

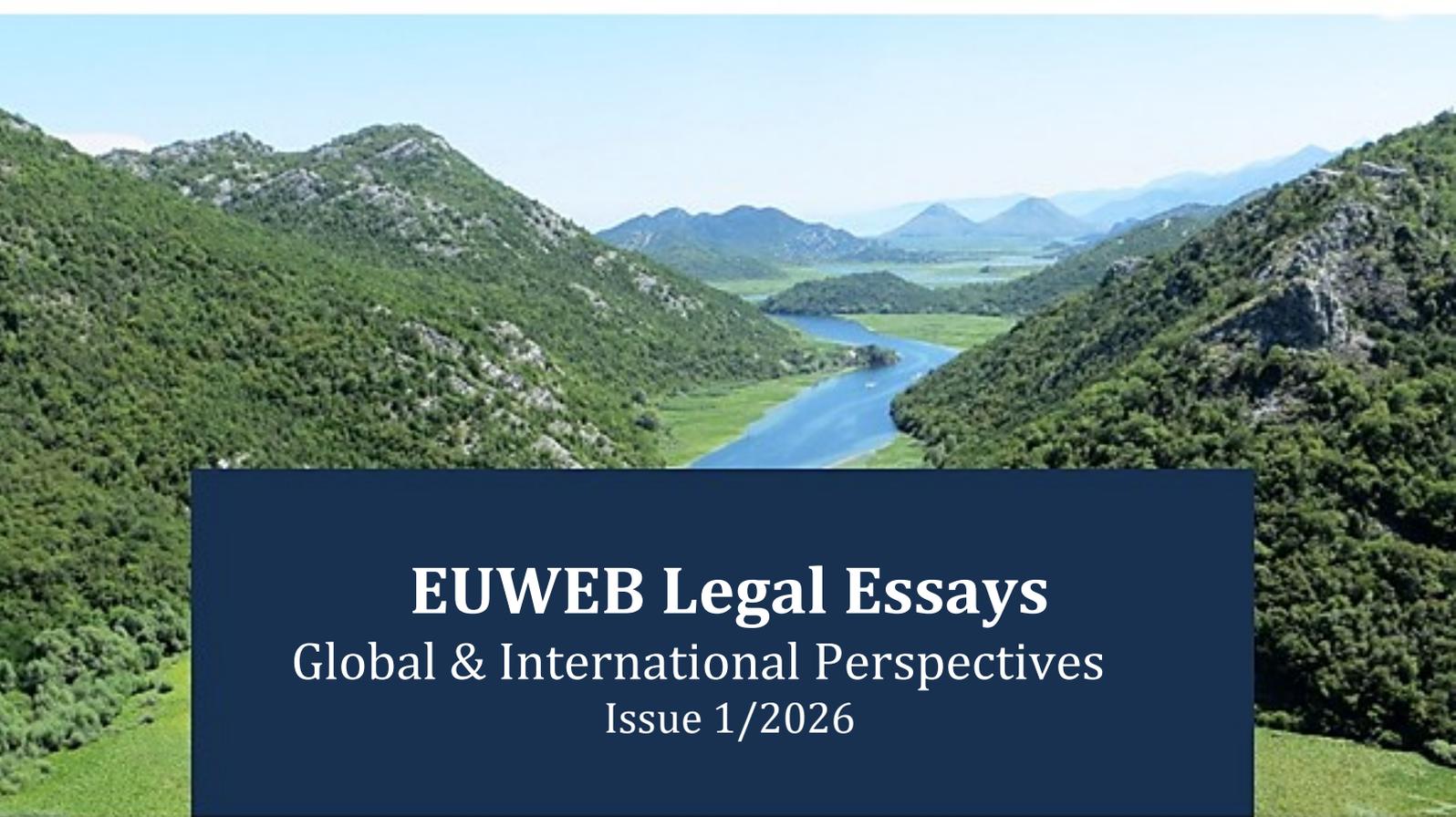
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THE FIGHT AGAINST ILLICIT FIREARMS IN THE EUROPEAN UNION LEGAL FRAMEWORK: AMONG ARMED CONFLICTS AND REARMAMENT

by Christian Ponti*

SUMMARY: 1. Introduction and Research Plan. – 2. An Overview of the Main Sources of EU law Relating to Illicit Firearms. – 3. Inconsistencies in the Classification of Firearms under EU Legislation: The Solution Identified in Regulation (EU) 2025/41. – 3.1 Licences, Authorization for Firearms Transfers, and the Digitalization of Procedures. 3.2. Risk Assessment, Criteria for Firearms Exports and Other Measures to Prevent Diversion. – 3.3. Marking, Record-Keeping and the Exchange of Information. – 4. Conclusion.

1. Introduction and Research Plan

The circulation of illicit firearms¹ in the European Union (EU)² continues to pose a serious threat to the Union's internal security and that of its Member States. Firearms trafficking is a threat in itself, but an even greater threat due to its enabling role in other serious organised crime³. The dynamics of the illicit firearms market in the EU are undergoing a number of changes, which can be attributed to two main factors. Firstly, criminals are demonstrating an ability to adapt by identifying alternative sources and channels for supplying illicit firearms⁴. Secondly, technological developments and digital transformations have had a significant impact⁵, facilitating the illicit manufacturing of and trafficking in firearms (IFT) within the EU, as well as to and from it.

In the short to medium term, ongoing geopolitical shifts may also impact and facilitate the IFT into, from and within the EU. The instability of the international political context in various regions of the world, coupled with the outbreak of armed conflicts on the Union's doorstep, has exacerbated the risk of an increase in the circulation of illicit firearms⁶. The Western Balkan region continues to be a key source of IFT into the EU⁷. However, other conflict zones, such as Ukraine, could similarly emerge as significant sources of IFT in the short to medium term⁸. This threat could increase in the future as a

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¹ Broadly speaking illicit firearms refer to “*weapons that are produced transferred, held, or used in violation of national or international law*”, M. SCHROEDER, *Captured and Counted: Illicit Weapons in Mexico and the Philippines*, in *Small Arms Survey, Everyday Dangers*, Cambridge, 2013, p. 284.

² Europol, *The changing DNA of serious and organised crimes, European Union Serious and Organised Crime Threat Assessment (SOCTA Report)*, 2025, pp. 37, 61-63.

³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *EU action plan on firearms trafficking 2020-2025 (EU Action Plan)*, of 24 July 2020, COM(2020) 608 final, pp. 2-3.

⁴ UNDOC, *Digest of Firearms Trafficking and Related Crimes Cases. A Review of Cases and Good Practices Emerging from National Jurisprudence*, 2023, pp. 21-41.

⁵ SOCTA Report, 2025, cit., pp. 62-63.

⁶ EU Action Plan, cit., p. 3.

⁷ UNODC, *Global Study on Firearms Trafficking*, Vienna: UNODC, 2020, available at <https://www.unodc.org/unodc/en/firearms-protocol/firearms-study.html>.

⁸ Global Initiative Against Transnational Organised Crime, *Tomorrow's Fire, Future Trends in Arms Trafficking from the Ukraine Conflict (GI-TOC)*, 2025, https://globalinitiative.net/wp-content/uploads/2025/02/Tomorrows-Fire_conference-report.v1-MR-PB-MR-18-Feb-PB-PG-MR-PB2.pdf.

result of the current European rearmament plan⁹. Although there is no direct causal link, strengthening the military sector for the defence and security of Member States could indirectly lead to an increase in weapons in circulation, consequently boosting the risk of trafficking in firearms. These factors confirm that the circulation of illicit firearms in the EU is an increasing problem, underlining the need for the EU to have effective strategies in place, including a comprehensive legal framework, to combat this criminal activity. The EU's normative framework on firearms encompasses hard law, such as directives and regulations, as well as soft law instruments, such as action plans. The latter are policy documents that set out the Union's main guidelines in this area and make recommendations that Member States may choose to adopt. This essay focuses on binding legal instruments. It aims to assess the effectiveness and coherence of the EU legislation to tackle illicit firearms circulation after the adoption of the Union's most recent legislative act (Regulation (EU) 2025/41)¹⁰ (EU Firearms Regulation). This contribution argues that only a "unified" legal regime capable of addressing coherently the complex challenges posed by the circulation of illicit firearms within and between European Union Member States and third countries¹¹ can contribute decisively to the Union's fight against the proliferation of illegal firearms. Another theoretical premise behind this study is that the "dualistic" regulatory approach to the illicit circulation of civilian and military firearms¹², endorsed by the EU, should be reconsidered by Member States when interpreting and applying existing legislation, and when framing future EU policies in this area. This would improve the harmonisation and efficacy of the legal framework.

2. An Overview of the Main Sources of EU law Relating to Illicit Firearms

The EU's fight against IFT is governed by various sources of secondary EU legislation. As mentioned, the EU regulates civilian and military firearms under two different legal regimes. This dualistic approach, together with the numerous legal sources on the subject, has resulted in an extremely fragmented legal framework. The EU has introduced legislation to tackle IFT of civilian firearms within and through the borders of the Union. This legislation is based on the EU's "internal security" and "commercial" policy frameworks. This regulatory process began with the adoption of Directive 91/477/EEC¹³

⁹ European Commission, *White Paper for European Defence – Readiness 2030*, 19 March 2025, https://commission.europa.eu/document/download/e6d5db69-e0ab-4bec-9dc0-3867b4373019_en

¹⁰ Regulation (EU) 2025/41 of the European Parliament and of the Council, *on import, export and transit measures for firearms, essential components and ammunition, implementing Article 10 of the United Nations Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol) (recast)*, of 19 December 2024, in OJ L series, of 22 January 2025.

¹¹ Illicit firearms circulate within the territory of the Union and across its external borders. Several EU official documents have established the link between the internal and external dimensions of firearms trafficking; see for instance Council of the European Union, *Draft European Action Plan to combat illegal trafficking in so called "heavy" firearms which could be used or are used in criminal activities*, of 29 November 2010, 16427/1/10 REV 1, pp. 1-2; EU Action Plan, *cit.*, p. 2.

¹² See Section 3, *infra*.

¹³ Council Directive 91/477/EEC, *on control of the acquisition and possession of weapons*, of 18 June 1991, in OJEC L 256/51, of 13 September 1991. For an overview of Directive 91/477/EEC, see A. COLLET, *L'Europe des armes, une double démarche*, in *Revue trimestrielle de droit européen*, Vol. 28, No. 1, 1992, pp. 105-110; L. LEME, *The Council Directive on Control of the Acquisition and Possession of Weapons and its Categorization of Firearms: A Rational Approach to Public Safety?*, in *Harvard International Law Journal*, Vol. 37, No. 2, 1996, pp. 568-581; T. SPAPENS, *Trafficking in Illicit Firearms for Criminal Purposes within the European Union*, in *European Journal of Crime, Criminal Law and Criminal Justice*, Vol. 15, 2007, pp. 359-381.

(EU Firearms Directive), which regulates the acquisition, possession and circulation of civilian firearms within the EU. The directive establishes minimum common standards that Member States must transpose into their national laws. Based on art. 100A(1) of the EEC Treaty, Directive 91/477/EEC aims to balance the objectives of the internal market (i.e. the cross-border movement of firearms within the EU) with security policy purposes (i.e. guaranteeing a high level of security for European citizens). EU Firearms Directive is based on the idea that mutual trust between Member States requires partially harmonised legislation on firearms to underpin the abolition of controls at intra-Community frontiers. Directive 91/477/EEC neither defines firearms specifically nor addresses IFT directly. However, it contains a few provisions that are indirectly relevant to the leakage of firearms onto the illicit market¹⁴.

Directive 2008/51/EC¹⁵ amends Directive 91/477/EEC, reinforcing its “security aspects”¹⁶ and the regulation of intra-EU circulation of civilian firearms. It partially incorporates into EU legislation the relevant provisions of the United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components, and Ammunition (UNFP), which supplements the United Nations Convention against Transnational Organized Crime (UNTOC)¹⁷. Directive 2008/51/EC establishes several provisions that are highly relevant to countering IFT, including specific obligations to facilitate the tracing of firearms, and minimum standards for the deactivation of firearms.

Following the terrorist attacks in Europe in 2015, the Commission proposed amending the Firearms Directive (Directive 91/477/EEC, as amended by Directive 2008/51/EC) to tighten controls on the acquisition, possession and circulation of firearms¹⁸. Directive 2017/853/EU¹⁹ primarily aims to prevent the diversion of civilian

¹⁴ Directive 91/477/EEC determines which firearms are prohibited or require authorisation or declaration for acquisition and possession by individuals, and sets out the minimum requirements that Member States must impose regarding the acquisition and possession of the different categories of firearms. (Annex 1): Category A lists prohibited firearms, such as automatic weapons. These weapons must, in principle, be excluded from private possession. Categories B and C contain firearms that require a licence or reporting. Category D comprises other firearms, which can be sold freely. The categorisation of firearms aims to prevent citizens of a Member State with strict legislation from easily purchasing a weapon in a Member State with more permissive legislation and taking it back to their home State. This could encourage smuggling. Secondly, Directive 91/477/EEC obliges Member States to register all firearms entering the market domestically and to exchange related information. For a criticism to this approach based on categorization of firearms see L. LEME, *op. cit.*

¹⁵ Directive 2008/51/EC of the European Parliament and of the Council, *amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons*, of 21 May 2008, in OJ L 179, of 8 July 2008.

¹⁶ In clear continuity with Directive 91/477/EEC, Directive 2008/51/EC essentially aims to ensure the proper functioning of the internal market for legal firearms and strengthen the security of EU citizens against dangers arising from them through various preventive measures. Accordingly, it supplements the minimum conditions for acquiring and possessing firearms for civilian use and further harmonises administrative requirements for their transfer and circulation within the EU.

¹⁷ The *United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components, and Ammunition* (UNFP) was adopted by GA Res. 55/255, of 8 June 2001, as the third supplementary Protocol to the *United Nations Convention against Transnational Organized Crime* (UNTOC); GA Res. 55/25, of 15 November 2000; UNTOC entered into force on 29 September 2003; UNFP, to which both the EU and its Member States are parties, entered into force on 3 July 2005.

¹⁸ Proposal for a directive of the European Parliament and of the Council *amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons*, of 18 November 2015, COM (2015) 750 final.

¹⁹ Directive (EU) 2017/853 of the European Parliament and of the Council *amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons*, of 17 May 2017, in OJ L 137, of 24 May 2017.

firearms to the illicit market by establishing a new classification of firearms²⁰, and introducing stricter regulation of the acquisition, possession and online trade of licit firearms. Furthermore, Directive 2017/853/EU introduces several measures specifically designed to prevent and suppress IFT. These include enhancing the traceability of firearms through a reinforced normative framework, as well as introducing specific norms on converted and deactivated firearms.

The adoption of Directive 2021/555/EU²¹, which codifies Directive 91/477/EEC, marks the culmination of the regulatory process relating to the circulation of civilian firearms within the EU. Following the rationale of previous EU Firearms Directives, Directive 2021/555/EU aims to balance internal market objectives and security imperatives regarding civilian firearms, by setting common rules for their acquisition, possession and transfer within the EU. Directive (EU) 2021/555 confirms that the legal basis for the EU Firearms Directive is art. 114 of the Treaty on the Functioning of the European Union (TFEU) related to the functioning of the internal market²². Key updates include stricter rules on the most dangerous firearms to improve security, enhanced traceability, better control over online purchases and the reactivation of deactivated weapons. The Directive also includes provisions for improved information exchange between Member States, as well as mandatory medical checks for firearm authorisation.

The EU has completed the process of transposing UNFP provisions into EU legislation through Regulation (EU) 258/2012²³, which addresses the transfer of civilian firearms to and from countries outside the EU. Regulation (EU) 258/2012 establishes common procedural rules for the export and import of firearms, their parts and components, and ammunition, including measures for transit. The strategic objective of Regulation (EU) 258/2012 is to reduce the risk of IFT by establishing requirements and criteria for legal export procedures and the tracing of firearms.

Regulation (EU) 258/2012 was replaced by Regulation (EU) 2025/41²⁴, which updates the rules governing the import, export and transit of firearms from outside the EU. The legal basis of this Regulation is art. 207 of the Treaty on the Functioning of the European Union (TFEU) related to the EU's common commercial policy. Regulation (EU) 2025/41 seeks to strike a balance between increased security and facilitating the circulation of licit firearms. It seeks to close loopholes that are exploited by criminals for IFT, while also facilitating the legitimate trade and movement of firearms. It aims to enhance the traceability of civilian firearms by harmonising and digitalizing procedures

²⁰ See Section 3, *infra*.

²¹ Directive (EU) 2021/555 of the European Parliament and of the Council, *on control of the acquisition and possession of weapons (codification)*, of 24 March 2021, in OJ L 115, of 6 April 2021.

²² The Court of Justice of the European Union ruled on 3 December 2019 that art. 114 TFEU is the right legal basis for the EU Firearms Directive. This was in response to an action for annulment brought by the Czech Republic concerning Directive 2017/853/EU. For more on this, see C. PONTI, *La direttiva dell'Unione europea sulle armi da fuoco in una recente sentenza della Corte di giustizia*, in *Eurojus*, no. 1, 2020, pp. 82-90, available at <https://rivista.eurojus.it/wp-content/uploads/pdf/Ponti-direttiva-armi.pdf>.

²³ Regulation (EU) 258/2012 of the European Parliament and of the Council, *implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition*, of 14 March 2012, in OJ L 94, of 30 March 2012.

²⁴ Regulation (EU) 2025/41 of the European Parliament and of the Council on *import, export and transit measures for firearms, essential components and ammunition, implementing Article 10 of the United Nations Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol)*, of 19 December 2024, in OJ, L Series, of 22 January 2025.

across the EU, thereby facilitating data collection and improving cooperation between national authorities. Regulation (EU) 2025/41 introduces measures to prevent legally manufactured firearms exported from the EU from being diverted to the illegal market. The new rules also aim to simplify and streamline procedures for legitimate users, such as hunters, sports shooters and exhibitors.

To conduct a comprehensive review of EU legal sources relevant to combating IFT, it is also necessary to consider EU policies addressing the issue of illicit small arms and light weapons (SALW)²⁵, a category of weapons that includes military firearms. These policies fall within the EU's external competencies. Regarding the export of military goods outside the EU, Council Common Position 2008/944/CFSP²⁶ (EU Common Position) defines common rules governing the export of military technology and equipment. The EU Common Position provides a list of rules to which EU Member States must adhere, including risk assessment criteria for the issuance of arms export licences.

3. Inconsistencies in the Classification of Firearms under EU Legislation: The Solution Identified in Regulation (EU) 2025/41

One of the main problems posed by the EU's regulatory framework on firearms is that it provides for different legal regimes for civilian and military firearms. Furthermore, EU legislative acts contain different classifications of firearms when delimiting their scope. In practice, these circumstances can make it difficult to precisely identify the applicable instrument and legal regime in a specific case, leading to discrepancies and inconsistencies in the application of EU firearms legislation by Member States.

EU legal instruments regulating civilian firearms establish that "*firearm [...] shall mean any 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*"²⁷. According to this definition, which is very similar to that contained in the UNFP, a firearm has three main elements: a) it is portable; b) it is a barrelled weapon; and c) it expels a projectile by the action of a combustible propellant. In other words, the EU's definition of a firearm is based on the physical or forensic characteristics of firearms, rather than their design or intended application (civilian or military use). However, this definition is supplemented by different classifications of firearms in EU legal instruments. Regarding the circulation

²⁵ In accordance with a definition contained in a document adopted by the UN General Assembly on 8 December 2005 (see UN Doc. A/Res/60/81, of 11 January 2006) and entitled *Report of the Open-ended Working Group to Negotiate an International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons* (UN Doc. A/60/88, of 27 June 2005), p. 7, para. 4, small arms and light weapons will mean any man-portable lethal weapon that expels or launches, is designed to expel or launch or may be readily converted to expel or launch a shot, bullet or projectile by the action of an explosive, excluding antique small arms and light weapons or their replicas; a) small arms are, broadly speaking, weapons designed for individual use. They include, inter alia, revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and light machine guns; b) light weapons are, broadly speaking, weapons designed for use by two or three persons serving as a crew, although some may be carried and used by a single person. They include, inter alia, heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles, portable launchers of anti-tank missile and rocket systems, portable launchers of anti-aircraft missile systems, and mortars of a calibre of less than 100 millimetres.

²⁶ EU Council Common Position 2008/944/CFSP, *defining common rules governing control of exports of military technology and equipment*, of 8 December 2008, in OJ L 335, of 13 December 2008; as amended by Council Decision (CFSP) 2019/1560, *amending Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment*, of 16 September 2019, in OJ L 239, of 17 September 2019.

²⁷ See art. 1, para. 1, no. 1), Directive 2021/555/EU; art. 2, para. 1, no. 2), Regulation (EU) 2025/41.

of firearms within the Union, EU Firearms Directive, based on various amendments prohibits certain highly dangerous firearms (including some military firearms)²⁸. EU Firearms Regulation, which governs trade outside the EU, explicitly distinguishes between civilian and military firearms to define its scope, which encompasses exclusively civilian firearms²⁹. In contrast, the EU Common Position (which does not define firearms) makes it clear that it applies exclusively to the technology and equipment contained in the EU Common Military List (which includes military firearms)³⁰.

According to a study of the European Commission³¹, this slightly different approach to classifying firearms in EU legislative acts has led to confusion regarding the application of EU firearms legislation by Member States, resulting in an unclear distinction between military and civilian firearms. The classification of firearms in Regulation (EU) 258/2012 was consistent with that in Directive 91/477/EEC. However, the adoption of Directive 2017/853/EU has introduced inconsistencies between the two. Directives 2017/853/EU and 2021/555/EU prohibit civilians from using certain dangerous semi-automatic firearms, which are now classified as Category A weapons³². These weapons may not be held by private persons under any circumstances, even if they have been permanently deactivated. Such weapons account for a large proportion of hunting and sporting firearms, and they can easily be converted into fully automatic weapons, posing a threat to public safety. Furthermore, certain semi-automatic firearms can be highly dangerous even without conversion due to their high ammunition capacity. Considering Directives 2017/853/EU and 2021/555/EU, inconsistencies have arisen in the classification of firearms regarding the scope of Regulation EU 258/2012. This is because Regulation (EU) 258/2012 states that certain types of semi-automatic firearms must be authorised and are classified as civilian firearms.

Another sensitive issue relating to the classification of firearms concerns inconsistencies between Regulation (EU) 258/2012 and the EU Common Position. The application of Regulation (EU) 258/2012 revealed that the competent authorities frequently experience significant challenges in determining whether firearms are civilian or military based on their technical characteristics. This is mostly evident when assessing the classification of certain types of weapons and the applicable export regime. Inconsistencies in national classification practices are linked to the existence of a “grey area” of overlap between Annex I to Regulation (EU) 258/2012 and the Common Military List, particularly category ML1, which covers semi-automatic weapons³³, among others. This means that the same type of firearm could potentially be subject to both regimes. In practice, it can be difficult to distinguish between civilian and military firearms based on technical characteristics. Ultimately, the decision on the applicable export regime may be

²⁸ See fn. 33, *infra*.

²⁹ See art. 3, para. 1, Regulation (EU) 258/2012 and art. 3, let. b), Regulation (EU) 2025/41.

³⁰ Art. 1, par. 1, EU Common Position (see also fn. 34, *infra*).

³¹ European Commission, *Study in view of a report evaluating the implementation of Regulation 258/2012*, Final Report, of 22 November 2017, pp. 106-107.

³² See Annex I, Part II, Category A 6-7-8 of Directives 2017/853/EU and 2021/555/EU; in particular, the following are prohibited: automatic firearms that have been converted into semi-automatic firearms; semi-automatic short firearms with magazines capable of holding more than 20 cartridges; and semi-automatic long firearms with magazines capable of holding more than 10 cartridges, and those originally intended to be carried, which can be reduced to a length of less than 60 cm by means of a folding or telescopic stock. According to recital 22 of Directive 2017/853/EU: “*Firearms designed for military use, such as AK47 and M16, and which are equipped to operate on the basis of selective fire, where they may be manually adjusted between automatic and semi-automatic firing modes, should be classified as category A firearms and should therefore be prohibited for civilian use. If converted into semi-automatic firearms, they should be classified in point 6 of category A*”.

³³ Common Military List of the European Union, 5414/25, 25 February 2025.

subject to interpretation by the competent national authorities on a case-by-case basis. Moreover, the lack of a clear distinction set out in legal instruments undermines the principle of equal treatment for substantially similar transactions.

To solve this kind of problem, Regulation (EU) 258/2012 establishes that items covered by both the Common Military List and Annex I of Regulation (EU) 258/2012 may be assessed using a single procedure³⁴. However, Member States are not obliged to do so. Nevertheless, this provision enables Member States to effectively address the aforementioned ‘grey area’ of overlap. The use of a single procedure should enable such uncertain cases to be dealt with by developing a procedure that meets all relevant requirements in an integrated manner. However, a shortcoming is that Regulation (EU) 258/2012 does not specify what such a procedure should entail, leaving Member States free to design their own approach. Consequently, Member States have interpreted and implemented the single procedure differently³⁵. These different interpretations of the grey area may result in the same item being licensed as either civilian or military, depending on national assessments and procedures. This discrepancy hinders the harmonisation of EU-level firearms export procedures and may have a negative impact on the fight against IFT. It also prevents extra-EU trade from functioning more smoothly due to the different practices faced by commercial traders. Moreover, where Member States do not use a single procedure under art. 4, para. 2, Regulation (EU) 258/2012 to integrate the requirements of the two regimes, choosing the procedure to be applied to uncertain cases can be problematic in the absence of clear categories. Another issue is the potential for abuse of this procedure, as many Member States interpret it as allowing them to apply identical procedures and criteria to all exports of civilian and military weapons, rather than using it to make the export of both types of weapons subject to a single administrative procedure on an exceptional basis.

One of the main purposes of Regulation (EU) 2025/41 is to address the inconsistencies in the classification of firearms that exist between Directives 2017/853/EU and 2021/555/EU, Regulation (EU) 258/2012 and the EU Common Position. To this end, Regulation EU2025/41 fully aligns with Directive EU 2021/555, classifying certain semi-automatic firearms as Category A weapons³⁶, the most dangerous and prohibited firearms. Following this amendment, authorisations for the transfer of these firearms are now exclusively within the scope of the EU Common Position. Transactions between States (i.e. government-to-government) and direct sales to the armed forces, police or public authorities remain excluded from the scope of Regulation (EU) 2025/41 and will continue to be subject to the Common Position. All other transactions are of a civilian nature and are therefore subject only to the rules and procedures set out in Regulation (EU) 2025/41.

3.1. Licences, Authorization for Firearms Transfers, and the Digitalization of Procedures

EU legislation provides for different levels of intervention to address IFT. This establishes a set of standards that are necessary to ensure adequate preventive control over transnational movements. A major area of concern relates to licences and authorisations for the transfer of firearms, namely a comprehensive system for controlling the import, export and transit of firearms, their parts and components, and ammunition. The strategic objective of EU legislation in this area is to reduce the risk of IFT by establishing common

³⁴ Art. 4, para. 2, Regulation (EU) 258/2012; see also recital 18 in the Preamble.

³⁵ European Commission, *Study in view of a report evaluating the implementation of Regulation (EU) 258/2012*, cit., pp. 34-35.

³⁶ Regulation EU 2025/41, Annex I, Category A, nos. 6-7-8.

requirements for legal export, import and transit procedures, as well as for the tracing³⁷ of firearms.

The fundamental legal principle established by EU legislation is that the import, export and transit of firearms must always be carried out with the knowledge and consent of all States involved; without this, such activities are illegal. In summary, this legislation (derived from the UNFP) requires Member States to establish or maintain an effective licensing or authorisation system to ensure that:

- firearms are not exported to or transited through States that have not authorised the transfer³⁸;
- the information contained in documents used for legal imports and exports (licences or authorisations) complies with certain minimum standards³⁹, to enable them to be traced and to avoid engaging in the criminal offence of IFT, as defined by the UNFP⁴⁰;
- States' responsibility and the security conditions related to the import and export system are strengthened⁴¹.

As mentioned, Directive 2021/555/EU establishes criteria and formalities for regulating the acquisition, possession and circulation of firearms within the EU. According to Directive 2021/555/EU, when a Member State authorises the transfer of a firearm, it must issue a licence containing all the relevant information⁴². This licence must accompany the firearm until it reaches its destination and must be produced whenever required by the authorities of the Member States. Regulation (EU) 2025/41 provides a more detailed legal framework setting out updated common procedural rules and standards for authorising the import, export and transit of civilian firearms, their essential components and ammunition to and from the EU. Regulation (EU) 2025/41 primarily aims to further harmonise the legislation of Member States and thereby enhance the traceability of firearms (including parts, components and ammunition), while closing loopholes that are exploited for firearms trafficking and facilitating legitimate trade and movement of firearms. While confirming the general principle of prior authorisation for transfers of firearms, Regulation (EU) 2025/41 provides for exceptions in the case of temporary exports or re-exports⁴³. To enhance traceability, Regulation EU 2025/41 establishes specific requirements, including detailed documentation for an export authorization⁴⁴, import authorisations from destination countries⁴⁵, and considerations

³⁷Traceability refers to the ability to track firearms, their essential components and ammunition at all stages of their movement into, out of or through the EU: “*tracing*’ means the systematic tracking of firearms and, where possible, their essential components 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” (art. 1, para. 1, no. 13, Directive 2021/555/EU).

³⁸ Art. 10, para. 2, UNFP.

³⁹ Art. 10, para. 3, UNFP.

⁴⁰ See Section 4, *infra*.

⁴¹ Art 10, para. 5, UNFP.

⁴² Art. 16 Directive 2021/555/EU.

⁴³ Temporary exports and re-exports deal for example with residents travelling to participate in hunting or sporting events, who are exempt from full authorisation, but prior electronic notification is still required. In such cases, travellers must carry a valid European Firearms Pass, particularly if they are transporting firearms by air. Even when simplified procedures apply, the competent authority has the power to suspend or block the export for up to 30 days if there are reasonable grounds to suspect misuse or non-compliance; see arts. 22-23 Regulation (EU) 2025/41.

⁴⁴ Art. 21, para. 1, Regulation (EU) 2025/41.

⁴⁵ Art 20, para. 2, let. a), Regulation (EU) 2025/41. In the case of the transit of firearms and related items through third countries, each transit country must provide written confirmation that it does not object (art. 24, para. 1, let. c), Regulation (EU) 2025/41.

regarding the intended end use, consignee, identified final recipient, and risk of diversion⁴⁶.

The main risks identified by Regulation EU 2025/41 upon import relate to the circumvention of unclear regulations that allow for the import of ‘semi-finished’ firearms and components. These can be used to manufacture unmarked and unregistered ‘ghost guns’ at home. To limit this risk, Regulation EU 2025/41 establishes that only authorised dealers and brokers are eligible to import semi-finished firearms and semi-finished essential components⁴⁷. Another major concern relates to alarm and signal weapons that can be converted into lethal firearms. In this regard, the Regulation EU 2025/41 stipulates that only approved alarm and signal weapons may be imported. The European Commission shall maintain an open register of convertible and non-convertible models⁴⁸. Imported deactivated firearms require valid certificates and markings to be uploaded to the electronic licensing system⁴⁹. All imports of listed firearms and related items must comply with strict documentation, marking⁵⁰ and registration rules to ensure traceability and lawful use⁵¹.

One of the key features of Regulation (EU) 2025/41 is the establishment by the Commission of a harmonised digital framework for controlling the import, export and transit of firearms, essential components and ammunition⁵². The aim is to ensure traceability, security checks and enforcement across the EU. This centralised, secure electronic licensing system will oversee all authorisation procedures, communications and compliance monitoring relating to the movement of firearms across EU. The European Commission’s establishment of this new electronic licensing system will improve the systematic collection of data on the international movement of civilian firearms, as well as data on seized firearms. Research and targeted policies to tackle firearms trafficking will be aided by the availability of annual data from Member States on the number of authorisations and refusals, and the quantities and values of civilian firearm imports and exports by origin and destination. Currently, this data is lacking.

The EU Common Position does not contain detailed provisions⁵³ on licences and authorisations for the export of SALW, nor does it regulate import procedures.

3.2. Risk Assessment, Criteria for Firearms Exports and Other Measures to Prevent Diversion

Arms diversion risk refers to the possibility that arms transferred under a regular licence may be diverted to an unintended destination or recipient (*e.g.* organised armed groups, irregular gangs, criminal organisations or terrorist groups) or re-exported to countries subject to EU or UN arms embargoes. This can happen during the transfer of arms, once they have reached their destination, or after delivery. The problem of diversion escalates in situations of armed conflict, as it is much more challenging to effectively control the circulation of arms in an environment of active hostilities. The risk of diversion is even greater in post-conflict situations, particularly if there are no adequate security measures in place to trace and secure weapon storage. For instance, in the context of the armed

⁴⁶ Art. 24, para. 1, let. c), Regulation (EU) 2025/41.

⁴⁷ Art. 9, para. 3, Regulation (EU) 2025/41.

⁴⁸ Art. 8, Regulation (EU) 2025/41.

⁴⁹ Art. 7, Regulation (EU) 2025/41.

⁵⁰ See Section No. 3.3, *infra*.

⁵¹ Importers must register and maintain records for 20 years and provide origin and destination details to the authorities upon request; see art. 34 Regulation (EU) 2025/41.

⁵² Art. 34 Regulation (EU) 2025/41.

⁵³ See art. 1, para. 2, EU Common Position.

conflict in Ukraine, the large-scale supply of military equipment, combined with Ukraine's history as a hub for illicit arms trafficking, has exacerbated such risks⁵⁴.

Under the EU legal framework, Member States have several obligations of conduct to mitigate the risk of arms diversion⁵⁵. At the licensing stage, EU Common Position sets out eight mandatory criteria, including the risk of diversion⁵⁶, for Member States to use when assessing case by case the export of military technology and equipment (including military firearms) outside the EU. Regulation (EU) 258/2012 stipulates that Member States “*shall take into account*” the requirements included in EU Common Position “*where appropriate*”⁵⁷, when deciding on licences for the export of civilian firearms. The practice of EU Member States demonstrates that applications for the export of civilian firearms are often evaluated using the eight criteria of the EU Common Position as though they were intended for military use⁵⁸.

One of the main objectives of Regulation (EU) 2025/41 is to strengthen the security aspects of arms transfers, thereby confirming and promoting convergence among EU Member States in the adoption and implementation of stricter export policies. This includes the establishment of a common risk assessment standard for the export of civilian and military firearms to problematic countries as defined by the EU Common Position. Regulation (EU) 2025/41 provides a highly relevant coordination clause with the EU Common Position⁵⁹. This means that, in order to grant a licence for exporting firearms, Member States must assess each case to determine whether civilian firearms could be diverted within the buyer's country or re-exported under undesirable conditions. The assessment considers the recipient country's technical capability to use the technology or equipment, its capacity to implement effective export controls, and the risk of re-export to undesirable destinations, terrorist organisations or individuals. If the outcome of the assessment is unsatisfactory, the export licence must be denied.

One of the major challenges associated with exporting civilian firearms is the risk of them being diverted due to a lack of controls and supervision after delivery. Once diverted, these weapons may contribute to instability near EU borders or eventually be trafficked back into the EU. To mitigate such risks, Regulation (EU) 2025/41 stipulates that authorities may carry out coordinated post-shipment checks to ensure compliance with authorisations, provided that the non-EU destination countries give their consent and cooperate. Customs and other agencies must exchange information via EU risk management platforms. Goods found to be non-compliant may be detained, destroyed or seized following due process⁶⁰.

3.3. *Marking, Record-Keeping and the Exchange of Information*

EU legislation sets out a series of standards for marking firearms as part of preventive control measures for transfers. These measures are of paramount importance in mitigating the risk of firearms being diverted at the post-delivery stage, particularly in the long term

⁵⁴ See footnote n. 8, *supra*.

⁵⁵ According to the predominant interpretation of international law scholars, obligations of conduct are “obligations to endeavour” or “obligations of a best effort nature”. These obligations require a State to make every effort (due diligence) to achieve a particular result, with no guarantee of success; *ex multis* A. OLLINO, *Due Diligence Obligations in International Law*, Cambridge, 2022, pp. 76-97.

⁵⁶ Art. 2, para. 7, EU Common Position.

⁵⁷ Art. 10, para. 1, let. c), Regulation (EU) 258/2012.

⁵⁸ European Commission, *Study in view of a report evaluating the implementation of Regulation (EU) 258/2012*, cit., p. 38.

⁵⁹ Art. 24, para. 1, let. b), Regulation (EU) 2025/41.

⁶⁰ Art. 27 Regulation (EU) 2025/41.

and in post-conflict contexts. These measures originate from the UNFP. These regulations are essential for record-keeping, ensuring compliance with current quality and safety requirements and enabling weapons to be recognised and traced promptly by law enforcement and judicial authorities. In terms of marking, EU legislation has identified two specific aims: i) to prevent markings from being easily erased; and ii) to clarify which essential components should be marked. Directive 2008/51/EC, which amends Directive 91/477/EEC, introduced an obligation for all Member States to ensure that any firearm or its parts placed on the market are marked and registered. Furthermore, Directive 2008/51/EC requires Member States to implement national computerised data filing systems to register key information on all firearms in circulation within their territories. However, Directive 2008/51/EC raised ambiguities and uncertainties in interpretation by establishing that all firearms must be marked; but not clarifying whether all essential parts of a firearm (or only one) must be marked. Consequently, these provisions have been applied inconsistently by the Member States. The purpose of Directives 2017/853/EU and 2021/555/EU is to enhance the traceability of firearms and to fully align EU legislation with the legal requirements of the UNFP. These directives establish some provisions aimed at better harmonising Member States' legislation on the marking of firearms, which was lacking in uniformity and facilitated the illegal trading of weapon parts or the illicit reactivation of firearms. Both Directives oblige Member States to introduce tighter marking rules for civilian firearms in three areas, to enable them to be tracked more easily in the event of theft, loss, diversion from the legitimate market or IFT. These include marking techniques; marking imported firearms as required by the UNFP; and affixing the marking to any essential component of the firearm⁶¹. In terms of traceability, they also stipulate that records must be kept for 30 years after the destruction of the relevant firearms or components, in the form of computerised data-filing systems in the Member States⁶².

With regard to marking, Regulation (EU) 2025/41 provides for a clear coordination clause linking it to Directive 2021/555/EU. The Preamble states: "*Firearms, essential components and ammunition should be declared for release for free circulation only if they are properly marked in accordance with Directive EU 2021/555*"⁶³. Regulation (EU) 2025/41 sets out obligations relating to the marking of firearms and essential components prior to import⁶⁴ or export⁶⁵, including deactivated weapons⁶⁶. Thus, legislation on the transfer of civilian firearms outside the EU is fully aligned with EU legislation on intra-EU transfers, in accordance with the UNFP provisions.

The EU Common Position contains no provisions relevant to the tracing of military firearms, such as marking and record-keeping. However, recommendations in this area are provided by soft law global arms control instruments. These include the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects of 2001⁶⁷, complemented by the International Instrument to

⁶¹ Art. 4 Directives 2017/853/EU and 2021/555/EU.

⁶² *Ibidem*. An inconsistency with the EU Firearms Regulation still remains on data retention; according to art. 31, para. 1, Regulation (EU) 2025/41: "*Member States shall keep, for not less than 20 years, all information relating to the import, export and re-export of listed goods, which is necessary to trace and identify those goods, and to prevent and detect illicit trafficking therein*".

⁶³ Recital 16 Regulation (EU) 2025/41.

⁶⁴ Art. 6 Regulation (EU) 2025/41.

⁶⁵ Art. 21, para. 1, let. h), Regulation (EU) 2025/41.

⁶⁶ Art. 7 Regulation (EU) 2025/41.

⁶⁷ *Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, New York, of 9-20 July 2001, UN Doc. A/CONF.192/15.

Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons of 2005⁶⁸.

Due diligence is linked to several categories of international obligation, including those that require States to ensure that their relevant national authorities provide certain information. The obligation to share relevant information stems from the principle of transparency in arms transfers. All relevant EU legal instruments oblige Member States to exchange information relating to the implementation of these instruments, covering the various stages involved in transferring firearms⁶⁹.

4. Conclusion

Although the EU has adopted several legally binding instruments to counteract IFT, no single tool regulates all aspects of this criminal activity. This study shows that, with the adoption of Directive 2021/555/EU and Regulation (EU) 2025/41, legislators have consolidated the positive legislative trend of EU legislation aimed at strengthening security issues related to the possession and circulation of legal and illegal civilian firearms within the EU, as well as the transfer of firearms to and from third countries. In particular, Regulation (EU) 2025/41 seems to provide all the requirements necessary to effectively achieve strategic objectives such as harmonising the legislation of EU Member States to tackle IFT. Firstly, aligning the normative framework of Regulation EU 2025/41 with Directive EU 2021/555 could contribute to the expected unity and coherence of EU legislation dealing with the preventive control of the transnational movement of civilian firearms, both within and outside the EU. This would strengthen and harmonise important areas of legislation, such as the classification of firearms, licences and authorisations for arms transfers, marking and record-keeping. However, a significant gap remains in terms of marking and record keeping with regard to the alignment of the two regimes on civilian and military firearms, since these aspects are not covered by the EU Common Position.

Secondly, despite the aforementioned shortcomings, the normative framework of Regulation (EU) 2025/41 is well-suited to reducing inconsistencies between EU legislation on civilian and military firearms and to bridging the gap between these two legal regimes. This is because Regulation (EU) 2025/41's alignment with 2021 Directive in terms of the classification of civilian firearms helps to achieve better complementarity with the EU Common Position on military firearms. It also resolves ambiguity concerning the transfer of certain semi-automatic firearms, which are now fully covered by the EU Common Position as military firearms. Moreover, following the adoption of Regulation (EU) 2025/41, the transfer of civilian firearms from Member States to third countries will require authorisation through a risk assessment procedure. This procedure will be conducted in accordance with the criteria set out in the EU Common Position, which includes the risk of weapon diversion, among other things. Since Regulation EU 2025/41 was adopted within the framework of the EU's common commercial policy, there may also be some developments regarding the role of the EU Court of Justice, as this is a matter that falls within its jurisdiction. This is not currently possible under the EU Common Position.

In conclusion, while there has been undeniable progress, the EU still lacks comprehensive legislative policies to combat all aspects of IFT. In particular, further legislative intervention is needed to effectively harmonise Member States' substantive

⁶⁸ UN A/RES/60/81, of 8 December 2005.

⁶⁹ See art. 18 Directive 2021/555/EU; art. 28 Regulation (EU) 2025/41; and art. 4, para. 1, and art. 8 EU Common Position.

criminal law on IFT, including the adoption of common definitions of offences and penalties. The criminalization and prosecution of certain acts are crucial to tackle IFT. The obligation of EU Member States to domestically criminalise IFT arises from their ratification of the UNFP. However, the implementation process of the UNFP has not provided the expected harmonisation of legislation in EU member states. The legal basis for such intervention lies in art. 83, para. 1, TFEU. This establishes minimum rules concerning the definition of criminal offences and sanctions relating to IFT with a cross-border dimension, provided that this is necessary due to the nature or impact of the offence, or to combat such trafficking on a common EU basis.

ABSTRACT

This essay examines the EU legal framework for preventing and suppressing the illicit manufacture and trafficking of firearms, which are considered one of the main criminal threats to EU member states. The instability of the international political context in neighbouring regions, coupled with the outbreak of armed conflicts on the Union's doorstep, justifies the need to strengthen the European Union's internal rules to prevent the illicit trafficking of firearms. This threat could potentially escalate in the future as a consequence of the ongoing European rearmament initiative. This study aims to evaluate the effectiveness of the EU's current legislation in addressing the illicit trafficking of civilian firearms, with a particular focus on the most recent legislative act adopted by the Union (Regulation EU 2025/41). The interplay between this regime and the EU's legal framework for combating the proliferation of military firearms in the category of small arms and light weapons (SALW) is also considered. The research is based on the premise that only a unified legislative framework capable of coherently regulating both intra- and extra-EU civilian and military firearms transfers can effectively address the most significant challenges associated with the proliferation of illicit firearms. The essay concludes that the EU legislative framework provides all the requirements necessary to effectively achieve strategic objectives, such as harmonising EU Member State legislation to tackle illicit firearms trafficking.

KEYWORDS

Civilian Firearms, Council Common Position 2008/944/CFSP, Military Firearms, Regulation EU 2025/41, Trafficking, UN Firearms Protocol.

LA LOTTA CONTRO LE ARMI ILLECITE NEL QUADRO GIURIDICO DELL'UNIONE EUROPEA: TRA CONFLITTI ARMATI E RIARMO

ABSTRACT

Questo saggio esamina il quadro giuridico dell'UE per la prevenzione e la repressione della fabbricazione e del traffico illeciti di armi da fuoco, considerati una delle principali minacce criminali per gli Stati membri dell'UE. L'instabilità del contesto politico internazionale nelle regioni limitrofe e lo scoppio di conflitti armati alle porte dell'Unione giustificano il rafforzamento delle norme interne dell'Unione europea volte a prevenire il traffico illecito di armi da fuoco. Tra le altre cose, questa minaccia potrebbe aumentare in futuro come effetto collaterale dell'attuale piano europeo di riarmo. Lo studio mira a valutare l'adeguatezza delle norme dell'UE finora stabilite per contrastare il traffico illecito di armi da fuoco, concentrandosi in particolare sull'atto

legislativo più recente adottato dall'Unione (Regolamento UE 2025/41). Esso esamina inoltre l'interazione tra tale regime e il quadro giuridico dell'Unione per la lotta alla proliferazione delle armi da fuoco militari che si collocano nella categoria delle armi di piccolo calibro e leggere (SALW). La ricerca si basa sul presupposto che solo un quadro legislativo unificato in grado di regolamentare in modo coerente i trasferimenti di armi da fuoco militari e civili sia all'interno che all'esterno dell'UE possa affrontare efficacemente le sfide più importanti legate alla proliferazione delle armi da fuoco illegali. Il saggio conclude che il quadro legislativo dell'UE contiene tutti i requisiti necessari per raggiungere efficacemente obiettivi strategici quali l'armonizzazione della legislazione degli Stati membri dell'UE nel contrasto della proliferazione delle armi da fuoco illecite.

KEYWORDS

Armi da Fuoco Civili, Armi da Fuoco Militari, Posizione Comune 2008/944/CFSP, Protocollo ONU sulle Armi da Fuoco, Regolamento UE 2025/41, Traffico.