

SALW Legislation in Montenegro: Compliance with EU Regulations



The **South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons** (SEESAC) has a mandate from the United Nations Development Programme and the Regional Cooperation Council to support all international and national stakeholders by strengthening national and regional capacity to control and reduce the proliferation and misuse of small arms and light weapons, and thus contribute to enhanced stability, security and development in South Eastern and Eastern Europe.

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SALW Legislation in Montenegro: Compliance with EU Regulations, Belgrade, 2009

Acknowledgements

This study benefited from the generous support of Norway.

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ISBN: 978-86-7728-088-8

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I INTRODUCTION

Joining the European Union is a strategic priority of Montenegrin foreign policy, largely based on a general consensus within Montenegrin society. The Declaration of the Parliament of the Republic of Montenegro on accession to the European Union of 08.06.2005, the Declaration of the Government of Montenegro on accelerating the process of accession to the European Union of 27.04.2006, the Stabilisation and Association Agreement of 15.10.2007, the request of Montenegro to acquire the status of European Union membership candidate of 15.12.2008, are the basic instruments which define the official position of the state of Montenegro towards European Union integration as a strategic goal.

Integration into the European Union inevitably involves previous acceptance of the values, principles, traditions and aims on which the European Union is based, *starting from Article 249 of the European Union Agreement* which refers to the process and the conditions to be met by the state applying to join the European Union.

Adopting the *acquis communautaire*, that is the community law, as the legal tradition of the European Union involves accepting the content, principles and political goals of the foundation agreements, the regulations based on those agreements and the decisions of the European Court of Justice, the declarations and resolutions of the European Union, the European Security and Defence Policy measures, the measures referring to the justice and policing, international agreements ratified by the European Union, and the agreements between the Member States within the European Union.

The control of the acquisition and possession of small (light) firearms¹, which is also the subject of this comparative analysis, is included in the 35 sections of *acquis communautaire*. This study aims to review the existing legal solutions in the *Law on Weapons* (The Republic of Montenegro Official Gazette, no. 49/04 of 22.07.2004; and the Official Gazette of Montenegro no. 49/08 of 15.08.2008.) and evaluate its compatibility with the European Union Council Directive 91/477/EEC on control of the acquisition and possession of weapons,² and the Directive 2008/51/EC amending Directive 91/477/EEC on control of the acquisition and possession of weapons,³ which is in accordance with the *UN Protocol on firearms*.⁴ The above-mentioned legal acts represent the relevant legal framework of the European Union on this subject, and complement the *Directive of the European Parliament and of the Council 2001/95/EC on the general safety of products*.⁵

The United Nations Development Program (UNDP) and the Stability Pact for South Eastern Europe (SCSP) issued a mandate to the *South-Eastern and Eastern Europe Clearing House for the Control of Small Arms and Light Weapons (SEESAC)* enabling it to support national and regional capacities for control and reduction of the spread and misuse of small arms and light weapons (SALW), thus contributing to the stability, safety and development of South Eastern and Eastern Europe. A primary analysis of the *Law on Weapons* was conducted in July 2007, with the support of SEESAC and the Office of the European Commission in Podgorica, in order to evaluate its compatibility with *Directive EU 91/477/EEC on control of the acquisition and possession of weapons*. After the report of the European Commission to the European Parliament and the Council of 15.10.2000 on implementing *Directive EU 91/477/EEC*⁶, a European Council Strategy on SALW and their ammunition followed in December 2005, and then finally *Directive 2008/51/EC amending Directive EU 91/477/EEC on control of the acquisition and possession of weapons*, after which the need for an overall comparative analysis in order to establish a consistent legal system in Montenegro, in accordance with *acquis communautaire* on this subject, became apparent.

¹ The European Commission Questionnaire contains questions to the applicant state referring to control of the acquisition and possession of small arms and light weapons in the chapter- joint security and defense policy.

² The Official Gazette of the European Communities number L256 of 13.09.1991.

³ The Official Gazette of the European Communities L179 of 08.07.2008.

⁴ The protocol against illegal manufacture and trade of firearms, their parts and ammunition, as an addition to the UN Convention against transnational organized crime – (came into effect on 03.07.2005.) represents the first allround UN document including the policy on SALW. It aims at improving the national legislature and the exchange of information between states regarding illegal firearms, arms dealers, sources and trafficking routes.

⁵ The Official Gazette of the European Communities L095 of 05.04.2001.

⁶ Report from the Commission to the European Parliament and the Council (The implementation of Council Directive 91/477/EEC, of 18th June 1991, on control of the acquisition and possession of weapons) – Brussels, 15.12.2000, COM (2000)837 final.

The process of accepting the legal tradition of the European Union (*acquis communautaire*) involves a wide margin of appreciation on the part of the applicant state as to the form and manner in which the directives are harmonised with the local legal system, where the state is responsible for consistent adherence to the content and the aim of the directives, as stipulated in Article 249(3) of the *European Union Agreement*.

There are limitations on the trade in small arms and light weapons - SALW in the European Union and Montenegro. The social context, as a source of rights in a material sense (*fontes iuris essendi*), at the time before *Directive EU 91/477/EEC*, and *Directive 2008/5/EC amending Directive EU 91/477/EEC*, meant a free flow of goods, labour and capital within the outer borders of the European Union, as one of the basic values of the EU, which meant the complete absence of police and customs formalities within the EU, which in turn created the need to establish regulations which would make the system of legal monitoring of acquisition and possession of firearms and their transfer from one Member State into another more efficient.

The compatibility of the positive regulations of Montenegro with the *acquis communautaire* on this matter shall:

- ensure a consistent legal system regarding the control of acquisition and possession of weapons and ammunition, which shall improve the security policy in general;
- ensure that all owners of weapons are identified, including the authorised importers and distributors;⁷
- increase the state's capacity for enforcing the import-export policy regarding weapons and ammunition;⁸
- improve the fight against the black market in weapons and the distribution of registered weapons onto the black market;⁹
- harmonise the process of licensing and issuing authorisations to possess weapons;
- centralise the database and records of weapons and improve the registry of weapons.

II COMPARATIVE ANALYSIS

Directive EU 91/477/EEC sets a minimum standard regarding the acquisition, possession, carrying, transporting and trading in firearms which are in private possession, to be met by the applicant state in the process of integration into the European Union. The directive refers to the obligation to categorize weapons into those prohibited for civilian acquisition and use, those which require official permission and those which require official registration, and the category of 'other weapons'. The importance of categorisation is key for the appropriate application of the Directive, because it is a precondition for the implementation of other relevant standards¹⁰ from the Directive such as the trade of weapons and ammunition among civilians, the transport of weapons and ammunition, the permission to acquire possess and carry weapons and ammunition, and records and registry of weapons and ammunition. This implies that the appropriate categorisation of weapons and ammunition is

⁷ Dealers or brokers, as referred to in Article. 1.(C) and Article. 1.(B)(1e) of the EU Directive 2008/51/EC.

⁸ European Union Rules of Behaviour regarding the export of weapons of 08.06.1998.

⁹ The research of SEESAC-a and SMALL ARMS SURVEY from Geneva, published in "Republika Crna Gora – Kuća bez oružja nije pravi dom" (The Republic of Montenegro – A house without weapons is no real home"), in 2004, about light and small caliber weapons indicates an estimated number of between 168,000 and 246,000 light weapons in Montenegro, of which between 126,000-175,000 are in the possession of citizens. The number of 175,000 light weapons corresponds to a "careful estimate" of one light weapon per household, which implies that there are around 89,000 "illegal weapons".

¹⁰ The standard is a document containing the technical specifications or other precise criteria which must be applied consistently in the way of rules and regulations and definition of characteristics in order to ensure that the material products, processes and services suit their purpose.

an initial (pre-judicial) legal question in the process of harmonising the local legal framework regarding the acquisition and control of light and small calibre weapons with the Directives *EU 91/477/EEC* and *2008/51/EC*.

Directive EU 91/477/EEC refers to weapons and firearms, as described in Annex I (every firearm defined in section II of this Annex, unless its application is not excluded on the basis of section III of this Annex in which the reasons for exclusion from use are defined, according to which the term “firearms” refers to every weapon falling within categories A, B, C and D), and other weapons apart from firearms in the sense of the local legislations.

Category A – prohibited firearms:

1. Explosive military projectiles and launchers;
2. Automatic firearms.
3. Firearms disguised as other objects.
4. Ammunition with penetrating explosive or incendiary projectiles and the projectiles for such ammunition.
5. Pistol and revolver ammunition with expanding projectiles and the projectiles for such ammunition, except in the case of weapons for hunting or for target shooting for persons entitled to use them.

Category B – Firearms subject to authorisation

1. Semi-automatic or repeating short firearms.
2. Single-shot short firearms with centre-fire percussion.
3. Single-shot firearms with rimfire percussion whose overall length is less than 28 cm.
4. Semi-automatic long firearms whose magazine and chamber can together hold more than three rounds.
5. Semi-automatic long firearms whose magazine and chamber cannot together hold more than three rounds, where the loading device is removable or where it is not certain that the weapon cannot be converted with ordinary tools into a weapon whose magazine and chamber can together hold more than three rounds.
6. Repeating and semi-automatic long firearms with smooth-bore barrels not exceeding 60 cm in length.
7. Semi-automatic firearms for civilian use which resemble weapons with automatic mechanisms.

Category C – Firearms subject to declaration

1. Repeating long firearms other than those listed in category B, point 6.
2. Long firearms with single-shot rifled barrels.
3. Semi-automatic long firearms other than those in category B, points 4 to 7.
4. Single-shot short firearms with rimfire percussion whose overall length is not less than 28 cm.

Category D – Other firearms

- a) Single shot long firearms with smooth-bore barrels.

In the sense intended in Directive 91/477/EEC the term firearm also refers to every essential component part of the above mentioned weapons (section II(B) Annex I).

The subject matter of the Directive does not limit the application of domestic legislation in relation to hunting and target shooting, as defined in *Article 2 (1)* of the Directive. Such an approach by the European Union indicated the need for the state applicant to ensure that freedom of movement in the area of hunting and target shooting is not limited through the measures required by the standards of community law.¹¹

Article 2 (2) of the *Directive 91/477/EEC* explicitly excludes from its scope the acquisition or possession of weapons and ammunition, under domestic law, by the armed forces, police, official institutions or collectors, and institutions which deal with cultural or historical aspects of weapons, recognised as such by the Member State on whose territory the institution was founded. The commercial transfer of weapons and live ammunition is also excluded from the Directive.

According to the principle of *Argumentum a maiori ad minus*¹², Member States can in their own legislation introduce stricter requirements for the control, acquisition and possession of weapons than those of the Directive, as stipulated in *Article 3* of the *Directive 91/477/EEC*. Since the Montenegrin Law on Weapons contains stricter requirements than the minimum standard stipulated in the Directive, Montenegro must accordingly inform the European Commission about the discrepancies resulting from the stricter standards, as stipulated in *Article 15(4)* of the *Directive 91/477/EEC*, and the European Commission shall inform the Member States.

Directive 2008/51/EC on amendments defines the meaning of the term *weapons and firearms* in *Article 1* of the *Directive 91/477/EEC* so that for the purposes of this Directive the term *firearms* refers to any easily portable barrelled weapon that expels, is designed to expel or may be converted to expel a shot, bullet or projectile by the action of a combustible propellant, unless it is excluded for one of the reasons listed in part III of Annex I.

In the sense intended in this Directive an object is considered to be convertible so that it can expel a bullet or a projectile by the action of a combustible propellant if:

- its exterior resembles a firearm,
- its design or material can be converted for such purposes.

Article 1(B)(1a) of the *Directive 2008/51/EC* gives a precise definition to section II (B) of Annex I and *Directive 91/477/EC* which refers to firearm components, so that for the purposes of this Directive the term “*part*” shall mean any element or replacement element specifically designed for a firearm and essential to its operation, including a barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing a firearm.

According to *Article 1.(b)(1b)* of *Directive 008/51/EC*, “*essential component*” shall mean any breach-closing mechanism, the chamber and the barrel of a firearm which, being separate object, are included in the category of the firearms on which they are or are intended to be mounted.

For the purposes of *this Directive*, according to *Article 1(B)(1c)*, the term “*ammunition*” shall mean the complete round or the components thereof, including cartridge cases, primers, propellant, powder, bullets or projectiles, that are used in a firearm, provided that those components are themselves subject to authorisation in the relevant Member State.

¹¹ Montenegro must ensure that its legislation in the area of the free movement of goods is harmonized with Articles 28-30 of the EC Treaty and the relevant practice of the European Court of Justice.

¹² A way of logical thinking when interpreting regulations by which the lesser is permitted if the greater is already permitted.

According to section III of the Annex I of the Directive 91/477/EEC, in the sense intended in the Annex, objects which correspond to the definition of a “firearm” shall not be included in that definition if they:

- a) have been rendered permanently unfit for use by officially recognised and/or guaranteed technical procedures;
- b) are designed for alarm, signalling, life-saving, animal slaughter or harpoon fishing or for industrial or technical purposes provided that they can be used for the stated purpose only;
- c) are regarded as antique weapons or reproductions of such where these have not been included in the previous categories and are subject to national laws.

Law on Weapons (The Republic of Montenegro Official Gazette, no. 49/04 of 22.07.2004; and the Official Gazette of Montenegro no. 49/08 of 15.08.2008.) contains twelve chapters referring to:

- I General provisions;
- II Acquisition, possession, carrying of weapons and ammunition and collecting weapons;
- III The rules for the handling of weapons and ammunition;
- IV Confiscation of weapons, ammunition and authorisation documents;
- V Repair and conversion of weapons;
- VI Trade of weapons and ammunition;
- VII Manufacture of weapons and ammunition;
- VIII Transport of weapons and ammunition;
- IX Shooting ranges;
- X Monitoring and records;
- XI Penalty provisions;
- XII Transitional and final provisions.

Article 1, paragraph 2 of the *Law on Weapons* excludes the weapons and ammunition for the needs of the army, police and other bodies of state administration of Montenegro, for which special acquisition and possession regulations apply, and the museum exhibits, in accordance with the provisions in *Article 2(2)* of the *Directive EU 91/477/EEC*.

The definition of firearms in the sense intended in the *Law on Weapons* is given in *Article 3* which states that “firearms are all kinds of guns, pistols and revolvers, and all kinds of devices from which, with the aid of explosive force of gunpowder gases, expel through their barrels grains, balls, shot, darts and other projectiles, and hand-held and free-standing devices intended to produce loud reports, designed not to take full loading, and which are loaded from the muzzle with a certain quantity of black powder and are fired with match, flint or percussion cap (mužari). “

This definition of firearms does not conform to all the requirements from *Article 1(A)* of *Directive 2008/51/EC* amending *Directive 91/477/EEC on control of the acquisition and possession of weapons*, which defines the meaning of the term firearm from *Article 1, and Annex I of the Directive 91/447/EEC*. The definition of firearms from *Article 3* of the *Law on Weapons*, while it covers easily portable barrelled weapons that expel, or are designed to expel a bullet or projectile, does not cover certain weapons “which may be converted to expel a bullet or projectile by the action of a combustible propellant” (convertible weapons), even though the *Law on Weapons*

in Article 56, paragraph 2 clarifies the term “conversion of weapons” defining it as *shortening the weapon, adapting the weapon to other ammunition, replacing or adding new essential components and other changes to the weapon which affect its functioning or technical characteristics*. Commercial companies and entrepreneurs dealing with conversion and repair of weapons have to acquire official permission to repair or convert weapons from the official body with jurisdiction (the Ministry of Interior of Montenegro), according to Article 56, paragraphs 3 and 4 of the *Law on Weapons*. According to paragraph 3 of Article 56 of this Law commercial companies and entrepreneurs can accept only the registered weapons for repair and/or conversion, but based on monitoring the processes of registration it can be concluded that there are significant flaws in registering and updating the records of weapons. Converted weapons are subject to examination and marking and commercial companies or entrepreneurs are required to inform the ministry in question about performing any change of calibre, technical or ballistic characteristics within eight days of converting the weapon, as stipulated in Article 57 of the *Law on Weapons*.

According to Article 9 of the *Law on Weapons*, essential components of weapons, defined in section II of Annex I of Directive 91/477/EEC as firearms in the sense of the term intended in the Directive, are: barrels for guns, pistols and revolvers, adapters for firearms, pistol and rifle bolts, revolver cylinders, pistol slides, magazines and stocks, which are in the sense of Article 2, paragraph 1, point 7 of the Law also defined as weapons.

Although certain provisions of the Law on Weapons include requirements which are stricter and exceed the minimum standard of Directives EU 91/477/EEC and 2008/51/EC, the Law does not conform to the systematisation of Directive 91/477/EEC and categories of firearms A, B, C, and D, which appear necessary from the aspect of legal concision and easier monitoring of compatibility between local regulations and the community law, in order to improve legal security and avoid arbitrary interpretation of regulations and ambiguity in their application.

■ CATEGORY A – prohibited firearms

By careful examination of the Law it can be concluded that the Law recognises all five types of weapons for which civilian acquisition, possession, carrying, manufacture, repair, conversion, trade and transport are prohibited in accordance with category A of Directive 91/477/EEC on control of acquisition and possession of weapons. *Argumentum a fortiori*¹³, the Law on Weapons includes the classification of five additional types of weapons, also prohibited for civilian acquisition and possession.

The restrictive approach in regulating prohibited weapons from category A is apparent in the provisions of Article 12 of the *Law on Weapons* which allows for the possibility of the Ministry of Interior of Montenegro (MUP CG) to issue (by subordinate legislation) a prohibition of carrying, manufacture, repair, conversion, trade and transfer of “other weapons”, if required by “special reasons of safety precaution and the security of public order”.

■ CATEGORY B – firearms subject to authorisation

Firearms (as defined in Article 3 of the *Law on Weapons*) and crossbows (stringed weapons, Article 7 of the *Law on Weapons*) with a pull weight of over 45 kg (100 pounds) can be acquired only with the permission issued by the Ministry of Interior of Montenegro (MUP CG), which designs application forms for acquiring such weapons. According to Article 16 of the *Law on Weapons* the acquisition of firearms with a projectile containing tranquilliser for temporary sedation of animals can be permitted to scientific institutions, bodies of state administration, and other legal or natural persons, for the purpose of scientific research and collecting data on animal species, animal protection, and other instances where sedation of animals is required for regular activities.

Natural persons can acquire ammunition for firearms on production of a weapon registration document issued by the official body after acquiring the weapon with the official authorisation (Article 27 of the *Law on Weapons*), and commercial companies and entrepreneurs can acquire ammunition based on the authorisation to possess weapons, as stipulated in Article 24 of the *Law on Weapons*.

¹³ Argumentum a fortiori (ratione) – argument from the stronger reason, precisely for that reason.

Collection of old weapons is regulated by *Article 32* of the *Law on Weapons* which permits natural persons to acquire, possess and collect up to three samples of old weapons¹⁴ without authorisation, whereas authorisation to collect old weapons issued by the Ministry of Interior of Montenegro (MUP CG), is required for acquiring, possessing and collecting more than three samples of old weapons. Natural persons with authorisation to collect old weapons can also collect cold weapons, automatic and semi-automatic weapons no longer used by the armed forces or the police, which have been rendered permanently unfit for use, as stipulated in *Article 33, paragraph 1* of the *Law on Weapons*. Weapons rendered permanently unfit for use are weapons with a permanently blocked full length of the barrel or cylinder, as stipulated in *paragraph 2 of Article 33*. In weapons where the barrel is replaceable without the use of tools, the barrel must be permanently blocked and joined to the housing, according to *Article 33, paragraph 3* of the *Law on Weapons*.

The *Law on Weapons* does not systematise category B weapons in one place according to *Annex I of Directive 91/477/EEC*. Based on analysing the content of the whole text of the *Law on Weapons* it can be concluded that the weapons whose acquisition and possession are subject to authorisation are:

- firearms and crossbows with a pull weight of over 45 kg (100 pounds);
- firearms with a projectile containing tranquilliser (for sedation of animals and scientific purposes);
- old weapons (more than three samples);
- cold weapons, automatic and semi-automatic weapons no longer used by the armed forces or the police, which have been rendered permanently unfit for use (with authorisation to collect old weapons);
- ammunition for firearms.

It can therefore be concluded that all firearms not listed in category A belong to category B, which are weapons whose acquisition and possession are subject to authorisation by the official body. It would be expedient to systematise category B in accordance with *Directive 91/477/EEC*, that is to establish a legal and technical norm which would include all types of such weapons by listing them in one place, as suggested earlier in the text of the Comparative Analysis.

■ **CATEGORY C – firearms subject to declaration**

The *Law on Weapons* does not include category C according to *Annex I of Directive EU 91/477/EEC* as there are no provisions for any types of weapons which are subject to official registration. The provisions of the *Law* which require the owner to place their weapons in the care of another person authorised to possess or carry such weapons in case of leaving their place of abode for over three months and inform the Ministry of Interior (MUP)¹⁵ are therefore legally irrelevant for the previous conclusion since this is not an obligation to officially declare weapons. As for compatibility of the *Law on Weapons* with the community law, that is the absence of category C in the *Law*, the provisions requiring the owner to report the loss or theft of weapons¹⁶ and the obligation to report lost and found weapons¹⁷, are also legally irrelevant since the disposition of these norms is entirely different to the norm which would regulate the category of weapons C, requiring declaration of certain types of weapons at the time of their acquisition, as stipulated in *Annex I* of the *Directive 91/477/EEC*.

However, the fact that the *Law* does not recognise the types of weapons listed in category C does not necessarily mean that the *Law on Weapons* does not conform to *Directive 91/477/EEC* and *Directive 2008/51/EC* (as

¹⁴ According to Article 14, paragraph 1, point 5 of the *Law on Weapons*, old weapons are weapons no longer in use, weapons with historical or artistic value, weapons that are part of national costume, weapons ignited by flint, fuse or percussion cap, and other firearms apart from military and police weapons which are worn out and not in a usable condition. Most EU member states refer to weapons as “old weapons” based on their date of production, (e.g. 1870), or a combination of technical characteristics of the weapon and a certain date, e.g. Slovenia.

¹⁵ Article 42 of the *Law on Weapons*.

¹⁶ Article 43 of the *Law on Weapons*.

¹⁷ Article 44 of the *Law on Weapons* is relevant for proper application of Article 1(4)(A) of *Directive 2008/51/EC* on the data a European firearms pass should contain.

suggested in primary compatibility analysis of the law of July 2007),¹⁸ since based on analysis of the text of the *Law on Weapons* it can be concluded that the weapons from *Annex I* of *Directive 91/477/EEC* are already included in the types of weapons whose acquisition and possession is subject to authorisation according to Montenegrin Law (category B). *Argumentum a maiori ad minus*, Montenegrin Law requires stricter conditions than those of the Directive, which is legitimate according to *Article 3* of *Directive 91/477/EEC*.¹⁹ The legitimacy of the approach of Montenegro on regulating this subject matter comes from the European Commission report to the European Parliament and Council on the implementation of *Directive 91/477/EEC* of 15.12.2000, in which a restrictive approach practice is noted in certain European Union Member States that categorise their firearms into only two categories, category A – prohibited firearms, and category B – firearms subject to authorisation. Point 18 of *Preamble* in *Directive EU 2008/51/EC* confirms the legitimacy of such an approach of certain Member States.

■ CATEGORY D - other firearms

Category D includes single-shot long firearms with smooth-bore barrels which according to the systematisation of Montenegrin Law belong to the category of weapons requiring authorisation. It can therefore be concluded, as in the case of firearms in category C, that the restrictive approach of Montenegro does not necessarily imply incompatibility with *Directive EU 91/477/EEC* and *Directive EU 2008/51/EC*.

However, the absence of category D in the systematisation of the Law would have limited the persons possessing such weapons in terms of length of validity of a European firearms pass, since *Article 1(4)* of *Directive 91/477/EEC* used to provide 10 years for the period of validity for category D firearms, whereas categories B and C were limited to a period of 5 years. Since *Article 1e* of *Directive 2008/51/EC amending Directive 91/477/EEC on control of the acquisition and possession of weapons* has unified the validity of the European firearms pass to a period of five years for all categories of firearms, this difference has become irrelevant.

Consistent adoption of the systematisation in *Directive 91/477/EEC* would be most expedient from the aspect of consistency of the legal system, since firearms categorisation is part of a whole range of other provisions (e.g. regulating civilian trade in weapons or introducing the European firearms pass).

According to *Article 13* of the *Law on Weapons* persons over 18 years of age can acquire the following weapons without authorisation or declaration:

- air, gas or signalling weapons, bows, crossbows whose pull weight does not exceed 45 kg (100 pounds), aerosols dispersing harmless irritants, life-saving devices, cattle killing devices, and other similar devices for industrial or technical purposes acquired in accordance with the regulations;
- weapons acquired and possessed as souvenirs, or decorative replicas of weapons, which cannot fire and cannot be converted to fire bullets;
- weapon replicas or objects intended for play, which can only fire bullets whose kinetic energy does not exceed 0.5 J, cap guns, and similar;
- harpoon guns and other objects which by the action of spring, suspended rubber or gas expel under pressure spears or harpoons, which are intended solely for fishing (underwater weapons).

As for weapons other than firearms, in the sense of the term intended in *Article 1(A)* of *Directive 2008/51/EC amending Directive 91/477/EEC on control of the acquisition and possession of weapons*, it can be concluded that *Article 13* of the *Law on Weapons* is in accordance with the above-mentioned directives, especially with section III of *Annex I* of *Directive 91/477/EEC*, providing details on what is not included in the definition of firearms in the sense intended in the Annex.

¹⁸ Mr. Marko Ivković, European Union and local firearms regulations (Comparative analysis – Podgorica, July 2007).

¹⁹ Italy classifies air weapons as firearms, and Sweden classifies weapons rendered unfit for use (draed) as firearms.

■ LEGAL (ADMINISTRATIVE) REQUIREMENTS FOR CIVILIAN ACQUISITION AND POSSESSION OF WEAPONS THAT ARE SUBJECT TO AUTHORISATION

Without prejudice to *Article 3, Article 5 of Directive 91/477/EEC*, allows the Member States to introduce stricter standards than the minimum standards in the directive, and authorise the acquisition and possession of firearms only by persons who have good cause and who:

- 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;
- are not likely to be a danger to themselves, to public order or to public safety.

The limiting conditions which apply to Member States refer to weapon categories B, C and D.

The conditions stipulated in the Law on Weapons are in complete accordance with the standards in *Directive 91/447/EEC and Directive 2008/51/EC*, and they include even stricter elements than the minimum standard.

According to *Article 17 of the Law on Weapons* authorisation to acquire weapons can be given to any natural person who meets the following conditions:

- is at least 21 years of age;
- has not been convicted, and had no proceedings initiated against them for crimes against the constitutional order and security of Montenegro, against humanity or other assets protected by international law, against life and bodily integrity, against property, and other crimes with elements of violence, gain or passion;
- has not been convicted, and had no proceedings initiated against them for offences against public order and peace committed by use of firearms, and offences stipulated in this law, over the period of three years before applying for authorisation for acquisition of weapons;
- there are no other circumstances indicating that the weapons could be misused in terms of: frequent consumption of large quantities of alcohol; severely dysfunctional relationships with family, neighbours and work colleagues; disciplinary breach of regulations in hunting, target shooting, and similar;
- has a justified reason for acquiring weapons;
- has undergone a medical examination and been deemed medically fit to possess and carry weapons;
- has been trained for using weapons and familiarised with the regulations regarding possession and carrying of weapons.

Article 17, paragraph 3 of the Law on Weapons provides an administrative procedure to establish whether the requirements of paragraph 1, points 1-5 are met, requiring the applicant to provide documents which prove they are medically fit (paragraph 1, point 6), familiar with regulations on possession and carrying weapons, and trained for using weapons (paragraph 1, point 7). *Article 18 of the Law on Weapons* gives a specific list of justified reasons for acquiring weapons:

- jeopardised personal safety of a natural person;
- hunting;
- target shooting.

However, the Law is not clear on which kinds of weapons require previous training. Since *Article 20* includes only three types of weapons, weapons for hunting, weapons for sports, and short firearms, it remains unclear whether

obligatory training applies to other kinds of weapons, not referred to in category A of *Directive 91/477/EEC*. This discrepancy should be corrected by amending the law.

Article 27 of the Law on Weapons stipulates that a weapon registration document for possession of weapons only, shall be issued to natural persons possessing weapons for the purpose of personal safety, or owners of trophy weapons, whereas weapon registration document for possession and carrying weapons shall be issued to natural persons wishing to practice sport hunting or target shooting. In both cases, the document shall be issued to the owner of the hunting or sports weapon, and it can include the names of a maximum of three other persons using the same weapon for hunting or sporting purposes (multiple users of weapons). The weapon registration document is issued for the period of five years, with the possibility of re-registration for another five years, on condition that MUP (The Ministry of Interior) re-establishes that the requirements according to *Article 17, paragraph 1, points 2 – 6 of the Law* are met, as stipulated in *Article 28 of the Law*. The registration document for trophy weapons is issued for an indefinite period.

The above-mentioned requirements are in accordance with the standards, since although there is a European firearms pass for the weapons within EU states, the community law allows Member States to regulate the administrative procedure of issuing documents for acquisition and possession of weapons themselves, where the permission to acquire and permission to possess category B firearms can be in the form of a single administrative directive, according to *Article 7(3) of Directive 91/477/EEC*.

According to *Article 24 of the Law on Weapons*, natural persons can acquire ammunition for firearms on production of weapon registration document, and commercial companies and entrepreneurs can acquire ammunition based on the authorisation to possess weapons, which implies that this approach to the acquisition of ammunition is in accordance with *Article 10 of Directive 91/477/EEC*

■ LEGAL (ADMINISTRATIVE) REQUIREMENTS FOR CIVILIAN ACQUISITION AND POSSESSION OF WEAPONS FOR COMMERCIAL COMPANIES AND ENTREPRENEURS FOR THE PERFORMANCE OF THEIR WORK

According to *Article 21 of the Law on Weapons*, authorisation to acquire firearms shall be issued only to commercial companies and entrepreneurs whose work directly involves providing physical security and protection of buildings and goods, and target-shooting organisations for the purposes of performing their activities, provided that they have a space where weapons can be stored and kept safely. Commercial companies and entrepreneurs managing a hunting ground may provide hunting weapons and ammunition to members of local and foreign hunting organisations with valid hunting licences to use for a limited period of time on a specific hunting ground in order to hunt game, as stipulated in *paragraph 2 of this article*. Members of foreign hunting organisations can deposit their personal hunting weapons for safekeeping with the commercial company managing the hunting ground for a period of up to one year, regulated by a written contract.

This regulation is in accordance with the standards, especially since *Directive 91/477/EEC* and *Directive 2008/51/EC* take a flexible approach regarding hunting and sports target-shooting regulations within the EU.

The Law on Weapons meets the requirements in *Article 5 of Directive 91/477/EEC*, which refer to the legal option of a Member State to withdraw the authorisation to acquire weapons if there is a change in circumstances stipulated in *Article 5(1)(b) of the Directive*. This legal option is stipulated in chapter IV of the Law, entitled "Confiscation of weapons, ammunition, and weapons documents" (Article. 47-52).

■ EUROPEAN FIREARMS PASS

Annex II of Directive 91/447/EEC regulates the standard and European firearms pass. *Article 1(4) of the Directive* provides that European firearms pass shall be issued to persons lawfully entering into possession of and using firearms. It shall be valid for a maximum period of five years, which may be extended. The European firearms pass is a document which is not transferable, and shall record the firearm or firearms possessed and used by the holder of the pass. It must always be in the possession of the person using the firearm, and any change in

the possession or characteristics of the firearm, as well as the loss and theft thereof shall be indicated on the pass.

Article (4A) of Directive 2008/51/EC amending Directive 91/477/EEC on control of acquisition and possession of weapons provides that the European firearms pass must contain the data stipulated in Annex II of *Directive 91/477/EEC*, and according to Annex II the pass shall have the following sections:

- a) identity of the holder;
- b) identification of the weapon or firearm, including a reference to the category within the meaning of the Directive;
- c) period of validity of the pass;
- d) section for use by the Member State issuing the pass (type and references of authorisation, etc.);
- e) section for entries by other Member States (authorisation to enter their territory, etc.);
- f) the statements.

According to Annex II, the right to travel to another Member State with one or more of the firearms in categories B, C, or D mentioned in this pass, shall be subject to one or more prior corresponding authorisations from the Member State visited. This or these authorisations may be recorded on the pass. The prior authorisation referred to above is not in principle necessary in order to travel with a firearm in categories C or D with a view to engaging in hunting or with a firearm in categories B, C, or D for the purpose of taking part in target-shooting, on condition that the traveller is in possession of the firearms pass and can establish the reason for the journey.

Where a Member State has informed the other Member States, in accordance with article 8(3), that the possession of certain firearms in categories B, C or D is prohibited or subject to authorisation, one of the following statements shall be added:

“A journey to... (State(s)s concerned) with the firearm... (identification) shall be prohibited”,

“A journey to... (State(s)s concerned) with the firearm... (identification) shall be subject to authorisation“.

Article 1(e) of Directive 2008/51/EC has amended *Article 1(4) of Directive 91/477/EEC*, providing a universal period of validity for European firearms pass of five years, with the possibility of extension. *Article 1(4) of Directive 91/477/EEC* used to provide a period of validity for European firearms pass for category D weapons of maximum ten years.

It is important to note that the European firearms pass is not a European authorisation for acquisition and possession of firearms, since issuing authorisations for acquisition and possession of firearms is within the jurisdiction of the Member States. It is also important to note that full implementation of certain parts of *Directive 91/477/EEC* and *Directive 2008/51/EC*, such as provisions on mutual relations of Member States in terms of acquisition, possession and transport of weapons, and consistent adherence to the provisions on the European firearms pass, is possible only after Montenegro has gained full European Union membership. But even at this stage of integration it is possible to adjust the forms of Montenegrin weapon registration documents to the official form of the European firearms pass, according to Annex II of *Directive 91/477/EEC*. It is also possible to regulate relations among the countries of the region and other countries in the way of bilateral and multilateral agreements, especially in terms of reciprocal acceptance of the requirements for control of acquisition, possession, trade and transport of weapons, in accordance with community law. Timely and efficient exchange of information would also contribute to meeting the requirements for the integration of Montenegro, and would be in accordance with *Article 12(3) and Article 13(1) and (2) of the Directive*.

■ MANUFACTURE, TRADE AND TRANSFER OF WEAPONS

The meaning of the term “dealer” in the sense intended in *Article 1(2) of Directive 91/477/EEC* is significantly different from the meaning of the local term “trgovac”, since it refers to any natural or legal person whose trade or business consists wholly or partly of the manufacture, trade, exchange, hiring out, repair or conversion of firearms.

Directive 2008/51/EC adds the words “parts and ammunition” to the end of the definition of the term “dealer”, making it even more specific.²⁰

Article 1(B)(1e) of Directive 2008/51/EC introduces the term „broker“, which refers to any natural or legal person whose trade or business consists wholly or partly in the buying, selling or arranging the transfer of weapons. This meaning is compatible with the local understanding of a broker, commission agent, or carrier in weapons trade.

The Montenegrin Law on Weapons does not recognise such wide definition of the terms “dealer” or “broker” in the sense intended above, but chapter V of the Law regulates the problem of weapons conversion and repair, chapter VI regulates the trade of weapons and ammunition, chapter VII regulates the manufacture of weapons and ammunition, and chapter VIII regulates the transfer of weapons and ammunition, which are all kinds of trade or business of a “dealer” in the sense intended in *Directive 91/477/EEC and Directive 2008/51/EC*.

The Law on Weapons should be amended so as to define the terms “trgovac” (dealer) and “broker” in accordance with the community law, making sure that the term “broker” includes brokering or commission sale in trade of weapons, and forwarding in transfer of weapons.

Article 4 of Directive 91/477/EEC requires the Member States to make the pursuit of the activity of “dealer” of category A and B weapons within their territory conditional upon authorisation on the basis of at least a check of the private and professional integrity and of the abilities of the dealer. In the case of a legal person, the check shall be on the person who directs the undertaking. Every Member State is also required to regulate the trade of category C and D weapons by making it subject to declaration.

The Law on Weapons uses the terms “commercial company” and “entrepreneur” to describe the trade and business covered by the terms “dealer” and partly “broker” of *Directive 91/477/EEC and Directive 2008/51/EC*, without reference to brokering in the trade of weapons, and forwarding or arranging transport of weapons.

The trade and business of commercial companies and entrepreneurs is subject to official authorisation by MUP (the Ministry of Interior) of Montenegro, as stipulated in parts of the Law referring to specific kinds of trade (*Article 56, paragraphs 3 and 4; Article 59, paragraphs 2 and 3; Article 60, paragraphs 2 and 3; Article 62, paragraphs 2 and 4.*).

The regulations on entry, transit, and exit of weapons across the state borders are not covered by the Law on Weapons, but by the law regulating the surveillance of state borders, as referred to in *Article 39a of the Law on Weapons* (The Official Gazette of Montenegro, no. 49/08 of 15.08.2008, amending the Law on Weapons, Official Gazette no. 49/04 of 22.07.2004.).

The Law on Weapons of Montenegro is partly in accordance with the requirement of *Directive 2008/51/EC*, according to which the weapons trade is subject to authorisation issued after a vetting procedure “which includes a basic level of personal and professional integrity” of the person involved in the trade. All kinds of trade listed apart from brokering, forwarding and arranging transport of weapons, are included in the Law on Weapons and therefore subject to control and proof that requirements have been met, as stipulated in the provisions of *Article 17, paragraph 1, points 1-4, and point 6*, the content of which has already been clarified in this analysis in the part referring to administrative requirements for acquisition and possession of weapons which is subject to official authorisation.²¹

²⁰ Article 1(2) of Directive 2008/51/EC.

²¹ Page 14 of the Comparative Analysis.

Full implementation of *Directive 91/477/EEC* and *Directive 2008/51/EC* in terms of transfer of weapons between Member States will be possible after full integration of Montenegro into the European Union. However, at the current stage of integration, Montenegro must pay attention to the restrictiveness of the provisions in *Articles 14 and 15 of Directive 91/477/EEC* in terms of the prohibition of entry into Montenegro for firearms, except in the cases and under conditions stipulated by *Articles 11 and 12 of the Directive*, and weapons which are not firearms, if in accordance with the legal system of the state. Montenegro is obliged particularly to ensure that travellers from third states (outside the EU) intending to travel to a European Union Member State adhere to the provisions on transfer of weapons in *Article 11 of the Directive*, and also to amend the Law on Weapons so as to include these provisions.

Article 4 (5) of Directive 2008/51/EC requires the Member States to ensure that all firearms can be linked to their owner at any moment. However, with regards to firearms classified in category D, Member States shall, as from 28 July 2010, put into place appropriate tracing measures, including, as from 31 December 2014, measures enabling linking at any moment to the owner of firearms placed on the market after 28 July 2010.

The fact that Montenegrin Law on Weapons does not include category D, which would be systematised in one place in the Law, indicates potential difficulties which may be expected during the implementation of these provisions, which contributes to the view that a consistent systematisation of *Directive 91/477/EEC* and categorisation of weapons into categories A, B, C, and D within the Law on Weapons is the most expedient solution.

In terms of unique marking of weapons, according to *Article 4 of Directive 2008/51/EC*, for the purpose of identifying and tracing of weapons,²² it is significant that there are no registered civilian manufacturers (business entities) of light and small calibre firearms and ammunition, which makes the meaning of the provisions in *Article 4(2)(a) of Directive 2008/51/EC* relative at this stage, (which doesn't mean that it shall remain so in the future), since the above mentioned article of the Directive requires of the Member States a unique marking of weapons including the name of the manufacturer, the country or place of manufacture, the serial number, and 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 Proofmarks on Small Arms, or maintain any alternative unique user-friendly marking with a number or alphanumeric code, permitting ready identification by all States of the country of manufacture.

On the other hand, the need has become apparent for Member States to provide appropriate unique markings at the time of transfer of a firearm from government stocks to permanent civilian use, permitting identification by States of the transferring country, where an appropriate (legal or sub-legal) provision should be introduced to complement the national act.

■ RECORDS

According to community law, Member States are required to ensure that official records of firearms, classified into categories A, B, and C, are kept by the dealers which means keeping records of the data which identifies the firearm in terms of model, calibre and serial number, and general data such as names and addresses of suppliers and buyers, or users of weapons. Member States are required to establish a permanent administrative control regarding this issue, and the dealers are explicitly required to keep the records for five years after discontinuing the trade.

The Law on Weapons provides a framework regulating this subject matter by a general requirement in *Article 69* for the Ministry of Interior regarding record keeping of the issued authorisations for acquisition of weapons and ammunition, weapon registration documents, authorisations for possession of weapons, authorisations for collection of weapons, confiscated, found and returned weapons. *Article 70, paragraph 1* lists the kinds of records that sports, target-shooting and hunting organisations, and other commercial companies officially registered for the trade, are required to keep on weapons and ammunition that they have acquired, or hired out. Apart from the records of paragraph 1 of this article, commercial companies and entrepreneurs are required to keep records

²² For the purposes of this Directive the term „tracing“ shall mean the systematic tracking of firearms and, where possible, their parts and ammunition from manufacturer to purchaser for the purpose of assisting the competent authorities of Member States in detecting, investigating and analysing illicit manufacturing and illicit trafficking.

of manufactured and delivered weapons, acquired and sold weapons and ammunition, repaired and converted weapons, acquired weapons, hired out weapons, collected weapons, and acquired and used ammunition.

During the editing process of the text of the Law on Weapons the legislative and record keeping requirements for the manufactured and delivered ammunition of Article 70, paragraph 2, point 1, must have been omitted. According to community law, these requirements apply to Member States, and should be included in the amended Law.

Article 71 of the Law on Weapons allows for MUP (Ministry of Interior) of Montenegro to prescribe forms and ways of keeping records by a sub-legal act. MUP (Ministry of Interior) has met this requirement by introducing the Rulebook on forms and ways of keeping records of weapons and ammunition.²³ This sub-legal act provides a precise and detailed content and layout of the forms, and the ways of keeping the above mentioned records, and it complements the Law on Weapons in terms of keeping records. It can therefore be concluded that this part of the normative legal framework of Montenegro (except the editing error in Article 70, paragraph 2, point 1) is in accordance with *Directive 91/477/EEC and Directive 2008/51/EC*.

The records stipulated in *Article 6 and Articles 8-12 of this Rulebook* are kept permanently (the minimum standard in the above mentioned Directives is five years), except the records of hired out weapons for recreational and sports target shooting, which are kept for one year. The author's opinion is that the Rulebook on forms and ways of keeping records of weapons and ammunition should be amended by a provision which would determine the person or entity responsible for keeping records after the dealer discontinues the trade, as stipulated in *Article 4(4) of Directive 2008/51/EC*.

It is important to note that *Article 4(4) of Directive 2008/51/EC* introduces a requirement to Member States as of 31.12.2014, to establish and maintain a computerised data-filing system, This filing system shall record and maintain for not less than 20 years each firearm's type, make, model, calibre and serial number, as well as the names and addresses of the supplier and the person acquiring or possessing the firearm.

This means that the provisions of Article 15 of the Rulebook on forms and ways of keeping records of weapons and ammunition will need to be amended in order to replace the dual system of record keeping where written book keeping records are obligatory and electronic records selective, by a new system where electronic record keeping is obligatory.

■ OTHER PROVISIONS

Article 16 of Directive EU 91/477/EEC has introduced to the Member States the obligation to 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.

Chapter XI of the *Law on Weapons* prescribes penalty provisions, where breach of certain norms of this Law is considered an offence, with the possibility of prosecution, if any of legal entities referred to in this Law commit one of the criminal acts of possession (active or passive), which is prosecuted *ex officio*²⁴, as stipulated in the Criminal Code²⁵ (substantive right), and Criminal Procedure²⁶ (procedural law).

The penalties prescribed in the Law on Weapons, ranging from a value of one to five minimal wages in Montenegro (as a variable economic parameter), for minor offences of natural persons²⁷, and a value of three to ten minimal wages for major offences of natural persons, and the penalties prescribed for commercial companies

²³ The Official Gazette of Montenegro no. 02/05 of 18.01.2005.

²⁴ For example criminal act of unauthorised possession of weapons and explosives in Article 403 of the Criminal Code ; criminal act of preparing and procuring weapons and funds intended for the execution of criminal acts in Article 402 of the Criminal Code ; criminal act of unauthorised use of explosive and flammable material in Article 335 of the Criminal Code .

²⁵ Criminal Code (the Official Gazette of Montenegro no. 70/03, 13/04, 47/06 and the Official Gazette of Montenegro no. 40(08).

²⁶ Criminal Procedure (the Official Gazette of Montenegro no. 71/03, 7/04 and 47/06).

²⁷ Minimal wage, according to the general, collective agreement, on 10.07.2009, in Montenegro equals to the sum of EUR 55,00.

ranging from ten to two hundred minimal wages in Montenegro, imply that the penalties provided according to the Law on Weapons are appropriate for the needs of general and special prevention, protection of public order, strengthening of social morals and discipline of the citizens, which is the purpose of penalty sanctions in Montenegro in general.²⁸

It can therefore be concluded that the penalty provisions of the Law on Weapons are in accordance with the requirement in *Article 16 of Directive 91/477/EEC*.

Article 13(1) of Directive 91/477/EEC requires each Member State to communicate all useful information at its disposal concerning definitive transfers of firearms, to which end a contact group for the exchange of information shall be set up for the efficient application of this article, as stipulated in *article 13(3) of the Directive*.

By application of *Article 12(3) of Directive 91/477/EEC* Member States may provide for arrangements more flexible than those prescribed by mutual recognition of national documents.

According to *Article 14 of Directive 91/477/ECC*, Member States shall adopt all relevant provisions prohibiting entry into their territory:

- of a firearm except in the cases defined in *Articles 11 and 12 of this Directive*;
- of a weapon other than a firearm (in the sense intended in Annex 1), provided that the national provisions of the Member State in question so permit.

Hence, it seems that the terminology used in the Law on Weapons is not compatible with the terminology used in *Directives 91/477/EEC and 2008/51/EC*, which suggests a need for legal and language editing, since the translations of international legal instruments (UN, EU, OSCE) are often unclear, which makes their implementation into domestic legal order difficult.

The author therefore thinks that editing the text of the Law on Weapons should involve the teamwork of legal experts, weapons experts and translators.

²⁸ Article 8 of the Law on Offences (The Official Gazette of Montenegro no. 25/94; 38/96; 48/99).

■ SCHEMATIC PRESENTATION OF COMPATIBILITY OF THE NORMATIVE LEGAL FRAMEWORK OF MONTENEGRO WITH DIRECTIVE EU 91/477/EEC AND DIRECTIVE 2008/51/EC

T A B L E I

Definition and categorisation of weapons

TOPIC	PROVISIONS AND REQUIREMENTS OF DIRECTIVE 91/477/EEC AND DIRECTIVE 2008/51/EC	PROVISIONS OF THE LAW ON WEAPONS	RECOMMENDATIONS
Definition of weapons	Directive 91/477/EEC refers to weapons and firearms as defined in Annex I (every firearm defined in section II of this Annex, unless otherwise stipulated in section III of this Annex, where the term „firearms“ refers to every object which falls into categories A, B, C and D), and weapons other than firearms, in the sense intended in national legislation.	In the sense of Article 2 of the Law on Weapons, weapons are: 1. firearms; 2. air weapons; 3. gas and signalling weapons; 4. fragmentation weapons; 5. weapons with string; 6. cold weapons; 7. essential components of weapons; Other devices defined by this Law as weapons, are also considered weapons.	The definition of weapons in Article 2 of the Law on Weapons is in accordance with the provisions of Annex I, section I of Directive 91/477/EEC.
Definition of firearms	Directive 2008/51/EC determines the meaning of the term <i>firearm</i> of Article 1 of Directive 91/477/EEC so that for the purposes of this Directive the term <i>firearm</i> refers to any easily portable barrelled weapon that expels, is designed to expel or may be converted to expel a shot, bullet or projectile by the action of a combustible propellant, unless it is excluded for one of the reasons listed in part III of Annex I.	In the sense intended in Article 3, paragraph 1, firearms are: all kinds of guns, pistols and revolvers, and all kinds of devices from which with the aid of explosive force of gunpowder gases expel through their barrels grains, balls, shot, darts and other projectiles, and hand-held and free-standing devices intended to produce loud reports, designed not to take full loading, and which are loaded from the muzzle with a certain quantity of black powder and are fired with match, flint or percussion cap (mužari).	The definition of firearms in the sense intended in Article 3 of the Law on Weapons does not include all the requirements of Article 1(A) of Directive 2008/51/EC, which gives a detailed definition of the term firearm of Article 1, and Annex I of Directive 91/477/EEC, since apart from easily portable barrelled weapons that expel, are designed to expel a shot, bullet or projectile, it does not include the weapons which “may be converted to expel a bullet or projectile by the action of a combustible propellant, (convertible weapons)“.

TOPIC	PROVISIONS AND REQUIREMENTS OF DIRECTIVE 91/477/EEC AND DIRECTIVE 2008/51/EC	PROVISIONS OF THE LAW ON WEAPONS	RECOMMENDATIONS
<p>Prohibited firearms - category A</p>	<ol style="list-style-type: none"> explosive military projectiles and launchers; automatic firearms; firearms disguised as other objects; ammunition with penetrating explosive or incendiary projectiles and the projectiles for such ammunition; pistol and revolver ammunition with expanding projectiles and the projectiles for such ammunition, except in the case of weapons for hunting or for target shooting for persons entitled to use them. 	<p>It is prohibited to acquire, possess, carry, manufacture, repair, convert, trade in and transfer the following weapons and ammunition:</p> <ol style="list-style-type: none"> all kinds of automatic weapons; other semi-automatic weapons with magazine capacity of more than 5 rounds, except guns of calibre 22 LR; all kinds of weapons with integral silencer, silencers intended for weapons, and parts of silencers; telescopic sights with light rays or electronic devices for enhancing light or infrared devices; weapons intended for expelling explosive projectiles; weapons disguised as other objects so that their exterior is not recognisable as weapons; fragmentation weapons; ammunition designed primarily to pierce armour, ammunition with explosive, flammable or toxic projectiles; ammunition that hasn't been authorised for trade according to the provisions of special regulations; blades of switchblades which are suspended on a spring and can be released from the handle by pressing a button or lever, knuckle dusters and metal flying stars (Shuriken). 	<p>The Law recognises all five kinds of weapons and prohibits their civilian acquisition, possession, carrying, manufacture, repair, conversion, trade and transfer, in accordance with category A of Directive 91/477/EEC on control of acquisition and possession of weapons. The Law includes five additional kinds of weapons whose civilian acquisition and possession is prohibited.</p>
<p>Firearms subject to authorisation - category B</p>	<ol style="list-style-type: none"> semi-automatic or repeating short firearms; single-shot short firearms with centre-fire percussion; single-shot firearms with rimfire percussion whose overall length is less than 28 cm; Semi-automatic long firearms whose magazine and chamber can together hold more than three rounds; semi-automatic long firearms whose magazine and chamber cannot together hold more than three rounds, where the loading device is removable or where it is not certain that the weapon cannot be converted with ordinary tools into a weapon whose magazine and chamber can together hold more than three rounds; repeating and semi-automatic long firearms with smooth-bore barrels not exceeding 60 cm in length; semi-automatic firearms for civilian use which resemble weapons with automatic mechanisms. 	<p>The Law on Weapons does not systematise category B weapons in one place, and by analysing the content of the Law, the weapons whose acquisition and possession is subject to authorisation are:</p> <ol style="list-style-type: none"> firearms and crossbows with pull weight of over 45 kg (100 pounds); firearms with a projectile containing tranquilliser (for sedation of animals and scientific purposes); old weapons (more than three samples); cold weapons, automatic and semi-automatic weapons no longer used by the armed forces or the police, which have been rendered permanently unfit for use (with authorisation to collect old weapons); ammunition for firearms. 	<p>Although according to the Law on Weapons the firearms not listed in category A are included in category B, systematising category B in accordance with Directive 91/477/EEC, and establishing a legal and technical norm which would unify all kinds of such weapons by listing them in one place would be most expedient. This appears necessary from the aspect of legal concision and easier monitoring of compatibility between local regulations with the community law, in order to improve legal security and avoid arbitrary interpretation of regulations and ambiguity in their application.</p>

TOPIC	PROVISIONS AND REQUIREMENTS OF DIRECTIVE 91/477/EEC AND DIRECTIVE 2008/51/EC	PROVISIONS OF THE LAW ON WEAPONS	RECOMMENDATIONS
<p>Firearms subject to declaration – category C</p>	<ol style="list-style-type: none"> 1. repeating long firearms other than those listed in category B, point 6; 2. long firearms with single-shot rifled barrels; 3. semi-automatic long firearms other than those in category B, points 4 to 7; 4. single-shot short firearms with rimfire percussion whose overall length is not less than 28 cm. 	<p>The Law on Weapons does not prescribe any kind of weapon which is subject to declaration, which would be in accordance with category C according to Annex I of Directive 91/477/EEC.</p>	<p>The fact that the Law does not recognise the kinds of weapons in category C does not necessarily imply that this part of the Law on Weapons is not in accordance with Directives 91/477/EEC and 2008/51/EC, since it can be concluded that the weapons in category C according to Annex I are already included in the kinds of weapons whose acquisition and possession are subject to authorisation (category B) according to the Montenegrin Law on Weapons. The legitimacy of this approach of Montenegro is confirmed by the experience of certain Member States. However, systematisation according to Annex I is recommended for reasons already mentioned.</p>
<p>Other firearms – category D</p>	<p>Single shot long firearms with smooth-bore barrels.</p>	<p>According to the systematisation of the Montenegrin Law, single shot long firearms with smooth-bore barrels belong to the category of firearms which are subject to authorisation.</p>	<p>The restrictive approach of Montenegro does not necessarily imply incompatibility with Directive EU 91/477/EEC and Directive EU 2008/51/EC. However, consistent adoption of the systematisation in Directive 91/477/EEC would be most expedient from the aspect of consistency of the legal system, since firearms categorisation is part of a whole range of other provisions (e.g. regulating civilian trade in weapons or introducing the European firearms pass).</p>

T A B L E II

Legal (administrative) requirements for civilian acquisition of weapons which are subject to authorisation

TOPIC	PROVISIONS AND REQUIREMENTS OF DIRECTIVE 91/477/EEC AND DIRECTIVE 2008/51/EC	PROVISIONS OF THE LAW ON WEAPONS	RECOMMENDATIONS
<p>Acquisition and possession of weapons by natural persons</p>	<p>Without prejudice to Article 3, Article 5 of Directive 91/477/EEC, allows the Member States to introduce stricter standards than the minimum standards in the directive, and authorise the acquisition and possession of firearms only by persons who have good cause and who:</p> <ul style="list-style-type: none"> ■ 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; ■ are not likely to be a danger to themselves, to public order or to public safety. 	<p>According to Article 17 of the Law on Weapons authorisation to acquire weapons can be given to any natural person who meets these conditions:</p> <ul style="list-style-type: none"> ■ is at least 21 years of age; ■ has not been convicted, and had no proceedings initiated against them for crimes against the constitutional order and security of Montenegro, against humanity and other goods protected by international law, against life and bodily integrity, against property, and other crimes with elements of violence, gain or passion; ■ has not been convicted, and had no proceedings initiated against them for offences against public order and peace committed by use of firearms, and offences stipulated in this law, over the period of three years before applying for authorisation for acquisition of weapons; ■ there are no other circumstances indicating that the weapons could be misused in terms of: frequent consumption of large quantities of alcohol; severely dysfunctional relationships with family, neighbours and work colleagues; –disciplinary breach of regulations in hunting, target shooting, and similar; ■ has good cause for acquiring weapons; ■ has undergone a medical examination and been deemed medically fit to possess and carry weapons; ■ has been trained for using weapons and familiarised with the regulations regarding possession and carrying of weapons. <p>Article 18 of the Law on Weapons gives a specific list of justified reasons for acquiring weapons which are: jeopardised personal safety, hunting, and target shooting.</p> <p>Article 27 of the Law on Weapons stipulates that a weapon registration document for possession of weapons only, shall be issued to natural persons possessing weapons for the purpose of personal safety, or owners of trophy weapons, whereas weapon registration document for possession and carrying weapons shall be issued to natural persons wishing to practice hunting or target shooting.</p>	<p>It is necessary to establish by the Law precisely which kinds of weapons are subject to prior training, since Article 20 of the Law mentions only three kinds of weapons: hunting weapons, sports weapons and short firearms; so it remains unclear whether this requirement applies to other kinds of weapons, not included in category A of Directive 91/477/EEC, which should be rectified by amending the Law.</p>

TOPIC	PROVISIONS AND REQUIREMENTS OF DIRECTIVE 91/477/EEC AND DIRECTIVE 2008/51/EC	PROVISIONS OF THE LAW ON WEAPONS	RECOMMENDATIONS
<p>Acquisition and possession of weapons by commercial companies and entrepreneurs</p>	<p>Article 4 of Directive 91/477/EEC requires the Member States to make the pursuit of the activity of "dealer" of category A and B weapons within their territory conditional upon authorisation on the basis of at least a check of the private and professional integrity and of the abilities of the dealer. In the case of a legal person, the check shall be on the person who directs the undertaking. Every Member State is also required to regulate the trade of category C and D weapons by making it subject to declaration.</p>	<p>According to Article 21 of the Law on Weapons, authorisation to acquire firearms shall be issued only to commercial companies and entrepreneurs whose work directly involves providing physical security and protection of buildings and goods, and target-shooting organisations for the purposes of performing their activities, provided that they have a space where weapons can be stored and kept safely. Commercial companies and entrepreneurs managing a hunting ground may provide hunting weapons and ammunition to members of local and foreign hunting organisations with valid hunting licences to use for a limited period of time on a specific hunting ground in order to hunt game, as stipulated in <i>paragraph 2 of this article</i>. Members of foreign hunting organisations can deposit their personal hunting weapons for safekeeping with the commercial company managing the hunting ground for a period of up to one year, regulated by a written contract.</p>	<p>This subject matter is in accordance with the minimum standard of Directive 91/477/EEC and Directive 2008/51/EC, especially since the directives take a more flexible approach to hunting and target shooting within the EU.</p>
<p>Confiscation of authorisation to possess weapons</p>	<p>Directive 91/477/EEC prescribes a legal option of a Member State to withdraw the authorisation to acquire weapons if there is a change in circumstances stipulated in Article 5(1)(b).</p>	<p>This legal option is stipulated in chapter IV of the Law on Weapons entitled "Confiscation of weapons, ammunition, and weapons documents" (Article. 47-52).</p>	<p>The Law on Weapons is in accordance with the standards of Directive 91/477/EEC and Directive 2008/51/EC.</p>

T A B L E III

European firearms pass

TOPIC	PROVISIONS AND REQUIREMENTS OF DIRECTIVE 91/477/EEC AND DIRECTIVE 2008/51/EC	PROVISIONS OF THE LAW ON WEAPONS	RECOMMENDATIONS
<p>European firearms pass</p>	<p>Annex II of Directive 91/447/EEC regulates the standard and European firearms pass. Article 1(4) of the Directive provides that European firearms pass shall be issued to persons lawfully entering into possession of and using firearms. It shall be valid for a maximum period of five years, which may be extended. European firearms pass is a document which is not transferable, and shall record the firearm or firearms possessed and used by the holder of the pass. It must always be in the possession of the person using the firearm, and any change in the possession or characteristics of the firearm, as well as the loss and theft thereof shall be indicated on the pass.</p> <p>Article (4A) of Directive 2008/51/EC amending Directive 91/477/EEC on control of acquisition and possession of weapons provides that European firearms pass must contain the data stipulated in Annex II of Directive 91/477/EEC, and according to Annex II the pass shall have the following sections:</p> <ol style="list-style-type: none"> identity of the holder; identification of the weapon or firearm, including a reference to the category within the meaning of the Directive; period of validity of the pass; section for use by the Member State issuing the pass (type and references of authorisation, etc.); section for entries by other Member States (authorisation to enter their territory, etc.); the statements. 	<p>The Law on Weapons does not include provisions on European firearms pass.</p>	<p>It is important to note that full implementation of certain parts of Directive 91/477/EEC and Directive 2008/51/EC, such as provisions on mutual relations of Member States in terms of acquisition, possession and transport of weapons, and consistent adherence to the provisions on European firearms pass, is possible only after Montenegro has gained full European Union membership. But even at this stage of integration it is possible to adjust the forms of Montenegrin weapon registration documents with the official form of European firearms pass, according to Annex II of Directive 91/477/EEC. It is also possible to regulate relations among the countries of the region and other countries in the way of bilateral and multilateral agreements, especially in terms of reciprocal acceptance of the requirements for control of acquisition, possession, trade and transport of weapons, in accordance with the community law. Timely and efficient exchange of information would also contribute to meeting the requirements for the integration of Montenegro, and would be in accordance with Article 12(3) and Article 13(1) and (2) of the Directive.</p>

TABLE IV

Manufacture, trade and transfer of weapons

TOPIC	PROVISIONS AND REQUIREMENTS OF DIRECTIVE 91/477/EEC AND DIRECTIVE 2008/51/EC	PROVISIONS OF THE LAW ON WEAPONS	RECOMMENDATIONS
<p>Definitions of the terms dealer and broker</p>	<p>The meaning of the term “dealer” in the sense intended in Article 1(2) of Directive 91/477/EEC is significantly different from the meaning of the local term “trgovac”, since it refers to any natural or legal person whose trade or business consists wholly or partly in the manufacture, trade, exchange, hiring out, repair or conversion of firearms.</p> <p>Directive 2008/51/EC adds the words “parts and ammunition” to the end of the definition of the term “dealer”, making it even more specific.</p> <p>Article 1(B)(1e) of Directive 2008/51/EC introduces the term “broker”, which refers to any natural or legal person whose trade or business consists wholly or partly in the buying, selling or arranging the transfer of weapons. This meaning is compatible with the local understanding of a broker, commission agent, or carrier in weapons trade.</p> <p>Article 4 of Directive 91/477/EEC requires the Member States to make the pursuit of the activity of “dealer” of category A and B weapons within their territory conditional upon authorisation on the basis of at least a check of the private and professional integrity and of the abilities of the dealer. In the case of a legal person, the check shall be on the person who directs the undertaking. Every Member State is also required to regulate the trade of category C and D weapons by making it subject to declaration.</p>	<p>Montenegrin Law on Weapons does not recognise such wide definition of the terms “dealer” or “broker” in the sense intended above, but chapter V of the Law regulates the problem of weapons conversion and repair, chapter VI regulates the trade of weapons and ammunition, chapter VII regulates the manufacture of weapons and ammunition, and chapter VIII regulates the transfer of weapons and ammunition, which are all kinds of trade or business of a “dealer” in the sense intended in Directive 91/477/EEC and Directive 2008/51/EC.</p> <p>The Law on Weapons uses the terms “commercial company” and “entrepreneur” to describe the trade and business covered by the terms “dealer” and partly “broker” of Directive 91/477/EEC and Directive 2008/51/EC, without reference to brokering in the trade of weapons, and forwarding or arranging transport of weapons.</p>	<p>The Law on Weapons should be amended so as to define the terms “trgovac” (dealer) and “broker” in accordance with the community law, making sure that the term “broker” includes brokering or commission sale in trade of weapons, and forwarding in transfer of weapons.</p> <p>The rest of the Law on Weapons of Montenegro is in accordance with the requirement of Directive 2008/51/EC, according to which the weapons trade is subject to authorisation issued after a vetting procedure “which includes a basic level of personal and professional integrity” of the person involved in the trade. All kinds of trade listed apart from brokering, forwarding and arranging transport of weapons, are included in the Law on Weapons and therefore subject to control and proof that requirements have been met, as stipulated in the provisions of Article 17, paragraph 1, points 1-4, and point 6. Full implementation of Directive 91/477/EEC and Directive 2008/51/EC in terms of transfer of weapons between Member States will be possible after full integration of Montenegro into European Union. However, at the current stage of integration, Montenegro must pay attention to the restrictiveness of the provisions in Articles 14 and 15 of Directive 91/477/EEC in terms of the prohibition of entry in Montenegro for firearms, except in the cases and under conditions stipulated by Articles 11 and 12 of the Directive, and weapons which aren't firearms, if in accordance with the legal system of the state. Montenegro is obliged particularly to ensure that travellers from third states (outside the EU) intending to travel to a European Union Member State adhere to the provisions on transfer of weapons in Article 11 of the Directive, and also to amend the Law on Weapons so as to include these provisions.</p>

TOPIC	PROVISIONS AND REQUIREMENTS OF DIRECTIVE 91/477/EEC AND DIRECTIVE 2008/51/EC	PROVISIONS OF THE LAW ON WEAPONS	RECOMMENDATIONS
<p>Marking and registration of firearms</p>	<p>Member States are required to ensure that any firearm or part placed on the market has been marked and registered or deactivated in accordance with Article 4(1) of Directive 2008/51/EC, for the purpose of efficient identification and tracing of weapons, and shall, at the time of manufacture of each firearm, either:</p> <p>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 Proofmarks on Small Arms; or</p> <p>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.</p> <p>The marking shall be affixed to an essential component of the firearm, the destruction of which would render the firearm unusable. Furthermore, Member States shall ensure, at the time of transfer of a firearm from government stocks to permanent civilian use, the appropriate unique marking permitting identification by States of the transferring country.</p> <p>According to Article 4 (5) of Directive 2008/51/EC Member States shall ensure that all firearms may be linked to their owner at any moment. However, as regards firearms classified in category D, Member States shall, as from 28 July 2010, put into place appropriate tracing measures, including, as from 31 December 2014, measures enabling linking at any moment to the owner of firearms placed on the market after 28 July 2010.</p>	<p>The regulations on entry, transit, and exit of weapons across the state borders are not covered by the Law on Weapons, but by the law regulating the surveillance of state borders, as referred to in Article 39a of the Law on Weapons. According to Article 63 of the Law on Weapons, the application for the authorisation of transport of weapons and ammunition shall contain:</p> <ol style="list-style-type: none"> 1. the name and address of the sender; 2. the name and address of the receiver; 3. the name and address of the manufacturer of weapons; 4. the type, make, serial number, calibre, quantity and way of packaging of weapons; 5. the means of transport; 6. date and time of the beginning of transport, direction of moving and destination; 7. names of port of entry and port of exit and time of weapons crossing the border; 8. safety measures during the transport of weapons. <p>If needed, the competent authority may provide further safety measures during the transport of weapons (direction of moving, escort of sender or carrier, police escort, etc.).</p>	<p>In terms of unique marking of weapons, according to Article 4 of Directive 2008/51/EC, for the purpose of identifying and tracing of weapons, it is significant that there are no registered civilian manufacturers (business entities) of light and small calibre firearms and ammunition, which makes the meaning of the provisions in Article 4(2)(a) of Directive 2008/51/EC relative at this stage, (which doesn't mean that it shall remain so in the future), since the above mentioned article of the Directive requires of the Member States a unique marking of weapons including the name of the manufacturer, the country or place of manufacture, the serial number, and 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 Proofmarks on Small Arms, or maintain any alternative unique user-friendly marking with a number or alphanumeric code, permitting ready identification by all States of the country of manufacture. On the other hand, a need has become apparent for Member States to provide appropriate unique markings at the time of transfer of a firearm from government stocks to permanent civilian use, permitting identification by States of the transferring country, where an appropriate (legal or sub-legal) provision should be introduced to complement the national act.</p> <p>The fact that Montenegrin Law on Weapons does not include category D, which would be systematised in one place in the Law, indicates potential difficulties which may be expected during the implementation of these provisions, which contributes to the view that a consistent systematisation of Directive 91/477/EEC and categorisation of weapons into categories A, B, C, and D within the Law on Weapons is the most expedient solution.</p>

TABLE V

Records and exchange of information

TOPIC	PROVISIONS AND REQUIREMENTS OF DIRECTIVE 91/477/EEC AND DIRECTIVE 2008/51/EC	PROVISIONS OF THE LAW ON WEAPONS	RECOMMENDATIONS
<p>Records and forms</p>	<p>According to community law, Member States are required to ensure that official records of firearms, classified into categories A, B, and C, are kept by the dealers which means keeping records of the data which identifies the firearm in terms of model, calibre and serial number, and general data such as names and addresses of suppliers and buyers, or users of weapons. Member States are required to establish a permanent administrative control regarding this issue, and the dealers are explicitly required to keep the records for five years after discontinuing the trade. According to Article 4(4) of Directive 2008/51/EC 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 system in which each firearm subject to this Directive shall be recorded. This filing system shall record and maintain for not less than 20 years each firearm's type, make, model, calibre and serial number, as well as the names and addresses of the supplier and the person acquiring or possessing the firearm.</p>	<p>The Law on Weapons provides a framework regulating this subject matter by a general requirement in Article 69 for the Ministry of Interior regarding record keeping of the issued authorisations for acquisition of weapons and ammunition, weapon registration documents, authorisations for possession of weapons, authorisations for collection of weapons, confiscated, found and returned weapons. Article 70, paragraph 1 lists the kinds of records that sports, target-shooting and hunting organisations, and other commercial companies officially registered for the trade, are required to keep on weapons and ammunition that they have acquired, or hired out. Apart from the records of paragraph 1 of this article, commercial companies and entrepreneurs are required to keep records of manufactured and delivered weapons, acquired and sold weapons and ammunition, repaired and converted weapons, acquired weapons, hired out weapons, collected weapons, and acquired and used ammunition. Article 71 of the Law on Weapons allows for MUP (Ministry of Interior) of Montenegro to prescribe forms and ways of keeping records by a sub-legal act, since MUP (Ministry of Interior) has become competent for this requirement by introducing the Rulebook on forms and ways of keeping records of weapons and ammunition.</p>	<p>During the editing process of the text of the Law on Weapons the legislative and record keeping requirements for the manufactured and delivered ammunition of Article 70, paragraph 2, point 1, must have been omitted. According to community law, these requirements apply to Member States, and should be included in the amended Law.</p> <p>The records stipulated in Article 6 and Articles 8-12 of this Rule book are kept permanently (the minimum standard in the above mentioned Directives is five years), except the records of hired out weapons for recreational and sports target shooting, which are kept for one year. The author's opinion is that the Rulebook on forms and ways of keeping records of weapons and ammunition should be amended by a provision which would determine the person or entity responsible for keeping records after the dealer discontinues the trade, as stipulated in Article 4(4) of Directive 2008/51/EC.</p> <p>Article 15 of the Rule book on forms and ways of keeping records of weapons and ammunition will need to be amended in order to replace the dual system of record keeping where written book keeping records are obligatory and electronic records selective, by a new system where electronic record keeping is obligatory.</p>
<p>Exchange of information</p>	<p>Article 13(1) of Directive 91/477/EEC requires each Member State to communicate all useful information at its disposal concerning definitive transfers of firearms, to which end a contact group for the exchange of information shall be set up for the efficient application of this article, as stipulated in article 13(3) of the By application of Article 12(3) of Directive 91/477/EEC Member States may provide for arrangements more flexible than those prescribed by mutual recognition of national documents.</p>	<p>The Law on Weapons does not provide the obligation of international exchange of information in this area.</p>	<p>According to Article 13(1) of Directive 91/477/EEC a contact group for the exchange of information shall be set up. For the efficient application of this Article it is necessary to establish provisions determining which office of state administration shall have the status of central national body for international exchange of information regarding weapons transfers.</p>