

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)

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)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

Acting in accordance with the ordinary legislative procedure⁽²⁾,

Whereas:

- (1) Council Directive 93/15/EEC of 5 April 1993 on the harmonization of the provisions relating to the placing on the market and supervision of explosives for civil uses⁽³⁾ has been substantially amended⁽⁴⁾. Since further amendments are to be made, that Directive should be recast in the interests of clarity.
- (2) It is necessary to clarify in this Directive that certain articles were identified following the United Nations recommendations on the transport of dangerous goods as being pyrotechnic articles or ammunition, thus falling outside the scope of this Directive. Commission Directive 2004/57/EC of 23 April 2004 on the identification of pyrotechnic articles and certain ammunition for the purposes of 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and supervision of explosives for civil uses⁽⁵⁾, which currently contains a list of such articles, should therefore be repealed.
- (3) Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products⁽⁶⁾ lays down rules on the accreditation of conformity assessment bodies, provides a framework for the market surveillance of products and for controls on products from third countries, and lays down the general principles of the CE marking.

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- (4) Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products⁽⁷⁾, lays down common principles and reference provisions intended to apply across sectoral legislation in order to provide a coherent basis for revision or recasts of that legislation. Directive 93/15/EEC should therefore be adapted to that Decision.
- (5) Safety during storage is covered by Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances⁽⁸⁾ which sets out safety requirements for establishments where explosives are present. Safety of explosives during transport is regulated by international conventions and agreements, including the United Nations recommendations on the transport of dangerous goods. Those aspects should therefore not fall under the scope of this Directive.
- (6) Pyrotechnic articles require appropriate measures to ensure the protection of end-users and the safety of the public. Pyrotechnic articles are covered by Directive 2013/29/EU of the European Parliament and of the Council of 12 June 2013 on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles⁽⁹⁾. This Directive should therefore not apply to pyrotechnic articles.
- (7) The scope of this Directive should cover ammunition, but only as regards the rules governing controls on transfers and the associated arrangements. Since ammunition is transferred under conditions similar to those under which arms are transferred, transfers of ammunition should be governed by provisions similar to those applicable to arms, as set out in Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons⁽¹⁰⁾.
- (8) This Directive should apply to all forms of supply, including distance selling.
- (9) The definition of the explosives covered by this Directive should be based on the definition of such products as set out in the United Nations recommendations on the transport of dangerous goods.
- (10) In order to ensure the free movement of explosives it is necessary to harmonise the laws relating to making explosives available on the market.
- (11) Economic operators should be responsible for the compliance of explosives with this Directive in relation to their respective roles in the supply chain, so as to ensure a high level of protection of public interests, such as health and safety of persons and public security and to guarantee fair competition on the Union market.
- (12) All economic operators intervening in the supply and distribution chain should take appropriate measures to ensure that they only make available on the market explosives which are in conformity with this Directive. It is necessary to provide for a clear and proportionate distribution of obligations which correspond to the role of each economic operator in the supply and distribution chain.
- (13) In order to facilitate communication between economic operators, market surveillance authorities and end-users, Member States should encourage economic operators to include a website address in addition to the postal address.

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- (14) The manufacturer, having detailed knowledge of the design and production process, is best placed to carry out the conformity assessment procedure. Conformity assessment should therefore remain solely the obligation of the manufacturer.
- (15) It is necessary to ensure that explosives from third countries entering the Union market comply with this Directive, and in particular that appropriate conformity assessment procedures have been carried out by manufacturers with regard to those explosives. Provision should therefore be made for importers to make sure that the explosives they place on the market comply with the requirements of this Directive and that they do not place on the market explosives which do not comply with such requirements or present a risk. Provision should also be made for importers to make sure that conformity assessment procedures have been carried out and that marking of explosives and documentation drawn up by manufacturers are available for inspection by the competent national authorities.
- (16) The distributor makes an explosive available on the market after it has been placed on the market by the manufacturer or the importer and should act with due care to ensure that its handling of the explosive does not adversely affect the compliance of the explosive.
- (17) Any economic operator that either places an explosive on the market under his own name or trade mark or modifies an explosive in such a way that compliance with this Directive may be affected should be considered to be the manufacturer and should assume the obligations of the manufacturer.
- (18) Distributors and importers, being close to the market place, should be involved in market surveillance tasks carried out by the competent national authorities, and should be prepared to participate actively, providing those authorities with all necessary information relating to the explosive concerned.
- (19) Unique identification of explosives is essential if accurate and complete records of explosives are to be kept at all stages of the supply chain. This should allow the identification and the traceability of an explosive from its production site and its placing on the market until its final user and its use with a view to preventing misuse and theft and to assisting law enforcement authorities in the tracing of the origin of lost or stolen explosives. An efficient traceability system also facilitates market surveillance authorities' task of tracing economic operators who made non-compliant explosives available on the market. When keeping the information required under this Directive for the identification of economic operators, economic operators should not be required to update such information in respect of other economic operators who have either supplied them with an explosive or to whom they have supplied an explosive.
- (20) The provisions of this Directive relating to the making available on the market should be limited to the expression of the essential safety requirements for explosives in order to protect the health and safety of persons, property and the environment. In order to facilitate conformity assessment with those requirements it is necessary to provide for a presumption of conformity for explosives which are in conformity with harmonised standards that are adopted in accordance with Regulation (EU) No 1025/2012 of

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the European Parliament and of the Council of 25 October 2012 on European Standardisation⁽¹¹⁾ for the purpose of expressing detailed technical specifications of those requirements.

- (21) Regulation (EU) No 1025/2012 provides for a procedure for objections to harmonised standards where those standards do not entirely satisfy the requirements of this Directive.
- (22) In order to enable economic operators to demonstrate and the competent authorities to ensure that explosives made available on the market conform to the essential safety requirements it is necessary to provide for conformity assessment procedures. Decision No 768/2008/EC establishes modules for conformity assessment procedures which include procedures from the least to the most stringent, in proportion to the level of risk involved and the level of safety required. In order to ensure inter-sectoral coherence and to avoid ad-hoc variants conformity assessment procedures should be chosen from among those modules. Because of their specific characteristics and the hazards involved, explosives should always be submitted to third party conformity assessment.
- (23) Manufacturers should draw up an EU declaration of conformity to provide information required under this Directive on the conformity of an explosive with this Directive and of other relevant Union harmonisation legislation.
- (24) To ensure effective access to information for market surveillance purposes, the information required to identify all applicable Union acts should be available in a single EU declaration of conformity. In order to reduce the administrative burden on economic operators, that single EU declaration of conformity may be a dossier made up of relevant individual declarations of conformity.
- (25) The CE marking, indicating the conformity of an explosive, is the visible consequence of a whole process comprising conformity assessment in a broad sense. General principles governing the CE marking are set out in Regulation (EC) No 765/2008. Rules governing the affixing of the CE marking should be laid down in this Directive.
- (26) The conformity assessment procedures set out in this Directive require the intervention of conformity assessment bodies, which are notified by the Member States to the Commission.
- (27) Experience has shown that the criteria set out in Directive 93/15/EEC that conformity assessment bodies have to fulfil to be notified to the Commission are not sufficient to ensure a uniformly high level of performance of notified bodies throughout the Union. It is, however, essential that all notified bodies perform their functions to the same level and under conditions of fair competition. That requires the setting of obligatory requirements for conformity assessment bodies wishing to be notified in order to provide conformity assessment services.
- (28) In order to ensure a consistent level of conformity assessment quality it is also necessary to set requirements for notifying authorities and other bodies involved in the assessment, notification and monitoring of notified bodies.

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- (29) If a conformity assessment body demonstrates conformity with the criteria laid down in harmonised standards, it should be presumed to comply with the corresponding requirements set out in this Directive.
- (30) The system set out in this Directive should be complemented by the accreditation system provided for in Regulation (EC) No 765/2008. Since accreditation is an essential means of verifying the competence of conformity assessment bodies, it should also be used for the purposes of notification.
- (31) Transparent accreditation as provided for in Regulation (EC) No 765/2008, ensuring the necessary level of confidence in certificates of conformity, should be considered by the national public authorities throughout the Union as the preferred means of demonstrating the technical competence of conformity assessment bodies. However, national authorities may consider that they possess the appropriate means of carrying out that evaluation themselves. In such cases, in order to ensure the appropriate level of credibility of evaluations carried out by other national authorities, they should provide the Commission and the other Member States with the necessary documentary evidence demonstrating the compliance of the conformity assessment bodies evaluated with the relevant regulatory requirements.
- (32) Conformity assessment bodies frequently subcontract parts of their activities linked to the assessment of conformity or have recourse to a subsidiary. In order to safeguard the level of protection required for the explosives to be placed on the Union market, it is essential that conformity assessment subcontractors and subsidiaries fulfil the same requirements as notified bodies in relation to the performance of conformity assessment tasks. Therefore, it is important that the assessment of the competence and the performance of conformity assessment bodies to be notified and the monitoring of notified bodies cover also activities carried out by subcontractors and subsidiaries.
- (33) It is necessary to increase the efficiency and transparency of the notification procedure and, in particular, to adapt it to new technologies so as to enable online notification.
- (34) Since notified bodies may offer their services throughout the Union, it is appropriate to give the other Member States and the Commission the opportunity to raise objections concerning a notified body. It is therefore important to provide for a period during which any doubts or concerns as to the competence of conformity assessment bodies can be clarified before they start operating as notified bodies.
- (35) In the interests of competitiveness, it is crucial that notified bodies apply the conformity assessment procedures without creating unnecessary burdens for economic operators. For the same reason, and to ensure equal treatment of economic operators, consistency in the technical application of the conformity assessment procedures needs to be ensured. That can best be achieved through appropriate coordination and cooperation between notified bodies.
- (36) In order to ensure legal certainty, it is necessary to clarify that rules on Union market surveillance and control of products entering the Union market provided for in Regulation (EC) No 765/2008 apply to explosives. This Directive should not prevent Member States from choosing the competent authorities to carry out those tasks.

- (37) Member States should take all appropriate measures to ensure that explosives may be placed on the market only if, when properly stored and used for their intended purpose, or under conditions of use which can be reasonably foreseen, they do not endanger the health and safety of persons. Explosives should be considered as non-compliant with the essential safety requirements laid down in this Directive only under conditions of use which can be reasonably foreseen, that is when such use could result from lawful and readily predictable human behaviour.
- (38) The existing system should be supplemented by a procedure under which interested parties are informed of measures intended to be taken with regard to explosives presenting a risk to the health or safety of persons, or to property or the environment. It should also allow market surveillance authorities, in cooperation with the relevant economic operators, to act at an earlier stage in respect of such explosives.
- (39) Where the Member States and the Commission agree as to the justification of a measure taken by a Member State, no further involvement of the Commission should be required, except where non-compliance can be attributed to shortcomings of a harmonised standard.
- (40) In the event of a serious threat to, or attack on, public security as a result of illicit possession or use of explosives or ammunition Member States should be allowed to derogate, under certain conditions, from this Directive with regard to transfer of explosives and ammunition in order to prevent such illicit possession or use.
- (41) It is essential to establish administrative cooperation mechanisms between competent authorities of Member States. Therefore, the competent authorities should base their approach on Council Regulation (EC) No 515/97 of 13 March 1997 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⁽¹²⁾.
- (42) This Directive should not affect the power of Member States to take measures with a view to preventing illegal trade in explosives and ammunition.
- (43) In order to achieve the objectives of this Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of Union measures concerning adapting this Directive to United Nations recommendations on the transport of dangerous goods. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (44) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers⁽¹³⁾.

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- (45) The advisory procedure should be used for the adoption of implementing acts requesting the notifying Member State to take the necessary corrective measures in respect of notified bodies that do not meet or no longer meet the requirements for their notification.
- (46) The examination procedure should be used for the adoption of the implementing acts in order to set up the practical arrangements for the operation of the system for the unique identification and traceability of explosives, as well as for setting out the technical arrangements for the application of the provisions on the transfer of explosives, in particular the model document to be used.
- (47) The examination procedure should also be used for the adoption of implementing acts with respect to compliant explosives which present a risk to the health or safety of persons or to other aspects of public interest protection.
- (48) The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to compliant explosives which present a risk to the health or safety of persons, or to property or the environment, imperative grounds of urgency so require.
- (49) In line with established practice, the committee set up by this Directive can play a useful role in examining matters concerning the application of this Directive raised either by its chair or by a representative of a Member State in accordance with its rules of procedure.
- (50) When matters relating to this Directive, other than its implementation or infringements, are being examined, i.e. in a Commission expert group, the European Parliament should in line with existing practice receive full information and documentation and, where appropriate, an invitation to attend such meetings.
- (51) The Commission should, by means of implementing acts and, given their special nature, acting without the application of Regulation (EU) No 182/2011, determine whether measures taken by Member States in respect of non-compliant explosives are justified or not.
- (52) Member States should lay down rules on penalties applicable to infringements of the provisions of national law adopted pursuant to this Directive and ensure that those rules are enforced. The penalties provided for should be effective, proportionate and dissuasive.
- (53) It is necessary to provide for reasonable transitional arrangements that allow the making available on the market without the need to comply with further product requirements of explosives that have already been placed on the market in accordance with Directive 93/15/EEC before the date of application of national measures transposing this Directive. Distributors should therefore be able to supply explosives that have been placed on the market, namely stock that is already in the distribution chain, before the date of application of national measures transposing this Directive.
- (54) Since the objective of this Directive, namely to ensure that explosives on the market fulfil the requirements providing for a high level of protection of health and safety and other public interests while guaranteeing the functioning of the internal market cannot be sufficiently achieved by the Member States but can rather, by reason of its

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scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

- (55) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to the earlier Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.
- (56) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and the dates of application of the Directives set out in Annex V, Part B,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) [OJ C 181, 21.6.2012, p. 105.](#)
- (2) Position of the European Parliament of 5 February 2014 (not yet published in the Official Journal) and decision of the Council of 20 February 2014.
- (3) [OJ L 121, 15.5.1993, p. 20.](#)
- (4) See Annex V, Part A.
- (5) [OJ L 127, 29.4.2004, p. 73.](#)
- (6) [OJ L 218, 13.8.2008, p. 30.](#)
- (7) [OJ L 218, 13.8.2008, p. 82.](#)
- (8) [OJ L 10, 14.1.1997, p. 13.](#)
- (9) [OJ L 178, 28.6.2013, p. 27.](#)
- (10) [OJ L 256, 13.9.1991, p. 51.](#)
- (11) [OJ L 316, 14.11.2012, p. 12.](#)
- (12) [OJ L 82, 22.3.1997, p. 1.](#)
- (13) [OJ L 55, 28.2.2011, p. 13.](#)