



Brussels, 31 October 2011
D(2010)

Meeting report

Subject: Meeting of the Explosives Working Group, 19 October 2011

All Member States except Cyprus, Greece, Hungary and Latvia attended the meeting. Observers from Switzerland, Norway, Croatia, Turkey, EUROPOL, the European Parliament and the federations representing the European explosives industry (FEEM), explosives engineers (EFEE), automotive supplier industry (CLEPA) and aggregates industry (UEPG), as well as the French Association of Pyrotechnics, Fireworks and Explosive Devices Manufacturers (SFEPA) were also present.

At the beginning of the meeting, the undersigned introduced Mr Julian Foley, who will be the new Desk Officer for explosives and pyrotechnic articles as of November 2011. The undersigned himself will continue to follow issues regarding explosives and pyrotechnic articles in his new role as the Head of Sector Legislation Specific Chemicals.

The draft agenda and the report of the last meeting were adopted without changes. Sweden inquired whether there had been any progress on the differentiation between civil and military explosives. The Commission underlined that the issue was complicated, because of the diverging positions of the Member States, but promised to present a first draft for a question and answer as soon as possible.

Adaptation of Directive 93/15/EEC to the New Legislative Framework

The recast of Directive 93/15/EEC is part of a package of 10 Directives that is expected to be adopted by the Commission shortly. The Council is scheduled to start examining the package at a first working party meeting on 29 November. The recast technique was used in order to adapt the 10 Directives to Decision No 768/2008/EC on a common framework for the marketing of products, without further changing its content.

In the discussion following a short presentation of the recast by the Commission, the Netherlands asked whether the requirement that economic operators should possess a licence contained in Article 5 applied also to natural persons. The Commission explained that the definition of economic operator in Article 2 covered also natural persons engaging in the storage, use, transfer, export or trade of explosives. In practice this means that every natural or legal person doing anything with an explosive has to have a licence, except if this person is an employee of an already licensed economic operator.

Some Member States explained that they also required every employee to have a sub-licence, whereas others rely on the responsibility of the employer to screen and train his employees.

The Netherlands also inquired whether the Commission was planning to revoke Directive 2004/57/EC, which contains a list of pyrotechnic articles and ammunition in order to exclude them from the scope of the Explosives Directive 93/15/EEC. The Commission replied that at the last working group meeting the Member States representatives had not supported a repeal of that Directive, and that therefore it would stay in force.

Sweden remarked that because export was included in the definition of the economic operator, it would need to change its national explosives act. The Commission replied that the proposal indeed required exporters of explosives to possess a licence, but that this was not really new as trade of explosives was also included in the definition of an undertaking in the explosives sector contained in Directive 93/15/EEC. Other elements of the Directive, such as the intra-Community transfer document and the conformity assessment procedures did not apply to exported explosives.

Sweden also asked for verification whether not only Articles 12, 13 and 14, but the whole new Directive would apply to ammunition. The Commission explained that its Legal Service had reviewed the document and ensured that, in line with Article 1.1 (b) only the Articles related to transfers and information exchange (i.e. 12, 13 and 14) will apply to ammunition.

Sweden then commented on Article 6.1, which requires that explosives placed on the market and explosives manufactured for own use should comply with the essential safety requirements, indicating that including own use may cause problems for research and development. The Commission clarified that in-house research and development was in any case not affected and referred to the agreed interpretation given on the issue of CE marking of on-site mixed explosives in the Q&A document (see link: http://ec.europa.eu/enterprise/sectors/chemicals/files/explosives/qa_for_website_en.pdf). Due to the specific nature of explosives and in their own interest, manufacturers should in any case apply the relevant general and specific safety requirements of the Directive. However, if explosives are not placed on the market, the *explosives will not need to be CE marked*.

Sweden also asked to replace '*placing on the market*' with '*making available on the market*' in several articles, including 6.3, 7.2 (a), 8.8 and 22.2, in order to ensure that a manufacturer keeps the appropriate documentation for longer than 10 years after the first explosives have been sold. The ensuing discussion showed that there is indeed some confusion regarding the exact meaning of '*placing*' and '*making available*' on the market.

The Commission explained it had consulted the responsible unit already some time ago and that it was given the reply that the 10 years related to each single product placed on the market, i.e. that manufacturers have to keep the documentation for 10 years after the last individual product of a certain type has been placed on the market. Using '*making available*' would be problematic, because manufacturers normally do not know when the last distributor makes a product available to an end user.

Sweden then asked why the order of CE marking, pictogram and identification number of notified body contained in Model Article R12 of Decision 768/2008/EC has been changed in the recast of the Explosives Directive. In the recast the CE mark is directly followed by the identification number of the notified body, which again may be followed by a pictogram indicating a special risk or use.

The notified body representatives present confirmed that placing the identification number next to the CE mark is already current practice. The Commission informed that

the order of R12 had been slightly changed in the complete package of 10 Directives in order to render it more logical. In the case of explosives, the pictogram indicating a specific risk should be taken from table 2.1.2 of Annex I of the CLP Regulation (1272/2008/EC).

The Commission thanked the Member States for reading the document so attentively, and offered to put the final text of the proposal on CIRCA after its formal adoption. Any further discussion on possible modifications that Member States would wish to make should, however, take place in the appropriate Council Working Group.

Implementation of Directive 2008/43/EC (identification and traceability of explosives)

As an example for the state of preparations in the private sector, the German blasting association presented a software solution which can be used by its members in order to ensure traceability along the entire supply chain. The software can also be used to comply with additional national legal requirements, such as maintaining a storage record book. It also enables distributors to break bulk into smaller consignments and operators to book explosives back into storage when they have not been used on a blasting site.

Several Member States were interested in an answer on whether records have to be kept on the individual shotfirer to whom the explosive are given, or if the last place and responsible person for the storage on a site is sufficient. The Commission explained that according to its interpretation the explosives ID should be recorded at the last place where the explosives are kept on site before being given out and used, but that it was up to the Member States to determine whether it was necessary to record to whom exactly they are given.

The Federation of European Explosives Manufacturers (FEEM) reported on the state of the preparations by the explosives industry as a whole, underlining that they fully supported the enhanced security requirements. FEEM underlined that the identification and traceability system for explosives is the most ambitious scheme ever introduced in any industrial sector.

FEEM has developed a harmonised European explosives code, which is becoming the standard for all supply-chain participants.

However, for various reasons, including problems arising during software development and due to the late transposition of the Directive by some Member States, industry will not be able to meet the current April 2012 deadline without potentially compromising security and workplace safety. It has therefore asked for a limited deadline extension.

Presently, most producers are in a test phase until spring 2012 and will have their pilot plants operational by the end of that year. FEEM confirmed that industry is well on track to fully meet the deadline set out in its project action plan, which was developed following the request of several Member States at the last working group meeting, and that industry will be ready to fully apply the Directive also to stocks by April 2015.

FEEM emphasised that, wherever technically possible, their members will endeavour to introduce traceability even before.

The Commission then introduced Explo Doc 4.0, which contains the draft Directive as it will be sent to the Committee set up by Directive 93/15/EEC for a vote by written procedure. The Commission informed that there have been two rounds of written consultations since the last working group meeting (in January/February and April/May 2011), and that it had taken into account the comments made as well as those made by the other Commission services during the interservice consultation in July 2011.

The Commission drew attention to the fact that most provisions of Directive 2008/43/EC will be delayed by only one year, and that this and the prolongation of full traceability to 2015 follows a realistic assessment of the situation.

Ireland asked FEEM to confirm that before 2015 there will not be another request for deadline prolongation. FEEM confirmed this and referred to its action plan. The representative of Europol underlined that it is better to have something properly done than an incomplete system, and stressed the importance of having and following the action plan.

Several Member States indicated that it will be impossible for them to meet the April 2012 deadline for transposition. The Commission explained that it had used this deadline in order to avoid that Member States have to enforce the implementation of the Directive by industry already as of April 2012, but indicated that it was aware of the timing issues of legislative processes in the Member States and that this would be taken into account when communicating with the Commission departments dealing with the transposition of EU legislation.

In order to provide more explanation to the term *'articles too small to affix the information under points 1(b)(i), 1(b)(ii) and 2 or where it is technically impossible due to their shape or design to affix a unique identification'* in the amended Directive 2008/43/EC, the Commission agreed to integrate the content of the relevant FEEM guidance document into the Q&A document on its web site after consulting the working group in writing.

Germany suggested introducing an additional exemption for shock tubes. The Commission explained that the proposal was already too far advanced for doing so and that anyway shock tubes do not fall under the definition of explosives as *"materials and articles considered to be [explosives] in the United Nations recommendations on the transport of dangerous goods and falling within class 1 of those recommendations"*. In order to inform interested parties of this interpretation, the Commission would consider drafting a question and answer for the Q and A document on the Commission's web site, which could be agreed by the Member States by correspondence before the next meeting.

Update on the action plan on enhancing the security of explosives

The Commission informed that DG Home Affairs is planning a conference to review the implementation of the action plan around spring 2012.

Update on SCEPYLT

The SCEPYLT coordinator presented the current state of implementation of the system for electronic explosives transfer approvals. In 2011, one coordination meeting and a training course were held, and another coordination meeting is foreseen for 2012. The first electronic requests for real transfers were put into the system at the beginning of

October. They concerned transfers from Italy, France and Germany to Spain. However, by the time of the meeting, the transfers have not yet been approved because either the consents of a transit country or of the country of origin were still outstanding.

The SCEPYLT coordinator also mentioned that compared to last year more Member States (15) were now connected to the system. A glossary of terms has been developed allowing the enforcement authorities of all Member States concerned by a transfer to understand the form in their own language. The Member States working together within the project have also been discussing the use of standardised secure paper on which transfer approvals will be printed in the future.

The SCEPYLT work programme for the next year will contain the following items:

- Development of a document containing the applicable procedures
- Training of personnel dealing with the system
- Integration of different electronic signature systems
- Linking SCEPYLT to the CBRNe¹early warning system
- Evaluating the functioning of the system
- Agreeing on the way to proceed after the Commission's grant runs out at the end of next year.

It is also envisaged to introduce a function into the system that will allow the automatic invoicing of companies receiving transfer approvals.

The SCEPYLT coordinator informed that Spain up to now has not granted multiple transfer approvals, but that in the future it may do so provided that a specific traceability Annex is being filled for every delivery. In this context, Spain envisages linking SCEPYLT with the unique identification and traceability required by Directive 2008/43/EC. Germany commented that it did see SCEPYLT as an instrument for speeding up transfer approvals exclusively, and not as a tool to ensure traceability. In Germany and many other Member States, the competent authority will not be informed about each and every transfer in cases where it has granted a multiple transfer approval.

The Commission underlined that it had invested a considerable amount of money into the development of the system and that it was time now to see it working in practice. The SCEPYLT coordinator announced that he will provide additional information on the use of the system by November. He also underlined that the system fully meets the requirements of Decision 2010/347/EU, in particular as the transfer document can only be printed by the competent authority of the country of origin when all other involved competent authorities have given their approval to a transfer.

Report from the latest meeting of the Forum of Notified Bodies

¹ *Chemical, biological, radiological, nuclear and explosives*

The chairman of the Forum informed about the meeting held in Reims on 18 May 2011. In particular, he thanked the Czech notified body for organising this year's round robin tests on detonators and announced that the calendar for round robin testing on different items has already been agreed up to 2014. FEEM requested to be more closely involved in this initiative, which was welcomed by the notified bodies representatives.

The Forum asked the Netherlands about the fate of the conformity assessment certificates issued by TNO, which has recently been de-notified by the Dutch authorities after the takeover of its explosives and pyrotechnic articles section by TÜV Rheinland Nederland. According to the *Guide on the implementation of Directives based on the New Approach ('blue guide')*, the certificates remain valid unless it can be demonstrated that they should be withdrawn. The guide also advises that "where a Member State withdraws its notification, it shall take appropriate steps to ensure that another notified body processes files of the body concerned in order to ensure continuity".

The Netherlands declared that they had contacted TÜV, which will prepare an inventory of all existing certificates. The certificates will be transferred to TÜV Rheinland Intercert in Hungary, which will be responsible for all follow up activities unless a manufacturer decides to entrust another notified body with this task.

Rock cracker devices

Following a discussion at the last working group on pyrotechnic articles, the Commission asked whether the Member States could provide it with suggestions for technical criteria for making a distinction between rock cracker devices which would fall under Directive 2007/23/EC on pyrotechnic articles and those which should fall under the Explosives Directive.

After some discussion, the explosives working group reached consensus that all rock cracker devices should remain within the scope of Directive 2007/23/EC, where they should be categorised as category P2 (only for persons with specialist knowledge).

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Lead diazide, styphnate and picrate

FEEM presented a letter that it had addressed to the European Chemicals Agency (ECHA) on the possible inclusion of lead diazide, lead styphnate and lead picrate in Annex XIV (list of substances subject to authorisation) of Regulation (EC) No 1907/2006 (REACH). The three lead compounds were proposed for the identification as substances of very high concern by ECHA itself upon a request by the European Commission (see: http://echa.europa.eu/consultations/authorisation/svhc/svhc_cons_en.asp). According to FEEM, an inclusion would have serious consequences for the production of electric and electronic detonators, because there are currently no commercial alternatives available for the substances concerned. The chairman recommended FEEM to contact the responsible services in DG Environment and Enterprise in order to obtain additional information on the further procedure.

Room document on measures to enhance transports security

The SCEPYLT coordinator presented room document 1, which contains a draft for a legal act on measures to enhance the security during the transport of explosives. FEEM

referred to the already existing provisions regarding transport security in ADR chapter 10.1 and asked the Commission to avoid a duplication of regulations addressing transport. Germany mentioned the Proposal for a Regulation *on the professional cross-border transportation of euro cash by road between euro-area Member States* as a good example and referred to DG MOVE as the responsible Commission service for rules on the transport of explosives.

The Commission confirmed that DG MOVE has the lead on this subject, and informed that during a recent conference organised by the European Federation of Explosives Engineers (EFEE) in Lisbon a very interesting presentation was made by the Portuguese authorities and industry. It will make the respective conference paper available on CIRCA for information.

Maik Schmahl