



## EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Consumer, Environmental and Health Technologies

**Chemicals**

Brussels, 14 October 2016

### MINUTES

**Subject: Meeting of the Explosives Working Group, Brussels, 26 October 2015**

The meeting was attended by representatives of 19 Member States (BE, BG, CZ, FI, FR, DE, HU, IE, IT, LV, LT, NL, PL, PT, RO, SK, ES, SE, UK). Switzerland and representatives of CEN and of several trade associations (AFEMS, CLEPA, EFEE, European Shippers' Council, FEEM, IME, KCEM, SFEPa and UEPG) also attended the meeting as observers. A representative of the Forum of Notified Bodies and a representative of the Spanish Guardia Civil department responsible for SCEPYLT were invited as private experts.

#### **1. Approval of the draft agenda and of the minutes of the last meeting**

The draft agenda for the meeting was adopted without any changes.

The draft minutes of the meeting of 4 November 2014 were uploaded on CIRCABC short before the meeting. Therefore, it was decided to allow more time for the WG members to read them before approval. If no comments will be submitted in writing within three weeks (i.e. by 16.11.2015), the minutes would be considered as approved in the circulated version.

#### **2. Update on the implementation of the Action Plan on Enhancing the Security of Explosives**

The Commission provided an update on the current status of implementation of the Action Plan on Enhancing the Security of Explosives. In particular, the Commission informed that, after the progress report of 2012 on the Action Plan, it is now preparing a second and final progress report to be adopted in early 2016. This second progress report on the Action Plan on Explosives will be of particular importance, as not only will it capture the work done to implement its 48 actions, but will also take conclusions on lessons learnt and priorities for future work in the area of explosives. The Commission also informed that, from now on, the new Internal Security Fund–Police (ISF-Police), set up for the period 2014-20, will support initiatives by the Commission and by Member States to enhance the security of explosives in the EU.

### **3. Report on the last meetings of the Standing Committee on Precursors**

The Commission gave an update on the last two meetings of the Standing Committee on (Explosives) Precursors (SCP), which took place in March and June 2015, respectively. In the March meeting the Commission presented a report on the current restrictions regime for Ammonium Nitrate. Currently, the relevant provisions are part of the REACH Regulation, but the Commission would favour transferring these provisions to the Explosives Precursors Regulation as this would be a more adequate legislative act to address the security concerns posed by Ammonium Nitrate. In the report, the Commission took note that there was no majority among Member States in support of transferring these provisions from REACH to the Explosives Precursors Regulation; therefore at this stage no such proposal will be submitted. At the March meeting there was also a presentation of the results of a study, which showed that in many Member States awareness of the new rules was still very limited in the months following the entry into force of the new Regulation, and that it was relatively easy to purchase precursor substances restricted under the Regulation. At the June meeting of the SCP some Member States reported on the first experiences with the new rules on explosives precursors. Also, the Commission noted at the meeting that still several Member States had not transposed the measures required by the Regulation and announced that as of September 2015 it would launch EU pilots against those Member States which would still not comply by then. There were also preliminary discussions on whether certain articles containing restricted precursors would fall under the scope of the Regulation, and on possible new substances to be added to the annexes of the Regulation.

### **4. New recast Directive 2014/28/EU of 26 February 2014**

#### **➤ Interpretation of "own use" in Article 5(1) and 5(2)**

Following several clarification requests from Member States, the Commission prepared and issued via CIRCABC an interpretation document in June 2015. No objections were submitted in writing by Member States; therefore, the Commission concluded that its proposed interpretation and conclusions on this point are endorsed by Member States and will add it to the Q&A document. FEEM expressed support for the Commission's paper, and suggested that the same interpretation could be extended also to the traceability provisions. The Commission asked FEEM to send a document to be circulated among Member States via CIRCABC; based on the feedback received and on its own reflections, the Commission would then draft a reply to FEEM's proposal.

#### **➤ Re-notification procedure of Notified Bodies under the new Directive and obligations of Notified Bodies (Articles 28 and 40)**

The Commission gave a presentation on the need to re-notify conformity assessment bodies for explosives under the new Directive 2014/28/EU, as all current notifications under Directive 93/15/EEC will expire as from 20 April 2016. The Commission explained in detail the steps to be followed in the re-notification process, and stressed that it will be necessary to have transposed, if not fully at least partially (i.e. the relevant provisions of Chapter 5 of the Directive), the new Directive at national level. Without transpositions, there will be no legal basis for the re-notification. The Commission stressed in its presentation that notified bodies must comply with the requirements of the Directive, and that national notifying authorities are responsible for checking their

compliance. The Commission draw the attention in particular to the requirements pursuant to articles 28(11) and 40 of the Directive (obligation that notified bodies participate in the activities of the Forum of Notified Bodies); the Commission has started monitoring participation and will inform the national authorities, in case of non-compliance by certain notified bodies with this obligation. The Commission also stressed the need that notified bodies comply with the requirements pursuant to Article 28(6) of the Directive (notified bodies must be capable to carry out all conformity assessment tasks on their own), and stressed that it is the duty of notifying authorities to control the fulfilment of this requirement. One Member State asked for clarification on Article 28(6), in particular on the requisite that, in case a notified body subcontracts a certain task to another entity, then the notified body must have staff and facilities in the EU capable of verifying the correctness of the test results produced by the subcontractor. Would it be possible for a notified body to fulfil this requisite via an external, EU-based accredited laboratory? Or must the notified body carry out this verification with own staff and facilities? The Commission asked to submit the question in writing; it will look into this issue and provide a reply at a later stage.

## **5. The role of manufacturers' tests in conformity assessments**

The Commission reminded that in the evaluation study of the Explosives Directive published in 2007 there was a recommendation to clarify whether manufacturers' tests should/might be used for conformity assessment purposes. However, this issue was never clarified, and therefore one Member State asked to discuss it at the present meeting. This Member State gave a presentation on this subject, in which it stressed that practices on acceptance of manufacturers' tests differ among Member States. ISO/IEC standard 17065 seems to make this option not possible; on the other hand, the document EA 2-17 of European Accreditation providing guidance on accreditation of notified bodies explicitly allowed this option, under certain circumstances. However, in the recently revised version of EA 2-17 the explicit mention of this possibility has disappeared. So, there is now a lack of harmonised guidance which poses challenges to all stakeholders: manufacturers, accreditation bodies, notified bodies and notifying/competent authorities. A possible solution would be to clarify this aspect in the Blue Guide currently under revision. The Member State stressed at the end of the presentation that the possibility (which is not an obligation) should be given to notified bodies to accept manufacturers' tests under their own responsibility, without the risk that later the authorities in other Member States refuse to recognise the validity of the conformity certificate because of this. Another Member State, SFEPA and FEEM expressed support for this position. One Member State was more critical, as manufacturers may not be impartial when testing their own products. Finally, one Member State stressed in this context the importance to verify the accuracy of linguistic translations of manufacturers' documents.

## **6. Report on the last meeting of the Forum of Notified Bodies for Explosives**

A representative of the Forum of Notified Bodies informed on the last meeting of the Forum, which took place in May 2015 in Sofia (Bulgaria). In particular, he mentioned the periodical Round Robin Tests (RRTs) organised by the Forum. During the last RRT, propellants were tested. Analysis of the tests results is still on-going; preliminary assessment showed however that the results of friction and impact sensitivity tests largely differed (in the range of 50%) among participating notified bodies, which is not satisfying. On the other hand, tests results of burning speed were fairly consistent. The Forum is also currently discussing some issues which are relevant for the applicable

harmonised standards with CEN. The next meeting of the Forum will be in May 2016 in Romania.

## **7. First meeting of the new AdCo on Explosives for civil uses**

The Commission informed that the first meeting of the new AdCo group on explosives for civil uses will take place begin of December in Rome, Italy, as a back-to-back meeting with the AdCo group on pyrotechnic articles. Most Member States have already indicated their representatives to the new AdCo group. Also stakeholders have been invited to the first meeting, which will be structured in an open session followed by a closed session (for market surveillance authorities only).

## **8. Organisation of an ad-hoc meeting on SCEPYLT in 2016**

A representative of the Spanish Guardia Civil department gave a presentation on the current status of SCEPYLT implementation and use. He regretted that not all Member States which have implemented connectivity with SCEPYLT use it for their transfer procedures. Communication with some of these Member States is difficult, and an additional problem is that some of the connected Member States would like to use SCEPYLT but cannot because their neighbouring countries refuse to use it or implement it. The representative of the Guardia Civil stressed that the system is absolutely safe and much faster than the paper-based alternative; industry is indeed in favour of SCEPYLT use. The Commission informed that the financing of SCEPYLT for the next multiannual period has been finally secured starting from January 2016; in order to facilitate discussions and detailed exchange of information among Member States, with a view to increase the use of SCEPYLT, the Commission informed that it would be available to organise an ad hoc meeting fully dedicated to SCEPYLT, to be hold in Brussels in the spring of 2016. In order to understand if there is enough interest for such a meeting among Member States, the Commission will circulate a message via CIRCABC inviting to inform on their availability to participate to this meeting.

## **9. Validity of certificates when conformity assessment bodies lose their notification or cease their activities**

The Commission reminded that in the last years two notified bodies for explosives lost their notification. While Directive 93/15/EEC does not explicitly state who is responsible for processing the documents of ex-notified bodies, the new Directive 2014/28/EU specifies that the legal responsibility is on the national authorities that notified them. Regarding the validity of certificates, the Commission stated that these remain valid in principle until expiration date, or until the time of the next periodical audit (in case of QS certificates). For QS certificates, companies should then find a new notified body before the next audit date. The Commission also stressed that certificates of ex-notified bodies must be kept available for market surveillance authorities; in case the certificates are not (yet) transferred to another notified body, it is the legal obligation of the notifying authority to ensure this. The Commission suggested drafting a guidance paper on how national authorities should fulfil this obligation.

## **10. Implementation of Directive 2008/43/EC**

### **➤ Presentation by the Explosives for civil uses Task Force**

A representative of UEPG, which holds the Chair of the Task Force, gave a presentation on the work of the Explosives for civil uses Task Force, which was

set up to support the operators along the whole supply chain for the implementation of the Explosives Traceability Directive. Lot of work and investment has been done by the manufacturers to comply with the provisions. On the side of end-users, of which many are SMEs, there is still a need to receive more guidance and information, and several operators are still a little hesitant to make the investment needed for full compliance. The Task Force members have worked, via the national members, to inform companies, but their outreach does not cover 100% of the operators. Support from national competent authorities is necessary to raise awareness, but they have not always and not everywhere been receptive to this need. The Task Force has developed guidance documents and set up a dedicated web-site. After the entry into force of the Directive, the Task Force has carried out a survey in September-October 2015 in order to evaluate the state of the implementation and the challenges faced by the whole supply chain. The replies cover 22 Member States and 2 EFTA countries. The survey found that problems of some kind were reported in all countries. There are for instance misinterpretations of the Directive's provisions in some Member State, which seem to consider that the traceability requirements do not apply to end-users. Another problem for companies was that sometimes they do not know which authority is responsible for enforcing the Directive, and thus which authority to contact in case of enquiries. Then, operators frequently faced technical problems, due for example to the non-availability of hardware and of software needed to trace the explosives, or to compatibility and interoperability issues of the XML files with companies' IT-systems. There is also a widespread need to train the own staff. Most of the technical problems are in the process of being solved. Significant problems derive from unmarked explosives still possessed by some users and distributors and from non-readable explosives (mostly due to poor labelling quality and methods, but sometimes also to damage deriving from storage conditions or malfunctioning). This because distributors and end-users are not allowed to re-label unmarked products. SFEPA commented that another specific problem derives from the fact that unmarked detonators and similar articles with a long shelf life that are meant to be destroyed, cannot be accepted by the specialised operators, because there is no exception from the traceability requirements even for explosives that are being transported to destruction sites. FEEM stressed this is a real problem many companies are facing and that it would be important to find a pragmatic, but legal solution. The Commission clarified that the Directive's requirements apply to end-users, too. Regarding old stocks of unmarked articles, the Commission stressed that this is rather a matter of national implementation and enforcement.

#### ➤ **Presentation by EFEE**

A representative of EFEE gave a presentation on the experience gained with the implementation of the Directive in Germany. While confirming some of the technical problems highlighted in UEPG's presentation (i.e. readability issues, availability of hardware, need for staff training, problems with XML files), EFEE stressed that these problems are limited and in the process of being solved. EFEE stated that it would be very useful for a consistent implementation of the Directive to have a clear definition of "end-user", as currently this is not being interpreted by the different Member States in a consistent manner. EFEE has worked during the last years with economic operators along the supply chain and in collaboration with the competent authorities in order to inform on the new requirements.

➤ **Proposal by FEEM and IME regarding the manufacturing site codes for imported explosives**

The Commission informed that IME, supported by FEEM, had submitted a written proposal to amend the part of the Traceability Directive regulating the case of explosives manufactured outside the EU by a non-EU company; currently, the importer must request from the national authority of the Member State of import for the attribution of a site code. IME proposed that the importer may request either to the authorities of the Member State in which it is established or of first import into the EU the attribution of a site code to be used for all imports originating from this manufacturer. The Commission asked all WG members to provide their comments on this proposal in writing by 16 November 2015.

➤ **Feedback from competent authorities on their experiences with the implementation**

A tour de table was carried out among Member States and EFTA countries to obtain their feedback on their respective experiences with the implementation of the Traceability Directive. Most countries reported not having encountered major problems. One Member States suggested that amending the Directive adding a clear definition of “associated label” would be useful for the purpose of implementation. Another Member State noticed that carriers are supposed to also comply with the traceability requirements, but that they generally do not receive the XML files because manufacturers and distributors exchange these files directly between themselves. Also, carriers are not able to verify the content of the packages they receive, because of the TDG rules.

➤ **Update on the activities of the UN Sub-Committee of Experts on the Transport of Dangerous Goods regarding the development of an international traceability system**

The Commission informed on the status of the discussions within the UN Sub-Committee on Transport of Dangerous Goods (TDG) on the proposal to introduce a global harmonised marking system for the purpose of explosives traceability. The last text proposed by IME was mostly based on the EU system introduced by Directive 2008/43/EC, but the Commission is of the opinion that some drafting work on specific details would still be needed to make it fully compatible with the Directive. At the last Sub-Committee on TDG in June 2015 the Commission submitted a brief note to the Member States, in which it pointed to the three specific elements of IME’s proposal for which there was still a discrepancy with the Directive, and it informed that, if wished by Member States, it could help with the drafting work in collaboration with IME. The Member States accepted, so the Commission started discussions with IME on the text of the proposal. The UN Sub-Committee on TDG will work further on this issue at their next meeting session starting 30.11.2015.

➤ **Provision by national authorities of their lists of manufacturing site codes**

The Commission reminded Member States of their commitment to share their respective manufacturing site codes in a restricted CIRCABC folder. So far however, only 12 Member States have provided their lists of codes. Therefore,

the Commission asked all members to send their lists for publication on CIRCABC as soon as possible.

## **11. AOB**

The Commission informed that the tentative date for the next meeting of the Explosives WG is 7.10.2016.