

Decision in case 1842/2016/CEC on the European Commission's failure to carry out an impact assessment on its proposal to revise the EU Firearms Directive

Decision

Case 1842/2016/CEC - Opened on 27/06/2017 - Decision on 27/02/2018 - Institutions concerned European Commission (No maladministration found) | European Commission (Settled by the institution) |

The complainant was concerned that the European Commission had failed to carry out an impact assessment before presenting its proposal to revise the EU Firearms Directive. He also considered that the Commission had not adequately replied to his concerns.

In the course of the Ombudsman's inquiry, the Commission replied to the complainant, explaining why it had not carried out an impact assessment on its proposal. It thereby settled this aspect of the complaint.

The Ombudsman found that the Commission's decision not to carry out an impact assessment was reasonable. She thus found no maladministration by the Commission in this respect.

Therefore, the Ombudsman closed the inquiry.

Background to the complaint

1. The complainant is the secretary of a Dutch sport-shooting club, who is also involved in the organisation "Firearms United". He was concerned that the European Commission had failed to carry out an impact assessment prior to presenting its proposal [1] to revise the EU Firearms Directive [2] on 18 November 2015.

2. On 1 October 2016, the complainant sent an e-mail to the Commission, asking to know why there was no impact assessment accompanying its legislative proposal for the revision of the Firearms Directive.

3. On 18 October 2016, the Commission replied to the complainant, informing him that his e-mail had been forwarded to the Commission's Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) and that he would receive a reply soon. The complainant did not receive a reply before turning to the Ombudsman on 15 December 2016.



4. On 20 November 2016, the complainant asked the Regulatory Scrutiny Board (RSB) [3] to provide him with an impact assessment on the proposed changes to the Firearms Directive.
5. On the following day, the RSB replied that there was no impact assessment accompanying the proposed revision of the Firearms Directive. It stated that, although the 'Better Regulation Guidelines' [4] define under what circumstances an impact assessment is needed, it is the Commission that ultimately decides whether an impact assessment is necessary. In this case, the Commission did not deem an impact assessment was necessary, among other reasons, due to the urgent need to revise the existing EU legislation, following the Paris terrorist attacks of 13 November 2015. However, the RSB added that the proposal had been based on the findings of an evaluation and had been subjected to the so-called 'feedback mechanism', an online public consultation carried out on legislative proposals before they are approved by the legislators (in this case, the European Parliament and the Council).
6. The complainant replied to the RSB on 22 November 2016, disagreeing with its position and making a number of remarks [5]. He enquired about the evaluation that had been carried out, the European Parliament's position on the lack of an impact assessment, the feedback obtained from the public consultation and the role of the RSB.
7. The RSB replied to the complainant on 1 December 2016. It explained that it carries out quality checks of the Commission's impact assessments and, since May 2015, of some evaluations. However, the Commission Directorate-General in charge of the legislative file, in this case DG GROW, is responsible for the consultations, the follow-up to impact assessments and the legislative process. The RSB explained that it had not reviewed the evaluation on the proposal for a revised Firearms Directive since it was finalised before this role was added to the RSB's mandate (in May 2015). It provided the complainant with the evaluation [6], the 'inter-institutional agreement' (which set out the role of the Parliament in relation to the rules on impact assessments) [7] and the public consultation [8].
8. The complainant wrote again to the RSB on 4 December 2016. He claimed that the recommendations of the evaluation did not support the Commission proposal and that there was no need to strengthen the existing rules applying to legally-held firearms.
9. On 6 December 2016, the RSB stated that it could not take a position on a subject that it had not reviewed at the preparatory stage. It suggested that the complainant turn to DG GROW. It also noted that it was now for national governments and the Parliament to decide during the legislative procedure.
10. On 14 December 2016, the complainant wrote again to the RSB to express his disappointment with its reply. He also complained that the Commission had used the 'trilogue' negotiations (between the European Parliament, Council and Commission) on the legislation [9], as a reason for not explaining its position. He criticised the trilogues as lacking transparency.
11. On 15 December 2016, the complainant turned to the European Ombudsman.



The inquiry

12. The Ombudsman opened an inquiry into the complainant's concerns that the European Commission had failed (i) to provide an adequate reply to his e-mails concerning the impact assessment, and (ii) to carry out an impact assessment of its proposal for the revision of the Firearms Directive.

13. In the course of the inquiry, the Ombudsman received the reply of the European Commission on the complaint. The Ombudsman's decision takes into account the arguments and views put forward by the parties.

Preliminary remarks

14. After several rounds of trilogue negotiations, the European Parliament and the Council reached an agreement on the proposal in December 2016. The revised directive on the control of the acquisition and possession of weapons [10] was approved by the two institutions in March and April 2017, respectively. The directive entered into force on 13 June 2017. Among other things, the revision reduces the number of weapon categories and changes the classification of certain types of weapons, as well as more strictly defining the exceptions provided for civilian use of the most dangerous weapons.

Arguments presented to the Ombudsman

15. The complainant claimed that he did not receive a response to his questions. He further claimed that the Commission had breached its own rules by not carrying out an impact assessment. He referred to the Better Regulation Guidelines, which state: “ *An [impact assessment] is required for Commission initiatives that are likely to have significant economic, environmental or social impacts*”. He claimed that there was no proof that stricter rules on legal gun ownership would lead to less terrorism. He also claimed that the RSB should have stopped the legislative process because no impact assessment had been carried out.

16. In the course of this inquiry, the Ombudsman asked the Commission to reply to the complainant's email of 1 October 2016. On 28 July 2017, the Commission replied to the complainant, referring also to his correspondence with the RSB. It informed him that, on 18 November 2015, it had drafted a proposal to amend the Firearms Directive based on the conclusions of three studies [11]. These studies evaluated the measures provided for in the Firearms Directive and showed that the Directive contained certain deficiencies that needed to be addressed. In particular, the Commission noted that, in recent years, murders in Europe have been committed with firearms and, in some cases, with firearms that satisfied the legal requirements. Moreover, the Council had asked the Commission to propose a revision of the Firearms Directive at the beginning of 2016 [12]. Against this background, the Commission had decided that it was not expedient to carry out its own impact assessment.



17. The Commission acknowledged that a large number of hunters, sport shooters and collectors possess weapons without causing any safety risk. It stated that the revised Directive, as adopted by the European Parliament and the Council, safeguards fully the opportunity to buy firearms, including, under certain conditions, firearms that are normally prohibited for civilians.

The Ombudsman's assessment

18. The Ombudsman notes that the Commission has now replied to the complainant. She also notes that this reply, together with the earlier replies by the RSB, explain in detail why the Commission decided not to carry out an impact assessment for its proposed revision of the Firearms Directive.

19. Thus, the Commission has now **settled the complainant's grievance about the Commission's failure to reply**.

20. Regarding the complainant's **claim that the Commission's proposal for a revision of the Firearms Directive was not accompanied by an impact assessment**, the Ombudsman notes that the Better Regulation Guidelines state "[t]he Guidelines (...) should be applied in a proportionate manner using common sense. The aim is not to respect procedural requirements per se but to ensure that the Commission is equipped with relevant and timely information on which to base its decisions. (...) Exceptions to these requirements are possible but must [be] validated and justified externally."

21. The Ombudsman notes that the Council invited the Commission to present a proposal to revise the Firearms Directive *"at the latest at the beginning of 2016"*. In the 'explanatory memorandum' to its proposal, the Commission referred to the Paris terrorist attacks, which had occurred only days earlier, and to other attacks in Europe that year. On this basis, the Commission concluded that it needed to take immediate action to strengthen the existing rules on the access to and trade of firearms. The explanatory memorandum also explained that the revised Directive had been drafted with no impact assessment having been carried out, due to the urgency of the proposal.

22. Moreover, the Ombudsman notes that the proposal was based on three studies. Two of the studies recommended combining non-legislative and legislative measures to tackle the illicit trafficking of firearms, and to revise the Firearms Directive. The third study (evaluation) assessed the implementation of the Firearms Directive and made a number of recommendations on how it should be revised.

23. Against that background, the Ombudsman finds that the Commission had valid reasons for deciding to present its proposal without first carrying out an impact assessment.

24. Regarding the complainant's claim that the RSB should have required the Commission to carry out an impact assessment, the Ombudsman notes that the RSB's mandate is limited to



assessing the Commission's draft reports on impact assessments, major evaluations and so-called 'fitness checks' that have been submitted to it [13] . Thus, the RSB gives its opinion on initiatives that are accompanied by an impact assessment. The RSB however does not have the power to require the Commission to carry out an impact assessment in any given case.

25. Therefore, the Ombudsman finds that there was no maladministration by the Commission in presenting its proposal for the revision of the Firearms Directive without first carrying out an impact assessment .

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion :

By replying to the complainant, the European Commission has settled this matter.

There was no maladministration by the European Commission in presenting its proposal for the revision of the Firearms Directive without first carrying out an impact assessment.

The complainant and the European Commission will be informed of this decision .

Emily O'Reilly European Ombudsman

Strasbourg, 27/02/2018

[1] Proposal for a Directive of the European Parliament and of the Council amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons, COM(2015) 750 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2015:0750:FIN> [Link]

[2] Council Directive 91/477/EEC on control of the acquisition and possession of weapons, OJ L 256, 13.9.1991, p. 51–58

[3] The RSB is an independent body of the Commission that offers advice to the 'College of Commissioners'. It examines and issues opinions and recommendations on all the Commission's draft impact assessments and major evaluations and fitness checks of existing



legislation. https://ec.europa.eu/info/law/law-making-process/regulatory-scrutiny-board_en [Link]

[4] The Better Regulation Guidelines set out the steps to be taken by the relevant sections of the Commission when assessing existing EU legislation, considering the need to revise legislation or drafting new legislation. The Better Regulation Guidelines, SWD (2017) 350, 7 July 2017, can be found at <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines.pdf> [Link]

[5] For example, he argued that there was no relation between legal gun ownership and terrorism, and considered that the Commission's referral to terrorism to justify the "urgency" was not correct. He claimed that Members of the European Parliament had subsequently said that changing the directive would not combat terrorism.

[6] <http://ec.europa.eu/DocsRoom/documents/8385/attachments/4/translations> [Link]

[7] Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, OJ L 123, 12.5.2016, p. 1-14

[8] <http://ec.europa.eu/transparency/regdoc/?fuseaction=feedbackreport&docId=3085376> [Link]

[9] "Trilogues" are the informal part of the EU legislative process by which Parliament and Council, the "co-legislators", reach agreement on proposed legislation. This important part of the process is based on direct, face-to-face negotiations between the co-legislators, assisted by the Commission.

[10] Directive (EU) 2017/853 of the European Parliament and of the Council of 17 May 2017 amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons, OJ L 137, 24.5.2017, p. 22-39

[11] "Study to support an Impact Assessment on a possible initiative related to improving rules on deactivation, destruction and marking procedures of firearms in the EU, as well as on alarm

weapons and replicas", June 2014:

<http://docplayer.net/1238312-Study-to-support-an-impact-assessment-on-a-possible-initiative-related-toimproving-rules-on-deactivation-destruction-and-marking-procedures-of-firearms-in-the-EU-as-well-as-on-alarm-weapons-and-replicas.html> [Link]; "Study to Support an Impact Assessment on Options for Combatting Illicit Firearms

Trafficking in the European Union", Final Report, July 2014:

<https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/organized-crime-and-human-trafficking/2014-2015/1238312-Study-to-support-an-impact-assessment-on-a-possible-initiative-related-toimproving-rules-on-deactivation-destruction-and-marking-procedures-of-firearms-in-the-EU-as-well-as-on-alarm-weapons-and-replicas.pdf> [Link] and "Evaluation of the Firearms Directive", Final report, December 2014:

<http://ec.europa.eu/DocsRoom/documents/8385/attachments/4/translations/en/renditions/native> [Link]. Information on the stakeholders that had been consulted for the study concerning the implementation of the Firearms Directive can be found at:

<http://ec.europa.eu/DocsRoom/documents/8385/attachments/9/translations> [Link]

[12] Council conclusions on strengthening the use of means of fighting trafficking of firearms, 12892/15, 8 October 2015:



<http://data.consilium.europa.eu/doc/document/ST-12892-2015-INIT/en/pdf> [Link]

[13] Article 2 of the Decision of the President of the European Commission on the establishment of an independent Regulatory Scrutiny Board, 19.5.2015, C(2015) 3263 final