

# Explosives for civil uses: making available on the market and supervision. Recast. 'Goods package'

2011/0349(COD) - 26/02/2014 - Final act

**PURPOSE:** to align Directive 93/15/EEC on the harmonisation of the laws of the Member States relating to the making available on the market and supervision of explosives for civil uses with the new legislative framework, in particular to Decision No 768/2008/EC establishing a common framework for the marketing of products (Goods Package).

**LEGISLATIVE ACT:** Directive 2014/28/EU of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to the making available on the market and supervision of explosives for civil uses (recast).

**CONTENT:** the Directive is part of a package aiming to recast **eight directives** in order to adapt them to the EU's new legislative framework on sectoral product harmonisation.

The recast seeks to further harmonise and simplify national laws applicable to:

- **explosives for civil uses**
- [simple pressure vessels](#)
- [electromagnetic compatibility](#)
- [non-automatic weighing instruments](#)
- [measuring instruments](#)
- [lifts and safety components for lifts](#)
- [equipment for use in potentially explosive atmospheres](#)
- [electrical equipment designed for use within certain voltage limits.](#)

**The EU's "new legislative framework"**, which was adopted in 2008, is a general measure of the internal market with the objective of strengthening the effectiveness of the Union's legislation on product safety and its implementation mechanisms. It aims to **strengthen the safety of products** available on the market, and ensures a better functioning internal market for instance through equal treatment of economic operators on the market.

It is made up of **two complementary texts**: regulation 765/2008 outlining the requirements concerning accreditation and surveillance for the marketing of products, and decision 768/2008/EC relating to a common framework for the marketing of products.

The main elements of the new Directive are as follows:

**Purpose and scope:** the Directive shall apply to **explosives for civil uses**. It aims to ensure that explosives on the market fulfil the requirements providing for a high level of protection of health and

safety and other public interests while guaranteeing the functioning of the internal market. It should apply to all forms of supply, including distance selling.

**This Directive shall not apply to:** (i) explosives, including ammunition, intended for use, in accordance with national law, by the armed forces or the police; (ii) pyrotechnic articles falling within the scope of Directive 2013/29/EU; (iii) ammunition, except in cases provided for in the Directive.

**A new Annex I**, introduced by the Parliament, contains a non-exhaustive list of pyrotechnic articles and ammunition respectively identified following the United Nations recommendations on the transport of dangerous goods.

**Obligations of economic operators and increased traceability requirements:** the Directive clarifies the obligations of manufacturers and introduces obligations for importers and distributors:

- When placing their explosives on the market, **manufacturers** shall ensure that they have been designed and manufactured in accordance with the essential safety requirements set out in Annex II. **Manufacturers** shall ensure that explosives which they have placed on the market bear a **unique identification** in accordance with the system for the identification and traceability of explosives.
- Before placing an explosive on the market **importers** shall ensure that the appropriate conformity assessment procedure has been carried out by the manufacturer. They shall ensure that the manufacturer has drawn up the technical documentation, that the explosive bears the CE marking.
- Before making an explosive available on the market **distributors** shall verify that the explosive bears the CE marking, that it is accompanied by the required documents.
- Importers shall indicate, on the explosive, their **name, registered trade name or registered trade mark and the postal address** at which they can be contacted or, where that is not possible, on its packaging or in a document accompanying the explosive.
- The contact details of the manufacturer and importer shall be in a **language easily understood by end-users** and market surveillance authorities. Such instructions and **safety information**, as well as any labelling, shall be clear, understandable and intelligible.
- Economic operators who consider or have reason to believe that an explosive which they have placed on the market is not in conformity with this Directive shall immediately take the **corrective measures** necessary to bring that explosive into conformity, to withdraw it or recall it, if appropriate.

**Identification and traceability of explosives:** economic operators should adhere to a uniform system for the unique identification and traceability of explosives. Such a system is essential if accurate and complete records of explosives are to be kept at all stages of the supply chain. This should allow the identification and the traceability of an explosive from its production site and its placing on the market until its final user and its use with a view to preventing misuse and theft and to assisting law enforcement authorities in the tracing of the origin of lost or stolen explosives.

**Identification of economic operators:** for explosives not covered by the identification and traceability of explosives system, economic operators should, on request, identify the following to the market surveillance authorities: (a) any economic operator who has supplied them with an explosive; (b) any economic operator to whom they have supplied an explosive.

Economic operators shall be able to present this information for **10 years** after they have been supplied with the explosive and for 10 years after they have supplied the explosive.

**Licence or authorisation:** economic operators shall be in possession of a licence or authorisation which entitles them to engage in the manufacture, storage, use, import, export, transfer or trade of explosives.

**EU declaration of conformity:** the EU declaration of conformity shall have the model structure set out in Annex IV. In order to reduce the administrative burden on economic operators, that single EU declaration of conformity may be a dossier made up of relevant individual declarations of conformity.

**CE marking:** the Directive provides that the CE marking shall be affixed **visibly, legibly and indelibly** to the explosive before it is placed on the market. Where that is not possible or not warranted on account of the nature of the explosive, it shall be affixed to the packaging and to the accompanying documents. As requested by the Parliament, Member States should build upon existing mechanisms to ensure correct application of the regime governing the CE marking and shall take appropriate action in the event of improper use of that marking.

**Notified bodies:** the Directive **reinforces the notification criteria** for notified bodies. It clarifies that subsidiaries or subcontractors must also comply with the notification requirements. Specific requirements for notifying authorities are introduced, and the procedure for notification of notified bodies is revised. The competence of a notified body must be demonstrated by an accreditation certificate. A conformity assessment body shall be a third-party body independent of the organisation or the explosive it assesses. The **impartiality** of the conformity assessment bodies, their top level management and of the personnel responsible for carrying out the conformity assessment tasks shall be guaranteed.

**Market surveillance and the safeguard clause procedure:** the Directive revises the existing safeguard clause procedure. It introduces a **phase of information exchange** between Member States, and specifies the steps to be taken by the authorities concerned, when a non-compliant article is found. Member States should take all appropriate measures to ensure that explosives may be placed on the market only if, when **properly stored** and used for their intended purpose, or under conditions of use which can be reasonably foreseen, they do not endanger the health and safety of persons.

**Restrictive measures in case of non-compliance:** appropriate restrictive measures, such as withdrawal of the explosive from the market should be taken in respect of the explosive concerned without delay.

Rules on **penalties** applicable to infringements by economic operators could include criminal penalties for serious infringements. The penalties provided for should be effective, proportionate and dissuasive.

**Transitional measures:** Member States shall not impede the making available on the market of explosives covered by Directive 93/15/EEC which are in conformity with that Directive and which were placed on the market before 20 April 2016.

ENTRY INTO FORCE: 18/04/2014.

TRANSPOSITION: 19/04/2016. Measures should apply from 20/04/2016.

**DELEGATED ACTS:** the Commission shall be empowered to adopt delegated acts in accordance with Article 47 updating Annex I in order to align it to the United Nations recommendations on the transport of dangerous goods. The power to adopt delegated acts shall be conferred on the Commission for **five years (renewable) from 18 April 2014**. The delegated act shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act (this period may be extended by two months). If the European Parliament and the Council object, the delegated act shall not enter into force.

