

Marketing and use of explosives precursors

2010/0246(COD) - 20/11/2012 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 595 votes to 12, with 14 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council on the marketing and use of explosives precursors.

Parliament adopted its position at first reading under the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise negotiated between Parliament and the Council. They amend the Commission proposal as follows:

Purpose and scope: it is stipulated that this Regulation establishes harmonised rules concerning the **making available on the market, but also the possession, use and introduction into the Union** 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, and ensuring appropriate reporting of **suspicious transactions** throughout the supply chain.

The Regulation will not apply to medicinal products when legitimately made available to a member of the general public on the basis of a medical prescription in accordance with the applicable national law.

Labelling: all economic operators, including retailers, that intend to make substances restricted under this Regulation available to members of the general public, should ensure that the packaging indicates that the purchase, possession or use of that substance or mixture by members of the general public is subject to a restriction.

National measures to be maintained: some Member States have already legislative measures in force at national level providing for protection against some substances that have an illicit use that are similar or higher than what this Regulation is intended to achieve. Since it would be against the aims of this Regulation to diminish the protection through measures at the Union level, **it is appropriate to provide within the safeguard clause a mechanism by which such national measures could remain in force.**

Introduction, possession and use: the illicit manufacture of home-made explosives should be made more difficult by setting **concentration limits** for substances that can be used as explosives precursors. Below these concentration limits, as set out in Annex I, free circulation is ensured subject to a safeguard mechanism, but above these concentration limits access for the general public should be restricted. Above these concentration limits members of the general public should thus as a general rule not be able to acquire, introduce, possess or use those substances.

Parliament considers, for legitimate purposes it is, however, appropriate to allow application of a system by which members of the general public can be able to acquire, introduce, possess or use the substances listed in Annex I provided they hold a licence to do so.

Given that **hydrogen peroxide, nitromethane and nitric acid** are widely used for legitimate purposes by members of the general public, it should be possible for Member States to apply a **registration system** in accordance with the regime laid down in this Regulation instead of a licensing system in order to grant access to those substances in lower concentrations.

Issuing of licences: in order to achieve legitimate objectives of public security whilst at the same time ensuring the least disruption to the smooth functioning of the internal market, it is appropriate to provide for a licensing system in accordance with which a member of the general public, who has acquired a

substance listed in Annex I, in a concentration above that laid down in that Annex would be able to introduce it from another Member State or a third country into a Member State which allows access to those substances in accordance with any of the systems provided for in this Regulation.

Reporting of suspect transactions: the amended text provides for a reporting mechanism that covers both professional users throughout the supply chain and members of the general public involved in transactions which, by reason of their nature, or scale, are to be regarded as suspicious.

To this aim, Member States should set up national contact points for the reporting of suspicious transactions.

Ammonium nitrate shall be subject to the reporting mechanism for suspicious transactions.

Transactions which might be considered suspect are those in which, for example, the prospective buyer: is a customer (professional or non-professional):

- appears unclear about the intended use,
- appears unfamiliar with the intended use or cannot plausibly explain it,
- intends to buy unusual quantities, unusual concentrations or unusual combinations of substances,
- is unwilling to provide proof of identity or place of residence, or
- insists on using unusual methods of payment including large amounts of cash.

National contact points: the national contact points shall be informed by the competent licensing authority of any refusal of an application for a licence, where the refusal is based on reasonable grounds for doubting the legitimacy of the intended use or the intentions of the user. Likewise, the competent licensing authority shall inform the national contact point of any suspension or revocation of a licence.

In order to prevent and detect possible illegal use of explosives precursors, the national contact point should **keep records of the reported suspicious transactions** and the national competent authority should **take the necessary measures to investigate the concrete circumstances**, including the genuineness of the relevant economic activity exercised by a professional user involved in a suspicious transaction.

Reporting of thefts and disappearances: thefts of explosives precursors are a means of obtaining starting materials for illicit manufacture of explosives. It is therefore appropriate to provide for reporting of significant thefts and disappearances of any substance listed in the Annexes. In order to facilitate the tracing of the perpetrators and to alert the competent authorities in other Member States to possible threats, national contact points should, whenever appropriate, make use of the Early Warning System established at Europol.

Safeguard clause: in order to address substances not listed pursuant to this Regulation but concerning which a Member State discovers reasonable grounds for believing that they could be used for illicit manufacture of explosives, a safeguard clause providing for **an appropriate Union procedure is introduced**. Member States, in certain circumstances, may adopt safeguard measures also regarding substances already included in the annexes.

Changes to the annexes: the Commission shall maintain Annex I under constant review and should, where justified, prepare a legislative proposal in order to add a new substance to that Annex, or to delete a

substance from the Annexes, in accordance with the ordinary legislative procedure, in order to accommodate developments in the misuse of chemical substances as precursors to explosives.

Delegated acts: the Commission shall be empowered to adopt delegated acts concerning changes of the limit values in Annex I to this Regulation, as well as concerning addition of substances to Annex II to this Regulation.

Report: the Commission shall, based on the ongoing work of the Standing Committee on Precursors present a report examining any problems arising from the implementation of this Regulation, the desirability and feasibility to extend the scope of this Regulation, both as regards covering professional users and including non-scheduled explosive precursor substances in the provisions on reporting of suspicious transactions, disappearances and thefts.

The Commission shall taking into account relevant experience gained by Member States and considering costs and benefits, present a report examining the desirability and feasibility of further strengthening and harmonising the system in view of the threat to public security.