

## II

(Preparatory Acts)

## COMMISSION

**Proposal for a Council Directive on the supervision and placing on the market of explosives for civil uses and the mutual recognition of authorizations and approvals relating to such explosives**

(92/C 121/24)

COM(92) 123 final — SYN 409

(Submitted by the Commission on 13 April 1992)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas Article 8a provides that the internal market must be established not later than 31 December 1992; whereas the internal market must comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty;

Whereas the free movement of goods presupposes that certain basic conditions are fulfilled; whereas, in particular, the free movement of explosives presupposes, *inter alia*, mutual recognition of approvals and authorizations as a prelude to harmonization of laws on explosives;

Whereas explosives for civil uses are covered by detailed national regulations, mainly in respect of safety and security requirements; whereas such national regulations provide, in particular, that marketing authorizations be granted only where explosives have satisfactorily undergone a series of tests;

Whereas the existing supervision procedures are directed towards ensuring that such products meet safety and security requirements; whereas such supervision procedures may differ appreciably from one Member State to another without, however, adversely affecting compliance with safety and security requirements;

whereas, in order to avoid repetitive checks each amounting to barriers to trade, it is advisable to provide initially for mutual recognition of authorizations granted by the Member States to place explosives for civil uses on the market;

Whereas harmonization of provisions governing the placing of such explosives on the market presupposes that divergent national rules relating to approval and authorization procedures will be harmonized in order to ensure the free movement of these products without lowering existing and justified levels of safety and security in the Member States;

Whereas this Directive defines only the essential requirements which must be met by explosives conformity tests; whereas, in order to facilitate the process of demonstrating compliance with the essential requirements, it would be very useful to possess standards harmonized at European level, concerning, *inter alia*, methods for testing explosives; whereas such standards do not exist at present;

Whereas standards harmonized at European level are drawn up by private bodies and must retain their status as non-mandatory (voluntary) standards; whereas, in this connection, the European Committee for Standardization (CEN) has been recognized as one of the two bodies competent to adopt harmonized standards in accordance with the general guidelines for cooperation between the Commission and CEN and Cenelec, ratified on 13 November 1984; whereas, for the purposes of this Directive, 'harmonized standard' means a text setting out technical specifications adopted by CEN under a mandate conferred by the Commission, in accordance with Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations<sup>(1)</sup>, as last amended by Commission Decision 90/230/EEC<sup>(2)</sup>, and in keeping with the abovementioned general guidelines;

<sup>(1)</sup> OJ No L 109, 26. 4. 1983, p. 8.

<sup>(2)</sup> OJ No L 128, 18. 5. 1990, p. 15.

Whereas the rules concerning the transport of explosives are covered by international conventions and agreements; whereas, at international level, there are United Nations Recommendations on the transport of dangerous goods (including explosives), the scope of which extends beyond the Community alone; whereas, in consequence, this Directive does not concern the transport rules;

Whereas pyrotechnical articles for display or entertainment purposes require special measures to ensure the protection of consumers and the safety of the general public; whereas, in consequence, this Directive does not concern such products;

Whereas the definition of the products covered by this Directive should be identical with the definition of such products as set out in the abovementioned United Nations Recommendations;

Whereas the health and safety of workers producing or using explosives must also be protected; whereas a Directive is to be prepared covering, *inter alia*, the health and safety of workers engaged in activities relating to the manufacture, storage and use of explosives;

Whereas it is essential to establish administrative cooperation mechanisms; whereas it is appropriate in this connection for the competent authorities to base their approach on Council Regulation (EEC) No 1468/81 of 19 May 1981 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs or agricultural matters<sup>(1)</sup>, as amended by Regulation (EEC) No 945/87<sup>(2)</sup>,

HAS ADOPTED THIS DIRECTIVE:

#### CHAPTER 1

##### GENERAL PROVISIONS

###### Article 1

###### Definitions

1. This Directive shall apply to explosives as defined in paragraph 2.
2. For the purposes of this Directive, 'explosives' means the materials and articles considered to be such in the United Nations Recommendations on the transport of dangerous goods and falling within Category 1 of those Recommendations.

<sup>(1)</sup> OJ No L 144, 2. 6. 1981, p. 1.

<sup>(2)</sup> OJ No L 90, 2. 4. 1987, p. 3.

3. This Directive shall not apply to:

- explosives used under military control or under the control of police forces,
- pyrotechnical articles used for purposes of display or entertainment.

4. For the purposes of this Directive:

- 'United Nations Recommendations' means the recommendations drawn up by the UN Committee of Experts on the transport of dangerous goods (Orange Book), as published by the United Nations and as amended on the date of this Directive's adoption,
- 'undertaking in the explosives sector' means any natural or legal person possessing a licence or authorization which entitles him to engage in the manufacture, storage, use and transfer of explosives or in trade in explosives,
- 'placing on the market' means any disposal against payment or free of charge to third parties of explosives or the release of explosives for circulation in the Community.

5. This Directive shall be without prejudice to the definitions of explosives set out in the national regulations.

#### Article 2

Member States shall take all measures necessary to ensure that supervision of transfers within the Community, the approval of explosives and the provisions governing the placing of explosives on the market are subject to the requirements laid down in this Directive.

#### CHAPTER 2

##### HARMONIZATION OF LAWS RELATING TO EXPLOSIVES

###### Article 3

###### Approval of explosives

Member States shall ensure that the placing of explosives on the market is subject to approval of the product, substances or preparations. Such approval shall be granted only where the explosive has satisfactorily undergone a series of tests intended to demonstrate its compliance with requirements concerning the security, safety and health of persons and the protection of property. Such tests shall be carried out in a laboratory approved by the competent authority or, failing this, in accordance with procedures providing guarantees similar to those that would be provided by an approved laboratory.

*Article 4***Mutual recognition of authorizations**

Approvals of explosives and authorizations to place explosives on the market which have been granted in a Member State pursuant to this Directive shall be accepted by the other Member States as approvals of explosives and marketing authorizations which are valid within their territories.

*Article 5***Essential requirements**

1. Member States shall take all appropriate measures to ensure that explosives are placed on the market only if they comply with the essential requirements set out in Annex I.

2. Member States shall presume as complying with the essential requirements explosives which meet the relevant national standards adopted pursuant to harmonized standards of which the reference numbers have been published in the *Official Journal of the European Communities*; Member States shall publish the reference numbers of the said national standards.

3. Where a Member State or the Commission considers that harmonized standards do not fully comply with the essential requirements, the Commission or the Member State concerned shall place the matter before the Standing Committee set up under Directive 83/189/EEC.

That Committee shall deliver an opinion as soon as possible. In the light of that opinion, the Commission shall notify the Member States of the measures to be taken with regard to the standards and the publication thereof.

*Article 6***Declaration of conformity**

1. Member States shall presume as complying with the essential requirements referred to in Article 5 all explosives in respect of which the manufacturer or the agent responsible for placing them on the market can produce on request the declaration of conformity described in Annex II.

2. Where an explosive does not comply with the requirements set out in Annex I, Member States shall take appropriate measures in respect of the person responsible for the declaration of conformity. They shall inform the Commission and the other Member States thereof.

## CHAPTER 3

**PROVISIONS RELATING TO THE MOVEMENT AND SUPERVISION OF EXPLOSIVES IN THE COMMUNITY***Article 7***Supervision of transfers of explosives**

1. Checks carried out under Community law or national law in the event of transfers of explosives shall no longer take the form of controls at frontiers, but shall be conducted solely within the context of routine checks performed in a non-discriminatory manner throughout the territory of a Member State.

2. Where special safety requirements such as those referred to in paragraph 3 are unnecessary or in the case of regular customers, explosives can be transferred without prior provision of information within the meaning of paragraph 3. The competent authorities shall then grant an approval valid for a maximum period of one year and liable to suspension or withdrawal at any time on the basis of a reasoned decision. The document referred to in paragraph 4 shall refer solely to such approval and must accompany the explosives until they arrive at their destination.

3. Where transfers of explosives must be specially supervised in order to comply with special safety requirements in the territory or part of the territory of a Member State, the following information shall be imparted by the operator in question to the competent authorities in the Member State to which the explosives are to be transferred or through which the shipment is to transit:

- the name and address of the vendor or consignor, the purchaser or consignee or, where appropriate, the owner; these particulars must be detailed enough to enable the operators to be contacted and confirmation to be obtained that the persons in question hold the requisite approvals or authorizations,
- the number and quantity of explosives being transferred,
- a full description of the explosive in question and of the means of identification,
- particulars of the approval referred to in Article 3,
- the means of transfer,
- the dates of departure and of arrival.

The competent authorities shall examine the conditions under which the transfer is to take place, in particular with regard to special safety and security requirements.

In the event of transit through the territory of a third Member State, that State shall likewise examine the transfer conditions.

4. Where a Member State authorizes a transfer, it shall issue a document which includes all the information referred to in paragraph 3. Such a document must accompany the explosives until they arrive at their destination. It must be produced for perusal by the competent authorities whenever they so request.

5. Each Member State shall forward all relevant information at its disposal on the subject of definitive transfers of explosives to Member States from which explosives are to be transferred, through the territory of which they are to transit or to which they are to be transferred.

#### Article 8

1. Member States shall set up information exchange networks for the implementation of this Directive not later than 31 December 1992. They shall notify the other Member States and the Commission of the national authorities responsible for forwarding or receiving information and for applying the procedures referred to in Articles 3 and 7.

2. For the purpose of implementing this Directive, the provisions of Regulation (EEC) No 1468/81, in particular those relating to confidentiality, shall apply *mutatis mutandis*.

### CHAPTER 4

#### OTHER PROVISIONS

#### Article 9

Any amendments necessary to adapt the Annexes to scientific and technical progress in the fields covered by this Directive and to take account of future amendments to the United Nations Recommendations shall be adopted in accordance with the procedure laid down in Article 10.

#### Article 10

The Commission shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

#### Article 11

##### Documents

Member States shall compile a register of all undertakings in the explosives sector which hold approvals or authorizations.

Member States shall determine whether such undertakings possess a system for keeping track of explosives such that those holding explosives can be identified at any time.

Undertakings in the explosives sector shall keep such records of their transactions as are necessary to fulfil the obligations set out in this Article.

The records must be kept for a period of not less than three years from the end of the calendar year in which the transaction recorded took place, even if the undertaking has ceased trading.

The records must be kept readily available for inspection by the competent authorities at their request.

#### Article 12

##### Penalties

Each Member State shall take appropriate measures to ensure proper implementation of all the provisions of this Directive and, in particular, shall specify the penalties to be imposed in case of breach of the said measures; such penalties must be effective, proportionate and dissuasive.

#### Article 13

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive before 31 December 1992. They shall forthwith inform the Commission thereof. They shall apply the provisions as from 1 January 1993.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the texts of the provisions of national

law which they adopt in the field governed by this Directive.

*Article 14*

This Directive is addressed to the Member States.

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*ANNEX I*

**ESSENTIAL REQUIREMENTS**

**I. General requirements**

1. Explosives must be so designed, manufactured and tested that their use does not compromise the safety, security and health of persons or jeopardize property or the environment.
2. Explosives must attain the levels of effectiveness intended by their manufacturer without giving rise to risks or other nuisance factors.
3. Explosives must be so designed, manufactured and packaged that their safety features and the effectiveness thereof are not impaired under the conditions of storage, transfer or use to which the product is likely to be exposed.

4. Risk levels and categories:

the optimum safety level to be taken into account during the design of the product shall be that beyond which constraints arising during manufacture, transfer, storage or use would preclude the product's being placed on the market or used.

**II. Additional requirements specific to the hazards to be averted**

1. *Stability in heat*

Explosives must remain stable at temperatures to which they may be exposed during their storage, transfer or use.

2. *Sensitivity to impact and friction*

Explosives must meet minimum safety criteria in respect of impact and friction so that they can be manufactured, stored, transferred and used without danger.

3. *Detonation sensitivity*

Explosives must be reliably detonated by the recommended detonator series. Where explosives are in the form of cartridges, the detonation must be reliably transmitted through a set of cartridges.

4. *Compatibility of components*

Explosives must contain only chemically and physically compatible components and must not give rise to any risk of chemical instability.

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*ANNEX II***Contents of the declaration by the manufacturer or by the agent responsible for placing the product on the market**

The declaration by the manufacturer or by the agent responsible for placing the product on the market, which is referred to in Article 6 (1), must contain the following information:

- the name and address of the manufacturer or the agent,
  - a description of the tests undergone by the explosive,
  - the identity of the person responsible for the declaration.
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