

Directive 2014/28/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market and supervision of explosives for civil uses (recast) (Text with EEA relevance)

CHAPTER 3

SECURITY PROVISIONS

Article 11

Transfers of explosives

- 1 Explosives may be transferred only in accordance with paragraphs 2 to 8.
- 2 Approval to transfer explosives shall be obtained by the consignee from the competent authority in the Member State of the consignee. The competent authority shall verify that the consignee is legally authorised to acquire explosives and that he is in possession of the necessary licences or authorisations. The economic operator responsible for the transfer shall notify the competent authorities of the transit Member State of any movement of explosives through the Member State concerned and shall obtain prior approval of the transit Member State concerned.
- 3 Where a Member State considers that there is a problem regarding the verification of the entitlement to acquire explosives referred to in paragraph 2, that Member State shall forward the available information on the subject to the Commission which shall inform the other Member States thereof.
- 4 Where the competent authority in the Member State of the consignee approves a transfer, it shall issue to the consignee a document which includes all the information referred to in paragraph 5. Such a document shall accompany the explosives until they arrive at their stated destination. It shall be produced at the request of the relevant competent authorities. A copy of that document shall be retained by the consignee who shall present it, upon request, for examination by the competent authority in the Member State of the consignee.
- 5 Where transfers of explosives must be specially supervised in order to comply with special security requirements in the territory or part of the territory of a Member State, prior to the transfer the following information shall be provided by the consignee to the competent authority in the Member State of the consignee:
 - a the names and addresses of the economic operators concerned;
 - b the number and quantity of the explosives being transferred;
 - c a full description of the explosives in question and of the means of identification, including the United Nations identification number;
 - d where the explosives are to be placed on the market, information on compliance with conditions for placing on the market;
 - e the means of transfer and the itinerary;
 - f the expected dates of departure and arrival;
 - g where necessary, the precise points of entry to and exit from Member States.

The information referred to in point (a) of the first subparagraph shall be sufficiently detailed in order to enable competent authorities to contact the economic operators and

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to obtain confirmation that the economic operators concerned are entitled to receive the consignment.

The competent authority in the Member State of the consignee shall examine the conditions under which the transfer may take place, with particular regard to the special security requirements. If the special security requirements are satisfied, approval for the transfer shall be granted. In the case of transit through the territory of other Member States, those Member States shall likewise examine and approve the particulars concerning the transfer.

6 Where the competent authority of a Member State considers that special security requirements referred to in paragraphs 4 and 5 are unnecessary, explosives may be transferred on their territory or part thereof without prior provision of information within the meaning of paragraph 5. The competent authority in the Member State of the consignee shall then grant an approval for a fixed period, which is liable to suspension or withdrawal at any time on the basis of a reasoned justification. The document referred to in paragraph 4, which shall accompany the explosives until they arrive at their destination, shall refer solely to that approval.

7 Without prejudice to the normal checks which the Member State of departure is to carry out in its territory, at the request of the competent authorities concerned, the consignees and the economic operators concerned shall forward to the authorities of the Member State of departure and to those of the Member State of transit all relevant information they possess concerning the transfer of explosives.

8 No economic operator may transfer explosives unless the consignee has obtained the necessary authorisations for the transfer in accordance with paragraphs 2, 4, 5 and 6.

Article 12

Transfers of ammunition

1 Ammunition may be transferred from one Member State to another only in accordance with the procedure laid down in paragraphs 2 to 5. Those paragraphs shall also apply to transfers of ammunition under mail-order sales.

2 Where ammunition is to be transferred to another Member State the person concerned shall, before any dispatch, communicate to the Member State in which that ammunition is located:

- a the names and addresses of the person selling or transferring the ammunition, of the person purchasing or acquiring the ammunition and, where appropriate, of the owner;
- b the address to which the ammunition is to be consigned or transported;
- c the quantity of ammunition to be consigned or transported;
- d data making it possible to identify the ammunition and also an indication that the ammunition has undergone a check in accordance with the Convention of 1 July 1969 on the Reciprocal Recognition of Proofmarks on Small Arms;
- e the means of transfer;
- f the date of departure and the estimated date of arrival.

The information referred to in points (e) and (f) of the first subparagraph need not be supplied in the case of a transfer between dealers. The Member State shall examine the conditions under which the transfer is to be carried out, in particular with regard to security. Where the Member State authorises such a transfer it shall issue a licence incorporating all the particulars referred to in the first subparagraph. That licence shall

accompany the ammunition until it reaches its destination. It shall be produced whenever so required by the competent authorities of the Member States.

3 Each Member State may grant dealers the right to effect transfers of ammunition from its territory to a dealer established in another Member State without the prior authorisation referred to in paragraph 2. To that end it shall issue an authorisation valid for three years which may at any time be suspended or cancelled by reasoned decision. A document referring to that authorisation shall accompany the ammunition until it reaches its destination. It shall be produced whenever so required by the competent authorities of the Member States.

Before effecting the transfer, the dealer shall communicate to the authorities of the Member State from which the transfer is to be effected all the particulars listed in the first subparagraph of paragraph 2.

4 Each Member State shall supply the other Member States with a list of the ammunition the transfer of which to its territory may be authorised without its prior consent.

Such lists of ammunition shall be communicated to dealers who have obtained approval for transferring ammunition without prior authorisation in accordance with the procedure laid down in paragraph 3.

5 Each Member State shall communicate all useful information at its disposal concerning definitive transfers of ammunition to the Member State, to the territory of which such a transfer has been effected.

All information that Member States receive in accordance with paragraphs 2 and 3 shall be communicated, not later than the time of the relevant transfers, to the Member States of destination and, where appropriate, not later than the time of transfer to the Member States of transit.

Article 13

Security derogations

By way of derogation from Article 11(2), (4), (5) and (6) and from Article 12, a Member State, in the event of serious threats to, or attacks on, public security as a result of illicit possession or use of explosives or ammunition, may take all necessary measures concerning transfers of explosives or ammunition in order to prevent such illicit possession or use.

The measures referred to in the first paragraph shall respect the principle of proportionality. They shall constitute neither a means of arbitrary discrimination nor a veiled restriction in trade between Member States.

Each Member State which adopts such measures shall notify the Commission of them forthwith. The Commission shall inform the other Member States thereof.

Article 14

Information exchange

1 Member States shall set up information exchange networks for the implementation of Articles 11 and 12. They shall notify the other Member States and the Commission of the

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national authorities responsible for forwarding or receiving information and for applying the procedures referred to in those Articles.

Member States shall keep at the disposal of the other Member States and of the Commission updated information concerning economic operators possessing licences or authorisations referred to in Article 16.

2 For the purposes of implementing this Directive, Regulation (EC) No 515/97, in particular the requirements thereof relating to confidentiality, shall apply *mutatis mutandis*.

Article 15

Identification and traceability of explosives

1 Economic operators shall adhere to a uniform system for the unique identification and traceability of explosives, that takes into account their size, shape or design, except where it is not necessary to place a unique identification on the explosive due to its low level of hazard, based on its characteristics and factors such as its low detonative effects, its uses and the low security risk it presents due to the low potential effects of misuse.

The system shall not apply to explosives transported and delivered unpackaged or in pump trucks for their direct unloading into the blast-hole, or explosives manufactured at blasting sites, and that are loaded immediately after being produced (in situ production).

2 That system shall provide for the collection and storage of data, including where appropriate by electronic means, enabling the unique identification and traceability of the explosive as well as for the placement of a unique identification on the explosive and/or its packaging enabling access to that data. Those data shall relate to the unique identification of the explosive, including its location while in the possession of economic operators and the identity of those economic operators.

3 The data referred to in paragraph 2 shall be tested at regular intervals and protected against accidental or malicious damage or destruction. Those data shall be stored for 10 years after the transaction took place or, where the explosives have been used or disposed of, 10 years after their use or disposal, even if the economic operator has ceased trading. They shall be immediately available at the request of the competent authorities.

4 The Commission may adopt implementing acts:

- a laying down the practical arrangements for the operation of the system of unique identification and traceability referred to in paragraph 1, taking into account the size, shape or design of the explosives, in particular the format and structure of the unique identification, as provided for in paragraph 2;
- b identifying the cases referred to in paragraph 1 where it is not necessary, due to the low level of hazard of an explosive, for economic operators to adhere to the system for the unique identification and traceability within the meaning of that paragraph.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 49(3).

Article 16

Licence or authorisation

Economic operators shall be in possession of a licence or authorisation which entitles them to engage in the manufacture, storage, use, import, export, transfer or trade of explosives.

The first paragraph shall not apply to employees of an economic operator possessing a licence or authorisation.

Article 17

Licensing of manufacturing activities

When a Member State issues a licence or authorisation referred to in Article 16 for manufacturing of explosives, it shall check in particular that the economic operators responsible are capable of complying with the technical commitments they assume.

Article 18

Seizures

Each Member State shall adopt the necessary measures to enable the competent authorities to seize any explosive if there is sufficient evidence that that explosive will be illicitly acquired, used or dealt in.