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**A7-0269/2012**

7.9.2012

**\*\*\*I**

## **REPORT**

on the proposal for a regulation of the European Parliament and of the Council on the marketing and use of explosives precursors  
(COM(2010)0473 – C7-0279/2010 – 2010/0246(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Jan Mulder

### ***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***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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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 marketing and use of explosives precursors  
(COM(2010)0473 – C7-0279/2010 – 2010/0246(COD))**

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

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2010)0473),
  - 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 (C7-0279/2010),
  - 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 19 January 2011<sup>1</sup>,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0269/2012),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **POSITION OF THE EUROPEAN PARLIAMENT\***

#### **AT FIRST READING**

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### **REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

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<sup>1</sup> OJ C 84, 17.3.2011, p. 25.

\* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ***■***.

## **on the marketing and use of explosives precursors<sup>1</sup>**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

**I**

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> This text is subject to legal linguistic finalisation, which will be carried out jointly by the legislative quality services of the Parliament and the Council in accordance with the provisions of the Joint declaration on practical arrangements for the codecision procedure of 13 June 2007 (OJ C145, 30.6.2007, p. 5).

<sup>2</sup> OJ C [...], [...], p. [...].

Whereas:

- (1) The Action Plan on Enhancing the Security of Explosives, adopted by the Council on 18 April 2008, called on the Commission to establish a Standing Committee on Precursors to consider measures and prepare recommendations concerning the regulation of explosives precursors (*i.e. substances or mixtures that could be misused for the illicit manufacture of explosives*) available on the market, taking into account their cost-benefit effects.
- (2) The Standing Committee on Precursors, established by the Commission in 2008, identified various explosives precursors that are susceptible to being used to commit terrorist attacks and recommended appropriate action at Union level.
- (3) Some Member States have already adopted laws, regulations and administrative provisions regarding the placing on the market, making available and possession of certain chemical substances and mixtures that can be used as explosives precursors.
- (4) These laws, regulations and administrative provisions, which are divergent and liable to cause barriers to trade within the European Union, should be harmonised in order to *improve* the free movement of chemical substances and mixtures within the internal market *and to the extent possible remove distortions of competition*, while ensuring a high level of protection of the   safety of the general public. *Rules have also been laid down at national and Union level regarding workers' safety and protection of the environment, which are not covered by this Regulation.*
- (5) *In order to ensure the greatest degree of uniformity for* economic operators   *a Regulation is the most appropriate* legal instrument to regulate the marketing and use of explosives precursors.

- (5a) *Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures<sup>1</sup> provides that substances and mixtures classified as hazardous should be correctly labelled before being placed on the market. It further provides that economic operators including retailers shall either classify and label such substances or rely on the classification made by an up-stream actor in the supply chain. It is thus appropriate to provide in this Regulation, that all economic operators, including retailers, that intend to make substances restricted under this Regulation available to members of the general public, should ensure that the packaging indicates that the purchase, possession or use of that substance or mixture by members of the general public is subject to a restriction.*
- (5b) *In order to attain, at a national level, a protection against illicit use of explosives precursors that is similar to or higher than what this Regulation is intended to achieve at the Union level, some Member States have already legislative measures in force for some substances that have an illicit use. Some of these substances are listed in the Annexes at the time of adoption of this Regulation and others might be restricted at the Union level in the future. Since it would be against the aims of this Regulation to diminish the protection through measures at the Union level, it is appropriate to provide within the safeguard clause a mechanism by which such national measures could remain in force.*
- (6) *The illicit manufacture of home-made explosives should be made more difficult by setting concentration limits for ■ substances that can be used as explosives precursors. Below these concentration limits, as set out in Annex I, free circulation is ensured subject to a safeguard mechanism, but above these concentration limits access for the general public should be restricted. Above these concentration limits members of the general public should thus as a general rule not be able to acquire, introduce, possess or use those substances.*
- (6a) *For legitimate purposes it is, however, appropriate to allow application of a system by which members of the general public can be able to acquire, introduce, possess or use the substances listed in Annex I provided they hold a licence to do so.*

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<sup>1</sup> OJ L 353, 31.12.2008, p.1



- (6b) Furthermore, in view of the fact that some Member States already have well-established registration systems, which are used to control the making available on the market of some or all of the substances listed in Annex I, it is appropriate to allow application of such a system to some or all substances listed in Annex I in accordance with the regime of registration laid down in this Regulation.*
- (6c) Given that hydrogen peroxide, nitromethane and nitric acid are widely used for legitimate purposes by members of the general public, it should be possible for Member States to apply a registration system in accordance with the regime laid down in this Regulation instead of a licensing system in order to grant access to those substances in lower concentrations.*
- (6d) Given its very specific subject matter, the objectives of this Regulation can be achieved whilst, in accordance with the principles of subsidiarity and proportionality, leaving the Member States the flexibility to choose whether not to allow any access to the substances listed in Annex I for members of the general public or to grant limited access in accordance with the provisions of this Regulation.*
- (6e) In order to achieve legitimate objectives of public security whilst at the same time ensuring the least disruption to the smooth functioning of the internal market, it is appropriate to provide for a licensing system in accordance with which a member of the general public, who has acquired a substance listed in Annex I, or mixture or substance containing that substance, in a concentration above that laid down in that Annex would be able to introduce it from another Member State or a third country into a Member State which allows access to those substances in accordance with any of the systems provided for in this Regulation.*

- (6f) *In order to make the implementation of the provisions concerning introduction of explosives precursors efficient, it is desirable that Member States ensure that the restrictions applicable to the introduction of the substances, mixtures or substances containing the substances listed in Annex I are brought to the attention of international travellers. For the same reason, it is desirable that Member States also ensure that the general public is made aware of those same restrictions applicable to the small consignments to private persons or ordered remotely by final consumers.*
- (6g) *Information provided by Member States to industry, particularly to small and medium-sized enterprises (SMEs), could be a valuable means of facilitating compliance with the requirements of this Regulation having regard to the importance of minimising administrative burdens for SMEs.*
- (7) As it would be disproportionate to prohibit the use of explosives precursors in professional activities, the **restrictions** relating to **introduction, making available, possession** and use of these explosive precursors should apply to the general public only. *Nevertheless, in view of the general objectives of this Regulation it is appropriate to provide for a reporting mechanism that covers both professional users throughout the supply chain and members of the general public involved in transactions which, by reason of their nature, or scale, are to be regarded as suspicious. To this aim, Member States should set up national contact points for the reporting of suspicious transactions.*
- (7a) *Transactions in which, for example, the prospective buyer: is a customer (professional or non-professional), appears unclear about the intended use, appears unfamiliar with the intended use or cannot plausibly explain it, intends to buy unusual quantities, unusual concentrations or unusual combinations of substances, is unwilling to provide proof of identity or place of residence, or insists on using unusual methods of payment including large amounts of cash, may be regarded as suspicious and economic operators might reserve the right to refuse such a transaction.*

- (7b) *In view of the general objectives of this Regulation it is furthermore desirable that the national contact point be informed by the competent licensing authority of any refusal of an application for a licence, where the refusal is based on reasonable grounds for doubting the legitimacy of the intended use or the intentions of the user. Likewise, it is desirable that the competent licensing authority inform the national contact point of any suspension or revocation of a licence.*
- (7c) *In order to prevent and detect possible illegal use of explosives precursors it is desirable that the national contact point keep records of the reported suspicious transactions and that the national competent authority take the necessary measures to investigate the concrete circumstances, including the genuineness of the relevant economic activity exercised by a professional user involved in a suspicious transaction.*
- (8) Concentration limits on hexamine in fuel tablets are technically not feasible. *In addition, there are many legitimate uses of sulphuric acid, acetone, potassium nitrate, sodium nitrate, calcium nitrate and ammonium calcium nitrate. A regulation at Union level on restriction of sales to the general public of these substances would result in disproportionately high administrative and compliance costs for consumers, public authorities and businesses. Nevertheless, in view of the objectives of this Regulation, measures* should be adopted to facilitate the reporting of suspicious transactions **■** for hexamine fuel tablets and *these* other precursors that do not have safe and suitable alternatives.
- (8a) *The measures adopted with respect to the different precursors covered by this Regulation differ in this respect: where feasible, concentration limits have been set, above which access to these chemicals is restricted, whereas for others only the reporting of suspicious transactions is foreseen. The criteria for determining which measures apply to which chemicals include the level of threat associated with the chemical concerned, the volume of trade in the chemical concerned, and the possibility to establish a concentration level below which the chemical could still be used for the purposes for which it is brought to the market. These criteria should continue to guide further actions which may be taken with respect to chemicals currently not covered by the scope of the Regulation.*

- (8b) *Thefts of explosives precursors are a means of obtaining starting materials for illicit manufacture of explosives. It is therefore appropriate to provide for reporting of significant thefts and disappearances of any substance listed in the Annexes. In order to facilitate the tracing of the perpetrators and to alert the competent authorities in other Member States to possible threats it is desirable that national contact points, whenever appropriate, make use of the Early Warning System established at Europol.*
- (9) Given that the trade in explosives precursors may lead to the illicit manufacture of improvised explosive devices, the Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation. Those penalties must be effective, proportionate and dissuasive.
- (10) *By virtue of* Annex XVII to Regulation (EC) No 1907/2006 of *the* European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)<sup>1</sup> *supply to members of the general public of ammonium nitrate that could be readily misused as an explosive precursor is prohibited. It is therefore not necessary to include ammonium nitrate in Annex I to this Regulation. However, supply of ammonium nitrate to certain professional users, mainly farmers, is allowed. It should therefore be subject to the reporting mechanism for suspicious transactions as there is no equivalent requirement in Regulation (EC) No 1907/2006. As part of the review, the Commission should [two years after the date of entry into force of this Regulation] present a report to the European Parliament and the Council examining the possibilities to transfer provisions on ammonium nitrate from REACH into this Regulation.*

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<sup>1</sup> OJ L 396, 30.12.2006, p.1

- (11) This Regulation requires the processing of personal data and their further disclosure to third parties in case of suspicious transactions. This processing implies a serious interference with the fundamental rights to private life and the right to the protection of personal data.
- Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>1</sup> governs the processing of personal data carried out in the framework of this Regulation. Accordingly it should be ensured that the fundamental right to the protection of personal data of individuals whose personal data are processed in application of the provisions of this Regulation are duly protected. ***In particular the processing of personal data that the granting of a licence, the registration of a transaction and the reporting of a suspicious transaction entail, should be done in accordance with Directive 95/46/EC including the general data protection principles of data minimisation, purpose limitation, proportionality and necessity and the requirement to show due respect for the data subject's rights of access, rectification and deletion.***
- (12) Given that the chemical substances used by terrorists and other criminals to make home-made explosives can change rapidly, it should be possible to bring other substances under the regime provided by this Regulation, sometimes as a matter of urgency.
- (13) ***In order to accommodate developments in the misuse of chemical substances as precursors to explosives and provided that proper consultation with relevant stakeholders is carried out in order to take into account the potentially significant impact on economic operators, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amendments to Annex I to this Regulation as regards concentration limits for substances and to Annex II to this Regulation as regards addition of substances. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.***

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<sup>1</sup> OJ L 281, 23.11.1995, p.31

- (13a) The Commission should maintain Annex I under constant review and should, where justified, prepare a legislative proposal in order to add a new substance to that Annex, or to delete a substance from the Annexes, in accordance with the ordinary legislative procedure, in order to accommodate developments in the misuse of chemical substances as precursors to explosives.*
- (13b) In order to address substances not listed pursuant to this Regulation but concerning which a Member State discovers reasonable grounds for believing that they could be used for illicit manufacture of explosives, a safeguard clause providing for an adequate Union procedure should be introduced.*
- (13c) Moreover, in view of the specific risks to be addressed by this Regulation, it is appropriate to provide that Member States, in certain circumstances, may adopt safeguard measures also regarding substances already included in the annexes.*
- (13d) Given the requirements under this Regulation as regards information to the Commission and the Member States, it would be inappropriate to make such new safeguard measures subject to the regime laid down in Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services<sup>1</sup> regardless of whether they refer to substances already listed in the annexes or to substances not listed therein.*

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<sup>1</sup> OJ L 24, 21.7.1998, p. 37

***(13e) Given the nature of this Regulation and the impact it may have on the security of citizens and on the market of the Union, the Commission should, thereby drawing on the continuous discussions in the Standing Committee on Precursors, present a report to the European Parliament and the Council examining any problems arising from the implementation of this Regulation, the desirability and feasibility to extend the scope of this Regulation, both as regards covering professional users and including non-scheduled explosive precursor substances in the provisions on reporting of suspicious transactions, disappearances and thefts. In this regard, 'non-scheduled explosive precursor substance' should mean any substance which, although not listed in the Annexes to this Regulation, is identified as having been used for the manufacture of home-made explosives. Furthermore, the Commission should, thereby taking into account relevant experiences gained by Member States and considering costs and benefits, present a report examining the desirability and feasibility of further strengthening and harmonising the system in view of the threat to public security.***

(14) Since the objective of this Regulation, namely limiting access by the general public to chemicals that may be used to make home-made explosives, can not be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Union level, the European Union may adopt measures in accordance with the principle of subsidiarity. In accordance with the principle of proportionality, this Regulation does not go beyond what is necessary in order to achieve those objectives.

***(14a) The European Data Protection Supervisor has given an opinion pursuant to Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>1</sup>.***

(15) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably the protection of personal data, the freedom to conduct a business, the right to property and the principle of non-discrimination. This Regulation should be applied by the Member States in accordance with these rights and principles.

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<sup>1</sup> *OJ L 8, 12.1.2001, p. 1.*

HAVE ADOPTED THIS REGULATION:



*Article 1*  
*Subject matter*

This Regulation establishes harmonised rules concerning the making available on the market, ***possession, use and introduction into the Union*** of substances or mixtures that could be misused for the illicit manufacture of explosives, with a view to limiting their availability to the general public, ***and ensuring appropriate reporting of suspicious transactions throughout the supply chain***.

***This Regulation is without prejudice to other more stringent provisions of Union law concerning the substances listed in the Annexes.***

*Article 2*  
*Scope*

1. This Regulation applies to the substances listed in the Annexes and mixtures ***or substances*** containing such substances.
2. This Regulation does not apply to:
  - (a) articles as defined in Article 3 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council<sup>1</sup>;
  - (b) pyrotechnic articles as defined in **■** Directive 2007/23/EC of the European Parliament and of the Council<sup>2</sup>, pyrotechnic articles intended for non-commercial use, in accordance with national law, by the armed forces, the law enforcement authorities or the fire department, equipment falling within the scope of Council Directive 96/98/EC<sup>3</sup>, pyrotechnic articles intended for use in the aerospace industry and percussion caps intended for toys;

***(ba) medicinal products when legitimately made available to a member of the general public on the basis of a medical prescription in accordance with the applicable***

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<sup>1</sup> OJ L 396, 30.12.2006  
<sup>2</sup> OJ L 154, 14.06. 2007  
<sup>3</sup> OJ L 46, 17.2.1997

*national law.*

*Article 3*  
*Definitions*

- 1.** For the purposes of this Regulation the following definitions apply:
- a.** ‘making available’ means any supply, whether in return for payment or free of charge;
  - b.** ‘use’ means any processing, formulation, storage, treatment, mixing, production of an article or any other utilisation;
  - c.** ***‘introduce’ means the act of bringing a substance into the territory of a Member State whether from another Member State or from a third country;***
  - d.** ‘member of the general public’ means any natural person who is acting for purposes which are outside his trade, business or profession;
  - e.** ‘suspicious transaction’ means any transaction concerning the substances listed in the Annexes, or mixtures ***or substances*** containing those substances ***including those to professional users***, where there are reasonable grounds for suspecting that the substance or mixture is intended for the production of home-made explosives;
- f.** ‘economic operator’ means any natural or legal person or public entity or group of such persons and/or bodies which delivers products or services on the market;
- 2.** ***For the purposes of this Regulation, the definitions of "substance", "mixture" and "article" as defined in Regulation (EC) No 1907/2006 shall apply.***

#### Article 4

##### *Introduction, making available, possession and use*

1. Substances listed in Annex I, or mixtures **or substances** containing those substances, shall not be made available to, **introduced**, possessed or used by members of the general public except if the concentration of the substance in the form in which it is made available is lower than or equal to the limit laid down in **that Annex** .
2. Notwithstanding paragraph 1, the substances listed in Annex I, or mixtures **or substances** containing those substances, may be made available to, possessed and used by members of the general public **in concentrations higher than those set out in that Annex**, provided that the member of the general public **obtains, and, if requested**, presents a licence for acquiring, **possessing or using** the substance, or mixture **or substance** containing the substance, **in concentrations higher than those laid down in Annex I**, issued **in accordance with Article 5** by a competent authority of **the Member State where that substance or mixture or substance containing the substance is going to be acquired, possessed or used**.
- 2a. **Notwithstanding paragraph 1 and 2, the following substances or mixture or substances containing those substances may be made available to, possessed and used by members of the general public if the economic operator who makes the substance or mixture or substance containing the substance available registers each transaction in accordance with the regime laid down in Article 5a:**
  - i) **hydrogen peroxide in concentrations higher than that set out in Annex I but lower than or equal to 35 % w/w;**
  - ii) **nitromethane in concentrations higher than that set out in Annex I but lower than or equal to 40 % w/w;**
  - iii) **nitric acid in concentrations higher than that set out in Annex I but lower than or equal to 10 % w/w.**

- 2b. *It shall be for the Member States to decide whether not to allow any exceptions from paragraph 1 or to impose a licensing system in accordance with paragraph 2 and/or a registration system in accordance with paragraph 2a.*
- 2c. *Member States shall notify all measures they take in order to implement any of the systems referred to in paragraphs 2 and 2a to the Commission. The notification shall, in the case not all substances in Annex I are available subject to licensing or registration, explicitly mention which substances are covered by the measure(s).*
- 2d. *The Commission shall make publicly available a list of measures notified by Member States in accordance with paragraph 2b.*
3. Where a member of the general public intends to *introduce* the substances listed in Annex I, or mixtures *or substances* containing those substances, *in concentrations higher than those laid down in that Annex*, into the territory of *a Member State which has derogated from paragraph 1 by applying a licensing system in accordance with paragraph 2 and/or a registration system in accordance with paragraph 2a or Article 15a*, that person shall obtain, and, if requested, present a licence issued in accordance with *the rules laid down in Article 5 and which is valid in that Member State to the national competent authority.*
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5. An economic operator *who* makes a substance or mixture *or substance containing a substance listed in Annex I* available to a ■ member of the general public in accordance with paragraph 2 shall *for each transaction require the presentation of a licence or if it is made available in accordance with paragraph 2a* keep a record of the transaction, *in compliance with the regime established by the Member State where the substance or mixture or substance containing a substance listed in Annex I is made available.*

## *Article 4aa*

### **Labelling**

An economic operator *who* intends to make the substances listed in Annex I, or mixtures *or substances* containing those substances, available to the general public, *shall in cases* where the concentration of the substance in the form in which it is made available is higher than the limit laid down in Annex I, *ensure, either by himself affixing an appropriate label or by verifying that an appropriate label is affixed, that the packaging clearly indicates* that the purchase, possession or use of that substance or mixture *by members of the general public* is subject to a *restriction* as referred to in *Article 4, paragraphs 1, 2 and 2a*.

## *Article 4a*

### *Free movement*

*Without prejudice to the second sentence of Article 1 and Article 9a, and save as otherwise provided in this Regulation or in other Union legislation, Member States shall not, on grounds related to the prevention of the illicit manufacture of explosives, prohibit, restrict or impede the making available on the market of:*

- *the substances listed in Annex I to this Regulation in concentrations lower than the limits laid down therein, or*
- *the substances listed in Annex II to this Regulation.*

## Article 5

### Licences

1. Each Member State *which issues licences to members of the general public with a legitimate interest to acquire, introduce, possess and use one or more substances listed in Annex I, or mixtures or substances containing those substances, in concentrations higher than those set out in that Annex* shall lay down rules for granting the licence provided for in Article 4, *paragraphs 2 and 3*. When considering whether to grant a licence, the competent authority of the Member State shall take into account *all relevant circumstances and* in particular the legitimacy of the intended use of the substance. The licence shall be refused if there are reasonable grounds for doubting the legitimacy of the intended use *or the intentions of the user to use it for a legitimate purpose*.
2. The competent authority may *choose how to* limit the validity of the licence, *either through single or multiple use and up* to a period not exceeding three years. *The competent authority* may oblige the licensee to demonstrate, *up to the designated expiry of the licence*, that the conditions under which the licence was granted are still fulfilled. The licence shall mention the substances *that the licence holder is permitted to acquire, possess or use*.
3. The competent authorities may require applicants to pay a fee for their application for a licence. Such fees shall not exceed the cost of processing the application.
4. The licence may be suspended or revoked by the competent authority whenever there are reasonable grounds for believing that the conditions under which the licence was granted are no longer fulfilled.
5. Appeals against any decision of the competent authority, and disputes concerning compliance with the conditions of the licence, shall be heard by *an* appropriate body responsible under national law.
6. Licences granted by the competent authorities of a Member State *may be recognised in other* Member States. The Commission *shall before the date of application of this regulation* draw up guidelines, after consulting the Standing Committee on Precursors, on the technical details of the licences *in order to facilitate* their mutual recognition. *These guidelines shall also contain information on what data to be comprised in licences valid for introduction,*

*including a draft format for such licences.*



*Article 5a*  
*Registration of transactions*

1. *The registration referred to in Article 4, paragraph 2a shall at least comprise the following information:*
  - a) *name, address and, where applicable, either the identification number of the member of the general public or the type and number of the identification document;*
  - b) *name of the substance or mixture including its concentration;*
  - c) *amount of the substance or mixture;*
  - d) *intended use of the substance or mixture as declared by the member of the general public;*
  - e) *date and place of the transaction;*
  - f) *signature of the member of the general public.*
2. *For the purpose of registration referred to in paragraph 1, the member of the general public shall provide an official identification document.*
3. *The registration documents shall be kept during a period of [five years] following the day the transaction took place. During that period, the registers shall be made available for inspection at the request of the competent authorities.*
4. *The registration information shall be kept on paper or on another durable medium and shall be available at any time during the entire period provided for in paragraph 3. Any electronically stored data must:*
  - a) *match the format and content of the corresponding paper documents and*
  - b) *be readily available at any time during the entire period provided for in paragraph 3.*

## Article 6

### *Reporting of suspicious transactions, **disappearances** and thefts*

1. Suspicious transactions in the substances listed in the Annexes, or mixtures **or substances** containing those substances, shall be reported in accordance with this Article.
2. Each Member State shall set up **one or more** national contact **points** with a clearly identified telephone number and e-mail address for the reporting of suspicious transactions.
3. Economic operators which have **reasonable grounds** to believe that a proposed transaction involving one or more substances listed in the Annexes, or mixtures **or substances** containing those substances, is a suspicious transaction, **having regard to all the circumstances and in particular where the prospective buyer:**
  - ***appears unclear about the intended use of the substance or mixture;***
  - ***appears unfamiliar with the intended use of the substance or mixture or cannot plausibly explain it;***
  - ***intends to buy substances in uncommon quantities, uncommon combinations or uncommon concentrations of substances for private use;***
  - ***is unwilling to provide proof of identity or place of residence; or***
  - ***insists on using unusual methods of payment including large amounts of cash;***

***may reserve the right to refuse the transaction and*** shall report this without ***undue*** delay, including if possible the identity of the client, to the national contact point of the Member State where the transaction was proposed.

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5. Economic operators shall also report significant *disappearances and* thefts of the substances listed in the Annexes and mixtures *or substances* containing those substances to the national contact point of the Member State where the theft has taken place.
6. In order to facilitate cooperation between the competent authorities and economic operators, **■** the Commission shall, after consulting the Standing Committee on Precursors, draw up *before the date of application of this regulation, and regularly thereafter* update guidelines to assist the chemical supply chain and, *where relevant, competent authorities*. The guidelines shall provide in particular:
- (a) information on how to recognise and notify suspicious transactions, *in particular as concerns concentrations and/or quantities for substances listed in Annex II below which no action is normally needed;*
  - (aa) information on how to recognise and notify significant disappearances and thefts;*  
**■**
  - (c) other information which may be deemed useful.
7. The competent authorities of the Member States shall ensure that the guidelines provided for in paragraph 6 **■** are regularly disseminated in a manner deemed appropriate by the competent authorities in accordance with the objectives of the guidelines.

## *Article 7*

### *Data protection*

Each Member State shall ensure that the processing of personal data carried out in application of this Regulation shall be in accordance with Directive 95/46/EC<sup>1</sup>. In particular, each Member State shall ensure that the processing of personal data required by the granting of a licence pursuant to Articles 4 and 5 of this Regulation ***or for the registration of transactions pursuant to Articles 4, 5a and 15a of this Regulation***, and the reporting of suspicious transactions pursuant to Article 6 of this Regulation, shall comply with Directive 95/46/EC.

## *Article 8*

### *Penalties*

Each Member State shall lay down rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

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<sup>1</sup> OJ L 281, 23.11.1995, p. 31

## Article 9

### Amendment of the Annexes

1. **■** The Commission *shall be empowered to* adopt **■** delegated acts in accordance with Article 10 *concerning changes of the limit values in Annex I to this Regulation to the extent necessary to accommodate developments in the misuse of chemical substances as precursors to explosives, or on the basis of research and testing, as well as concerning addition of substances to Annex II to this Regulation, where necessary to accommodate developments in the misuse of chemical substances as precursors to explosives. The Commission shall, as part of the preparation of the delegated acts, endeavour to consult relevant stakeholders, in particular the chemical industry and the retail sector.*

*Where, in the case of* a sudden change in the risk assessment as far as the misuse of chemical substances to make home-made explosives is concerned, *imperative grounds of urgency so require, the procedure provided for in* Article 13 *shall apply to delegated acts adopted pursuant to this Article.*

- 1a. *The Commission shall adopt a separate delegated act in respect of each change of the limit values in Annex I and each new substance added to Annex II. Each delegated act shall be based on an analysis demonstrating that the amendment is not likely to lead to disproportionate burdens on economic operators or consumers, having due regard to the objectives sought to be achieved.*

*Article 9a*  
*Safeguard clause*

- 1. Where a Member State has reasonable grounds for believing that a specific substance not listed in the Annexes could be used for the illicit manufacture of explosives, it may restrict or prohibit the making available on the market of that substance, or of any mixture or substances containing that substance, or stipulate that that substance shall be subject to the reporting of suspicious transactions in accordance with Article 6.*
- 2. Where a Member State has reasonable grounds for believing that a specific substance listed in Annex I could be used for the illicit manufacture of explosives, at a lower concentration level than the limit value laid down in Annex I, it may further restrict or prohibit the making available on the market of that substance by imposing a lower maximum permitted concentration level.*
- 2a. Where a Member State has reasonable grounds for establishing a concentration level above which a substance listed in Annex II should be subject to the restrictions applying to substances listed in Annex I it may restrict or prohibit the making available on the market of that substance by imposing a maximum permitted concentration.*
- 3. A Member States restricting or prohibiting substances in accordance with the provisions in paragraphs 1, 2 or 2a shall immediately inform the Commission and the other Member States thereof, giving reasons for its decision.*
- 4. In the light of the information communicated pursuant to paragraph 3, the Commission shall immediately examine whether to prepare amendments to the Annexes in accordance with Article 9, paragraph 1 or to prepare a legislative proposal to amend the Annexes. The Member State concerned shall, where appropriate, amend or repeal its national measures to take account of any such amendment to the Annexes.*

5. *No later than [3 months after entry into force of this Regulation] Member States shall notify the Commission of any existing national measures which have been adopted in order to restrict or prohibit the making available on the market of a substance or of any mixture or substance containing that substance on the ground that it could be used for the illicit manufacture of explosives.*

#### *Article 10*

##### *Exercise of the delegation*

0. *The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.*
1. *The delegation of power ■ referred to in Article 9 shall be conferred on the Commission for a period of 5 years from [Date of entry into force of this Regulation]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.*
- 1a. *The delegation of powers referred to in Article 9 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.*
2. *As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.*
- 2a. *A delegated act adopted pursuant to Article 9 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [2 months] at the initiative of the European Parliament or the Council.*
-

### Article 13

#### Urgency procedure

1. ***Delegated acts*** adopted under ***this Article*** shall enter into force without delay and ***shall*** apply as long as no objection is expressed in accordance with paragraph 2. The notification of the act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.
2. ***Either the*** European Parliament ***or*** the Council may **■** object to ***a*** delegated act ***in accordance with the procedure referred to in Article 10(2a)***. In such a case, the ***Commission shall repeal*** the act ***without delay following the notification of the decision to object by the European Parliament or the Council***.

■

### Article 15

#### Transitional provision

Possession and use by members of the general public of the substances listed in Annex I, or mixtures ***or substances containing such*** substances, above the concentration limits laid down in Annex I, shall continue to be allowed until [36 months after ***publication***]

### Article 15a

#### Existing registration systems

***Member States which on [the date of entry into force referred to in Article 17] have a system in place that requires economic operators, who make available to members of the general public one or more substances listed in Annex I, or mixtures or substances containing those substances, in concentration higher than those set out in that Annex, to register each such transaction may derogate from Article 4, paragraphs 1 and 2 by applying that registration system in accordance with the regime laid down in Article 5a to some or all substances listed in Annex I. The rules laid down in Article 4, paragraphs 2b to 5 shall apply mutatis mutandis.***



## Article 16

### Review

1. *The Commission shall present a report to the European Parliament and the Council by [three years after the date of application referred to in Article 17] examining:*
  - (a) *any problems that may have arisen as a result of the operation of this Regulation in practice;*
  - (aa) *the desirability and feasibility of further strengthening and harmonising the system in view of the threat to public security caused by terrorism and other serious criminal activities, taking into account the experiences gained by Member States under this Regulation, including any detected security gaps, and considering the costs and benefits for Member States, economic operators and other relevant stakeholders;*
  - (b) *the desirability and feasibility of extending the scope of this Regulation to cover professional users, taking into account the burdens imposed on economic operators and having regard to the objectives of this Regulation;*
  - (c) *the desirability and feasibility of including non-scheduled explosive precursor substances in the provisions on reporting of suspicious transactions, disappearances and thefts.*
2. *The Commission shall present a report to the European Parliament and the Council by [two years after the date of entry into force referred to in Article 17] examining the possibilities to transfer relevant provisions on Ammonium nitrate from Regulation (EC) No 1907/2006 REACH into this regulation.*

3. *If appropriate, in the light of the reports referred to in paragraphs 1 and 2, the Commission shall make a legislative proposal to the European Parliament and the Council with a view to amending this Regulation accordingly.*

*Article 17*

Entry into force

This Regulation shall enter into force on [*the twentieth day following that of its publication in the Official Journal of the European Union*]. *It shall apply from [18 months after publication]*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at [...], [...]

*For the European Parliament*

*For the Council*

*The President*

*The President*

[...]

[...]

## **ANNEX I**

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 limits set out below

Name of the substance and Chemical Abstracts Service Registry number (CAS RN)	<i>Limit value</i>	Combined Nomenclature (CN) code for a separate chemically defined compound meeting the requirements of Note 1 to Chapter 28 or 29 of the CN, respectively {see Regulation (EC) No 948/2009 of 30 September 2009, OJ L 287 of 31.10.2009}	Combined Nomenclature (CN) code for a mixture without constituents (e. g. mercury, precious or rare-earth metals or radioactive substances) which would determine classification under another CN code {see Regulation (EC) No 948/2009 of 30 September 2009, OJ L 287 of 31.10.2009}
Hydrogen peroxide (CAS RN 7722-84-1)	12% w/w	2847 00 00	3824 90 97
Nitromethane (CAS RN 75-52-5)	30 % w/w	2904 20 00	3824 90 97
Nitric acid (CAS RN 7697-37-2)	3 % w/w	2808 00 00	3824 90 97
Potassium chlorate (CAS RN 3811-04-9)	40 % w/w	2829 19 00	3824 90 97
Potassium perchlorate (CAS RN 7778-74-7)	40 % w/w	2829 90 10	3824 90 97
Sodium chlorate (CAS RN 7775-09-9)	40 % w/w	2829 11 00	3824 90 97
Sodium perchlorate (CAS RN 7601-89-0)	40 % w/w	2829 90 10	3824 90 97

## ANNEX II

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

Name of the substance and Chemical Abstracts Service Registry number (CAS RN)	Combined Nomenclature (CN) code for a separate chemically defined compound meeting the requirements of Note 1 to Chapter 28, Note 1 to Chapter 29 or Note 1 (b) to Chapter 31 of the CN, respectively {see Regulation (EC) No 948/2009 of 30 September 2009, OJ L 287 of 31.10.2009}	Combined Nomenclature (CN) code for mixtures without constituents (e. g. mercury, precious or rare-earth metals or radioactive substances) which would determine classification under another CN code {see Regulation (EC) No 948/2009 of 30 September 2009, OJ L 287 of 31.10.2009}
Hexamine (CAS RN 100-97-0)	2921 29 00	3824 90 97
Sulphuric acid (CAS RN 7664-93-9)	2807 00 10	3824 90 97
Acetone (CAS RN 67-64-1)	2914 11 00	3824 90 97
Potassium nitrate (CAS RN 7757-79-1)	2834 21 00	3824 90 97
Sodium nitrate (CAS RN 7631-99-4)	3102 50 10 (natural) 3102 50 90 (other than natural)	3824 90 97 3824 90 97
Calcium nitrate (CAS RN 10124-37-5)	2834 29 80	3824 90 97
Ammonium calcium nitrate (CAS RN 15245-12-2)	3102 60 00	3824 90 97
<b><i>Ammonium nitrate (CAS RN 6484-52-2) [in concentration of 16% by weight of nitrogen in relation to ammonium nitrate or higher]</i></b>	<b><i>3102 30 10 (in aqueous solution)</i></b> <b><i>3102 30 90 (other)</i></b>	<b><i>3824 90 97</i></b>

## EXPLANATORY STATEMENT

### The scope of the Commission's proposal

The Commission's proposal is for a Regulation restricting access by members of the public to specific substances in general use but which can also be misused as explosives precursors. To protect the free movement of goods, eight substances listed in Annex I may continue to be sold in concentrated form under a licence granted by a national competent authority for a documented legitimate purpose or, without a licence, at concentration levels which render them ineffective for the manufacture of home made explosives. A further seven substances are listed in Annex II where no licences or concentration levels apply. However for all 15 substances, and indeed for sales of any other substance, mixture not specifically listed in these Annexes but identified by the Commission from time to time as having been used for the manufacture of home made explosives, any transaction deemed to be "suspicious" on any "reasonable" grounds should be reported to a single national contact point.

Professional users of these materials and business-to-business sales would not be affected. The rights of individuals to privacy must be fully respected. The regulatory process should be flexible enough to allow a rapid response to changing needs. Voluntary agreements, codes of conduct and improved information systems between manufacturers and retailers would also be required in support of these measures.

### Rapporteur's position

The proposal seeks to reduce the frequency and impact of terrorist attacks by limiting access by the general public to, and reporting suspicious transactions of, widely and legitimately used substances (and mixtures thereof) which in high concentrations can also be used to manufacture explosives.

The proposal is directed at wholesalers, retailers and Member States. Chemical manufacturers already have controls and voluntary reporting codes in place for weapon and drug precursors, for instance, and should not be materially affected by these proposals. The tonnages involved are small compared to the total amounts sold. There are no concerns with respect to worker health or environmental exposure. Success will depend upon actions by competent authorities with respect to the gathering and sharing of relevant information.

The Rapporteur supports actions to combat terrorism and agrees with the overall rationale for the proposal, specifically a Regulation under Article 114 preventing fragmentation of the internal market.

The Rapporteur also agrees with the list of eight substances (and mixtures thereof) included in Annex I as requiring controls under this heading. It is therefore reasonable to allow sales in high concentrations to the general public to continue only under licence for legitimate end uses.

The burden of costs would be shared approximately equally between the manufacturers and retailers (through the costs of compliance, labelling, reformulating and loss of sales) and the

national competent authorities who would have to set up and staff the necessary licensing and information gathering and reporting systems.

The Rapporteur also proposes a number of amendments in order to apply the Common Understanding between three Institutions on practical arrangements for the use of delegated acts as approved by the Conference of Presidents on 3 of March 2011.

## PROCEDURE

<b>Title</b>	Marketing and use of explosives precursors			
<b>References</b>	COM(2010)0473 – C7-0279/2010 – 2010/0246(COD)			
<b>Date submitted to Parliament</b>	20.9.2010			
<b>Committee responsible</b> Date announced in plenary	LIBE 7.10.2010			
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	ENVI 7.10.2010	ITRE 7.10.2010	IMCO 7.10.2010	
<b>Not delivering opinions</b> Date of decision	ENVI 5.10.2010	ITRE 25.10.2010	IMCO 11.10.2010	
<b>Rapporteur(s)</b> Date appointed	Jan Mulder 9.12.2010			
<b>Discussed in committee</b>	25.1.2011	13.7.2011	4.10.2011	21.3.2012
	3.9.2012			
<b>Date adopted</b>	3.9.2012			
<b>Result of final vote</b>	+: –: 0:	50 0 0		
<b>Members present for the final vote</b>	Jan Philipp Albrecht, Edit Bauer, Simon Busuttil, Philip Claeys, Carlos Coelho, Agustín Díaz de Mera García Consuegra, Ioan Enciu, Frank Engel, Kinga Gál, Kinga Göncz, Nathalie Griesbeck, Sylvie Guillaume, Anna Hedh, Salvatore Iacolino, Lívia Járóka, Teresa Jiménez-Becerril Barrio, Timothy Kirkhope, Juan Fernando López Aguilar, Baroness Sarah Ludford, Monica Luisa Macovei, Svetoslav Hristov Malinov, Véronique Mathieu, Anthea McIntyre, Louis Michel, Antigoni Papadopoulou, Georgios Papanikolaou, Carmen Romero López, Judith Sargentini, Birgit Sippel, Rui Tavares, Nils Torvalds, Axel Voss, Renate Weber, Josef Weidenholzer, Cecilia Wikström, Auke Zijlstra			
<b>Substitute(s) present for the final vote</b>	Anna Maria Corazza Bildt, Cornelis de Jong, Evelyne Gebhardt, Monika Hohlmeier, Franziska Keller, Ádám Kósa, Marian-Jean Marinescu, Antonio Masip Hidalgo, Jan Mulder, Raül Romeva i Rueda, Marie-Christine Vergiat, Glenis Willmott			
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Justas Vincas Paleckis, Iuliu Winkler			
<b>Date tabled</b>	11.9.2012			