



**2018/0103(COD)**

18.9.2018

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## **DRAFT REPORT**

on the proposal for a regulation of the European Parliament and of the Council on the marketing and use of explosives precursors, amending Annex XVII to Regulation (EC) No 1907/2006 and repealing Regulation (EU) No 98/2013 on the marketing and use of explosives precursors (COM(2018)0209 – C8-0151/2018 – 2018/0103(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Andrejs Mamikins

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▬ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council on the proposal for a regulation of the European Parliament and of the Council on the marketing and use of explosives precursors, amending Annex XVII to Regulation (EC) No 1907/2006 and repealing Regulation (EU) No 98/2013 on the marketing and use of explosives precursors  
(COM(2018)0209 – C8-0151/2018 – 2018/0103(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0209),
  - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0151/2018),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of 11 July 2018<sup>1</sup>,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A8-0000/2018),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>1</sup> Not yet published in the Official Journal.

## Amendment 1

### Proposal for a regulation

#### Recital 12

*Text proposed by the Commission*

(12) Insofar as online marketplaces act as mere intermediaries between economic operators on the one hand, and members of the general public, professional users or farmers on the other hand, they should not be required to instruct their personnel ***involved in the sale of restricted explosives precursors*** or verify the identity and, where appropriate, the licence of the prospective customer or request other information from the prospective customer. However, given the central role which online marketplaces that act as an intermediary play in online economic transactions, including as regards the sales of restricted explosives precursors, it is appropriate that they ***should*** inform, in a clear and effective manner, users who aim to make available ***restricted*** explosives precursors ***through the use*** of their ***services of the*** obligations under this Regulation. ***In addition, it is appropriate that online marketplaces that act as an intermediary*** take measures to help ensure that their users comply with their obligations regarding verification, for instance by offering tools to facilitate verification of licences. ***All such obligations on online marketplaces that act as an intermediary under this Regulation should be without prejudice to Articles 14 and 15 of Directive 2000/31/EC of the European Parliament and of the Council<sup>34</sup>.***

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<sup>34</sup> ***Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic***

*Amendment*

(12) Insofar as online marketplaces act as mere intermediaries between economic operators on the one hand, and members of the general public, professional users or farmers on the other hand, they should not be required to instruct their personnel ***regarding the obligations under this Regulation*** or to verify the identity and, where appropriate, the licence of the prospective customer or request other information from the prospective customer. However, given the central role which online marketplaces that act as an intermediary play in online economic transactions, including as regards the sales of restricted explosives precursors, it is appropriate that they inform, in a clear and effective manner, users who aim to make available ***regulated*** explosives precursors ***of their obligations*** under this Regulation. ***They should also*** take measures to help ensure that their users comply with their obligations regarding verification, for instance by offering tools to ***facilitate*** verification of licences. ***In addition, they should be subject to the same detection and reporting obligations as economic operators with respect to suspicious transactions.***

commerce') (OJ L 178, 17.07.2000, p. 1).

Or. en

### *Justification*

*These changes are necessary to comply with the proposed amendments of Articles 7 and 9.*

## **Amendment 2**

### **Proposal for a regulation**

#### **Article 3 – paragraph 1 – point 9**

##### *Text proposed by the Commission*

(9) ‘economic operator’ means any natural or legal person or public entity or group of such persons and/or bodies which **delivers** regulated explosives precursors or services related to regulated explosives precursors, on the market, either off- or online and including online marketplaces;

##### *Amendment*

(9) ‘economic operator’ means any natural or legal person or public entity or group of such persons and/or bodies which **makes available** regulated explosives precursors or services related to regulated explosives precursors, on the market, either off- or online and including online marketplaces;

Or. en

## **Amendment 3**

### **Proposal for a regulation**

#### **Article 6 – paragraph 5**

##### *Text proposed by the Commission*

5. The competent authority may suspend or revoke the licence where there are reasonable grounds for believing that the conditions under which the licence was granted are no longer fulfilled.

##### *Amendment*

5. The competent authority may suspend or revoke the licence where there are reasonable grounds for believing that the conditions under which the licence was granted are no longer fulfilled. **The competent authority shall inform licence holders of any suspension or revocation of their licenses in due time.**

Or. en

## Amendment 4

### Proposal for a regulation Article 6 – paragraph 7 a (new)

*Text proposed by the Commission*

*Amendment*

**7a. Mutual recognition of the licences issued by other Member States shall be done bilaterally by means of agreements among the competent authorities;**

Or. en

## Amendment 5

### Proposal for a regulation Article 6 – paragraph 9

*Text proposed by the Commission*

*Amendment*

9. Licences issued by a Member State in accordance with Article 7 of Regulation (EC) No 98/2013 which are still valid on [the day of entry into application of this Regulation] shall lose their validity on that date. Each Member State may decide, upon request of the licence holder, to confirm, renew or prolong such licences issued in that Member State if the restricted explosives precursors can be subject to a license in accordance with the limit values set out in column 3 of Annex I and if the competent authority considers that the requirements for granting the licence as referred to in paragraph 1 are met. Such confirmation, renewal or prolongation should respect the time limit set in paragraph 3 of this Article.

9. Licences issued by a Member State in accordance with Article 7 of Regulation (EC) No 98/2013 which are still valid on [the day of entry into application of this Regulation] shall lose their validity on that date. **By ... [6 months after the date of entry into force of this Regulation], the competent authorities shall notify licence holders of the date on which their licences will cease to be valid.** Each Member State may decide, upon request of the licence holder, to confirm, renew or prolong such licences issued in that Member State if the restricted explosives precursors can be subject to a license in accordance with the limit values set out in column 3 of Annex I and if the competent authority considers that the requirements for granting the licence as referred to in paragraph 1 are met. Such confirmation, renewal or prolongation should respect the time limit set in paragraph 3 of this Article.

Or. en



## Amendment 6

### Proposal for a regulation

#### Article 7 – paragraph 1

##### *Text proposed by the Commission*

1. An economic operator who makes available a **restricted** explosives precursor to another economic operator shall inform that economic operator that the acquisition, possession or use of that **restricted** explosives precursor by members of the general public is subject to a restriction as set out in Article 5(1) and (3).

##### *Amendment*

1. An economic operator who makes available a **regulated** explosives precursor to another economic operator shall inform that economic operator that the acquisition, possession or use of that **regulated** explosives precursor by members of the general public is subject to a restriction as set out in Article 5(1) and (3) **and to the reporting obligations set out in Article 9.**

Or. en

##### *Justification*

*‘Restricted’ substances are listed in Annex 1, while ‘reportable explosive substances’ are included under Annex 2. The proposed amendment clarifies that the obligation to report on suspicious transactions covers both groups of substances in accordance with Article 9.*

## Amendment 7

### Proposal for a regulation

#### Article 7 – paragraph 3

##### *Text proposed by the Commission*

3. An online marketplace that acts as an intermediary shall take measures to ensure that its users, when making available **restricted** explosives precursors through its services, are informed of their obligations pursuant to this Regulation.

##### *Amendment*

3. An online marketplace that acts as an intermediary shall take measures to ensure that its users, when making available **regulated** explosives precursors through its services, are informed of their obligations pursuant to this Regulation.

Or. en

##### *Justification*

*This amendment extends the information obligation of online marketplaces to regulated substances (Annex II)*

## Amendment 8

### Proposal for a regulation

#### Article 7 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**3a.** *In order to minimise the risk of counterfeit licences, national competent authorities may give economic operators dealing with the regulated substances access to an electronic database to check the authenticity of a licence on the basis of a hit/no hit request.*

Or. en

## Amendment 9

### Proposal for a regulation

#### Article 7 – paragraph 3 b (new)

*Text proposed by the Commission*

*Amendment*

**3b.** *Any professional or personal use of the regulated explosives precursors by economic operators shall be prohibited.*

Or. en

## Amendment 10

### Proposal for a regulation

#### Article 8 – paragraph 3

*Text proposed by the Commission*

*Amendment*

3. For the purpose of verifying compliance with this Regulation and detecting and preventing the illicit manufacture of explosives, economic operators shall retain the data referred to in paragraph 2, **together with** the name and address of the customer, for one year from the date of transaction. During that period, the data shall be made available for

3. For the purpose of verifying compliance with this Regulation and detecting and preventing the illicit manufacture of explosives, economic operators shall retain the data referred to in paragraph 2, the name and address of the customer, **and a copy of the licence** for one year from the date of transaction. During that period, the data shall be made

inspection at the request of the competent inspection authorities or law enforcement authorities.

available for inspection at the request of the competent inspection authorities or law enforcement authorities.

Or. en

### *Justification*

*The inclusion of this online marketplaces that act as an intermediary is necessary to avoid critical security gap.*

## **Amendment 11**

### **Proposal for a regulation**

#### **Article 9 – paragraph 1 – subparagraph 1**

##### *Text proposed by the Commission*

For the purpose of detecting and preventing the illicit manufacture of explosives, economic operators shall report transactions concerning regulated explosives precursors, including transactions involving professional users, where there are reasonable grounds for suspecting that the substance or mixture is intended for the illicit manufacture of explosives.

##### *Amendment*

For the purpose of detecting and preventing the illicit manufacture of explosives, economic operators ***and online marketplaces acting as an intermediary*** shall report transactions concerning regulated explosives precursors, including transactions involving professional users, where there are reasonable grounds for suspecting that the substance or mixture is intended for the illicit manufacture of explosives.

Or. en

## **Amendment 12**

### **Proposal for a regulation**

#### **Article 9 – paragraph 1 – subparagraph 2 – introductory part**

##### *Text proposed by the Commission*

Economic operators shall report such suspicious transactions after having regard to all the circumstances and in particular where the prospective customer displays one or more of the following:

##### *Amendment*

Economic operators ***and online marketplaces acting as an intermediary*** shall report such suspicious transactions after having regard to all the circumstances and in particular where the prospective customer displays one or more of the

following:

Or. en

### Amendment 13

#### Proposal for a regulation Article 9 – paragraph 2

*Text proposed by the Commission*

2. Economic operators, **other than** online marketplaces that act as an intermediary, shall have ***in place*** procedures to detect suspicious transactions, targeted to the environment in which the regulated explosives precursors are offered.

*Amendment*

2. Economic operators **and** online marketplaces that act as an intermediary shall have procedures ***in place*** to detect suspicious transactions, targeted to the environment in which the regulated explosives precursors are offered.

Or. en

*Justification*

*The inclusion of online marketplaces that act as an intermediary is necessary to avoid critical security gaps.*

### Amendment 14

#### Proposal for a regulation Article 9 – paragraph 3

*Text proposed by the Commission*

3. Economic operators may refuse the suspicious transaction and shall report the suspicious transaction or attempted transaction within **24** hours, including if possible the identity of the customer, to the national contact point of the Member State where the suspicious transaction was concluded or attempted.

*Amendment*

3. Economic operators **and online marketplaces that act as an intermediary** may refuse the suspicious transaction and shall report the suspicious transaction or attempted transaction within **12** hours, including if possible the identity of the customer, to the national contact point of the Member State where the suspicious transaction was concluded or attempted. ***Should an economic operator or online marketplace that acts as an intermediary be unable to report within 12 hours, it***

*shall report without undue delay.*

Or. en

## **Amendment 15**

### **Proposal for a regulation**

#### **Article 10 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall provide training for law enforcement, first responders and customs authorities to recognise regulated explosives precursors substances and mixtures during the course of their duties and to react in a timely and appropriate manner to suspicious activity.

*Amendment*

1. Member States shall provide training for law enforcement, first responders and customs authorities to recognise regulated explosives precursors substances and mixtures during the course of their duties and to react in a timely and appropriate manner to suspicious activity. ***Member States may request additional specific trainings from the European Union Agency for Law Enforcement Training (CEPOL).***

Or. en

## **Amendment 16**

### **Proposal for a regulation**

#### **Article 10 – paragraph 2**

*Text proposed by the Commission*

2. Member States shall organise, at least ***twice*** a year, awareness-raising actions, targeted to the specificities of each different sector using regulated explosives precursors.

*Amendment*

2. Member States shall organise, at least ***once*** a year, awareness-raising actions, targeted to the specificities of each different sector using regulated explosives precursors.

Or. en

## Amendment 17

### Proposal for a regulation Article 10 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a.** *Economic operators shall be responsible for providing information to their staff on the manner in which explosives precursors are to be made available under this Regulation and for raising staff awareness in this regard.*

Or. en

## Amendment 18

### Proposal for a regulation Article 11 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**3a.** *Each Member States shall be invited to set up an electronic register containing a comprehensive list of economic operators making available regulated explosives precursors on its territory in order to facilitate the inspections and controls under this Article;*

Or. en

## Amendment 19

### Proposal for a regulation Article 22 – paragraph 1

*Text proposed by the Commission*

*Amendment*

*No sooner than [six years after the date of application of this Regulation], the Commission shall carry out an evaluation of this Regulation **and** present a report on*

The Commission shall carry out an evaluation of this Regulation *by ... [3 years after the entry into force of this Regulation]. It shall* present a report on

the main findings to the European Parliament, the Council and the European Economic and Social Committee. The evaluation shall be conducted according to the Commission's better regulation Guidelines.

the main findings to the European Parliament, the Council and the European Economic and Social Committee. The evaluation shall be conducted according to the Commission's better regulation Guidelines.

Or. en

### *Justification*

*In the light of the importance of an effective system for the security of citizens, the time frame for the evaluation should be revised and shortened.*

## **Amendment 20**

### **Proposal for a regulation Annex I – paragraph 1**

#### *Text proposed by the Commission*

Substances which shall not be made available to, or introduced, possessed or used by, 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 column 2.

#### *Amendment*

Substances which shall not be made available to, or introduced, possessed or used by, 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 column 2, ***and for which suspicious transactions are to be reported within 12 hours.***

Or. en

## **Amendment 21**

### **Proposal for a regulation Annex II – paragraph 1**

#### *Text proposed by the Commission*

Substances on their own or in mixtures for which suspicious transactions ***shall*** be reported

#### *Amendment*

Substances on their own or in mixtures for which suspicious transactions ***are to*** be reported ***within 12 hours.***

Or. en

## **Amendment 22**

### **Proposal for a regulation Annex III – table – point 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***5a. Indicate whether the precursor(s) are intended to be introduced or used (or both) in a Member State different from that issuing this license or outside of the European Economic Area***

***( ) Yes***

***( ) No***

***Address:***

***Timeframe for the introduction or use (or both) of precursor(s):***

Or. en

## **Amendment 23**

### **Proposal for a regulation Annex III – table – point 5a (new)**

*Text proposed by the Commission*

*Amendment*

***5a. Indicate whether the precursor(s) are intended to be made available for sale in offline or online marketplaces.***

***( ) Yes***

***( ) No***

***Name of the marketplace:***

***Address:***

Or. en



## EXPLANATORY STATEMENT

The marketing and use of explosive precursors is currently governed by the Regulation (EU) No. 98/2013. This regulation establishes partly harmonized rules that restrict placing on the market of chemical substances such as hydrogen peroxide and nitric acid (and mixtures that contain them). It provides for a general prohibition on the possession and use of these chemicals for the 'general public', but Member States are entitled to grant controlled access for a legitimate intended use, by establishing a national licencing or registration regime. Economic operators that place such substances on the market are required to label them and to report suspicious transactions to the national contact points. The mentioned restrictions and obligations do not apply to professional users.

A Commission performed a REFIT ex-post evaluation on the implementation of Regulation (EU) No. 98/2013 by Member States. This evaluation identified several weaknesses, such as the great variation of licencing/registration regimes in different Member States; confusion on the part of the economic operators as to which products exactly fall under the scope of the regulation; and problems with monitoring internet sales, imports and intra-EU movements by the national authorities.

On 17 April 2018, the Commission submitted this new proposal (repealing Regulation 98/2013) in order to address the existing deficits, based on This proposal is part of a 'security package', aiming at better protecting European citizens against terrorism and other forms of serious crime. It aims at closing the identified 'significant gaps'. The main elements of the new proposal include the discontinuation of the registration regime, clarifying definitions such as economic operators, members of the general public (by also including legal persons) and the obligation for economic operators to verify licences upon sale (explanatory memorandum, pp. 10-17).

The **general** objectives are to

1. ensure the functioning of the internal market, preventing distortion of competition or trade barriers (IA, p. 21).
2. ensure a high level of security through measures to prevent and combat crime;

The **specific** objectives are to:

1. further restrict access to certain explosives precursors and strengthen controls;
2. align restrictions and controls with the evolving threats regarding explosives precursors;
3. increase enforcement of the regulation by the competent authorities;
4. improve the transmission of information and compliance along the supply chain;
5. facilitate intra-EU trade and prevent distortion of competition;
6. improve the clarity of the regulation and ensure uniformity in its application (IA, p. 21).

### Position of the Rapporteur

The Rapporteur welcomes the Commission's proposal for a regulation on explosive precursors (COM(2018) 209 final - 2018/0103 (COD)). The fact that in 2015 and 2016 homemade explosives were used in approximately 40% of terrorist attacks committed in the European Union demonstrate the need to close existing gaps in order to reduce the possibilities of accessing highly dangerous substances. However, the Rapporteur considers

that there are some aspects of the Commission's proposal that could be further improved in particular with respect to clarifications and specifications.

Finally, the Rapporteur recommends to endorse the proposed amendments and to forward the modified proposal for adoption to the plenary.