



# *Guns for sale*

*The Belgian illicit gun market in a European perspective*

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# Introduction

The attention paid to the problem of the possession of illicit firearms and the illegal trafficking of firearms has increased significantly over the past few years, at both a Belgian and a European level. In Belgium, this increase in political focus was triggered by a series of serious violent incidents, including attacks on the police with assault rifles in the streets of Brussels in 2010<sup>1</sup>, the mass shooting carried out at the Christmas market in Liège by Nordine Amrani in 2011<sup>2</sup>, the terrorist attacks on the Jewish Museum in Brussels in 2014<sup>3</sup> and the recent terrorist attacks in Paris<sup>4</sup>. Combating the illicit gun market has consequently become a matter of pressing national and international security. Concerns about the illicit possession of firearms and illicit firearms trafficking have led to the development of a series of legislative and policy initiatives in Belgium and the European Union (EU).

Belgium has been repeatedly described as one of Europe's key hubs for illegal firearms.<sup>5</sup> One of the reasons for this was the recent terrorist attacks in France (where a link with Belgium was found on each occasion), but, for historic reasons, Belgium has already long had a reputation as a place where it is easy to acquire firearms. Despite this, little is known about illicit firearms possession and the dynamics of the illicit gun market in Belgium. In this report, we will give an overview of the basic characteristics of the illicit gun market in Belgium, with a specific focus on the size of this market, the actors involved and the ways in which these weapons end up on this market. We will analyse these different characteristics within a broader European perspective, and, in the final section of the report, will propose a threefold approach to combat the illicit gun market.

# 1 Characteristics of the illicit gun market in Belgium

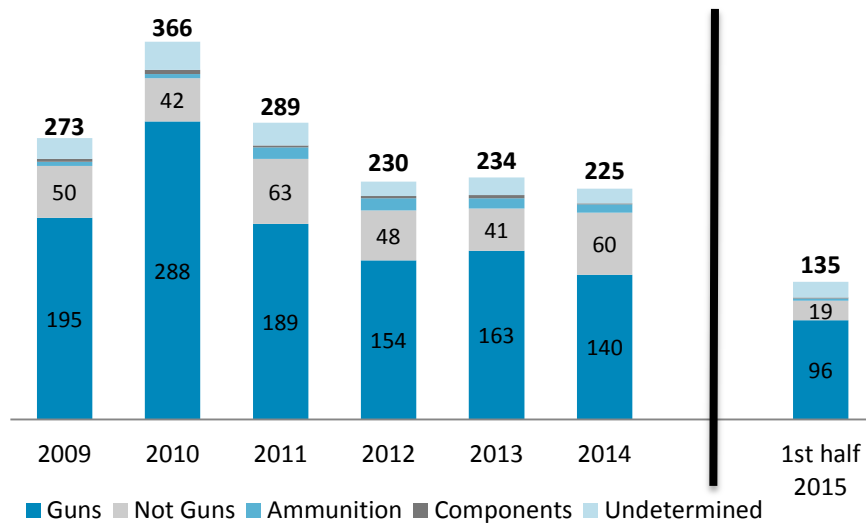
The illicit gun market is typically a very closed market in Europe. Crucial factors are the access to a good network and trust. It is therefore difficult to gain a better understanding of the profile of the illegal market for firearms in Belgium, with research on the characteristics on the illicit gun market in Belgium being quite limited to date. In this section, we will focus on the different actors in the illicit gun market in Belgium, and the different ways in which firearms can end up on this market. Before we do this, we will analyse the problems with estimating the size of the Belgian illicit gun market.

## 1.1 Size of the illicit gun market in Belgium

According to frequently quoted figures, it is estimated that there are between 1.5 and 2 million firearms circulating in Belgium. The federal government also used this figure in its communication prior to the introduction of the new federal firearms legislation in 2006.<sup>6</sup> In view of the fact that about 870,000 firearms were registered in the Central Weapons Registry (CWR) of the Belgian police at the time, this implies that there were about 630,000 to 1.1 million illegal firearms in circulation in 2006. To date, however, the source on which this estimate is based is unclear. In reality, a lack of reliable quantitative data makes it impossible to credibly and more accurately estimate the number of illicitly-held firearms in Belgium. The police surmise that the number is “very high”.<sup>7</sup>

The Belgian Federal Police publishes their official crime statistics several times a year. These statistics also contain figures for the recorded cases of illicit possession and trade in firearms in Belgium, and provide us with some insight into the contemporary illicit possession and trading of firearms in Belgium. Unfortunately, prior to 2009, the available police statistics did not make a differentiation between the types of weapons illicitly possessed or traded. This absence of sufficiently detailed data for a longer period of time means that it is impossible to quantitatively analyse the long-term evolution of illicit firearms possession or trade in Belgium. Between 2009 and first half of 2015, the police recorded 1,225 cases of illicit firearms trading in Belgium (see figure 1). This is an average of 188 cases per year. An analysis of the available data suggests that the number of recorded cases of illicit firearms trading has remained quite stable in recent years. Unfortunately, no information is available on the total number of guns involved in these trafficking cases.

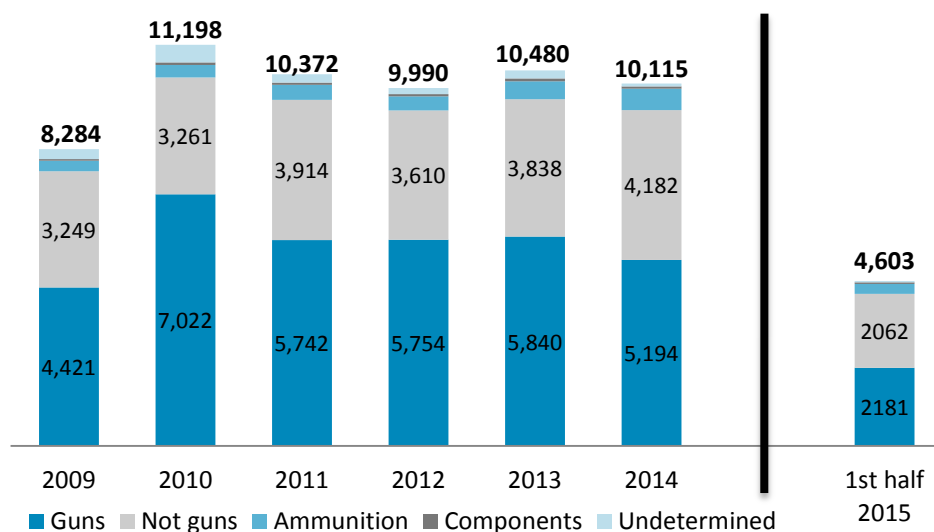
Figure 1: Recorded cases of illegal arms trading, 2009 - 2015\*



Source: Belgian Federal Police<sup>8</sup>

In addition, the Belgian police have recorded more than 35,000 cases of illicit firearm possession since 2009 (see figure 2) - an average of more than 5,500 cases per year. Given that each recorded case refers to at least 1 illicitly held firearm, this implies that the Belgian police record more than 100 illicitly-held firearms each week in Belgium. A previous study indicated a large increase in the recorded cases of illicit possession in weapons following the adoption of a more restrictive firearms legislation in 2006.<sup>9</sup> This more restrictive legislation led to an increase in the illegal possession of firearms, as a large number of legally-held firearms needed to be regularized in 2006, and a significant number of gun owners did not comply. The average annual number of firearms registered as “lost” in the CWR of the Federal Police, for example, increased more than tenfold in the years after 2006 (see later). This suggests that a significant group of individuals made false declarations in order to keep their weapons without applying for the necessary authorization.<sup>10</sup> The available police statistics also indicate a large increase in the recorded cases of illicit possession of firearms ammunition: the number of recorded cases doubled between 2009 and 2014.

Figure 2: Recorded cases of illegal arms possession, 2009-1<sup>st</sup> half of 2015



Source: Belgian Federal Police<sup>11</sup>

In spite of these official crime statistics, we lack a comprehensive overview of the scope of illegal possession and illicit trade in firearms and ammunition in Belgium, as these statistics only relate to known misdemeanours. The dark number of illegal possession and illicit trading in firearms in Belgium is significant. This lack of insight is partially the result of the clandestine nature of this possession, but also because of the lack of reliable basic data.<sup>1</sup> It is currently not even possible to tally how many of firearms are seized in Belgium each year, let alone identify the types of weapons, their provenance, or the context in which they were seized.

Belgium is not the exception in Europe with regard to the problems in estimating the size of the illicit gun market. At the present time, there are no reliable estimates of the size of this market in most European countries. The implication of this lack of reliable and comparable national statistics is that it is impossible to generate credible estimates for the whole EU. This was also one of the conclusions of a recent study ordered by DG Home of the European Commission: “*whilst it is possible to provide a range of estimates [of illicitly trafficked firearms], this range is very wide, underlining the fact that no accurate quantification of the problem is feasible on the basis of existing available data*”.<sup>12</sup> One of the most accurate estimates of illegal firearm possession has been made in the Netherlands. Based on the available police data on firearms-related incidents, a 2005 study estimated there were at least 54,000 owners of illegal firearms, with 85,000 to 125,000 illicitly-held operational firearms in the Netherlands.<sup>13</sup> Unfortunately, given the differences in the characteristics of the illicit firearms markets in different countries, the Dutch figures cannot be extrapolated to the rest of the EU. In section 2.2, we will elaborate further on the problem of the lack of good data and the way this hinders the development of effective and efficient policy to combat the illicit firearms market.

<sup>1</sup> In general, criminal investigations do not primarily focus on the illicit possession of arms or on illegally traded arms: they are often considered to be a “by catch” of other criminal activities. Furthermore, the registration of the seized firearms is not always complete or of good quality.

## 1.2 Actors in the illicit gun market

*Criminal groups* are generally considered to be the main drivers of the illicit firearms market in Europe. Firearms are very much in demand in criminal circles. The illicit gun market is closely linked to other criminal activities, such as the trafficking of human beings, gang violence, the illegal drugs market and so on. Most criminals prefer handguns, because they can be carried discreetly, but Europol has identified an increase in the availability of heavy weapons amongst criminals in Europe.<sup>14</sup> This observation has also been made by Belgian police forces. Heavier assault rifles are not only believed to be more easily available, but are also more often used than before, probably mainly by younger, more inexperienced, criminals.<sup>15</sup> Most criminals, for example, possess firearms for instrumental and defensive reasons, but some of them also possess firearms as a status symbol. Apparently, firearms and the matching ammunition can be obtained relatively easily by those in the criminal milieu. Significant differences in the way in which criminals acquire their firearms can be observed, however. Not all criminals want, possess or use firearms for the same reasons.

When analysing the demand for firearms, a distinction needs to be made between different types of criminal milieu<sup>1</sup>. The criminal milieus most often cited with regard to firearms are the illegal drugs market, the world of armed robbery, organized-crime groups, street gangs and motorcycle gangs. A Dutch study concluded that illicit gun possession by criminals can be mainly found among drug criminals and robbers.<sup>16</sup> Although some connections exist between these different criminal settings, the latter are believed to be characterized by a specific demand dynamic for firearms: different types of criminals want firearms for different reasons, want different types of firearms, and have different access to acquisition methods. A recent study indicated that a number of major criminals operating in this world have access to a large arsenal, and play a crucial role in the distribution of arms in these circles. These criminals have a certain status in this world, and can easily obtain weapons thanks to their extensive network. Over the years, some of these criminals have built up quite an arsenal, which is guarded and managed by their associates. Confidantes who need a weapon for their criminal activities can turn to these criminals. Younger, often petty, criminals generally do not have such easy access to these arms, and often have to resort to alternative ways of obtaining a firearm.<sup>17</sup> This idea is supplemented by Europol's conclusion that the large international gangs have their own arms suppliers who supply them with illegal weapons on a more permanent basis. Smaller gangs tend to purchase their weapons through specialised arms traffickers with connections in the source countries. Europol has also noticed the existence of firearms pools, mainly in Western-Europe.<sup>18</sup> These are hidden stashes of illegal firearms that are readily available, and which criminals can rent for a certain period of time. According to national police forces, there are also indications that pools of firearms exist in Belgium.

In addition to professional criminals, *terrorist groups* are often considered to be important actors on the illicit gun market. In recent years, a significant quantity of firearms and ammunition has been found in the possession of different types of terrorist groups: violent European separatist movements, religiously-inspired terrorist groups and radical left-wing or right-wing political groups. So far, there has been little research comparing the differences in firearm demand between these different types of European terrorist groups. Terrorist groups in several EU member states are believed to be in contact with organized crime groups for the

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<sup>1</sup> Even within these different criminal milieus distinctions need to be made based on differences in demand for firearms.

acquisition of weapons.<sup>19</sup> Despite these presumed links with the criminal milieu, it is believed that some terrorist groups have their own distribution channels, through which they acquire weapons. A look at media reports on the firearms used by terrorists in recent attacks in Europe suggests that different types of firearms were used, and that these weapons were acquired in different ways.<sup>20</sup>

A third group of actors in the illegal firearms market in Europe is made up of *illegal gun owners who are not directly linked to criminal or terrorist groups*, but who possess firearms without having the necessary permits. The possession of these firearms often only became illegal after changes in legislation. Up to 2006, many hunting and sporting rifles were freely available in Belgium. Owners of firearms who had legally acquired their firearm before the arms legislation was amended in 2006 were given the opportunity to regularise their arms, to sell them to others with a licence or authorization, or to hand them in to the provincial government. Large groups of firearms owners chose not to do this.<sup>21</sup> The Belgian Federal Department of Justice recently stated that 117,000 firearms that had been legally owned in 2006 were now “missing” from the CWR, and that many of these firearms were now illicitly possessed by persons who did not regularize their weapons after the change in legislation in 2006.<sup>22</sup> Based on figures of the CWR, we can deduce that large quantities of arms are involved. From 2006 to 2010, more than 15,000 firearms (and in particular “defence or war weapons”) were reported as “lost”, and were registered as such in the CWR. As a result, the average number of firearms lost each year was ten times higher in 2006-2010 than in the years before 2006.<sup>23</sup>

It is safe to assume that a large group of private individuals illegally kept their firearms or sold them to third parties. These firearms are not generally owned with the aim of performing criminal activities, but for collection purposes, fun, self-protection or for emotional reasons (for example, inherited guns). This does not automatically mean there are no links between the firearms of these ordinary citizens and criminal or terrorist settings, however. Such a link can arise, for example, if these weapons are stolen through burglaries<sup>24</sup> or if the gun owner decides to (illegally) sell his weapon to others. Once arms have been diverted into the illegal channels, the extent and the way they circulate on the illegal market is unclear.

## 1.3 Origins of the weapons

There are numerous ways in which firearms can illegally end up in hands of criminals, terrorist groups or ordinary citizens.<sup>25</sup> Five broad types of acquisition methods can be identified (each with several subtypes): (1) illegal production and alteration, (2) cross-border trafficking, (3) theft, (4) embezzlement and (5) exploiting differences in legislation. An analysis of the illicit gun market in Belgium indicates that each of these acquisition methods is used. Due to a lack of sufficient reliable and comparable data, however, it is currently impossible to estimate the relative importance of each acquisition method in Belgium.

### 1.3.1 The illegal production and alteration of firearms

The illegal production of firearms is generally not considered to be one of the most important sources of firearms in the illegal gun market in Europe. The overwhelming majority of illicit firearms in Europe were legally produced, but, at a certain point, have leaked into the illegal market.<sup>26</sup> Nevertheless, police forces across Europe have detected cases of illegal production and sale by legal manufacturers, and the illegal craft production of firearms by skilled individuals who have acquired the necessary components and have access to the right tools.



The illegal production of firearms is the exception rather than the rule in Belgium. The police have only recorded 71 cases of the illegal production or repair of firearms and 6 cases of illegal production of ammunition since 2009 (which is minimal compared to the 1,225 recorded cases of illicit firearms trade in Belgium). This includes people who assembled their own firearms using stolen components of firearms, or components they acquired through another source. During a search of the house of Amrani, the man who killed five people and injured a further 120 in Liège in December 2011, the police found around 9,500 arms components in addition to ten complete firearms.<sup>27</sup> In some cases, illegal production is carried out on a larger scale. Belgian handguns regularly cropped up in the Netherlands in the 1980s. They were identical to the arms legally produced by FN Herstal, but did not have serial numbers or proof marks. Research revealed that a number of employees had stolen firearms' components from the factory in order to produce their own complete weapons at home, and then sell them on the illegal market.<sup>28</sup>

The alteration of firearms, for example, by reactivating deactivated firearms or converting alarm pistols, gas pistols or replica firearms into sharp-shooting firearms, is a specific type of "production" that has generated more immediate concern. This is considered to be a primary source of illegal firearms possession in some EU Member States.<sup>29</sup> Previous studies have shown that gas and alarm pistols, which are freely available in many of the EU Member States (including Belgium), are being converted into operational firearms. This conversion often takes place in small-scale conversion workshops abroad, after which these firearms are smuggled to the destination country.<sup>30</sup> In Belgium the reactivation of deactivated firearms is an important feature of the illicit gun market<sup>31</sup>, even machine pistols that used to belong to Belgian police forces have ended up on this market this way.<sup>32</sup> It is believed that, partially as a result of the presence in the country of a major industrial producer of firearms (FN Herstal), a significant number of Belgians have the technical expertise to produce or alter firearms. Several retired employees of this company, for example, were recently arrested after police forces found approximately 50 firearms in their houses. The police believe that these men used their professional expertise to reactivate legally-bought, second-hand deactivated firearms and sell them on to criminals.<sup>33</sup> The most notorious case of reactivated deactivated firearms ending up in the wrong hands are the guns used by Coulibaly during the January 2015 terrorist attacks in Paris. Almost all of the guns he possessed, including two assault rifles and several pistols, were apparently reactivated.<sup>34</sup> At least one of the assault rifles used by Coulibaly was legally bought by a Belgian citizen in a shop in Slovakia that sells deactivated weapons as "movie props", and was then offered in an online auction site.<sup>35</sup> The assault rifle was reactivated somewhere between Slovakia and Paris, and subsequently used by Coulibaly in his terror attack. According to a recent analysis by Europol, deactivated guns from this Slovakian shop have been shipped across Europe in significant numbers.<sup>36</sup> According to some reports this number goes up to 14,000 deactivated guns sold abroad, mainly online.<sup>37</sup>

As a result of continuing innovation and technological advancements, the possibility of the 3D-printing of firearms in particular has received intense media attention in recent years. Europol has warned that 3D printing will be widely available in the future, and could potentially offer new opportunities for those interested in acquiring firearms, but stated that it is unlikely to become a major source of illegal firearms due to the technical complexity and the ease of access and the relatively low prices of firearms that are traditionally available on the black market in the EU.<sup>38</sup> No cases of 3D-printing of firearms have been recorded to date in Belgium.

### 1.3.2 Cross-border trafficking

The most cited-source for illegal firearms market in Europe is cross-border smuggling. The European single market has significantly facilitated the activities of illegal firearms traders, due to the freedom of movement and the lack of customs controls at the borders within the EU. Once a firearm has been smuggled into the EU, it can reach its European country of destination relatively easily. Firearms trafficking generally takes place under the form of “ant trade”: numerous shipments of small quantities of firearms that, over time, result in the accumulation of large numbers of illicitly held firearms. The firearms are often concealed in legitimate loads, or are transported in private cars or buses. The routes used are believed to be largely similar to those established for the trafficking of other illicit goods, such as drugs.<sup>39</sup>

The source countries of these smuggled firearms and the specific routes used for these smuggling activities tend to change. The supply depends heavily on what is easily available in certain regions, and is therefore cheap. Over the years the source countries have changed: while in the 2000s the smuggling of firearms for the criminal market mainly took place within the borders of the EU,<sup>40</sup> the main source countries for firearms smuggled into the EU today are generally situated in the Western Balkans. Following the armed conflict in the region in the 1990s, a large quantity of firearms and ammunition has remained beyond the control of national and local authorities. According to Belgian police, the increase in the possession and use of heavy firearms such as Kalashnikovs is a direct consequence of the increased smuggling of this type of weapon from former Yugoslavia after the war ended.<sup>41</sup> The region will likely remain the most important source of trafficked firearms, and especially of the ‘heavy firearms’. According to Europol: “*The Western Balkans are expected to remain a key source of heavy firearms trafficked into the EU, due to the large illicit stockpiles in Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, the Kosovo region, Montenegro and Serbia*”.<sup>42</sup> Other important source countries for firearms that are smuggled into the EU are the Russian Federation and Eastern European countries. Europol recently stated that firearms originating from the conflicts in Syria, Libya and Mali have also been found on the European illicit firearms market, and these countries may emerge as major sources of illegal firearms trafficked to the EU.<sup>43</sup>

Firearms are usually smuggled to Belgium in smaller quantities by road, with couriers travelling in passenger cars or small vans transporting small quantities of firearms. These lots generally consist of several types of firearms and ammunition. Once in the country of destination, the weapons are sold to criminals through a network of intermediaries.<sup>44</sup> Research indicates that major smuggling cases, with more than a hundred weapons being smuggled into the country simultaneously, rarely occur. The criminal groups that smuggle firearms are usually very small, and are characterised by a loose structure, working together for a limited time. Illicit arms trafficking is generally not a primary source of income for these groups (the smuggling operations are not sizeable enough and the profit margins too small), but is a sideline of other – more lucrative – illegal smuggling activities.

### 1.3.3 Theft of firearms

Theft is an important, but often underestimated illegal firearms acquisition method in several EU Member States. Almost half a million firearms lost or stolen in the EU remain unaccounted for in the Schengen Information System – a computer system that enables EU Member States to share information on firearms reported as lost, stolen or misappropriated.<sup>45</sup> Several Member States have published information on the number of firearm thefts in their country. Some examples: the German Federal Police registered 7,862 cases of firearm theft in 2010,

with a total number of 23,878 stolen firearms. Around 35,000 cases of firearm thefts have been registered in Germany since 2000, with more than 110,000 firearms being stolen.<sup>46</sup> In the United Kingdom, the number of firearms recorded as being stolen each year fluctuates between 2,000 and 3,000.<sup>47</sup>

The official crime statistics of the Belgian Federal Police indicate that about 1,600 to 2,100 thefts of arms or explosives are reported in Belgium every year on average. This amounts to about five weapon thefts a day. Unfortunately, there are no official statistics available on the number of stolen firearms. Firearms can be stolen from different types of locations. Stockpiles of government security forces, such as the police and the armed forces, which contain large numbers of weapons, can be the target of theft. Most cases of firearm theft are from the homes of private citizens, however. Other locations from which firearms can be stolen are firearms dealers, shooting ranges or firearms' manufacturers.<sup>48</sup> Firearms and ammunition have, in fact, been stolen from firearms manufacturers in the recent past. For example, nine individuals were sentenced for the theft and trafficking of guns from the Belgian firearms factory FN Herstal and ammunition from its ammunition factory in Zutendaal in 2007. The group, which included a factory worker and a private security guard working in the factory, among others, is believed to have sold up to one thousand firearms on the illicit gun market.<sup>49</sup>

### 1.3.4 Embezzlement

There are various embezzlement methods by which firearms can leak from the legal to the illegal circuit, for example, the organisation of fake exports, claiming the loss or theft of firearms, or falsifying the documents for the importation of firearms. Such methods have also been used in Belgium. In the summer of 2015, for example, three persons posing as legal arms dealers and using false importation documents (including a faked signature of the Walloon prime minister) to order firearms directly from a European firearms manufacturer were arrested in Belgium. It is believed these persons were able to successfully acquire more than 200 firearms in this way before being apprehended.<sup>50</sup>

Another method used by licensed dealers to divert arms is the falsification of the mandatory weapons registries they are required to keep. According to the police, a small quantity of the illegal firearms in Belgium are supplied by dishonest dealers, who sell them illegally to private individuals who do not hold the required licences.<sup>51</sup> These cases do not always relate to small quantities of illegally sold firearms, however. In 2008, for example, an arms trader was sentenced to prison and was barred from working in the arms industry for 10 years because he had bought about 800 firearms legally between 2004 and 2006, and had filed away the serial numbers and sold them to customers without a valid arms licence.<sup>52</sup> Some of these firearms were subsequently recovered from criminal networks in the Netherlands.<sup>53</sup>

### 1.3.5 Exploiting differences in legislation

Although the purpose of Directive 91/477/EEC was to converge national firearms legislation within the EU, for example, by introducing a categorization of firearms linked to different requirements for possession, significant differences in legislation can still be observed. These differences can be exploited by criminals and others looking for an easy way to acquire a firearm. As mentioned earlier in this report, persons with malign intentions have taken advantage of the differences in national legislation regarding the deactivation of firearms and the availability of alarm pistols in Europe. The European Commission's DG Home recently commissioned a study on possible actions for the improvement of rules on the marking,

deactivation and the destruction of firearms, and on alarm weapons and replica guns. This study noted significant national differences in rules on these issues and the implementation of the EU Directive.<sup>54</sup>

Another example of persons taking advantage of the differences in national legislation in Europe is the observed weapons' tourism for Belgian historical firearms. Until recently, the Belgian system for historical weapons was less stringent than regimes in neighbouring countries, which resulted in an increase in the cross-border trade in these guns. One of the greatest loopholes in the Belgian Federal Firearms Legislation of 2006 was that the requirement to hold a permit excluded a long list range of historic, folkloric and decorative firearms. This was motivated by the belief that the guns on this list were rare or no suitable ammunition was available. These guns were therefore deemed not dangerous, but this list also included firearms that were neither truly rare nor historic, and/or for which suitable ammunition was still easy to acquire. Furthermore, Belgian regulations in this regard were not consistent with the European Firearms Directive of 1991. Statistics on the import of firearms show that various types of historical guns started to flow into the Belgian market in the years following the introduction of the 2006 law. As the Belgian list was so much longer than that of neighbouring countries, many foreigners came to Belgium to buy their weapons legally and took them home without a transfer license and without applying for an authorization in their own country. This means the Belgian legislation on historical firearms was associated with illegal possession of firearms in other EU Member States.<sup>55</sup> According to Belgian police, these historical firearms appeared on the Belgian illicit gun market and ended up in the hands of criminals.<sup>56</sup>

## 2 Combatting the illicit gun market

In recent years, several legislative and policy initiatives have been taken by the Belgian government to combat the illicit gun market. In March 2012, in the aftermath of the attack carried out by Amrani, the Belgian Federal Government issued an Action Plan to boost the fight against illicit arms trafficking.<sup>57</sup> The aims of this Action Plan included the adaptation of the federal firearms legislation and strengthening the police service's operational capabilities. Plans were also made to improve data management and to gain a better insight into illicit arms trafficking and into the use of 'heavy' firearms by criminals. In addition, arms trafficking was labelled as a priority criminal phenomenon in the National Security Plan 2012-2015, issued by the Federal Police,<sup>58</sup> and a confidential circular from the Board of Prosecutors General with regard to the judicial handling of arms trafficking was adopted on 22 October 2012.

Several initiatives have also been taken at a European level in recent years. In December 2010, the European Council announced an Action Plan to combat the illicit trafficking of 'heavy' firearms intended for criminal networks,<sup>59</sup> and, in October 2013, the European Commission proposed a series of legislative and operational measures to support the fight against illegal firearms.<sup>60</sup> The introduction of these measures has been accelerated in the immediate aftermath of the recent terrorist attacks in Paris. On 18 November 2015, the European Commission proposed a number of amendments to the European Firearms Directive of 1991, which should make it harder for criminals to obtain certain types of weapons, and which will further harmonize national firearms legislations.<sup>61</sup> This proposal is currently being discussed within the European Council and the European Parliament. On 15 December 2015, a Commission Implementing Regulation was adopted establishing common guidelines on deactivation standards and techniques.<sup>62</sup> In addition to these measures, a European Action Plan to fight illicit firearms trafficking was also adopted on 2 December 2015, aimed at reinforcing operational collaboration, both within the EU and with neighbouring countries.<sup>63</sup>

An analysis of the contemporary illicit gun market and these legislative and policy initiatives indicates that a three-fold approach is needed to combat the illicit trafficking of firearms. Firstly, a clear legislative framework (with sufficient degree of harmonization at the European level) without loopholes is needed to properly protect legal firearms possession and the legal arms trade from the illegal circuit. Despite a good legislative framework being crucial in the fight against illicit weapons, efforts should not be limited entirely to this area, however. Indeed, as a second point, it is also important to obtain better insight into the problem by means of better data management and analysis. There are currently still a number of major deficiencies in this area. As we have seen in first section of this report, we need better insight into dynamics of the illicit gun market to significantly improve the fight against this phenomenon. Thirdly, law-enforcement agencies need more operational capacity out in the field, and better mutual collaboration. The following sections take a closer look at these three challenges.

## 2.1 Good firearms legislation as a prerequisite in the fight against the illicit gun market

Good legislation makes it possible to control legal possession of firearms and to combat illicit firearms' possession. Significant progress has been made in this area in Belgium since 2006. In the immediate aftermath of the public shooting carried out by Hans van Themsche in the streets of Antwerp in 2006, Belgian firearms legislation was made significantly more restrictive, and now complies with standards set by European regulation. There is now a broad public consensus that this review of the legislation concerning weapons has been a positive development. As mentioned in the previous section of this report, one of the greatest loopholes in the federal firearms' legislation of 2006 was the fact that a long list of historic, folkloric and decorative firearms was freely available in Belgium, which resulted in weapons' tourism in Belgium. A key component of the Belgian Federal Government's Action Plan with regard to illicit weapons from 2012 was the intention to scrap the list of freely available weapons entirely. This list was scrapped in a Royal Decree dated May 2013 and, in doing so, the greatest loophole in the federal firearms legislation was closed.

In the immediate aftermath of violent incidents in Europe, efforts are initially focused on additional legislative initiatives, often aimed at limiting the possession of legal firearms. This was no different after the recent terrorist attacks. As mentioned earlier, some days after the attacks in Paris in November 2015, the European Commission proposed a variety of amendments to the present legislative framework, aimed at helping Member States to limit access to firearms by criminals and terrorists.<sup>64</sup> The focus of these measures lies mainly on further harmonization of the legislative frameworks in all EU Member States, and on limiting the security risk associated with certain types of firearms by adding further restrictions. A number of the measures proposed can be shown to be of immediate value, such as the harmonization and reinforcement of the procedures to deactivate firearms. Yet, it is currently unclear what security risks are connected to a number of the other proposed measures (for example the proposed ban on automatic firearms which have been converted into semi-automatic firearms and on semi-automatic firearms which resemble weapons with automatic mechanisms). The impact on, and benefit to, security of these kind of bans is currently difficult to assess because of the lack of insight into the illicit gun market in Europe.

## 2.2 Gaining better insight into the illicit gun market is urgently needed

It is unclear how many illegal firearms are in circulation in Belgium (see earlier). From the response given by the competent minister to a recent parliamentary question, it appears that law enforcement and police agencies in charge lack a clear view of the issues they are required to fight: not only is no structured information available on seized weapons, there is also no information available on the nature of trafficking incidents, nor about the price of weapons in the illicit market.<sup>65</sup> This lack of basic information makes it difficult to obtain a clear view of the illicit firearms trafficking in Belgium and to develop a sound plan to combat this phenomenon. In order to tackle this properly, the federal government needs to empower the police to carry out structural improvements in data registration and analysis. The optimization of the visibility of arms trafficking and of the use of 'heavy' weapons has been included in the National Security Plan as Key Objective 6 in order to develop an adequate approach to reduce the

presence of these weapons among criminals<sup>1</sup>. While the intention to pay more attention to data collection is a positive development, the emphasis is only placed on illegal offences with 'heavy' firearms, although these arms only account for a rather small, but noticeable, share of the possession of illegal firearms in Belgium.

There is also an urgent need for more reliable data in the EU as a whole, in order to gain a clearer view of the issue of illicit firearms trafficking. This is also explicitly recognized by the European Commission: *"In order to enhance and accelerate an effective law enforcement response to this threat, it is essential to build a better intelligence picture on the trafficking of firearms and the use of explosives and on diversion from legal markets, and to improve existing statistical and analytical tools at EU and national level"*. This challenge has been put forward several times in recent policy initiatives adopted by various bodies within the EU. In the recently adopted EU Action Plan against illicit firearms trafficking, for example, the European Commission states it will continue to provide financial assistance for projects with a strong data collection impact and it invites all Member States to set up inter-connected national focal points on firearms to develop expertise and improve analysis on illicit firearms trafficking through the combined use of ballistic and criminal intelligence.<sup>66</sup>

## 2.3 Reinforce the operational capacities of law-enforcement agencies

A new National Security Plan is currently under development in Belgium. Illicit firearms trafficking was considered a priority criminal phenomenon in the previous National Security Plan (2012-2015), and, given the fact that the severity of the problem has increased over the past years, it makes sense to keep this issue a priority in the forthcoming Plan. This can be an important impulse in the fight against this phenomenon. It is, however, very important that the actors involved in the combat against illicit firearms trafficking, and in particular the Arms Unit in the Federal Judicial Police, have adequate resources to carry out their tasks properly, in terms of staffing, analytical capacity and judicial resources such as special tracking methods.

Some of these measures have been long overdue. A more efficient fight against illicit firearms trafficking by using special tracking methods, for example, was already announced in the Federal Government's 2012 Action Plan regarding illegal weapons. The government stated it would revise Article 90ter of the Code of Criminal Procedure which deals with the possibilities for telephone taps and police infiltration. These methods are only authorized in Belgium for a fixed list of criminal activities, as laid out in Art 90ter. With regard to possible arms trafficking violations, this list currently only refers to Article 10 (combating the illegal arms trade) of the Federal Act of 5 August 1991 regarding the import, export and transit of military equipment. Yet, since 2003 the Regions are competent for arms export control in Belgium and in 2012 the Regions adopted their own decrees to regulate this control.<sup>67</sup> With the adoption of these Decrees, article 10 of the Federal Act of 1991 was lifted. This means that, since 2012, it is no longer possible to tap telephones and use infiltration in the case of activities with regard to the illicit trafficking of firearms. With a view to strengthening the operational powers of law

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<sup>1</sup> The National Security Plan states, for example, that the procedure for the identification of the origin of a heavy weapon used during a crime should be analysed, and be adapted where necessary, and the application of this procedure should be promoted within all police bodies. There should be a particular focus in this matter on the collaboration between international police and justice. Confiscated heavy weapons should be systematically inspected with regard to their use in other cases involving the use of shells and/or bullets

enforcement agencies with regard to illicit firearms trafficking, it is therefore recommended to refer to the regional Weapon Trade Acts of 2012 (to combat cross-border illicit firearms trafficking) and to the Federal firearms legislation of 2006 (to combat illicit firearms trafficking within Belgium) in Art 90ter of the Code of Criminal Procedure.

In response to the foiled terrorist attack on the Thalys train in August 2015, the Minister of Justice announced four new measures in the fight against the illicit trafficking of weapons, including a change in legislation allowing the tapping of telephones and other special tracking methods in the investigation of firearms trafficking.<sup>1</sup> Other measures announced at the time were an evaluation of the circular COL14/2012 dated 22 October 2012 regarding the judicial approach to illicit firearms trafficking, improved cooperation at a European level, and the restoration of an inter-federal consultation committee to fight the illicit production and trafficking of weapons.<sup>68</sup> This last point was implemented with the Royal Decree of 9 October 2015<sup>11</sup>. The new consultation committee should focus on the exchange of relevant information, the coordination of activities with regard to combating the illegal arms trade, the preparation of initiatives in this area and giving advice to the ministers who hold responsibility in this area. The creation of this consultation committee is a positive move, given the importance of good collaboration between the various policy and law-enforcement actors concerned.

Steps have been made to better cooperate within Belgium, but is also of crucial importance to improve the collaboration between EU Member States given the many transnational aspects of illicit firearms trafficking. Reinforcing European operational collaboration is one of the key points in the European Commission's recent Action Plan against illicit firearms trafficking and includes facilitating the sharing of operational and ballistic information, encouraging more police joint operations, and the reinforcement of judicial cooperation between EU Member States. Other elements in the Action Plan focus, among other things, on the exchange of information, strengthening EU border controls, improving the training of law enforcement officers, more control over the trafficking of weapons via the Internet, and reinforcing collaboration with neighbouring countries that are considered (potential) source countries for illicit firearms in the EU. In light of its central geographical location and the problem of the illicit trafficking of firearms, it seems Belgium has an important role to play in the implementation of these European initiatives.

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<sup>1</sup> A similar law has meanwhile been proposed to the Chambers, by both a leading party and an opposition party.

<sup>11</sup> This committee is to consist of representatives from the Federal Weapons Agency, the Board of Prosecutors General, the Federal Court, the Federal Police, the local police, the Customs service, the Public Information and Security Services, the Firearms Testing Unit, the Economic Inspection, the regional authorities responsible for the issue of import, export and transit licences and the transfer of weapons, the governors (a French-speaking representative and a Dutch-speaking representative) and the FPS Foreign Affairs, Foreign Trade and Development Collaboration.



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