

## Revision of the Explosives Precursors Regulation

Impact assessment (SWD(2018) 104 final, SWD(2018) 105 (summary)) accompanying a Commission 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

This briefing provides an initial analysis of the strengths and weaknesses of the European Commission's [impact assessment](#) (IA) accompanying the above-mentioned [proposal](#), adopted on 17 April 2018 and referred to the Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE).

The proposal is part of the security package adopted by the Commission on 17 April 2018 and [presented](#) to the Parliament by Commissioner King on 11 June 2018. Its aim is to update [Regulation \(EU\) No 98/2013](#) on explosives precursors.<sup>1</sup> Explosives precursors can be found in various chemical products used by consumers, general professional users and industrial users, for example in detergents, fertilisers, special fuels, lubricants and greases, water treatment chemicals, etc. (IA, Annex 4, pp. 111-157). They can be mixed to produce home-made explosives (HME) that have been used in numerous terrorist attacks in Europe: Madrid in 2004, London in 2005, Paris in 2015, Brussels in 2016 and Manchester and Parsons Green in 2017 (IA, p. 6).

A REFIT ex-post evaluation on the implementation of the regulation<sup>2</sup> has been performed by the Commission and included as Annex 3 to the impact assessment of the proposal.<sup>3</sup> The evaluation concluded that the regulation 'proved to be only partially effective in reaching its specific objectives' (IA, p. 110). Among the positive outcomes, it noted that the amount of explosives precursors available on the market has decreased and the detection of potential threats has increased (IA, p. 89). Improvement was nevertheless found to be necessary regarding 'the fragmentation of the system of restrictions and control regimes [of explosive precursors] across the EU (i.e. ban, licensing and registration) and the diverging level of awareness along the supply chain' (IA, p. 110).<sup>4</sup>

The main elements of the new proposal include the discontinuation of the registration regime, clarifying definitions such as economic operators, members of the general public (by also including legal persons) and the obligation for economic operators to verify licences upon sale (explanatory memorandum, pp. 10-17).

### Problem definition

Drawing on the ex-post evaluation, the IA describes the following two problems, which the proposal aims to solve:

1. Explosives precursors continue to be misused for the manufacturing of HMEs;
2. Economic operators face unnecessary obstacles to the free movement of explosives precursors in the internal market (IA, pp. 8-12).

The problem tree on page 13 explains that the drivers of the two problems are the following:

- the level of access to restricted substances, which is no longer adequate;
- new and evolving threats;<sup>5</sup>
- insufficient awareness along the supply chain of reporting obligations;
- lack of effective application and enforcement of existing controls;
- fragmentation of the restriction and control system;

- lack of clarity of certain provisions in the current regulation, such as difficulties in identifying legitimate users and legal entities falling outside the scope of the general public (IA, p. 17).

The IA includes a wealth of background information in support of the problem analysis. It could nevertheless have been somewhat clearer and more precise when describing the underlying problem drivers and in particular the issues of enforcement and control or legal clarity.

## Objectives of the initiative

Both the general and specific objectives appear to be consistent with the conclusions of the ex-post analysis and are in line with the problems identified and their underlying drivers.

The **general** objectives are to:

1. ensure a high level of security through measures to prevent and combat crime;
2. ensure the functioning of the internal market, preventing distortion of competition or trade barriers (IA, p. 21).

The **specific** objectives are to:

1. further restrict access to certain explosives precursors and strengthen controls;
2. align restrictions and controls with the evolving threats regarding explosives precursors;
3. increase enforcement of the regulation by the competent authorities;
4. improve the transmission of information and compliance along the supply chain;
5. facilitate intra-EU trade and prevent distortion of competition;
6. improve the clarity of the regulation and ensure uniformity in its application (IA, p. 21).

The **operational** objectives are described together with the monitoring and evaluation indicators for the preferred option (IA, Annex 8, pp. 181-184). The objectives are linked to the problems identified and appear to comply broadly with the SMART<sup>6</sup> criteria set out in [tool #16](#) of the [Better Regulation](#) Guidelines (BRG).

## Range of options considered

The IA presents three policy options in addition to the baseline. Under the baseline (no-change scenario), ‘the three-tiered system of regimes and controls of the marketing and use of explosives precursors, i.e. a ban, licensing and registration regime, will be maintained’. In order to add new substances to the list of restrictions, an ordinary legislative procedure would be necessary. Confusion as to what is a professional user would remain (IA, p. 22). Moreover, the threat to public security would increase rather than decrease (IA, p. 18).

**Table 1: Description of the policy options (IA, p. 30)**

	Policy option 1: non-legislative	Policy option 2: legislative	Policy option 3: legislative
Short description	<b>Reinforce the application of the regulation with non-legislative measures</b>	<b>Strengthen and clarify the restrictions and controls of the regulation</b>	<b>Introduce further controls along the supply chain</b>
Action steps	<p>Establishing a Standing Committee on Precursors (SCP)<sup>7</sup> sub-group to regularly discuss the evolving threat posed by explosives precursors and identify security gaps as they arise.</p> <p>Tasking Europol and the EU Intelligence and Situation Centre (EU INTCEN) to regularly report to the SCP.</p> <p>Adopting a Commission recommendation setting out</p>	<p>Expanding the scope of restricted explosives precursors.</p> <p>Adopting a faster procedure to add restricted explosives precursors.<sup>8</sup></p> <p>Discontinuing the use of registration regimes.</p> <p>Reducing the scope of and set an upper concentration limit for licensing.</p> <p>Harmonising the circumstances to be taken into account by the national competent authorities when issuing licences.</p>	<p>Revising Annexes I and II<sup>12</sup> – taking a more proactive approach.</p> <p>Requiring reporting of suspicious transactions of non-scheduled substances.<sup>13</sup></p> <p>Introducing a full ban on restricted explosives precursors for members of the general public (including online sales).</p> <p>Requiring the registration of transactions involving professional users.</p>

<p>detailed recommendations for licensing and registration regimes.</p> <p>Organising dedicated workshops on enforcement for public authorities and develop guidelines.</p> <p>Establishing an SCP sub-group for inspection authorities.</p> <p>Organising dedicated workshops for the different actors in the supply chain.</p> <p>Promoting public-private dialogue between public authorities and online operators.</p>	<p>Addressing the definitions of ‘member of the general public’ and ‘professional user’.</p> <p>Clarifying the labelling obligation.<sup>9</sup></p> <p>Require retail to make sales personnel aware of the obligations of the regulation and perform checks.<sup>10</sup></p> <p>Clarifying that the regulation also applies to online sales and establish guidelines.</p> <p>Requiring Member States to set up inspection authorities, training and awareness-raising.</p> <p>Requiring members of the general public and professional users to report significant disappearances and thefts.<sup>11</sup></p>	<p>Requiring electronic registrations of transactions involving professional users to be forwarded to the competent authorities in real time.</p> <p>Requiring the registration of economic operators at national level.</p> <p>Requiring the labelling of Annex I and Annex II substances and mixtures.</p> <p>Requiring information on explosives precursors to be incorporated in bar codes.</p>
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Source: author on the basis of the information provided in the IA (pp. 22-31).

**Option 1 reinforces the application of the regulation with non-legislative measures** (see table 1 above). According to the IA, some Member States and economic operators voluntarily exchange information, increase the level of awareness and engagement of the relevant economic operators and public authorities, and adopt codes of conduct and guidance (IA, p. 23). It explains that the stakeholder consultation has shown that such voluntary efforts have indeed helped to achieve ‘the effectiveness and efficiency of the restrictions and controls in place’. This option provides a set of non-legislative measures (see table 1 above) to reinforce the application of the regulation with voluntary measures.

**Option 2 strengthens and clarifies the restrictions and controls of the regulation.** The idea of this option is to strengthen and clarify existing restrictions on making available the explosives precursors to the general public through certain measures (see table 1 above). These measures do not touch upon the essential characteristics of the regulation (IA, p. 25). For example, a new complete ban would be introduced for substances such as ‘hydrogen peroxide, nitromethane and nitric acid and the newly proposed sulphuric acid’ above the concentration level set out in Annex I of the regulation. No licence may be issued above that level, as there is no substantial legitimate use for it by the general public (IA, p. 26). Another update includes the definition of what is meant by ‘a member of the general public’ by covering also legal persons when they are not acting for purposes of trade, business or profession; a definition of ‘professional user’ would also be included in the regulation. Finally, the regulation would be extended to companies operating online, with regard to the restrictions and controls, as well as obligations on the supply chain, including retail (IA, p. 27).

**Option 3 introduces further controls along the supply chain.** This option proposes to amend the regulation significantly by introducing ‘new controls along the supply chain and [creating] additional obligations for the different actors involved’ (see table 1 above). Some elements of this option include, for example, a full ban on restricted explosives precursors for members of the general public, a requirement for economic operators to report all suspicious transactions, and obligatory labelling of Annex I and Annex II substances, alongside other substances included in those annexes. As a result, the licensing and registration systems would be discontinued and all transactions would be reported, including those concerning substances which are not yet identified as potentially dangerous explosives precursors. In addition, more substances would be covered by the restrictions with a view to preventing new, potentially dangerous substances from being misused, for example, if they have been used in other regions (IA, p. 28). Finally, under this option, economic operators would be required to label all explosives precursors listed in either annex, even though substances from Annex I would no longer be accessible to the general public.

The IA examines and compares the impacts of the options based on effectiveness, efficiency, coherence, and fundamental rights (IA, p. 48). Comparison tables with specific indicators to evaluate these assessment criteria are provided in the IA; however, more precision and details would be necessary to fully understand the actions planned under each option. The **preferred option is policy option 2**, which is said to have achieved the highest overall assessment criteria score. It would also significantly contribute to all six specific objectives. The IA notes that ‘the vast majority of the Standing Committee on Precursors

and industry representatives of manufacturers and distributors supported policy option 2' (IA, p. 50). However, the stakeholder consultations, as well as both the open public consultation and targeted consultations done for the external study informing the ex-post evaluation, yielded limited responses.<sup>14</sup>

## Scope of the impact assessment

The IA discusses the economic, social, environmental and fundamental rights impacts, as well as the effectiveness of the options (IA, p. 31). The analysis is largely qualitative. The ex-post analysis on the implementation of the regulation states that 'accurate data and statistics are rarely available, which makes it difficult to quantify the impact of the regulation' (IA, Annex 3, p. 82). This information could have been usefully included in the IA for better clarity, rather than presented only in the annexed ex-post evaluation.

The IA assesses the **economic impacts** regarding the effects on the EU economy, on different economic operators, and on SMEs in terms of compliance costs, administrative burdens and economic losses (for economic operators) (IA, p. 36). The ex-post analysis explains that the assessment of regulatory costs for economic operators and public authorities (see section below) again relies heavily on the qualitative feedback provided by stakeholders in the course of the survey and interviews (IA, Annex 3, p. 82).

**Option 1** is claimed to have a limited cost-saving and burden reduction potential, and zero impact on consumers (both professional users and the general public) in the short and medium-term, with uncertainties in the long-term (IA, pp. 37-38). 'In the mid-term, this policy option would have a positive effect on compliance costs by economic operators, as a result of increased awareness along the supply chain and increased uniformity in the practices adopted by Member States' (IA, p. 38). Under **option 2**, the EU level-playing field would be enhanced 'by harmonising Member States' regimes and imposing the same obligations on all manufacturers regarding labelling and the transmission of information'. Compliance by on-line sellers would be improved (IA, p. 39). The administrative burden for companies, manufacturers and sellers would include adapting their production process and packaging and labelling practices to the new rules for non-professional users. Extra regulatory costs and investments in human resources would arise for retailers 'due to the required training and the performance of checks' (IA, p. 40). A broad overview of costs and benefits for the preferred option is provided in Annex 6 (pp. 168-173). Total costs for businesses are estimated between €5.5 and €25.3 million, as one-off costs, and € 23.8 and €82.6 million as recurrent costs. Total costs for administrations are estimated at €5.6 million as one-off costs, and between €8.1 and €18.2 as recurrent costs. Under **option 3**, the overall increase of the administrative burden and compliance costs is estimated to be between 10 and 30 % (IA, p. 41). The total ban would affect some consumers who are professional users of the substances included in the regulation. For example, some manufacturers would have to adapt the composition of their consumer products, and some consumers would spend more on the same substances as, due to the dilution, they would need to buy bigger quantities in order to obtain the same results (e.g. in the use for hunting trophies). The IA concludes here that 'the increase in costs and administrative burden resulting from the measures proposed under policy option 3 would seem disproportionate' (IA, p. 41).

**Social impacts** are assessed in terms of reduced terrorism threats, and impacts on the labour market and public health (IA, pp. 41-45). Under **option 1**, a certain positive impact on security, as well as a positive, but limited, impact on the labour market is expected. Under **option 2**, a significant positive impact on security across the EU is expected, as well as a high impact on public health due to security benefits (for example, as a result of limited access of the general public to sulphuric acid and ammonium nitrate). However, decreased consumption and demand of the restricted products might lead to staff reductions. This could be compensated by new jobs in research and development - for example, regarding new, substitute substances or lower dilutions of the existing ones. Under **option 3**, a significant impact on high level security is expected in the EU. Regarding employment, the manufacturers and suppliers might need to reduce staff due to decreased demand in those Member States with a licensing or registration regime. Similarly to option 2, a positive impact on employment might be observed in the research and development sector. Impacts on public health are again estimated as positive.

The assessment of **environmental impacts** depends on several factors, such as substances affected, available alternatives, changes in volumes used and consumer behaviour (IA, p. 45). Moreover, according to the IA, the environmental impacts have to be regarded in the context of the relatively small part of the

market in explosives precursors that is addressed by the regulation. The current share for the general public is estimated at less than 1.5 % of the explosives precursors market (IA, p. 36).

**Impacts on fundamental rights** include the right to the protection of personal data, right to non-discrimination and freedom to conduct a business (IA, p. 46). Policy option 1 is said to have no impact on the freedom to conduct business, but negative impacts are expected under options 2 and 3. This is mainly due to restrictions on the type and concentration of substances, in the case of option 2, and prohibitions to sell restricted substances in the case of option 3 (IA, p. 47). Option 1 would have a positive impact on the right to the protection of personal data, whereas option 2 is claimed not to have much impact. This may appear slightly contradictory, given that the checks on buyers would include licence and ID checks. The impact on the protection of personal data is rather significant under option 3, as much more data would be collected for the purpose of, for example, requesting a licence to access restricted explosives precursors, or reporting of suspicious transactions. The IA concludes that the collection of this data 'does not appear to provide significant efficiency gains to justify the infringement of the right to protection of personal data' (IA, p. 47). The right to non-discrimination would be reinforced under option 1, by raising awareness along the supply chain of the need to avoid discrimination against customers on the basis of prejudices based on physical features. The IA does not mention any such impacts under option 2, while it considers that policy option 3 would not have an impact on the right to non-discrimination (IA, p. 47).

### Subsidiarity / proportionality

Subsidiarity is addressed in a dedicated chapter in the IA (pp. 20-21). The legal basis for this proposal is Article 114 of the Treaty on the Functioning of the European Union (TFEU)<sup>15</sup> under which the EU shares its competence with the Member States (IA, p. 20). The explanatory memorandum explains that the proposed measures 'would not be disproportionate in view of their limited expected impacts on the market, in terms of implementation or enforcement burden and costs' (pp. 5-6).

Several national parliaments have scrutinised the proposal, but at the time of writing none has issued a reasoned opinion on subsidiarity or proportionality grounds. The deadline for submissions is 19 July 2018.

### Budgetary or public finance implications

According to its explanatory memorandum, the proposal has no implications for the EU budget (p. 9). The economic impacts on public bodies are discussed in the IA in terms of enforcement costs and administrative burden (IA, pp. 38, 40, 41). Under option 1, enforcement costs are estimated to initially increase by less than 10 %, and under option 3 by between 10 to 30 % due to 'additional monitoring and inspection activities, the awarding of penalties, and adjudication'. As for the administrative burden, it would lighten under option 1 due to increased support from the Commission. Under option 3, it would increase by less than 10 % due to 'the monitoring of transactions and the managing of the register of economic operators' (IA, p. 41).

No quantification is provided for such costs under the preferred option 2 but generally under this option 'the burdens on public authorities would significantly increase through the requirement to have in place inspections authorities, raise awareness and to provide training for law enforcement and other competent authorities.' (IA, p. 40).

### SME test / Competitiveness

The description of impacts on SMEs is very general and qualitative, despite the fact that the IA claims to have paid particular attention to this aspect under the three policy options (IA, p. 36). It does not provide an estimate of how many retailers are affected by the regulation, nor the share of SMEs among them. The IA states that 'the SMEs have less resources available, both in terms of financial and human resources' (IA, p. 38). Under option 3, it points out that adapting to the new rules 'would be particularly problematic for SMEs, which might not have the capacity to adapt their products, purchase (more expensive) alternatives or target a different market' (IA, p. 40).

The effect on competition is described as overall positive in the case of options 1 and 2. Under option 3, there would be mixed effects on competition as a result of a more level playing field due to harmonised

regimes, on the one hand, and a significant negative impact on the competitiveness of affected producers and suppliers as a result of significant compliance costs and loss of sales, on the other (IA, p. 40).

## Relations with third countries

The IA mentions that the regulations '[\(EC\) No 1259/2013](#) and [\(EC\) No 273/2004](#) respectively address the trade in drug precursors between the EU and third countries, and within the EU. Several explosives precursors can also be used as drug precursors' (IA, p 8). It briefly mentions<sup>16</sup> that controls on imports from third countries would improve due to increased enforcement capacity across the EU, as dedicated national inspection authorities would be created.

## Simplification and other regulatory implications

The necessity to simplify the control regimes for explosives precursors, such as through a ban, registration or licensing, or a mix of them, is one of the conclusions of the ex-post evaluation and lies at the core of the proposal (explanatory memorandum, pp. 8-9; IA, p. 51). According to the ex-post evaluation, the regulation 'is in general consistent and complementary to key relevant EU legislation, such as [REACH](#), the [classification, labelling and packaging regulation](#), the [directive on explosives for civil uses](#), the [directive on pyrotechnic articles](#), the [directive on fertilisers](#), and the regulations on drug precursors'<sup>17</sup> (IA, Annex 3, p. 110). Following a request by the Regulatory Scrutiny Board (RSB) (see section below), the IA clarifies the differences in scope between this proposal and these legislative acts (IA, Annex 1, p. 56).

## Quality of data, research and analysis

The Commission has relied on comprehensive data found in the ex-post analysis annexed to the IA and on the February 2017 report on the regulation's application, as well as on stakeholder consultation (see below). Such consultations included an open public consultation, online workshops with national contact points and competent authorities, manufacturers and distributors carried out in the context of the external study performed in support of the ex-post evaluation, as well as the hearing of the SCP (IA, Annex 5, p. 159). The IA provides a rather detailed, mainly qualitative, analysis of the various types of impacts.

The outsourced study supporting the ex-post evaluation appears to have also covered the impact assessment of possible options for a future initiative. The ex-post evaluation and impact assessment seem to have been performed in parallel, although the IA report does not mention this. Annex 6 of the IA is dedicated to the impacts on various stakeholders specifically for the preferred option. However, the explanatory memorandum of the proposal (pp. 7-8) contains quantifications of costs for business, which do not appear to figure in the IA. Presumably these quantifications are to be found in the supporting study; this is not publicly available, however, at the time of writing.

The IA recognises that there are certain limitations to obtaining the data. For example, it states that 'data and information on the misuse of explosives precursors are limited and often not publicly accessible' (IA, Annex 3, p. 81), and that it is difficult to quantify the impact of the regulation on improving the level of protection in the EU (IA, Annex 2, p. 66). In this regard, the IA explains that it 'cannot provide detailed information on incidents and attacks involving explosives precursors, as this risks exposing vulnerabilities in Member States and may jeopardise ongoing investigations and prosecutions' (IA, p. 8).

Findings of the ex-post analysis are followed up in the IA in the design of the policy options. It is somewhat difficult to obtain a precise overview of the practical differences among the actions included under each option. Linking those actions with the specific objectives would have given a more complete picture.

## Stakeholder consultation

A [public consultation](#) on the revision of the Explosives Precursors Regulation was conducted from 6 December 2017 to 14 February 2018 and triggered 83 contributions, mostly from companies (35 responses) (IA, p. 68). Annex 2 of the IA (pp. 58-74) gives a detailed overview of this consultation in the form of a synopsis report, in line with the BRG. The public consultation was shorter than 12 weeks, the minimum limit provided for in the [tool # 53](#) of the BRG toolbox, but no justification for this is provided.

The IA identifies the following stakeholders as being affected by the problem and the initiative: the general public, public authorities such as competent authorities and national contact points, economic

operators (manufacturers, distributors and retailers, and professional users), as well as the members and observers of the SCP expert group (IA, Annex 2, p. 58; Annex 6, pp. 165-167). The opinions expressed in the stakeholder consultation appear to have been taken into account in the drafting of the IA, and the preferred option is claimed to be supported by the stakeholders. It has to be noted, however, that a problem during the ex-post evaluation was the 'limited responsiveness of economic operators. Despite the long list of economic operators targeted through the web-based survey (273), only 24 provided an answer and among them only few are retailers which, as shown by the following analysis are among the stakeholders that are most concerned by the Regulation. The information provided can be nevertheless considered somewhat representative given that the main EU business associations provided a feedback' (IA, Annex 3, p. 82). The IA, however, notes that many SMEs are not represented in those associations.

## Monitoring and evaluation

Monitoring indicators are identified in the IA in Annex 8, which provides individual indicators for the general, specific and operational objectives (pp. 178-184). The ex-post evaluation explains that some data is difficult to obtain due inter alia to the fact that some Member States only started to implement the regulation in 2014. The IA seems to have addressed this concern by explaining that a formal evaluation should be carried out six years after the implementation deadline 'to ensure that there is a sufficiently long period to evaluate after full implementation in all Member States' (IA, p. 52). This is taken over in article 22 of the proposal.

## Commission Regulatory Scrutiny Board

The Regulatory Scrutiny Board (RSB) gave a [positive opinion](#) on 23 March 2018 after a second reading of the draft IA (in its first reading it did not issue an opinion but a quality checklist). It recommended that the IA be further improved in several respects. Its key criticism was that the IA does not present a full range of policy options, namely it does not examine intermediate options between the preferred option and the maximalist option, which is more effective but also more costly, and that the stakeholder views were not presented transparently enough. Annex 1 of the IA includes a chapter on how the RSB recommendations have been covered in the final version (pp. 55-57), in accordance with the BRG. It seems that the main criticisms of the RSB were addressed. The IA does not provide more detailed or additional options, but it does explain the logic behind the three options offered. Other RSB recommendations for improvement also appear to have been dealt with, for example regarding coherence with other pieces of legislation regulating the same chemical substances, or how the regulation would apply to online sales. However, the RSB's question as to how undue burdens linked to parallel legislation are avoided seems to have remained unanswered.

## Coherence between the Commission's legislative proposal and IA

The proposal's provisions appear to generally follow the recommendations expressed in the IA. However, while the IA mentions that new labelling requirements would be introduced under the preferred option, the proposal does not explicitly require the labelling of explosives precursors by manufacturers (article 7).

## Conclusions

The IA essentially builds on the recommendations expressed in the ex-post evaluation on the implementation of the regulation on explosives precursors. It seems that the ex-post evaluation and impact assessment have been done in parallel, and it can be noted that the related external study is not publicly available. The IA gives the impression that it was put together in some haste. Despite the large amount of background information it includes, it lacks clarity and precision in some parts, such as when describing the underlying problem drivers or indeed the content of the policy options. The IA has attempted to provide a detailed, albeit mainly qualitative, analysis of the various types of impacts, acknowledging the limitations in obtaining data. It notes that many SMEs were not part of the EU level industry associations consulted in the context of the ex-post evaluation. This raises the question as to whether these businesses were targeted in the stakeholder consultation in any other way, which appears not to be the case. The public consultation lasted less than 12 weeks, which is contrary to the Better Regulation Guidelines. Although the IA report addresses the main criticisms expressed by the RSB, it does not answer the question on possible undue burdens linked to the parallel legislation in force.

## ENDNOTES

<sup>1</sup> Applicable from 2 September 2014.

<sup>2</sup> See I. Kiendl Krišto, [Regulation 98/2013 on the marketing and use of explosives precursors](#), implementation appraisal, EPRS, European Parliament, May 2018.

<sup>3</sup> The outsourced evaluation study on ‘combating the threat posed by explosives precursors: evaluation of the existing policy and legislative framework and preparation of an impact assessment of possible options for a future EU initiative’ was performed by a consortium of Ernst & Young, the Centre for International Legal Cooperation and RAND Europe, Brussels, 2018 (IA, Annex I, p. 57). Study not publicly available at the time of writing.

<sup>4</sup> For example, currently ‘the regulation bans the making available, introduction, possession and use of restricted explosives precursors (listed in Annex I of the regulation) to members of the general public. Member States can nevertheless establish and maintain licensing and/or registration regimes through which the restricted explosives precursors can be made available, in a controlled way, to members of the general public (Article 4(2) and (3))’ (IA, p. 85).

<sup>5</sup> The proposal aims to review the regulation in the light of the recent developments in the area of terrorism, such as increased availability of explosives precursors on-line and availability of instructions on how to produce a home-made explosive (HME) on the internet. The current regulation on explosives precursors does not specifically mention internet sales (IA, p. 83).

<sup>6</sup> Specific, measurable, achievable, realistic and time-bound.

<sup>7</sup> ‘An expert group that brings together experts from Member State authorities and stakeholders from the chemicals industry and retail’ (IA, p. 6).

<sup>8</sup> Through delegated acts instead of the ordinary legislative procedure, as provided for in the current regulation.

<sup>9</sup> A more generic provision than labelling is introduced in the proposal (article 7): each economic operator is required to inform the receiving economic operator that the product is subject to restrictions for the general public, as set out in article 5 of the proposal (explanatory memorandum, p. 14).

<sup>10</sup> ‘The checks as to licences would be reinforced by an identity check and retail would also be required to verify that any new prospective customer is a professional user.’ (IA, p. 27).

<sup>11</sup> ‘The Regulation will expand the duty to report significant thefts and disappearances of substances in their possession to professional users and members of the public who have access to restricted substances.’ (IA, p. 28). See article 9(6) of the proposal.

<sup>12</sup> Annex I: the restricted explosives precursors shall not be made available to members of the general public. Annex II: suspicious transactions of the included substances shall be reported.

<sup>13</sup> Including substances that have not yet been identified as potentially dangerous explosives precursors (IA, p. 28).

<sup>14</sup> The same criticism is mentioned in the EPRS [implementation appraisal](#) referred to above (p. 9).

<sup>15</sup> This article ‘allows for the European Parliament and the Council in accordance with the ordinary legislative procedure to adopt legislative measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market’ (explanatory memorandum, p. 5)

<sup>16</sup> Under the evaluation of effectiveness of policy option 2, pp. 35-36.

<sup>17</sup> Regulations [\(EC\) No 1259/2013](#) and [\(EC\) No 273/2004](#) address the trade in drug precursors between the EU and third countries and within the EU, respectively.

This briefing, prepared for the Committee on Civil Liberties, Justice and Home Affairs (LIBE), analyses whether the principal criteria laid down in the Commission’s own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal.

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