

Marketing and use of explosives precursors

2010/0246(COD) - 20/09/2010 - Legislative proposal

PURPOSE: to reduce access by the general public to high-risk chemicals suitable for easy misuse in producing home-made explosives.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: home-made explosives, fabricated from certain easily accessible chemical precursors, are a preferred tool for perpetrators of terrorist attacks. Currently, the general public has relatively easy access to these chemicals even when in concentrations sufficient to produce a powerful explosive device. The scale of the problem is amplified by the fact that the chemical market in the EU is large and diversified, with multiple end-users. Some Member States have already adopted either voluntary or legislative measures to reduce the availability of the chemical precursors to explosives, or a combination of both. Some Member States are considering such measures but are waiting for the EU to provide leadership. While several legislative and non-legislative measures exist at international, EU and national level, these either do not specifically focus on the security risks associated with certain chemicals or do not cover the entire EU. This implies that precursors that may be restricted or controlled in one country can be easily obtained in another. The current differences among the regimes applied to chemical precursors to explosives not only have a **negative effect on security but also distort the functioning of the internal market**.

IMPACT ASSESSMENT: the options considered included: (i) voluntary measures by the private sector (industry and retail); (ii) regulatory action carried out by the Member States individually; (iii) legislative measures at the EU level; (iv) a combination of these.

Several policy options for legislative action at EU level have undergone a thorough impact assessment and consultation process. The preferred policy option has positive impacts in terms of security, but also some negative economic impacts in particular on the retail sector and on public authorities of the Member States in terms of costs of implementation. However, these economic impacts and negative impacts on consumers are relatively minor as non-professional consumption of the precursors only accounts for about 1.5% of total EU consumption of the chemicals concerned, and substitutes are in most cases available.

It should be noted that the proposal was subject to an in-depth scrutiny to ensure that its provisions are fully compatible with **fundamental rights** and principles enshrined in particular in the Charter of Fundamental Rights of the European Union, and notably the protection of personal data, the freedom to conduct a business, the right to property and the principle of non-discrimination.

LEGAL BASE: **Article 114** of the Treaty on the Functioning of the European Union. A **regulation** is the appropriate instrument to achieve maximum harmonisation for the chemicals covered by the legal instrument, and also, where applicable, concentrations of these chemicals.

CONTENT: the proposed Regulation establishes **harmonised rules** concerning the making available on the market of substances or mixtures that could be misused for the illicit manufacture of explosives, with a view to limiting their availability to the general public. **This will be done by prohibiting the sales of certain chemicals above concentration thresholds to members of the general public.** Sales of higher concentrations would only be allowed to users who can document a legitimate need to use the chemical — these users can obtain a **licence to purchase the chemical**. The sales of these chemicals and their

mixtures as well as the sales of products containing chemicals of concern for which concentration thresholds cannot be set will also be subject to reporting of suspicious transactions. The substances and concentration thresholds are clearly set out in the Annex to the Regulation.

Each Member State shall ensure that the processing of personal data carried out in application of this Regulation shall be in accordance with Directive 95/46/EC. In particular, each Member State shall ensure that the processing of personal data required by the granting of license, and the reporting of suspicious transactions shall comply with Directive 95/46/EC.

Reasonably long transitional periods are foreseen so as to allow members of the general public and economic operators to adapt to the new requirements.

The proposed legislative action will be accompanied by voluntary measures by industry and the retail sector to enhance security and raise awareness in the entire supply chain.

The proposal is in line with the policy objectives set out in the EU Counter terrorism Strategy, the Action Plan on Enhancing the Security of Explosives and the Stockholm Programme — An open and secure Europe serving and protecting the citizens.

FINANCIAL IMPLICATIONS: the proposal has no implications for the European Union budget.