



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 9 October 2012

14479/12

**Interinstitutional File:
2010/0246 (COD)**

**COMPET 591
CHIMIE 70
ENFOPOL 307
ENV 739
MI 592
ENT 229
UD 239
CODEC 2276**

"I" ITEM NOTE

from: General Secretariat
to: Permanent Representatives Committee (Part 1)

No. prev. doc: 11990/12 COMPET 478 CHIMIE 56 ENFOPOL 214 ENV 587
MI 461 ENT 163 UD 186 CODEC 1797

No. Cion prop: 14376/10 COMPET 272 CHIMIE 33 ENFOPOL 271 ENV 636 MI 348
ENT 127 CODEC 944

Subject: Proposal for a Regulation of the European Parliament and of the Council on the
marketing and use of explosives precursors
- Approval of the text of one article

Background

1. The Commission submitted its proposal¹ to the Council and the European Parliament on 21 September 2010.
2. The Council position was established through a number of meetings of the Council preparatory bodies during the Hungarian, Polish and Danish Presidencies and an orientation debate in the Council (Justice and Home Affairs) on 26 April 2012.

¹ 14376/10 COMPET 272 CHIMIE 33 ENFOPOL 271 ENV 636 MI 348 ENT 127
CODEC 944.

3. During the autumn 2011 and the spring 2012, five informal trialogues and a number of technical meetings took place between representatives of the Council, the European Parliament and the Commission.
4. Following the final informal trialogue on 25 June 2012, the Permanent Representatives Committee (Part 2) on 11 July 2012 approved a draft compromise package². In that meeting, all delegations indicated that they could support the draft compromise package, but the Commission representatives indicated that the Commission would oppose it. The Presidency subsequently informed the European Parliament of the approval.

Proposed changes to Article 9a

5. The proposed Regulation lays down rules restricting the making available to and the possession and use by members of the general public of certain explosives precursors.
6. Article 9a allows a Member State to restrict access to other explosives precursors if it is discovered that they can be used for the illicit manufacture of explosives. It also lays down the procedure for establishing harmonised restrictions in such cases. During the legal-linguistic review of the draft compromise package it was discovered that that article only refers to "making available".
7. Since this issue could be perceived as substantive, the Presidency in the interest of transparency decided to ask delegations if they saw any problem with aligning the wording of Article 9a to the standard wording in the draft Regulation.

² 11990/12 COMPET 478 CHIMIE 56 ENFOPOL 214 ENV 587 MI 461 ENT 163 UD 186 CODEC 1797.

8. Following a presentation of the issue at the meeting of the Working Party on Technical Harmonisation on 1 October 2012, a document³ was issued in which delegations were invited to inform the Council Secretariat by 8 October at the latest if they opposed the alignment. No delegation⁴ had by that date opposed it.
9. The proposed changes to Article 9a compared to its wording in the draft compromise package⁵ are set out in the Annex.
10. The European Parliament has not yet adopted its position at first reading. The Presidency therefore proposes to seek its approval of these changes to the draft compromise package with a view to their inclusion in its position at first reading..

Conclusion

The Permanent Representatives Committee is invited to agree to the changes set out in the Annex of the wording of Article 9a compared to its wording in the compromise package and to mandate the President to inform the European Parliament accordingly with a view to seeking the Parliament's approval thereof.

³ See the revised document 14415/1/12 REV 1 COMPET 586 CHIMIE 69 ENFOPOL 302 ENV 737 MI 587 ENT 227 UD 238 CODEC 2267 in which two typing errors in the original document are corrected.

⁴ The Bulgarian delegation, however, submitted a statement concerning the entire draft Regulation intended for the minutes of the Council meeting at which the draft Regulation will be adopted. It is set out in the addendum to this note.

⁵ 11990/12 COMPET 478 CHIMIE 56 ENFOPOL 214 ENV 587 MI 461 ENT 163 UD 186 CODEC 1797

In this Annex, text that is new compared to the text in document 11990/12 of 11 July 2012 is set out in **bold underline**.

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, **possession and use** 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, **possession and use** 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, **possession and use** 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, **possession and use** 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.
-