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THE EUROPEAN PARLIAMENT

THE COUNCIL

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COUNCIL on the marketing and use of explosives precursors
COMMON GUIDELINES
Consultation deadline for Croatia: 7.12.2012

REGULATION (EU) No .../2012
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

on the marketing and use of explosives precursors

(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 Committee¹,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 84, 17.3.2011, p. 25.

² Position of the European Parliament of 20 November 2012 (not yet published in the Official Journal) and decision of the Council of....

Whereas:

- (1) Certain substances and mixtures are explosives precursors and can be misused for the illicit manufacture of explosives. The European Union 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 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 that appropriate action be taken 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 explosives precursors.

- (4) Those laws, regulations and administrative provisions, which are divergent and liable to cause barriers to trade within the 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, to remove distortions of competition, while ensuring a high level of protection of the safety of the general public. Other rules relating to certain substances covered by this Regulation, have also been laid down at national and Union level regarding the safety of workers and the protection of the environment. Those other rules are not affected 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.
- (6) 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 mixtures¹ provides that substances and mixtures classified as hazardous are to be correctly labelled before being placed on the market. It further provides that economic operators including retailers are either to classify and label such substances or to rely on the classification made by an up-stream actor in the supply chain. It is therefore appropriate to provide, in this Regulation, that all economic operators, including retailers, which make available substances restricted by this Regulation to members of the general public, ensure that the packaging indicates that the acquisition, possession or use of that substance or mixture by members of the general public is subject to a restriction.

¹ OJ L 353, 31.12.2008, p. 1.

- (7) In order to attain, at national level, protection against the illicit use of explosives precursors that is similar to or higher than that envisaged by this Regulation at Union level, some Member States already have laws, regulations and administrative provisions in force in respect of some substances susceptible of illicit use. Some of those substances are already listed in this Regulation, while others might be restricted at the level of the Union in the future. Since it would be contrary to the aims of this Regulation for measures at the level of the Union to diminish protection, it is appropriate to provide for a mechanism by which such national measures could remain in force (a safeguard clause).
- (8) The illicit manufacture of explosives should be made more difficult by laying down concentration limit values in respect of certain explosives precursors. Below those limit values, the free movement of those explosives precursors is ensured, subject to a safeguard mechanism; above those limit values, the access of the general public to those explosives precursors should be restricted.
- (9) Members of the general public should therefore not be able to acquire, introduce, possess or use those explosives precursors at concentrations above the limit values. However, it is appropriate to provide for members of the general public to be able to acquire, introduce, possess or use such explosives precursors for legitimate purposes, only if they hold a licence to do so.

- (10) 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 restricted by this Regulation which are not to be made available to members of the general public, it is appropriate to provide in this Regulation for a system of registration applicable to some or all of those substances.
- (11) Hydrogen peroxide, nitromethane and nitric acid are widely used for legitimate purposes by members of the general public. It should therefore be possible for Member States to provide for access to those substances within a given range of concentrations by applying a registration system under this Regulation rather than a licensing system.
- (12) Given its very specific subject matter, the objective 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 to grant limited access for members of the general public in accordance with this Regulation.

- (13) In order to pursue legitimate objectives of public security whilst still ensuring the least disruption to the proper 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 restricted by this Regulation which is not to be made available to members of the general public, or a mixture or substance containing it, in a concentration above the limit value would be able to introduce it from another Member State or from a third country into a Member State which allows access to that substance in accordance with any of the systems provided for in this Regulation.
- (14) In order to implement efficiently the provisions concerning the introduction of explosives precursors, Member States are encouraged to ensure that the restrictions applicable to the introduction of substances restricted by this Regulation which are not to be made available to members of the general public are brought to the attention of international travellers. For the same reason, Member States are also encouraged to ensure that the general public is made aware that those restrictions also apply to small consignments to private persons and to consignments ordered at a distance by final consumers.
- (15) Information provided by Member States to industry, particularly to small and medium-sized enterprises (SMEs), could be a valuable means of facilitating compliance with this Regulation, having regard to the importance of minimising administrative burdens for SMEs.

- (16) As it would be disproportionate to prohibit the use of explosives precursors in professional activities, the restrictions relating to the making available, introduction, possession and use of explosive precursors should apply only to the general public. Nevertheless, in view of the general aims 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 that end, Member States should set up national contact points for the reporting of suspicious transactions.
- (17) Various transactions in respect of explosives precursors might be regarded as suspicious and therefore reportable. This is the case, for example, where the prospective 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. Economic operators should be able to reserve the right to refuse such a transaction.

- (18) In view of the general aims of this Regulation, the competent authorities are encouraged to inform the relevant national contact point 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, the competent authorities are encouraged to inform the national contact point of the suspension or revocation of a licence.
- (19) In order to prevent and detect the possible illicit use of explosives precursors, it is desirable that the national contact points keep records of reported suspicious transactions, and that the competent authorities 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.
- (20) Where feasible, concentration limit values should be set, above which access to certain explosives precursors is restricted, whereas only the reporting of suspicious transactions should be provided for in respect of certain other explosives precursors. The criteria for determining which measures should apply to which explosives precursors include the level of threat associated with the explosives precursor concerned, the volume of trade in the explosives precursor concerned, and the possibility of establishing a concentration level below which the explosives precursor could still be used for the legitimate purposes for which it is made available. Those criteria should continue to guide further actions which may be taken with respect to explosives precursors not currently covered by the scope of this Regulation.

- (21) Concentration limit values 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 calcium ammonium nitrate. A regulation at Union level restricting sales to the general public of those substances would result in disproportionately high administrative and compliance costs for consumers, public authorities and businesses. Nevertheless, in view of the aims of this Regulation, measures should be adopted to facilitate the reporting of suspicious transactions in respect of hexamine fuel tablets and in respect of those other explosives precursors for which there are not suitable and safe alternatives.
- (22) Thefts of explosives precursors are a means of obtaining starting materials for the illicit manufacture of explosives. It is therefore appropriate to provide for the reporting of significant thefts and disappearances of substances subject to measures under this Regulation. In order to facilitate the tracing of the perpetrators and to alert the competent authorities of other Member States to possible threats, national contact points are encouraged, where appropriate, to make use of the Europol early warning system.
- (23) Member States should lay down rules on penalties applicable to infringements of this Regulation. Those penalties should be effective, proportionate and dissuasive.

- (24) By virtue of Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)¹ the supply to members of the general public of ammonium nitrate that could be readily misused as an explosive precursor is prohibited. However, the supply of ammonium nitrate to certain professional users, in particular farmers, is permitted. That supply should therefore be subject to the reporting mechanism for suspicious transactions established by this Regulation, since there is no equivalent requirement in Regulation (EC) No 1907/2006.
- (25) This Regulation requires the processing of personal data and their further disclosure to third parties in case of suspicious transactions. That processing and disclosure imply 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 data² 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 this Regulation is duly protected. In particular the processing of personal data that licensing, the registration of transactions and the reporting of suspicious transactions entail, should be carried out 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.

¹ OJ L 396, 30.12.2006, p. 1.

² OJ L 281, 23.11.1995, p. 31.

- (26) The choice of substances used by terrorists and other criminals for the illicit manufacture of explosives can change rapidly. It should therefore be possible to bring additional substances under the regime provided by this Regulation, where necessary as a matter of urgency.
- (27) In order to accommodate developments in the misuse of substances as explosives precursors, and provided that proper consultation with relevant stakeholders is carried out 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 to amend the concentration limit values above which certain substances restricted under this Regulation are not to be made available to the general public, and to list additional substances in respect of which suspicious transactions are to be reported. 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 the simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

- (28) The Commission should maintain under constant review the list of substances which are not to be made available to the general public above certain concentration limit values, and the list of substances in respect of which suspicious transactions are to be reported. The Commission should, where justified, prepare legislative proposals, in accordance with the ordinary legislative procedure, to add or delete entries in the former list, or to delete entries from the latter list, in order to accommodate developments in the misuse of substances as explosives precursors.
- (29) In order to deal with substances not already restricted by this Regulation but in respect of which a Member State discovers reasonable grounds for believing that they could be used for the illicit manufacture of explosives, a safeguard clause providing for an adequate Union procedure should be introduced.
- (30) Moreover, in view of the specific risks to be addressed in this Regulation, it is appropriate to allow Member States, in certain circumstances, to adopt safeguard measures, including in respect of substances already subject to measures under this Regulation.

- (31) Given the requirements under this Regulation as regards information to be provided 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 services¹ regardless of whether they refer to substances already subject to measures under this Regulation or to substances not so restricted.
- (32) Given the aims of this Regulation and the impact that it may have on the security of citizens and on the internal market, the Commission should, drawing on the continuous discussions in the Standing Committee on Precursors, present a report to the European Parliament and to the Council examining any problems arising from the implementation of this Regulation, the desirability and feasibility of extending its scope; both as regards covering professional users and as regards including in the provisions on the reporting of suspicious transactions, disappearances and thefts of substances which, although not subject to measures under this Regulation, are identified as having been used for the illicit manufacture of explosives (non-scheduled explosives precursors). Furthermore, the Commission should, taking into account relevant experience 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. As part of the review, the Commission should present a report to the European Parliament and the Council examining the possibilities to transfer provisions on ammonium nitrate from Regulation (EC) No 1907/2006 into this Regulation.

¹ OJ L 204, 21.7.1998, p. 37.

- (33) Since the objective of this Regulation, namely limiting access by the general public to explosives precursors cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the limitation, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (34) 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 data¹, the European Data Protection Supervisor has given an opinion².
- (35) 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 those rights and principles,

HAVE ADOPTED THIS REGULATION:

¹ OJ L 8, 12.1.2001, p. 1.

² OJ C 101, 1.4.2011, p. 1.

Article 1
Subject matter

This Regulation establishes harmonised rules concerning the making available, introduction, possession and use 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 the 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 to mixtures and substances containing them.
2. This Regulation does not apply to:
 - (a) articles as defined in Article 3(3) of Regulation (EC) No 1907/2006;

- (b) pyrotechnic articles as defined in Article 2(1) of Directive 2007/23/EC of the European Parliament and of the Council of 23 May 2007 on the placing on the market of pyrotechnic articles¹, pyrotechnic articles intended for non-commercial use, in accordance with national law, by the armed forces, the law enforcement authorities or the fire department, pyrotechnic equipment falling within the scope of Council Directive 96/98/EC of 20 December 1996 on marine equipment², pyrotechnic articles intended for use in the aerospace industry, or percussion caps intended for toys;
- (c) medicinal products legitimately made available to a member of the general public on the basis of a medical prescription in accordance with the applicable national law.

Article 3

Definitions

For the purposes of this Regulation the following definitions shall apply:

- (1) "substance" means a substance within the meaning of point (1) of Article 3 of Regulation (EC) No 1907/2006;
- (2) "mixture" means a mixture within the meaning of point (2) of Article 3 of Regulation (EC) No 1907/2006;

¹ OJ L 154, 14.6. 2007, p. 1.

² OJ L 46, 17.2.1997, p. 25.

- (3) "article " means an article within the meaning of point (3) of Article 3 of Regulation (EC) No 1907/2006;
- (4) 'making available' means any supply, whether in return for payment or free of charge;
- (5) 'introduction' means the act of bringing a substance into the territory of a Member State whether from another Member State or from a third country;
- (6) 'use' means any processing, formulation, storage, treatment or mixing, including in the production of an article, or any other utilisation;
- (7) 'member of the general public' means any natural person who is acting for purposes not connected with his trade, business or profession;
- (8) 'suspicious transaction' means any transaction concerning the substances listed in the Annexes, or mixtures or substances containing them, including transactions involving professional users, where there are reasonable grounds for suspecting that the substance or mixture is intended for the illicit manufacture of explosives;
- (9) '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;

- (10) 'restricted explosives precursor' means a substance listed in Annex I, in a concentration higher than the corresponding limit value set out therein and includes a mixture or another substance in which such a listed substance is present in a concentration higher than the corresponding limit value.

Article 4

Making available, introduction, possession and use

1. Restricted explosives precursors shall not be made available to, or introduced, possessed or used by, members of the general public.
2. Notwithstanding paragraph 1, a Member State may maintain or establish a licensing regime allowing restricted explosives precursors to be made available to, or to be possessed or used by, members of the general public, provided that the member of the general public obtains, and, if requested, presents a licence for acquiring, possessing or using them, issued in accordance with Article 7 by a competent authority of the Member State where that restricted explosives precursor is going to be acquired, possessed or used.

3. Notwithstanding paragraphs 1 and 2, a Member State may maintain or establish a registration regime allowing the following restricted explosives precursors to be made available to, or to be possessed or used by, members of the general public if the economic operator who makes them available registers each transaction in accordance with the detailed arrangements laid down in Article 8:
 - (a) hydrogen peroxide (CAS RN 7722-84-1) in concentrations higher than the limit value set out in Annex I, but no higher than 35 % w/w;
 - (b) nitromethane (CAS RN 75-52-5) in concentrations higher than the limit value set out in Annex I, but no higher than 40 % w/w;
 - (c) nitric acid (CAS RN 7697-37-2) in concentrations higher than the limit value set out in Annex I, but no higher than 10 % w/w.
4. Member States shall notify to the Commission all measures they take in order to implement any of the regimes provided for in paragraphs 2 and 3. The notification shall set out the restricted explosives precursors in respect of which the Member State provides for an exception.
5. The Commission shall make publicly available a list of measures notified by Member States in accordance with paragraph 4.

6. Where a member of the general public intends to introduce a restricted explosives precursor into the territory of a Member State which has derogated from paragraph 1 by applying a licensing regime in accordance with paragraph 2 and/or a registration regime in accordance with paragraph 3 or with Article 17, that person shall obtain, and, if requested, present to the competent authority, a licence issued in accordance with the rules laid down in Article 7 and which is valid in that Member State.
7. An economic operator who makes available a restricted explosives precursor 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 3, keep a record of the transaction, in compliance with the regime established by the Member State where the restricted explosives precursor is made available.

Article 5
Labelling

An economic operator who intends to make available restricted explosives precursors to a member of the general public, shall ensure, either by affixing an appropriate label or by verifying that an appropriate label is affixed, that the packaging clearly indicates that the acquisition, possession or use of that restricted explosives precursor by members of the general public is subject to a restriction as set out in Article 4(1), (2) and (3).

Article 6
Free movement

Without prejudice to the second paragraph of Article 1 and to Article 13, and unless otherwise provided for in this Regulation or in other legal acts of the Union, Member States shall not, on grounds related to the prevention of the illicit manufacture of explosives, prohibit, restrict or impede the making available of:

- (a) the substances listed in Annex I in concentrations not higher than the limit values laid down therein, or
- (b) the substances listed in Annex II.

Article 7
Licences

1. Each Member State which issues licences to members of the general public with a legitimate interest to acquire, introduce, possess or use restricted explosives precursors shall lay down rules for granting the licence provided for in Article 4(2) and (6). 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, through permitting single or multiple use for a period not exceeding three years. The competent authority may oblige the license holder to demonstrate, until the designated expiry of the licence, that the conditions under which the licence was granted are still fulfilled. The licence shall mention the restricted explosives precursors in respect of which it is issued.
3. The competent authorities may require applicants to pay a licence application fee. Such a fee shall not exceed the cost of processing the application.
4. The licence may be suspended or revoked by the competent authority where 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, by ... * draw up guidelines, after consulting the Standing Committee on Precursors, on the technical details of the licences in order to facilitate their mutual recognition. Those guidelines shall also contain information on what data is to be comprised in licences valid for the introduction of restricted explosives precursors, including a draft format for such licences.

* OJ: please insert a date: 18 months after the date of entry into force of this Regulation.

Article 8
Registration of transactions

1. For the purposes of registration pursuant to Article 4(3), members of the general public shall identify themselves by means of an official identification document.
2. The register shall comprise at least the following information:
 - (a) the name, address and, where applicable, either the identification number of the member of the general public or the type and number of their official identification document;
 - (b) the name of the substance or mixture, including its concentration;
 - (c) the amount of the substance or mixture;
 - (d) the intended use of the substance or mixture as declared by the member of the general public;
 - (e) the date and place of the transaction;
 - (f) the signature of the member of the general public.

3. The register shall be kept for five years from the date of the transaction. During that period, the register shall be made available for inspection at the request of the competent authorities.
4. The register shall be kept on paper or on another durable medium and shall be available for inspection at any time during the entire period provided for in paragraph 3. Any data stored electronically shall:
 - (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 9

Reporting of suspicious transactions, disappearances and thefts

1. Suspicious transactions involving the substances listed in the Annexes, or involving mixtures or substances containing them, 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 may reserve the right to refuse the suspicious transaction and shall report the transaction or attempted transaction without undue delay, including if possible the identity of the customer, to the national contact point of the Member State where the transaction was concluded or attempted in the event that they have reasonable grounds for believing that a proposed transaction involving one or more substances listed in the Annexes, or involving mixtures or substances containing them, is a suspicious transaction, having regard to all the circumstances and in particular where the prospective customer:
- (a) appears unclear about the intended use of the substance or mixture;
 - (b) appears unfamiliar with the intended use of the substance or mixture or cannot plausibly explain it;
 - (c) intends to buy substances in quantities, combinations or concentrations uncommon for private use;
 - (d) is unwilling to provide proof of identity or place of residence; or
 - (e) insists on using unusual methods of payment, including large amounts of cash.
4. Economic operators shall also report significant disappearances and thefts of the substances listed in the Annexes and of mixtures or substances containing them to the national contact point of the Member State where the disappearance or theft has taken place.

5. In order to facilitate cooperation between the competent authorities and economic operators, the Commission shall, after consulting the Standing Committee on Precursors, draw up, by... * guidelines to assist the chemical supply chain and, where relevant, the competent authorities. The guidelines shall, in particular, provide:
- (a) information on how to recognise and report suspicious transactions, in particular as concerns the concentrations and/or quantities of substances listed in Annex II below which no action is normally needed;
 - (b) information on how to recognise and report significant disappearances and thefts;
 - (c) other information which may be deemed useful.

The Commission shall update the guidelines regularly.

6. The competent authorities shall ensure that the guidelines provided for in paragraph 5 are regularly disseminated in a manner deemed appropriate by the competent authorities in accordance with the objectives of the guidelines.

* OJ: please insert a date: 18 months after the date of entry into force of this Regulation.

Article 10
Data protection

Member States shall ensure that the processing of personal data carried out in application of this Regulation is in accordance with Directive 95/46/EC. In particular, Member States shall ensure that the processing of personal data required in respect of licensing pursuant to Article 4(2) and (6) and Article 7 of this Regulation or for the registration of transactions pursuant to Article 4(3) and Articles 8 and 17 of this Regulation, and the reporting of suspicious transactions pursuant to Article 9 of this Regulation, comply with Directive 95/46/EC

Article 11
Penalties

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

Article 12
Amendments to the Annexes

1. The Commission shall be empowered to adopt delegated acts in accordance with Article 14 concerning changes of the limit values in Annex I to the extent necessary to accommodate developments in the misuse of substances as explosives precursors, or on the basis of research and testing, as well as concerning the addition of substances to Annex II, where necessary to accommodate developments in the misuse of substances as explosives precursors. 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 substances for the illicit manufacture of explosives is concerned, imperative grounds of urgency so require, the procedure provided for in Article 15 shall apply to delegated acts adopted pursuant to this Article.

2. 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 13
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, possession and use of that substance, or of any mixture or substance containing it, or it may provide that the substance be subject to the reporting of suspicious transactions in accordance with Article 9.
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 concentration lower than the limit value laid down in Annex I, it may further restrict or prohibit the making available, possession and use of that substance by imposing a lower concentration limit value.
3. Where a Member State has reasonable grounds for establishing a concentration limit value above which a substance listed in Annex II should be subject to the restrictions otherwise applying to restricted explosives precursors, it may restrict or prohibit the making available, possession and use of that substance by imposing a maximum permitted concentration.

4. A Member State restricting or prohibiting substances in accordance with paragraphs 1, 2 or 3 shall immediately inform the Commission and the other Member States thereof, giving its reasons.
5. In the light of the information communicated pursuant to paragraph 4, the Commission shall immediately examine whether to prepare amendments to the Annexes in accordance with Article 12(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.
6. By ...^{*}, Member States shall notify the Commission of any existing national measures restricting or prohibiting the making available, possession and use of a substance or of any mixture or substance containing it on the ground that it could be used for the illicit manufacture of explosives.

Article 14

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

^{*} OJ: please insert a date: three months after the date of entry into force of this Regulation.

2. The power to adopt delegated acts referred to in Article 12 shall be conferred on the Commission for a period of five years from ...*. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-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.
3. The delegation of power referred to in Article 12 may be revoked at any time by the European Parliament or by the Council. A decision to revoke 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.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 12 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two 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 two months at the initiative of the European Parliament or of the Council.

* OJ: please insert the date of entry into force of this Regulation.

Article 15
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 14(5). In such a case, the Commission shall repeal the act without delay following notification of the decision to object by the European Parliament or by the Council.

Article 16
Transitional provision

The possession and use by members of the general public of restricted explosives precursors shall be allowed until ... *

* OJ: please insert a date: 36 months after the date of entry into force of this Regulation.

Article 17
Existing registration regimes

A Member State which, on ...* has a regime in place that requires economic operators to register transactions making one or more restricted explosives precursors available to members of the general public may derogate from Article 4(1) or (2) by applying that registration regime in accordance with Article 8 to some or all of the substances listed in Annex I. The rules laid down in Article 4(4) to (7), shall apply mutatis mutandis.

Article 18
Review

1. By ...**, the Commission shall present a report to the European Parliament and to the Council examining:
 - (a) any problems that have arisen as a result of the application of this Regulation;
 - (b) 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 experience gained by Member States under this Regulation, including any detected security gaps, taking into account the costs and benefits for Member States, economic operators and other relevant stakeholders;

* OJ: please insert the date of entry into force of this Regulation.

** OJ: please insert a date: 54 months after the date of entry into force of this Regulation.

- (c) 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 objective of this Regulation;
 - (d) the desirability and feasibility of including non-scheduled explosives precursors in the provisions on reporting of suspicious transactions, disappearances and thefts.
2. By ...*, the Commission shall present a report to the European Parliament and to the Council examining the possibilities to transfer relevant provisions on ammonium nitrate from Regulation (EC) No 1907/2006 into this Regulation.
3. If appropriate, in the light of the reports referred to in paragraphs 1 and 2, the Commission shall submit a legislative proposal to the European Parliament and to the Council with a view to amending this Regulation accordingly.

* OJ: please insert a date: 24 months after the date of entry into force of this Regulation.

Article 19
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 ...*.

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

Done at ...

For the European Parliament
The President

For the Council
The President

* OJ: please insert a date: 18 months after the date of entry into force of this Regulation.

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 limit values set out below

Name of the substance and Chemical Abstracts Service Registry number (CAS RN)	Limit value	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 ¹	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 ¹
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

¹ Commission Regulation (EC) No 948/2009 (OJ L 287, 31.10.2009, p. 1).

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 ¹	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 ¹
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
Calcium ammonium nitrate (CAS RN 15245-12-2)	3102 60 00	3824 90 97
Ammonium nitrate (CAS RN 6484-52-2) [in concentration of 16 % by weight of nitrogen in relation to ammonium nitrate or higher]	3102 30 10 (in aqueous solution) 3102 30 90 (other)	3824 90 97

¹ Regulation (EC) No 948/2009.