




Basic information	
<p>2010/0246(COD)</p> <p>COD - Ordinary legislative procedure (ex-codecision procedure) Regulation</p>	Procedure completed
<p>Marketing and use of explosives precursors</p> <p>Repealed by 2018/0103(COD)</p> <p>Subject</p> <p>3.40.01 Chemical industry, fertilizers, plastics 3.70.13 Dangerous substances, toxic and radioactive wastes (storage, transport) 7.30.12 Control of personal weapons and ammunitions</p>	

Key players				
European Parliament	Committee responsible		Rapporteur	Appointed
	LIBE	Civil Liberties, Justice and Home Affairs	MULDER Jan (ALDE)	09/12/2010
			Shadow rapporteur	
			MATHIEU HOUILLON Véronique (PPE)	
	Committee for opinion		Rapporteur for opinion	Appointed
	ENVI	Environment, Public Health and Food Safety	The committee decided not to give an opinion.	
	ITRE	Industry, Research and Energy	The committee decided not to give an opinion.	
	IMCO	Internal Market and Consumer Protection	The committee decided not to give an opinion.	
Council of the European Union	Council configuration		Meetings	Date
	General Affairs		3210	2012-12-11
	Justice and Home Affairs (JHA)		3162	2012-04-26
European Commission	Commission DG		Commissioner	
	Migration and Home Affairs		MALMSTRÖM Cecilia	

Key events			
Date	Event	Reference	Summary
20/09/2010	Legislative proposal published	COM(2010)0473 	Summary
07/10/2010	Committee referral announced in Parliament, 1st reading		
26/04/2012	Debate in Council		Summary
03/09/2012	Vote in committee, 1st reading		
11/09/2012	Committee report tabled for plenary, 1st reading	A7-0269/2012	Summary
19/11/2012	Debate in Parliament		
20/11/2012	Decision by Parliament, 1st reading	T7-0413/2012	Summary
20/11/2012	Results of vote in Parliament		
11/12/2012	Act adopted by Council after Parliament's 1st reading		
15/01/2013	Final act signed		
16/01/2013	End of procedure in Parliament		
09/02/2013	Final act published in Official Journal		






Technical information	
Procedure reference	2010/0246(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Repealed by 2018/0103(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 114-p1
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/7/03883

Documentation gateway				
European Parliament				
Document type	Committee	Reference	Date	Summary
Committee draft report		PE464.688	22/06/2011	
Amendments tabled in committee		PE469.861	27/08/2012	
Committee report tabled for plenary, 1st reading/single reading		A7-0269/2012	11/09/2012	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0413/2012	20/11/2012	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00048/2012/LEX	15/01/2013	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2010)0473 	20/09/2010	Summary
Document attached to the procedure	SEC(2010)1040 	20/09/2010	
Document attached to the procedure	SEC(2010)1041 	20/09/2010	
Commission response to text adopted in plenary	SP(2013)73	23/01/2013	
Follow-up document	COM(2015)0122 	12/03/2015	Summary
Follow-up document	COM(2017)0103 	28/02/2017	Summary

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	IT_SENATE	COM(2010)0473	17/11/2010	
Contribution	PT_PARLIAMENT	COM(2010)0473	17/11/2010	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EDPS	Document attached to the procedure	N7-0044/2011 OJ C 101 01.04.2011, p. 0001	15/12/2010	Summary
EESC	Economic and Social Committee: opinion, report	CES0064/2011	19/01/2011	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

[Corrigendum to final act 32013R0098R\(01\)](#)
[OJ L 315 30.11.2017, p. 0078](#)

[Regulation 2013/0098](#)
[OJ L 039 09.02.2013, p. 0001](#)

[Summary](#)

Delegated acts

Reference	Subject
2016/3012(DEA)	Examination of delegated act
2016/3011(DEA)	Examination of delegated act
2016/3013(DEA)	Examination of delegated act

Marketing and use of explosives precursors

2010/0246(COD) - 28/02/2017 - Follow-up document

The Commission presents a report on the application of Regulation (EU) n° 98/2013 of the European Parliament and of the Council on the marketing and use of explosives, and the delegation of power provided for therein.

The report has been prepared on the basis of the discussions and consultations in the Standing Committee of Precursors, which provides a platform for Member States and representatives of the economic operators in the supply chain to exchange information and views on the practical implementation of the Regulation.

According to Europol's 2016 report on the terrorism situation and trend in Europe, home-made explosives remain a preferred weapon of terrorists, along with conventional firearms. The threat posed by the use of explosives precursor chemicals remains high and is continuously evolving.

Implementation and review of the Regulation: as of 1 January 2017, most Member States were in compliance with the requirements of Regulation (EU) No 98/2013. The report shows that, through the introduction and monitoring for the main threat substances of concern, the entry into force of the Regulation has contributed to:

- **reducing the amount of explosives precursors available on the market:** the supply chain has not reported any significant disturbances or economic losses as a result of this ;
- **increasing the capacity of competent and law enforcement authorities to investigate suspicious incidents involving explosives precursors:** Member States have reported an increase in the number of reported suspicious transactions, disappearances and thefts.

Problems identified: despite the overall positive impact of the Regulation, its application has given rise to several problems and challenges:

- the main challenge for Member State competent authorities is the **large number of operators affected** by the restrictions and controls of the Regulation, which makes it difficult for competent authorities to reach all economic operators in the supply chain of explosives precursors to inform them of their duties ;
- another challenge for Member State authorities is to enforce the restrictions and **controls on internet sales**, imports and intra-EU movements;
- a main challenge for **economic operators**, particularly those in the retail sector, has been to identify products that fall under the scope of the Regulation. it is difficult for operators at retail level to properly verify that the proper label is affixed and that the restriction applies effectively;
- a continuous challenge for the **Commission** is to keep abreast of the evolving security threat.

New measures: the Commission, in close collaboration with the Standing Committee of Precursors, has already started revising the Regulation **by adding three explosives precursor substances to Annex II** (aluminium powder, magnesium nitrate hexahydrate, and magnesium powder.)

However, the practical experience gained since the implementation of the Regulation, along with global developments, make it imperative to **consider additional changes** to the Regulation to increase the capacity of all actors involved in implementing and enforcing the restrictions and controls.

The Commission **will carefully assess** the impact of a number of possible new measures which may be proposed in the near future, in order to:

- **tighten restrictions and controls**, by adding new substances of concern to the scope of the Regulation and by strengthening restrictions on substances that are already covered;
- increase the capacity of the Member State competent authorities to monitor the sale and possession of explosives precursors, such as by requiring economic operators to register with their competent authority and to regularly submit their registry of transactions to the competent authorities;
- strengthen the **system of reporting suspicious transactions**, disappearances and thefts by, for example, ensuring that information which could have cross-border relevance is shared;
- improve the **transmission of information** along the chemical and retail supply chain by, for example, re-assessing the labelling provision in the Regulation;
- extend the scope of the Regulation to cover professional users;
- update Annex II, as often as necessary, to add specific substances which pose a threat as explosives precursors.

The report concludes that the Commission, Member States and the supply chain of explosives precursors in Europe must jointly step up their efforts to fully implement the existing provisions and identify measures and actions which strengthen the system around homemade explosives in the future.

Marketing and use of explosives precursors

2010/0246(COD) - 15/12/2010 - Document attached to the procedure

OPINION OF THE EUROPEAN DATA PROTECTION SUPERVISOR on the proposal for a Regulation on the marketing and use of explosives precursors.

The EDPS recalls that this proposal addresses the problems of the misuse of certain chemicals, which are widely available to the general public on the market, as precursors to home-made explosives.

- Articles 4 and 5 of the proposal deal with the prohibition of sale to the general public, which is combined with a licensing scheme and requirement to record all licensed transactions.
- Article 6 requires economic operators to report suspicious transactions and thefts.
- Lastly, Article 7 addresses the need for data protection.

The EDPS welcomes that the proposal contains a separate provision (Article 7) on data protection. With that said, this single — and very general — provision foreseen in the proposal is **insufficient** to adequately address the data protection concerns raised by the proposed measures. In addition, the relevant articles of the proposal (Articles 4, 5 and 6) also fail to describe in sufficient detail the specificities of the data processing operations foreseen.

For these reasons, the EDPS recommends that the proposal should contain **further and more specific provisions** to adequately address these concerns.

In addition, the EDPS recommends that the Commission guidelines on suspicious transactions and on the technical details of the licenses should include further specific provisions on data processing and data protection. Both guidelines, as well as any possible implementing decision in the area of data protection, should be adopted after consulting the EDPS and — where the implementation at the national level is at stake — the Article 29 Data Protection Working Party.

Article 5 of the Regulation should specify a **maximum retention period** (*prima facie*, not exceeding two years) as well as the **categories of personal data** to be recorded (not exceeding name, license number and items purchased). The collection and conservation of personal data should be limited to what is strictly necessary. The collection of special categories of data should be expressly prohibited.

The role and nature of the **contact points** should be clarified in Article 6 of the proposal. This provision should also specify a maximum retention period for the data reported on suspicious transactions (*prima facie*, not exceeding two years) as well as the personal data to be recorded (not exceeding name, license number, items purchased, and reasons giving rise to suspicion). Processing of special categories of data should be expressly prohibited.

Further, the **guidelines/implementing decision** should:

- specify the data that can be collected by the licensing authorities in connection with the license application and clearly limit the purposes for which data can be used. Similar provisions should also apply to the records of suspicious transactions;
- specify that the licensing authority should inform license holders about the fact that their purchases will be recorded and may be subject to reporting if found 'suspicious';
- further specify who should have access to the data received (and stored) by the national contact points. Access/disclosures should be limited on a strict need-to-know basis;
- provide for appropriate rights of access to data subjects and clearly set forth and justify any exceptions.

Lastly, the effectiveness of the measures foreseen should be **periodically reviewed**, at the same time also considering their impact on privacy.

Marketing and use of explosives precursors

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.

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.

Marketing and use of explosives precursors

2010/0246(COD) - 15/01/2013 - Final act

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

LEGISLATIVE ACT: Regulation (EU) No 98/2013 of the European Parliament and of the Council on the marketing and use of explosives precursors.

CONTENT: the Regulation aims to address the problem of the misuse of certain chemicals that are explosives precursors for the illicit manufacture of explosives, which could be used to carry out terrorist attacks. Some Member States had already enacted laws, regulations and administrative provisions, regarding the placing on the market, making available and possession of certain explosives precursors. However, **such laws are divergent and liable to cause barriers to trade** within the Union.

Objective: the Regulation aims to harmonise Member States' law in order to **improve the free movement of chemical substances and mixtures** within the internal market and, to the extent possible, to remove distortions of competition, while ensuring a high level of protection of the safety of the general public. The Regulation will also ensure an **increased level of security** in the entire European Union by creating a common framework for the access to certain explosives precursors.

Scope: the scope of the Regulation is limited to a short list of chemical substances and mixtures that are the sources of greatest concern. The Regulation contains two annexes listing:

- substances which shall not be made available to members of the general public on their own, or in mixtures or substances including them, except if the concentration is equal to or lower than the limit values set out in the text;
- substances on their own or in mixtures or in substances for which suspicious transactions shall be reported.

Licensing regime and registration regime: a Member State may maintain or establish a licensing regime allowing restricted explosives precursors to be made available to members of the general public, provided that the latter obtains a **licence for acquiring them** issued by a competent authority of the Member State where that restricted explosives precursor is going to be acquired, or used.

Since hydrogen peroxide, nitromethane and nitric acid are widely used for legitimate purposes by members of the general public, Member States may provide for access to those substances within a given range of concentrations by applying a **registration system** under this Regulation rather than a licensing system.

An economic operator who makes available a restricted explosives precursor to a member of the general public in accordance with the rules shall for each transaction require the presentation of a licence or keep a record of the transaction, in compliance with the regime established by the Member State where the restricted explosives precursor is made available.

Labelling: an economic operator who intends to make available restricted explosives precursors to a member of the general public, shall ensure that an **appropriate label** is affixed so that that the packaging clearly indicates that the acquisition, possession or use of that restricted explosives precursor by members of the general public is subject to restriction.

Reporting of suspicious transactions, disappearances and thefts: the Regulation establishes a system for reporting suspicious transactions involving the substances listed in the Annexes, or involving mixtures or substances containing them. Each Member State must set up one or more **national contact points** for the reporting of suspicious transactions.

ENTRY INTO FORCE: 1 March 2013.

APPLICATION: from 2 September 2014.

DELEGATED ACTS: the Commission may adopt delegated acts concerning changes of the limit values to the extent necessary to accommodate developments in the misuse of substances as explosives precursors. The power to adopt delegated acts shall be conferred on the Commission for a period of five years from 1 March 2013 (which may be tacitly extended for an identical period unless opposed by Parliament or Council.) The European Parliament or the Council may object to a delegated act within a period of 2 months from the date of notification (which may be extended for 2 months). If the European Parliament or the Council express objections, the delegated act will not enter into force.

Marketing and use of explosives precursors

2010/0246(COD) - 12/03/2015 - Follow-up document

In accordance with Article 18(2) of Regulation (EU) No 98/2013 on the marketing and use of explosives precursors, the Commission presented a report on the possibilities to transfer relevant provisions on ammonium nitrate from Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) into the Regulation on explosives precursors.

Ammonium nitrate (CAS RN 6484-52-2) is a chemical substance widely used as a fertiliser in the European Union. It can act as an oxidising agent and explodes when mixed with certain other chemicals. For this reason, ammonium nitrate fertilisers with a high nitrogen content are subject to technical requirements.² Because of these properties, ammonium nitrate fertilisers have been misused for the illicit manufacture of explosives. To protect against such misuse, access by members of the general public to ammonium nitrate as a substance or in mixtures is restricted and controlled.

At present, there are provisions on ammonium nitrate in both REACH and the Regulation on explosives precursors.

At the end of 2007, [the EU Action Plan](#) on Enhancing the Security of Explosives called for restrictions on the sale of ammonium nitrate fertilisers to the general public. There is thus a general agreement that the marketing and use of ammonium nitrate poses serious security concerns.

The Commission considers that as the risks relate to public security, the **restrictions on ammonium nitrate** are better placed in the Regulation on Explosives Precursors and would support the transfer of the relevant provisions from REACH, as originally intended in its [2010 proposal](#) for a regulation on the marketing and use of explosives precursors.

However, given the **continuing lack of consensus** from one of the co-legislators, i.e. the Council, on this issue, both in terms of the desirability of the transfer itself and the exact form it would take (i.e. whether ammonium nitrate would simply be transferred to Annex I, or whether separate arrangements would be made), a legislative proposal to transfer the provisions would probably not garner enough support in Council.

Member States that object to the transfer argue that it would weaken security around ammonium nitrate, as it may allow national competent authorities to make the substance available to the general public via licensing or registration regimes, which they are entitled to set up under Regulation (EU) No 98/2013.

In addition, the Commission notes that the **competent authorities in Member States have had little time to gather relevant experience** from implementing the Regulation on Explosives Precursors, as it only entered into force on 2 September 2014. It is therefore reasonable that Member States may want to examine the costs and benefits of the transfer at a later date.

Consequently, the Commission does not at present intend to propose legislation to transfer the relevant provisions on ammonium nitrate from REACH to the Regulation on Explosives Precursors. Instead, it will re-examine the possibility and the exact nature of such a transfer as part of a larger review planned for 2017 under the latter Regulation.

Marketing and use of explosives precursors

2010/0246(COD) - 26/04/2012

The Council held an **orientation debate** on a proposal for a regulation on the marketing and use of explosives precursors on the basis of a discussion paper presented by the Danish presidency.

Informal contacts with the European Parliament and the views expressed in the meeting of the LIBE committee of the European Parliament on 21 March 2012, indicate that the European Parliament still maintains a **strong preference for a "licensing-only" system**.

Based on the outcome of the negotiations during the autumn and on what has been said in the European Parliament during the spring, the Danish Presidency has considered how to proceed with the proposal in order to reach a compromise on the issue of **access to substances listed in Annex I to the draft Regulation** that would be acceptable both to Member States and to the European Parliament.

The Danish compromise proposal supported by the Council maintains the core elements of the initial Commission proposal, i.e. a general ban on members of the general public acquiring, possessing or using the relevant chemical substances. Member states may, however, derogate from this general rule:

- by introducing a **licensing system** through which members of the general public will be required to obtain and present a licence in order to acquire, possess or use the chemical substances listed in an annex to the regulation in concentrations higher than those laid down in that annex;
- by setting up a **system for registration of purchases** by members of the general public to get access to three of the substances in the annex, namely hydrogen peroxide, nitric acid and nitromethane under certain concentration limits. These are the substances and concentrations of which there is the highest use and which thus create the biggest administrative burden when establishing a licensing system;
- by **allowing Member States that already have a registration system** for access to one or more of the substances listed in the annex to continue to apply that system to some or all substances in accordance with the registration regime laid down in the regulation.

The Commission would review the regulation **after three years** to decide whether the system should be further strengthened and harmonised.

The Presidency hereby invites the Council to reaffirm its commitment to achieve a common legislative framework on the marketing and use of explosives precursors with the aim of strengthening the level of public security in the Union particularly with the view of preventing terrorist attacks. It asked its preparatory bodies to continue work on the file so as to agree on a final text with the European Parliament as soon as possible.

Marketing and use of explosives precursors

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Jan MULDER (ALDE, NL) on the proposal for a regulation of the European Parliament and of the Council on the marketing and use of explosives precursors.

The parliamentary committee recommends that the European Parliament's position at first reading under the ordinary legislative procedure should be to amend the Commission proposal as follows:

Purpose and scope: 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.

Members consider, 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: Members believe it is appropriate to provide 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.

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 should 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 should 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.

Ammonium nitrate: this substance should be subject to the reporting mechanism for suspicious transactions as there is no equivalent requirement in Regulation (EC) No 1907/2006.

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 adequate Union procedure should be introduced. Member States, in certain circumstances, may adopt safeguard measures also regarding substances already included in the annexes.

Changes to the annexes: the Commission should 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 should, 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.