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ENTERPRISE AND INDUSTRY DIRECTORATE-GENERAL

Internal Market for the Free Movement of Goods
Product Market Integration and Enforcement
Head of Unit

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Subject: Your complaints CHAP(2013)20 and CHAP(2013)21 against Spain and Sweden

Dear Sirs,

We received your letter of 15 November 2012 in which you present a complaint against Spain and Sweden alleging that certain legislative provisions on firearms, adopted by these Member States could violate the provisions of the Treaty on the Functioning of the EU on the free movement of goods. You also claim that Spanish provisions could violate Directive 91/477/EEC, amended by Directive 2008/51/EC. The European Commission has now assessed the information you have submitted.

As you mention in your letter, the Directive does not apply to the acquisition and possession of weapons and ammunition by collectors and bodies concerned with the cultural and historical aspects of weapons and recognized as such by the Member State on whose territory they are established (Art.2(2)).

However, if the weapons you refer to are not considered in such categories by Spanish legislation they would fall within the scope of the Directive. The principle of marking imposed is not in itself incompatible with the requirements of the Directive; article 3 leaves Member States free to adopt more stringent provisions. Therefore, we cannot conclude that there is a violation of the Directive, which only determines the minimum criteria.

We have also assessed the case in the light of Articles 34-36 TFEU. As regards the compatibility of the definition of the term "historical firearms" in Article 2(3) of the Spanish Royal Decree 976/2011 with Article 34 TFEU, it must be underlined that, effectively, the current definition institutes a more stringent system than the one

established by Directive 2008/51/EC. The consequence of the said system is that firearms which are not related to a fact or a relevant historical character, as well as those which were not produced before 1890, may not be considered as either historical or antique, and should therefore be marked.

You allege that, as a result of the said obligation, historical firearms see their value reduced. You also allege that, at the same time, such value reduction represents a decisive barrier to the intra-EU trade of these firearms with historical value.

Moreover, you allege that all firearms imported into Sweden, even from other EU Member States, must be marked for the purposes of their identification and localisation, as set out by Article 8(1)(b) of the UN Firearms Protocol.

A national rule which poses legal barriers to the free movement of goods is not necessarily contrary to EU law if it may be justified on one of the public interest grounds set out in Article 36 TFEU, such as the protection of the health and life of humans or by one of the overriding requirements of general public importance laid down by the case-law of the Court of Justice of the European Union. Any such rules should be necessary in order to attain one or more of the legitimate objectives, and should be in conformity with the principle of proportionality, whereby the least restrictive measure is to be used.

Nevertheless, to date Spain has demonstrated neither the justification nor the proportionality of the restrictive definition of "historical firearms" in Article 2(3) of the Royal Decree 976/2011. Therefore, the Commission services will contact the Spanish authorities to clarify this issue.

We will also request that the Swedish authorities demonstrate that the marking requirement at issue is necessary to give effective protection to the public-interest objective concerned and that there is no available alternative, which is equally effective for realisation of that objective, but which is less restrictive for the intra-EU trade.

Consequently, let me inform you that your complaint will be further examined by unit C/2 in DG ENTR responsible for application of Articles 34-36 TFEU.

Yours sincerely,


Maciej GÓRKA

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