



## EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SME's  
**Consumer, Environmental and Health Technologies**

**Chemicals**

Brussels, 22.10.2018

### Minutes

Meeting of the Group of Experts on Explosives  
Brussels, 20 October 2017

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

The draft agenda for the meeting was adopted without any changes. The draft minutes of the meeting of 17 October 2016 were approved and will be published on the public register of expert groups.

#### **2. Nature of the meeting**

Non-public. Upon request of a MS, COM clarified that this GoE meeting is not public (only authorised participants can attend) but that the minutes of it will be made public nevertheless, in line with the transparency rules for expert groups.

#### **3. List of points discussed**

##### **1) Presentation of AGM (Advanced Gateway to Your Meetings), the new management tool for the meetings of Groups of Expert groups and Committees**

COM explained the functioning of the new system for the preparation and organisation of expert groups meetings, which will be operative as from January 2018. No questions were raised.

##### **2) Update on the implementation of the Action Plan on Enhancing the Security of Explosives (DG HOME)**

DG HOME provided an update on the current status of implementation of the 2008 Action Plan on Enhancing the Security of Explosives and the 2015 Action Plan on firearms and explosives ("Action Plan"), which have as their main objectives the (i) information exchange and sharing of good practices; (ii) harmonisation measures (e.g. marketing and use of explosives precursors, intra-EU control tools such as SCEPYLT, development of common training curricula, vetting standards and procedures at EU level); (iii) developing, testing and trialling detection technologies; and (iv) funding projects and studies.

Regarding SCEPYLT, DG HOME said that it would attend the 17<sup>th</sup> SCEPYLT Coordination Meeting taking place in Madrid on 26-27 October 2017 in order to analyse the good functioning of the platform, also trying to convince other MS to connect. DG GROW said that

it is aware of the occasional connectivity problems of the SCEPYLT system and that it hopes that more clarity on the cause(s) will be obtained soon.

A MS commented that it has seen improvements of the SCEPYLT system, but the issue remains that, because of the refusal to use it by their neighbouring countries, several MS are hindered in using the system.

DG HOME made an update regarding the implementation of Regulation 98/2013/EU on explosives precursors and informed on the intention to revise it, with the Evaluation and Impact Assessment procedure scheduled for 2018.

DG HOME also informed on the CT Package adopted on 18 October 2017, which includes the 11<sup>th</sup> progress report towards an effective and genuine Security Union (COM(2017) 608 final) - the latest of the monthly progress reports informing on the implementation of the European Agenda on Security. The CT package contains some specific documents on explosives, one of them being an Action Plan to support the protection of public spaces (also from attacks with explosives). This Action Plan launches a call for project proposals through the Internal Security Fund (ISF) Police for a total amount of EUR 18.5 million (proposals may be sent until February 2018). This funding will support transnational projects improving the protection of public spaces. Another explosives-related document in the CT Package is a Commission Recommendation on immediate steps to prevent misuse of explosives precursors.

An observer underlined the importance of the correct implementation of the Traceability Directive and the importance of organising training sessions. It was agreed that the issue would be further discussed under point 12 (implementation of Directive 2008/43/EC).

### **3) Report on the last meetings of the Standing Committee on Precursors (DG HOME)**

DG HOME gave an update on the last meetings and activities of the Standing Committee on Precursors (Reg. 98/2013/EU on the marketing and use of explosives precursors):

- Committee meets 4 times a year;
- Organisation of regional workshops, in order to have smaller fora and to build trust among authorities;
- Two infringement proceedings open;
- Difference in speed of implementation among MS remains an issue;
- In November 2016 COM adopted three delegated acts, each one adding one substance to the Annex II of the Regulation (the three substances are Magnesium powders, Aluminium powders and Magnesium nitrate hexahydrate);
- Launch in May 2017 of the official revision process of the Regulation, which will lead to the publication of the evaluation and of the impact assessment in 2018;

- In the meantime, on 18 October 2017 COM has adopted a Recommendation on immediate steps to prevent misuse of explosives precursors, dealing for instance with the security conditions of storage.

A MS asked about the recommendation regarding security standards on storage (including the access to storage). COM answered that the Regulation does not address this issue at all and that storage rules fall within the competence of MS; hence, the need to issue a recommendation to MS to act and lay down security rules applicable to storage of explosives precursors.

#### **4) Report on the last meeting of the Forum of Notified Bodies for Explosives**

The Chairman of the Forum of Notified Bodies for Explosives updated the members of the GoE on the last meeting held in Poland on 12 May 2017. The minutes will be made available to the members of the GoE via CIRCABC.

The Chairman of the Forum briefly reported about the topics discussed at the meeting:

- Proficiency of round robin tests (RRT): many NBs have difficulties in sticking to the RRT-schedules and to provide their part of the work in time (shortage in staff etc.);
- Conformity assessments: negative assessments were a point of discussion, i.e. analysing the reasons of a negative assessment and the legal obligation to share with other NBs information on these negative assessments (art. 38(2) of Directive 2014/28). This is still an open point to be discussed and agreed on;
- Standardisation: NBs confirmed the need of new harmonised standards; this work should be coordinated with the AdCo Group of Explosives; a representative of the Forum of NBs will be present at the next AdCo group meeting (discussed further under point 11 of this meeting – revision of the standards);
- The next Forum meeting will take place in Luxembourg in May 2018.

#### **5) Report on the last meeting of the AdCo group on Explosives for Civil Uses**

The Chairman of the AdCo group reported about the last meeting of the AdCo Group in Buxton on 27-28 October 2016, which was very well attended.

In particular, the Chairman of the AdCo group informed on the following issues discussed at that meeting:

- The AdCo group builds on continued partnership with industry industrial stakeholders updated on past and future trends in civil explosives; the open session for observers was useful to make connections and share information, like e.g. on the creation of a task force on track and trace of UK explosives manufacturers for the implementation of Directive 2008/43/EC;

- Discussion on trends in civil explosives and developments of standards: certain novel types are not covered by current harmonised standards (electronic detonators and electronic firing systems or products where two items are brought together);
- Implementation of Directive 2008/43/EU on track and trace from market surveillance authorities (an in-depth discussion was held at the closed session and concerned the spotting of priorities, the identification of facilities and the need of resources to do in-depth checks also touching upon licenses and equipment);
- An ad-hoc working group on Article 16 of Directive 2014/28/EU (Licence or authorisation) was created, formed by market surveillance authorities from 7 countries. It was discussed that market surveillance authorities should take a common approach and the measures to reach such an approach should be analysed. A report was produced which will be presented at the next AdCo group meeting. The principle idea was to understand the difference of licensing systems between Member States (security and vetting issues)<sup>1</sup>. Issues touched upon are mutual recognition, the transfer of licences among operators, the actions to be taken after the death/termination of business. The results of the report discussions in the next AdCo group meeting will be presented to this group.

The AdCo Chairman informed that the next AdCo group meeting will take place in Brussels on 25-26 October 2017. COM thanked the AdCo group Chairman for his excellent work during his two-year term and outlined that a new Chairman needs to be elected at the next meeting to ensure the AdCo group remains fully operational; unfortunately, there are no candidates yet.

## **7) Update on the transposition by Member States of Directive 2014/28/EU**

COM informed participants that all MS have fully transposed Directive 2014/28/EU.

## **8) Revision of the Q&A document**

COM reported that the Q+A document concerning the implementation of Directive 2014/28/EU and of Directive 2008/43/EC is quite old, and was lastly partially updated in February 2013 (before the new Directive entered into force); therefore certain references were simply not longer correct, and the document does not include issues that have been clarified afterwards. Thus, COM prepared a revised version (but maintained the same structure of the document).

### COM explained the revision of certain points of the revised Q+A:

- Point 2: CE-marking of on-site mixed explosives: Q+A has been adapted to the changed legislative framework;

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<sup>1</sup> A questionnaire was sent out on the matter, the feedback rate was 75%.

- Point 8 (ammunition and explosives used by police forces): clarification that the matter does not fall under the scope of Directive 2014/28/EU – same content as in previous version was kept;
- Point 10 (site codes to non-EU manufacturing sites under 2008/43/EC): see below;
- New Point 13: clarification of the term “use for own purposes”;
- New Point 14 on the end of the transitional phase: it should be kept for explanatory purposes;
- New Point 15 (mixing of own explosives on site for blasting on own site and the definition of manufacturer using an explosive for own purposes): COM maintains the view that explosives mixed on-site by a manufacturer in his or her own quarry or mine (scenario 2) do fall under the scope of the definition of "use for own purposes" and that the provision in Article 5(1) of Directive 2014/28/EU applies.

Regarding point 10, COM informed that non-EU companies need to request different manufacturing site codes from different EU-countries for the same products in cases where the same product is exported to several EU-countries. Otherwise and by using only one code for all imports, the traceability would only be guaranteed in case the EU manufacturer operates via a single EU importer – this is rather unlikely and the reason why the approach proposed by the industry could not be accepted. A Member State highlighted that the initial thought was that with the unique code no information would be lost, if the code is recorded and the records are kept. However, the concern regards the lack of documentation if not all importers go through the same process. COM evidenced that the issue regards the tracing of explosives and the fact that the records need to be provided to market surveillance authorities; a non-EU companies is not obliged to keep the records and to provide them on request to the market surveillance authorities.

Concerning point 15 (mixing of own explosives on site for blasting on own site and the definition of manufacturer using an explosive for own purposes) a Member State pointed out to the need of being pragmatic and looking at small scale and ad-hoc activities. COM replied that COM is always trying to avoid unnecessary burden for industry but that for the formulation of point 15 the legal aspects needed to be safeguarded.

COM invited participants to provide comments to the Q+A document in track changes mode in writing until 15 December 2017. COM will then circulate via CIRCABC a revised version which will take into account the received input. The aim is to have the new Q+A document approved at the latest at the next meeting of this Group of Experts.

## **9) Applicability of traceability provisions to explosives in transit**

COM explained that the present is the follow-up discussion of last year's agenda point 12. COM was asked by stakeholders whether the provisions of the Traceability Directive 2008/43/EC apply to goods which are in transit only (not placed on the market) – this means these goods are coming from one non-EU country and will be moved to another non-EU country. Some Member States thought that such an interpretation would create double-standards (e.g. in case of theft, disappearance at the moment when the goods are in the EU

territory) and thus COM was of the opinion that the issue should be further discussed and clarified.

DG TAXUD presented the system applicable to goods in transit. DG TAXUD repeated that transit means that goods are not released for free circulation in the EU market. Transit procedures differ on the mode of transport, e.g. by air, road, sea. For example, for road transport the rules are very strict and well-monitored and an obligatory, electronic IT system of 2004 (NCTS) is in place (under NCTS the electronic message of delivery is sent to the office of departure at the moment of arrival; in case of non-delivery an immediate enquiry procedure starts). However, DG TAXUD admitted that if goods disappear/are removed between point A and B it is difficult to identify their exact location in the EU territory. DG TAXUD informed as well that rail transport systems are less developed (use of a simplified, paper-based procedure).

A Member State asked whether before the transit takes place no authority is evaluating the necessity of taking additional security measures. DG TAXUD replied that when goods enter the Union customs territory the transit does not start immediately, because other customs formalities are required (e.g. entry summary declarations, temporary storage regulations). If other regulations than the transit laws require additional documents/certificates then customs require the latter as well.

Another Member State made the example of an export of detonators from one Member State to outside the EU, leaving the EU territory from another Member State (e.g. explosives are shipped from Spain to the port of Antwerp and their export destination are the US). The Member State said that this is considered a transit case and hence the market surveillance authorities and the police are not aware, only customs authorities are. DG TAXUD answered that the legislation for this kind of situations is quite clear (export rules apply), but another matter regards the implementation and collaboration between Member States. DG TAXUD highlighted that this would not be a transit movement but an export movement – here the export procedure control system would apply (very similar to NCTS). The office in Spain would inform the office in Antwerp at the moment of departure and vice-versa at the moment of exit of the EU.

Another Member State asked which document would be required in such cases, e.g. the intra community transfer model and/or the documentation for the export procedure. DG TAXUD said that goods exported from the EU are in the export procedure system and can be identified. The carrier has the print out of the system (unique number of export declaration). Of course, if the intra-community transfer model is required due to any other legislation, it needs to be available. DG GROW repeated that in this case the transfer rules as per Art. 11 of Directive 2014/28/EU apply for the physical movement of the explosives from the manufacturing site to the point of export (e.g. from a factory in Spain to the Antwerp port), until the goods are exited from the EU. However, for explosives manufactured in the EU and meant to be exported to a non-EU country (thus not placed on the EU market), the traceability provisions of Directive 2008/43/EC do not apply, if the conditions indicated in Article 3(2) of Directive 2008/43/EC are met.

In order to clarify, a Member State intervened saying that for explosives in transit no security checks are carried out, because transit provisions only tackle the matter from a customs point of view. DG TAXUD confirmed that merely fiscal issues are tackled. If goods disappear, explosives are treated as other goods (furniture etc.).

Another Member State referred to the differences in interpretation amongst Member States. COM said that it was interested in knowing the different interpretations and that the problems should be brought up to the table (also by organising small task groups).

An observer intervened and maintained that Directive 2008/43/EC does not apply to goods in transit. The observer stated that physical checks are not carried out often by customs (e.g. a NCTS declaration is carried out for 8 days for example from Rotterdam to Amsterdam). When things e.g. fall off a truck the explosives cannot be traced back. COM asked whether this is a problem related to the rules or of implementation. The observer said that it is rather an implementation problem. Many companies do not make the difference between transit/transfer.

DG TAXUD commented that it is aware of the problem issues regarding audits, seals, risk profiles and the duration of NCTS declarations – COM is working on the matter and is trying to find solutions.

Another Member State asked which documentation should be required in case explosives are transferred from one Member State to another Member State passing through a non-Member State (e.g. from Poland to Greece via Serbia). COM replied that all participants must be Member States for the intra-EU transfer. COM clarified that the transfer provisions apply in every kind of scenario (export, import, intra-community transfer), but reminded that the original question to be clarified under the present agenda point was whether the traceability provisions of Directive 2008/43/EC apply in case of transit. COM believes that in order to apply the rules of Directive 2008/43/EC to goods in transit we would need to change the legislation. Such a legislative change could be proposed e.g. in case of motivated security concerns (public health, security reasons need to be considered, at the moment we do not have case information).

COM also informed about the development of a toolbox created by DG TAXUD concerning the application of EU customs rules to the specific sectors. This document could be sent upon request to competent authorities only but cannot be uploaded on CIRCABC, because this would make the toolbox accessible also to observers.

COM summarised discussions and said that the key questions here regard the application of the rules of Directive 2008/43/EC in case of transit, which in COM's opinion do not apply in the current legislative framework. COM is aware that e.g. if an incident happened along the transit from point A in a Member State to point B in another Member State, it would be difficult to trace back the good due to the missing EU identification code; if Member States consider and can document that this causes a serious security problem, a legislative amendment of the Directive would be the only solution to address it.

COM affirmed that its reading of Article 11 of Directive 2014/28/EU is that it applies to both transfer and transit procedures, given that Directive 2014/28/EU defines a transfer as "any physical movement within the Union".

An observer suggested drafting a Q+A point on the applicability of the directive's transfer rules also to explosives that are meant to be exported, as well as to those in transit through the EU territory. COM agreed.

## **10) Revision of the harmonised standards for civil explosives**

- **Results of the consultation on harmonised standards**
- **Discussion on a draft mandate for the revision of the harmonised standards**

COM stated it seemed that the current harmonised standards were no longer covering some of the new products, thus COM decided to consult the experts (NBs, AdCo group, the members and the observers of this Group of Experts) concerning the need to develop new standards and/or to revise the existing standards via a questionnaire. COM has uploaded on CIRCABC an overview of the feedback received in this first phase of consultations. Based on the feedback received, COM came to the conclusion that such a revision process for existing standards is indeed necessary. Therefore, COM included the standardisation work on explosives into the Union standardisation work programme for 2018. As a second phase, discussions with CEN will be held and this Group of Experts will be consulted on a draft mandate for the required standardisation work. Once this Group of Experts is confident that it has reached a text that can be endorsed, it should adopt it and the mandate should be submitted to the Standardisation Committee for approval. COM will work in the coming months on a draft mandate, which will be circulated for the collection of comments. Yet, due to staff shortage issues, it is difficult to predict when the mandate will be developed by COM.

An observer intervened as regards standard saying that it cannot understand the reason why there is a need to develop/revise standards for explosives, considering that the relevant Technical Committee CEN 321 is consulted at regular intervals, and such a need was never raised by the members of CEN/TC 321 before. Two Member States replied and said that updates are required, e.g. the electronic detonators require additional safety assessment. COM stressed that this Technical Committee has been non-active for several years, and expressed doubts that CEN's internal periodical consultation process of the members of CEN/TC 321 is effective in reaching all relevant stakeholders.

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

- **Tour de table with Member States on their experiences with the implementation**

No problems in the implementation were reported by Member States.

- **Provision by national authorities of tables listing their manufacturing site codes**

COM was glad to inform that it had managed to finally obtain the national lists of the manufacturing sites codes from all Member States plus EEA/EFTA countries (except Liechtenstein). The lists of the manufacturing site codes are archived in a restricted folder in CIRCABC accessible only to the competent authorities. The lists have also been made available in the CIRCABC library of the AdCo group, to which only market surveillance authorities have access.

- **International developments: 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**

COM informed about 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 was mostly based on the EU system introduced by Directive 2008/43/EC, but COM is of the opinion that some drafting work on specific details would still be needed to make it fully compatible with the Directive.

COM is of the opinion that in any case (even in case the UN harmonised marking system would be identical to the EU system) the use of the Unique Identification marking system alone is not enough and that it will not ensure traceability, without the second pillar of the EU traceability system (the record-keeping obligation). COM always took the position that in case of contradicting rules between such a UN system in the framework of TDG and the provisions of the Traceability Directive, in the EU the requirements of Directive 2008/43/EC would prevail.

An observer commented that the EU standards are much higher than the ones envisaged at UN level and that US companies try to downgrade this level to have a competition advantage. COM replied that it will do the utmost to protect EU companies.

### **12) Any other business**

- **Date of the next meeting**

COM has tentatively booked a room for the month of October 2018. The participants will receive the information on the exact date via the invitations that will be sent through the new AGM system for the management of meetings.

## **4. Conclusions/recommendations/opinions**

Traceability rules do not apply to civil explosives in transit.

## **5. Next steps**

- The minutes of the meeting of the Forum of Notified Bodies for Explosives held 12 May 2017 will be made available to the members of the GoE via CIRCABC.
- Participants of the GoE will provide comments to the Q+A document by 15 December 2017.
- COM will revise the Q+A document taking into account the input received and circulate it via CIRCABC in order to approve the new Q+A document at the next meeting of this GoE.
- Competent authorities will request the toolbox created by DG TAXUD concerning the application of EU customs rules to specific sectors as the document is for competent authorities only and cannot be circulated via CIRCABC.
- COM will work on a draft standardisation request (mandate), which will be circulated via CIRCABC to collect comments.

## **6. Next meeting**

The next meeting is planned to take place on 22 October 2018.

## **7. List of participants**

Members: AT, BE, CZ, DK, FI, FR, DE, IE, LV, LT, NL, PL, ES, SE, UK.

Observers: Switzerland, representatives of CEN-CENELEC, of EUROPOL and of several trade associations (AFEMS, SFEPa, UEPG, FEEM, European Shippers' Council, and EFEE).  
Chairman of the Forum of Notified Bodies for Explosives and the Chairman of the AdCo group on Explosives for Civil Uses.

EU institutions: the European Commission (DG GROW), the European Parliament.