possibly even at the outset of the case.<sup>86</sup> The three managers received suspended prison sentences and fines. The manager at the US subsidiary received a suspended prison sentence of one year and six months and a fine of 600,000 euro, while the two Germany-based managers received ten-month suspended prison sentences and 600,000 and 60,000 euro fines respectively.<sup>87</sup> In addition, SIG-Sauer was hit with a court order to repay the proceeds of ill-gotten gains (‘disgorgement’) in the amount of the 11 million euro the company had earned from the sale of the pistols<sup>88</sup> (Germany, 2009–2011).*

Conflicts in various regions of the world continue to generate a demand for firearms and other military equipment. This situation has created incentives to supply weapons illegally to regions in conflict and armed groups involved, using counterfeit export documentation and concealed end-user documentation. The 2017 Croatian Security Intelligence Public Report, which maps the overall context of illicit exports and diversion practices, noted:

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<sup>1</sup> The complete court documents on the case can be requested from Landgericht Stuttgart under the reference Az: 13 KLS 143 Js 38100/10.

*[The] development of numerous crisis hot spots across the Middle East and Africa has led to an increase in the demand for illegally procured arms and military equipment. Given that illegal arms trade is highly lucrative, members of crime groups in the Republic of Croatia have been trying to position themselves as intermediaries in that type of trade. It is often the case that such illegally procured arms are sold off to areas under international embargo, using counterfeit export documentation.<sup>89</sup>*

The cases above show that in some cases employees of firearms manufactures have taken advantage of their positions to forge the necessary documents to acquire export authorisations. As a result of their actions, thousands of firearms were diverted to the illicit sphere. Some of the guns involved were old surplus material left over from the Cold War, but others were newly manufactured pistols and assault rifles. Some of these good-quality firearms have been misused in committing murders in Europe, while others have ended up in the hands of rebels, crime groups and paramilitary organisations in other regions of the world.

### 3.2.3 Tampering with arms registers

As discussed in Chapter 2, all transactions conducted by authorised manufacturers, firearms dealers, law-enforcement agencies and the military must be recorded accurately in registers so as to guarantee a comprehensive system of firearms tracing. **Tampering with registers to divert firearms is possible above all for the employees of these entities** who have access to both record books and the corresponding weapons. As we shall see, not only firearms dealers but all kinds of actors who have legal access to firearms registers can take advantage of their positions and roles to divert firearms and ammunition by tampering with firearms repositories. This also involves state officials who have access to national firearms registers.

Our analysis indicates that **various types of firearms have been diverted by tampering with arms registers** in Europe. These include firearms which have been seized or surrendered (eg hunting weapons, pistols and revolvers), because their owners no longer have the right to possess them legally or because they are part of criminal investigations. Also old and surplus police equipment and firearms which civilian firearm-owners are typically prohibited to possess. As with fraud during arms transfers, the observation that many high-capacity firearms were retrieved from this category of fraud makes it an important challenge and should make it a key point of attention for law enforcement authorities. In the cases presented below, the quantities of firearms involved varied between a few units and several hundreds. In one case (Germany, 2006) the number of firearms diverted by tampering arms registers even reached the thousands.

The exact ways in which forgery involving arms dealers was committed is not always clear. In the following example, several Spanish perpetrators forged different arms dealers' registers and manufactured ammunition illicitly:

*As part of the operation 'Gravilla' (Gravel) various instances of fraud were discovered. The police investigated several owners of gun shops who had delivered and produced illegally sized ammunition to unauthorised users. As part of the plot, registry books of gun shops and personal documents of police controls were forged to set aside the (legal) components for illegal production. Two owners of gun shops, located in the provinces of Castellón and Valencia, provided explosive material (gunpowder) and pistons. As part of the investigation, the following items were seized: 25 firearms (pistols, revolvers, carbines and their essential parts); 20 kilograms of gunpowder of different kinds; 30,000 cartridges of different calibres; diverse ammunition of war; prohibited and illegal ammunition; a silencer; 55,000 pistons (an essential part of some ammunition), cash, machines for recharging ammunition and numerous fake documents. The motivation behind this scheme may stem from the fact that there is a maximum limit of ammunition that can be bought by firearm-owners each year. The police suspect that some hunters were looking for extra ammunition. However, the investigation could not rule out the possibility of customers with criminal intent<sup>90</sup> (Spain, 2015).*

The forgery of arms registers has been identified as a common type of diversion in a previous study conducted on illicit firearms trafficking in the United States. In that study, a team of researchers examined a list of 1,530 cases of firearm diversion identified by the US Bureau of investigation on Alcohol, Tobacco and Firearms between July 1996 and December 1998. Looking at corrupt licensed firearms dealers involved in illicit firearms trafficking, they concluded:

*Violations by licensed dealers in these investigations included 'off paper' sales, false entries in record books, transfers to prohibited persons, illegal out-of-state transfers, and obliterated serial numbers.<sup>91</sup>*

In this section, we focus on two of the *modi operandi* they identified and that involve the forgery of official documents: false entries in firearm registers and off-the-record sales.

### **Falsifying information**

Falsifying information registered in firearms repositories can occur in various ways, such as erasing entries to cover up theft, pretending that firearms are other types of goods than live-firing firearms or falsifying information on surrendered firearms.

#### *Erasing entries to cover up theft*

In theory, all cases of firearm or ammunition theft or loss must be declared to the authorities and recorded in official registers. In practice, however, this is not always the case. There is a risk, when people have access both to physical stockpiles and to arms registers, that they steal firearms, components or ammunition and falsify registers, pretending that the firearms never existed. Covering up such thefts can be done only by insiders and can involve large quantities, for instance:

*In 2009, several employees of a police warehouse in Poland were prosecuted for misappropriating circa 100 firearms, in addition to ammunition and police equipment. To cover up their actions, they falsified the registers listing the stocks of the warehouse<sup>92</sup> (Poland, 2009).*

### *False information on the types of weapons*

Another way to divert firearms by falsifying registers is to sell live-firing firearms that require authorisations but to label them as other types of firearm which are subject to fewer controls (eg as antique firearms). Such illicit sales have been used in the past to supply live-firing firearms to criminals. In the case mentioned in section 3.2.2 above, in 2017 a gun dealer registered in the United Kingdom falsified his register books to conceal illegal importations of firearms into the country, the illicit reactivation of deactivated firearms and illicit sales to unauthorised users. Over a six-year period, he imported hundreds of antique firearms and modern, prohibited, firearms from the United States. On the Customs papers, several modern firearms were wrongfully described as antique weapons. He also reactivated deactivated firearms to live-firing guns and handcrafted ammunition. The guns involved were Smith & Wesson pistols, 19th-century French and Russian guns and prohibited Colt pistols from the 1950s. As mentioned above, he supplied weapons to criminal networks through an intermediary and 107 crime scenes could be linked to his trade<sup>93</sup> (United Kingdom, 2017).

In another instance, a German firearms dealer forged information related to the conversion of his firearms:

*In various investigations conducted between 2003 and 2008, the Dutch police encountered 203 Glock pistols with erased serial numbers from a licensed German firearms dealer. It turned out that the dealer had embezzled more than 4,500 firearms by making it appear that he had himself converted the Glocks from lethal 9 mm calibre pistols to air pressure cartridges (LEP) firearms. In his arms register, the guns were deregistered with the remark: ‘converted to LEP firearm’; in practice, though, the weapons disappeared into the criminal underworld in their original form. The German authorities have since shut down the company<sup>94</sup> (Germany, 2006).*

Once again, these cases highlight the potential for one successful case of fraud to result in the diversion of many firearms and their being trafficked to the criminal world. This scheme involving converted firearms would no longer be possible today as the amendments introduced to the EU firearms directive in 2017 now require that converted firearms remain in their former category.<sup>95</sup> Yet, a similar scenario could possibly play out with other types of firearms which are less controlled in the EU (eg antiques).

### *Surrendered weapons*

Various voluntary surrender programmes have been introduced in several EU Member States to reduce the number of illegal firearms in circulation. Surrendered weapons must be duly registered, after which they can often either be sold to legitimate users,

deactivated or destroyed, depending on the type and context of the surrender programme. A previous Project DIVERT analysis has shown that there are diverse types of surrender programme and that they have been set up in different contexts. In post-conflict zones, for instance, surrender programmes have been used to remove firearms from society and prevent them from entering illicit networks. In other instances, temporary surrender programmes have been set up in tandem with major legislative changes. This allows citizens to dispose of firearms that they can no longer own legally and which it would otherwise become illegal to possess.<sup>96</sup>

We have identified recurring practices of fraud in the context of the voluntary surrender of firearms. One of them involves state officials who are in charge of collecting surrendered weapons and of registering them in the systems forging the corresponding data entries. This method is used to misappropriate firearms that are officially registered as having been surrendered. This practice has occurred predominantly during firearms collection campaigns as part of demilitarisation processes in post-conflict countries or in the wake of major legislative changes. The authorities must register each firearm surrendered in official repositories and firearm-owners who hand in their weapons to the authorities generally receive a certificate proving that they are no longer in possession of these weapons. The main approach of fraud in this context is the forging of surrender registers and certificates by state officials who pretend that surrendered firearms have been gifted to them personally. Cases from Italy, Austria, Belgium and the United Kingdom exemplify this method:

*In June 2018, in Palermo, a police officer was arrested for diverting firearms that had been voluntarily handed in by citizens. He was involved in monitoring the surrender activities. Whereas several gun-owners surrendered their firearms for destruction, the police officer modified the entries in the system fraudulently. He would pretend that the gun-owners had agreed to transfer their firearms to him. The signatures on the certificates of transfer did not match the signatures that had been provided by the owners of the weapons<sup>97</sup> (Italy, 2018).*

*In 2013, an Austrian state official of the district of Innsbruck was accused of diverting weapons and selling them to unauthorised users. He was suspected of acquiring 84 firearms which had been confiscated by the authorities. Some of these weapons had become illegal following a legislative change. The investigation team suspected three additional employees of the district of conspiring to enter the weapons fraudulently on the officer's firearms licence. The man sold several firearms illicitly to an arms dealer and acquaintances<sup>98</sup> (Austria, 2013).*

*A Belgian police officer, who was also a certified firearms dealer, was suspected of misappropriating firearms that had been deposited at his police station during a national firearms collection measure in Belgium in 2006. The scheme was uncovered after the Standing Police Monitoring Committee (Committee P) became aware that one police zone in East Flanders had remarkably low figures of surrendered weapons. An investigation revealed that several weapons that had been surrendered during the campaign were stored at the police officer's house. He was suspected of forging surrender*

*certificates and of the diversion of seven weapons.<sup>99</sup> His lawyer argued that this was legal because in periods of amnesty, people may choose to have their weapons destroyed or left to an authorised dealer<sup>100</sup>. (Belgium, 2009–2010).*

*In 2012, one inspector and a commissar of the police were prosecuted for writing a fake declaration during the surrender of a firearm. The commissar was declared guilty of the diversion of the firearm<sup>101</sup> (Belgium, 2012).*

*In 2000, a civilian armourer who was employed by the Sussex police was dismissed after he was accused of the illegal possession of pistols surrendered during a firearms amnesty. The firearms were registered by the police as ‘destroyed’, while in reality they ended up in his possession. The motive did not seem pecuniary, and the weapons were not linked to crime scenes<sup>102</sup> (United Kingdom, 2000).*

These observations suggest that it is not always easy for the authorities to monitor the exact whereabouts of firearms once they have been surrendered.

### Off-the-record sales

There is very little research on off-paper sales conducted by gun dealers in Europe. In 2021, a US team of investigators from The Trace and USA TODAY published a report examining violations by gun dealers in the United States. Their research was based on a one-year analysis of documents from almost 2,000 gun-dealer inspections that uncovered violations from 2015 to 2017. They found that one of the most common violations of the firearms legislation cited by the US Bureau of Alcohol, Tobacco and Firearms (ATF) is that of ‘not keeping proper inventory and sales records’.<sup>103</sup> Other common offences were for gun-sellers failing to acquire customers’ personal details or omitting information required on federal forms.<sup>104</sup> Unfortunately, no comprehensive data documenting violations by European gun dealers are available. In the absence of such data, we cannot assess the scope of off-the-record sales in the EU.

As part of our research for Project DIVERT, we identified two cases of sales that occurred without being duly registered or declared – the abovementioned Belgium, 2004–2006 could also be an example. In the first case, a Swedish gun dealer sold weapons to various unauthorised users without keeping records of his transactions:

*In 2019, a 43-year-old firearms dealer in Dalarna was sentenced to 7 years in prison for serious violations of the weapons regulation. Between 2015 and 2018 the dealer had purchased 317 firearms from 15 hunting shops in Sweden and had sold them on illegally. He did not keep official records of the sales. Even though the police must conduct annual inspections of all registered firearms dealers, they only ever carried out one inspection – in March 2015. According to media reports, several gun shops were also involved, since they sold more weapons to the dealer than was allowed by law. The firearms dealer was arrested in the summer of 2018 after an investigation began, since one of the weapons he had purchased and re-sold was found in the possession of a drug smuggler. At the time of*

*writing, 289 firearms were still missing. Some firearms sold by the gun dealer have been used in different criminal acts. One was found with a wanted drug smuggler, one was used in an assault carried connected to the Bandidos gang and a third was used in an attempted murder in the summer of 2017<sup>105</sup> (Sweden, 2019).*

Several experts, including representatives of the Swedish police, noted that the case pointed to shortcomings in the structure and implementation of the Swedish system of record-keeping and oversight of firearms dealers. The Swedish police in Dalarna indicated that the lack of a digital register poses a serious problem for gun control. Substantial resources are required to check the paper registers of registered gun dealers and Swedish police are required by law to check the records of all licensed arms dealers' books at least once a year. Given the lack of appropriate resources, such controls cannot be conducted annually. In that case, the police had only conducted one physical inspection of the shop, in March 2015.<sup>106</sup> **This case highlights the need for digital record-keeping and the physical controls of stockpiles to prevent and detect diversion**, a topic which we elaborate on further in Chapter 5.

A case from Switzerland is exemplary because it shows how the rules on record-keeping can be circumvented to divert ammunition. It is also relevant because some of ammunition was sold directly to a German criminal:

*The head of logistics of a the local police force of Schwyz is suspected of having diverted ammunition intended for police training and operations. He is alleged to have ordered a small amount of ammunition in 60 different purchases, but then redirected the ammunition to unauthorised addresses and distributed it to unauthorised users. He took advantage of the fact that no signatures or record-keeping was required to order smaller amounts of ammunition, which made tracing his activities difficult. The ammunition he purchased included expanding bullets, which are prohibited for civilian use. The financial value of the ammunition involved was equivalent to 165,000 euro. His crime was enabled by a lack of internal control. The same man was also suspected of diverting surrendered weapons during a collection measure. The authorities suspect that he collaborated with a German criminal who was sentenced for selling weapons on the darknet in a separate trial<sup>107</sup> (Germany, 2018).*

Strictly speaking, in this case there was no legal requirement to keep records of small purchases of ammunition. But by organising numerous transactions, the perpetrator circumvented the legal limitation of ammunition intentionally, with the express purpose of diverting large quantities of ammunition.

Both cases of forged arms registers reviewed by the research team have led to the **diversion of large numbers of firearms and ammunition**. The perpetrators of fraud in that context had a criminal intention and **sold firearms and ammunition to unauthorised users and/or criminals for pecuniary reasons**. In that sense, these cases have contributed to supplying the illicit firearms market.

### 3.2.4 False declaration of theft or loss

Previous research conducted as part of Project SAFTE noted that

*some recorded thefts are in reality cases of embezzlement, whereby legal gun-owners declare a firearm stolen in order to keep them illegally. This type of embezzlement is believed to be [particularly] popular after the adoption of new regulations aimed at restricting legal access to certain types of firearms.<sup>108</sup>*

The cases we retrieved as part of Project DIVERT involved the diversion of between one and a hundred firearm per case. They involved either weapons that can be owned legally by private owners (rifles, shotguns, carbines, and pistols) but also police service weapons and weapons of higher capacity (eg assault rifles).

There can be various reasons for wrongfully reporting one's gun as stolen. Some people do so because they cannot possess their firearms legally anymore, often in the wake of major legislative changes or because their personal situation has changed. For example, they are no longer medically fit to operate a gun or they no longer have a legitimate motive to possess a gun. Instead of handing in their weapons to the authorities or selling them to authorised users, some of these (now illegal) gun-owners chose to declare their guns as stolen in order to keep them. In Belgium, for example, the average annual number of firearms registered as lost and stolen increased more than tenfold immediately after a major reform of the firearms legislation in 2006. Belgian firearms experts believe that a significant number of these declarations were fake and can be ascribed to firearm-owners wanting to retain their guns without authorisation.<sup>109</sup> We found a case in Greece in which a legal gun-owner declared his firearm as stolen so that he could keep the gun without going through the legal procedures:

*During the investigation of a shooting club in Greece, the police found that the accountant of the club possessed a firearm which he had falsely reported as stolen. The investigation initially concerned the president of the shooting club, who was a member of an arms trafficking organisation and who would supply the organisation with cartridges that had not been spent during shooting exercises. Several other officials were caught during the investigation as they were involved in the illicit sale and disposal of the cartridges<sup>110</sup> (Greece, 2016).*

It is not always easy to distinguish between cases in which gun-owners have lied deliberately about the stolen status of the guns and cases of 'honest mistakes' in which gun-owners thought that their guns had been stolen, whereas in fact they had not:

*A firearm-owner believed that one of his firearms had been stolen since he could not retrieve it following a burglary in his house. He declared it stolen to the authorities. After his death, the family retrieved the firearms but did not report this to the police because they feared prosecution. The gun was found by police during an investigation involving family violence<sup>111</sup> (Belgium, 2006–2008).*

Another reason for falsely declaring a gun as stolen is to traffic guns illicitly. We have identified a practice in which legal firearm-owners declared their firearms as stolen so that they could transfer them to unauthorised users without the firearms being traced to them. A common practice by these so-called ‘straw purchasers’ is to declare the guns stolen before handing them over to the final recipient. That way, they cannot be held accountable for any crime committed with the firearms they acquired in their own names. In Italy, for example, organised crime groups would ask relatives or people without criminal records to buy weapons on their behalf which will later be declared as stolen. This is a way for these ineligible buyers to obtain ‘clean’ guns on the legal market which cannot be linked to any previous crime.<sup>112</sup> According to research conducted by Massari for the Small Arms Survey in 2013,

*70% of the thefts of legally owned civilian-held firearms in Campania [the region surrounding Naples] have been faked; the guns were not stolen but voluntarily given to mafiosi. This type of procurement constitutes an important channel used by organised crime to secure ‘clean’ weapons for homicides and other crimes.<sup>113</sup>*

Considering the restrictions in place on the number of firearms private citizens can buy at a time, mafiosi tend to rely on more structured sources. In addition, because controls have been tightened and applications to open a gun shop are more rigorously screened by the administrative and judicial authorities, this has made it more difficult for gun shops to simulate thefts and allow a group to take the firearms it wanted.<sup>114</sup>

Sometimes persons who illegally transferred firearms to others declared the weapons as stolen in an attempt not to be held accountable for the transfers. A gun dealer registered in Spain was involved in at least one case, while a retired Lithuanian police officer was involved in another:

*In September 2019, the police seized four illicit firearms as part of a roadside control of a vehicle, driven by two known criminals. The firearms could be traced back to a legal firearms dealer. The dealer claimed that the four firearms had been stolen along with 25 additional firearms that he had purchased between March and September of 2019. Many of the firearms in question were assault rifles (19 rifles Smith & Wesson MP15), although there were also two rifles, three shotguns and five carbines. The police assumed that all the firearms were sold to organised criminal gangs and that the declaration of theft was fake. The rest of the firearms had not yet been found and legal procedures against firearms dealer were pending at the time of writing<sup>115</sup> (Spain, 2019).*

*During the screening of two men in 2016 in Lithuania, police found a firearm registered to a former police officer. Shortly after the police had interviewed the two men, the weapon was registered as stolen, along with two other weapons in the possession of the former officers. After investigation into the alleged theft, police suspected that the former police officer had given his three firearms away, and that the belated declaration of theft was fake<sup>116</sup> (Lithuania, 2016).*

Interestingly, a gun dealer in Spain staged the burglary of his own business so that he could claim the insurance money for the firearms stolen:

*A shooting gallery that also owns an adjacent gun shop was robbed in Madrid in 2014. Almost 100 firearms were stolen, along with a large amount of ammunition. The majority of the weapons stolen were Smith & Wesson 9 mm handguns. The weapons came from a Basque security company which had gone bankrupt and were stored for sale in the shop. The total value of the guns stolen is estimated at a maximum of €300,000.<sup>117</sup> Police investigations suggest that the theft was staged and that the company owner left the lockers open to facilitate the theft<sup>118</sup> (Spain, 2014).*

All kinds of perpetrators can wrongfully report their guns as stolen or lost. They range from (otherwise legitimate) gun-owners who want to keep their firearms without following the legal procedures to people with criminal connections who act as straw purchasers and to police officers and gun dealers who sold firearms to criminals and covered up the transactions by means of a fake declaration of theft. The types of firearm involved were often those typically available to civilian users in the EU, such as hunting rifles and pistols, although in cases involving gun dealers and police officers directly there is a risk that prohibited firearms get diverted. In most cases we reviewed, a low-digit number of firearms were involved, considerably lower than that in other contexts.

### 3.2.5 Forged deactivation or destruction of firearms

Firearms can be rendered unfit for shooting through destruction or deactivation. With regard to the latter, according to previous research conducted as part of project SAFTE, the reactivation of deactivated handguns and automatic firearms can be considered one of the most important sources of illicit firearms trafficking in Europe.<sup>119</sup> Reactivated firearms have been seized in Europe for decades, but since 2014–2015 Europol observed a significant increase in the supply of poorly deactivated and reactivated firearms to criminals in Europe.<sup>120</sup> Before 2015, there were no common deactivation guidelines and poorly-deactivated firearms could proliferate throughout the EU as these were free to purchase.

One method of firearm fraud connected to firearm deactivation is the forgery of a deactivation certificate. This can occur in a number of ways. In Estonia, we observed how officials indeed performed a deactivation procedure but then reactivated the firearms and sold them onwards as deactivated:

*In 2009–2011, several Estonian nationals engaged in the business of illicit firearms trafficking by performing the illicit reactivation of poorly deactivated firearms. They rendered the firearms inoperable to get them removed from the Weapons Register and then reactivated them before selling them on. Many firearms were transferred illicitly in a live-firing state to Lithuania<sup>121</sup> (Estonia, 2009–2010).*

This action was blocked by the adoption of the 2017 amendments to the EU firearms directive, which strengthened deactivation standards.<sup>122</sup> There are several conditions to adhere to in order to deactivate a firearm permanently:

- The competent national authorities must render all essential parts of a firearm definitively inoperable and non-replaceable.
- They must verify that the deactivation measures are sufficient.
- The deactivated firearm must be marked and recorded as such before it is handed back to the owner with a certificate proving the deactivation.<sup>123</sup>

The strengthening of laws on deactivation standards has been particularly problematic in Spain. In 2011 and 2013, the Spanish regulation strengthened national deactivation standards and it became mandatory to adapt the firearms that had been deactivated using the previous standards to meet the new standards.<sup>1</sup> The costs of such upgrades have been pointed out as something that adversely affected the business model of dealers who specialised in retailing deactivated firearms.<sup>124</sup>

This created a market for fake deactivation certificates after 2013. We found a case in Sapin where an officer provided a deactivation certificate after performing only a poor deactivation:

*In two separate police operations in 2015 and 2016, more than 300 firearms were seized from an illicit firearms trafficking ring. Among them, more than 60 firearms had been declared deactivated by the head of the ICAE unit of Malaga. The officer had access to these weapons in his professional role (eg firearms handed over to the ICAE by previous owners or firearms awaiting destruction). Once he received them, he performed a 'poor deactivation' and issued corresponding deactivation certificates. The guns were only blocked by a loose metal pin in the barrel, which could be removed without any problem. Consequently, he sold the wrongly deactivated firearms to illicit firearms traffickers from whom they were later seized<sup>125</sup> (Spain, 2015–2016).*

Next to deactivation, firearms can also be destroyed. Even when outdated, firearms remain very durable goods. Surplus weapons, together with other seized or obsolete weapons, are regularly destroyed so as to avoid them falling in the wrong hands.

**To reduce the proliferation and misuse of firearms in Europe, it is important to have destruction stockpiles monitored closely until their destruction.** This entails increasing the security of physical stockpiles and keeping accurate records of destruction processes. In practice, this is not always done correctly. Insiders involved in the process of destruction have taken advantage of their position in different police units to divert firearms intended for destruction. In the context of fraud, the main technique employed by these perpetrators is to divert weapons intended for destruction

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<sup>1</sup> According to old standards, only the barrel needed to be rendered unusable. New standards stipulate that the barrel, the firing mechanism and the breach need to be deactivated, adapting EU legislation (verbal communication in Madrid with firearms experts of the Spanish National Police, 31 October 2019).

and to conceal the diversion by forging the official records of destruction (eg certificates of destruction or arms registers). For example, in Poland:

*From 2004 to 2007, members of the police in Chorzów (Silesia) diverted over a hundred firearms and 25,000 pieces of ammunition. They worked in the police warehouses, supply department, counter-terrorism unit and some of them served on the committee in charge of withdrawing service firearms. The scheme was as follows: police would register certain service weapons (Walther P64s) as destroyed and replaced. In reality, they took and sold them. They were charged with falsifying official records<sup>126</sup> (Poland, 2004–2007).*

Similarly, a former officer from the Spanish Guardia Civil was involved in a scheme of diverting weapons intended for destruction:

*In 2018, a scheme of arms trafficking involving a retired Guardia Civil officer was uncovered. He had embezzled several weapons destined for destruction or scrap metal as part of his former position. He would remove the weapons from destruction stockpiles, issue false certificates of destruction, and hand over the weapons to various people. The plot allegedly involved owners of scrap metal shops and owners of gun shops. Four people were arrested, and further investigations were ongoing at the time of writing<sup>127</sup> (Spain, 2018a).*

National Proof Houses are also places where there is a risk that firearms intended for destruction can be diverted:

*In October 2016, the director of the national Proof House of Belgium, an officer of the Judicial Police, was arrested on suspicion of firearms trafficking. The police believe that he exploited the lack of a reliable inventory system at the Proof House to divert 260 firearms that were supposed to be destroyed.<sup>128</sup> He is suspected of diversion and forgery, with the aggravating circumstance of fraud by a civil servant, with the intention of enrichment<sup>129</sup> (Belgium, 2016).*

There is also a risk that firearms intended for destruction are diverted during surrender programmes. In these programmes, people who do not comply with the legal conditions to possess a firearm (anymore) can surrender their weapons. They can often choose between several options (destruction, deactivation, surrender or sale to a legal owner). In several cases mentioned above, state officials in charge of collecting surrendered guns diverted these firearms and forged the records of destruction. We have discussed two such cases (Italy, 2018 and United Kingdom, 2000) above, where officials in charge of collection of surrendered firearms kept these for themselves.

Another relevant mode of fraud pertains to the false use of ammunition. Unlike firearms, ammunition is not durable. A cartridge is a combined package of the bullet (ie the projectile), the case (which holds everything together), the propellant (which provides most of the energy to launch the projectile) and the primer (which ignites the propellant). When a firearm is shot, the bullet is expelled from the case. At normal muzzle velocity, the impact of the bullet against its targets causes permanent

deformation which prevents the bullet from being reused. As part of Project DIVERT we identified several cases of diversion by transferring ammunition that is recorded as “shot”, for example in Greece:

*A police investigation revealed that after shooting exercises the president of a local shooting club in Greece had supplied an OCG with cartridges that had not been used. According to the investigation, he was a member of an arms trafficking organisation, together with other officials who were arrested as part of the investigation<sup>130</sup> (Greece, 2016).*

Although explosives are not the core focus of Project DIVERT, a similar pattern has also been observed with explosives:

*In 2017 an explosion occurred in the entrance of SBA Police Station Dhekelia in Cyprus.<sup>1</sup> The explosion was at first believed to be caused by an Improvised Explosive Device (IED) thrown into the station from a passing motorcycle, but investigations revealed that the explosive device was a grenade owned by the National Guard of the Republic of Cyprus.<sup>131</sup> Since the National Guard did not report any grenades missing from their stockpiles, the case suggests that the grenade may have been declared as used during training and sold later to unauthorised users, who provided them to the perpetrator of the explosion (Cyprus, 2017).*

It is very difficult to monitor how many shots have been fired during shooting practice (or how many explosives have been used in military exercises). Shooting ranges do not necessarily have the means to verify whether each customer has handed in unspent ammunition after shooting. For this reason, although we retrieved only one single case illustrating the problem of unspent ammunition being diverted, we suspect that similar dynamics play out in other EU Member States.

The identified cases suggest that fake deactivation and destruction is **often committed by insiders** who can access physical stockpiles as part of their position. These are, for example, state officials who handle firearms intended for deactivation or destruction (eg in the context of surrender programmes) or gun dealers who can access deactivated guns legally because of their business. In addition, these actors sometimes also have the technical knowledge and expertise to illegally reactivate or convert the guns. In the case of fake destruction of firearms or fake use of ammunition in exercises, all kinds of firearm and many types of cartridge can be diverted (eg those used in shooting ranges by private individuals or by the police and the armed forces during training activities).

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<sup>1</sup> The Sovereign Base Areas of Akrotiri and Dhekelia (SBA) are a British Overseas Territory on the Island of Cyprus, which includes British military bases and installations.

### 3.3 Conclusions on the scope and characteristics of firearm fraud

The available data on the scope and characteristics offer only a glimpse of firearm fraud. Because of its covert nature, these data are tainted by a ‘detection bias’. Our qualitative analysis is based on a dataset of cases of fraud which we collected during our desk and field research in all EU Member States, where we were often assisted by national firearms experts. The DIVERT dataset of cases of fraud can not be read as a comprehensive sample. Instead, it provides insight into different possible types of fraud and the actors involved, and allows us to draw some provisional conclusions about the characteristics of fraud.

The firearms diverted through fraudulent activities may include firearms typically accessible to private individuals but also prohibited weapons. One reason for this is that some of them stem from state stockpiles and gun dealerships which store firearms prohibited for civilian use. An additional factor that speaks to the gravity of the phenomenon is that many firearms acquired through fraud were used in illicit circles – for example, organised crime groups, including narcotics-traffickers. And some were used to commit crimes such as armed robberies and murders or to support one side in armed conflicts abroad. Because the perpetrators of fraud do not necessarily have the right criminal connections to sell these guns, they sometimes require an intermediary to make this connection.

Various reasons exist to acquire firearms or ammunition illegally through fraud. Private individuals who do not fulfil the requirements to own a gun legally have purchased firearms using the practice of ‘lying and buying’. Other cases were committed for pecuniary reasons, mostly in the context of illicit arms trade, or to get the insurance money from a staged burglary. Sometimes insiders involved in the legal trade in firearms have been involved in fraud (eg employees of authorised arms businesses and shooting ranges), but sometimes also persons involved in the legal control of firearms, – such as police officers in charge of monitoring or collecting firearms.

Bearing in mind the methodological precautions mentioned above, we can conclude that **the scope of firearm fraud is relatively unknown in most EU Member States**, even in those where large numbers of cases have been identified. Our research findings are largely dependent on the national competent authorities’ ability to detect fraud and on the publicisation of the phenomenon in open sources and internal reports. Fraud can have far-reaching consequences not only in Europe, but also in armed conflicts abroad, if the firearms end up in the wrong hands. This has been confirmed when large quantities of weapons of EU origin were diverted to armed rebels and unstable regions of the world where they were used in human rights abuses. The scarcity of data available on firearm fraud, however, implies that large parts of the scope and characteristics of firearm fraud remain unknown, and that more research remains to be done to improve our understanding of the phenomenon.

The fact that our dataset is not comprehensive also implies that the identified number of firearms, components and the amount of ammunition are likely only the tip of the iceberg. There is potential for many more cases of firearms to be diverted through undetected or unreported fraudulent actions. It is likely that a lack of awareness of the problem and a lack of policy attention may result in many cases not being detected or publicised. Apart from the covert nature of the phenomenon, negligence in the controls conducted by law-enforcement agencies, inadequate monitoring of stockpiles and inaccurate record-keeping by competent authorities may also play a role. In the following chapter we will analyse various challenges and policy actions that have been taken in Member States across the EU to prevent firearms fraud.

# 4



## Challenges for preventing and detecting firearm fraud

### Box 7 Key findings

An essential prerequisite for developing a structured policy response to combat firearm fraud is to develop a good intelligence picture of the phenomenon. The first step is to keep adequate records on legal firearm holdings. It is important to conduct periodic data-cleaning of national firearms databases. Digitalising such registers can help to prevent the manipulation and forgery of legal data on firearms. It is important not only to keep good data, but also to cross-check them against actual stockpiles (eg firearms dealers, shooting ranges). Finally, identifying risk profiles and suspicious movements can help to detect fraud. In addition, improving the quality of the seizure data is essential to tracing firearms. This can be done by raising awareness and providing training on how to record good data. In addition to improving the quality of data, there is a need to build a strategic analysis of firearm fraud in the EU so as to improve the policy response to that issue.

Another cornerstone of the EU policy against firearm fraud is international information-exchange. Several frameworks and platforms in the EU, such as EMPACT Firearms, can serve as a forum for discussing firearm fraud. Dealing with firearm fraud also requires a proactive approach at national level. There is a need to connect actors working on the legal side of firearms control and criminal investigators to track down the diversion of firearms. Risk profiles developed by Customs authorities, for example, can contribute to detecting fraud by other agencies. It is also important to combine formal and more informal cooperation between licensing authorities and other national actors so as to increase detection rates. The relevant authorities, however, do not necessarily have the right skills or training to detect or investigate fraud.

Since various national authorities are involved in diverse aspects of the control of firearms, they need to be coordinated. In this regard, several existing initiatives to connect these actors (eg National Firearms Focal Points) and to facilitate cross-border investigations (eg through Europol) could be strengthened.

Several issues hinder the capacity of Member States to prevent and combat fraud effectively. During our background research and analysis, we found that national law-enforcement agencies do not always keep good data on the firearms that are diverted through fraud in the EU. As a result, **the intelligence picture of firearm fraud is fragmented in Europe**. This has consequences on the ground for investigative and operational work, since the lack of a good intelligence picture means that there is no good foundation on which to build law-enforcement strategies and policies to combat the phenomenon. Additionally, research on firearm fraud is scarce in the EU. Evidence on the issue is largely based on individual cases. The number of cases identified in this report, and the number of firearms and cartridges involved, remain a clear underestimation of the actual number of items that are actually diverted through fraud. **In the absence of statistics or any other reliable quantitative data on the phenomenon, it is close to impossible to sketch the scope of firearm fraud in Europe**. In addition, in this report we have retrieved only a limited number of cases of firearm fraud compared to other diversion methods examined in separate reports of Project DIVERT on firearm theft<sup>1</sup> and non-regularisation.<sup>2</sup> As a result, the full scope of firearm fraud in the EU is unknown.

Based on our case analysis, we have identified various modi operandi perpetrated by a wide range of actors who have used more or less sophisticated schemes to divert firearms and ammunition. Fraud can result in the diversion of firearms and ammunition at any stage of the life cycle of firearms – acquisition, transfer, registration, theft or loss – until deactivation or destruction. Given the large number of opportunities for fraud throughout the life cycle of firearms, we believe that the number of cases identified in this report does not reflect the full potential of firearm fraud as a diversion method. Instead, we suspect that there is a large dark number of cases that are not detected by the authorities. All of these factors suggest that **firearm fraud has the potential to divert large amounts of firearms and ammunition**.

In this chapter, we turn to some main challenges for combatting firearm fraud in the EU and identify good practices developed by EU Member States to tackle these challenges.

## 4.1 Firearms record-keeping and documentation

An essential prerequisite for developing a structured policy response to combat firearm fraud is an accurate and comprehensive intelligence picture of the phenomenon. This report has diagnosed this to be a major challenge in the EU. A better intelligence picture of firearm fraud requires firearms data to be properly registered. In many EU Member States, there is a lack of good data on legal firearm holdings and seizures of firearms held or used illegally. Data-collection and record-keeping lack common guidelines at the EU level, resulting in a fragmented picture of legal firearm-ownership in the EU and illicit firearm possession and trafficking. It also undermines the ability to

cross-check legal data with criminal data and therefore to track down diverted firearms to their point of diversion.

To tackle the challenges connected to firearms record-keeping and documentation, several initiatives can be taken, such as:

- Verifying firearms registers and documents against physical stockpiles periodically using risk analyses
- Verifying theft and loss and investigating suspicious cases
- Digitalising firearms registers to prevent manipulation and improve data quality
- Using fraud-proof documentation, including electronic signatures
- Improving the quality of seizure and fraud data
- Organising training on data-recording practices and engaging in data-collection exercises to raise awareness of the quality and aggregation of data
- Improving data-sharing at national level, for example through National Firearms Focal Points
- Interconnecting digital repositories to ease information-sharing and automated cross-checking

#### 4.1.1 Digitalisation of legal firearms repositories and documentation

**Adequate record-keeping on firearms, their owners and their licences is one of the central elements in ensuring that Member States' authorities can prevent and combat the diversion of firearms effectively.** This is true both from an operational standpoint – to keep track of firearms – and from an analytical standpoint – to examine patterns and trends in firearm diversion. This section presents some of the challenges of record-keeping particularly relevant to fighting firearm diversion through fraud.

Since the 2008-amendment to the Firearms directive, the EU requires member states to have a digital register of firearms held legally, lost, found and seized.

### Box 8 Good practice: Lithuania's firearm registration

The Lithuanian digital firearm registry holds all information regarding firearms and firearm licences. All Lithuanian firearm dealers have a personalised account in the national firearm registry where they register all transactions. Private citizens can buy or sell firearms only through registered firearm dealers. Every firearm transactions is thus registered. This allows the authorities to check a firearm dealer's stock and makes tampering more difficult.<sup>3</sup> Firearm licences are registered in this online database, making it more difficult to purchase firearms with falsified papers.<sup>4</sup>

The Lithuanian registry is also connected to various national digital repositories. This interoperability makes it possible to cross-check the national firearms register against criminal records, (limited) information in medical files (such as changes in mental health) and the register of lost, stolen and seized firearms. An automatic cross-check runs once a week. New entries in criminal records of firearms holders even trigger an immediate automatic alert. Currently the system produces about 300 weekly alerts that the authorities consequently follow up on. These frequent automated controls enable the authorities to confiscate legal firearms from those individuals who pose a stronger risk of diverting or misusing their firearm in a timely manner. It also prevents these individuals from purchasing new legal firearms.<sup>5</sup>

Not all national databases are as advanced as the Lithuanian system. Some Member States are currently in the process of upgrading their existing digital systems to cover the full life cycle of firearms and/or to introduce unified electronic systems for arms dealers that will make it possible to monitor all their transactions at all times (eg Germany, Sweden).<sup>6</sup>

We notice also that Member States' efforts to digitalise or upgrade their databases in order to comply with EU regulations often has the positive side-effect that **they are combined with major processes of data cleaning**. For example, in France, the 2015 'National Plan against Illegally Held Firearms'<sup>1</sup> announced the modernisation of the AGRIPPA database which stores all the data concerning legal firearms and firearm-owners. This upgrade included improving the automatic identification of suspicious data entries, optimising the search system, and establishing interoperability with other databases, such as the national database of lost and stolen objects (including firearms) and the Schengen Information System. The upgrade was also accompanied by an effort

<sup>1</sup> In the context of the 2015 Paris attacks, the French government adopted the National Plan against Illegally Held Firearms that included several measures to strengthen controls of firearms circulation and detect fraudulent activities. Border controls were reinforced and the number of house arrests and house searches was increased. In addition, a national arms control coordination service was set up in the Ministry of Interior to improve the cohesion of the national approach to fighting illicit firearms trafficking. Penalties incurred for organised crime and terrorism were strengthened and measures were taken to ease investigation (systematic use of special investigation measures such as infiltration, fake purchases).

to correct mistakes such as double entries.<sup>7</sup> Spain's update of its firearms database in 2014–2015 was also accompanied by a data-cleaning process. This cleaning process led to a significant increase in the accuracy of annual statistics on firearms possession and licensing in the country.<sup>8</sup>

Some Member States have introduced electronic databases for specific phases of the firearms life cycles to deal with particular national challenges. The process of destruction is one of these phases. Our research has shown that various Member States have faced problems with misappropriated firearms, components and/or ammunition during the process of destruction, often at the hand of actors involved in the management of destruction stockpiles (see Chapter 3). For this reason, Croatia, for example, has introduced electronic records on destruction activities to keep track of various major firearms destruction campaigns. These records have helped the authorities to mitigate the risk of the diversion of weapons intended for destruction – for example, by adding detailed documentation about destroyed items.<sup>9</sup> Creating such detailed records increases the likelihood that diversion is detected and this in itself may deter acts of diversion.

**The digitalisation of arms dealers' repositories of firearms is another crucial element that supports Member States in their investigations of trafficking and diversion.**

Europol can provide operational support to digitalise commercial registers of firearms. For example, in the case of Flobert-type pistols described above, Europol cooperated with the Slovak authorities to collect and digitalise the registers of Slovak arms dealers which were identified as sources of several Flobert guns that had been purchased using fraudulent documentation and diverted to a large extent to illicit circles across the EU. This information on the registers helped the authorities in other Member States to trace back some of the Flobert guns which they had seized in criminal investigations to their origin in Slovakia. This, in turn, helped investigators with identifying trafficking schemes and dismantling organisations engaged in trafficking.<sup>10</sup>

Challenges unrelated to record-keeping can also benefit from digitalisation. For example, **Spain is currently developing a secure system to allow for mandatory electronic signatures for medical personnel in charge of issuing the health certification** necessary to acquire firearms licences.<sup>11</sup> These changes must be seen against the background of two large-scale schemes involving fake health certificates in Spain in 2008 and 2011. These cases involved respectively 15 and 131 persons, who acquired legal firearms fraudulently, using illegitimate certificates (see Section 3.2.1 for details). The Spanish firearms authorities have stated that this new system will make it much more difficult to conduct document fraud related to medical certificates. Yet they also caution that digitalisation is no silver bullet. They point to the remaining challenge of detecting the deteriorating mental health of gun-owners in a timely manner in order to be able to take swift action.<sup>12</sup> One remedy that can help to improve the quality of health exams is the cross-checking of individuals' health status by a least two qualified professionals. In Croatia, for example, the health status to acquire firearms needs to be examined by the applicant's general practitioner and by an additional certified doctor.<sup>13</sup>

## Box 9 Fraud-proof documentation

Not all documentation related to the legal use or possession of firearms is digitalised. Certain countries offer more fraud-proof paper documents, for example:

- In Croatia, licences are printed on a protected paper with a watermark and a unique number.<sup>14</sup>
- In Belgium's province of Wallonia firearms authorisations are protected with a stamp using invisible ink and an embossed stamp. In addition, each licence is assigned a unique number.<sup>15</sup>
- In Germany, licences and documentation for the possession of firearms are printed exclusively by the Federal Printing House (*Bundesdruckerei*) on special paper. Stamps and seals are used by the authorities to issue such documentation.<sup>16</sup>

In addition to firearms licences, some countries protect their end-use certification for firearms export against forgery. Sweden, for example, prints its own EUCs on banknote paper, and purchasers must mail their EUCs once they are filled in to the Swedish embassy in the country of import. From there they are sent to the Swedish licensing authority.<sup>17</sup> This procedure has two advantages. First, it makes the forgery of such paper more cumbersome. In addition, direct contact with local diplomatic representatives may help detect suspicious profiles, since it can be assumed that they have insight into local firearms importers.

It should be expected that these types of secure end-use documentation are less vulnerable to fraud than other types of end-user documentation such as the letterhead paper of arms dealers' companies that are accepted by licensing authorities (eg Walloon Region, United Kingdom).<sup>18</sup>

Over and above the positive added value of improving information-sharing and the digitalisation of databases with a view to reducing the risks of firearm fraud and improving the system of control of legal firearms in the EU, ethical considerations should be considered while developing such systems. More precisely, given that confidential information pertaining to the location and safe storage conditions of firearms, and also medical and psychological data, may be stored in such databases, strong security measures should be taken to restrict the access to such data in the absence of criminal offences. These considerations should be considered carefully by Member States while developing and maintaining such databases on legal firearm-owners.

## 4.1.2 Verification of arms registers and stocks

Besides the quality of the data and the need to protect legal documentation, it is important that Member States ensure that all actors who are required to keep records do in fact adhere to the rules set at both EU and national levels. Controlling and verifying legal firearms repositories is crucial to preventing the forging of arms registers and the possible diversion of large quantities of firearms.

Checking the registers and stocks of firearms dealers is one central practice designed to prevent cases of fraud. The Swedish authorities, for example, started to improve their system of control concerning firearms dealers after they detected a large-scale case of fraud involving a legal firearms dealer. This arms dealer had tampered with the registers of his own dealership to divert firearms that he sold to illicit users. The dealer had taken advantage of a lack of systematic law-enforcement controls that would periodically have compared arms dealers' registers with their actual stockpiles (see Section 3.2.3).<sup>19</sup> After this case, several initiatives were launched to strengthen the system of control of firearms dealers. The police, for example, have provided additional training to officers who are carrying out checks on firearms dealers.<sup>20</sup> In addition, to gain a better overview of the activity of arms dealers and to facilitate controls for officers, the Swedish authorities have started to design a unified electronic system that keeps track of arms dealers' transactions.<sup>21</sup>

A lack of control creates a risk that firearms used in shooting clubs may be misappropriated (see Chapter 3). Law enforcement agencies from several EU Member States have criticised the lack of controls of shooting clubs.<sup>22</sup> In a recent incident, for example, false documents proving they had completed shooting practice were handed out by a shooting club in Spain to at least a hundred members of the club. Some of the weapons which were acquired by these members were later found in crime scenes.<sup>23</sup> In another example, a legal firearms dealer in France conspired with a shooting club to produce false membership certificates in order to facilitate their acquisition of firearms.<sup>24</sup> This illustrates the importance of controlling the declarations made by firearm-owners to licensing authorities with a view to identifying possible fraud.

In addition to checking the registers of commercial actors, an interesting approach is to **build on the knowledge gained from previous investigations to identify similar profiles and identify the risks of firearm fraud**. Information from Germany shows how the authorities approach investigations once irregularities are suspected in firearms dealers' records. Typically, the German criminal police wait for repeated irregularities in dealers' firearms records before a deeper investigation is launched since such investigations are often time-consuming and complex and require extensive resources, particularly when large dealerships with extensive stocks of firearms are concerned. The criminal police also use insights gained from continuing fraud investigations for preventive purposes. Hence, the authorities may signal to legal dealers with profiles similar to those under investigation that their businesses are under surveillance in order to prevent them from pursuing similar fraud schemes.<sup>25</sup>

In addition to regularly checking the activities of actors in the legal firearms market, it is important to investigate cases of firearm diversion in a way based on reasoning from known facts or past events (as opposed to making assumptions or predictions). Verifying loss and theft is an important procedure for detecting and investigating fraudulent declarations. It can help to exclude the possibility that firearms owners have staged a fake theft or loss of their guns. In general, Member States' regulations prescribe that theft and loss must be declared immediately to the nearest police office. Yet, Member States use different practices to verify thefts. Whereas in some Member States the normal procedure is that every case of theft is investigated by the criminal police in a systematic fashion, most of the time Member States do not have the necessary resources to investigate every case of theft. In Spain, for example, only suspicious cases of thefts, such as repetitive thefts, are investigated in depth by the police.<sup>26</sup>

### 4.1.3 Quality of firearm seizures data

In addition to the databases containing data on legal firearms, **functioning repositories on seized firearms are necessary**. An accurate system of record-keeping that allows to the authorities to analyse seizure data is an important tool for law-enforcement agencies to detect firearm diversion. By cross-checking seizure data with legal data, the authorities can identify the last legitimate owner of firearms and use this as a starting point to determine the method of diversion. Unfortunately, making such a connection is not always possible because of the poor quality of the record-keeping on firearms seizures in many Member States.

Besides the insufficient investment in capacity and tools to undertake sound analyses, we identified several basic problems in many EU Member States. The incompleteness and inadequate quality of firearm seizure data, for one, has resulted in a lack of comprehensive insights into illicit firearm possession, trafficking and diversion in the EU. Databases in which information on firearms seizures are kept, as another example, do not always allow for the automated aggregation of data. This hinders the analysis of data collected at a national level. In addition, seizure databases are not always interoperable with legal databases. This limits the opportunities to match data easily with other relevant databases (eg repositories on legal firearms or ballistic information). Finally, it is important to collect data of sufficient quality, since the likelihood of tracking down the timing of the diversion of firearms increases if many accurate details on the seizures are recorded (eg the correct model of the firearm, if is converted or reactivated, in which context the firearm was seized).

#### *Data collection*

Whereas seizure databases are the point of departure for effective analyses of diversion, there are at least two other factors that determine the success of such analyses. First, **the urgency among law-enforcement staff about good-quality seizure data**. Law-enforcement officers must often juggle multiple priorities and concentrate on the most

urgent tasks at hand (eg finding the perpetrator of a crime). This can mean that ‘investigating the gun’ may be of a lower priority if it does not help to solve a more immediate crime. Yet, good recording and analysing data on seizures can contribute to identifying more sources of firearm diversion or trafficking networks and prevent future crime.<sup>27</sup> Second, even in cases where awareness of such issues exists, **police officers do not always have the appropriate training and skills in firearms identification and data entry.** A lay police officer may not always be aware of all the complex information related to a firearms seizure and/or the latest trends of trafficking (such as the conversion or reactivation of different types of gun). Such training initiatives are conducted in some Member States that we researched in-depth (eg Spain and Germany).<sup>28</sup>

**The National Firearms Focal Point can play a role in improving the quality and the correctness of national databases.** One of the roles of National Firearms Focal Points is to create and improve national repositories for criminal and ballistics intelligence on firearms (including on diverted firearms such as lost and stolen firearms). They are tasked with overcoming problems related to data-collection and -analysis, such as the lack of connectedness of databases on firearms seizures and criminal investigations. In Spain, for example, much of the effort of the National Firearms Focal Point has been assigned to acquiring technical equipment and updating software to improve the standardisation and interoperability of databases (see also section 4.4).

In addition to improving the data infrastructure on firearms, National Firearms Focal Points are responsible for tracing seized firearms. Given their wide access to many of the relevant national and international firearms repositories, one of their roles is to extract, match and analyse data to complement the intelligence picture of illicit firearms trafficking and diversion. This is crucial to combating fraud because systematic tracing is often the starting point for discovering schemes of firearm diversion.<sup>29</sup>

It is important to stress that the availability of appropriate ammunition is a crucial enabling factor in contexts of crime and violence. As shown in Chapter 3, fraud has been used to divert large amounts of ammunition. Yet, the diversion of ammunition is an understudied topic and insufficient systematic data are available.<sup>1</sup> One of the reasons why analysis of the topic is in short supply is the lack of marking standards for ammunition. Different methods of marking and often imprecise markings make it **difficult to identify and track down licit and illicit ammunition holdings and flows.**<sup>30</sup> To tackle this challenge, UNIDIR in 2020 developed a handbook to enhance the profiling of ammunition, providing good practices to enhance the standardisation of data-collection methods, and to help aggregate data on ammunition used in crimes or seized.<sup>31</sup> Some of the most important advice provided by the handbook that is relevant

<sup>1</sup> To that end, the Group of Governmental Experts (GGE) on Problems Arising from the Accumulation of Conventional Ammunition Stockpiles in Surplus has developed a typology of ammunition diversion with a view to improve the understanding of the phenomenon. See “Diversion Typology: Paper Submitted on Behalf of the Chair.”, GGE/PACAS/2020/3, <https://undocs.org/GGE/PACAS/2020/3>.

in the context of firearm fraud is that standardising ammunition profiling will make it possible to generate data on the volumes and origins, trends and patterns of criminal ammunition.<sup>32</sup> It will facilitate national and international analysis of data on criminal ammunition<sup>33</sup> and make it easier to cross-check data with legal firearms databases, which may help detect more cases of diversion or fraud. More standardised practices of ammunition profiling will improve the intelligence picture of diversion, trafficking and misuse.

### *Data analysis*

An intelligence-led approach to firearm fraud not only entails improving the collection of data, but it also requires the analysis of these data. Our research shows that **in most EU Member States, strategic analysis of firearm fraud does not form an adequate basis for investigations, action plans and policies.** In most EU Member States the intelligence picture is bound to the individual cases identified and is therefore fragmented. This does not allow law-enforcement agencies to gain insights into the broader nature of firearm fraud proactively. The findings of project DIVERT underlining the wide scope of firearm fraud, the wide variety of modi operandi, the specific features of actors involved and the loopholes they can exploit clearly illustrate the advantages of a more comprehensive insight into the phenomenon.

A functioning database of firearms held legally, lost, found and seized, and the skills and awareness to use them are challenges to improve the intelligence picture on firearm fraud. The next step is sufficiently aggregated and disaggregated data on firearm fraud, most of which does not seem to exist in the EU and its Member States. This is not merely a problem linked to the issues in data-recording mentioned above. Rather, the authorities often do not see fraud as a specific diversion method. Its different modi operandi are mostly treated in isolation. Following this view, the treatment of fraud by law enforcement differs significantly from that in the case of more tangible diversion methods such as theft, which receive more specific attention. Creating databases listing the incidents of fraud and collecting information on different modi operandi of fraud could be a first step towards building more systematic knowledge on this diversion method. In the long run, as more data are collected and analysed, it may help form a more accurate intelligence picture of the different methods of firearm fraud. Eventually, they may form the evidence base for developing targeted responses to firearm fraud. Similar incidence databases are already used by Member States' law-enforcement agencies to analyse cases about hand grenades and firearm theft.<sup>34</sup>

## 4.2 International information exchange

Several frameworks and platforms have been developed at the EU level to combat illicit firearms trafficking which can serve as forums to discuss and share information on cases, patterns and schemes of firearm fraud. These mechanisms of information-exchange are all the more important for responding to the lack of comprehensive or comparable data available on firearm fraud in the EU.

**Europol** contributes to the fight against the diversion and trafficking in firearms in general, and of firearm fraud in particular, by providing IT infrastructure for information-exchange, by supporting national agencies with tracing firearms and providing operational support. Europol's Secure Information Exchange Network Application (SIENA) provides a platform that enables the exchange of operational and strategic crime-related information between Europol, Member States and third parties. The database has been extended in recent years to share information on seized assets in EU countries, including firearms. It has also been extended to include counter-terrorism data.<sup>35</sup> This database is valuable for investigating firearm fraud since it provides detailed information on seizures that can be cross-checked with legal firearms repositories. Data-exchange in this context often helps detect sources and methods of diversion.

Europol also provides facilities for the European Multidisciplinary Platform Against Criminal Threats (**EMPACT**). EMPACT is a platform of information-exchange to deal with organised and serious international crime, including illicit firearms trafficking and diversion. EMPACT builds on cooperation between law-enforcement agencies from EU Member States, EU institutions and agencies, and third countries, international organisations and other (public and private) partners. The platform is used for information-exchange but also to plan cross-border law-enforcement operations, which often benefit from the operational support of Europol. Relevant issues and cases of illicit firearms trafficking are discussed by the platform's working group EMPACT Firearms. The members of this working group exchange information on risks and cases of firearm diversion and trafficking that are relevant beyond single Member States and sometimes beyond the borders of the EU.<sup>36</sup>

**Frontex**, the European Border and Coast Guard Agency, is another actor that can contribute to improved information-sharing on firearm diversion, beside the operational action they conduct.<sup>37</sup> The role of Frontex is to combat serious crime affecting the security of the external borders of the EU. It combats, among other things, organised crime groups involved in illicit trafficking and other types of serious crime, including illicit firearms trafficking and document fraud.<sup>38</sup>

To counteract document fraud Frontex operates a Centre of Excellence on Documents Fraud that was established in 2018. The Centre of Excellence has developed a comprehensive database of genuine and falsified documents to help Customs officers detect forgeries. The database includes the different types of document required to trade and possess firearms. In this Centre of Excellence, several experts support the

different units of Frontex which are confronted with document fraud. The Centre of Excellence also shares its expertise and knowledge with all the Customs agencies in Member States.

In an additional effort to increase the expertise of border guards with firearm-related documentation, Frontex has developed a handbook to help border guards and Customs officers detect document forgery pertaining to cross-border movements of firearms. The publication provides detailed information on the different standard documents required by EU law and diverse specimens of the documents used by Member States. This handbook is intended to help border guards verify the authenticity of documents.<sup>39</sup> This type of database of standard documents used in the context of legal arms trade is valuable for detecting fraudulent information or forged documentation.

Since 2019, Member States have been able to exchange information about firearms transfer authorisation with one another in an electronic and standardised manner through the **Internal Market Information System** (IMI). IMI makes it possible for Member States to notify prior consent – which is the authorisation to purchase or acquire firearms from another Member State – to notify an authorisation to transfer firearms from another Member State and to upload a list of firearms for the transfer for which no prior consent is required.<sup>40</sup> The information and documents are accessible to both Member States in IMI for the entire period of validity of transfer authorisations and six months after their expiration.<sup>41</sup> In the case of firearm fraud, this means that if EU Member States have concerns about a transfer procedure, they can consult the IMI database to verify that the documents they have received correspond to a request in another Member State. This reduces the risks of transfers being conducted with fake or forged transfer documents. Establishing direct communication between Member States is important, as criminals have exploited the gaps that arise from poor or indirect communication (see Chapter 3 section 3.2.2).

One of the benefits of the IMI System is that it also provides a common repository for rejected applications. This allows any Member State to check whether and why applicants for a transfer licence have previously been denied a transaction in another Member State. This can help to identify applications for transfers that might be prone to diversion and/or fraud. Another positive aspect of IMI is that it secures the flux of information between Member States on the transfers of firearms. Because it is an electronic database, it also makes the exchange of information more systematic. Finally, the modalities of information exchange are flexible and can adapt to any national administrative structure (centralised, fully decentralised or anything in between).

Yet there are still some shortcomings with IMI. For example, the information on transfers must be uploaded by national authorities in a file format since IMI is not always interoperable with national databases. This means that data cannot easily be searched for in the system. Instead, when a Member State's authorities wish to access data on a transaction, they must open a document manually. Second, it is not clear how systematically Member States share data on denied, suspended or withdrawn

transfer licences via IMI. Because there is no legal obligation to do so, it is possible that this type of information may not be shared in a systematic way by all the Member States.

Finally, issues pertaining to firearms exports are discussed in the **Firearms Exports Coordination Group**, which gathers representatives of DG Home, Europol and EU Member States (established in terms of Regulation 258/2012). However, since its first meeting in 2014 the group has met on only a very limited number of occasions.<sup>42</sup> The work of this Group focuses on administrative procedures for export control, information-sharing, tracing and trade<sup>43</sup> rather than on concrete cases of diversion and/or fraud. Nevertheless, its discussions on loopholes in EU export and transfer legislation can contribute to making the overall EU regulatory framework increasingly resilient to fraud. For example, the group's fifth meeting held in 2018 identified that simplified procedures for temporary exports of firearms are implemented very differently in Member States. As discussed in Chapter 3, these differences in national legislation leave room for travelling without proper documentation and can possibly lead to diversion. The group also recommended the use of an electronic system to submit a request for export authorisation.<sup>44</sup> Given the strong risks of document forgery in the context of the legal arms trade (including transfers), we have identified electronic documentation as a good practice to prevent document fraud in section 4.2.1. Digital systems make it easier to compare different databases and to exchange information digitally as opposed to paper-based systems.

Combating corruption and money laundering is closely related to firearm fraud and therefore it deserves attention in a holistic analysis of policies that can be used to fight the problem. Corruption is the core area of work of the **European Anti-Fraud Office (OLAF)**. The role of OLAF is to investigate fraud, corruption and misconduct and develop an anti-fraud policy in the EU. The work of OLAF covers multiple topics, from overseeing the spending of the EU budget and monitoring the taxing system to investigating misconduct by staff members of the EU, providing support for digital forensics and cooperating with investigative partners. All EU Member States must designate an anti-fraud coordination service (AFCOS) to facilitate information exchange with OLAF and to coordinate legislative, administrative and investigative activities within their respective countries. Although OLAF does not focus specifically on firearm fraud, it has a central function in developing overall policy on fraud involving corruption in the EU.

Corruption can facilitate fraudulent actions committed in the context of firearms possession, use or trade. This is particularly apparent in cases where the perpetrators involved are insiders who benefit from their knowledge of the rules and procedures and from their access to physical stockpiles to divert firearms (see Chapter 3 sections 3.2.3 and 3.2.5). To obtain fake seals or signatures, criminal networks often target persons involved in the legal trade in firearms, such as legal firearms dealers or brokers, or persons involved in the control of firearms trade and stocks, such as agents of border controls or security agents guarding firearms stockpiles. Against this background, the

fight against corruption is a policy field that can reduce the opportunities for firearm fraud.

Many countries have set up specialised units dedicated to corruption. Improving linkages between public agencies and units which fight corruption and those which combat illicit firearms trafficking is therefore a fruitful avenue for future improvement. The same can be said about collaboration with those agencies which fight money laundering. If diversion is committed with the aim of trafficking firearms for financial benefit, this implies that the origin of the money obtained must be concealed. Traffickers who have diverted firearms have used various methods of money laundering. For example, they have produced fake bills stemming from fictitious companies to cover up their illicit firearms business. In line with a strategy of 'following the money', agencies working to fight money laundering can help detect cases and schemes of firearm diversion and related money laundering.

### 4.3 Safeguarding arms flows

The revised **EU SALW Strategy** adopted in 2018 noted that the fight against firearm diversion requires the effective establishment and enforcement of norms and rules to safeguard legal firearms at all stages of their life cycle, including during export.<sup>45</sup> It also requires the EU to counter diversion by

*supporting capacities for identifying points of diversion by means of tracing, making better use of information-exchange systems and mitigating the risk of further diversion by cutting supply to identified diverters in the framework of arms export control.*<sup>46</sup>

The SALW Strategy therefore called upon Member States and the EU to enforce compliance with existing rules and to develop tools that prevent the diversion of firearms during export.

These policies have been developed in the context of increasingly complex export trading patterns involving more and more brokers, front companies and transit and trans-shipment points. This situation makes it increasingly difficult for the authorities to identify and monitor the end-use of exported goods.<sup>47</sup> This has in turn created more opportunities for firearm diversion at various points in the supply chain. The complex and technical nature of export control places a burden on investigators and prosecutors that makes it imperative to deal with cases of fraud rapidly, because drawn-out investigations can result in evidence disappearing and investigators possibly running out of (financial) resources.<sup>48</sup>

Our findings relating to the diversion of firearms during transfers demonstrate that compliance with the existing rules and norm as well as a stricter safeguard mechanism is a considerable challenge. EU arms export policies need to take more systematic account of the impact of the diversion of firearms of EU origin in other regions of the

world, develop tools to detect and investigate diversion and harmonise the prosecution procedures for those cases that are detected.

Figure 2 : Key points of intervention to enforce compliance and safeguard mechanisms during arms transfers



This next subsection discusses the best practices for and the challenges in combating firearm diversion during the export, import and transfer of firearms. It goes beyond the analysis of the legal framework for preventing firearm fraud that we presented in Chapter 2 by focusing on the policies that enhance the detection, coordination of action and prosecution of firearm fraud.

### 4.3.1 Detecting and investigating fraud

As discussed in previous chapters, licensing authorities use multiple tools to ensure that criminals are excluded from the trade in firearms. These measures include a system to guarantee that the end-user will not divert firearms and cross-checking information in different international databases to ensure that any suspicious transactions are detected and neutralised. Depending on the national setup of these licensing procedures, national authorities may be more or less equipped to detect and prevent cases of fraud. In most EU Member States there are no standardised procedures to detect fraud during the licensing process.

#### *Detection during licensing phase*

One important safeguard mechanism against firearm diversion occurs during the licensing phase of arms transfers, imports and exports. The detection of fraud by licensing authorities requires expertise, practical experience and knowledge of the

multitude of different procedures and documents required during the licensing procedure. It also requires licensing authorities to be aware of the different opportunities that exist to misuse or abuse these procedures and to forge the documents.

One crucial component that contributes to successful fraud detection is the **institutional memory of the licensing authorities**. Having a team of experts who have built up their expertise over several years is a crucial asset of such agencies. First, they are familiar with the exporters who frequently apply for export licences. Second, they have witnessed and memorised many cases and documents. This allows them to identify documentation, such as EUCs or IICs, that differs from previous procedures. In Belgium, for example, the Walloon licensing authority believes that the institutional memory of the licensing unit — which is characterised by a low turnover of experts — allows them to detect most cases of suspicious documentation.<sup>49</sup> However, the authority also notes that fraud is more difficult to detect on foreign documentation (such as IICs) because of a lack of common templates. In cases where foreign documents raise suspicions, the unit can cooperate with its counterparts in other countries to determine whether fraud has been committed.<sup>50</sup> Communication with such foreign contacts can also be positively influenced by long-term relationships, which is really only possible in units with a low staff turnover.

Another aspect that is critical to detecting fraud is the **cooperation between national licensing authorities and other national actors** involved in verifying information provided during the licensing process. Member States organise their licensing procedures differently. Export licences can be examined by more than one authority. In instances where several authorities are involved in the licensing process, one authority often takes the lead while others play a consultative role based on their particular expertise (eg expertise in licensing legal firearms or investigating criminal schemes of fraud).<sup>51</sup> Such consultations may be carried out as part of institutionalised multi-agency meetings. Spain, for example, has formalised the cooperation of multiple agencies within a working group on arms exports (*Junta interministerial reguladora del comercio exterior de material de defensa y de doble uso*, JIMDDU for short). The group, coordinated by the Ministry of Trade, brings together members of the Ministry of Foreign Affairs, the Ministry of Defence, the Ministry of Interior (including representatives from the *Guardia Civil*) and representative of the Customs and the national intelligence services. These actors bring to the table expertise stemming from various backgrounds to discuss all export applications issued in Spain. Together they assess the reliability of the exporter and the end-user (from a criminal, financial and political perspective) and the accuracy of the documents provided.<sup>52</sup> The discussions are led both at a technical and at a political level, and most decisions are taken by consensus.<sup>53</sup>

The added value of this system is that it makes strong coordination between experts possible. In this way, it leaves hardly any space for fraud during the licensing process.<sup>54</sup> A similar approach has been developed in Croatia, albeit with a clear focus on preventing terrorism. The country's Action Plan for the Prevention and Suppression of Terrorism (2011) established several national commissions to control and prevent the

transfer of weapons and explosives to terrorists. One of these commissions has the goal of monitoring the export of military goods; one of its main tasks is supervising the examination and allocation of export licences and preventing document forgery in this context. Many different authorities are represented on these commissions, including the Ministry of Defence, the Ministry of Interior, the intelligence service and the Ministry of Foreign Affairs.<sup>55</sup> In sum, close and coordinated national cooperation that involves a multitude of important expert perspectives on the licensing process is a sound practice that can increase the detection of forgeries.<sup>56</sup>

Cooperation at national level can take the form of various joint actions between specialised investigative units and licensing authorities. Formalised interagency meetings, but also less formal periodic meetings between relevant actors, can be one way of building relationships and developing clear processes of interagency communication and cooperation that can be put to work if actual cases of fraud arise. National cooperation alone, however, is not enough to detect fraud. Often, national authorities must draw on institutionalised international information-exchange mechanisms, which we described in the previous sections of this chapter. In addition to these institutionalised systems, national licensing authorities often need to get in touch with licensing authorities across the world on an ad hoc basis, for example, to verify the accuracy of import certificates, for which, as we discussed in Chapter 3, no uniform international template exists. In this sense, combining formal and less formal cooperation and information-sharing with foreign authorities is a necessity if fraud is to be effectively detected and prevented.

**Implementation of the ATT** is another opportunity for detecting and investigating diversion. Article 11 of the treaty identifies several actions that State Parties can take at each stage of the transfer chain to mitigate the risk of diversion. These actions include an assessment of the risk of diversion and exchanging information with exporters, importers and transit or trans-shipment countries. However, it is not clear to what extent State Parties assess such risks in terms of fraud. Within the ATT process, the Working Group on Effective Treaty Implementation (WGETI) and on Transparency and Reporting (WGTR) have taken steps to help ATT States Parties better address and mitigate the risks of diversion. WGETI describes diversion as one of its top three priorities and created a sub-working group on diversion. The sub-working group has considered the risk of diversion throughout the different stages of the arms transfer chain and produced a living document on ‘possible measures to prevent and address diversion’.<sup>57</sup> In 2020, the sub-working group received a revised multi-year work plan to explore practical measures for assessing the risk of diversion and to discuss the roles of importing and transit and transshipment States, and post-delivery cooperation.<sup>58</sup> The EU could use this as an opportunity to bring up discussions on the typology of diversion, including on fraud, in this sub-working group. Furthermore, the ATT hosts a Diversion Information Exchange Forum (DIEF) which is intended to serve as a mechanism for informal voluntary information exchange on “concrete cases of suspected or detected diversion and for sharing concrete, operational diversion-related information”<sup>59</sup>. There may be space to encourage States to share experience in detecting and responding to cases of fraud.

### *Detection during border controls*

After a licence has been granted, Customs authorities and border control agencies are generally the next in line to detect irregularities during border controls. Border controls can include the verification of paper-based documents but they may also include **physical verification of firearms shipments** once they have reached the external borders of the EU, or once they have reached their destination. Since it is often not possible to check every export or import physically, risk-analysis systems are used in various Member States. Risk profiling means that verification is not conducted randomly but targeted at suspicious shipments.

**Risk profiling** can be performed electronically and complemented by human analysis. To determine the risk profile of a shipment, several pieces of information are considered: the type of goods, the type of end-user, the shipping route and whether the licence has been previously denied to another exporter.<sup>60</sup> This requires licensing authorities and Customs authorities to exchange information both nationally and at EU level. Such a risk system can help Customs authorities make an informed choice that takes account of their responsibilities to detect fraud and at the same time to minimise the financial implications of holding up containers for additional controls.<sup>61</sup>

In Spain, for example, the risk profiles created by the Customs authorities are the most important tool for the initial detection of irregularities during the export, import and transit of goods, including firearms. Spain's electronic risk database is based on up-to-date fiscal information of the companies involved, information about previous misconduct and information shared through international channels and forums, such as, for example, the COARM database. Customs officers receive risk alerts in real time (eg on their mobile phones) once a risk is identified by the database. For example, if a container which is suspected to carry illegal firearms arrives in a Spanish harbour, or if a company which has been involved in fraudulent export in the past starts shipping goods to, via or from Spain, the system will send an alert. Consequently, the container is checked physically, extra documentation can be requested or the container can be placed under surveillance. All newly detected cases of fraud (or other irregularities) are fed into the risk management system for future consultation.<sup>62</sup>

Customs agencies face various **challenges with detecting and/or investigating cases of firearm fraud** effectively. First, export controls of weapons (including firearms) are not a priority for most Customs agencies in Europe, as their core focus remains import controls and revenue collection. This is compounded by the fact that export-related offences are rather rarely detected, which in turn reduces the resources allocated to the control of firearms exports. On the other hand, dedicating few resources and attention to such cases also means that fewer cases will be detected. This lack of prioritisation leads to a situation in which some Customs authorities lack the resources, training and specific skills to detect firearm fraud.<sup>63</sup> Yet, a lack of human and technical resources may also be related to broader downsizing trends in public services that were common in many EU Member States after the global financial crisis in 2008. For example, in the

2010s the United Kingdom reduced the number of its enforcement staff for Customs in line with a broader reduction of civil service staff.<sup>64</sup>

### Box 10 Monitoring legal shipments of firearms and preventing diversion

EU regulation allows exporters to send firearms covered by one export licence in multiple separate shipments as long as these shipments take place within the validity period of the licence (see Chapter 3). If no systematic monitoring system is in place, this increases the chances of ill-intentioned exporters diverting firearms which are officially intended for export. For example, an exporter may claim (potentially by faking documents) that 500 firearms have been shipped, but in fact only 497 of them arrive at their destination. The three remaining firearms may be officially recorded as having been exported, but in fact remain in the possession of the exporter, who may leak them to illicit users. Although we have found no empirical evidence of such a fraud scheme, it has been pointed out as a credible threat by competent national authorities. This suggests the need for a monitoring system that allows Customs to track down the number of firearms which have effectively been shipped. In Spain, for example, the authorities have developed a monitoring system that allows the authorities to check all firearms export and import licences against actual Customs declarations monthly. This makes it possible to keep track of ongoing exports and imports and enables authorities to detect irregularities.<sup>65</sup>

Besides the lack of prioritisation of firearm fraud, many EU Member States' Customs agencies lack the awareness of how to detect fraud. Detecting firearm fraud (or other export-related irregularities) requires a **specific set of skills** that cannot be expected of every Customs officer. For example, detecting suspicious shipments requires Customs officers to be able to identify physically the items that are listed by the EU as military goods. This may be particularly difficult in the case of shipments of firearms components.

Various Member States have recognised this problem and have set up **specialised arms export control units within Customs authorities**. Such units can concentrate their expertise and help to build institutional memory about cases of export-related fraud.<sup>66</sup> In the Netherlands, for example, a specialist team under the Customs administration is responsible for the enforcement of export controls and sanctions (Precursors, Strategic Goods and Sanctions – *Precursoren, strategische goederen en sancties, POSS*). The *POSS* team has the power to demand extensive information from exporting entities and to access their premises. It also collaborates with and assists the unit in charge of investigations into economic, fiscal and financial fraud (Fiscal Information and Investigation Service – *Fiscale inlichtingen en opsporingsdienst, FIOD*). A specialised prosecution office supervises investigations into arms trade controls carried out by the *POSS* and the *FIOD*.<sup>67</sup>

When a Customs office detects a suspicious transaction in Germany, it can contact the specialised team at the Customs crime office which has expertise, substantial experience and access to intelligence information on matters of irregular transactions. The team can contact technical experts immediately in cases where it is unclear whether a shipment contains controlled goods.<sup>68</sup> Yet, not all Member States have such specialised Customs units. This means that after an instance of fraud is detected, the investigation may also be handed over to specialised police teams or prosecutors.<sup>69</sup>

### *Investigation of fraud cases*

Various legal systems in EU Member States have different divisions of tasks between the actors in charge of the investigation, the prosecution and the judgment of firearm fraud cases. In some Member States, the prosecutor directs the preliminary investigation and the collection of evidence for indictment. In other Member States, the local police leads all aspects of the preliminary investigation, whereas the prosecutor does not take an active role in the investigation.

In addition, the institutional responsibility for investigating export control cases also varies between countries. In certain Member States, the Customs authorities are responsible for the investigation of offences relating to arms export control. In other Member States, the police or other organisations assume that role. This can pose a problem for international cooperation because the authority in charge of the investigation of a case in one country may need to cooperate with a functional counterpart in another state which may not be its direct counterpart.<sup>70</sup> Such cooperation can lead to delays in communication and cooperation, since different agencies may not share the same organisational culture, have no official agreement in place to share information in an uncomplicated manner, and may not have established personal rapport at previous international meetings.<sup>71</sup>

In the absence of cooperation mechanisms, the investigation and prosecution of export-control violations can be impeded by a lack of formal agreements to cooperate, of procedures to share information, of opportunities to meet or insufficient clarity or overlaps between the competencies of institutions or departments.<sup>72</sup> As we pointed out above, firearms focal points, joint investigative teams or bilateral accords for information exchange can be possible remedies to such issues.

### **4.3.2 Prosecution of export-related fraud**

Prosecution is inseparable from the detection and investigation of firearm fraud during export. The threat of prosecution is an important deterrent mechanism to criminals intent on committing fraud. Since European legislation does not prescribe prosecution measures for export-related crimes, they are handled individually by the Member States. This leads to a patchwork where national prosecution differs in various critical

aspects, which makes it easier for some Member States to prosecute export-related offences whereas others find it more onerous.

**The type and severity of penalties differ between Member States.** This is true both for civilian firearms (covered by the EU firearms directive) and military-use firearms (covered by the EU military list). According to the 2018 SIPRI and Ernst & Young study of Regulation 258/2012, export-related crimes involving civilian firearms are more commonly sanctioned with criminal penalties than administrative sanctions. Some Member States even only hand down administrative sanctions in certain cases.<sup>73</sup> Regarding the seriousness of sanctions, some states provide for comparably lower punishment (eg Greece and Slovenia), whereas other states enforce rather severe punishment. Cyprus stands out by penalising export-related offences involving civilian firearms with up to 15 years' imprisonment and/or fines of €42,715 for the unauthorised import of firearms and up to €100,000 for unauthorised export or transit.<sup>74</sup>

**Practices of sanctions for fraud committed with exports of military-grade firearms vary across Member States** and are regulated by different types of law. A 2019 study conducted by SIPRI investigated the ways in which export-control violations are detected, investigated and prosecuted in the EU. The study found that various systems of prosecution are in place for arms export violations. Depending on the Member States' legal systems, the prosecution of export-related fraud is either covered by the general economic (criminal) offences legislation (eg the Netherlands), the (criminal) Customs legislation (eg the United Kingdom) or specific legislation on export controls (eg Croatia). Moreover, offences specifically related to firearm fraud are sometimes also treated in their own right, such as the falsification of documents. In other cases, offences related to firearm fraud are treated together with other infractions related to export control. Member States apply different kinds of sanction, often depending on the severity of the offences. These sanctions range from warning letter for not providing all the required information to fines imposed by Customs and prison sentences. The maximum penalty for an offence related to exporting military firearms is three years in prison in Cyprus (the minimum in the EU) and 30 years in France (the maximum in the EU), whereas Slovakia's legislation does not mention any prison sentence for that type of offence.<sup>75</sup>

In addition to penalties, **various aspects of the prosecution of firearm fraud in the context of arms exports can make it either easier or more onerous for competent authorities to prove offences.** For example, in some Member States, it must be proven that the suspected offender had knowledge that a fraud was being committed, whereas this is not the case in other Member States. Most importantly, Member States do not have equal means to prove that the perpetrator was intending to commit a fraud. For example, in the framework of investigations into firearms exports, the German authorities have the right to intercept telecommunications, while this is not possible in the United Kingdom, for example.<sup>76</sup> Prosecution may further be complicated by regulations that limit the time within which prosecutors must press charges. In the

United Kingdom, for example, charges must be pressed no later than six months after the offence was committed.<sup>77</sup>

Another difficulty is that **not all Member States allow prosecution of the intention to divert firearms through fraud**. This implies that not all suspicious shipments can be stopped before the actual diversion. A solution developed by some Member States is the so-called ‘controlled deliveries’, where suspicious shipments continue to be monitored even after they left the EU borders. But this requires resources that not all Member States have. Alternatively, some EU Member States do penalise the attempt to commit an export offence: this is possible in the United Kingdom and in Germany under specific circumstances.<sup>78</sup>

In addition, **not all the actors can be held responsible for fraud on export**. For example, in the Netherlands, Slovenia and the United Kingdom, both legal and natural persons can be prosecuted for violations of the export-control rules and sentenced with penalties which range from compulsory closure to the payment of a fine. In Germany, on the other hand, it is not possible to prosecute a company. Rather, a company representative must be designated as individually responsible for an offence regarding arms exports, as recent court cases against employees of SIG-Sauer and Heckler & Koch have shown (see Chapter 3 for detailed case descriptions).<sup>79</sup>

Finally, an obstacle to prove fraud on export can be the **legal requirement to keep intelligence information secret**, to protect state interests, to protect sources or because it was provided by foreign intelligence services under the condition that it was not to be disclosed. Therefore, according to a 2019 study by the Stockholm International Peace Research Institute, intelligence services ‘*might prefer to monitor and disrupt export control violations rather than prosecute them*’.<sup>80</sup>

In short, the rules and practices for the prosecution of fraud differ between Member States. This creates a potential risk that criminals may choose to operate in those Member States with the most lenient prosecution frameworks. Certain legislation imposes lower penalties, others have stricter requirements to prove offences, yet others prohibit certain investigative instruments. This means that there is room for improvement – for example, by exchanging best practices of prosecution in international forums or by comparing penalties for certain offences across Europe – as a first step towards future alignment. Moreover, establishing specialised prosecutor (or legal adviser) positions at a national level can create institutional expertise on export-related offences. This can be of help to national courts which have to face sometimes very skilled defence lawyers. Such positions are already in place, such as those in the United Kingdom, where export control cases can be channelled through specific courts. These courts have increased the national judicial experience in this particular area. Most of the recent high-profile cases involving violations of export controls in the United Kingdom have been heard in one of these courts (eg the Southward Crown Court).<sup>81</sup>

## 4.4 Operational capacities to combat firearm fraud

The work of the actors involved in the fight against firearm fraud is shouldered by sustained, appropriate and sufficient operational capacities and cooperation if it is to contribute effectively to the fight against diversion. In this regard, the EU and its Member States have the challenge to support the capacities of the actors who combat firearm fraud. Up to now, policy developments in this area have been relatively limited. To date, the EU and its Member States have lacked a structured policy to deal with firearm fraud.

Our research has shown that firearm fraud is a **complex and multifaceted phenomenon** in Europe. Given its technical nature, transnational features and legislative complexities, dealing with firearm fraud is a difficult task. Not only criminals, but also skilled individuals and gun enthusiasts with strong levels of technical and/or legal expertise can play a role in firearm fraud and take advantage of legal loopholes, legislative differences between EU Member States or a lack of information-sharing and cooperation. In addition, the firearms involved are often not used immediately by their buyers. Instead, they often remain under the radar for quite some time. Therefore, criminal investigations into firearm fraud do not always lead to immediate results. A more proactive approach is required to overcome these complexities and to provide answers to the issues of firearm fraud.

In most EU Member States, **the actors involved in the system of legal firearms control, and investigators working on illicit firearms trafficking often work in separate silos.** Their respective efforts to secure the legal firearms market and to combat illicit firearms trafficking are simply not connected enough. To remedy these issues, national authorities in charge of controlling the legal aspects of firearms and those investigating criminal aspects (eg illicit firearms trafficking) need to coordinate their activities. Starting with the criminal side, firearms are still too often considered as only the collateral evidence of criminal investigations. When investigators retrieve illicit firearms in the context of other crimes (eg drug-trafficking or murder), they often focus on solving the crime rather than investigating the gun. An illustration of this phenomenon is that firearms are not sufficiently traced in certain EU Member States. A direct consequence of this issue is that it is difficult to track down illicit firearms to their source or mode of diversion (eg through fraud). On the other hand, looking at the system of legal firearm control, there is also a lack of sensitisation to the risks of diversion and criminal access to firearms. It is therefore important that the EU and its Member States increase the capacities of actors involved in the control of legal firearms and sensitise them to the previously identified *modi operandi* of fraud.

Because of the multifaceted and wide nature of firearm fraud, many different national authorities are involved in preventing and combating firearm fraud. They include, among other actors, licensing authorities, police, Customs and prosecutions offices. Between these actors, each Member State allocates the responsibilities relevant to preventing and combating firearm fraud differently and as a consequence we cannot compare these different national systems comprehensively in this report. Despite this,

we have identified some important sound practices which help Member States in their efforts to curb fraud in the context of firearm diversion.

An important answer to several problems relating to the insufficient connection of actors involved in the fight against firearm diversion is the establishment of **National Firearms Focal Points** across Europe. These Focal Points are designed to serve as a main hub for gathering, analysing and sharing information on issues of firearms trafficking and diversion, both at a national and at an international level.<sup>82</sup> This makes them the central contact point for those national and international agencies that have requests for information on such matters. Owing to their central position, they can also take on a coordinating role for different national agencies involved in combating illicit trafficking and diversion. This is particularly vital because information exchange is not always standardised between agencies, which may create the risk that information goes missing. In addition, the Focal Points may also support the operational work of international agencies and platforms such as Europol and EMPACT Firearms. In this sense, National Firearms Focal Points are an important tool in the fight against firearm diversion at the national, EU and international levels.

In recent years, the EU has been encouraging the creation of National Firearms Focal Points in EU Member States and in neighbouring partner countries in South-Eastern Europe. The implementation of National Firearms Focal Points is supported by EMPACT Firearms.<sup>83</sup> To this end, the EU is also financing a project to improve the coordination of the Focal Points based in the EU and in those EU partners in South-Eastern Europe. The overarching goal of the project is to develop existing focal points and to achieve a level of standardisation that can be implemented across Europe.<sup>84</sup> One important aspect of this project is to enhance the interoperability of databases at the national and EU levels as a way of laying the basis for improved analysis that will serve to identify patterns of trafficking and diversion. A second aspect is the support given to operational actions between Member States and third countries, such as South-Eastern European partners or countries in the Middle East and North Africa.<sup>85</sup>

Despite these efforts, only a handful EU Member States and partners in South-Eastern Europe have established fully staffed and trained National Firearms Focal Points.<sup>86</sup> For this reason, the EU Action Plan on Firearms Trafficking 2020–2025 recommends reinforcing the competences and the staffing of the Focal Points.<sup>87</sup> In addition, the capacities of many existing Focal Points need to be strengthened. To ensure that the Focal Points can overcome the problem with the current intelligence picture, their core tasks need to be clarified and implemented. Basic requirements include:

- the presence of firearms expertise;
- access to all relevant databases on firearms-related crime
- analytical capacities; and
- a commitment to national and international information-exchange.

In most EU Member States, many problems are connected to a **lack of investment in the capacity and tools to focus on firearm fraud**. Member States should therefore devote more investment to building capacity, training and specialising detectives in

firearm fraud. Given their workload, specific expertise and preoccupation with solving individual cases, detectives often do not have the necessary resources (time, methodological skills or access to other relevant cases) to undertake more aggregated and strategic analyses.

It is also a good practice to **dedicate firearm units of the police to identifying and analysing document fraud**. In Spain, for example, the agency of the *Guardia Civil* in charge of the administrative control of weapons and explosives (*Intervención Central Armas y Explosivos (ICAE)*) has a small team of experts who focus on document fraud and financial irregularities related to firearms.<sup>88</sup> The organisation of the *Guardia Civil* has the advantage that this team is physically located at the same place as the Spanish National Firearms Focal Point, which facilitates information-exchange. In addition, in the case of arms exports, certain EU Member States have set up units that focus specifically on document fraud. These are detailed in section 4.3 and are dedicated to safeguard mechanisms in the context of arms exports.

In addition, as we have seen in Chapter 3, fraud perpetrated by members of state agencies can lead to the diversion of large numbers of firearms. For this reason, **internal investigation bodies** in law-enforcement agencies are another important tool to help detect and investigate fraud by controlling and monitoring police activities. The Belgian Standing Police Monitoring Committee (Committee P), for example, played an important role in detecting and investigating cases of diversion involving the forging of documents and/or official registers during various surrender programmes.

The EU provides various frameworks of operational support to strengthen national investigators' capacities in their investigations of firearm fraud. To begin with, Europol hosts an operational centre called the **European Serious and Organised Crime Centre (ESOCC)**, which provides support for operational activities and task forces involving organised crime, including firearms trafficking and/or diversion. Operational activities are often necessary in the case of firearm fraud, since, as we have shown in Chapter 3, many cases involve more than one Member State. The ESOCC helps to set up and to coordinate investigations that involve several Member States using a temporary operational task force. In addition to this coordinating role, ESOCC can support such task forces by providing strategic operational intelligence, on-the-spot support and financial contributions. ESOCC can also provide cross-departmental support (eg by involving Europol's department for counter-terrorism). An example of a successful task force set up by ESOCC includes the detection of a scheme in which criminals used identity fraud to facilitate the purchase of Flobert-type weapons in Slovakia that were later converted to live-firing firearms and trafficked across Europe (see Germany, 2019).<sup>89</sup>

Europol also has the capacity to support **Joint Investigative Teams (JIT)**. These are temporary cooperation tools which are set up at the initiative of several Member States to coordinate the investigation or prosecution of transnational cases. JITs bring together national investigative agencies to deal with cross-border crime, including firearms trafficking and diversion. Europol can support JITs by providing intelligence,

analytical, technical, financial and logistical support, and forensic expertise, and by supporting the secure exchange of information. Each JIT is established for a limited duration and for a specific purpose to carry out criminal investigations in one or several Member States. A JIT can consist of (among other actors) law-enforcement officers, prosecutors and judges. Joint operations are often necessary in the case of firearm fraud, since many cases involve more than one Member State.<sup>90</sup> JITs have been used in the past to dismantle a scheme of fraud during which an organised crime group used fraudulent documentation (fake IDs) to purchase acoustic weapons that were later used in attempted murders in France and in Spain.<sup>91</sup>

# 5

## Conclusions



In its Action Plan against firearms trafficking 2020–2025, the EU Commission identified the safeguarding of the legal firearms market and the prevention of diversion as one of its key priorities. To this end, the EU Action Plan urges Member States to improve the intelligence picture of illicit and diverted firearms. It also calls for more cooperation between national units fighting illicit firearms trafficking and also for international cooperation with EU and non-EU partners.

Although the Action Plan does not mention firearm fraud specifically, it touches upon several issues that we have identified in this report and which are closely connected to fraud. For example, while we identified that differences in legislation can create opportunities for fraudulent activities, the EU Action Plan requires EU Member States to fulfil the full transposition and enforcement of the EU firearms directive and to harmonise their national classification of firearms with EU categories.

In addition, this report has provided evidence that fraud can be committed to bypass arms embargoes. Against that background, the EU Action Plan examines ways to prevent the circumvention of export prohibitions. Notwithstanding these ambitions, there is no structured approach to firearm fraud at the EU level. In this context, there is also no comprehensive and accurate intelligence picture of firearm fraud in the EU, since data are not collected in a standardised way. Another reason for this is that criminal and legal data are not cross-checked systematically against each other. This results in a fragmented and scattered picture of firearm fraud in the EU and it also complicates the proactive fight against firearm fraud. Therefore, there is an urgent need to enhance the collection of data on firearm fraud and the exchange of information between the actors involved. Furthermore, it is crucial to enforce compliance with existing safeguard mechanisms and to develop actors' capacities to combat firearm fraud.

Project DIVERT was developed to contribute to improving the intelligence picture of firearm diversion in the EU and of firearm fraud in particular. With this report, we aim

to support the development of effective policies that will prevent and deal with firearm fraud and strengthen the effort towards combating the trafficking in firearms acquired through fraud in the EU.

This report has shown that fraud is not always easily detected and that it is likely that many cases go unnoticed by the authorities. In addition to the covert nature of fraud, our findings suggest that this lack of detection may be due to the fact that the destructive potential and concomitant risks of firearm fraud are not always well known or understood by all the relevant policy-makers. In addition, some initiatives to combat the issue effectively have been set up but are not yet fully implemented across the EU. This is in spite of the wide array of policies against firearm diversion that have been introduced and the multitude of actors that deal with issues related to firearm fraud.

### *Scope and characteristics of firearm fraud in the European Union*

Our study identified that fraud is a method of diversion that can result in the diversion of large quantities of firearms that circulate illicitly in the EU and in other regions of the world. Our examination of a sample of cases of fraud in Member States – which mainly covered incidents that took place during the past two decades – revealed that large amounts of firearms can be diverted through fraud. In reality, the actual number of firearms, components and ammunition that are diverted through fraud is likely much larger. This is because firearm fraud is essentially a covert phenomenon and our sample is consequently far from being comprehensive. Certain types of fraud, can lead to very large numbers of firearms being diverted to the illicit sphere. This is particularly the case in the context of the (international) arms trade, where large quantities of firearms or ammunition are often involved. Similarly, large numbers of firearms have been diverted by forging arms dealers' registers. Besides, firearms of a higher capacity are often involved in cases of diversion in the context of arm transfers or the forgery of arm registers. Other types of fraud, such as acquiring an authorisation to possess firearms, or cases of fake theft or loss, have often involved fewer weapons, and of lower capacity, than other methods. But these 'smaller cases' do not render these diversion methods less dangerous or lead to fewer diversions. In fact, the aggregated number of these cases involves large quantities of firearms. In addition, straw purchases using forged declarations of loss or theft have been used by criminal outfits in systematic fashion in the past.

Various actors, invoking a diverse range of motivations, have used fraud to acquire or trade in firearms illegally. There are three main reasons for perpetrating firearm fraud: possession for leisure purposes, possession for criminal use and possession for financial gain. In practice, these motivations may overlap. Regarding the wish to possess firearms for leisure purposes, fraud is mostly committed by (otherwise law-abiding) private individuals who do not always fulfil the requirements to possess or use firearms. Then there are those actors attached to state authorities (such as police officers) who have exploited their positions to gain access to firearms for their own use. Criminal motivations were mostly found in cases carried out by specialised fraudsters

trying to divert firearms either for direct use in the criminal milieu or for trade with criminals. Straw purchases, or criminals faking documents pretending to be official authorities, are a case in point. Financial gain seems to have been a reason to commit fraud by different types of actor. Persons within the legal firearms control system have, for example, abused their position to gain access to firearms (police, military). Similarly, some employees of firearms dealerships or manufactures have provided false information in order to be able to sell firearms to illicit users.

Certain firearms have been trafficked into or in the illicit sphere and some of those firearms have been used to commit crimes. However, the exact scope of the phenomenon remains opaque. In some instances, such as straw purchases commissioned by organised crime groups, the link to the criminal scene is obvious. In many other instances, though, firearms have been diverted for financial reasons and trafficked to illicit users, including organised crime groups such as narcotics traffickers, or even parties involved in armed conflicts outside of Europe. Some of these guns have been used in armed robberies, murders or human rights violations. The perpetrators of fraud are often not directly linked to those who use them in crime and to commit violence. Most of the time, the connection is made by intermediaries on the illicit market. The firearms diverted through fraud may be more dangerous than the firearms typically accessible to private individuals, because they can stem from stockpiles to which access is usually prohibited to civilian users (such as service weapons for police or army members).

In the final paragraphs of this report we provide an overview of the key challenges that remain to prevent the diversion of firearms through fraud.

### *Challenges for data-collection and record-keeping*

This section highlights the challenges that exist in the prevention and combating of firearm fraud in the EU. To start with, it is crucial to **upgrade the quality of the data collected on legal and illegal firearms** in each Member State. This a precondition of improving our understanding of firearm fraud and of enhancing the efforts aimed at combating it. One problem identified in this report is that existing legal and criminal databases often do not allow for the smooth cross-checking of data, which undermines the ability to detect, investigate and prosecute firearm fraud. Currently, data-collection and record-keeping lack common guidelines at the EU level, and this results in a poor intelligence picture of firearm fraud. To mitigate this issue, certain Member States have developed comprehensive and accurate recording systems for firearms. These include centralising data, digitalising databases and organising training and awareness-raising on how to record good data.

First, although they are a precondition of quick-and-easy tracing, national digital registers on legal and illegal firearms have not been fully developed in all the EU Member States. Even though the EU introduced an obligation to maintain electronic records for legal firearms holdings in 2008, not all of the Member States use electronic

registers. Many Member States, sometimes with EU support, have upgraded, cleaned and digitalised their databases. In short, the added values of a digital system include these: all transactions involving firearms are registered electronically, arms dealers have direct access to information concerning authorised firearm-owners and, most importantly, the database is interoperable with other digital databases. This allows for the systematic cross-checking of information and the detection of fraud in a standardised and systematic manner. It is therefore important for EU Member States to **continue their efforts towards the complete digitalisation of their national firearms registers**. Here the focus should be on setting up repositories that cover the whole life cycle of legal firearms, from manufacture or import to destruction or export. All the actors involved in the manufacture, trade or legal control of firearms should have access to the parts of the database that are relevant to them.

Another issue identified in this report is that certain national firearms repositories are not sufficiently up to date. This raises the issue of keeping track of legal firearms but also of detecting possible cases of diversion. Apart from digitalisation, it is therefore important to **delete regularly all outdated and double entries in order to guarantee the accuracy of information**. Up-to-date digital databases may greatly reduce the workload of law-enforcement officers working on tracing firearms and investigating firearm fraud. In addition to digitalising databases, it is a good practice to use documentation that is difficult to forge, such as watermarked documents, embossed seals or even banknote paper.

National systems in which all the steps in the life cycle of firearms are not fully digitalised **require periodic verification of various types of declaration against physical stockpiles**. However, in practice this is not always the case. The first actors involved in or affected by these measures are legal firearms dealers. Following the detection and investigation of various cases of fraud involving registered firearms dealers, certain Member States have adopted a stricter approach to controlling gun dealerships. These measures included the systematic and periodic verification of arms dealers' registers against their actual stockpiles. Given the large number of resources and the costs involved in implementing large-scale controls, a good practice identified in Germany is to wait for repeated irregularities before launching an investigation, and to adopt a preventive approach to identified risk profiles. Finally, another good practice identified in the detection of fraud that concerns not only arms dealers, but also all kinds of firearm-owner, is to investigate (suspicious) cases of theft or loss, as is done in Spain.

Since firearm fraud can result in diversion from the legal to the illegal sphere, it is important to consider not only legal firearms data. On the contrary, building a better intelligence picture of firearm fraud also requires setting up and maintaining **comprehensive records of seized firearms**. Such records may contain details of the guns seized (eg model, markings, changes to the firearms) and the context in which these guns were seized. It is also important to ensure that these databases are user-friendly. We have identified that **mistakes while entering data can have grave consequences and undermine the quality of record-keeping**. For this reason, Member States should raise awareness among police officers who are not firearms experts to

record firearms properly while recording seizure data. This can be done by providing training in firearms and recording methods to improve the accuracy of data.

Even if repositories of legal and seized firearms are in place, **these databases are often designed to support law-enforcement operations and are not necessarily usable for analytical purposes.** To be able to analyse more extensive diversion trends, we encourage Member States to explore ways of combining the operational and analytical functions of firearms databases – for example, by allowing the authorities to aggregate data on the number of seizures, the context of seizures or, ideally, the context of diversion. Another way to build a better understanding of firearm fraud is to **pilot an incident database on the phenomenon at a national level.** This is an important way of learning which types of firearm fraud occur in which Member States, in which context they occur and what flaws in the legal control system seem to enable them.

Apart from the poor quality of data, our findings suggest that the **existing data are not sufficiently analysed with a view to improving our understanding of diversion and, more specifically, of fraud.** One central problem in this respect is the insufficient tracing of firearms. In other words, investigations on seized firearms often do not focus on the ‘history’ of the guns and therefore reveal no information about their diversion and/or even how a firearm was trafficked.<sup>1</sup> This is because in the context of a gun seizure the investigative approach often prioritises more imminent crimes (eg drug-trafficking or murders) over analysis of the gun or guns. To improve the intelligence picture of the modus operandi of firearm fraud, it is critical to **develop a stronger approach to ‘investigating the gun’.**<sup>2</sup> Such an approach increases the chances of uncovering the actors and the trafficking networks involved in firearm fraud. It may also reveal important information about the vulnerabilities in the system of legal firearms control.

### *Challenges to data-exchange and information-sharing*

Even when Member States collect good firearms data at a national level, they do not always disseminate them across all the relevant national units, or even at EU level. Given the large number of actors involved in combating firearm fraud (eg licensing authorities, regional police forces, police units specialised in firearms trafficking, Customs authorities), information-sharing between agencies is a crucial precondition of the detection of fraud. This involves both regular information exchange between different administrations or units and the consultation and cross-checking of existing databases. A lack of sound procedures for information exchange implies that important information held by one agency may not reach another agency. Although several initiatives have been taken to exchange information on issues related to firearm fraud, there is a need for more systematic and standardised procedures to combat firearm fraud.

**National Firearms Focal Points** are essential institutions to fight firearm fraud. It is important that these focal points are well-staffed and have sufficient resources, so they

can undertake their task appropriately as a central node for information-sharing, operational coordination and firearm-tracing (among other tasks).

With IMI, the EU has established a digital system to consult information on arms transfers within the EU. This can be considered a good practice to prevent fraud, because it allows Member State authorities to verify the authenticity of documents provided by gun-owners and dealers who wish to transfer firearms within the EU. It also secures the flow of information between different licensing authorities, which reduces the opportunities for criminals to take advantage of indirect communication to forge key documents. Even though information can also be shared on decisions to deny, withdraw or suspend licences through IMI, it is not clear how systematically Member States share that type of information. This means that this system is not always exploited to its full potential. Consequently, it would be good if the practices of reporting to the IMI are harmonised and Member States report information on denials, suspensions and withdrawals in a systematic way.

At national level, too, it is important for actors involved in the licensing system and actors involved in the verification of information **cooperate in a formalised way** by setting up frameworks that allow for easy information-exchange and operational coordination and cooperation between the relevant actors. This may include that memoranda need to be drafted with a view to facilitating cooperation and/or information-exchange between agencies. It may also include holding periodic or ad hoc forums of information-exchange about the risks of firearm diversion and/or fraud.

A mechanism of coordination for illicit firearms trafficking and firearm diversion already exists at the EU level in the form of EMPACT Firearms. EMPACT Firearms could serve as a model for setting up similar national mechanisms of coordination on illicit firearms trafficking and diversion. The added value of forums of information-exchange such as EMPACT Firearms is that they provide a framework within which to raise awareness of any loopholes and risk areas in the legal system controlling firearms. EMPACT Firearms also serves as a platform to exchange intelligence about ongoing investigations, cases and modi operandi of fraud.

To remedy the lack of awareness on the part of certain actors concerning the modi operandi of firearm fraud, a solution could be to develop a **database of cases of fraud** and to provide open access to it to the relevant actors. For example, the handbook developed by the Centre of Excellence on Documents Fraud of Frontex on the subject of document fraud intended for Customs officers can be highlighted as a good practice to raise awareness on the specific risks and practices associated with document fraud in the context of arms transfers, exports or imports. This type of database could be developed in other contexts and for other types of actor. In general, it would be good to develop a body of international knowledge and resources that can be used to sensitise border guards to possible forgeries of Customs control documents.

Apart from information-exchange, one important issue that delays or impedes efforts to combat firearm fraud is **the lack of interoperability of different databases** at the

international and the national levels. At the EU level, some relevant international databases are not yet fully integrated and this delays tracing requests. Part of the problem is that there is a lack of a standardised data among EU Member States, which would allow the seamless sharing of relevant data. Not only at the EU level, but also within Member States, the relevant databases are not always integrated digitally. For example, national seizure databases are not always directly connected to electronic registers on legal guns or to ballistics databases.

It is important for the EU to continue its efforts to **integrate international databases to improve firearms tracing**. Its plan to integrate the SIS II and the iArms databases and to implement an integrated search function is exemplary in this regard. Such support could be extended to further areas of data integration. For example, the standardisation of national ballistics data would allow the seamless exchange of such data between Member States. Improving the functioning of IMI towards better integration with national databases and adding a function that allows for better searchability would also contribute to the more effective detection of fraud. **At a national level, it is important that different repositories which help to trace firearms and to prevent fraud are connected digitally**. This concerns, among other functions, the interoperability between registers on legal firearms, seized firearms, criminal records and records on lost and found firearms.

### *Challenges to compliance and the safeguarding of exports and transfers*

An important challenge inherent in the EU legal framework regulating firearms trade, possession and use is its **legal complexity**. This is particularly critical because fraud can occur at multiple stages in the life cycle of a firearm, and each of these is governed by different pieces of legislation. The framework is composed of various legal provisions which sometimes overlap or lack clarity. This arises, for example, the fact that different pieces of legislation apply to the trade in firearms depending on their use (military or civilian). Given that several types of firearm can be used both in a civilian and in a military context, it is not always easy to determine which legislation applies. In addition, the overlaps or lack of clarity can also result in Member States applying different legislation to the same firearms (or the same types of firearm). This poses a problem in particular in the context of arms transfers within the EU, where it is sometimes unclear which shipments are governed by which legislation. This complexity can make it more difficult for law enforcement or Customs officers to detect infractions.

In addition to their complexity, **firearms legislation at a national level are sometimes inconsistent and not harmonised with each other**. This may be caused by a lack of implementation of existing EU regulations, different interpretations of EU legislation leading to different outcomes in national law and, finally, parts of the law which are not a competence of EU legislation. Inconsistencies and differences that we reviewed include, for example, different practices concerning the marking and record-keeping of firearms and ammunition and the lack of legal provisions allowing for tighter controls

of arms exports in many countries (such as physical post-export controls). Such different legislation or practices may create a risk of diversion, since all kinds of fraud and irregularities are more difficult to detect. To avoid ambiguities between national legislation that can be exploited to divert firearms fraudulently, it is crucial for EU Member States to fully incorporate the EU firearms directive and relevant legislation on the export of firearms.

**The absence of standardised documentation regarding firearms also presents a risk for fraud.** This is particularly relevant in the case of different types of end-use certification during the export of firearms. The current lack of standardisation of such documents effectively means that law-enforcement agents are in charge of controlling very different documents, which increases the difficulty of detecting instances of fraud and forgery. To increase the likelihood of detecting forged documentation in the context of arms exports, the research team suggests exploring the possibility of imposing standardised export documentation on all Member States. In this regard, the EU recently took a decision to harmonise the certification of end-use by imposing the minimum requirements to be indicated on EUCs. However, the scope of this standardisation is limited, because this decision applies only to the export of firearms under the Common Position 2008/944/CFSP.<sup>3</sup> Concerning civilian firearms exports, the EU could work on imposing similar minimum requirements, or at least on requiring the use of EUCs that fully reflect the template provided in Annex II of Regulation 258/2012. In parallel, another possible avenue by which to standardise export-control documentation could be to develop a template of international import certificates (IICs) for non-EU firearms importers.

The lack of standardised procedures and documents in international arms trade also introduces the risk of fraud because not all Customs officers in charge of conducting controls at the border are trained to detect all the different types of fraud identified in this report. Indeed, as pointed out above, firearm fraud is not a priority for most Customs agencies in the EU, and few human and technical resources are dedicated to the issue.

**The prosecution of actors who divert firearms through fraud** during transfer or export is important to deter future acts of diversion and to reduce the number of firearms in illicit circulation. In this report we focused on the prosecution of crimes in the field of arms exports and transfers. Our findings suggest that prosecution in Member States resembles a patchwork: Member States use very different penalties for similar crimes, they have different requirements for proving fraud (eg needing to prove intent or not) and the law-enforcement authorities in Member States are allowed to use different tools to track down perpetrators (eg being able to intercept phone conversations or not). Finally, some countries have specialised prosecutors with the requisite expertise to prosecute firearm fraud, while others do not have such agencies.

Exchanging best practices on the prosecution of crimes related to firearm fraud in international forums can add to building expertise on the matter. In addition, comparing the penalties handed down against infractions related to irregularities

during firearms export can serve as a first step towards discussing the future alignment of penalties in order to eliminate the substantial differences between Member States.

### *Challenges in strengthening actors in combating firearm fraud*

One of the key actors in the effort aimed at combating firearm diversion are **National Firearms Focal Points**. Despite the progress made in recent years to establish National Firearms Focal Points in the EU and its neighbouring territories, not all of the EU Member States exploit the full potential of firearms focal points.

Another challenge facing the investigation of firearm fraud is that **teams and units in each Member State do not always have the right strategic operational intelligence, the support or the financial resources required to investigate cases of fraud**. But Europol's ESOC does provide an efficient framework that enables resources to be put together and provides support for operational activities and task forces in the context of firearm diversion. **Because cases of firearm fraud often have transnational implications, they often require the intervention of several EU Member States**, which may allocate the work on firearm fraud to different units. For this reason, certain Member States' teams need to coordinate with other Member States' units which are not necessarily their exact counterparts. This can lead to problems with understanding, sharing information and coordinating activities. Europol's JITs can provide a solution to these types of issue to facilitate the coordination the investigation of transnational cases of fraud. They can also contribute to build capacity by providing both intelligence and technical or logistical support for ongoing investigations.

Another issue is that **actors working on the legal system underpinning the control of firearms and criminal investigators often work in siloes, which reduces their ability to detect fraud**. These actors do not necessarily have the capacity and tools to **exchange information** among one another or to allocate more investment to firearm fraud. Because of their workload and their specific tasks on particular cases, they do not always have the means to undertake analyses on fraud. Establishing a specialised unit on firearm fraud within some of these units can contribute to prioritising firearm fraud in specific teams and therefore improve its detection and investigation (following the model of the ICAE team that focuses on fraud related specifically to firearms). We also recommend **sensitising those national actors who work towards controlling firearms possession, use and trade to the modus operandi used by criminals to divert firearms by, for instance, forging documents**. This increases the chances of detecting discrete cases of fraud. Certain information-sharing mechanisms described above can serve to strengthen the capacities of actors to detect firearm fraud by sensitising them to the issue of fraud (eg the handbook on document fraud designed by the Centre of Excellence on Documents Fraud of Frontex).

## Endnotes

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