Explosives precursors
Fighting the misuse of chemicals by terrorists

OVERVIEW

Since 2008, in line with its action plan to enhance the security of explosives, the European Union has considered regulating chemicals that could be used to produce homemade explosives to be a priority. A first legislative act in this regard – Regulation (EU) No 98/2013 on the marketing and use of explosives precursors – was adopted in 2013.

The 2015 Paris and 2016 Brussels terrorist attacks and their operating modes, which were based on the use of homemade explosives, led to an assessment of the efficiency of the 2013 regulation. To take into account existing challenges, and increase stakeholders’ ability to implement and enforce restrictions and controls under the regulation, the European Commission launched its revision in February 2017. On 17 April 2018, it adopted a proposal for a new regulation on explosives precursors.

Following trilogue negotiations, an agreement between the European Parliament and the Council was reached on 5 February 2019. The Parliament’s Committee on Civil Liberties, Justice and Home Affairs (LIBE), approved the agreed text on 19 February 2019. The vote in plenary is due to take place in April 2019.
Introduction

A precursor is a compound participating in a chemical reaction that produces another compound. The European Commission defines explosives precursors as 'chemical substances that can be used for legitimate purposes, but [...] can also be misused to manufacture homemade explosives'. The frequent use of homemade explosives during terrorist attacks in the European Union and elsewhere has had an impact on how these readily available chemical substances are perceived. Considered a major threat to security due to their potential for inflicting casualties and damage, they are now felt to require tighter control, with a view to allowing their use for legitimate purposes while preventing their misuse in the context of serious crime, terrorism and war.

To align its approach with this new reality, in 2008 the EU decided to start regulating the use of explosives precursors. The first step in this direction was taken on 4 April 2008, when the Council approved an EU action plan on enhancing the security of explosives (Doc 8109/08).

Existing situation

The adoption of Regulation (EU) No 98/2013 of 15 January 2013 on the marketing and use of explosives precursors was a follow-up to the above-mentioned 2008 action plan.

The legal basis for the regulation is Article 114 of the Treaty on the Functioning of the European Union (TFEU), which refers to the approximation of laws in the framework of the establishment and functioning of the internal market. The regulation, in its recital 24, also refers to Regulation (EC) No 1907/2006 concerning the registration, evaluation, authorisation and restriction of chemicals (REACH). One of the challenges faced by Regulation 98/2013 was to reconcile freedom of trade with the preservation of internal public security at EU and national levels. This is one of the reasons why the legal basis of the regulation is Article 114 TFEU and not Article 83(1)(2) TFEU, which provides a list of crimes of European interest, including terrorism and organised crime, with regard to which minimum rules can be established by a directive. Regulation 98/2013 entered into force on 1 March 2013 and became applicable on 2 September 2014.

The restrictions imposed by Regulation 98/2013 are listed in its two annexes:

- Seven restricted substances are listed in Annex I (on their own or in mixtures or substances including them). These substances cannot be made available to or introduced, possessed or used by members of the general public, unless a Member State decides to keep a licensing or a registration regime. They remain available if their concentration is lower than the limits set in the list:
  - hydrogen peroxide (limit value: 12 % w/w, i.e. 12 g for 100 g of solution);
  - nitromethane (limit value: 30 % w/w, i.e. 30 g for 100 g of solution);
  - nitric acid (limit value: 3 % w/w, i.e. 3 g for 100 g of solution);
  - potassium chlorate (limit value: 40 % w/w, i.e. 40 g for 100 g of solution);
  - potassium perchlorate (limit value: 40 % w/w, i.e. 40 g for 100 g of solution);
  - sodium chlorate (limit value: 40 % w/w, i.e. 40 g for 100 g of solution);
  - sodium perchlorate (limit value: 40 % w/w, i.e. 40 g for 100 g of solution);
- Eight substances are listed in Annex II, for which suspicious transactions, on their own or in mixtures, shall be reported:
  - hexamine;
  - sulphuric acid;
  - acetone;
  - potassium nitrate;
  - sodium nitrate;
  - calcium nitrate;
  - calcium ammonium nitrate;
Explosives precursors

- ammonium nitrate (in concentrations of 16% by weight of nitrogen in relation to ammonium nitrate, or higher).

To reinforce the implementation of the regulation, in 2008 the Commission set up a **Standing Committee on Precursors**, an expert group that brings together representatives of the EU Member States, industry and retail stakeholders. Communication materials, such as template **posters** and **leaflets**, have been prepared on the Standing Committee’s recommendation.

From early 2015 onwards, the EU witnessed a drastic change in its security situation. The terrorist threat, mainly Jihadist, that had been hanging over its territory since the beginning of the 21st century, increased substantially, starting with the Charlie Hebdo attacks in Paris. In April 2015, the Commission released the **European Agenda on Security**, setting three priorities for the EU: combating terrorism, fighting serious cross-border crime and tackling cybercrime.

The November 2015 Paris attacks and the March 2016 Brussels attacks highlighted the need to improve the tools for combating terrorism and, in particular, the fight against homemade explosives such as triacetone triperoxide, or **TATP**. On 30 November 2016, the Commission extended the number of substances for which transactions must be reported, to include:

- aluminium, powders (Commission Delegated Regulation (EU) 2017/214);
- magnesium nitrate hexahydrate (Commission Delegated Regulation (EU) 2017/215);

**Parliament’s starting position**

The European Parliament has expressed its position on the explosives precursors issue on several occasions since the adoption of Regulation 98/2013. It has also shown its commitment to fighting terrorism, for instance with its resolution of 11 February 2015 on anti-terrorism measures (2015/2530(RSP)). In its resolution of 3 October 2017 on the fight against cybercrime (2017/2068(INI)), the Parliament highlighted the problem of the availability of firearms and explosives precursors to hidden networks.

The Parliament’s Special Committee on Terrorism (TERR), created on 6 July 2017, adopted a report on its findings and recommendations (2018/2044(INI)) on 18 November 2018, attaching particular importance to explosives precursors.

**Council’s starting position**

In its 12 December 2017 conclusions (Doc 15648/17), the Council strongly insisted on strengthening the EU response to chemical, biological, radiological, and nuclear-related risks: ‘[The Council calls on the Member States to] take action to follow the recommendations and to report back to the Commission on the effectiveness of their prohibition, licensing or registration systems, to raise awareness of the risks and responsibilities related to this threat 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.’

Preparation of the proposal

The February 2017 evaluation report: positive outcome of the regulation, yet challenges remain

Following the requirements of Article 18(1) of Regulation 98/2013, and taking into account the priority given to the fight against terrorism by the 2015 agenda on security, the Commission published an evaluation report on the implementation of the regulation on 28 February 2017. The report concluded that the regulation ‘has contributed to reducing the threat posed by explosives precursors in Europe’ and that it has reduced access to precursors thanks to the restrictions introduced. It furthermore stated that the evolution of the homemade explosives threat made it essential for the different EU players and industry stakeholders to fully implement the regulation and identify measures that could strengthen the system in the future. The report established that as of 1 January 2017, 23 Member States were fully compliant with the regulation and five were partially compliant – not having established provisions on penalties. Twelve Member States had banned access to restricted explosives precursors for the general public, as provided for in Article 4 of Regulation 98/2013, and 16 Member States had organised licensing/registration regimes, where the restricted substances could be made available to the public under certain conditions.²

Given these differences, the report noted that ‘there is no EU-level consensus over whether restricted explosives precursors should be banned or made available in a controlled way.’ The reason behind this lack of agreement³ were the two main challenges that Member States were facing:

- enforcing restrictions with such a large number of operators involved (among others: manufacturers, retailers (including online retailers) and large and small companies);
- enforcing restrictions and controls on online sales, imports and intra-EU movements.

Retailers also faced an additional challenge: the diversity of national regimes in the Member States.

Next step: launching the revision of Regulation 98/2013

Following the February 2017 report, the Commission published a roadmap and an inception impact assessment on the revision of Regulation 98/2013. After underlining the fact that homemade explosives had killed at least 195 persons and injured 750 others in Europe between November 2015 and May 2017, the inception impact assessment recalled that the overall objective of the revision was to strengthen Europeans’ protection against the illicit use of explosives precursors. The specific objectives included improving the capacity of economic operators and Member States; increasing the degree of uniformity in the application of the regulation; strengthening controls regarding professional users; and restricting and controlling all of the substances included in the regulation in proportion with the threat they pose.

On 18 October 2017, the Commission adopted Recommendation (EU) No 2017/1936 on immediate steps to prevent the misuse of explosives precursors, calling on the Member States to adopt urgent measures in support of the objectives of Regulation 98/2013.

Stakeholders’ views

Between 6 December 2017 and 14 February 2018, the Commission held an open public consultation that yielded 83 responses, mainly from the private sector. The Commission summarised the outcome of the consultation as follows: there is ‘a consensus that any changes to the current legislative framework should take into account the balance between risk mitigation and market related effects, while ensuring simplicity and enforceability of the system’. Additionally, a survey was
Explosives precursors

conducted between 21 December 2017 and 20 January 2018, targeting national competent authorities, national contact points and economic operators.

Final step: the release of a new proposal

The Commission released its proposal for a new regulation on explosives precursors on 17 April 2018. The proposal was accompanied by an impact assessment, which took up several issues that had already been highlighted in the May 2017 inception impact assessment, in particular with regard to the key challenges:

- **lack of capacity** of some economic operators to fulfil their obligations under the regulation, more specifically because its provisions are not clear enough or because the economic operators feel that they do not have enough means to fulfil these obligations; on their side, some Member States have had problems in monitoring transactions and cross-border issues;
- **insufficient level of harmonisation**, with some economic operators perceiving the need to adapt to each Member State’s provisions as a challenge, and with some Member States asking for a common approach on licensing;
- **eligibility of purchase**: as the risk that professional users may divert chemical substances from their legitimate use creates a possible security gap, some Member States have recommended that the scope of the regulation should also cover professional users;
- **weak controls** on some substances: some Member States have alerted that – as homemade explosive recipes have evolved (in part as a result of the misuse of regulated substances) – some substances may not be restricted or controlled in proportion to the threat they pose;
- **identification of products** for which technical and awareness issues still exist;
- **level of awareness**, which varies among Member States and operators;
- **online security issues**, due to difficulties in controlling the retailers, in particular from outside the EU, and the customers.

Among the different options presented in the impact assessment, the preferred one was a legislative instrument revising the existing framework in order to increase the effectiveness of the restrictions, enforcement by the public authorities and compliance with the supply chain.

The changes the proposal would bring

The resulting proposal, which has Article 114 TFEU as its legal basis and repeals Regulation 98/2013, would change the current situation by strengthening the existing rules as follows:

- **introducing restrictions on additional chemicals**: the Commission proposes to add new chemicals to the restricted substances that could be used to make home-made explosives. The proposal also lowers the concentration limit for nitromethane. Since the substances covered by the proposal can be obtained both in shops and from online retailers and online marketplaces, the new rules will also apply fully to online sales;
- **ending the current registration systems**: the proposal puts an end to the registration systems that some Member States currently have in place. The distinction between a professional user, to whom restricted explosives precursors can be made available, and a member of the general public, who must not have access, will be facilitated by introducing a definition of both concepts;
- **licensing**: Member States may choose to adopt a licensing system for the purchase of a limited number of restricted substances that could have a clear legitimate use. The existing parameters for licensing would be tightened. At present, the regulation does not feature any provisions regarding the legitimate use by members of the general public of some restricted explosives precursors above the concentration limit provided.
for by the regulation. Therefore, it is now proposed to discontinue the licensing of potassium chlorate, potassium perchlorate, sodium chlorate and sodium perchlorate. Licences will be requested for a number of restricted explosives precursors (hydrogen peroxide, nitromethane and nitric acid and the newly proposed sulphuric acid). Licences may only be provided for these substances in concentrations not exceeding an upper limit to be set in the proposed regulation. For sulphuric acid, which is proposed for addition to the list of restricted explosives precursors, the upper limit is set at 40%. Before issuing a licence to a member of the general public, each Member State will have to verify the legitimacy of such a request and run a careful security screening, including a criminal record check;

- **labelling**: the proposal makes it clear that entities at each step in the supply chain will bear the burden of informing those at the next that the product supplied is subject to the restrictions of this regulation. This can be done through a label or through the use of existing tools such as the safety data sheet under the REACH Regulation;

- **quicker and better information-sharing**: the proposal introduces an obligation for businesses to report a suspicious transaction to the competent authorities within 24 hours. The new measures also provide for greater information-sharing between companies, including online businesses, and awareness-raising along the whole supply chain.

### Advisory committees

The European Economic and Social Committee (EESC), in its opinion adopted on 11 July 2018, welcomed the proposal. However, it notes that there are 'a number of areas where greater clarity on the scope and implementation of the regulation should be considered; these will also need to be discussed in greater detail with Member States in the months ahead' and considers that 'the provisions with respect to sales via the internet require further work if they are to have any real effect; it is difficult to see how these can be effective solely at Member State level'. The EESC also questions 'the effectiveness of grouping such widely disparate substances under a single regulatory regime' and recommends the adoption of a 'different substance-specific approach'. 'EU legislation in respect of drug precursors provides a useful model for this', the EESC concludes.

### National parliaments

Of the national parliaments, the Senate and the Chamber of the Parliament of the Czech Republic submitted contributions, respectively on 15 August 2018 and 6 June 2018.

- The Senate requests that the definition of restricted explosives precursors be modified to also include mixtures of two or more precursors in which the limit values for individual precursors are not exceeded. Furthermore, it refuses to support the obligation for Member States to organise awareness-raising campaigns at least twice a year.

- The Chamber supports the position of the Czech government and considers that the one-year deadline for the transposition of the future legislation in the national legal order is too short.

The Commission gave its reply to the above stances on 10 December 2018.

### Legislative process

**European Parliament**

The file was assigned to Parliament’s Committee on Civil Liberties, Justice and Home Affairs (LIBE) on 28 May 2018. Andrejs Mamikins (S&D, Latvia) was appointed rapporteur on 4 June 2018. The Environment, Public Health and Food Safety (ENVI), Industry, Research and Energy (ITRE), Internal
Explosives precursors

Market and Consumer Protection (IMCO) and Legal Affairs (JURI) committees were invited to give opinions, but none chose to do so. The LIBE report was adopted in committee on 10 December 2018. LIBE subsequently decided to enter into interinstitutional negotiations on the basis of its report, a decision confirmed during the January plenary session.

Council of the European Union

The Council entrusted the explosives precursors proposal to the Working Party on Competitiveness and Growth, which started examining the proposal on 25 May 2018.

The working party held seven meetings under the Bulgarian and the Austrian Presidencies. The delegations focused their debates on definitions: farmers and professional users, verification upon sale and inclusion of online marketplaces. They also discussed the question of delegating acts for adding substances to the list of restricted substances.5

On 12 December 2018, Coreper agreed on a position and mandated the presidency to enter into interinstitutional negotiations, with a view to reaching agreement at first reading.

Outcome of the interinstitutional negotiations

Two trilogue meetings took place between the Parliament, the Council and the Commission, and an agreement was reached on 4 February 2019. The negotiators agreed to:6

- modify the list of restricted chemicals7 and tighten the conditions for granting licences to the general public for the purchase and use of explosives precursors, so as to end the current weak registration systems that allow people to buy restricted substances by simply showing an ID card;
- clarify that online marketplaces are equally covered by the respective rules on sale and on the reporting of suspicious transactions.

The restrictions would not apply to professionals who need to use the listed chemicals in connection with their trade or profession.

Next steps

The LIBE committee approved the agreed text unanimously on 19 February 2019. It has now to be approved by the European Parliament in plenary: the vote is expected to take place during the second April 2019 part-session.

Once the text has been formally adopted by Parliament and Council, the regulation will enter into force 20 days after its publication in the Official Journal and then become applicable 18 months after entering into force.

EP SUPPORTING ANALYSIS


Marketing and use of explosive precursors, European Parliament, Legislative Observatory (OEIL).
ENDNOTES

1 As in the case of Afghanistan, where improvised explosive devices account for more deaths than do landmines, according to the United Nations.

2 Regulation 98/2013 has relevance to the EEA. The 2017 report noted that 'the EFTA Surveillance Authority (ESA) is competent for monitoring the application of the Regulation in those countries. Whereas Norway and Liechtenstein are in compliance with the Regulation, on 17 November 2016, ESA brought Iceland before the EFTA Court for that State’s failure to take the measures necessary to make the Regulation part of its internal legal order'.


4 See also Zandersone, L., Revision of the Explosives Precursors Regulation, initial appraisal of a European Commission impact assessment, EPRS, European Parliament, July 2018.

5 Doc 14613/18.

6 See the European Parliament’s press release.

7 No licensing is permitted for ammonium nitrate (16 % by weight of nitrogen in relation to ammonium nitrate), potassium chlorate (40 % w/w, i.e. 40 g for 100 g of solution), potassium perchlorate (40 % w/w, i.e. 40 g for 100 g of solution), sodium chlorate (40 % w/w, i.e. 40 g for 100 g of solution) and sodium perchlorate (40 % w/w, i.e. 40 g for 100 g of solution).

DISCLAIMER AND COPYRIGHT

This document is prepared for, and addressed to, the Members and staff of the European Parliament as background material to assist them in their parliamentary work. The content of the document is the sole responsibility of its author(s) and any opinions expressed herein should not be taken to represent an official position of the Parliament.

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.

eprs@ep.europa.eu (contact)
www.eprs.ep.parl.union.eu (intranet)
www.europarl.europa.eu/thinktank (internet)
http://epthinktank.eu (blog)

First edition. The ‘EU Legislation in Progress’ briefings are updated at key stages throughout the legislative procedure.