

Minutes

Meeting of the Explosives Working Group
Brussels, 17 October 2016

1. Approval of the agenda and of the minutes of previous meeting

The agenda was approved with only a minor change (agenda point 3 was postponed from the morning to the afternoon session). The minutes of the previous meeting were circulated on CIRCABC only short before the meeting; it was therefore decided to adopt them via a written procedure. Member States will be able to submit their comments in writing until 7 November 2016; if no comments or objections will be received by that date, the minutes will be considered as adopted.

2. Nature of the meeting

Non-public.

3. List of points discussed

1) Update on the implementation of the Action Plan on Enhancing the Security of Explosives

DG HOME provided an update on the current status of implementation of the Action Plan on Enhancing the Security of Explosives ("Action Plan"). DG Home informed that, after the progress report of 2012 on the Action Plan, it has now prepared a second and final progress report ("Progress Report") on the implementation of the EU action plan on enhancing the security of explosives. The Progress Report is of particular importance, as it contains 48 recommendations for action divided into four broad categories: horizontal, prevention, detection and response measures. As regards Regulation (EU) No 98/2013 on the marketing and use of explosive precursors ("Precursors Regulation"), DG HOME informed about several positive impacts of its implementation: reduced availability of precursors; fostering market access to alternative and safer products; better awareness of sellers on suspicious transactions.

One MS pointed at the inconsistency of point 2.2.7 on the vetting of personnel in the Progress Report with art. 16 of Directive 2014/28/EU on explosives for civil uses ("Explosives Directive"). The Progress Report states that a Commission study would provide common criteria for background checks and vetting requirements for the vetting of staff, whereas art. 16(2) of the Explosives Directive exempts employees of companies dealing with explosives from the obligation to possess a licence or authorisation for civil explosives purposes.

DG HOME replied that it still needs to look into the substantial conformity of the Progress Report with the Explosives Directive, but that however little progress has been done on this specific action point so far. The MS also asked how/if the provision on vetting in the Progress Report interferes with the Precursors Regulation. DG HOME explained that the concept of employees is not specifically defined under the Precursors Regulation. Employees could fall under "members of the general public" as well as "economic operators". The first is not granted access to precursors without a license. DG GROW will look into this issue and prepare a note to be circulated in writing; one MS asked to also send a questionnaire to the MS. Another MS specified that in its country the name of the employee appears on every licence/authorisation. The employer has to adopt certain security standards before hiring a

worker dealing with explosives; a person not fulfilling this employability rules cannot be employed. Yet, the legal person required to be in possession of a licence or authorisation remains the employer.

2) Report on the HOMER project

A representative of the German *Bundesanstalt für Materialforschung und Prüfung* (BAM) explained that the aim of the project was to mitigate the risks of homemade explosives by giving the relevant authorities an overview of all freely available recipes. A survey on the most popular explosives was carried out and HOMER made a selection. The recipes were all fed into a knowledge management platform and could be made available to the police/other institutions. The presentation of the project will be made available to the participants.

3) Report on the "Explosive Quality Documentation" (EXQUDO) project

A representative of the Spanish *Guardia Civil* department presented the project, currently developed up to 80%. The project should develop an information system with the aim to trace the entire life-cycle of explosives and to foster interoperability between the public administration and the private sector. This should lead to: reduction in time and prevention of mistakes in tracing explosives; more control and security in identifying explosives; minimising the possibility of data manipulation; contribute to correctly adopt Regulation 910/2014 on electronic identification and trust services for electronic transactions; support the adoption of other projects such as SCEPYLT, sTesta and SAT. For the moment, EXQUDO will only be applied in Spain, no other MS has so far expressed interest in applying it. One MS said that it had roughly the same project for administrative purposes ongoing than EXQUDO. It had difficulties in finishing it due to the failed interlinking between the legal provisions and technical requirements. Especially, the unique identification was complicated. The MS proposed to organise an ad hoc meeting on the issue. DG GROW will verify with the MS whether there is an interest in such an ad hoc meeting.

4) Report on the last meetings of the Standing Committee on Precursors

DG HOME gave an update on the latest items discussed within the Standing Committee, such as the role of customs and the shipment of precursors outside the EU. Precursors can be shipped in very small amounts outside the EU and we are not fully aware about the consequences. A project led by the NGO Conflict Armament Research, which has been contracted by the EU, is on-going, in order to track back the precursors originating from the EU found in conflict areas to the original manufacturer and to understand at which point they were diverted. The Precursors Regulation needs to be reviewed through delegated acts by the end of 2016, since new threat substances should be added to Annex II (substances for which suspicious transactions shall be reported). The question whether the relevant provisions for Ammonium Nitrate should be transferred from REACH to the Precursors Regulation is still under discussion.

5) New recast Directive 2014/28/EU of 26 February 2014

- A tour de table took place in which all MS were asked to provide an update on the state of transposition in their respective countries. With a few exceptions, all MS have transposed the Explosives Directive in national law. Of those which still haven't yet, most of them reported that they are in the final phase of the legislative transposition

process. Once again, the Commission invited the remaining MS to transpose and notify the Commission as soon as possible.

- The Commission gave an update on the re-notification process of Notified Bodies under the new Directive. The Commission reminded that, due to the repealing of the old Directive 93/15/EEC by the new Directive 2014/28/EU on 20 April 2016, all the notifications under Directive 93/15/EEC expired on that date. In order to be able to re-notify their notified bodies, the Member States must have first transposed (at least partially) the new Directive into their respective national legislation. The Commission informed that on 19 April 2016, there were 13 remaining Notified Bodies for civil explosives (as the Notified Bodies from Sweden and the Netherlands had already ceased their activity before that date). Currently, 9 Notified Bodies have already been re-notified, 3 still wait for re-notification, and the Finnish Notified Body has informed that they will not seek re-notification.

6) Validity of certificates when Conformity Assessment Bodies lose their notification or cease their activities

The Commission informed that, when the notification of a notified body is withdrawn or suspended, the notifying Member State has the legal obligation pursuant to Art. 34(2) of Directive 2014/28/EU to ensure that the files of the ex-notified body are either transferred to another notified body or kept available, e.g. for requests from market surveillance authorities. Type-certificates (e.g. Module B) issued by the ex-notified body remain valid until expiration date or, in case they don't have an expiration date, until the certified product is not modified in a way that would require re-assessment and re-notification. Quality management system (QMS) certificates (e.g. Module D) requiring periodic audits will remain valid until the date of the next planned audit. Before that date, companies will have to find a new notified body.

Finland announced that they agreed with their ex-notified body that the ex-body will keep the relevant documents related to their certificates available on request, for the purpose of transfer to another notified body or of control by market surveillance authorities. The Commission suggested sharing this information with the AdCo group. The Commission will prepare a draft note and, upon approval of the text by the Finnish authorities, it will give all the relevant information to the market surveillance authorities (by uploading the information on CIRCABC).

A representative of the Federation of European Explosives Manufacturers (FEEM) highlighted that many notified bodies have closed their activities within the last years and that this might have negative effects on the industry, e.g. bottlenecks in the conformity assessment procedures, higher costs and a decrease in the quality of assessments.

7) Report on the last meeting of the Forum of Notified Bodies for Explosives

The Chairman of the Forum reported on the last meeting, which took place on 9-10 May 2016 in Sibiu (Romania). Participation was very good, as all 13 Notified Bodies for explosives were present. An important point of discussion was the organisation of the periodical Round Robin Tests (RRT), which have proven during the last years to be difficult to organise and have not been as regular as intended; also in the follow-up to the RRT more continuity is wished. The current on-going RRT focuses on thermal stability of explosives, the next RRT (2016-17) will be dedicated to shock tubes.

Another important issue discussed in Sibiu was on conformity assessment of some new products, for which the current harmonised standards are not of much help, like e.g. electronic detonators and remote firing systems. An update of the standards to include these new products would be necessary.

8) Adoption of new Rules of Procedure in order to align the Explosives Working Group to the harmonised rules introduced by Decision C(2016)3300-3301 of 31/05/2016

The Commission informed on the new horizontal framework for expert groups, which was adopted on 31 May via a Commission Decision. The aim of the new horizontal framework is to increase transparency on the work of expert groups, and it will affect the selection process of the expert group members (in particular stakeholders). The Commission stressed that the new selection rules for stakeholders will only apply to new organisations, and that they will not affect the status of the stakeholders already listed as observers to the Explosives WG. The rules need to be implemented within 2016, hence the Commission has prepared draft new Rules of Procedure (RoP) on the basis of the template contained in the Commission Decision, for adoption by the Explosives WG. In this regard, point 14(3) of the draft RoP on transparency becomes vital. It states that DG GROW shall make available all relevant documents "either on the Register of expert groups or via a link from the Register to a dedicated website".

The Commission asked to what extent the WG members could agree to have the information published and reminded that objections to publication for specific documents would remain possible, in line with the rules of Regulation (EC) No 1049/2001 on public access to documents of the EU institutions.

One MS asked to insert a deadline for the WG's minutes to be sent by the Commission. The Commission accepted the request, and it was agreed by the WG to set in the RoP a deadline of 1 month after the date of the meeting for the circulation of the minutes.

The RoP were adopted by the WG with the following additions:

- the WG agreed on the transparency provisions set forth in the RoP with the addition of an explicit possibility to justify non-disclosure of single documents. Information falling under the scope of article 4 of Regulation (EC) No 1049/2001/EU will not be (fully) disclosed upon request of the participant.
- draft minutes will be circulated via CIRCABC within one month after the meeting; non-objection is taken as tacit agreement; objection can be made within two weeks of receipt of the minutes. The Commission will then publish the minutes three month after the meeting. The minutes will not contain any specific reference to Member States' comments.

9) Report on first meeting of the new AdCo on Explosives for Civil Uses

The first meeting of the new AdCo group on explosives for civil uses was held in December 2015 in Rome, Italy, and saw wide attendance from the national market surveillance authorities (20 countries were represented); industry representatives (FEEM and UEPG) also attended a part of the meeting. The discussions aimed at mapping the relevant issues for the AdCo group and at identifying working items. On the agenda were discussions on the traceability provisions for explosives, scope of standards, intelligence matters, precursors, correct labelling, CE marking, transfer and transit of explosives. The AdCo group agreed to carry out an internal survey in order to prioritise the future work by identifying the most important three items. The next meeting of this AdCo group will be hosted by the British Health and Safety Laboratory in Buxton, UK on 27-28 October 2016.

The Commission suggested that it would be useful to have the tables listing the manufacturing sites codes on the CIRCABC site of the AdCo group. The WG members agreed with the proposal.

10) Report on the last meetings of the EFTA Expert Group on Explosives

This agenda point was skipped due to the absence of the EFTA representative.

11) Report on the ad/hoc meetings on SCEPYLT (the Pan/European Information System on Explosives Control to Prevent and Fights against Terrorism) of 13 May 2016

The Commission informed that on 13 May 2016 it has hosted an ad hoc meeting fully dedicated to SCEPYLT. Currently 13 Member States have implemented connectivity with SCEPYLT, but only 6 have so far used it for their transfer procedures (with a 7th that started recently). The project coordinating country Spain has mentioned that the communication with some of the Member States which are connected but do not use SCEPYLT is difficult. Some of the connected Member States would like to use SCEPYLT but cannot, because their neighbouring countries refuse to use it or implement it. This is unfortunate, since the system is absolutely safe and much faster than the paper-based alternative. The Commission informed that it will cover all the financing of SCEPYLT for the next multiannual period, so joining SCEPYLT does not result in a financial burden for Member States.

Two Member States stated that several cumbersome administrative problems occur with the system: server address changes; personal changes in charge of administration; you cannot yourself connect but you need to "interact" with some "specific secret" people. The suggestion was to move everything to the public internet and use encryption methods. One Member State replied and said that you cannot put it on the public net, because risks with "hacking" arise, and added that the problems occur rarely and are quickly solved. But other Member States were largely in agreement that they experience connectivity issues very often, and said that every time a Member State slightly changes its configuration, all other Member States are obliged to adapt their settings and in the meantime they lose connectivity. They wonder if these problems are caused by the configuration of the TESTA-ng platform (where the Commission could intervene) or by SCEPYLT itself.

The Commission will contact DG DIGIT, which is in charge of managing TESTA-ng, to find out if the connectivity problems lie with this platform.

12) Implementation of Commission Directive 2008/43/EC setting up a system for the identification and traceability of explosives for civil uses

- A representative of the *Explosives for civil uses Task Force* gave a presentation on "Outcomes of the 2nd survey on the Mapping of the implementation of the Directive in Europe in 2016". Less Member States were covered in this survey than in the previous one. The survey results are that the directive appears to be well implemented almost everywhere and in the whole supply chain, and only few challenges remain. The remaining problems had been anticipated by the Task Force: misinterpretations of the directive regarding the applicability to end-user (in some Member States they are exempted from the obligations), which creates distortion of the market and unfair competition; on this aspect, there is a need for clarification. An additional problem is that, apart from different approaches and interpretations between Member States, in some countries these differences are replicated also at regional level, which causes confusion for economic operators. More information and support from the competent

authorities would be necessary. Most of the technical problems (hardware, software, interoperability, connectivity, staff training) are solved or about to be solved. A recurring problem derives from the non-readability of the markings of explosives, especially when they are damaged during transport, storage or after malfunctioning: how to deal with these articles and be compliant with the Traceability Directive? The Commission asked if there are any data on how often these cases occur, to understand the size of the problem. The Task Force representative replied that they would try to find out and report back.

- A representative of EFEE gave a presentation of another survey carried out among their members; one relevant point in the feedback received was that there are concerns that the different interpretations among Member States on the applicability of the Directive's provisions to end-users cause competition distortions.
- A tour de table among Member States on their experiences with the implementation of this Directive took place, and the overall conclusion was that no country is currently experiencing significant problems in implementing the provisions.
- The Commission gave an update on the activities of the UN Committee of Experts on the Transport of Dangerous Goods and on the Globally Harmonised System of Classification and Labelling of Chemicals, Sub-Committee of Experts on the Transport of Dangerous Goods, regarding the development of an international traceability system. The Commission reminded that a draft proposal is being discussed in the UN Sub-Committee on Transport of Dangerous Goods to introduce a global harmonised marking system for the purpose of traceability of explosives, mostly (but not fully) based on the EU system introduced by Directive 2008/43/EC. One of the questions being discussed was how the reference to the EU Directive could be added to the UN Model Regulations. One proposal was to copy the EU provision into the Model Regulations; another proposal was to merely refer to the Directive. The Commission has concerns with the first solution, because the way provisions are formulated in the draft proposal currently being discussed in the UN Sub-Committee might not be identical to the wording of the Directive, and legal uncertainties could arise; to the contrary, the EU is fine with the mere reference. The next meeting of the UN Sub-Committee on the Transport of Dangerous Goods will be held in December and on that occasion the draft proposal will be proposed for formal adoption. The Commission stressed that, in case the adopted version of the proposal would in some point conflict with the Directive, the provisions of Directive 2008/43/EC will remain fully applicable and binding and will not be superseded by the text of the UN Model Regulations.
- The Commission informed that it had received a clarification request on the applicability of the traceability provisions to explosives in transit through the territory of the EU (i.e. explosives coming from a non-EU country and destined to another non-EU country, and which are not placed on the EU market). The Commission explained that this issue could not be discussed at a high level of detail at the present meeting, because DG TAXUD (the Commission's DG in charge of the Customs Union legislation) was not present. The Commission gave a presentation on how the monitoring procedure for goods in transit functions in the EU.

When the transit procedure starts at the border (entry - land, air or sea), a transit declaration is lodged and accepted by the customs authorities (a customs office of departure), the consignment is usually sealed (unless the description of the goods is sufficient to permit easy identification of the goods) and a time-limit is set within which the goods shall be presented at the customs office of destination (exit - land, air or sea). During transit the goods cannot be stored in a customs warehouse, temporary

warehouse or any other place approved by customs. If there is a business need to store those goods for certain period of time, the transit operation has to be ended and the goods are placed under another customs procedure (e.g. customs warehousing) or in temporary storage. If those goods are not released afterwards for free circulation, after ending the storage they are placed again under the second transit procedure to be taken out from the EU.

Transit procedure, if case of road transport and partially also in case of rail transport, is covered by the electronic system (NCTS). Exchange of the IT messages between the customs offices (departure and destination) in real time allows for very efficient supervision and monitoring of the goods in transit. The accessibility and availability of the system is very high in all MS, above 99%. If those goods do not arrive to the customs office of destination within the time set at departure, the enquiry procedure starts immediately (supported also by the system). The aim of that procedure is to establish what happened with the goods and who may be responsible for their removal from the customs supervision.

In case of incident en route (including transshipment), the relevant data are recorded by a carrier and later entered into the system as well. The Commission concluded that taking above into account it seems that transit is a safe procedure and each irregularity is detected in a short time. Therefore, even if the traceability provisions do not apply to explosives in transit, which seems to be the correct interpretation, this should not create a security loophole.

Two MS pointed out that the EU traceability system is based on two elements: the unique identification and record-keeping. According to them, the unique identification should also apply to goods in transit; the record-keeping obligation not, because the good in transit is not placed on the EU market. Furthermore these goods in transit are stored in sealed containers. Another MS expressed the view that from a security point of view it is not comprehensible that you have dichotomy of rules for goods merely in transit and goods placed on the EU market. The Commission asked Member States which is their approach on explosives in transit: do they apply the customs procedure or do they apply the Traceability Directive rules? The replies from the Member States showed different opinions on the applicable rules. Hence, the Commission said that it will provide additional information on this issue at a later stage, and that it will consider sending a questionnaire to the Member States to understand what the common practice is.

- The Commission informed that so far 27 Member States and 2 EFTA countries have provided the tables listing their manufacturing site codes. The Commission thanked the Member States for the submission of the tables, and expressed the wish that the missing table for one Member State will be sent soon. The Commission also reminded the importance to provide updated tables in case of changes to the site codes in a timely manner.

13) Regulatory challenges posed by Mobile Explosives Manufacturing Units (MEMUs)

The representative of the Norwegian Directorate for Civil Protection gave a presentation on the challenges posed by Mobile Explosives Manufacturing Units (MEMUs). These Mobile Units are increasingly being used for blasting operations, which arises several issues from a regulatory and security point of view (e.g. approvals, licences, controls, staff training, maintenance). The current national regulations are often not up-to-date to address all the relevant aspects, in addition these Mobile Units often operate from one country to the other, so controls and application of national rules are difficult. There have however already been

severe incidents in Norway, so the potential risks posed by MEMUs must be addressed. The Norwegian representative stressed that, given the cross-border dimension of several of these issues, EU-wide solutions are more effective than national solutions. Some possible solutions that he would like to discuss are e.g. the development of a harmonised standard for MEMUs, or amendments to the Machinery Directive or to the Civil Explosives Directive.

Some Member States replied that they have already national standards and control systems in place and are thus not very keen to start with a new system, but of course they would share their knowledge. Other Member States referred to the security and advantages of such methods, the only aspect of concern would relate to the safety and security of vehicles. Another participant proposed an addendum to the Machinery Directive rather than a review of the Civil Explosives Directive. One Member State suggested that industry could develop a code of good practice for MEMUs. The Commission stated that this would be a typical issue to be discussed within the next AdCo meeting.

14) Harmonised standards for civil explosives

The Commission mentioned that, while the essential safety requirements in Directive 2014/28/EU are basically the same as in Directive 93/15/EEC, most of the harmonised standards have been developed and adopted several years ago. Therefore, it is useful to consult the Member States via a short questionnaire, so as to learn if they consider that some of the existing harmonised standards should be updated in order to reflect the technical progress, and/or new harmonised standards should be developed to facilitate compliance of certain articles with the essential safety requirements. The Commission informed that it will upload a questionnaire on CIRCABC immediately after the meeting.

4. Conclusions/recommendations/opinions

1) The WG adopted the new Rules of Procedure.

2) The WG agreed to share the tables listing the manufacturing site codes with the AdCo group.

5. Next steps

- The Commission will prepare a note on the classification of employees under the Explosives Precursors Regulation.
- The Commission will verify with the Member States if there is an interest in organising an ad hoc meeting on EXQUDO.
- The Commission will prepare a note, in collaboration with the Finnish authorities, to inform the AdCo group on the contact point for the documents of the Finnish ex-notified body.
- The Commission will verify if the connectivity problems in SCEPYLT are related to the TESTA-ng platform.
- The Commission will provide additional information to the Member States on the applicable rules to explosives in transit.
- The Commission will consider sending a questionnaire to the Member States to understand what the common practice is concerning explosives in transit.
- The Member State which has not yet sent its table listing their manufacturing site codes is requested to do it at their earliest convenience.
- The Commission will send a questionnaire on harmonised standards via CIRCABC; the Member States are asked to provide their feedback via the questionnaire by 2.12.2016.

6. Next meeting

The next meeting will take place on 20 October 2017.

7. List of participants

Members: AT, BE, BG, HR, CZ, DK, FI, FR, DE, IE, IT, LT, LU, NL, PL, PT, RO, ES, SE, UK.

Observers: Norway, Switzerland, EFTA, the Chairman of the Forum of Notified Bodies for Explosives and representatives of the relevant economic stakeholders (AFEMS, EFEE, FEEM, KCEM, SFEPA, UEPG).

EU institutions: the European Commission (DG GROW and DG HOME).

Private experts: a representative of the Central Inspection for Arms and Explosives of the Spanish Guardia Civil.