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Subject:	Proposal for a Regulation of the European Parliament and of the Council on the marketing and use of explosives precursors - Orientation debate on certain issues
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Delegations will find in the Annex to this Note a discussion paper prepared by the Presidency. This discussion paper was examined by the Permanent Representatives Committee (Part II) at its meeting on 18 April 2012, and subsequently updated. It is intended to serve as the basis for an orientation debate on certain issues in the Council (Justice and Home Affairs) on 26 April 2012.

Presidency discussion paper on the proposal for a Regulation on the marketing and use of explosives precursors

I. Background

1. Following the terrorist bombings in Madrid on 11 March 2004, the European Council on 25 March 2004 adopted a declaration¹ on combating terrorism. The declaration *inter alia* addressed the need to ensure greater security of explosives and instructed the Council to examine the scope for measures in this area.
2. In order to further set out the framework of the EU priorities in the fight against terrorism, the European Council adopted the European Union Counter-Terrorism Strategy² in 2005. The strategy sets out the four strands of work in the fight against terrorism: prevent, protect, pursue, respond. One of the key priorities in the pursue strand is to prevent access by terrorists to weapons and explosives, ranging from components for homemade explosives (including chemical substances that are explosives precursors) to CBRN³ material.
3. As part of the implementation of the European Union Counter-Terrorism Strategy, the Council adopted an EU Action Plan⁴ on Enhancing the Security of Explosives in 2008 that establishes the priorities for future actions in this field. The priorities include the setting-up of a Standing Committee on Precursors under the auspices of the Commission, the tasks of which include to consider and prepare recommendations concerning regulation of explosives precursors available on the market thereby taking into account the costs and benefits of such measures. The Standing Committee on Precursors has identified a number of explosives precursors that are susceptible to being utilised to manufacture explosives used to commit terrorist attacks and has in consequence recommended EU legislative measures in this area.

¹ Council document 7906/04 JAI 100 ECOFIN 107 TRANS 145 RELEX 123 ECO 73 PESC 208 COTER 20 COSDP 142.

² Council document 14469/4/05 JAI 423 ECOFIN 353 TRANS 234 RELEX 639 ECO 136 PESC 1010 COTER 72 COSDP 810 PROCIV 174 ENER 172 ATO 103.

³ Chemical, biological, radiological, and nuclear material.

⁴ Council document 8311/08 JAI 165 ENFOPOL 75 MI 117 ENT 74 CHIMIE 18 TRANS 116 RECH 125.

4. Against this background, the European Council in 2010 agreed in "The Stockholm Programme - an open and secure Europe serving and protecting citizens"⁵ that a legislative framework to address the dangers associated with precursors should be developed.

II. Proposal for a Regulation

5. As a follow-up to the EU Action Plan on Enhancing the Security of Explosives and following preparation in the Standing Committee on Precursors, the European Commission on 20 September 2010 presented a proposal for a Regulation of the European Parliament and of the Council on the marketing and use of explosives precursors. The proposed regulation limits the access to explosives precursors by members of the general public.
6. The core element of the proposed regulation is that members of the general public are not allowed to acquire, possess or use the chemical substances listed in Annex I to the regulation in concentrations higher than those laid down in that annex. However, with the exemption that members of the general public may acquire these substances if they obtain a licence valid for one or more of the substances and presents this license to the economic operator who makes the substance available. The Commission proposal also contains an obligation for the economic operator to register such transactions.

III. State of play

7. The proposal has been discussed in detail during the Hungarian and Polish Presidencies. In these discussions Member States have expressed diverging views regarding a number of central elements of the proposal including whether the regulation only should allow Member States to provide exemptions from the general prohibition against acquiring, possessing or using the substances listed in Annex I through a system of licensing as proposed by the Commission or whether registration of purchases of such substances by the economic operator could serve as an alternative.

⁵ OJ C 115, 4.5.2010, p.1

8. On the basis of the discussions the Polish Presidency presented a proposal for a compromise based on a “dual system” that allows Member States to choose whether to set up a licensing system or a registration system or not to allow for any exemptions from the general prohibition against acquiring, possessing or using the substances listed in Annex I. There was broad acceptance amongst the Member States for this proposal as a basis for seeking an agreement with the European Parliament.
9. During the autumn, three informal trialogues were held. Following the third informal trialogue, the Polish Presidency on 7 December 2011 informed the Permanent representatives Committee (Part I) that the informal negotiations with the European Parliament had revealed that the European Parliament had a strong preference for a "licensing-only" system and was not likely to support the compromise proposal on the “dual system”. Also the Commission maintained a strong preference for a "licensing-only" system. On the other hand, the examination in the Permanent Representatives Committee (Part I) had shown that it was not possible to obtain support from a qualified majority of Member States for a “licensing only” system. Accordingly, the Polish Presidency concluded that it would not be possible to reach an agreement on the proposal within the near future.

IV. Possible way forward

10. Informal contacts with the European Parliament and the views expressed in the meeting of the LIBE committee of the European Parliament on 21 March 2012, indicate that the European Parliament still maintains a strong preference for a "licensing-only" system.
11. Based on the outcome of the negotiations during the autumn and on what has been said in the European Parliament during the spring, the Danish Presidency has considered how to proceed with the proposal in order to reach a compromise on the issue of access to substances listed in Annex I to the draft Regulation that would be acceptable both to Member States and to the European Parliament.

- 12 The Presidency does not propose any changes to any other elements of the negotiation mandate given by the Permanent Representatives Committee (Part I) during the autumn and confirmed on 25 November 2011⁶. The other two main elements of the negotiation mandate are the procedures for amendment of the Annexes to the draft Regulation and the proposal to keep the restrictions on ammonium nitrate in Annex XVII to Regulation (EC) No 1907/2006 (REACH). With regard to these other elements the negotiation mandate is still considered valid.
13. Against this background The Presidency has therefore presented a discussion paper focusing on the access to substances listed in Annex I to the draft Regulation that outlines a possible way forward towards a compromise. The ideas presented therein have been discussed at the meeting of the Permanent Representatives Committee (Part II) on 18 April 2012⁷. The discussion paper contains the following main elements:
- Member States may decide whether to totally prohibit access by members of the general public to the substances listed in Annex I to the regulation in concentrations higher than those laid down in that annex or whether to allow access to one or more of the substances in accordance with the system provided for in the regulation.
 - In Member States that decide to derogate from the general prohibition against acquiring, possessing or using the substances listed in Annex I, members of the general public will be required to obtain and present a licence in order to acquire those substances.

⁶ The original Presidency mandate of 4 November 2011 is set out in document 16083/11 COMPET 467 CHIMIE 76 ENFOPOL 378 ENV 823 MI 529 ENT 232 UD 286 CODEC 1823. The consolidated text at the end of the Polish Presidency is set out in document 17983/11 COMPET 85 CHIMIE 90 ENFOPOL 455 ENV 921 MI 637 ENT 271 UD 352 CODEC 2284.

⁷ The discussion paper, which contains proposals for changes to the draft regulation was revised following the discussion on 18 April. The revised text is set out in document 8785/1/12 REV 1 COMPET 204 CHIMIE 32 ENFOPOL 104 ENV 285 MI 250 ENT 92 UD 111 CODEC 988.

- Member States may, however, also set up a system for registration of purchases and through this system allow members of the general public to get access to three of the substances, namely hydrogen peroxide, nitric acid and nitromethane under certain concentration limits. These are the substances and concentrations of which there is the highest use and which thus create the biggest administrative burden when establishing a licensing system.
- Member States that already have a registration system for access to one or more of the substances listed in Annex I, may apply that system to some or all substances listed in Annex I in accordance with the registration regime laid down in the Regulation.
- The Commission will, based on the experiences gained, three years after the date of application of the draft Regulation present a report on the desirability and feasibility of further strengthening and harmonising the system and, if it so deems appropriate, present appropriate legislative proposals.

V. Conclusion

14. The Presidency hereby invites the Council to:

- **Reaffirm its commitment to achieve a common legislative framework on the marketing and use of explosives precursors with the aim of strengthening the level of public security in the Union particularly with the view of preventing terrorist attacks, and**
- **Endorse further deliberations in the Council preparatory bodies aiming to pave the way for a compromise with the other Institutions based on the main elements presented in Point 12 and 13 above.**
