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ENTERPRISE AND INDUSTRY DIRECTORATE-GENERAL

Chemicals, metals, mechanical, electrical and construction industries; Raw materials
Chemicals - Classification & Labelling, Specific Products, Competitiveness

Brussels, 08 November 2010
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Meeting report

Subject: Meeting of the Explosives Working Group, 22 October 2010

All Member States except Cyprus, France, Greece, Hungary, Luxembourg, Malta and Slovenia attended the meeting. Switzerland, Turkey and the federations representing the European explosives industry (FEEM), explosives engineers (EFEE), automotive supplier industry (CLEPA), mining industry (Euromines) and aggregates industry (UEPG) were present as observers.

The draft agenda and the report of the last meeting were adopted without changes.

Update on the implementation of the action plan on enhancing the security of explosives

The Commission (DG HOME) informed about the latest progress in and future work on the implementation of the action plan. Amongst other actions, several security related projects are currently funded by the Commission and legislation on precursors of explosives had recently been proposed. In 2011, the Commission will continue to work to implement the action plan, including cooperation with the private sector on voluntary security codes, further work on a database of commercial explosives and working with international partners (notably the United States). The EU Explosives Advisory Group will also be reconvened in order to evaluate the implementation of the action plan so far and to look at the way forward.

Regarding action plan items 2.4.1 and 2.4.3, the undersigned asked the Member States to verify if they had sent a reply to the Commission's questionnaire and if the overview presented in document Explo Doc 3.1 correctly reflected the situation.

Intra-EU transfers of explosives: Update on SCEPYLT

The head of the SCEPYLT coordination unit gave an update on the situation of the project. In total, 11 Member States are currently connected to SCEPYLT, but are not yet using the system for real explosives transfers. Spain and Portugal intend to start using the system for real transfers between the two countries in the very near future. The Netherlands are planning to connect to the 11 others during the next few months.

The partnership declaration, which is necessary for continued funding under the Commission's ISEC programme, has so far been signed by Germany, Poland, Denmark, Netherlands, Lithuania, Portugal and Slovenia. Bulgaria, the UK and Italy have indicated that they also intend to do so.

Poland commented on the increase of the contribution per Member State from €5,500 to €15, 000, which is the result of fewer countries signing the partnership declaration than expected. Poland asked if countries joining the system later would also have to pay part of the cost. In his reply, the head of the SCEPYLT coordination unit indicated that no one would get a free ride just by waiting.

DG HOME commented on the prospect for financing the system after 2013 and said that this is an open question, as the current financial programme will be running out that year. However, it may be possible to provide funding for three more years based on a successful application made in 2012. In any case, the issue of long-term financial sustainability should be discussed further at the next SCEPYLT coordination meetings.

Romania inquired about the procedure to follow if a Member State in the transfer chain did not use the electronic system. The Commission replied that in this case the existing paper form would have to be used.

The UK asked if economic operators could be charged for the issuing of transfer approvals. The Commission replied that this was not determined by EU legislation and depended on the rules in force in the different Member States. In order to be able to create an overview, the Commission asked Member States to provide information on whether and how much they charge until 22 November. The Commission will make this information available on CIRCA.

Identification and traceability

The Commission (DG Enterprise and Industry) then informed about the transposition of Commission Directive 2008/43/EC, setting up a system for the identification and traceability of explosives for civil uses. Infringement procedures opened against Greece, the Czech Republic, Slovakia and Sweden were closed earlier this year, and all Member States except Finland have now transposed the Directive.

Finland informed that its long-awaited decree was currently with the Ministry of Justice and that it should be passed on to the Council of State soon, in order to be formally adopted in November. The outstanding legislation for the island of Åland should also be adopted soon.

The Commission stated that it is somewhat concerned about the transposition by Poland, because the Polish implementing legislation prescribes details of the unique identification which according to Directive 2008/43/EC should be designed by the manufacturer. Such a fixation of the code makes it impossible for manufacturers to use the standardised FEEM explosives code and therefore leads to trade barriers not only for companies from other EU Member States intending to place explosives on the Polish market, but also for Polish manufacturers intending to sell explosives elsewhere in the EU.

Poland explained that during their initial consultations with industry the prescription of the content of the unique identification had not been criticised. Poland promised to react quickly to a possible letter of formal notice from the Commission in order to clarify the situation.

Possible Amendment of Directive 2008/43/EC

FEEM (explosives industry federation) made a presentation giving detailed arguments for prolonging the deadline of 5 April 2012 for the implementation of the Directive by the Member States by three years and for exempting certain items from its scope.

FEEM mentioned that:

- the lateness of some Member States in their transposition has shortened the time for the preparation of a homogeneous traceability system by industry;
- specific software solutions need to be developed in order to take into account that distributors, who "break bulk" from the deliveries they receive, must be able to affix the identification on the packaging without having the possibility to be assigned their own production site number;
- problems of scope between the war weapons control act and Directive 93/15/EEC exist for crystalline explosives (RDX, PETN etc.) and these need to be resolved;
- tests carried out by manufacturers have confirmed that it is not possible to affix even the reduced information laid down in point three of the Annex to Directive 2008/43/EC on certain articles.

FEEM also explained that a postponement could provide industry with enough time to ensure that all stocks, held by 5 April 2015, will be labelled in compliance with the Directive.

In the ensuing discussion, FEEM's request for the postponement of the application deadline and for exemptions from the scope of the Directive for very small articles was supported by the Federation of European Explosives Engineers and by the associations of the Mining and Aggregates Industries.

Denmark and Portugal remained sceptical with regard to the deadline extension, but indicated some flexibility in case that the other Member States would agree. Spain gave some comments on the technical aspects of the system, which can also be used to facilitate bookkeeping. The UK, Netherlands and Finland in principle could support a postponement, but for less than three years. Sweden argued that if there has to be a postponement, then it should be for the full three-year period in order to solve the issue once and for all. Germany supported a postponement and indicated flexibility on the timing.

Europol underlined the importance of the unique identification as a tool for law-enforcement and asked for guarantees that the objective will be achieved when a postponement has been granted. Poland, Portugal, the UK and Ireland asked industry to draw up an implementation plan in order to justify the length of the delay. Ireland insisted that the rules on the original coding must not change, which was accepted by the other members of the working group. As far as stocks are concerned, FEEM's offer to have them all in line with labelling requirements of the Directive by 2015 was welcomed by many Member States. However, Ireland considered that in the run-up to a new deadline the current and the new labelling system would anyway co-exist for some time.

Several Member States also acknowledged the need for exempting items too small or unsuitable to affix the code.

The Commission concluded by asking Member States to consult with their national stakeholders and to provide comments to the Commission by 22 November 2010. FEEM, together with the user industries, should continue working on their announced guidance document which will define in more detail the articles which could fall under the exemption for very small items. They should also draw up an implementation plan in order to justify the length of the requested deadline prolongation and to provide assurance that the new labelling and traceability system will be fully operational by 5 April 2015. Based on this information, the Commission will consider preparing a draft Directive amending Directive 2008/43/EC. The Member States would then be consulted on this by written procedure, and, if there is sufficient agreement, the Commission could prepare the procedure for a vote by the Committee set up by Article 13 of Directive 93/15/EEC during the first half of 2011.

Software to implement Commission Directive 2008/43/EC

EFEE (European Federation of Explosives Engineers) presented their software project TTE (tracking and tracing explosives). Once up and running, the software will provide a multilingual, encrypted and password protected system, which aims also to solve the specific problems of dealers who repackage explosives. The software should be tested in a real-life situation before being used; therefore EFEE would also welcome a possible deadline extension in order to ensure sufficient time for testing.

In this context, the UK referred to very small users, e.g. quarries which only have a few blasts per year, and asked if the Directive required that record-keeping had to be computerised. The Commission explained that nothing in the European explosives legislation made the use of computers mandatory, and that Article 12 of the Directive explicitly foresaw the possibility for manufacturers to attach adhesive detachable copies of the original label for use by clients in paper records.

The UK also asked if there was a sufficient offer of barcode readers that could work in explosive atmospheres. EFEE mentioned that for example in Germany there was no legal requirement to use explosive atmosphere protected equipment, and that doing so would increase the cost. Euromines referred to a study that they had undertaken regarding the possible influence of underground radio frequencies on electric detonators. Another study is planned to test the linking of scanners by radio, and promised to make its results available to the working group.

The Commission concluded that even if there is no legal requirement to use explosive atmosphere protected equipment, in case of doubt safety at the workplace should always be given first priority.

Alignment of Directive 93/15/EEC to the new internal market framework

The Commission (ENTR unit C1 - regulatory approach for the free movement of goods) presented information regarding the latest state of the planned alignment of the Explosives Directive to the new internal market framework.

Directive 93/15/EEC will be part of a package of 10 Directives which will be proposed for adaptation to Decision 768/2008/EC. The Commission's internal impact assessment board is expected to scrutinise the impact assessment for this in January/February 2011, followed by the adoption of the proposals by the Commission planned for the first half of 2011. The negotiations in the Council and at the European Parliament are expected to

take about one year, and with a transposition period of two years the full applicability would be in 2014.

The Commission reminded that documents Explo Docs 8.1 and 8.2 had been distributed to the Member States, and asked for comments in writing by 22 November. Any comments should take into account that the alignment will be done as a recast, which means that the provisions contained in Decision 768/2008/EC cannot be changed in themselves and that the parts of Directive 93/15/EEC not affected by any changes should also remain as they are.

Sweden referred to the obligation for keeping copies of the EC declaration of conformity, for example contained in Article 8.2 (a) of document ExploDoc 8.1, and asked if this documentation had to be kept for every single explosive article or for a model type of the explosive. The Commission explained that the 10-year period starts running from the moment when the last individual article of a type is being placed on the market, but that one would only need to keep one document per type.

The Commission further replied to a question from the Spanish notified body by saying that importers should establish contractual links with manufacturers ensuring that importers can supply the authorities with all necessary information regarding the product when necessary.

As far as labelling and traceability is concerned, the Commission mentioned that it could also be an option to grant the possibility to an authorised representative of an overseas manufacturer to apply for an identification number for an overseas manufacturing site with one single Member State competent authority. This could avoid that there would be different numbers attributed to the same overseas site depending on the Member State where its importers are located.

Regarding the modules, Spain and Germany asked for module C to be deleted, i.e. module C2 should be retained in the Commission proposal, because it is more closely related to the former module C. The Commission asked Member States to provide their comments on this by 22 November; in case of no objections C2 will be the base for the Commission proposal.

Forum of explosives notified bodies

The chairman of the Forum, Michel Lefebvre of the Belgian notified body CECOC, presented a summary of the discussions at the last meeting on 12 May 2010 in Madrid. The Netherlands informed that its notified body, TNO Certification BV, has been taken over by TÜV Rheinland, and that it will concentrate on pyrotechnic articles in the future and will soon be denotified for explosives.

Possible repeal of Commission Directive 2004/57/EC on the identification of pyrotechnic articles and certain ammunition

As discussed at the last Forum of the notified bodies for pyrotechnic articles, the French notified body INERIS had prepared a document outlining the arguments for repealing Directive 2004/57/EC.

According to INERIS, that Directive, which lists pyrotechnic articles and ammunition, creates more confusion than it helps to define the terms explosives or pyrotechnic articles.

While the German notified body representative supported the proposal, the German competent authority explained that Directive 2004/57/EC also serves to distinguish ammunition and that it therefore was still useful. The UK supported the German competent authority, but indicated that the list contained in the Directive could do with some amending.

The Netherlands explained that some rocket engines would fall under the Explosives Directive when Directive 2004/57/EC is being applied strictly. The Commission commented that depending on the net explosive content this outcome was actually positive.

Spain asked the Commission to rather put together a list of explosives and add that to the Directive.

The Commission concluded that there was no unanimous opinion supporting a repeal of the Directive, and that taking into account the other tasks that had to be fulfilled in relation to explosives, this was also no Commission priority. However, it would keep the issue on the agenda for the next meeting. The Commission also explained that in its view Directive 2004/57/EC only provided examples, and that the final determination whether a product is an explosive, pyrotechnic article or ammunition had to be made on the basis of the definitions contained in the relevant EU legislation.

Any other business

Mutual recognition agreement with Switzerland

The Commission informed about the start of negotiations on a mutual recognition agreement with Switzerland regarding Directive 2008/43/EC (identification and traceability) and possibly also on conformity assessment. The Swiss observers confirmed this and welcomed the start of negotiations. There were no objections against this from any Member State.

Use of the explosives transfer form

Sweden asked whether the intra-Community transfer of explosives form should also be used for transfers going through other Member States on to third countries. The explosives in question would not be placed on the Community market.

The Commission replied that the provisions in Directive 93/15/EEC relating to transfers of explosives were not based on the provisions regarding the placing on the market, but on the supervision of explosives for civil uses. Therefore the explosives transfer form should in principle be used if an explosive is shipped to a third country via another Member State.

This interpretation is confirmed by the definition of transfer in Directive 93/15/EEC: *'transfer' shall mean any physical movement of explosives within Community territory apart from movements within one and the same site.*

Being very strict, one could say that the certificate in accordance with Decision 2004/388/EC on an Intra-Community transfer of explosives document only applies to intra-Community transfers where the final destination is within the EU. However, the certificate should be used also for transports where the final destination is outside the EU for practical reasons, because the competent authority concerned will anyway have to notify the transfer to the transit Member States, and it would complicate the transaction if an administration had to use another, less known certificate.

Germany added that in case of official customs supervision it was not necessary to use the transfer form.

Transfers of explosives for the military

The Netherlands reported on a case where a company was sending explosives to another company in another Member State, which was then using the explosives in products manufactured for the military. Sweden explained that it issues intra-Community transfer documents if the transfer is being conducted by a private company and no transfer document is necessary if the transfer is being performed by the military themselves.

The UK indicated that a distinction had to be made between eventual use by the military or immediate use, and asked for some Commission guidance to be given in this sense.

The Commission confirmed that it could prepare a document, which, after approval by the working group, could be added to the question and answer document on the Commission's web site.

Update on contact information

The Commission asked Member States to update their contact information on http://ec.europa.eu/enterprise/sectors/chemicals/files/explosives/national_authorities_explosives_en.pdf, especially as far as their competent authorities for the intra-Community transfer of explosives approvals are concerned.

Information on Directive 2007/23/EC on pyrotechnic articles

The Commission informed about the formal objections received from Sweden and France against the harmonised standards for consumer fireworks and on the further steps of the procedure (more information available on the CIRCA website of the pyrotechnic articles working group).

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