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COMMISSION STAFF WORKING DOCUMENT

SUMMARY OF THE IMPACT ASSESSMENT

Accompanying document to the
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the marketing and use of explosives precursors

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SUMMARY OF THE IMPACT ASSESSMENT

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on the marketing and use of explosives precursors**

1. BACKGROUND

In accordance with the EU Action Plan on Enhancing the Security of Explosives, which was approved by the Justice and Home Affairs Council in April 2008 and which called on the Commission to ‘establish a Standing Committee to consider measures and prepare recommendations concerning the regulation of explosives precursors available on the market taking into account their cost-benefit effects’, the Commission intends to adopt measures to deal with the marketing and use of explosives precursors in September 2010.

The overall objective of the measures is to establish a harmonised approach to restricting the marketing and use of certain substances that are frequently used for the illicit manufacture of explosives, with a view to preventing their diversion and misuse. These measures are intended to constitute a tangible deliverable under the ‘prevent’ strand of the EU Counter-Terrorism Strategy adopted by the JHA Council on 1 December 2005.

The proposed policy builds on the work and recommendations of the Standing Committee on Precursors (SCP), an ad hoc advisory committee composed of experts from the EU Member State authorities and representatives of the private sector, and on a thorough assessment entitled ‘Preparatory Study to Inform an Impact Assessment of Potential Legislative and Non-legislative Restrictions on Chemical Precursors to Explosives’, prepared by an external contractor. The reports submitted in the course of the work on the study were also discussed regularly in the SCP and in a Commission Interservice Group on explosives issues.

2. PROBLEM DEFINITION

In recent years, the EU and EEA countries have collectively experienced a high number of terrorist and criminal attacks using explosives, home-made explosives (HMEs) and improvised explosive devices (IEDs), as well as an even higher number of attacks that were prevented, or failed¹. HMEs are the means most frequently used to carry out attacks.

2.1. Assessment of specific problems

Wide availability and easy access by the general public to precursors on the market

At present, a wide variety of precursors are easily available to the general public. The internet is an easy channel to buy precursors too. Even greater quantities of precursors can be obtained by or through commercial or otherwise legitimate end users.

High ‘potency’ of precursors

The concentration levels of precursors in certain products available to the general public and to legitimate end users are in many cases sufficient to produce an explosive.

¹ As documented in EU Terrorism Situation and Trend Reports by Europol.

No EU level playing field

While several legislative and non-legislative measures exist at international, EU and national level, these either do not specifically focus on the security risks associated with certain chemicals or do not cover the entire EU. This implies that precursors that may be restricted or controlled in one country can be easily obtained in another. In addition to the consequences for security, such a situation may also give rise to market distortions, preventing a level EU playing field in this area.

The main groups of precursors requiring the most urgent attention are:

Precursor group	Chemical	Main associated use
Nitrates/ nitrogenous fertilisers	Ammonium nitrate	Ammonium nitrate (mixed with a fuel e.g. diesel oil (ANFO) or sugar (ANIS)) is one of the most common ingredients in large-scale IEDs. Other nitrates can also be used as oxidiser ingredients in IEDs.
	Potassium nitrate	
	Sodium nitrate	
	Calcium nitrate	
Hydrogen peroxide and acetone	Hydrogen peroxide	Used by various terrorist groupings to produce Triacetone triperoxide (TATP).
	Acetone (propanone)	
Nitro-methane and hexamine	Nitromethane	Nitromethane: used by ETA and possibly other groupings. Explosive in combination with ammonium nitrate or nitric acid. Hexamine: used to produce explosives in combination with hydrogen peroxide.
	Hexamine (methenamine)	
Strong acids	Nitric acid	Nitric acid is used in the synthesis of HMEs such as urea nitrate.
	Hydrochloric acid	
	Sulphuric acid	
Chlorates and perchlorates	Sodium chlorate	Used as oxidisers / oxygen generators to produce HMEs. A mixture of chlorates can be an HME in itself without the need for a detonator / booster. Chlorates can also serve as a booster.
	Sodium perchlorate	
	Potassium chlorate	
	Potassium perchlorate	

2.2. Subsidiarity and proportionality principles

The EU can only be as secure as its weakest link. Consequently, activities at EU level and a coordinated EU approach are needed, and will benefit all relevant stakeholders. The subsidiarity principle is thus satisfied because the goals to be achieved through measures on explosives precursors cannot be achieved by any single EU Member State, and must therefore be addressed at EU level.

The significant numbers of attacks or attempted attacks, as documented by Europol, underline the extent and urgency of the problem.

Moreover, EU regulation also has a strong internal market rationale, since the current situation, which imposes different regulatory regimes on the chemical industry, distorts the market and imposes additional costs of adjustment on the private sector. In these circumstances, EU regulation on the marketing and use of explosives precursors is proportionate.

3. OBJECTIVES

As a reflection of the problems identified, the policy objectives deriving from the problem definition are presented in Table 3 below.

Table 3: General, specific and operational objectives

General objective	Specific objectives	Operational objectives
To reduce the number and potency of terrorist and other criminal incidents in the EU using explosives, by deterring terrorists and other criminals from using precursors to build explosives and inhibiting their access to precursors.	1.1 To restrict access to certain precursors by the general public	1.1.1 To reduce the availability of certain precursors on the EU consumer market to the general public
		1.1.2 To reduce certain types of supply channels / ways of access to precursors
	1.2 To reduce the reliability and potency of home-made explosives or components manufactured for malicious or criminal purposes	1.2.1 To develop suitable additives and promote the use of these additives to prevent the use of precursors in explosives
		1.2.2 To reduce concentrations of certain precursors available to the general public
	1.3 To enhance the security and awareness of the entire supply chain of precursors	1.3.1 To increase control and surveillance over transactions and sales of certain precursors
		1.3.2 To increase control and surveillance over transport, distribution, import / export, etc.
		1.3.3 To raise awareness among supply chain actors of the risks in general and suspicious transactions.
	1.4 To prevent terrorists and other criminals from making use of lower control levels and fewer restrictions on chemicals in some countries	1.4.1 To establish common measures at EU / international level

The policy objectives are fully in line with the EU counter-terrorism strategy, with the EU Action Plan on Enhancing the Security of Explosives and with the Stockholm programme², which stipulates that a ‘*legislative framework to address the dangers associated with precursors should be developed*’.

4. POLICY OPTIONS

The policy options considered are presented in Table 4. Policy options 0 – 4 only concern sales to the general public, and will therefore not directly affect any professional use. Those who use the identified precursors professionally may be indirectly affected, because sometimes they make use of general retail channels, which under the policy options may become the subject of certain restrictions. Only policy option 5 covers a wider spectrum of supply chain stakeholders.

Table 4: Overview of policy options

Policy option 0 — Status Quo	No action. This implies that no changes are made to the current situation. The baseline is a combination of existing policies, legislative <i>acquis</i> , voluntary measures and other relevant activity.
Policy option 1	A total ban on sales of the substances to members of the general public, irrespective of concentration levels.
Policy option 2	A ban on sales of the substances in all concentrations and quantities over the internet.
Policy option 3	A ban on sales to the general public if the substance is above a specific concentration level.
Policy option 4	Option 3 plus additional measures:
Policy option 4a	A ban on sales to minors.
Policy option 4b	Sales of the substances in higher concentrations than those allowed under option 3 through a trader or consumer licensing system.
Policy option 4c	Introducing a system of reporting suspicious transactions.
Policy option 4d	A scheme for labelling precursors with a code specifying that the purchase may be subject to registration, with a system for recording the identity of the buyer (including internet sales). Records should be made available to competent law enforcement authorities.
Policy option 5	Taking measures to enhance the surveillance of legitimate

² 17024/09.

	<p>and professional use, including sub-options such as:</p> <p>Promoting Codes of Conduct</p> <p>Education and training</p> <p>Raising staff awareness</p> <p>Addressing medium / small users in particular</p>
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5. PREFERRED OPTION

The preferred policy option can be formulated as follows:

Setting concentration thresholds for the sale of certain precursors to members of the general public, with a system to report suspicious transactions for certain precursors. Developing a consumer licensing system to allow for sales of higher concentrations. Adding voluntary measures to support the reporting of suspicious transactions and the implementation of the consumer licensing system, as well as other relevant action to raise awareness in the supply chain.

5.1. Main impacts of the preferred policy option

5.1.1. Financial and economic impacts

The value of goods currently sold yearly to the general public above the proposed concentration thresholds is estimated at about €450-1150 million. However, about half of these goods will still be sold and bought through the acquisition of personal licences. Consumers will also be able to switch to substitute products, which are available. The drop in consumer sales is estimated to be at most €115-280 million.

As a total ban is not envisaged, and the overall non-professional consumption of the precursors concerned only amounts to about 1-5% of total EU consumption of these chemicals, the impact on the producers of base chemicals will be very limited.

In terms of costs of compliance with the provisions of the preferred policy option by businesses and public authorities, the total maximum cost of arrangements needed may add up to about €100-140 million per year (around €65 million of which is to be borne by public authorities), plus an additional €80-126 million one-off cost. Legitimate users will face some administrative costs when required to provide identification and proof of legitimate use: licensing, registration or presentation of company documents may be requested. However, consumers will in general be able to access diluted versions or — if these are not a feasible option — suitable alternatives (save for a few products such as hexamine fuel tablets), if they choose not to ask for a licence.

All cost estimates have been made assuming that the outcomes are at the upper end of the scale, and could in reality be significantly less.

5.1.2. *Social impacts*

The measures included in the preferred policy option are not expected to have serious social effects. Clearly, however, the overall positive social effect of successfully countering the threat of attacks using home-made explosives is improved security in terms of a reduction in casualties and long-term health problems, reduced levels of fear and increased perception of safety.

On the other hand, the restrictions can cause some inconvenience to consumers, who would still be able to access precursors in higher concentrations, but will be required to apply for a licence. There is also a limited risk that sellers would too quickly consider a transaction as suspicious and refuse to sell. However, this could be offset by clear guidance, education and training. There is also a risk that competent authorities may decide not to accept licences from persons not legally resident in the country where they would like to make the purchase, as they do not have access to possibly relevant information on that person. In addition, the system of reporting suspicious transactions should not lead to ‘overzealous’, discriminatory reactions on the part of businesses, for example based on specific physical features or foreign accents.

5.1.3. *Impacts on fundamental rights*

The preferred policy option requires the processing of personal data and their further disclosure to third parties (e.g. law enforcement authorities) in the case of suspicious transactions. This implies potentially serious interference with private life and the right to the protection of personal data, and thus requires compliance with international and EU data protection law and with national data protection laws implementing EU data protection law.

Freedom to conduct a business would not be affected as companies will still be able to trade all precursors (with some exceptions like producers of hexamine fuel tablets), even though some limitations may apply as they would need to set up a new reporting system and carry out additional checks of exemption permits. The right to property would not be affected, as in principle the handling, sale and possession of precursors would still be possible.

5.2. Benefits of the preferred policy option

5.2.1. *Restricting access to certain precursors by the general public*

Consumers would have open access to chemical substances below a certain concentration level. Access to higher concentrations would not be banned, but restricted and controlled.

5.2.2. *Reducing the reliability and potency of ‘home-made’ explosives or components manufactured for malicious or criminal purposes*

Setting concentration thresholds would as a minimum make it more difficult to produce reliable and potent home-made explosives. The notification of suspicious transactions and a licensing system will both have a deterrent effect and improve the chances of terrorists and other criminals being caught before they can fabricate home-made explosives.

5.2.3. *Enhancing the security and awareness of the entire supply chain of precursors*

The cumulative effects of the different elements included in the policy option would have a strong positive impact on the security and awareness of the entire supply chain handling

precursors. In comparison to existing EU and national measures, more focus will be on security (as opposed to safety).

5.2.4. Preventing terrorists and other criminals from making use of lower control levels and fewer restrictions on chemicals in some countries

The cumulative effects of lowering concentration levels in open sales channels combined with a system of reporting suspicious transactions and controlled sales of higher concentration levels will create an EU level playing field, both avoiding internal market distortions and preventing persons with malevolent aims from making use of lower standards in other Member States.

5.3. The EU added value

The purpose of the proposed measures is to develop a holistic approach at EU level, minimising the current differences in national approaches. This will improve the functioning of the internal market and will prevent terrorists and other criminals from making use of lower standards in certain Member States. In addition, the measures will strengthen the EU focus on the security of precursors (in contrast to solely safety, as has been the case so far) and will help to increase awareness among both supply chain actors and consumers. Education and training will support the implementation of the measures included in the preferred policy option. Research will help to render precursors less harmful. Last but not least, a common EU approach towards the development and implementation of such measures will allow Member States to exchange experiences and information.

5.3.1. Expected take-up among relevant stakeholders

Member State experts, even though not expressing any formal political position, were overall in favour of the combination of measures included in the preferred policy option. They considered that the policy option was broadly in line with measures that were already in place in several Member States, which had proven to be successful or were recently created in response to a perceived need to increase the security of precursors. All agreed that an EU-wide approach would favour an EU level playing field.

Industrial stakeholders, while stressing an overall preference for voluntary measures, also supported the combination of measures included in the policy option.