

E X P L A N A T I O N

I. CONSTITUTIONAL GROUND FOR ADOPTION OF LAW

Constitutional ground for adoption of the Law on amendments and supplements of the Law on explosive substances is included in the provision of the Article 16 paragraph 1 point 5 of the Constitution of Montenegro, stipulating that issues of interest for Montenegro shall be regulated by a law.

II. REASONS FOR ADOPTION OF LAW

The valid Law on explosive substances was adopted in 2008. and in terms of that, it is necessary, in certain parts, to revise it.

Amendments and supplements of the Law on explosive substances shall improve the field of explosive substances, in terms of production of explosive substances on the place of its use and selling conditions of class II pyrotechnic devices and class P1 pyrotechnic devices which are component part of ships equipment intended for rescue at the sea.

Also, one of the fundamental conditions for integration of Montenegro into the European Union is an obligation to harmonise national legislation with the Aquis Communautaire, especially in the sense of safety. Action Plan for the Chapter 24 – Justice, Freedom and Safety, adopted by the Government of Montenegro at 38 session, held on 10 October 2013, in the Chapter VII – Fight against terrorism, under point 7.2, envisages an obligation to adopt the Law on amendments and supplements of the Law on explosive substances (hereinafter referred to as: Draft law).

A draft law specifies manufacture of explosive substances on the place of its use, categorisation and selling of class II and P1 pyrotechnical devices, as well as use of pyrotechnical devices for public fireworks, which are significantly related to safety of people, their property and environment. A new categorisation of pyrotechnical devices, according to their use and purpose, level of hazard and noise, was made in order to provide a high level of protection of people and safety, to determine age limits for purchase of pyrotechnic devices, as well as time for their selling, i.e. use.

The proposed solutions do not jeopardise, but improve, the existing safety level enhance selling conditions, harmonise selling conditions with surrounding countries, reduce impact of uncontrolled market and increase economic results, and therefore, increase revenues to the Budget.

The Ministry of the Interior (hereinafter referred to as: Ministry) on 21. March 2013 published on its webpage a Public Invitation for participation in consultations in drafting of the law on amendments and supplements of the Law on explosive substances.

In accordance with the Decree on procedure and manner of carrying our public debate during drafting of law („Official Journal of MNE“, number 12/12), the Ministry on 24. May 2013. published a Public Invitation for public debate on draft Law on amendments and supplements of the Law on explosive substances, with Program of public debate which ended with the round table on 02. July 2013. Besides, text of the

draft law was published on the internet site of the Ministry as of 24. May 2013. So that all interested entities could submit remarks, proposals and suggestions.

III. HARMONISATION OF LAW WITH EUROPEAN LEGISLATION

Adoption of this law presents, as already stated, further harmonisation of legislation of Montenegro with the Aquis Communautaire in the field of explosive substances, thus provisions of the Draft law are harmonised with:

- Directive 2007/23/EC of the European Parliament referring to placing pyrotechnical devices on the market.

IV. EXPLANATION OF FUNDAMENTAL LEGAL INSTITUTES

Amendments and supplements in the Draft law are presented in wholes, as the basic text law is systematized.

In Chapter I – General provisions

Article 1 – Amendment to the Article 3 paragraph 3 was done in order to specify provisions which relate to defining of the term commercial explosive.

Article 2 – it is stipulated to use gender sensitive language.

Article 3 – amendments of the Article 5 are done in order to specify the term „recycling” and „de-elaboration”, as well as amendment of points 11 and 12 by providing a definition for portable magazine, i.e. storage container. Also, after the point 12 a new point is added which defines UN number.

In Chapter II – Safety measures

Article 4 – amendment was done in the term „de-elaboration”.

Article 5 – it is proposed to remove the paragraph 2 of Article 11, while the hazard zone should be regulated by a by-law specified in the Article 75 of this law.

In Chapter III – Conditions for manufacture, trade, procurement and use

Article 6 – amendment was done by stipulating that manufacture of explosive substances can be executed by a business organisation registered for production of explosive substances and having in possession a license from the Ministry.

Article 12 – eight new Articles is added (30a, 30b, 30c, 30d, 30e, 30f, 30g and 30h) which stipulate: in what way and under which conditions a business organisation can manufacture and use explosive substances at construction sites, i.e. place of use; content of request and proofs to accompany the request for licence for manufacture of explosive substances at the place of use; obligation of immediate and direct use of manufactured explosive substances and prohibition of their packaging and storage; conditions to be fulfilled by a place of manufacture and obligation that equipment, raw material and place of manufacture must be under constant physical and technical protection.

Article 13 – amendment is done for the purpose of more precise defining of explosive substances trade. Retail of class I pyrotechnical devices and slow-burning fuses shall not be considered, in terms of this law, explosive substances trade.

Article 14 – harmonisation was done with regulations in the field of higher education and national framework of qualifications.

Article 15 – it is propose to make amendment by deleting words „which has a licence for use of explosive substances”. Namely, drafter considers that it is not necessary to procure a licence for use of explosive substances, apart from a licence for procurement of those explosive substances.

Article 17 – amendment was done by stipulating the obligation for a business organisation, other legal person or entrepreneur to store unused explosive substances in storage containers, except in cases of their one-day use, when unused quantities of explosive substances must be destroyed at the construction site. Also, a maximum quantity of commercial explosive is proposed as well as ignition devices which can be stored in storage containers.

Article 18 – it is envisaged to amend the Article 43 paragraph 1 in a way to delete words „or use”.

Article 19 – supplement is done in terms of classes of pyrotechnical devices, in a way that, apart from class I, II, III and IV pyrotechnical devices, there are T1, T2, P1 and P2 pyrotechnical devices. Also, by this Article the Ministry is authorised to impose safety conditions which must be fulfilled by pyrotechnical devices according to their characteristics (in terms of mass, chemical composition, type of material, level of sound, range, time of activation, reaction and other characteristics), as well as marking of pyrotechnical devices.

Article 20 – it is proposed, after the Article 45, to add four new Articles 45a, 45b, 45c and 45d, which stipulate conditions for selling of class II and P1 pyrotechnical devices, period during the year when and to whom the class I, II and P1 pyrotechnical devices can be sold, prohibition to sell and use the class II pyrotechnical devices, as well as authorisation to the Ministry to impose special safety conditions to be fulfilled by selling premises where the class II and P1 pyrotechnical devices are sold.

Article 21- harmonisation was done in terms of level of education with regulations in the field of higher education and national framework of qualifications.

Article 22 – it is proposed to amend in the Article 50 paragraph 3 of the law in order to add, apart from the class I, II, III and IV pyrotechnical devices, also the class T1 and T2 pyrotechnical devices that they can be used for performing of fireworks for theatrical effects in theatres and similar institutions, in filming and television studio or in open space.

Article 23 – it is established that by a licence for performance of public fireworks it should define type and class of pyrotechnical devices for that purpose, place and time of performance of public fireworks, as well as a responsible person and a person who performs the public fireworks. Also, it is stipulated what should accompany a request for issuance of a permit for performance of public fireworks, as well as that the Ministry impose more specific conditions and safety measures for performance of public fireworks and content of the plan on performance of the public fireworks.

Article 24, 26, 27, 28, 29 and 30 - harmonisation was done in terms of level of education with regulations in the field of higher education and national framework of qualifications.

In Chapter IV – Products and storage facilities

Article 31 – it is proposed to supplement the Article 75 related to boundaries of the hazard zone in the by-law which has to be adopted.

In Chapter V - Records

Article 32 – proposed amendments relate to records on manufactured explosive substances on the place of use (on issued licences and decisions on expiry of these licences) and records kept by business organisations.

In Chapter VI - Surveillance

Article 33- supplement was proposed related to responsibilities of inspectors in part of manufacture of explosive substances and performance of public fireworks.

In Chapter VII – Penal provisions

Article 34, 35 i 36 – harmonisation of penal provisions was done with provisions of the Law on misdemeanors.

In Chapter VIII – Transitional and final provisions

Article 37- deadline for adoption of by-laws is stipulated.

Article 38 – it is stipulated that as from the day of enforcement of this law, it shall be ceased to be valid the Article 14 of the Law on amendments and supplements of the Law stipulating fines for misdemeanors („Official Journal of MNE” No. 40/11).

Article 39 – deadline of eight days is stipulated for entering into force of this law.

V. ESTIMATED AMOUNT OF FINANCIAL RESOURCES NECESSARY FOR IMPLEMENTATION OF LAW

For implementation of this law it is not necessary to provide additional financial resources in the budget of Montenegro.