

# Regulation 98/2013 on the marketing and use of explosives precursors

*This briefing is one in a series of 'implementation appraisals', produced by the European Parliamentary Research Service (EPRS), on the operation of existing EU legislation in practice. Each briefing focuses on a specific EU law which is likely to be amended or reviewed, as envisaged in the European Commission's annual work programme. 'Implementation appraisals' aim at providing a succinct overview of publicly available material on the implementation, application and effectiveness to date of specific EU law, drawing on input from EU institutions and bodies, as well as external organisations. They are provided by the Ex-Post Evaluation Unit of EPRS, to assist parliamentary committees in their consideration of new European Commission proposals, once tabled.*

## SUMMARY

Explosives precursors are chemical substances that can be (and have been) misused to manufacture homemade explosives (HMEs). [Regulation 98/2013](#)<sup>1</sup> on the marketing and use of explosives precursors, applicable since September 2014, has two general aims: to increase public security through a reduced risk of misuse of explosives precursors for the manufacture of HMEs and, at the same time, to enable the free movement of explosives precursor substances in the EU internal market, given their many legitimate uses. The regulation establishes a system of restrictions and controls on a number of explosives precursors with the aim of limiting the general public's access to these substances. The regulation also establishes an obligation for economic operators to report suspicious transactions, disappearances and thefts of explosives precursors.

Evidence collected through the Commission's evaluation and stakeholder consultation confirms the existence of significant challenges related to the application of the regulation. These include a fragmented landscape of restrictions and controls across Member States (which apply an outright ban, a licensing or a registration regime, or a combination of these); insufficient awareness along the supply chain about rules and obligations arising from the regulation; and a lack of clarity about certain provisions that focus particularly on the identification of products that fall within the scope of the regulation and the identification of legitimate/professional users. Lack of clarity as to the application of the regulation to online marketplaces is yet another problem, given the absence of an explicit reference to e-commerce in the regulation. Non-inclusion of all threat substances in the list of restricted explosives precursors is seen as yet another important challenge, and so is the perceived inflexibility of the procedure for adding new threat substances to the list, especially in view of the need to react quickly to new and evolving threats.

In light of the above, in April 2018 the European Commission put forward a [proposal](#) for a new regulation, accompanied by an [impact assessment](#) and an evaluation.

## 1. Background

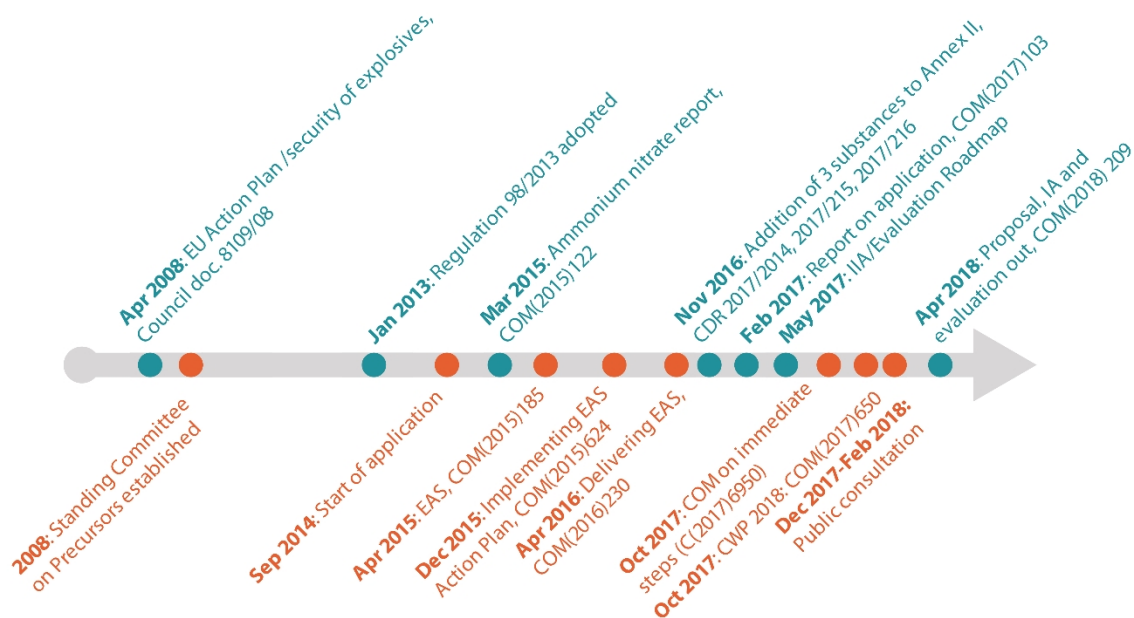
This briefing examines the implementation of Regulation 98/2013 on marketing and use of explosives precursors (hereafter referred to as 'the regulation').

Explosives precursors are chemical substances that can be misused to manufacture homemade explosives (HMEs) and as such present a security threat to the EU. Homemade explosives were used in the majority of terrorist attacks in the EU, including those in Paris in 2015, in Brussels in 2016 and in Manchester in 2017. At the same time, these chemical substances have broad legitimate uses: lower concentrations are found in 'printer ink cartridges, disinfectants, fuels, pesticides, shampoos, carpet cleaners and nail polish removers [and] higher concentrations are used in industrial settings to treat metal surfaces, coat products and produce pharmaceuticals'.<sup>2</sup> Therefore these substances, or mixtures containing them, need to be available to professional users for their legitimate use.<sup>3</sup>

Regulation 98/2013 was adopted with the two-fold aim of reducing the risk of misuse of the substances used for the manufacture of HMEs (security), while at the same time enabling the free movement of these substances in the EU internal market for their legitimate use (internal market).

The 2018 [evaluation](#)<sup>4</sup> of the regulation by the European Commission found that the application of the existing regulation was only the first step towards achieving both the security and the internal market aims, and that significant challenges existed. Notably, concerning the security aspect, it found that the existing restrictions did not fully prevent explosives precursors from being accessed and misused for the manufacture of HMEs. On the other hand, it noted that economic operators faced a number of obstacles to the free movement of explosives precursors in the internal market.

On 17 April 2018, the Commission adopted a [proposal](#)<sup>5</sup> for a new regulation, accompanied by an [impact assessment](#) and the above-mentioned evaluation. Earlier EU-level actions and the policy context related to explosives precursors are presented in some detail in the Commission impact assessment and the annexed evaluation,<sup>6</sup> and are therefore omitted from this section. The graphic below provides a simple overview of the important milestones with regard to the regulation of explosives precursors in the EU.



## 2. Overview of the current legislation

The regulation establishes a **system of restrictions and controls** aimed at limiting the availability of a number of explosives precursors to the general public and at ensuring appropriate **reporting of suspicious transactions**, significant disappearances and thefts through the supply chain.

Explosives precursor substances are divided into two groups, listed in Annex I and Annex II to the regulation. **Seven restricted explosives precursors (Annex I)** cannot be made available and cannot be introduced, possessed or used by members of the general public, either on their own or in mixtures or

substances including them, except when a Member State maintains a licensing or registration regime.<sup>7</sup> **Eleven other substances (Annex II)** are not restricted in the same way but are subject to an obligation to report suspicious transactions, significant disappearances and thefts (this reporting obligation also covers substances included in Annex I).

#### Annex I – seven restricted explosives precursors (REPs)

'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 Annex I]'. These are:

- Hydrogen peroxide\*, limit value 12 % weight for weight (w/w) (exception Article (4)(3)(a) 35 % w/w)
- Nitromethane\*, limit value 30 % w/w (exception Article (4)(3)(b) 40 % w/w)
- Nitric acid\*, limit value 3 % w/w (exception Article (4)(3)(c) 10 % w/w)
- Potassium chlorate, limit value 40 % w/w
- Potassium perchlorate, limit value 40 % w/w
- Sodium chlorate, 40 % w/w
- Sodium perchlorate, 40 % w/w

Article 4(1) stipulates that REPs (Annex I) shall not be made available to, or introduced, possessed or used by, member of the general public. Two exceptions are provided for under certain circumstances:

A licensing regime: Member States may maintain or establish a licensing regime allowing REPs to be made available to, or to be possessed or used by members of the general public in possession of the relevant licence (Article 4(2)). Further provisions for such a licensing regime are given in Article 7.

A registration regime: With regard to the first three substances in Annex I (*marked with an asterisk in the list above*), a Member State may maintain or establish a registration regime allowing them to be made available to, or to be possessed or used by, members of the general public, in concentrations higher than those stipulated in the annex but lower than those given in Article (4)(3)(a)(b)(c) respectively. The condition here is that the economic operator who makes them available needs to register each transaction in accordance with the detailed arrangements given in Article 8.

Finally, as to the process of amending Annex I, the only way that new substances can be added to or existing ones deleted from the annex is by amending Regulation 98/2013 under the ordinary legislative procedure (formerly the co-decision procedure (COD)) (Article 18(3), Recital 28). On the other hand, the Commission can amend the concentration limit values given in the annex through the adoption of delegated acts (Articles 12, 14 and 15, Recital 27).

In addition to substances listed in Annex I, the regulation identifies a number of other substances that pose security concerns in Annex II. These are difficult to control in a similar manner to the substances under Annex I since, 'in addition to their professional use, they are widely used in common consumer products within a vast supply chain'.<sup>8</sup> Internal market considerations play a role here, as explained in Recital 21: 'A regulation ... restricting sales to the general public of [Annex II] substances would result in disproportionately high administrative and compliance costs for consumers, public authorities and businesses. Nevertheless... measures should be adopted to facilitate the reporting of suspicious transactions in respect of [Annex II substances]'.<sup>9</sup>

#### Annex II – eleven substances (originally eight, plus three substances added in 2017)

'Substances on their own or in mixtures or in substances for which suspicious transactions shall be reported'. These are:

- Hexamine (fuel tablets)
- Sulphuric acid
- Acetone
- Potassium nitrate
- Sodium nitrate
- Calcium nitrate
- Calcium ammonium nitrate
- Ammonium nitrate<sup>10</sup>
- Aluminium, powders<sup>11</sup>
- Magnesium nitrate hexahydrate<sup>12</sup>
- Magnesium, powders<sup>13</sup>

Article 9 obliges economic operators to report suspicious transactions, disappearances and thefts of the substances listed in both annexes to the designated national focal points (NFPs).

As regards suspicious transactions, economic operators are obliged to report when they have reasonable grounds to believe that the concluded or attempted transaction involving one or more substances is intended for the illicit manufacture of explosives. Article 9(3) provides guidance as to what may constitute a 'suspicious transaction'. Further guidance on how to identify a suspicious transaction is provided in the Commission's guidelines issued in accordance with Article 9(3)(5).<sup>14</sup>

Finally, as regards the process of amending Annex II, the Commission can add new substances to it through the adoption of delegated acts (Article 12, Recital 27). But the only way to delete existing substances under Annex II is by amending Regulation 98/2013 through the COD procedure (Recital 28).

The regulation contains a two-part '**review**' clause.

1. **Article 18(1)** requires that the Commission present a **report** to the co-legislators by **2 September 2017** (i.e. three years after the application date), examining any problems that may have arisen as a result of the **application of the regulation**, and also examining the desirability and feasibility of:

- further strengthening and harmonising the system;
- extending the scope of the regulation to include professional users;<sup>15</sup>
- including non-scheduled explosives precursors in Annex II.

2. Article 18(2) requires that the Commission present a report to the co-legislators by 2 March 2015, examining the possibilities to transfer relevant provisions on ammonium nitrate from Regulation 1907/2006 to Regulation 98/2013.

The two reports drawn up in line with the above obligations are discussed in Section 3 below.

### 3. EU-level reports, evaluations and studies

This section summarises the findings presented in the Commission's April 2018 **evaluation**<sup>16</sup> of the regulation and in two earlier Commission reports: the **report** from February 2017<sup>17</sup> on the **application** of the regulation and the more specific **report** from March 2015<sup>18</sup> related to the possible transfer of **ammonium nitrate** provisions from Regulation 1907/2006 to Regulation 98/2013. The section also includes the findings contained in two other relevant publications: the Europol Terrorism Situation and Trend Reports (TE-SAT) from **2016**<sup>19</sup> and **2017**.<sup>20</sup>

Among these publicly available sources on (or related to) the regulation's implementation, the April 2018 evaluation provides the most comprehensive overview and is therefore examined in some detail below.

Finally, it should be noted that the **2018 external study**<sup>21</sup> that helped inform the Commission's evaluation (and related **impact assessment**), was not publicly available at the time of writing of this briefing. While legitimate security-related concerns might have prevented this study from being made publicly available,<sup>22</sup> it ought to be expected that it be made available to the co-legislators in advance of their consideration of the proposal, to enable them to take into account all relevant evidence at hand.<sup>23</sup>

#### 3.1. European Commission evaluation and reports

##### Evaluation from 17 April 2018

The Commission published its **evaluation**<sup>24</sup> of the existing regulation on 17 April 2018, together with its **impact assessment** and its **proposal** for a new regulation to replace the existing one.

The evaluation presents the most comprehensive publicly available overview of the functioning of the regulation to date. The only earlier Commission report on the application of the regulation (from February 2017) generally refrained from making any conclusive findings in view of the insufficient time since the application of the regulation. This earlier report was more an announcement of the measures that the Commission intended to take in the planned review of the regulation than a report on the application of the regulation.<sup>25</sup>

The ex-post evaluation of the existing regulation and the ex-ante impact assessment that fed into the proposal for a new regulation appear to have been conducted simultaneously. While this is not in line with the 'evaluate first' principle (whereby, ideally, the evaluation is performed before the impact

assessment to enable the results of the evaluation to feed into the impact assessment), the Commission's Better Regulation Toolbox allows for what are known as **'back-to-back' evaluations**, i.e. those undertaken in parallel with impact assessments.<sup>26</sup>

### Key findings

The evaluation finds that the regulation 'has been a key factor to reducing access to dangerous explosives precursors which can be misused to manufacture [homemade explosives] and to preventing terrorist attacks in Europe'.<sup>27</sup> The amount of explosives precursors available on the market in the EU has decreased and the detection of potential threats posed by, and misuse of available explosives precursors has increased. However, recent attacks and incidents involving explosives precursors are **evidence of 'the continuous misuse of explosives precursors'**.<sup>28</sup> Furthermore, the positive effects of the regulation on the **internal market** appear to be limited (free movement of relevant substances across intra-EU borders is sometimes difficult in view of the **different regimes in some Member States**).

Among the **key challenges** arising from the application of the regulation (pp. 89-91), the evaluation notes the following:

- An insufficient level of harmonisation: Economic operators conducting business in several Member States face obstacles with regard to the free movement of explosives precursors **in the internal market**, because **national control regimes vary significantly** (ban/licensing/restrictions or a combination of two). Such economic operators need to be familiar with the regimes in all of the Member States where they operate, and to ensure their compliance with these regimes. This situation is problematic not only with respect to the internal market, but also because it poses a possible security concern.
- Determining **who is eligible to purchase** explosives precursors (and who is not) appears to be difficult: The regulation provides **no definition** for a **'professional user'** (i.e. a person eligible to purchase restricted substances). Consequently, it is difficult for retailers to identify legitimate (and non-legitimate) users at a point of sale, and hence to comply with Article 9 on reporting obligations of suspicious transactions.
- **Identifying the products** that fall within the scope of the regulation appears to be difficult: This challenge relates to the provisions on **labelling set out in Article 5**. On the one hand, it appears difficult for retailers to identify products containing explosives precursors in concentrations above the limits specified in the regulation (especially when they are an ingredient of a product and not a single-substance product) and, consequently, to affix the appropriate label or to verify that the appropriate label is affixed as required by Article 5. There seems to be a **lack of clarity** on who is **responsible for labelling** (**retailers** consider the **manufacturers** as responsible for identifying and labelling the products concerned).
- Along the supply chain, the **level of awareness** about the rules and obligations arising from the regulation **varies considerably** among Member States and poses a security concern.
- Security concerns with regard to **online sales**, given the reportedly wide availability of and insufficient control over online transactions involving explosives precursors: The evaluation notes a shift towards online sales after the regulation started being applied.<sup>29</sup> Explosives precursors are reportedly more widely available on the internet than in physical markets. Furthermore, the evaluation notes a lack of clarity as to the application of the regulation to online marketplaces, given the **absence of any explicit reference to e-commerce in its provisions**. An assessment carried out on a number of online retailers revealed that 'an important number of the assessed online retailers allow for an easy access to explosives precursors with no mention of the Regulation, no requirement for a registration account, no check of identity and address of the requester'.<sup>30</sup> Online retailers in turn face several problems that have already been mentioned above, such as identifying what products fall within the scope of the regulation, recognising the traits of a suspicious transaction, and handling large amounts of data.

The evaluation was conducted according to the five usual **evaluation criteria: relevance, effectiveness, efficiency, coherence and EU added value**.

In terms of **relevance**, the evaluation finds that the regulation **remains relevant** to the current EU security context (misuse and attempted misuse of explosives precursors for manufacturing homemade



explosives). It includes (either in Annex I/restrictions or in Annex II/reporting) substances used in the majority of terrorist attacks (e.g. in TATP and HMTD explosives<sup>31</sup>). However, the evaluation finds that the regulation is not fully relevant to existing or future security needs. Currently, the regulation **does not restrict all substances** that have been used in the past for manufacturing HMEs (e.g. sulphuric acid, ammonium nitrate or metal powders). The only place where these substances feature is in Annex II (reporting provisions) to the regulation. As to future security needs, the evaluation finds that the current **provisions for adding new substances to Annex I** (restricted explosives precursors)<sup>32</sup> are **not flexible enough** to take into account the changing risk landscape and the necessity 'to accommodate developments in the misuse of substances as explosives precursors'.<sup>33</sup> Finally, the evaluation finds that the regulation's relevance is limited, in so far as it does not cover all parties concerned or **provide clear provisions on all of them** (legal entities with no legitimate use for explosives precursors, professional users, economic operators and online retailers). Furthermore, the regulation **lacks provisions on transport and storage** (which are of relevance to the economic operators' obligation to report significant disappearances and thefts, as set out in Article 9(4)).

As regards **effectiveness**, the evaluation finds that the regulation has had the effect of limiting the overall availability of explosives precursors to the general public.

On the subject of the control regimes, the evaluation notes that different Member States have chosen a **variety of control regimes**: outright bans, licensing regimes, registration regimes or a combination of all of these.<sup>34</sup>

Concerning **licensing regimes**, the evaluation notes significant variations among those Member States that apply a licensing regime, including a number of applications, a licence-requesting process, criteria for granting a licence, and licence validity. Nonetheless, the evaluation notes that the licensing regimes have been assessed by those Member States as an **overall effective method** offering a balance between the need to protect and safeguard consumer choice and legitimate use'.<sup>35</sup> Reportedly, the licensing regime has **affected a very limited number of users** (fewer than 1 000 licences have been requested and fewer than 500 licences have been granted in those Member States, with the proportion of licences granted compared to the number of requests showing significant variations – from 1 % to 86 %). The availability of an alternative in the form of non-restricted lower concentration substances was among the main reasons for rejecting licence applications.<sup>36</sup>

The evaluation finds that **registration regimes** 'may have been **less effective** than licensing in controlling access to restricted explosives precursors'. It appears that, despite the fact that Member States with a registration regime have more homogenous rules on the registration of transactions in comparison with the above-mentioned variety of licensing rules, economic operators in these Member States seem to face bigger **challenges** in terms of **compliance**. Robust controls and inspections needed for the enforcement of the registration regimes are reportedly not carried out systematically.

Finally, while presumably an outright **ban** would have been effective in limiting the overall availability of explosives precursors to the general public, it would have been useful for comparison purposes had the evaluation provided more details on the experiences from those Member States that maintain a full ban regime.<sup>37</sup>

Concerning the effectiveness of controls on **online sales**, the evaluation notes that 'the issue of availability of restricted substances in online marketplaces has **not been effectively regulated**'.<sup>38</sup>

Overall, the regulation appears to have been **effective in its objective of limiting the availability** of explosives precursors to the general public across the EU, with one significant **exception** – explosives precursors remain easily available **online**.<sup>39</sup> As for **improving detection of the potential threat and misuse** of explosives precursors, the evaluation notes that there has been an increase in information-sharing regarding suspicious transactions. At the same time, the evaluation notes that reporting of suspicious transactions remains a challenge due to a **lack of awareness** about the rules and obligations concerning the supply chain, which is complex and large, and to difficulties in ascertaining who the **legitimate users** eligible to purchase explosives precursors are, and in **identifying what products** fall within the scope of the regulation. Finally, concerning the **objective of improving the free movement of explosives precursors** within the EU, the evaluation finds that the regulation 'has contributed to a **low or very low** extent to the smooth movement of explosives precursors within the internal market'.<sup>40</sup>

With regard to **efficiency**, the evaluation notes that the main costs economic operators incur are related to their **reporting activities** (ranging between €96 and €368 million, with a best estimate of €232 million) and the **training of staff** (ranging between €4.6 million and €29.9 million, best estimate €17.3 million). **Labelling** activities are widely considered burdensome given the above-mentioned lack of clarity, and different interpretations among manufacturers and retailers regarding the obligations for labelling the relevant products. The costs for economic operators conducting business across the EU (and thus having to comply with different regimes in different Member States) have not been specified in any detail. As for the costs incurred by public authorities, the most burdensome are those related to the **registration and processing of licensing applications**. However, the registration regime is perceived as less cost-effective than the licensing and ban regimes, given that it incurs costs for economic operators (who have to register transactions) and for national authorities (which have to carry out inspections). In addition, the benefits of the registration regime are deemed to be fewer given its reactive nature (the purchase of explosives precursors, the manufacture of HMEs, and a terrorist act itself, can occur before the registration list reaches the national authorities/law enforcement bodies and is acted upon).

The evaluation notes that **reducing the number of regimes** and **clarifying labelling** obligations seem to be key in simplifying/cost-saving measures. In particular, the evaluation finds that the licensing regime has contributed to promoting alternative substances and lower concentrations.<sup>41</sup>

With regard to the **coherence criterion**, the evaluation finds that there is complementarity between the regulation and other relevant EU legislation, with no major inconsistencies or overlaps (although some differences in terminology and definitions exist). The only notable exception is **ammonium nitrate**, which is regulated in different aspects by both this regulation and the REACH Regulation.<sup>42</sup>

Finally, the evaluation finds that, in comparison with the situation prior to 2014,<sup>43</sup> the regulation has 'made the **first step**' towards the harmonisation of measures. Without the regulation, 'it is reasonable to assume that explosives precursors that are currently restricted would have continued to be widely available to the general public'.<sup>44</sup> At the same time, the evaluation notes that the overall **EU added value** (for both security and internal market) 'appears to be **limited by the fragmentation of restrictions and control regimes** across the EU and the **insufficient level of awareness** along the supply chain'.<sup>45</sup>

## European Commission report on the application of the regulation, February 2017

This [report](#)<sup>46</sup> is based on the provisions set out in **Article 18(1)**, which oblige the Commission to **present a report** to the co-legislators **examining** the following aspects:

- any **problems** that have arisen from the application of the regulation;
- the desirability and feasibility of **further strengthening and harmonising the system**;
- the desirability and feasibility of extending the scope of the regulation to cover **professional users**;
- the desirability and feasibility of **including non-scheduled explosives** precursors in the provisions on reporting of suspicious transactions, disappearances and thefts.

Overall, the report finds that the regulation 'has contributed to reducing the threat posed by explosives precursors in Europe'.<sup>47</sup> Namely, the amount of explosives precursors on the market has decreased and the capacity of law enforcement to investigate incidents involving explosives precursors has increased.

The report notes the considerable diversity in how Member States apply the regulation's core articles. Some 12 Member States maintain bans in accordance with Article 4(1), thus not allowing members of the general public any access to restricted explosives precursors, while 16 Member States have licensing and/or registration regimes in place, through which restricted explosives precursors can be made available to members of the general public under certain conditions. In view of this, the report notes that 'there is **no EU-level consensus** over **whether restricted explosives precursors should be banned or made available in a controlled way**'.<sup>48</sup> Furthermore, licensing and registration systems differ greatly between Member States, leading to different outcomes (e.g. percentage of licences granted and denied). Finally, mutual recognition of each other's licences appears to be non-existent.

The report notes that it is '**still too early to draw conclusions**'<sup>49</sup> on many important aspects of the regulation and that it is 'not yet possible to assess in more detail the impact of the Regulation'.<sup>50</sup> Indeed, rather than providing an examination of the regulation as per the requirements in Article 18(1), the

**report often focuses on the steps the Commission intends to take in the future**, in particular when responding to **Article 18(1) subparagraphs (b), (c) and (d)**.<sup>51</sup> As to the findings in response to **Article 18(a)** on problems that have arisen from the application of the regulation, these are presented briefly below.

The two main challenges faced by Member States involve **enforcing restrictions** in view of the large number of operators affected (the **large supply chain** includes, among others, manufacturers, retailers, big and small companies and internet sellers), and enforcing restrictions and controls on **internet sales, imports and intra-EU movements**.

Economic operators, especially retailers having to comply with the provisions on **labelling** set out in Article 5, face other challenges: 'When [labelling] is not done early on in the supply chain, it is difficult for [retailers] to properly verify that the label is affixed and that the restriction applies'.<sup>52</sup> Further challenges for retailers doing business in several Member States include the **diversity of national regimes** they need to comply with. Retailers also face difficulties in differentiating between '**professional users**' and 'members of the general public', given the lack of clarity as to who qualifies as a professional.

Finally, the challenge for the Commission is to keep abreast of the **changing security situation** and to react promptly whenever the need for including new substances or new concentrations of existing substances arises.

### European Commission report on ammonium nitrate, March 2015

This [report](#)<sup>53</sup> was produced as per **Article 18(2)**, which requires that the Commission present a report to the co-legislators **by 2 March 2015** examining the **possibilities to transfer** relevant **provisions on ammonium nitrate** from Regulation 1907/2006 (REACH) into the regulation examined here. The report explains the presence of ammonium nitrate in both regulations and gives an overview of the lack of consensus on this particular issue during the negotiations preceding adoption of the present regulation. The Commission notes its intention to re-examine the possibility of a transfer of relevant provisions of ammonium nitrate as part of the planned review of the regulation scheduled for 2017 under Article 18(1), in view of the short implementation time of the present regulation and in view of the probable continuing opposition to such a transfer by the Council.

## 3.2. Other relevant reports

Europol publishes annual reports on the terrorism situation and trends (TE-SAT reports). Its 2016 [report](#)<sup>54</sup> notes that homemade explosives **remain 'the most commonly used explosives in improvised explosives devices** (IEDs). Notwithstanding the easy access to bomb-making instructions on the internet, there is evidence that more expert knowledge is likely to have been transferred to terrorists through direct contact and experience. The transfer of knowledge to the EU has been facilitated by the phenomenon of foreign terrorist fighters and returnees. There are indications that some of the fighters in the conflict zones have received advanced training in manufacturing and using HMEs in IEDs.<sup>55</sup> Finally, the report points to evidence that some terrorist groups 'have tried to establish **large clandestine stockpiles of explosives precursors** in the EU for future use in large-scale bomb attacks'.<sup>56</sup> A later Europol [report](#)<sup>57</sup> notes that explosives were used in 40 % of the attacks in 2016.

## 4. European Parliament positions / MEPs' questions

This section provides an overview of selected EP resolutions and written questions by MEPs to the Commission during the current legislature, related to the issue of ILO networks.

### 4.1. TERR committee and Parliament resolutions

Being actively engaged in the security and counter-terrorism agenda, the European Parliament set up a [Special Committee on Terrorism](#) (TERR) in July 2017. The committee is expected to present, by July 2018, a final report with factual findings and recommendations on several measures and initiatives. These include:

'to identify and analyse, with impartiality and according to an evidence-based approach, the potential faults and malfunctions that have allowed recent terrorist attacks in different Member



States to occur, in particular by collecting, compiling and analysing all information available to Member States' intelligence services or law enforcement and judicial authorities about perpetrators prior to their terrorist offence'.

The Parliament has expressed its views on a broad range of terrorism-related measures in several resolutions in the past few years.<sup>58</sup> It specifically expressed its **concern** about the online availability of explosives precursors in its recent [resolution](#) on the fight against cybercrime.<sup>59</sup> The resolution noted in particular 'growing links between terrorism and organised crime' and a '**wide availability** of firearms and **explosive precursors on hidden networks**'.

## 4.2. Members' questions

Members of the European Parliament have raised the issue of terrorism and counter-terrorism measures on numerous occasions. For example, during the current parliamentary term Members have asked 726 written questions related to terrorism, but none on the specific subject of explosives precursors.

## 5. Council of the European Union

In December 2017, the Council specifically addressed the issue of explosives precursors in its [conclusions](#) on strengthening the EU response to chemical, biological, radiological and nuclear-related risks, reducing access to explosives precursors and protecting public spaces. In particular, the Council called on the Commission to 'facilitate a discussion within the Standing Committee on Precursors, including on the further use of alternative substances, the definition of a professional user and the definition and nature of inspection systems'.<sup>60</sup> It also called on Member States to report to the Commission on the effectiveness of their respective regimes (ban, licensing or registration), 'to raise awareness of the risks and responsibilities ... among all economic operators, to limit the availability of explosives precursors to the general public, strengthen cooperation at national and EU level, and proactively engage with the supply chain, and to foster more effective control through enhanced enforcement'.<sup>61</sup>

## 6. European Commission's public and stakeholder consultations

While preparing the evaluation and impact assessment, the Commission carried out an [open public consultation](#) from 6 December 2017 to 14 February 2018. The consultation garnered 83 responses, the majority from businesses and private companies. The questionnaire (a combination of evaluation- and impact assessment-related questions), the contributions received and a summary of responses are all provided on the general [webpage](#) on the consultation.

In addition, in the context of an external study for the Commission,<sup>62</sup> the contractor conducted a **targeted survey** among **national competent authorities (NCAs), national contact points (NCPs) and economic operators** from 21 December 2017 to 20 January 2018, and conducted further interviews with a selected number of NCAs, NCPs and economic operators. The results of these consultation activities are included as Annex 2 to the impact assessment.<sup>63</sup> The number of those who responded to the targeted survey appears to be rather low.<sup>64</sup> The responses to two questions, which garnered either strong agreement or strong disagreement and had a high response rate, are included below:

- In your opinion, to what extent do the issues listed below raise today a **security concern** in your country: **unauthorised internet sale of explosives precursors**? Survey feedback: 65 % (n=41) replied '**high extent**' or '**very high extent**'.
- Based on your experience, to what extent has [the regulation] contributed to... **smooth movement** of explosives precursors **within the internal market**? Survey feedback: 74 % of the economic operators (n=14) replied '**low extent**' or '**very low extent**'.

Finally, [earlier feedback](#) to the Commission's inception impact assessment garnered seven replies, some of them rather elaborate, including from retail associations, the chemical industry and distributors.<sup>65</sup>

## ENDNOTES

- <sup>1</sup> [Regulation \(EU\) No 98/2013](#) of 15 January 2013 on the marketing and use of explosives precursors.
- <sup>2</sup> Impact assessment accompanying the proposal for a regulation, [SWD\(2018\) 104](#), European Commission, 17 April 2018, p. 6.
- <sup>3</sup> Note that the majority of chemicals are traded between businesses (B2B). Trade between business and consumers (B2C) usually involves mixtures of products. See [Guidelines](#) by the European Commission and the Standing Committee on Precursors on the marketing and use of explosives precursors, 1 May 2017 version, p. 3.
- <sup>4</sup> The evaluation is presented as Annex 3 (pp. 75-110) to the impact assessment accompanying the proposal for a new regulation, [SWD\(2018\) 104](#), European Commission, April 2018.
- <sup>5</sup> Proposal for a regulation on the marketing and use of explosives precursors, amending Annex XVII to Regulation 1907/2006 and repealing Regulation 98/2013, [COM\(2018\) 209](#), European Commission, 17 April 2018.
- <sup>6</sup> Impact assessment, [SWD\(2018\) 104](#), European Commission, 17 April 2018, pp. 5-8 and 77-79.
- <sup>7</sup> Note, however, that substances under Annex I are generally available to the general public if the concentration is equal to or lower than the limit values set out in Annex I.
- <sup>8</sup> [Guidelines](#) by the European Commission and the Standing Committee on Precursors on the marketing and use of explosives precursors, 1 May 2017 version, p. 11.
- <sup>9</sup> Regulation 98/2013, recital 21.
- <sup>10</sup> For details on the inclusion of ammonium nitrate, see Recital 24 and Article 18(2) to Regulation 98/2013. See also the report pursuant to Article 18 of Regulation 98/2013, examining the possibilities to transfer relevant provisions on ammonium nitrate from Regulation (EC) 1907/2006, [COM\(2015\) 122](#), March 2015.
- <sup>11</sup> Commission Delegated Regulation 2017/214 added 'Aluminium, powders' to Annex II.
- <sup>12</sup> Commission Delegated Regulation 2017/215 added 'Magnesium nitrate hexahydrate' to Annex II.
- <sup>13</sup> Commission Delegated Regulation 2017/216 added 'Magnesium, powders' to Annex II.
- <sup>14</sup> [Guidelines](#) by the European Commission and the Standing Committee on Precursors on the marketing and use of explosives precursors, 1 May 2017 version, pp. 11-13.
- <sup>15</sup> See more on the lack of clarity about who 'professional users' are (as opposed to 'members of the general public') in Section 3.1.
- <sup>16</sup> The evaluation is presented as Annex 3 (pp. 75-110) to the impact assessment accompanying the proposal for a new regulation, [SWD\(2018\) 104](#), European Commission, April 2018.
- <sup>17</sup> Report on the application of, and delegation of power under, Regulation (EU) 93/2013 on the marketing and use of explosives precursors, [COM\(2017\) 103](#), European Commission, February 2017.
- <sup>18</sup> Report pursuant to Article 18 of Regulation (EU) 98/2013 on the marketing and use of explosives precursors, examining the possibilities to transfer relevant provisions on ammonium nitrate from Regulation (EC) 1907/2006, [COM\(2015\) 122](#), European Commission, March 2015.
- <sup>19</sup> European Union Terrorism Situation and Trend Report ([TE-SAT](#)) 2016, Europol, 20 July 2016. NB: The 2016 report covers the situation in 2015.
- <sup>20</sup> European Union Terrorism Situation and Trend Report ([TE-SAT](#)) 2017, Europol, 15 June 2017. NB: The 2017 report covers the situation in 2016.
- <sup>21</sup> Study on combatting the threat posed by explosives precursors: evaluation of the existing policy and legislative framework and preparation of an impact assessment of the possible options for a future EU initiative, by Ernst & Young, the Centre for International Legal Cooperation, and RAND Europe, 2018. This study was not available publicly or in the inter-institutional database at the time of writing of this briefing.
- <sup>22</sup> In a similar vein, the Commission notes that its [impact assessment](#) does not include all of the pertinent information, given its sensitive nature. It notes, for example, that '[t]his impact assessment report cannot provide detailed information on incidents and attacks involving explosives precursors, as this risks exposing vulnerabilities in Member States and may jeopardise ongoing investigations and prosecutions', p. 8.
- <sup>23</sup> This could be done, for example, by uploading the study to the inter-institutional database or by applying Rule 210a of the European Parliament's [Rules of Procedure](#) on the procedure for the consultation by a committee of confidential information received by Parliament.
- <sup>24</sup> The evaluation is not presented as a separate document but as Annex 3 to the impact assessment [SWD\(2018\) 104](#), pp. 75-110.
- <sup>25</sup> See section 3.1. below for a short overview of the February 2017 report.
- <sup>26</sup> For more on this, see in particular tool #52 of the Commission's Better Regulation Toolbox ([Better Regulation internal guidelines and toolbox](#), as updated in July 2017).
- <sup>27</sup> [SWD\(2018\) 104](#), p. 88.
- <sup>28</sup> *Ibid.*, p. 89.
- <sup>29</sup> *Ibid.*, p. 101. The evaluation notes that this shift follows the overall increase of online shopping but notes that it 'may be partially attributed also to the weaker controls and limited traceability of transactions'.
- <sup>30</sup> [SWD\(2018\) 104](#), p. 91.
- <sup>31</sup> TATP: triacetone triperoxide; HMTD: hexamethylene triperoxide diamine.
- <sup>32</sup> As noted earlier, new substances can be added to, or existing ones deleted from, Annex I only through amending the regulation under the ordinary legislative procedure (Article 18(3), Recital 28).
- <sup>33</sup> [SWD\(2018\) 104](#), p. 95.

- <sup>34</sup> A **map** presenting **different national regimes** applied to restrictive explosives precursors features on p 86 of the [evaluation](#).
- <sup>35</sup> [SWD\(2018\) 104](#), p. 98.
- <sup>36</sup> The evaluation noted that there was **virtually no demand for licences for five of the seven Annex I substances** – '0 to 30 applications per substance per year, for all [Member States] applying licensing regimes'. These are nitric acid, potassium chlorate, potassium perchlorate, sodium chlorate and sodium perchlorate.
- <sup>37</sup> Especially in view of the findings that in Member States applying licensing regimes, there has virtually been no demand for licences for the five of the seven substances in Annex I. As for the remaining two – hydrogen peroxide and nitromethane – the evaluation's findings indicate that lower concentrations of the two substances are in many instances considered sufficient to achieve the same result in most frequent legitimate uses (as an ingredient of a cleaning product for swimming pools and hunting trophies, and as an ingredient of fuel for model vehicles). 'Concentrations above the limits set in Annex I have not always proved to be necessary for carrying out [these legitimate] activities.' [SWD\(2018\) 104](#), p. 104.
- <sup>38</sup> *Ibid.*, p. 101.
- <sup>39</sup> *Ibid.*, p. 100.
- <sup>40</sup> *Ibid.*, p. 100.
- <sup>41</sup> The efficiency section of the evaluation could have benefited from the inclusion of further underlying evidence from the study that informed it. For example, explaining the wide ranges of costs on reporting and training of staff; clarifying the costs for economic operators who conduct business across the EU; further comparing the three regimes – licensing, registration and ban – for their efficiency (the evaluation usually limits itself to comparing the licensing with the registration regime).
- <sup>42</sup> On the inclusion of ammonium nitrate in both regulations and the examination of a possible transfer of relevant provisions on ammonium nitrate from REACH to this regulation, see more details in the Commission's March 2015 [report](#) (also examined further down in this section).
- <sup>43</sup> See [SWD\(2018\) 104](#), pp. 79-81 for a brief overview of the situation prior to the adoption of the regulation.
- <sup>44</sup> *Ibid.*, p. 107.
- <sup>45</sup> *Ibid.*, p. 109.
- <sup>46</sup> Report on the application of, and delegation of power under, Regulation (EU) 93/2013 on the marketing and use of explosives precursors, [COM\(2017\) 103](#), European Commission, February 2017. The report was due no later than 2 September 2017 (i.e. three years after the regulation became applicable) but was submitted six months before this deadline. The report combined two requirements: the one stemming from Article 18(1) on review, due by 2 September 2017, and the other one stemming from Article 14(2) on the delegation of power, due by 1 June 2017. Consequently, the period of application of the regulation that was reported on was shortened.
- <sup>47</sup> *Ibid.*, p. 5.
- <sup>48</sup> *Ibid.*, p. 3.
- <sup>49</sup> *Ibid.*, p. 4.
- <sup>50</sup> *Ibid.*, p. 5.
- <sup>51</sup> Corresponding to sections 3.2., 3.3. and 3.4. of the [COM\(2017\) 103](#) report (pp. 6-9).
- <sup>52</sup> [COM\(2017\) 103](#), European Commission, February 2017, p. 6.
- <sup>53</sup> Report pursuant to Article 18 of Regulation (EU) No 98/2013 on the marketing and use of explosives precursors, examining the possibilities to transfer relevant provisions on ammonium nitrate from Regulation (EC) 1907/2006, [COM\(2015\) 122](#), European Commission, March 2015.
- <sup>54</sup> European Union Terrorism Situation and Trend Report 2016, [\(TE-SAT\) 2016](#), Europol, 20 July 2016.
- <sup>55</sup> [TE-SAT 2016](#), Europol, 20 July 2016, p. 13.
- <sup>56</sup> *Ibid.*, p. 12.
- <sup>57</sup> European Union Terrorism Situation and Trend Report 2017, [\(TE-SAT\) 2017](#), Europol, 15 June 2017.
- <sup>58</sup> [Resolution](#) of 11 February 2015 on anti-terrorism measures; [Resolution](#) of 9 July 2015 on the European Agenda on Security; [Resolution](#) of 25 November 2015 on the prevention of radicalisation and recruitment of European citizens by terrorist organisations, European Parliament.
- <sup>59</sup> [Resolution](#) of 3 October 2017 on the fight against cybercrime, 2017/2068(INI), European Parliament.
- <sup>60</sup> [Council conclusions of 7 December 2017](#) on strengthening the European Union response to CBRN related risks, reducing access to explosive precursors and protecting public spaces, 15648/17, p. 6.
- <sup>61</sup> *Ibid.*
- <sup>62</sup> See footnote 21.
- <sup>63</sup> [SWD\(2018\) 104](#), pp. 58-75 (pp. 58-71 on evaluation and pp. 71-75 on impact assessment).
- <sup>64</sup> The total number of responses differs from one question to another, the highest number of responses being 41.
- <sup>65</sup> Handelsverband Deutschland, DUCC/Downstream Users of Chemicals Co-ordination group, Verband der Chemischen Industrie. V, Hellenic Ministry of Economy and Development, FECC/European Association of Chemical Distributors, EuroCommerce, and one anonymous feedback.

Table: Regulation (EU) No 98/2013 on the marketing and use of explosives precursors

<p><b>EP committees responsible at the time of adoption of the EU legislation:</b> Committee on Civil Liberties, Justice and Home Affairs (LIBE)</p>
<p><b>Date of adoption of original legislation in plenary:</b> 15 January 2013</p>
<p><b>Entry into force and application date:</b> Entry into force: 29 February 2013 (Article 19); Application date: <b>2 September 2014</b> (Article 19)</p>
<p><b>Planned date for review:</b> 16 May 2018 The regulation contains a two-part 'review' clause.</p> <p>1. Article 18(1) requires that the Commission present a report to the co-legislators by <b>2 September 2017</b> (i.e. three years after the application date), examining any problems that have arisen as a result of the <b>application of the regulation</b>, examining the desirability and feasibility of further strengthening and harmonising the system; of extending the scope of the regulation to include professional users, and of including non-scheduled explosives precursors in Annex II.</p> <p>2. Article 18(2) requires that the Commission present a report to the co-legislators by <b>2 March 2015</b>, examining the possibilities to transfer relevant provisions on <b>ammonium nitrate</b> from Regulation 1907/2006 into this regulation.</p>
<p><b>Timeline for new legislation:</b> Originally announced for <a href="#">Q4 2016</a>, included in <a href="#">CWP 2018</a>, <a href="#">proposal</a> out on 17 April 2018.</p>

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