



Council of the
European Union

Brussels, 20 October 2017
(OR. en)

13721/17

CT 115
ENFOPOL 493
COTER 119
COSI 250
PROCIV 89
JAI 972

COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: C(2017) 6950 final

Subject: COMMISSION RECOMMENDATION of 18.10.2017 on immediate steps to
prevent misuse of explosives precursors

Delegations will find attached document C(2017) 6950 final.

Encl.: C(2017) 6950 final



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COMMISSION RECOMMENDATION

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on immediate steps to prevent misuse of explosives precursors

(Text with EEA relevance)

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on immediate steps to prevent misuse of explosives precursors

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) Recent terrorist attacks and incidents indicate that the threat posed by home-made explosives in Europe remains high. Explosives precursor substances continue to be accessed and used for the purpose of making home-made explosives, in spite of efforts to effectively restrict and control access to them.
- (2) In its Resolution 2370 (2017), the UN Security Council stresses the paramount need to prevent terrorists from using or seeking access to raw materials and components that can be used to manufacture explosives and calls for enhanced vigilance, including through the issuance of good practices, sharing information across borders and establishment of partnerships.
- (3) Regulation (EU) No 98/2013 of the European Parliament and of the Council¹ 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.
- (4) Proper application of Regulation (EU) No 98/2013 by all Member States is necessary to achieve its objective of improving the free movement of chemical substances and mixtures within the internal market and removing distortions of competition, while ensuring a high level of protection of the safety of the general public. It will also further the objectives of Directive (EU) 2017/541 of the European Parliament and of the Council² to prevent terrorist offences, involving the manufacture, possession, acquisition, transport, supply or use of explosives, as well as the provision and reception of instructions on making or using explosives.
- (5) This Recommendation aims to ensure that the objective of Regulation (EU) No 98/2013 can be more effectively achieved by providing guidance to Member States on

¹ Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors (OJ L 39, 9.2.2013, p. 1).

² Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

its application. This Recommendation complements the Guidelines³ adopted by the Commission and the Standing Committee on Precursors⁴ and takes into account the discussions held in that committee and during a series of regional workshops involving Member State authorities, organised in 2016 and 2017.

- (6) The availability of explosives precursors to the general public should be restricted to prevent terrorists to acquire explosives precursors. Regulation (EU) No 98/2013 restricts the access to, and use of, seven chemical substances (restricted explosives precursors listed in Annex I of Regulation (EU) No 98/2013)⁵ by members of the general public.
- (7) Notwithstanding this prohibition, Member States may decide to grant access by the public to those substances only through a system of licences and registration. As of 1 January 2017, sixteen Member States have licensing and/or registration regimes in place instead of a prohibition.⁶ Thus, in those Member States, restricted explosives precursor substances and mixtures are still accessed and used by members of the general public.
- (8) Member States should identify and promote lower concentrations and alternative substances with less concern to security and establish conditions on the storage of explosives precursors. Member States which have a licensing regime should carry out checks on the background of the individual asking for a licence.
- (9) This Recommendation also calls for improved enforcement of the restrictions and controls laid down in Regulation (EU) No 98/2013 and cross-sectoral cooperation. Increasing the level of awareness among all actors in the supply chain, including those operating online, will better enable them to comply with their obligations under Regulation (EU) No 98/2013.
- (10) Without prejudice to the legal frameworks for the cross-border exchange of information in the context of criminal investigations concerning a terrorist offence⁷ or in the area of customs⁸, this Recommendation calls for the exchange of information on suspicious transactions, disappearances, thefts, and other suspicious incidents or licence applications, when this appears to have a cross-border element.
- (11) Although recent attacks and incidents have mostly involved triacetone triperoxide (TATP), the threat concerns a wider range of home-made explosives and explosives precursor substances. The Union and its Member States must remain vigilant by detecting and addressing developments in this area, in cooperation with relevant stakeholders and users.

³ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/crisis-and-terrorism/explosives/explosives-precursors/docs/guidelines_on_the_marketing_and_use_of_explosives_precursors_en.pdf

⁴ <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3245>

⁵ Hydrogen peroxide, Nitromethane, Nitric acid, Potassium chlorate, Potassium perchlorate, Sodium chlorate, Sodium perchlorate in a concentration higher than the corresponding limit value set out in Annex I and including a mixture or another substance in which such a listed substance is present in a concentration higher than the corresponding limit value.

⁶ Report from the Commission on the application of, and delegation of power under, Regulation (EU) 98/2013 of the European Parliament and of the Council on the marketing and use of explosives precursors, COM (2017) 103 final of 28.2.2017.

⁷ Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences (OJ L 253, 29.9.2005, p. 22).

⁸ Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 82 of 22.3.97, p.1).

- (12) Since the adoption of the Regulation, the Commission has monitored and facilitated its application in close collaboration with the Standing Committee on Precursors. In February 2017, the Commission adopted a report⁹ which concluded that, although the entry into force of the Regulation has contributed to reducing the threat posed by explosives precursors in Europe, it is necessary to identify measures and actions which strengthen the system of controls around homemade explosives. In May 2017, the Commission has started its work to review the Regulation¹⁰ on Explosives Precursors with an evaluation that will be followed by an impact assessment during the first half of 2018. The evaluation will examine the relevance, effectiveness, efficiency, coherence and added value of the Regulation as well as identify problems and obstacles that might require further action. The impact assessment will examine various policy options to address any problems and obstacles identified. Pending the outcome of this review, the Recommendation recommends that Member States take immediate steps to effectively restrict the availability of explosives precursors to the general public within the framework of the existing Regulation,

HAS ADOPTED THIS RECOMMENDATION:

Limiting the availability of explosives precursors to the general public

1. Member States should take all necessary measures under Regulation (EU) No 98/2013 to restrict the availability of explosives precursors to the general public and prevent terrorists from accessing explosives precursors, as well as ensuring the appropriate reporting of suspicious transactions throughout the supply chain. To this end, Member States should carefully assess whether the prohibition, licensing or registration system that they have put in place is effectively meeting these objectives. Member States should inform the Commission of the results of their assessment within four months after the adoption of this Recommendation. This information will contribute to the assessment of possible further measures at EU level.
2. In addition, Member States should urgently take the following actions:
 - (a) promote and, where possible and appropriate, require the use of alternative substances or lower concentrations which can be used for the same legitimate activity with less concern to security;
 - (b) lay down security conditions on the storage of explosives precursors for economic operators, professional users, and members of the general public who are legally in possession of explosives precursors;
 - (c) provide clear guidance to economic operators about how to effectively and efficiently verify whether a person is a member of the general public or not. To that end, Member States could apply a notion of "professional user" which implies that a person has a need for a restricted explosives precursor for purposes connected with trade, business or profession;
 - (d) where a licensing scheme is in place pursuant to Article 4(2) of the Regulation (EU) No 98/2013, carry out checks on the background of the individual

⁹ Report from the Commission on the application of, and delegation of power under, Regulation (EU) 98/2013 of the European Parliament and of the Council on the marketing and use of explosives precursors, COM (2017) 103 final of 28.2.2017.

¹⁰ https://ec.europa.eu/home-affairs/what-is-new/work-in-progress/initiatives/revision-regulation-marketing-and-use-explosives-precursors_en

applying for a licence, in particular verifying the criminal records of the applicant in all states of residence during the preceding five years; and

- (e) set up inspection systems to identify non-compliance by economic operators.

Strengthening cooperation and engaging with the supply chain

3. In order to strengthen cooperation and engage with the supply chain, Member States should:

- (a) provide training to ensure that law enforcement, first responders and customs authorities are able to recognise explosives precursor substances and mixtures during the course of their duties and to react in a timely and appropriate manner to suspicious activity;
- (b) in addition to the existing reporting obligations in Article 9(4) of Regulation (EU) No 98/2013, encourage end-users of explosives precursors to report significant disappearances and thefts;
- (c) insofar as not already covered by existing obligations in Union legislation, exchange information on suspicious transactions, disappearances, thefts and other suspicious incidents or licence applications, whenever these might have cross-border elements, with other Member States concerned, as soon as possible and in accordance with national law and relevant international legal instruments; and
- (d) identify all sectors of relevance, including those operating online, target awareness-raising actions to the specificities of each different sector, and maintain a dialogue with the supply chain and with end-users to improve understanding of the legitimate professional and non-professional uses of explosives precursors.

Done at Brussels, 18.10.2017

For the Commission

Member of the Commission