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**Communication from the Commission on measures to ensure greater security in explosives, detonators, bomb-making equipment and fire-arms**

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COMMUNICATION FROM THE COMMISSION

ON MEASURES TO ENSURE GREATER SECURITY IN EXPLOSIVES, DETONATORS, BOMB-MAKING EQUIPMENT AND FIRE-ARMS

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### 1. INTRODUCTION

The use of explosives to harm innocent citizens has been the most common method used by terrorists to instil fear in populations accustomed to living in democratic, free and open societies. In October 2003 the JHA Council had concluded there was no need to introduce new measures on storage and transport of explosives. However, in the aftermath of the terrorist bombings in Madrid on 11 March 2004 a consensus started to emerge within EU Member States for the need to explore a more harmonised system that would prevent explosives, detonators, bomb-making equipment and fire-arms from falling into the hands of terrorists. In its 25 th March 2004 Declaration, the European Council recognised the “need to ensure terrorist organisations and groups are starved of the components of their trade”. In particular it recognised “the need to ensure greater security of firearms, explosives, bomb-making equipment and the technologies that contribute to the perpetration of terrorist outrages”. Furthermore, the revised Plan of Action on Combating Terrorism of June 2004 called upon the Council and the Commission to examine the scope for measures to ensure greater security of explosives (Action 3.6.1).

The Commission, in its October 2004 Communication on Prevention, preparedness and response to terrorist attacks[1] signalled its intention to present proposals if necessary to ensure the highest possible security level in

Europe. Indeed, the “Hague Program - Strengthening freedom, security and justice in the EU” , endorsed by the European Council in November 2004, explicitly invites the Commission to make proposals aimed at improving the storage and transport of explosives as well as at ensuring traceability of industrial and chemical precursors. The Commission strongly welcomes this invitation and hereby presents its proposals in the present Communication.

The Commission believes that all interested parties, in particular the industry (including producers, end-users, transporters, researchers), the Member States and Europol must contribute to improve the security of explosives and firearms. While their industrial usefulness is beyond doubt, policy-makers must ensure the security of citizens by reducing and eliminating the possibility of their misuse . In the same way that manufacturers of explosives and firearms in the past embraced the notion of safety and made it a routine feature of their products, the same approach should be taken towards internal security. The Commission would like to see a drastic change in thinking by all stakeholders concerned and move from a logic of “whether” to one of “how” this can be achieved. The Commission is thus willing to engage in a structured dialogue with the private sector in order to see an enhancement of the security features (most importantly regarding storage, commercialisation, transport and traceability) of component and end products all along the production and supply chain. The Commission can draw on its experience in other fields – for instance, traceability with regard to the food production and supply chain for purposes of health protection – when devising ways of guaranteeing the security of explosives and firearms.

## 2. THE EU PLAN FOR ENHANCING THE SECURITY OF EXPLOSIVES

THE COMMISSION plans to bring together all the major stakeholders : the manufacturers of, and traders in, explosives, experts from Europol and SitCen, national experts from the Member States, Commission and the Council Terrorism Working Party. Subsequently, the Commission will consider setting up an expert group ( an Explosives-Security Expert Group ) and task it with elaborating and submitting to the Commission an EU Plan for the enhancement of the security of explosives and firearms. The Plan would have to ensure complementarity between public and private measures in the field and set defined targets. A work method for the plan and for monitoring its success would need to be defined. The expert group could assess the needs in any of the fields related to enhancing the security of explosives and firearms, identify the detection and intervention capability gaps in the EU that need to be addressed and analyse the costs involved.

## 3. STORAGE, TRANSPORT AND TRACEABILITY

As The Hague program suggests, the focus of this Communication is storage, transport and traceability. Security arrangements for the storage of explosives through, for instance, physical means and efficient accounting and auditing standards , are self-evidently crucial in preventing terrorists from gaining possession of legally produced products through theft or misappropriation. Transparency is key to allowing the careful scrutiny of transfers of such products while traceability techniques (like tagging or marking) are useful in following the life-cycle of explosives and for detecting dangerous transfers and suspicious possession. Methods for placing obligations on those trading in explosives to report any suspicious transactions should also be explored. Furthermore, dangerous products in transit – such as explosives and all-bomb-related equipment and devices - may be either subject to a direct attack or illicitly diverted to a destination other than the one intended. Security arrangements and traceability must thus also become a key aspect at all stages of the supply chain.

Measures to combat terrorism should address all possible sources. A comprehensive approach to the problem is

necessary since enhanced detectability of some explosives/detonators could push terrorists to use other devices or substances instead, which might be even more difficult to detect.

A comprehensive analysis of detection techniques and their respective success rates for different types of explosives would be a major asset to identify major risks. An approach towards reducing the risks of explosives being misused by terrorists or criminals should be extensive and involve regulation of commercial explosives (including the reporting of suspicious transactions), marking of explosives, stronger security constraints for transport and storage, the use of technology to detect, tag and track explosive material, information sharing and investigative support. The EU, while in all respects wishing to maintain the mutually fruitful cooperation with the United States, must not allow a transatlantic technology gap to develop, particularly insofar as concerns the use of detection equipment in transportation points.

In addition, so-called ‘homemade’ explosives made out of widely available chemicals present a threat of the same scale as commercial explosives and thus research to improve their detectability should also be considered a priority.

Demilitarised explosives coming on the market also present a major risk. Since military explosives are normally not marked, the chance of detecting them might be less than that for civil ones. The official or parallel trade of surplus military explosives and the extent of involvement of organised crime networks in Europe in illicit transfers are, therefore, a major cause of concern and must be tackled head-on. A United Nations Report[2] notes that several states in Eastern Europe cited concerns regarding the trafficking of surplus military explosives and devices from former Soviet stockpiles. Huge stockpiles of military explosives exist in Central and Eastern Europe. Programs to destroy those stocks are in place but have shown a limited success rate so far and thus need to be drastically improved.

## 4. STATE OF PLAY / PROPOSED MEASURES

### 4.1. Trade in fertilisers

The Fertiliser Regulation [3], in Articles 25 to 28, foresees some security measures, controls and special testing requirements for ammonium nitrate fertilisers. It also obliges manufacturers to keep records of production sites and their operators.

The Commission is considering a modification of this Regulation in order to introduce the appropriate requirements to sell ammonium nitrate fertiliser only to authorised persons and upon proof of use for solely agricultural purposes. In addition, a proposal to oblige companies selling such material to notify law enforcement authorities of any suspicious transactions could also be explored. Member States should also be encouraged to take similar measures with regard to fertilisers not falling within the scope of the Regulation.

### 4.2. Storage of explosives

The storage of explosives falls under the Seveso II Directive [4] . Its scope is not focused on explosives as such, but on fixed installations storing higher quantities of dangerous substances. It basically addresses the safety of installations rather than their “security”. The Directive does not require security analyses, nor does it impose additional security measures for installations that are either particularly vulnerable to terrorist attacks or that are

potential targets of attacks. It should, nevertheless, be noted that all requirements related to the mitigation of the consequences of accidents, and in particular the formulation in advance of emergency plans, will equally help with the consequences of a terrorist attack targeting a Seveso installation. Moreover, part of the information needed for a risk assessment is already available through the safety reports.

The Commission is addressing security issues for establishments covered by the Seveso II Directive where dangerous substances like explosives or ammonium nitrate are present, such as analysis of the consequences of possible intentional adversary acts, deliberate major accidents and measures to prevent them. Results of a joint workshop on the protection of hazardous installations from intentional adversary acts, Budapest, 28-29 April 2005 can be found on the website of the Commission:

[http://europa.eu.int:8082/comm/environment/seveso/conf\\_events.htm](http://europa.eu.int:8082/comm/environment/seveso/conf_events.htm)

The Seveso II Directive applies mainly to chemical and petrochemical plants where huge quantities of chemicals are present. The directive does not distinguish between “normal” dangerous goods and “high consequence” dangerous goods (i.e whose misuse can result in mass casualties or destruction). Provisions to reduce the increased risk should, therefore, apply especially to these high potential dangerous substances such as explosives.

The Commission will address recommendations to Member States to take initiatives to improve the security in all companies and personnel responsible for or dealing with high consequence dangerous goods; Security will be increased by the creation and implementation of security plans which could contain a number of elements identified by the Commission.

#### 4.3. Transport of explosives and other dangerous goods (TDG)

EU Member States are obliged to amend the TDG security provisions in their domestic road and rail transport legislation by 1 July 2005. However, most Member States have additional regulations concerning the control of certain categories of dangerous goods. Appropriate industrial associations have prepared guidelines to the Transport of Dangerous Goods security provisions, covering all relevant sectors. The Commission has supported this work and the guidelines were completed in April 2005. Dialogue with the industry is a key element in improving explosives transport security since the industry could develop stricter guidelines for improving transport security.

The Commission adopted improved controls on the transfer of explosives between Member States in April 2004, as a step to make their cross-border transport safer. The controls are contained in Commission Decision 2004/388/EC harmonising the information required, and procedures to be followed during such cross-border transfer.

The improved controls on the transfer of explosives between Member States should make it easier to trace explosives and to check that their movement has been approved by national authorities. The document also includes details of which companies or organisations are involved in which type of explosives and an itinerary for the transfer and authorisations by all Member States over whose territory the explosives will move. Such measure should make it easier to trace explosives as they move from the manufacturer to the user.

In order to achieve the objectives established in the EU Plan of Action on combating terrorism (point 4.2), the

Commission has started to develop a policy on supply chain security, in order to complement already existing legislation in various areas of transport security (air, maritime and port security) and increase security on land transport.

The major focus of this policy process is to develop initiatives and security measures, legal and operational, for business to increase the security awareness within the EU national supply chain without hampering trade and, by doing so, countervailing possible terrorist threats.

Supply chain security will be an evolutionary process. Making security thinking a daily routine (awareness) in EU transport operations helps to upgrade business quality performance and resilience to incidents. In international trade, the success of a transport security policy depends on reciprocity.

#### 4.3.1. Detection of explosives and fire-arms at airports

Following the September 11 attacks and other air-craft related incidents, airport security has been increased. The Framework Regulation 2320/2002 establishing common rules in the field of civil aviation security considers fire-arms and explosives as prohibited articles and requires that all passengers and their baggage (cabin or hold) are screened by a set of acceptable methods. The Commission carries out inspections to verify, inter alia, the implementation of these requirements.

The Commission, assisted by the Aviation Security Committee (AVSEC), is currently working on controlling the implementation of the technical specifications and the performance criteria of the different families of detection equipment employed at Member State airports.

#### 4.4. Production, commercialisation and traceability of explosives

Council Directive 93/15/EEC on the harmonisation of the provisions relating to the placing on the market and supervision of explosives for civil uses<sup>[5]</sup> (for example for quarrying or demolition works) defines the essential requirements which must be met by explosive conformity tests in order to ensure the free movement of these products without lowering optimum levels of safety and security. It also covers the supervision of transfers of explosives and ammunition. Due to the obvious limitations of this legislation in the light of the increased terrorist risk, the Commission has started a dialogue on security issues with the industry. New practices might be envisaged for a variety of domains: marking of explosives and detonators, stronger storage and transportation security as well as the reporting of suspicious transactions.

Following the discovery of explosives, finding their origin is of crucial importance for investigators. Swiss legislation on the matter for example is very strict and requires explosives to be marked prior to their commercialisation. The rate of successfully solved cases relating to marked explosives in Switzerland, however, has not been dramatically higher than successfully solved cases with unmarked ones.

The Commission suggests the assessment of the cost-benefit of marking explosives with an electromagnetic code.

#### 4.5. Detection of explosives

The detection of explosives can be achieved with various techniques (e.g X-ray, sniffer dogs, vapour detection

systems). No single technique allows a satisfactory detection of explosives; a combination of methods is always necessary. However, making one marking substance or agent compulsory in the EU for all explosives could make their detection easier since the sensors would mainly have to detect one substance. However, due to the presence of foreign-made explosives, it is necessary that detection equipment is still able to detect other marking agents as well as unmarked explosives.

Extensive research programs are conducted on electronic noses and other technologies. The NOSE II program (second network of excellence on artificial olfactory sensing) of the European Commission has already enabled the creation of a network of scientists in that domain. However, a first important step would be to conduct an extensive study of existing detection techniques, assessing precisely their success rate, detection time and cost for each type of explosive. Technology gaps could be identified in that way and be taken into consideration by research programs. Best combinations of equipment should also be properly evaluated since it is impossible to detect explosives properly with a one step system.

The Commission will launch such an integrated analysis of detection techniques. This work will constitute solid grounds to build legislative initiatives in this field. Meanwhile the Commission recommends setting up appropriate measures to make it compulsory to use detection devices in certain strategic locations (e.g. at airports).

#### 4.6. Detonators

Due to their small size, detonators present a major risk of theft and non-detection. Thus, making detonators easier to detect would be an important improvement to the security chain. The Joint Research Centre of the Commission could analyse some of the options available to enhance their detectability. Depending on the results of analysis from the JRC, the Commission could propose to modify Council Directive 93/15 EEC in order to make some mark, detection agent or device mandatory.

#### 4.7. Law enforcement cooperation in the field of explosives

The identification of capability gaps in terms of human resources, techniques and materials devoted to detect, intervene and neutralise improvised and non-conventional explosive devices within the EU will require serious reflection on a method for bridging them. The Commission has gathered information from the Member States through a questionnaire it presented to the Council in 2004. Following an analysis, any gaps that might result could be resolved by a variety of ways including directing research in a specific way and developing structures that allow solidarity between Member States to be expressed, for example through initiatives for mutual assistance on a bilateral or multilateral basis.

##### 4.7.1. Europol Bomb Database

Europol is currently managing an EU database on explosive devices used by terrorist and criminal organisations. European law enforcement services and in particular their Explosive Ordnance Disposal (EOD) Units need to have 24-hour access to available data on explosives, explosive devices and their components in order to exchange this information immediately in the light of terrorist bomb incidents or threats.

Europol is already exploring the possibility of having a central computerised system in which bomb-related data

consisting of written texts, structured data and multi-media information such as images of electronic parts and electronic circuits, would be stored.

The exchange of information via the Europol database will be of great importance in relation to “homemade explosives” and the network would be an ideal instrument to produce a list of improvised explosive devices (IEDs) and assess their impact.

Europol should promote the use of its database on explosive devices used by terrorists by the competent services in the Member States and the Commission by reporting every six months about the inputs provided by Member States to the database.

#### 4.7.2. Inventory of Capacities of the Member States

Last year, the Commission presented to the Council a questionnaire to assess Member State capabilities and future co-ordination of their EOD Units. The results of the questionnaire have facilitated the assessment of the capacities in Member States of human resources, techniques and materials devoted to detect, intervene and neutralize improvised and non-conventional explosive devices. This inventory also assesses their capabilities in terms of forensic investigation in bomb attacks and will also be a first step for a future application of solidarity mechanisms amongst Member States in case of major terrorist events.

#### 4.7.3. Explosive Ordnance Disposal Units Network

Following the capability assessment, the setting up of a Network of Member State EOD Units should be considered, following examples already developed in other fields, such as the Network of Protection of Public Figures. The Network could be a channel for an open and fluid exchange of information on techniques and operational tactics. Furthermore, the improvement of detection capabilities should be a priority for the Network.

The Commission is currently working on establishing a network of EOD Units following analysis of the answers to the questionnaire submitted by the Commission to the Member States.

#### 4.7.4. Improvised Explosive Devices Forensic Network

During a second phase, the proposed EOD Units Network would enlarge its capacity to exchange information on the forensic aspects of improvised explosive devices (IEDs). The creation of a Forensic Network could be a starting point to develop a common strategy on investigation and research policies and for the harmonisation of techniques in this field.

### 4.8. Research and technological development

Research and technological development can reduce the risks linked to the production, transport and storage of firearms, explosives, bomb-making equipment and technologies that contribute to the perpetration of terrorist acts. Research can also contribute to better detecting, tagging and tracking systems.

A three year Preparatory Action (2004-2006) was launched with the aim of fostering the conditions and the environment favourable to the improvement of the European scientific, technological and industrial capacities

and to test the ground for a fully fledged European Security Research Programme to be launched in 2007. The Preparatory Action covers 5 main priority research areas, including the fight against terrorism.

As a follow up to the Preparatory Action, the multi-annual European Security Research Programme would conduct mission oriented technological research, taking into account final user needs. Under the 6<sup>th</sup> Framework Programme for Research and Technological Development, the Commission has opened a call for research proposals on nanotechnological approaches for improved security systems including detectors for explosives.

#### 4.9. Law enforcement cooperation in the field of fire-arms

Several initiatives have already been launched with the aim of improving law enforcement co-operation in the fight against illicit firearms that will reap results in 2005. As part of the counter proliferation programme of its Counter-Terrorism Unit, Europol will be offering operational support to Member State investigations and disseminate strategic products. Europol is currently undertaking a feasibility study in the area of illicit trafficking in firearms in order to decide whether an analysis work file on illicit firearms can be opened in 2005. Moreover, the development of an EU capability for the tracing of illicit firearms is part of the Europol Work Programme for 2005.

A legislative instrument laying down common standards for the reporting of seized or recovered firearms used for crime, or firearms that have been diverted, lost or stolen could be considered. This would facilitate the exchange of information for the purpose of investigation and provision of a common denominator for a method to analyse intelligence.

#### 4.10. Firearms - Import/export licensing regime and other aspects of implementation of the UN Protocol

The Commission will present a proposal for a Council regulation on an import/export licensing system for firearms by 2007, after an internal consultation process with the Member States and stakeholders.

This regulation will aim to implement Article 10 of the UN Protocol on the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition into Community legislation. As the implementation of this UN Protocol covers a wide range of issues such as customs, trade, explosives, internal market and external relations, the proposal will take due account of all these elements.

Also, a technical modification of Directive 91/477[6] will be proposed by the Commission in 2005, in order to integrate the appropriate provisions required by the Protocol as regards intra-Community transfers of weapons concerned by the Directive, and more particularly article 10 of that same Protocol relating to general requirements for export, import and transit licensing or authorization systems. The functioning export/import licence system shall serve as an important control/monitoring tool of the export/import of firearms from and into the EU and, therefore, will contribute to the prevention and investigation mechanisms of terrorism.

However, the improved import/export regime is only one element of the prevention of illegal trafficking of firearms and must be seen in combination with effective border management, including an active neighbourhood policy in this area.

[1] COM (2004) 698 final; 20.10.2004

[2] The United Nations Report on Illicit Manufacturing of and trafficking in explosives by criminals and their use for criminal purposes (of 23rd January 2002); E/CN.15/2002/9/Add.1

[3] Regulation (EC) 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilizers.

[4] Seveso II Directive (96/82/EC) on the control of major-accident hazards (OJ No L 10 of 14 January 1997).

[5] OJ L 121 of 15 May 1993

[6] Council Directive of 18 June 1991 on control of the acquisition and possession of weapons (91/477/EEC).

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