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on enhancing the security of explosives

SUMMARY OF THE IMPACT ASSESSMENT

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SUMMARY OF IMPACT ASSESSMENT

Background

The use of explosive devices by terrorists and other criminals has led to the launching of work on the security of explosives. Enhancing the security of explosives and making the production of explosive devices for terrorists more difficult has been and continues to be a priority for the European Union.

One of the key measures undertaken by the Commission in the development of a policy on enhancing the security of explosives was the setting up of an Explosives Security Experts Task Force (ESETF), composed of private and public sector representatives, with a view to preparing recommendations for actions in the explosives security field. The ESETF completed its work in June 2007 with the identification of 50 recommendations for actions. These recommendations form the basis for the development of an EU Action Plan.

What is the problem?

The main problem which needs to be addressed is the use of explosives and explosives precursors to commit terrorist acts. Explosive devices remain the most used means of terrorist attacks and were responsible for the vast majority of victims of terrorist attacks over the last 50 years.

Who is affected?

The entire EU society is affected by the identified high level problem as terrorists may strike anywhere and at any time. The availability of explosives and explosives precursors, and the open nature of internal EU borders mean that any EU Member States can be the subject of a terrorist threat.

Objective

The general objective of an EU Action Plan on Enhancing the Security of Explosives would be to reduce the number and potency of terrorist incidents in the EU using explosives. The underlying goal would therefore be to protect society from the threat of attacks using explosive devices while taking into full consideration the multiple areas of economic activity in which explosives and their precursors are used for the benefit of all.

The four policy options

Four policy options have been identified concerning the establishment of an EU Action Plan on Enhancing the Security of Explosives. These options have been elaborated based on the recommendations for specific actions set forth in the ESETF report and group together the various ESETF recommendations depending on their impact:

- Policy Option 1 – Status Quo

The first Policy Option implies that no changes are made to the current situation. All actions included are already underway or are planned to happen even in the absence of the Action Plan. The Status Quo is a combination of existing organisations responsible for the provision of strategic assessments on counter-terrorism matters, a research package which includes

allocations related to the security of explosives, a legislative acquis concerning aviation security, transport of dangerous goods and the development of the single market of civil explosives and draft legislation in the area of the traceability of explosives for civil use and harmonisation of criminal sanctions on distributing bomb-making experience on the internet.

It should be mentioned that measures also exist at national level. These relate to all aspects of explosives security, ranging from public security aspects, precursors, supply chain and detection. However, the approaches vary greatly across the EU, with some Member States applying high explosives security standards in nearly all areas and others having relatively underdeveloped security systems and mechanisms.

- Policy Option 2 – Minimum Option

The second Policy Option includes a variety of measures which together form a ‘package’ combining horizontal measures, prevention initiatives, detection measures and actions to increase preparedness and readiness to respond. Based on broad consultations, it is anticipated that a majority of stakeholders would consider these actions ‘acceptable’ and beneficial, with relatively low costs and risks. The Policy Option has a strong focus on:

- Exchanging information, knowledge and experience, both vertically and horizontally - the option includes several proposals for the establishment of cooperation and coordination mechanisms in the shape of databases, events, expert groups and networks. Together these would form the knowledge and intelligence base of the Action Plan. The actions proposed do not only concern the horizontal, EU level, but also affect the national level.
- Furthering existing and launching new research - several of the actions include research into new areas and expanding research in already existing fields. Most have a very practical focus, linking the themes to other concrete actions. For example, the research proposed with regard to the detection of IEDs at airports will feed into the actions aimed at improving detection technologies overall.
- Awareness-raising and alerting options in the precursors supply chain - recent events have once more shown the importance of making all actors in the supply chain of precursors and explosives more aware of the potential risks and suspicious transactions. The option includes several actions that relate to campaigns and the development of alert mechanisms.
- Assessments and feasibility studies whether further measures should be undertaken - the option also includes several actions aimed at assessing the feasibility and launching debates on some of the more ‘challenging’ initiatives which would be included in the Action Plan. As for the actions that focus on research, they are meant to feed into actions with a more ‘operational’ focus.
- Some additional security and detection measures - finally, the option includes a limited number of actions with an ‘operational’ focus, covering the security of facilities and detection.

- Policy Option 3 – Intermediate Option

The third Policy Option is again a mix of horizontal measures, prevention initiatives, detection measures and actions to increase preparedness and readiness to respond. There is, however, a relatively higher focus on actions in the area of prevention. This option includes all actions under Policy Option 2 with the addition of additional actions deemed to be more sensitive in nature and requiring bigger efforts for implementation.

The overall focus of Policy Option 3 is more operational, with a set of measures built around:

- Regulation of new areas and updating regulatory arrangements in others – several actions focus on addressing areas which are currently insufficiently covered or not addressed at all, such as vetting of staff working with explosives, the precursors market and raw materials used to manufacture explosives. Other actions may not result in legislation but constitute otherwise binding requirements, such as the obligation for Member States to keep explosives manufacturers and distributors informed of regional threats.
- Introducing EU schemes and standards - in the area of detection, the option proposes the development of new, EU-wide schemes to certify and test detection solutions. In addition to increasing the performance of detection systems, these are also aimed at further removing single market obstacles.
- Concrete security interventions - the option also presents several actions with a practical focus on improving existing standards, such as the initiative to improve the security of Mobile Explosive Manufacturing Units (MEMUs) and of EX/II and EX/III vehicles carrying explosives. Others focus on mobile phone networks and the Internet.

- Policy Option 4 – Maximum Option

The fourth Policy Option is a mix of prevention initiatives and detection measures, mainly addressing regulatory aspects, recording and reporting mechanisms and standardisation.

The option includes all actions under Policy Option 3 with the addition of measures identified in the ESETF report which can be described as being very ambitious and which require genuine commitment to the process.

Option 4 is ambitious, including a ‘package’ of measures focusing on:

- Regulation of new areas and updating regulatory arrangements in others - several new legislative instruments are included, such as the legal obligation to record the identity of buyers of certain quantities / concentrations of precursors, a ban on selling precursors to minors and harmonisation of legislation in the area of pyrotechnic articles.
- Introducing EU schemes and standards - new schemes are proposed for the recording of the identity of the buyers of precursors, for reporting on suspicious transactions and for trialling detection solutions. Minimum standards are proposed concerning the security of storage of explosive precursors.

The different policy options are cumulative in the sense that each higher numbered option also contains the actions in the lower numbered option(s).

The impacts of the four policy options

- Policy Option 1 – Status Quo

The first policy option includes 7 actions which are likely to be implemented regardless of whether an EU Action Plan is developed. The 7 actions would most likely have a relatively small effect on the general objective of reducing the number and potency of terrorist incidents using explosives. This would be so because the measures would not address the core of the problem which is the availability and easy access to explosives and explosive precursors.

The fact that terrorist attacks using explosives have been committed in the EU in recent times confirms that existing measures and initiatives may be insufficient.

- Policy Option 2 – Minimum Option

Of the 24 actions, the action judged to be most effective with respect to the overall objective is the introduction of security plans and management systems at all explosives facilities. There are five actions that were rated highly with respect to their effectiveness in contributing to the general objective. They are: establishing an early warning system; establishing simple means within the precursors supply chain to alert national authorities of suspicious transactions; campaigns to raise awareness of staff all along the precursors supply chain; ensuring that security staff using detection equipment are provided with up to date information on terrorist modus operandi; and, establishing a European EOD network.

Two of the actions in this Policy Option are of a character that no contribution to the general objective ‘to reduce the number and potency of terrorist incidents using explosives’ is likely to accrue immediately. Both involve the assessment of needs and preliminary investigation.

Together, the combination of actions in this Policy Option would contribute positively to all of the objectives of the planned policy.

The majority of actions in this Policy Option have a low dependency on non EU actors hence implementation should be relatively straightforward and could take place in the short term.

- Policy Option 3 – Intermediate Option

Two of the 14 actions are highly rated with respect to their contribution to the general objective. They are: the establishment of a system concerning the regulation of explosive precursors; and, activities to limit the spread of bomb making experience over the internet. In combination the actions contribute to all of the specific objectives of the planned policy.

The dependency on other actors to implement the additional actions in this Policy Option is higher than in Policy Option 2.

Since Policy Option 3 includes the measures set out in Policy Option 2, it should be underlined that the impacts of the actions included in Policy Option 2 will remain unchanged. In other words, the 14 additional actions included in this option will not influence these impacts.

- Policy Option 4 – Maximum Option

All of the seven actions added under Policy Option 4 would make a positive contribution to the general objective. Two of these actions are highly rated with respect to their effectiveness with regard to the general objective. They are: the establishment of a system of reporting suspicious transactions; and, harmonising EU requirements for the licensing and handling of large amounts of pyrotechnic articles. However, in both cases the costs are likely to be both high and unpredictable.

Since Policy Option 4 includes the measures set out in Policy Options 2 and 3, it should be underlined that the impacts of the actions included in Policy Option 2 and 3 will remain unchanged. In other words, the 7 additional actions included in this option will not influence these impacts.

Conclusion

The impact assessment report recommends that all of the actions proposed by the ESETF should be included in the Action Plan – without however committing the Commission already at this stage to full implementation of all actions. This can be further explained as follows.

All of the actions in Policy Option 2 should be included in the preferred Policy Option. Of those additional actions included in Policy Option 3 all should be included in the preferred Policy Option with the following reservations. Further feasibility studies are required to identify the parameters of: a system concerning the regulation of explosives precursors; procedures for formal licensing and vetting of those handling explosives; and, the accounting of raw materials used in the manufacture of explosives.

In general terms Policy Option 4 is the preferred option with the stipulation however that further feasibility studies and consultations need to be taken forward concerning some of the actions identified in Option 4. There are a number of actions within Policy Option 4 that have high and uncertain costs and have been assessed as being only ‘moderately’ effective. These actions may have merit but before they are pursued further feasibility and assessment work is needed. Of those actions included in Policy Option 4 only the introduction of a complete ban on selling precursors to minors should be immediately pursued, subject to an assessment of the feasibility of enforcing such a ban. The remaining actions should be subject to feasibility work.

The analysis of impacts has also shown that certain measures would require further development in order to work out the details of the proposed measures and their specific impacts. It is therefore suggested that the Action Plan should clarify that on the points where further feasibility work still needs to be carried out, the Commission is only committing itself to pursuing such feasibility work, not necessarily to any subsequent implementation. Any possible implementation would necessarily be dependant on the results of the feasibility work. An analysis of the impacts of the particular measures identified by the Explosives Security Experts Task Force has shown that no single measure from among those set out in the Task Force report would be sufficient by itself to achieve the general objective of reducing the number and potency of terrorist and other criminal incidents in the EU using explosives. When combined however, these measures would address in a comprehensive fashion the security of explosives in the European Union and would significantly contribute to achieving all of the identified policy objectives. It should be noted here as well that there have been no indications that some of the measures proposed could interfere with each other in a negative

way – rather it is the cumulative effects of the actions which is expected to increase the overall effectiveness of the measures taken together.

The work of the Explosives Security Experts Task Force, the Explosives Security conferences organised by the Commission and more broadly the entire process of public-private dialogue concerning the security of explosives have contributed to the elaboration of a comprehensive set of measures concerning the security of explosives. None of the measures identified in the Explosives Security Experts Task Force report should be disregarded as they are an emanation of the expectations of civil society and relevant public authorities in the EU. Consequently, these measures should be included in the Action Plan in full, although as indicated above, further feasibility work should be taken up concerning certain actions. This should be clearly indicated in the Action Plan.