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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the marketing and use of explosives precursors**

(Text with EEA relevance)

SEC(2010) 1041

SEC(2010) 1040

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

The proposed regulation addresses the problem of the misuse of certain chemicals, which are widely available to the general public on the market, as precursors to home-made explosives. Home-made explosives, in turn, are the tool most preferred by terrorists and other criminals to perpetrate attacks. The main aim of the measures proposed is to reduce this risk by preventing access to selected highly concentrated chemicals by the members of the general public.

- **General context**

Home-made explosives, fabricated from certain easily accessible chemical precursors, are a preferred tool for perpetrators of terrorist attacks, from which the EU, as documented in the Europol TE-SAT reports, is not spared. Currently, the general public has relatively easy access to these chemicals even when in concentrations sufficient to produce a powerful explosive device. The scale of the problem is amplified by the fact that the chemical market in the EU is large and diversified, with multiple end-users. The supply chain for precursors, and in particular the last segment (sales to end users), is in general insufficiently aware of the risks posed by individuals involved in serious criminal activities and terrorism attempting to obtain precursors. Some supply chain actors, in particular at the end of the chain, have sold precursors to terrorists or other criminals in quantities that should have raised suspicion. While several legislative and non-legislative measures exist at international, EU and national level, these are either not specifically focused 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. This causes not only a security problem but also a problem for the smooth functioning of the internal market.

- **Existing provisions in the area of the proposal**

Regulation (EC) No 1907/2006<sup>1</sup> (REACH) — this covers chemicals from the safety perspective but — with one exception — does not address the concerns of security related to chemical precursors to explosives.

Annex XVII of REACH<sup>2</sup> includes a ban on the sale to the general public of ammonium nitrate (one of the precursors of concern) containing 16 % or more nitrogen. However, this instrument does not provide for licensing schemes or reporting of suspicious transactions, and only concerns one of the precursors identified as high-risk in the Action Plan on Enhancing the Security of Explosives.

Council Directive 91/414/EEC<sup>3</sup> — this phases out the sale of weed-killers containing chlorates, but addresses only one particular use of these chemicals, and only one group of chemical precursors to explosives of concern.

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<sup>1</sup> OJ L 396, 30.12.2006, p.1.

- **Consistency with the other policies and objectives of the Union**

The proposal is in line with the policy objectives set out in the European Union Counter-terrorism Strategy<sup>4</sup>, the Action Plan on Enhancing the Security of Explosives<sup>5</sup> and the Stockholm Programme — An open and secure Europe serving and protecting the citizens.<sup>6</sup>

## 2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

*Consultation methods, main sectors targeted and general profile of respondents*

The proposed policy builds on the work and recommendations of the Standing Committee on Precursors (SCP). This Committee is an ad hoc advisory Committee composed of experts from the EU Member State authorities and representatives of the private sector, and is chaired by the Commission. It so far has met ten times in order to advise the Commission on the substances covered by this Regulation and other measures aimed at explosives precursors. On 13 February 2009, the SCP adopted its annual report for 2008 which contained concrete recommendations for enhancing the security of precursors.

These recommendations served as the basis for an impact assessment study. The SCP was closely involved in the development of this study — its members (from both the public and private sector) were consulted on a regular basis. In addition, an online business survey and two stakeholder workshops were organised to validate the assessment of the policy options proposed in the draft study. The consultations in the course of the development of the preparatory study also included consultation of some SMEs that would be most affected by possible measures on precursors, in particular hexamine producers.

*Summary of responses and how they have been taken into account*

This consultation process with external and internal stakeholders resulted in a high level of consensus on the preferred policy option and a practical and realistic balance between security concerns on the one hand, and industry, retail and consumer welfare concerns on the other. Concerns on the part of industry and the SMEs most affected (in particular producers of hexamine fuel tablets) have been accommodated in the final text of the proposal.

- **Collection and use of expertise**

*Scientific/expertise domains concerned*

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<sup>2</sup> As amended by Commission Regulation (EC) No 552/2009; OJ L 164, 26.6.2009, p. 7  
<sup>3</sup> OJ L 230, 19.8.1991, p.1  
<sup>4</sup> 14469/3/05 REV 3  
<sup>5</sup> 8109/08  
<sup>6</sup> OJ C 115, 4.5.2010, p.1

The proposal is based to a large extent on security research and tests conducted by several EU Member States. Expertise on the market for chemicals and the use of chemical products was provided by industry representatives.

#### Methodology used

The results of the security research and tests were reflected in the development of recommendations to the European Commission by the Standing Committee on Precursors, and were included in the assessment of impacts and evaluation of individual policy options in the course of the impact assessment study carried out by an external contractor.

#### Main organisations/experts consulted

CEFIC, FECC, experts from the relevant authorities of the Member States, as well as consultancy firms — GHK, Rand Europe, Comstratos.

#### Summary of advice received and used

While the risk of the potential misuse of certain chemical precursors to produce home-made explosives cannot be completely excluded, it can be considerably reduced by limiting the availability of such chemicals above certain concentration thresholds to the general public. The thresholds proposed are based on the security research and test results and on an analysis of the use of the chemical substances in question by the general public.

#### Means used to make the expert advice publicly available

The ‘Preparatory Study to Inform an Impact Assessment of Potential Legislative and Non-Legislative Restrictions on Chemical Precursors to Explosives’ has been shared with the members of the Standing Committee on Precursors (and via them with the Member State authorities and industrial stakeholders), and can be obtained from the Commission upon request.

#### • **Impact assessment**

The options considered included voluntary measures by the private sector (industry and retail), regulatory action carried out by the Member States individually, legislative measures at the European Union level, and a combination of these.

Voluntary measures by industry and the retail sector would entail reporting of suspicious transactions, awareness raising campaigns among employees about the security risks related to the chemicals of concern, and enhancing the security of the entire supply chain for these chemicals. Efforts undertaken by the European Commission with several European-level associations in 2008 have shown that, while desirable, such measures cannot in themselves achieve the desired goal of enhanced security because uniform enforcement and outreach to all relevant stakeholders EU-wide cannot be ensured.

Some Member States have already adopted either voluntary or legislative measures to reduce the availability of the chemical precursors to explosives, or a combination of

both. Some Member States are considering such measures but are waiting for the EU to provide leadership. This diversity shows that a harmonised EU-level approach is desirable in order to prevent different levels of regulation resulting in security gaps an internal market with free movement of goods and persons.

Several policy options for legislative action at EU level have undergone a thorough impact assessment and consultation process. While having no known negative impacts on the environment, the preferred policy option has positive impacts in terms of security, but also some negative economic impacts in particular on the retail sector and on public authorities of the Member States in terms of costs of implementation. However, these economic impacts and negative impacts on consumers are relatively minor as non-professional consumption of the precursors only accounts for about 1.5% of total EU consumption of the chemicals concerned, and substitutes are in most cases available. The purchase of chemicals above the concentration thresholds will still be possible, albeit upon presentation of a licence. Industry and retail organisations selling to the general public will thus be most affected by compliance costs, as well as government authorities responsible for the licensing scheme.

The Commission carried out an impact assessment listed in the Work Programme. The impact assessment report is accessible at [http://ec.europa.eu/governance/impact/ia\\_carried\\_out/cia\\_2010\\_en.htm#homaf](http://ec.europa.eu/governance/impact/ia_carried_out/cia_2010_en.htm#homaf).

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

- **Summary of the proposed action**

The key aim of the proposed action is to reduce access by the general public to high-risk chemicals in concentration levels that make these chemicals suitable for easy misuse to produce home-made explosives. This will be done by prohibiting the sales of certain chemicals above concentration thresholds to members of the general public. Sales of higher concentrations would only be allowed to users who can document a legitimate need to use the chemical — these users can obtain a licence to purchase the chemical. The sales of these chemicals and their mixtures as well as the sales of products containing chemicals of concern for which concentration thresholds cannot be set will also be subject to reporting of suspicious transactions. The proposed legislative action will be accompanied by voluntary measures by industry and the retail sector to enhance security and raise awareness in the entire supply chain.

#### **Legal basis**

Article 114 of the Treaty on the Functioning of the European Union.

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the European Union.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason(s).

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 give rise to market distortions that prevent a level EU playing field in this area.

There have been indications that terrorist groups take the different approaches in different Member States into consideration. The clearest cases have concerned ETA, which has hidden large quantities of explosives precursors outside Spain, in particular in France and Portugal. At the same time, there is no clear evidence to date that terrorists have changed their purchasing behaviour on the basis of differences in regulation in the different Member States. The lack of such indications may also be because currently these chemicals are still easily available across most of the Member States

EU action will better achieve the objectives of the proposal for the following reason(s).

The current differences among the regimes applied to chemical precursors to explosives not only have a negative effect on security but also distort the functioning of the internal market. They negatively affect cross-border trade and other economic activities of producers and other supply chain stakeholders active in more than one country. Action at EU level would help eliminate these negative effects.

Recent attacks and failed or prevented attacks have shown that terrorism is going beyond the Member States that have traditionally suffered from terrorist attacks (e.g. Spain, the UK, France) and is spreading to other EU countries. The nature of these incidents also shows that terrorists may prepare in one country for an attack in another. The EU can only be as secure as its weakest link. Consequently, activities at EU level and a co-ordinated EU approach are needed, and will benefit all relevant stakeholders.

The Member States, by way of their representatives in the Standing Committee on Precursors (SCP), have indicated that they prefer an EU approach to this issue in order to create a level playing field. This approach is also supported by the EU associations representing the chemical industry, which have been extensively consulted in the course of the SCP's work and the work on the impact assessment. Some Member States have indicated that they have not yet taken action because they are waiting for an EU initiative.

These actions will result in a more harmonised security environment for chemicals used to produce home-made explosives.

The scope of the proposal is limited to a short list of chemical substances and their mixtures, and to the sales of these to the general public (i.e. not to professional users or in business-to-business operations). Moreover, for some of the substances, their availability to the general public is limited only if they are above certain concentration levels, and can still be obtained upon presentation of a licence from a public authority (documenting legitimate use). The substances and concentration thresholds are clearly set out in the Annex to the Regulation. The current situation shows that national regulation in this area is leading to diversity rather than convergence, which is detrimental to security. Such regulatory diversity enables the purchase of chemicals of concern in one Member State and its easy transport and potential misuse for the

production of home-made explosives in another Member State.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

The proposed legislative instrument has a clearly delimited scope. It leaves wide scope for the Member States to develop a consumer licensing scheme in line with their existing structures and to introduce appropriate penalties. All economic operators would be subject to the same rules. The instrument can be flexibly adjusted to the evolution of the threat and knowledge about the chemical substances (in terms of e.g. research results) by adding or removing substances from the Annexes by means of a delegation procedure. The form of a Regulation was chosen in order to prevent the need for national transposition measures in 27 Member States with each potential modification of the Annexes.

The financial burden on the European Union and the national governments will be minimised by using existing structures to implement the Regulation. Moreover, the scope of the Regulation is limited to certain chemical precursors posing the greatest concern, for most of which alternatives exist which can satisfy consumer needs. This is likely to keep the number of licence requests at a low level. In order to achieve a practical balance between security concerns and the capacities of industry, the retail sector and law enforcement for reporting suspicious transactions, guidance will be developed with the involvement of all these stakeholders. Negative economic effects on industry and the retail sector will be minimised given the overall low consumption of the chemicals of concern above the stated concentration thresholds (1.5% of total EU consumption of the chemicals concerned), the possibility to purchase these chemicals upon presentation of a licence, and the likely increase in the use of substitute chemicals by the general public. In order to prevent an excessive initial burden on public authorities and the supply chain for the chemicals of concern, the Regulation will have a transitional phase for implementation. This is also necessary in order to allow businesses and consumers to continue using their old supplies of the chemicals in question in order to minimise their economic loss, but also to allow national authorities to put in place the licensing scheme forming part of the preferred policy option.

- **Impact on fundamental rights**

This proposal was subject to an in-depth scrutiny to ensure that its provisions are fully compatible with fundamental rights and principles enshrined in particular in the Charter of Fundamental Rights of the European Union, and notably the protection of personal data, the freedom to conduct a business, the right to property and the principle of non-discrimination. Reporting suspicious transactions and the licensing scheme foreseen in the Regulation require processing of personal data. This implies a serious interference with private life and the right to the protection of personal data. In order to be lawful this interference has to comply with the criteria required by EU law: this entails that it must be in accordance with the law, must seek to attain a legitimate public interest necessary in a democratic society; the interference must furthermore be necessary to attain this objective and proportionate to the objective pursued, i.e. the objective cannot be attained by less restrictive measures. The proposal explicitly requires that the processing of



personal data under this Regulation must always be carried out in accordance with EU data protection laws, namely Directive 95/46/EC<sup>7</sup> and national data protection laws implementing this Directive.

As far as the right to conduct a business and the right to property are concerned, the proposal constitutes a proportionate answer to the objectives it seeks to attain, in particular in light of other policy options scrutinised in the Impact Assessment, such as, for instance, a total ban on sales of the substances to members of the general public irrespective of concentration levels. Other, potentially less intrusive policy options were considered to be less effective. The Regulation defines the scope of application of the licensing schemes by listing the chemicals of concern in Annex I and by stating clearly the concentrations above which a license would be required for the purchase of the respective chemical. Reporting of suspicious transactions applies only to the chemicals listed in the Annexes and will be based on a risk assessment carried out by the economic operators. The proposal foresees the elaboration of concrete and clear guidelines to assist economic operators in assessing the suspicious nature of a transaction. These guidelines will ensure that a too broad interpretation of the concept is avoided so as to minimize the transmissions of personal data to law enforcement authorities and to prevent any potential arbitrary or discriminatory practices. At the same time, the licensing scheme and the obligation to report suspicious transactions will allow economic operators to continue trading all precursors, thereby limiting the impact on the freedom to conduct a business. The right to property will not be affected as businesses and members of the general public will continue to be able to use their lawfully acquired possessions. Finally, reasonably long transitional periods are foreseen so as to allow members of the general public and economic operators to adapt to the new requirements, thereby further limiting the impact on the right to property and the freedom to conduct a business.

- **Choice of instruments**

Proposed instruments: Regulation.

Other means would not be adequate for the following reason(s).

Article 114 of the Treaty on the Functioning of the European Union, which is the most appropriate legal basis given the scope of the action, gives a choice between a Regulation and a Directive. In order to achieve maximum harmonisation for the chemicals covered by the legal instrument, and also, where applicable, concentrations of these chemicals, a Regulation is more appropriate. A harmonised approach is desirable not only from the security perspective but also from the perspective of unified rules for economic operators. Moreover, the form of a Regulation will prevent the need for national transposition measures every time changes are made to the list of chemical substances in the Annexes (in line with the development of the threat).

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<sup>7</sup> OJ L 281, 23.11.1995, p. 31

#### **4. BUDGETARY IMPLICATIONS**

The proposal has no implications for the European Union budget.

#### **5. ADDITIONAL INFORMATION**

- **Simulation, pilot phase and transitional period**

There will be a transitional period for the proposed act.

- **Review/revision/sunset clause**

The proposal includes a review clause.

- **European Economic Area**

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**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 Committee<sup>8</sup>,

Having regard to the opinion of the Committee of the Regions<sup>9</sup>,

After consulting the European Data Protection Supervisor<sup>10</sup>

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Action Plan on Enhancing the Security of Explosives, adopted by the Council on 18 April 2008<sup>11</sup>, 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 appropriate action 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 chemical substances and mixtures that can be used as explosives precursors.
- (4) These laws, regulations and administrative provisions, which are divergent and liable to cause barriers to trade within the European Union, should be harmonised in order to

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<sup>8</sup> OJ C [...], [...], p. [...].

<sup>9</sup> OJ C [...], [...], p. [...].

<sup>10</sup> Opinion of .....OJ C .....

<sup>11</sup> 8311/08

guarantee the free movement of chemical substances and mixtures within the internal market while ensuring a high level of protection of the health and safety of the general public.

- (5) As each modification of a Directive and its Annexes would require national transposition measures in 27 Member States and all economic operators should be subject to the same rules, it is more appropriate to use a Regulation as the legal instrument to regulate the marketing and use of explosives precursors.
- (6) The reliability and potency of home-made explosives should be reduced by setting concentration limits for certain substances. Members of the general public should only be able to use those substances at concentrations above the specified thresholds where they hold a licence to do so. Such substances should only be supplied to holders of such a licence.
- (7) As it would be disproportionate to prohibit the use of explosives precursors in professional activities, the measures relating to import, marketing and use of these explosive precursors should apply to the general public only.
- (8) Concentration limits on hexamine in fuel tablets are technically not feasible. Measures should be adopted to facilitate the reporting of suspicious transactions at the retail stage for hexamine fuel tablets and other precursors that do not have safe and suitable alternatives.
- (9) Given that the trade in explosives precursors may lead to the illicit manufacture of improvised explosive devices, the Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation. Those penalties must be effective, proportionate and dissuasive.
- (10) For simplification purposes, existing provisions related to ammonium nitrate should be included in the present Regulation and paragraphs 2 and 3 of entry 58 to Annex XVII to Regulation (EC) No 1907/2006 of European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)<sup>12</sup> should be deleted.
- (11) This Regulation requires the processing of personal data and their further disclosure to third parties in case of suspicious transactions. This processing implies 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 data<sup>13</sup> 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 the provisions of this Regulation are duly protected, in particular the processing of personal data that the granting of a licence and the reporting of transactions considered suspicious should entail.

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<sup>12</sup> OJ L 396, 30.12.2006, p.1

<sup>13</sup> OJ L 281, 23.11.1995, p.31

- (12) Given that the chemical substances used by terrorists and other criminals to make home-made explosives can change rapidly, it should be possible to bring other substances under the regime provided by this Regulation, sometimes as a matter of urgency.
- (13) The Commission should therefore be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union for the purpose of amending the Annexes to this Regulation.
- (14) Since the objective of this Regulation, namely limiting access by the general public to chemicals that may be used to make home-made explosives, can not be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Union level, the European Union may adopt measures in accordance with the principle of subsidiarity. In accordance with the principle of proportionality, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (15) 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 these rights and principles.

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

##### **Subject matter**

This Regulation establishes harmonised rules concerning the making available on the market 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.

#### *Article 2*

##### **Scope**

1. This Regulation applies to the substances listed in the Annexes and mixtures containing such substances.
2. This Regulation does not apply to:
  - (a) articles as defined in Article 3 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council<sup>14</sup>;
  - (b) pyrotechnic articles as defined in Council Directive 2007/23/EC of the European Parliament and of the Council<sup>15</sup>, pyrotechnic articles intended for non-commercial use, in

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<sup>14</sup> OJ L 396, 30.12.2006

<sup>15</sup> OJ L 154, 14.06.2007

accordance with national law, by the armed forces, the law enforcement authorities or the fire department, equipment falling within the scope of Council Directive 96/98/EC<sup>16</sup>, pyrotechnic articles intended for use in the aerospace industry and percussion caps intended for toys;

(c) substances listed in the Annexes and mixtures containing such substances which are used by the armed forces or law enforcement authorities.

### *Article 3*

#### **Definitions**

For the purposes of this Regulation the following definitions apply:

- (1) ‘making available’ means any supply, whether in return for payment or free of charge;
- (2) ‘use’ means any processing, formulation, storage, treatment, mixing, production of an article or any other utilisation;
- (3) ‘member of the general public’ means any natural person who is acting for purposes which are outside his trade, business or profession;
- (4) ‘suspicious transaction’ means any transaction concerning the substances listed in the Annexes, or mixtures containing those substances, where there are reasonable grounds for suspecting that the substance or mixture is intended for the production of home-made explosives;
- (5) ‘non-scheduled substance’ means any substance which, although not listed in the Annexes, is identified as having been used for the manufacture of home-made explosives;
- (6) ‘economic operator’ means any natural or legal person or public entity or group of such persons and/or bodies which delivers works, products or services on the market;
- (7) ‘farmer’ means a natural or legal person, or a group of natural or legal persons, whatever legal status is granted to the group and its members by national law, whose holding is situated within Community territory, as referred to in Article 52 of the Treaty on European Union, and who exercises an agricultural activity;
- (8) ‘agricultural activity’ means the production, rearing or growing of agricultural products including harvesting, milking, breeding animals and keeping animals for farming purposes, or maintaining the land in good agricultural and environmental condition as established under Article 5 of Council Regulation (EC) No 1782/2003<sup>17</sup>.

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<sup>16</sup> OJ L 46, 17.2.1997

<sup>17</sup> OJ L 270, 21.10.2003

## *Article 4*

### **Import, making available, possession and use**

1. Substances listed in Annex I, or mixtures containing those substances, shall not be made available to, possessed or used by members of the general public except if the concentration of the substance in the form in which it is made available is lower than or equal to the limit laid down in Annex I.
2. Notwithstanding paragraph 1, the substances listed in Annex I, or mixtures containing those substances, may be made available to, possessed and used by members of the general public, provided that the member of the general public presents a licence for acquiring the substance, or mixture containing the substance, issued by a competent authority of a Member State.
3. Where a member of the general public intends to import the substances listed in Annex I, or mixtures containing those substances, into the Customs territory of the European Union, and the concentration of the substance or mixture in the form in which it is imported is higher than the limit laid down in Annex I, that person must present a licence as referred to in paragraph 2 at the Customs office of entry. In case of doubts relating to the authenticity or correctness of the licence issued in accordance with paragraph 2 as well as when further advice is required, the customs authorities shall contact the competent authorities designated by the Member State for issuing licences in accordance with Article 5.
4. Notwithstanding paragraph 1, ammonium nitrate and mixtures containing ammonium nitrate may be made available to farmers and may be possessed by farmers, for use as fertilisers in agricultural activities, in concentrations above the limit listed in Annex I.
5. An economic operator which makes a substance or mixture available to a licensed member of the general public in accordance with paragraph 2 shall verify the licence and keep a record of the transaction.
6. An economic operator which intends to make the substances listed in Annex I, or mixtures containing those substances, available to the general public, where the concentration of the substance in the form in which it is made available is higher than the limit laid down in Annex I, shall indicate clearly on the packaging that the purchase, possession or use of that substance or mixture is subject to a licence as referred to in paragraph 2.

## *Article 5*

### **Licences**

1. Each Member State shall lay down the rules for granting the licence provided for in Article 4 (2). When considering whether to grant a licence, the competent authority of the Member State shall take into account 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.
2. The competent authority may either limit the validity of the licence to a period not exceeding three years or may oblige the licensee to demonstrate at intervals not exceeding

three years that the conditions under which the licence was granted are still fulfilled. The licence shall mention the substances concerned.

3. The competent authorities may require applicants to pay a fee for their application for a licence. Such fees shall not exceed the cost of processing the application.

4. The licence may be suspended or revoked by the competent authority whenever 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 the appropriate body responsible under national law.

6. Licences granted by the competent authorities of a Member State shall be valid in all Member States. The Commission may draw up guidelines, after consulting the Standing Committee on Precursors, on the technical details of the licences to assist their mutual recognition.

#### *Article 6*

#### **Reporting of suspicious transactions and thefts**

1. Suspicious transactions in the substances listed in the Annexes, or mixtures containing those substances, shall be reported in accordance with this Article.

2. Each Member State shall set up a national contact point with a clearly identified telephone number and e-mail address for the reporting of suspicious transactions.

3. Economic operators which have reason to believe that a proposed transaction involving one or more substances listed in the Annexes, or mixtures containing those substances, is a suspicious transaction, shall report this without delay, including if possible the identity of the client, to the national contact point of the Member State where the transaction was proposed.

4. Economic operators shall report any other suspicious transactions regarding a non-scheduled substance, and mixtures containing such substances.

5. Economic operators shall also report significant thefts of the substances listed in the Annexes and mixtures containing those substances to the national contact point of the Member State where the theft has taken place.

6. In order to facilitate cooperation between the competent authorities and economic operators, in particular as regards non-scheduled substances, the Commission shall, after consulting the Standing Committee on Precursors, draw up and update guidelines to assist the chemical supply chain. The guidelines shall provide in particular:

(a) information on how to recognise and notify suspicious transactions;

(b) a regularly updated list of non-scheduled substances to enable the supply chain to monitor on a voluntary basis the trade in such substances;

(c) other information which may be deemed useful.



7. The competent authorities of the Member States shall ensure that the guidelines provided for in paragraph 6 and the list of non-scheduled substances are regularly disseminated in a manner deemed appropriate by the competent authorities in accordance with the objectives of the guidelines.

#### *Article 7*

### **Data protection**

Each Member State shall ensure that the processing of personal data carried out in application of this Regulation shall be in accordance with Directive 95/46/EC<sup>18</sup>. In particular, each Member State shall ensure that the processing of personal data required by the granting of license pursuant to Articles 4 and 5 of this Regulation, and the reporting of suspicious transactions pursuant to Article 6 of this Regulation, shall comply with Directive 95/46/EC.

#### *Article 8*

### **Penalties**

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

#### *Article 9*

### **Amendment of the Annexes**

In order to accommodate developments in the misuse of chemical substances as precursors to explosives, or on the basis of research and testing, the Commission may adopt amendments to the Annexes by means of delegated acts in accordance with Articles 10, 11 and 12. Where imperative grounds of urgency so require, in particular where there is a sudden change in the risk assessment as far as the misuse of chemical substances to make home-made explosives is concerned, Article 13 shall apply.

#### *Article 10*

### **Exercise of the delegation**

1. The powers to adopt the delegated acts referred to in Article 9 shall be conferred on the Commission for an indeterminate period of time.
2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
3. The powers to adopt delegated acts are conferred on the Commission subject to the conditions laid down in Articles 11 and 12.

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<sup>18</sup> OJ L 281, 23.11.1995, p. 31

## *Article 11*

### **Revocation of the delegation**

1. The delegation of power referred to in Article 9 may be revoked at any time by the European Parliament or by the Council.
2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated powers which could be subject to revocation and possible reasons for a revocation.
3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.

## *Article 12*

### **Objections to delegated acts**

1. The European Parliament and the Council may object to the delegated act within a period of two months from the date of notification. At the initiative of the European Parliament or the Council, this period shall be extended by one month.
2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the Official Journal of the European Union and shall enter into force at the date stated therein.
3. The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.
4. If the European Parliament or the Council objects to a delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.

## *Article 13*

### **Urgency procedure**

1. A delegated act adopted under the urgency procedure shall enter into force without delay and 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. The European Parliament and the Council may within a period of six weeks from the date of notification object to the delegated act. In such a case, the act shall cease to be applicable. The institution which objects shall state the reasons for objecting to the delegated act.

*Article 14*

**Amendment of Annex XVII to Regulation (EC) 1907/2006**

In Annex XVII to Regulation (EC) No 1907/2006<sup>19</sup>, in entry 58 of the table setting out the designation of the substances, groups of substances and mixtures and the conditions of restriction, in the column 2, paragraphs 2 and 3 are deleted.

*Article 15*

**Transitional provision**

Possession and use by members of the general public of the substances listed in Annex I, or mixtures of those substances, above the concentration limits laid down in Annex I, shall continue to be allowed until [36 months after adoption]

*Article 16*

**Review**

A review of this Regulation shall be made [5 years after adoption].

*Article 17*

**Entry into force**

This Regulation shall enter into force on [18 months after adoption].

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

Done at [...], [...]

*For the European Parliament*

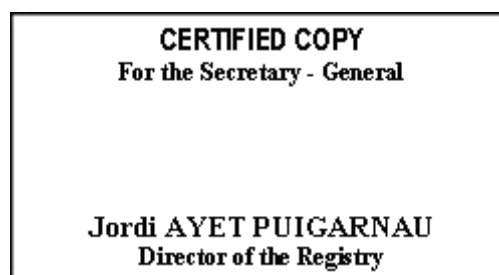
*For the Council*

*The President*

*The President*

[...]

[...]



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<sup>19</sup> OJ L 396, 30.12.2006

## ANNEX 1

**Substances which shall not be made available to members of the general public on their own, or in mixtures including them, except if the concentration is equal to or lower than the limits set out below**

Name of the substance and Chemical Abstracts Service Registry number (CAS RN)	Minimum amount present	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 {see Regulation (EC) No 948/2009 of 30 September 2009, OJ L 287 of 31.10.2009}	Combined Nomenclature (CN) code for a mixture or preparation without constituents (e. g. mercury, precious or rare-earth metals or radioactive substances) which would determine classification under another CN code {see Regulation (EC) No 948/2009 of 30 September 2009, OJ L 287 of 31.10.2009}
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
Ammonium nitrate (CAS RN 6484-52-2)	16% by weight of nitrogen in relation to ammonium nitrate	3102 30 10 (in aqueous solution) 3102 30 90 (other)	3824 90 97

## ANNEX II

**Substances on their own or in mixtures 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 {see Regulation (EC) No 948/2009 of 30 September 2009, OJ L 287 of 31.10.2009}	Combined Nomenclature (CN) code for mixtures or preparations without constituents (e. g. mercury, precious or rare-earth metals or radioactive substances) which would determine classification under another CN code {see Regulation (EC) No 948/2009 of 30 September 2009, OJ L 287 of 31.10.2009}
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)	3824 90 97
	3102 50 90 (other than natural)	3824 90 97
Calcium nitrate (CAS RN 10124-37-5)	2834 29 80	3824 90 97
Ammonium calcium nitrate (CAS RN 15245-12-2)	3102 60 00	3824 90 97