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WORKING PAPER

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Technical Harmonisation (Explosives Precursors)
Subject:	Proposal for a Regulation of the European Parliament and of the Council on the marketing and use of explosives precursors, amending Annex XVII to Regulation (EC) No 1907/2006 and repealing Regulation (EU) No 98/2013 on the marketing and use of explosives precursors - Powerpoint presentation by the Commission



Revision of the Regulation on the Marketing and Use of Explosives Precursors

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Working Party on Technical Harmonisation

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25 May 2018

DG HOME

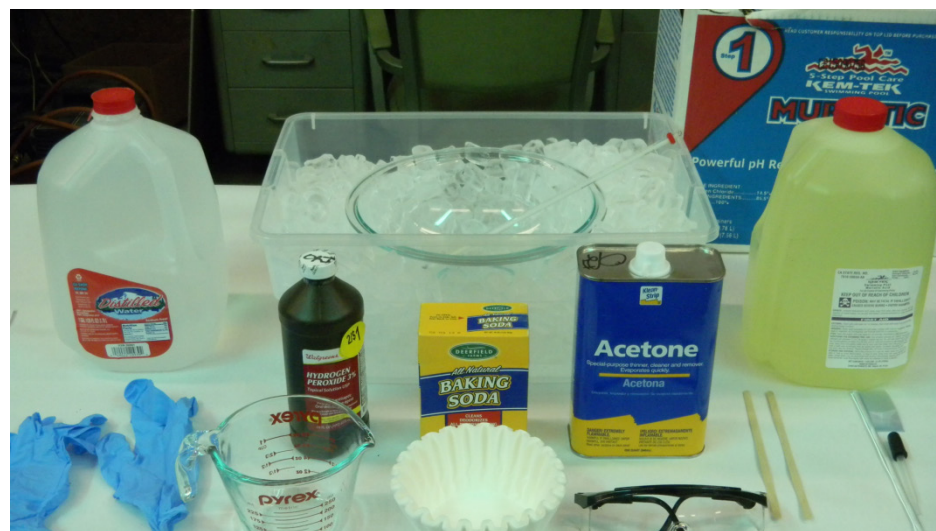
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Explosives Precursors

- **Definition:** Chemical substances that can be misused to manufacture homemade explosives (HMEs)
- **Use:** substances and mixtures containing them serve a variety of purposes (e.g. fuel, cleaning, disinfection, etc.)
- **Misuse:** illicit manufacture of HMEs (e.g. TATP)



Current framework

- **Regulation 98/2013 on the marketing and use of explosives precursors**

The availability of 7 substances (restricted explosives precursors listed in Annex I) is subject to restrictions and controls. Member States can choose between:

- Full ban on restricted substances for members of the general public
- Licensing regime
- Registration regime

18 substances are subject to an obligation to report suspicious transactions (Annex I + II).

Obligations imposed by Reg. 98/2013

Member States ...

- Shall designate a competent authority and (a) national contact point(s)
- Shall establish and enforce measures concerning penalties and (optionally) a licensing and/or registration regime
- Shall notify all measures to the Commission
- Shall disseminate the Guidelines issued by the Commission

Economic operators ...

- Shall ensure appropriate labelling of restricted precursors
- Shall restrict sales, require licenses, and/or register transactions, according to the measures set up in each MS
- Shall report any suspicious transactions thefts and disappearances along the entire supply chain

Need for revision

- **Threat posed by HMEs remains high**
 - HMEs have been used in the vast majority of recent attacks in the EU and have been responsible for the vast majority of victims of terrorist attacks involving explosives
 - The availability of explosives precursors facilitates the use of HMEs in attacks
- **Outcome of the evaluation:**
 - The amount of explosives precursors available to the general public has decreased
 - More suspicious transactions have been reported
 - Terrorists and criminals continue to access and misuse explosives precursors
- **Objective of the revision:** setting stricter and more uniform rules to close existing security gaps and deprive potential terrorists of the means to carry out attacks

Policy context

- Security context: threat posed by HMEs remains high
- Current legal framework: Regulation (EC) No 98/2013 on the marketing and use of explosives precursors
 - Report on the application of the Regulation
 - Evaluation of the Regulation
- European Agenda on Security
- Action plan against trafficking in and use of firearms and explosives
- Communication on delivering on the EU agenda on security to fight terrorism
- Commission recommendation on immediate steps to prevent misuse of explosives
- Council conclusions of 7 December 2017

Other relevant legislation

- Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)
- Regulation (EC) No 1272/2008 on the classification, labelling and packaging of substances and mixtures (CLP)
- Regulation (EC) No 2003/2003 relating to fertilisers
- Regulations (EC) No 1259/2003 and No 273/2004 which address the trade in drug precursors between the EU and third countries and within the EU.

Problem definition

- Security problem: explosives precursors continue to misused
 - Dangerous substances remain accessible to illegitimate users
 - Detection of threats is not sufficiently effective throughout the EU
- Internal market problem: economic operators face unnecessary obstacles to the free movement of explosives precursors
 - Barriers to competition within the EU
 - Restrictions and controls are not always applied by online marketplaces.

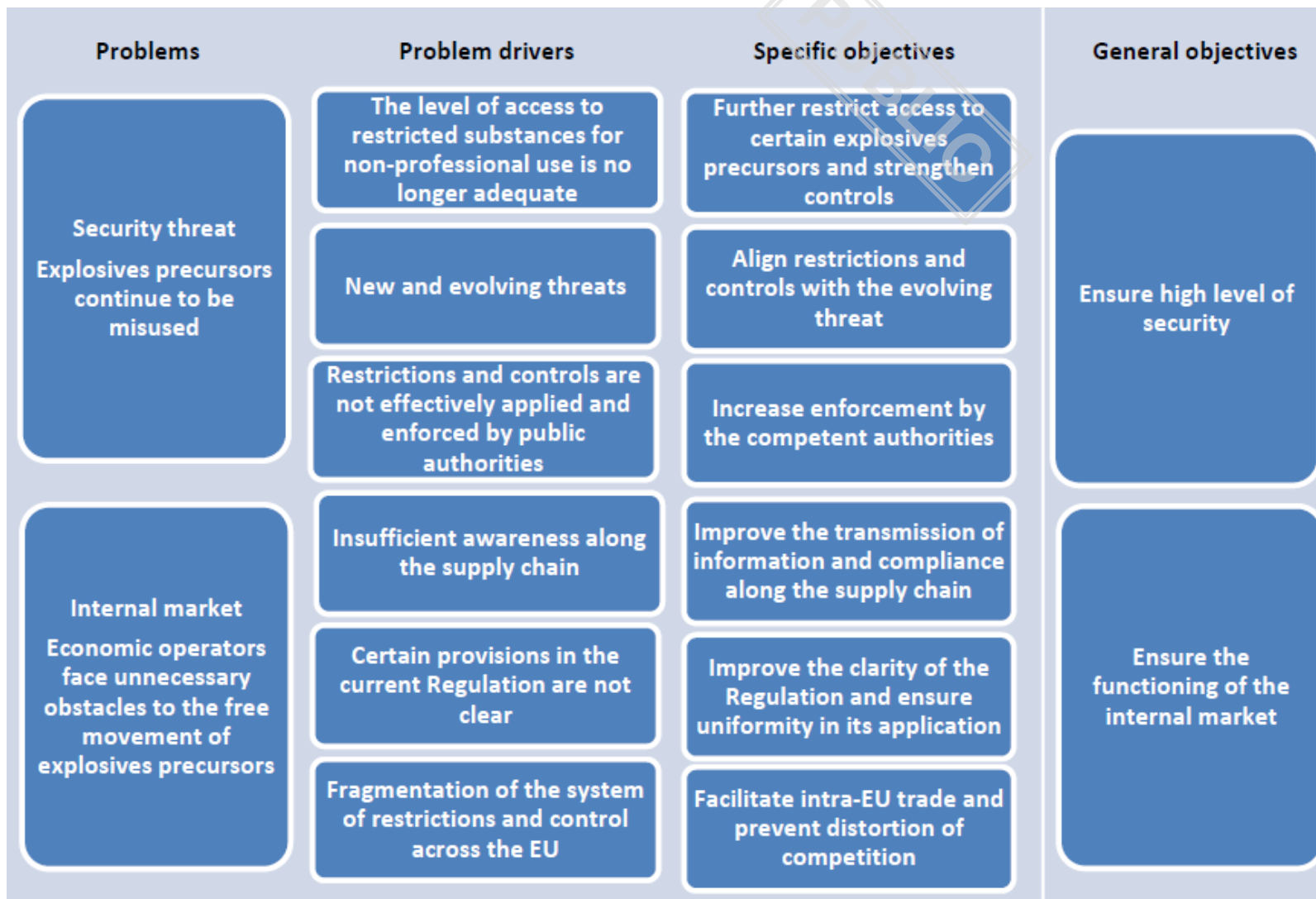
Problems and problem drivers



Why should the EU act?

- Legal basis: Art. 114 TFEU → shared competence
- Subsidiarity: necessity of EU action
 - Threat posed by HMEs remains high across the EU
 - Forum shopping can impact the security of all MS
 - Differences in the practical application of the Regulation affect economic operators when they buy or sell products across EU borders
- Subsidiarity: added value of EU action
 - Creating a level playing field between on- and offline suppliers
 - Facilitating cross border exchange of information

Objectives



Policy options

- **Policy option 0** (*baseline*) – The Commission, in consultation with the SCP, will continue to monitor and facilitate the application of the Regulation
- **Policy option 1** (*non-legislative*) – Reinforce the application of the Regulation with non-legislative measures
- **Policy option 2** (*legislative*) – Strengthen and clarify the restrictions and controls of the Regulation
- **Policy option 3** (*legislative*) – Introduce further controls along the supply chain

Impacts of the policy options

How do the different policy options score on:

- Effectiveness
- Economic impacts
- Social impacts
- Environmental impacts
- Impact on fundamental rights

Comparison of the policy options

To compare the policy options, each option was scored against the following assessment criteria:

- Effectiveness
- Efficiency
- Fundamental rights
- Coherence

Assessment criteria	Policy option 1	Policy option 2	Policy option 3
Effectiveness	+5.5	+11	+ 10
Efficiency	+1.5	-0.5	-9.5
Impact on fund. rights	+1.5	-0.5	-3
Coherence	0	+1	-0.5
Total	+8.5	+11	-3

Preferred policy option

The preferred policy option is option 2.

- Advantages of the preferred policy option
 - Best score and most balanced score on impacts
 - PO 2 strengthens and clarifies the existing legal framework without touching upon the essential characteristics of the Regulation
 - The measures proposed will clarify and improve the efficiency of the control measures currently applied
 - The vast majority of the SCP and industry representatives of manufacturers and distributors support policy option 2.
- Proportionality

Monitoring and evaluation

- The Commission will continue to work closely with the SCP, MS authorities, chemical supply chain and relevant EU agencies and institutions
- To monitor the implementation of the measures foreseen data will be collected (via MS and from economic operators)
- Formal evaluation (effectiveness, efficiency, relevance, coherence and EU added value) should be carried out 6 years after the deadline for implementation
- Monitoring and evaluation indicators are listed in Annex 8

RSB comments and opinion

Meeting with the RSB: 21 March

Overall opinion: positive

Main considerations:

- Definition of the options
- Inclusion of stakeholder views

Other issues:

- Consistency with other relevant legislation
- Online sales

The draft impact assessment was revised on the basis of these comments

Thank you for your attention