

This text is meant purely as a documentation tool and has no legal effect. The Union's institutions do not assume any liability for its contents. The authentic versions of the relevant acts, including their preambles, are those published in the Official Journal of the European Union and available in EUR-Lex. Those official texts are directly accessible through the links embedded in this document

► **B** REGULATION (EU) No 98/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 January 2013

on the marketing and use of explosives precursors

(Text with EEA relevance)

(OJ L 39, 9.2.2013, p. 1)

Amended by:

		Official Journal		
		No	page	date
► <b><u>M1</u></b>	Commission Delegated Regulation (EU) 2017/214 of 30 November 2016	L 34	1	9.2.2017
► <b><u>M2</u></b>	Commission Delegated Regulation (EU) 2017/215 of 30 November 2016	L 34	3	9.2.2017
► <b><u>M3</u></b>	Commission Delegated Regulation (EU) 2017/216 of 30 November 2016	L 34	5	9.2.2017

Corrected by:

► **C1** Corrigendum, OJ L 315, 30.11.2017, p. 78 (98/2013)



**REGULATION (EU) No 98/2013 OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL**

**of 15 January 2013**

**on the marketing and use of explosives precursors**

**(Text with EEA relevance)**

*Article 1*

**Subject matter**

This Regulation establishes harmonised rules concerning the making available, introduction, possession and use of substances or mixtures that could be misused for the illicit manufacture of explosives, with a view to limiting their availability to the general public, and ensuring the appropriate reporting of suspicious transactions throughout the supply chain.

This Regulation is without prejudice to other more stringent provisions of Union law concerning the substances listed in the Annexes.

*Article 2*

**Scope**

1. This Regulation applies to the substances listed in the Annexes and to mixtures and substances containing them.
2. This Regulation does not apply to:
  - (a) articles as defined in Article 3(3) of Regulation (EC) No 1907/2006;
  - (b) pyrotechnic articles as defined in Article 2(1) of Directive 2007/23/EC of the European Parliament and of the Council of 23 May 2007 on the placing on the market of pyrotechnic articles<sup>(1)</sup>, pyrotechnic articles intended for non-commercial use, in accordance with national law, by the armed forces, the law enforcement authorities or the fire department, pyrotechnic equipment falling within the scope of Council Directive 96/98/EC of 20 December 1996 on marine equipment<sup>(2)</sup>, pyrotechnic articles intended for use in the aerospace industry, or percussion caps intended for toys;
  - (c) medicinal products legitimately made available to a member of the general public on the basis of a medical prescription in accordance with the applicable national law.

*Article 3*

**Definitions**

For the purposes of this Regulation the following definitions shall apply:

- (1) ‘substance’ means a substance within the meaning of point (1) of Article 3 of Regulation (EC) No 1907/2006;

<sup>(1)</sup> OJ L 154, 14.6.2007, p. 1.

<sup>(2)</sup> OJ L 46, 17.2.1997, p. 25.

**▼B**

- (2) 'mixture' means a mixture within the meaning of point (2) of Article 3 of Regulation (EC) No 1907/2006;
- (3) 'article' means an article within the meaning of point (3) of Article 3 of Regulation (EC) No 1907/2006;
- (4) 'making available' means any supply, whether in return for payment or free of charge;
- (5) 'introduction' means the act of bringing a substance into the territory of a Member State whether from another Member State or from a third country;
- (6) 'use' means any processing, formulation, storage, treatment or mixing, including in the production of an article, or any other utilisation;
- (7) 'member of the general public' means any natural person who is acting for purposes not connected with his trade, business or profession;
- (8) 'suspicious transaction' means any transaction concerning the substances listed in the Annexes, or mixtures or substances containing them, including transactions involving professional users, where there are reasonable grounds for suspecting that the substance or mixture is intended for the illicit manufacture of explosives;
- (9) 'economic operator' means any natural or legal person or public entity or group of such persons and/or bodies which delivers products or services on the market;
- (10) 'restricted explosives precursor' means a substance listed in Annex I, in a concentration higher than the corresponding limit value set out therein and includes a mixture or another substance in which such a listed substance is present in a concentration higher than the corresponding limit value.

*Article 4***Making available, introduction, possession and use**

1. Restricted explosives precursors shall not be made available to, or introduced, possessed or used by, members of the general public.
2. Notwithstanding paragraph 1, a Member State may maintain or establish a licensing regime allowing restricted explosives precursors to be made available to, or to be possessed or used by, members of the general public, provided that the member of the general public obtains, and, if requested, presents a licence for acquiring, possessing or using them, issued in accordance with Article 7 by a competent authority of the Member State where that restricted explosives precursor is going to be acquired, possessed or used.
3. Notwithstanding paragraphs 1 and 2, a Member State may maintain or establish a registration regime allowing the following restricted explosives precursors to be made available to, or to be possessed or used by, members of the general public if the economic operator who makes them available registers each transaction in accordance with the detailed arrangements laid down in Article 8:
  - (a) hydrogen peroxide (CAS RN 7722-84-1) in concentrations higher than the limit value set out in Annex I, but no higher than 35 % w/w;

**▼B**

- (b) nitromethane (CAS RN 75-52-5) in concentrations higher than the limit value set out in Annex I, but no higher than 40 % w/w;
- (c) nitric acid (CAS RN 7697-37-2) in concentrations higher than the limit value set out in Annex I, but no higher than 10 % w/w.

4. Member States shall notify to the Commission all measures they take in order to implement any of the regimes provided for in paragraphs 2 and 3. The notification shall set out the restricted explosives precursors in respect of which the Member State provides for an exception.

5. The Commission shall make publicly available a list of measures notified by Member States in accordance with paragraph 4.

6. Where a member of the general public intends to introduce a restricted explosives precursor into the territory of a Member State which has derogated from paragraph 1 by applying a licensing regime in accordance with paragraph 2 and/or a registration regime in accordance with paragraph 3 or with Article 17, that person shall obtain, and, if requested, present to the competent authority, a licence issued in accordance with the rules laid down in Article 7 and which is valid in that Member State.

7. An economic operator who makes available a restricted explosives precursor to a member of the general public in accordance with paragraph 2 shall for each transaction require the presentation of a licence or, if it is made available in accordance with paragraph 3, keep a record of the transaction, in compliance with the regime established by the Member State where the restricted explosives precursor is made available.

*Article 5***Labelling**

An economic operator who intends to make available restricted explosives precursors to a member of the general public, shall ensure, either by affixing an appropriate label or by verifying that an appropriate label is affixed, that the packaging clearly indicates that the acquisition, possession or use of that restricted explosives precursor by members of the general public is subject to a restriction as set out in Article 4(1), (2) and (3).

*Article 6***Free movement**

Without prejudice to the second paragraph of Article 1 and to Article 13, and unless otherwise provided for in this Regulation or in other legal acts of the Union, Member States shall not, on grounds related to the prevention of the illicit manufacture of explosives, prohibit, restrict or impede the making available of:

- (a) the substances listed in Annex I in concentrations not higher than the limit values laid down therein; or
- (b) the substances listed in Annex II.

**▼B***Article 7***Licences**

1. Each Member State which issues licences to members of the general public with a legitimate interest to acquire, introduce, possess or use restricted explosives precursors shall lay down rules for granting the licence provided for in Article 4(2) and (6). When considering whether to grant a licence, the competent authority of the Member State shall take into account all relevant circumstances and, in particular, the legitimacy of the intended use of the substance. The licence shall be refused if there are reasonable grounds for doubting the legitimacy of the intended use or the intentions of the user to use it for a legitimate purpose.
2. The competent authority may choose how to limit the validity of the licence, through permitting single or multiple use for a period not exceeding three years. The competent authority may oblige the license holder to demonstrate, until the designated expiry of the licence, that the conditions under which the licence was granted are still fulfilled. The licence shall mention the restricted explosives precursors in respect of which it is issued.
3. The competent authorities may require applicants to pay a licence application fee. Such a fee shall not exceed the cost of processing the application.
4. The licence may be suspended or revoked by the competent authority where there are reasonable grounds for believing that the conditions under which the licence was granted are no longer fulfilled.
5. Appeals against any decision of the competent authority, and disputes concerning compliance with the conditions of the licence, shall be heard by an appropriate body responsible under national law.
6. Licences granted by the competent authorities of a Member State may be recognised in other Member States. The Commission shall, by 2 September 2014 draw up guidelines, after consulting the Standing Committee on Precursors, on the technical details of the licences in order to facilitate their mutual recognition. Those guidelines shall also contain information on what data is to be comprised in licences valid for the introduction of restricted explosives precursors, including a draft format for such licences.

*Article 8***Registration of transactions**

1. For the purposes of registration pursuant to Article 4(3), members of the general public shall identify themselves by means of an official identification document.
2. The register shall comprise at least the following information:
  - (a) the name, address and, where applicable, either the identification number of the member of the general public or the type and number of their official identification document;
  - (b) the name of the substance or mixture, including its concentration;

**▼B**

- (c) the amount of the substance or mixture;
- (d) the intended use of the substance or mixture as declared by the member of the general public;
- (e) the date and place of the transaction;
- (f) the signature of the member of the general public.

3. The register shall be kept for five years from the date of the transaction. During that period, the register shall be made available for inspection at the request of the competent authorities.

4. The register shall be kept on paper or on another durable medium and shall be available for inspection at any time during the entire period provided for in paragraph 3. Any data stored electronically shall:

- (a) match the format and content of the corresponding paper documents; and
- (b) be readily available at any time during the entire period provided for in paragraph 3.

*Article 9***Reporting of suspicious transactions, disappearances and thefts**

1. Suspicious transactions involving the substances listed in the Annexes, or involving mixtures or substances containing them, shall be reported in accordance with this Article.

2. Each Member State shall set up one or more national contact points with a clearly identified telephone number and e-mail address for the reporting of suspicious transactions.

3. Economic operators may reserve the right to refuse the suspicious transaction and shall report the transaction or attempted transaction without undue delay, including if possible the identity of the customer, to the national contact point of the Member State where the transaction was concluded or attempted in the event that they have reasonable grounds for believing that a proposed transaction involving one or more substances listed in the Annexes, or involving mixtures or substances containing them, is a suspicious transaction, having regard to all the circumstances and in particular where the prospective customer:

- (a) appears unclear about the intended use of the substance or mixture;
- (b) appears unfamiliar with the intended use of the substance or mixture or cannot plausibly explain it;

**▼B**

- (c) intends to buy substances in quantities, combinations or concentrations uncommon for private use;
- (d) is unwilling to provide proof of identity or place of residence; or
- (e) insists on using unusual methods of payment, including large amounts of cash.

4. Economic operators shall also report significant disappearances and thefts of the substances listed in the Annexes and of mixtures or substances containing them to the national contact point of the Member State where the disappearance or theft has taken place.

5. In order to facilitate cooperation between the competent authorities and economic operators, the Commission shall, after consulting the Standing Committee on Precursors, draw up, by 2 September 2014 guidelines to assist the chemical supply chain and, where relevant, the competent authorities. The guidelines shall, in particular, provide:

- (a) information on how to recognise and report suspicious transactions, in particular as concerns the concentrations and/or quantities of substances listed in Annex II below which no action is normally needed;
- (b) information on how to recognise and report significant disappearances and thefts;
- (c) other information which may be deemed useful.

The Commission shall update the guidelines regularly.

6. The competent authorities shall ensure that the guidelines provided for in paragraph 5 are regularly disseminated in a manner deemed appropriate by the competent authorities in accordance with the objectives of the guidelines.

*Article 10***Data protection**

Member States shall ensure that the processing of personal data carried out in application of this Regulation is in accordance with Directive 95/46/EC. In particular, Member States shall ensure that the processing of personal data required in respect of licensing pursuant to Article 4(2) and (6) and Article 7 of this Regulation or for the registration of transactions pursuant to Article 4(3) and Articles 8 and 17 of this Regulation, and the reporting of suspicious transactions pursuant to Article 9 of this Regulation, comply with Directive 95/46/EC.

*Article 11***Penalties**

Member States shall lay down rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.



### *Article 12*

#### **Amendments to the Annexes**

1. The Commission shall be empowered to adopt delegated acts in accordance with Article 14 concerning changes of the limit values in Annex I to the extent necessary to accommodate developments in the misuse of substances as explosives precursors, or on the basis of research and testing, as well as concerning the addition of substances to Annex II, where necessary to accommodate developments in the misuse of substances as explosives precursors. The Commission shall, as part of the preparation of the delegated acts, endeavour to consult relevant stakeholders, in particular the chemical industry and the retail sector.

Where, in the case of a sudden change in the risk assessment as far as the misuse of substances for the illicit manufacture of explosives is concerned, imperative grounds of urgency so require, the procedure provided for in Article 15 shall apply to delegated acts adopted pursuant to this Article.

2. The Commission shall adopt a separate delegated act in respect of each change of the limit values in Annex I and each new substance added to Annex II. Each delegated act shall be based on an analysis demonstrating that the amendment is not likely to lead to disproportionate burdens on economic operators or consumers, having due regard to the objectives sought to be achieved.

### *Article 13*

#### **Safeguard clause**

1. Where a Member State has reasonable grounds for believing that a specific substance not listed in the Annexes could be used for the illicit manufacture of explosives, it may restrict or prohibit the making available, possession and use of that substance, or of any mixture or substance containing it, or it may provide that the substance be subject to the reporting of suspicious transactions in accordance with Article 9.

2. Where a Member State has reasonable grounds for believing that a specific substance listed in Annex I could be used for the illicit manufacture of explosives, at a concentration lower than the limit value laid down in Annex I, it may further restrict or prohibit the making available, possession and use of that substance by imposing a lower concentration limit value.

3. Where a Member State has reasonable grounds for establishing a concentration limit value above which a substance listed in Annex II should be subject to the restrictions otherwise applying to restricted explosives precursors, it may restrict or prohibit the making available, possession and use of that substance by imposing a maximum permitted concentration.

4. A Member State restricting or prohibiting substances in accordance with paragraph 1, 2 or 3 shall immediately inform the Commission and the other Member States thereof, giving its reasons.



**▼B**

5. In the light of the information communicated pursuant to paragraph 4, the Commission shall immediately examine whether to prepare amendments to the Annexes in accordance with Article 12(1) or to prepare a legislative proposal to amend the Annexes. The Member State concerned shall, where appropriate, amend or repeal its national measures to take account of any such amendment to the Annexes.

6. By 2 June 2013, Member States shall notify the Commission of any existing national measures restricting or prohibiting the making available, possession and use of a substance or of any mixture or substance containing it on the ground that it could be used for the illicit manufacture of explosives.

*Article 14***Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 12 shall be conferred on the Commission for a period of five years from 1 March 2013. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 12 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 12 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

*Article 15***Urgency procedure**

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of the act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

**▼B**

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 14(5). In such a case, the Commission shall repeal the act without delay following notification of the decision to object by the European Parliament or by the Council.

*Article 16***Transitional provision**

The possession and use by members of the general public of restricted explosives precursors shall be allowed until 2 March 2016.

*Article 17***Existing registration regimes**

A Member State which, on 1 March 2013 has a regime in place that requires economic operators to register transactions making one or more restricted explosives precursors available to members of the general public may derogate from Article 4(1) or (2) by applying that registration regime in accordance with Article 8 to some or all of the substances listed in Annex I. The rules laid down in Article 4(4) to (7), shall apply *mutatis mutandis*.

*Article 18***Review**

1. By 2 September 2017, the Commission shall present a report to the European Parliament and to the Council examining:

- (a) any problems that have arisen as a result of the application of this Regulation;
- (b) the desirability and feasibility of further strengthening and harmonising the system in view of the threat to public security caused by terrorism and other serious criminal activities, taking into account the experience gained by Member States under this Regulation, including any detected security gaps, taking into account the costs and benefits for Member States, economic operators and other relevant stakeholders;
- (c) the desirability and feasibility of extending the scope of this Regulation to cover professional users, taking into account the burdens imposed on economic operators and having regard to the objective of this Regulation;
- (d) the desirability and feasibility of including non-scheduled explosives precursors in the provisions on reporting of suspicious transactions, disappearances and thefts.

2. By 2 March 2015, the Commission shall present a report to the European Parliament and to the Council examining the possibilities to transfer relevant provisions on ammonium nitrate from Regulation (EC) No 1907/2006 into this Regulation.

**▼B**

3. If appropriate, in the light of the reports referred to in paragraphs 1 and 2, the Commission shall submit a legislative proposal to the European Parliament and to the Council with a view to amending this Regulation accordingly.

*Article 19*

**Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 2 September 2014.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

**▼B***ANNEX I*

Substances which shall not be made available to members of the general public on their own, or in mixtures or substances including them, except if the concentration is equal to or lower than the limit values set out below

Name of the substance and Chemical Abstracts Service Registry number (CAS RN)	Limit value	Combined Nomenclature (CN) code for a separate chemically defined compound meeting the requirements of Note 1 to Chapter 28 or 29 of the CN, respectively <sup>(1)</sup>	Combined Nomenclature (CN) code for a mixture without constituents (e.g. mercury, precious or rare-earth metals or radioactive substances) which would determine classification under another CN code <sup>(1)</sup>
Hydrogen peroxide (CAS RN 7722-84-1)	12 % w/w	2847 00 00	3824 90 97
Nitromethane (CAS RN 75-52-5)	30 % w/w	2904 20 00	3824 90 97
Nitric acid (CAS RN 7697-37-2)	3 % w/w	2808 00 00	3824 90 97
Potassium chlorate (CAS RN 3811-04-9)	40 % w/w	2829 19 00	3824 90 97
Potassium perchlorate (CAS RN 7778-74-7)	40 % w/w	2829 90 10	3824 90 97
Sodium chlorate (CAS RN 7775-09-9)	40 % w/w	2829 11 00	3824 90 97
Sodium perchlorate (CAS RN 7601-89-0)	40 % w/w	2829 90 10	3824 90 97

**▼C1**

<sup>(1)</sup> Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

**▼B***ANNEX II*

Substances on their own or in mixtures or in substances for which suspicious transactions shall be reported

Name of the substance and Chemical Abstracts Service Registry number (CAS RN)	► <b>M1</b> Combined Nomenclature (CN) code <sup>(1)</sup> ◀	Combined Nomenclature (CN) code for mixtures without constituents (e.g. mercury, precious or rare-earth metals or radioactive substances) which would determine classification under another CN code <sup>(1)</sup>
Hexamine (CAS RN 100-97-0)	2921 29 00	3824 90 97
Sulphuric acid (CAS RN 7664-93-9)	2807 00 10	3824 90 97
Acetone (CAS RN 67-64-1)	2914 11 00	3824 90 97
Potassium nitrate (CAS RN 7757-79-1)	2834 21 00	3824 90 97
Sodium nitrate (CAS RN 7631-99-4)	3102 50 10 (natural) 3102 50 90 (other than natural)	3824 90 97 3824 90 97
Calcium nitrate (CAS RN 10124-37-5)	2834 29 80	3824 90 97
Calcium ammonium nitrate (CAS RN 15245-12-2)	3102 60 00	3824 90 97
Ammonium nitrate (CAS RN 6484-52-2) [in concentration of 16 % by weight of nitrogen in relation to ammonium nitrate or higher]	3102 30 10 (in aqueous solution) 3102 30 90 (other)	3824 90 97
<b>▼<u>M3</u></b> Magnesium, <i>powders</i> (CAS RN 7439-95-4) <sup>(2)</sup> <sup>(3)</sup>	ex 8104 30 00	
<b>▼<u>M2</u></b> Magnesium nitrate hexahydrate (CAS RN 13446-18-9)	2834 29 80	3824 90 96
<b>▼<u>M1</u></b> Aluminium, <i>powders</i> (CAS RN 7429-90-5) <sup>(2)</sup> <sup>(3)</sup>	ex 7603 10 00 ex 7603 20 00	

**▼B**

►**C1** <sup>(1)</sup> Regulation (EEC) No 2658/87. ◀

►**M1** <sup>(2)</sup> With a particle size less than 200 µm.

<sup>(3)</sup> As a substance or in mixtures containing 70 % or more, by weight, of aluminium and/or magnesium. ◀