

NAME
ADDRESS
DATE

EUROPEAN OMBUDSMAN
1 avenue du Président Robert Schuman
CS 30403
F-67001 Strasbourg Cedex
France

**Suspected data manipulation by the European Commission in the COM(2013)716
presented to the Council and the European Parliament on 21.10.2013**

Dear Mrs. O'Reilly

As a citizen of the European Union I am appealing to you, the European Ombudsman, for the investigation of deliberate data manipulation conducted by Mrs. Malmström's administration throughout the campaign against "gun violence" in the EU.

The Commission set up a Firearms Expert Group to develop and disseminate guidance on best practice on the subject of the fight against the illicit trafficking in firearms. The members of the group are:

Member States' law enforcement authorities
Experts from universities, research institutes and non-governmental organisations
Associations of European producers of firearms
The European Police Office

These experts assisted the Commission with the draft of the Communication (2013)716¹ (further referred as "Communication"), which contains false statements, manipulated data and is rather misleading due to the poor knowledge of the Directive 91/477/EEC, as amended by Directive 2008/51/EC (further referred as "Firearms Directive") Mrs. Malmström has demonstrated as a Commissioner.

I would like to provide you with some evidence so you can judge for yourself:

1. Citation from the Communication (Introduction): *"The misuse of firearms, be it legally-owned civilian weapons or civilian or military weapons which have been illicitly manufactured or obtained, is a serious threat to the EU's security from both an internal and an external perspective."*

The Serious and Organised Crime Threat Assessment 2013 (SOCTA) provided by Europol (that has one member in the Firearms Expert Group) identified, in Chapter 5 – Recommended Priorities, the following key threats²:

Facilitation of illegal immigration
Trafficking in human beings
Counterfeit goods with an impact on public health and safety
Missing Trader Intra Community (MTIC) fraud
Synthetic drugs production and polydrug trafficking in the EU
Cybercrime

Money laundering

How is it possible, that Mrs. Malmström is making such strong statements in the Communication, whereas Europol describes the situation in its report as following (page 31): *"The illicit trade in firearms in the EU remains limited in size and trafficking occurs on a small scale. The weapons and OCGs involved in weapons trafficking primarily originate from the Western Balkans and the former Soviet Union."*?

2. Citation from the Communication (Introduction): *"The illegal import and sale of these weapons, as well as their production, provide lucrative business for the EU's estimated 3600 organised crime groups."*

The SOCTA 2013 report (p.33) says: *"There are an estimated 3600 OCGs active in the EU involved in a broad range of criminal offences."* The amount of OCGs in the report does not relate to the illegal import, sale or production of firearms, but to the total number of OCGs operating within the EU in a wide range of activities. Mrs. Malmström is again deliberately manipulating and exaggerating the data in order to create a sense of fear in the public.

3. Citation from the Communication (Introduction): *"There are still far too many victims of gun-related violence in the EU"*. This statement is apparently based on a Eurostat report, 'Trends in crime and criminal justice', 18/2013³. However this report contains **no data** relating to gun-related violence at all. I therefore demand Mrs. Malmström provides the true source of the data that was used to back this statement. In addition to this, this Eurostat report states: "Decreases in recorded crime except for domestic burglary".

4. Citation from the Communication (Introduction): *"In the first decade of the 21st century there were over 10 000 victims of murder or manslaughter, killed by firearms, in the 28 Member States of EU..."* The source is allegedly the UNODC Global Study on Homicide 2011⁴, but this study provides **no numbers of victims killed by firearms** in the EU. It only estimates the percentage of homicides by firearms (page no. 40, Fig. 3.1): Homicides in Europe (32 countries): 21% of homicides are committed by firearms, in 36% of cases sharp objects such as knives were used, in 43% of cases other means were used. To conclude, **in 79% of all cases no firearms were used** to commit a homicide. Mrs. Malmström is probably referring to the statistical data collected for this report (Homicides by firearms ⁵) – the statistics cover the time period from 2003-2010 and the total number of victims that had fallen to gun crime in the 28 EU Member States is **7131**. As the data were not always provided by the states, Mrs. Malmström possibly felt obliged to make a scientific estimate and rounded it up to "over 10 000". Shall I assume that this malpractice is common for all Eurostat reports or reports presented to the EU's institutions?

5. Mrs. Malmström claims that her campaign is aimed primarily against the illicit manufacture, trade and trafficking in firearms (which I do welcome) as she writes in her letter to the European Gun Owners Confederation: *"I would like to reassure you that the strategy proposed by the Commission is all about protecting citizens and communities from violent crime. It is about keeping illegal firearms off our streets, and cracking down on the criminal networks that trade in illegal firearms. We know that thousands of people use their firearms legally for hunting and leisure, these are responsible, law-abiding citizens and we do not want to disrupt these traditional activities."* ⁶

How is it so, that *Safeguarding the licit market for civilian firearms* consists primarily of a tightening up of the EU rules on legal firearms? The Commissioner suggested in the Communication the following steps on how to “safeguard” the licit market:

5.1 (3. Priority 1, Task 1) “*The Commission will weigh at a technical level the value of certain types of firearms currently permitted for civilian use, like semi-automatic weapons, against the security risks, and consider whether it would be more appropriate to further restrict access to these weapons.*” Semi-automatic is another term for self-loading and these self-loading weapons are exactly the ones used for the very traditional and lawful activities Mrs. Malmström wishes to protect – leisure and hunting.

5.2 (3. Priority 1, Task 1) “*The Commission will assess the need to go beyond the current scope of the Firearms Directive and to address, in the light of Member States' experiences, the need for regulation of the sale and possession of items such as **air guns, replicas, antique weapons** and deactivated weapons which may readily be converted into or used as firearms.*” Leisure activities such as air-rifle shooting, airsoft or paintball are an essential part of any developmental program at many summer camps for children. Will they now become illegal? And what about historical re-enactment, trying to keep our history alive, making sure Europeans do not forget the horrors of war - will they all become criminals overnight? Please demonstrate how this proposal will **not harm** the pursuit of lawful leisure activities?

5.3 (3. Priority 1, Task 1) “*Building on its recent assessment of the scope for simplifying these rules (classification of firearms into categories), where it was concluded not to propose a reduction in the number of categories (COM(2012) 415)⁷, the Commission has begun reviewing this issue in a wider context including the potential for reducing illicit trade between Member States which apply different rules, and for facilitating cross-border law enforcement cooperation.*”

The Firearms Directive: “*Several Member States have simplified the way they classify firearms by switching from four categories to the following two: prohibited firearms and firearms subject to authorisation. Member States should fall into line with this simplified classification, although Member States which divide firearms into a further set of categories may, **in accordance with the principle of subsidiarity**, maintain their existing classification systems.*”

Now Mrs. Malmström has decided to interfere in Article 3 of the Lisbon Treaty? **The use of Union competences is governed by the principles of subsidiarity and proportionality** and I insist the Commission keeps to them.

5.4 (3. Priority 1, Task 3) “*There may also be value in adopting more common EU standards on the legitimate purposes for owning or using a firearm and on when a licence should be refused.*”

Does the Commission believe its “superordinate position” allows it to dictate to European countries what is or is not a good reason for owning a firearm? The Firearms Directive already defines who is allowed to possess firearms and when the authorisation should be refused.

The Firearms Directive: “*Member States shall permit the acquisition and possession of firearms only by persons who have good cause and who:*

(a) are at least 18 years of age, except in relation to the acquisition, other than through purchase, and possession of firearms for hunting and target shooting, provided that in that case persons of less than 18 years of age have parental permission, or are under

parental guidance or the guidance of an adult with a valid firearms or hunting licence, or are within a licenced or otherwise approved training centre;

(b) are not likely to be a danger to themselves, to public order or to public safety. Having been convicted of a violent intentional crime shall be considered as indicative of such danger.

Member States may withdraw authorisation for possession of a firearm if any of the conditions on the basis of which it was granted are no longer satisfied.”

In other words, medical checks as well as criminal record checks are required as a condition for the lawful purchase and ownership of any firearm already. I therefore don't see the benefit of evaluating it by the Commission at all.

5.5 (2. The need for an action at EU level) *“According to firearms experts, differences in national legislation on firearms are exploited by criminals, increasing the risk of illicit circulation across borders.”*

“It is in the interests of both the safety of the citizen and the smooth functioning of the internal market for there to be a consistent approach to authorisations for firearms dealers, brokers and owners across the EU. Criminals may seek to acquire firearms where national procedures are regarded as most flexible.” The Firearms Directive sets common standards for all EU Member States and as the states themselves can apply even stricter regulations, I don't understand how “national differences” or “flexible procedures” can actually occur. Unless the Commission doesn't fulfil its obligation by ensuring that Member States correctly implement the Directive and advocates additional regulations instead.

The Firearms Directive:

“For the purpose of identifying and tracing each assembled firearm, Member States shall, at the time of manufacture of each firearm, either:

(a) require a unique marking, including the name of the manufacturer, the country or place of manufacture, the serial number and the year of manufacture (if not part of the serial number). This shall be without prejudice to the affixing of the manufacturer's trademark. For these purposes, the Member States may choose to apply the provisions of the Convention of 1 July 1969 on Reciprocal Recognition of Proof marks on Small Arms; or

(b) maintain any alternative unique user-friendly marking with a number or alphanumeric code, permitting ready identification by all States of the country of manufacture

Member States shall ensure that all firearms may be linked to their owner at any moment. Member States shall, by 31 December 2014, ensure the establishment and maintenance of a computerised data filing system, either a centralised system or a decentralised system which guarantees to authorised authorities access to the data-filing systems in which each firearm subject to this Directive shall be recorded.

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.”

6. Citation from the Communication (Introduction): *“These priorities (Safeguarding the licit market for civilian firearms, Reducing diversion of firearms into criminal hands,*

Increasing pressure on criminal markets, Building better intelligence) *draw on discussions with law enforcement authorities, the views of victims of gun violence, NGOs and authorised manufacturers retailers and users, as well as responses to a public consultation conducted by the Commission in March-June 2013.*”

81 000 citizens that took part in the on-line survey (which was available only in English language) „A common approach to reducing the harm caused by criminal use of firearms in the EU“ sent a clear message to the Commission, that they are **severely** opposed to the suggestion of further action on EU level in this area.⁸ No wonder it was dismissed shortly afterwards by the DG Home as not “representative of a cross-section of the general public” and not “scientifically based”. ⁹

Another (Euro-barometer) survey was launched that provided results “more suitable” to the Commission’s needs. In this survey a majority of European citizens (58%) thought that there should be common minimum standards (without knowing that there are already common minimum standards), but this survey makes also clear that in **15 Member States, over 50% of respondents would prefer each country in the EU to make its own laws** – IE-51%, UK-52%, PL-53%, CZ-53%, SK-51%, LV-56%, DK-54%, EL-56%, BG-55%, CY-56%, HU-59%, RO-61%, LT-64%, MT- 64%, EE-56% ! ¹⁰

I request that the results of both surveys are included in the Communication as well. EU citizens were opposed to the Commission’s proposals for a reason, they were quite aware of Article 3 of the Lisbon Treaty and of the fact that the Commission is trying to jeopardize the very principles of subsidiarity and proportionality.

Commissioner Malmström uses all means available to achieve it and searches for any reason to prove that “*there is a clear need for EU action*”.¹¹ Without hesitation omitting, manipulating data and making misleading statements such as that “*legally owned weapons in the EU continue to feed the illegal market*”.¹² Where is the evidence in the Communication supporting this statement? Is it the data from **one** EU state (“*In UK in 2010/11 63% of the 2534 stolen firearms were stolen from residential premises*) on the amount of stolen firearms that were automatically applied to all EU Member States? Communication conveniently omits that the following sentence in the same UK document clarifies that “*Air weapons accounted for around a half (46%) of the thefts*”¹³. And the figure of 2534 “firearms” does not only include air weapons but also starting guns or imitation firearms (such as soft air weapons). The example shows a worrying sign of the Commission’s inclination to use data misleadingly.

With such statements the Commissioner deliberately manipulates the public to think legal gun owners are the source of gun crime, act as suppliers of organized groups and convert anything they find into firearms. It is worth noting that such actions qualify as Defamation.

I also insist Commissioner Malmström provides distinct figures of victims of legal and illegal firearms. That might help the Commission not to treat these two separate terms as one.

In order to see how damaging Mrs. Malmström’s defamations are, please see the example below. In the extract from Communication the word firearm was swapped for car:

“Cars have lawful and responsible civilian uses, and their manufacture, sale and purchase are a part of the EU’s internal market. Cars in the wrong hands, however, can

have devastating consequences for citizens and communities. There are still far too many victims of traffic accidents in the EU. In the first decade of the 21st century over 400 000 victims died on our roads.¹⁴ (That is 40 times more than by firearms).

At any of the intervening stages of sale, possession, trade, storage and deactivation the car is susceptible to diversion into criminal hands. The illegal import and sale of these cars, as well as their parts and components, provide lucrative business for the EU's estimated 3600 organised crime groups. According to Interpol cars are a key facilitator for crimes such as drug trafficking, terrorism, theft, robbery, corruption, intimidation, trafficking in human beings, trafficking of illicit goods ¹⁵. The legally owned cars in the EU continue to feed the illegal market.

EU should set new standards on which cars can be sold for civilian use, how to licence persons who wish to possess and to use cars. Given that a car can only inflict harm with fuel, the Commission will examine ways of preventing acquisition and misuse of fuel by criminals, for example through imposing limits on the maximum size of fuel tanks for lawful civilian-type cars.

There may also be value in adopting more common EU standards on the legitimate purposes for owning or using a car and on when a licence should be refused. (Racing, joyriding, collecting and owning a car for security reasons does not constitute good cause).

The strategy proposed by the Commission is all about protecting citizens and communities from violent crime and traffic accidents. We know that thousands of people use their cars legally, these are responsible, law-abiding citizens and we do not want to disrupt their traditional activities."

FACE - European Federation of Associations for Hunting and Conservation is also addressing many issues arising with Mrs. Malmström's Communication. Please see FACE'S RESPONSE TO THE EUROPEAN COMMISSION'S COMMUNICATION ON FIREARMS: AIMING AT THE WRONG TARGET for more reference.¹⁶

I am very disappointed in what has become of the "European Dream", I would therefore like to remind you of the **Article 1a** of the Lisbon Treaty:

"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."

I wonder what has actually happened with those values. We have a Commissioner and DG Home who have a tendency to misrepresent facts and ignore undesired figures in order to justify an EU action at all costs, with disregard to civil liberties. And all just because it is far easier for them to impose restrictions on lawful activities than to actually fight the illegal ones. They don't even feel ashamed to present such document to the Council and to European Parliament that will (unfortunately) make decisions based upon it.

I would like to therefore ask you, the European Ombudsman, that your office:

- requests immediate withdrawal of Commission's document COM(2013)716

- conducts a serious internal investigation about the methodology used in the preparation of the Communication, the public consultation and survey that preceded it and also into the work of the Firearms Expert Group
- orders the Commission to amend the COM(2013)716 according to your findings and to the demands presented in this complaint
- starts proceeding that would lead to Commissioner Malmström facing disciplinary action for serious misconduct and abuse of power that was trusted upon her by the citizens of the EU

I would like to use this opportunity to thank you that you are dealing with my complaint, which I personally regard as very important and hope that you will not fail the principles upon which the Union has been founded. I believe that your investigation can prevent the disaffection of many citizens towards the EU and its institutions that would otherwise certainly arise.

Yours sincerely

SIGNATURE

1. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0716:FIN:en:PDF>
2. <https://www.europol.europa.eu/content/eu-serious-and-organised-crime-threat-assessment-socta>
3. http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-13-018/EN/KS-SF-13-018-EN.PDF
4. <http://www.unodc.org/unodc/en/data-and-analysis/statistics/crime/global-study-on-homicide-2011.html>
5. <http://www.unodc.org/unodc/en/data-and-analysis/homicide.html>
6. http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/trafficking-in-firearms/docs/answer_to_firearms_complaint_en.pdf
7. COM(2012) 415; the report concluded that 'there would be no clear benefit in a compulsory restriction of the classification at EU level to only two firearms categories if treated in an isolated way.'
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0415:FIN:EN:PDF>
8. http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2013/docs/consultation_026/report_on_consultation_including_annex_en.pdf
9. <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2013-012523&language=EN>
10. http://ec.europa.eu/public_opinion/flash/fl_383_en.pdf
11. http://europa.eu/rapid/press-release_SPEECH-13-842_en.pdf
12. http://europa.eu/rapid/press-release_SPEECH-12-841_en.pdf
13. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/116483/hosb0212.pdf
page 67,2.9 Stolen firearms, table 2.13
14. http://ec.europa.eu/transport/road_safety/pdf/observatory/trends_figures.pdf
15. <http://www.interpol.int/Crime-areas/Vehicle-crime/Vehicle-crime>
16. <http://www.face.eu/firearms-ammunition>