

Our Ref. EN 2014_01

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Explanatory Note

1. Introduction

Title of Regulations	<i>Marketing and use of explosives precursors (Implementation) Regulations, 2014</i>
Activity to be regulated	Marketing and use of hydrogen peroxide, nitromethane and nitric acid which can be used within a given range of concentrations for legitimate use by the members of the general public.
Responsible entity	The Technical Regulations Division (TRD) within the Malta Competition and Consumer Affairs Authority (MCCAA)

2. Summary and background

2.1 Aims & Objectives of the legislation

These proposed regulations implement the provisions of Articles 4, 7, 8, 9 and 11 of 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.

Regulation (EU) No. 98/2013:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0098&from=EN>

This EU 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 that appropriate reporting of suspicious transactions, significant disappearances and thefts, throughout the supply chain is introduced.

According to Article 4(1) of Regulation (EU) No. 98/2013 the regulation applies a strict control regime on a number of substances. It imposes a ban on the marketing and use of explosives precursors and states that: *“restricted explosives precursors shall not be made available to, or introduced, possessed or used by, members of the general public”* above a specific concentration as identified in Annex I of the regulation.

In addition, Article 9 of Regulation (EU) No. 98/2013 imposes a duty on economic operators to report any suspicious transactions as well as significant disappearances and thefts involving a number of substances or mixtures to the national contact points designated by Member State authorities.

2.2 Importance of Regulations

The proposed Legal Notice is important so as to allow the use of restricted explosives precursors by the general public by establishing the following regimes as per paragraphs 4 and 5 of the proposed regulations:

1. Licensing regime
2. Registration regime

Since these are exemptions, not all Member States will have a licensing or registration regime for the general public. In some Member States the general public will not be allowed to buy, use or possess products containing the substances in the First Schedule of the proposed Legal Notice with concentrations over the limits specified.

2.3 Public Consultation

Interested parties are invited to submit comments on the draft legal notice by **Friday 8th August 2014**.

Your comments on the proposed Regulations are invited. Note that this explanatory note does not seek your views on Regulation (EU) No. 98/2013 but on the proposed regulations for implementing it.

For any other information kindly contact the Regulatory Affairs Directorate within the Technical Regulations Division of the Malta Competition and Consumer Affairs Authority using the following contact details:

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3. Overview of the structure of the instrument

The draft regulations establish that the Technical Regulations Division (TRD) within the Malta Competition and Consumer Affairs Authority (MCCAA) are the national contact point and the responsible body for the Licensing regime and Registration regime for the following 3 substances:

1. Hydrogen Peroxide
2. Nitromethane
3. Nitric Acid

The legal notice includes information on the issuing of licences and registration of transactions. In addition there is the reporting of suspicious transactions and the penalties applicable for infringement of the provisions of Regulation (EU) No. 98/2013 or the provisions of the draft legal notice.

4. Commentary on parts and articles

Regulation No.	Meaning & obligations placed on user
4 - Licences	<p>The general public shall apply for a licence with MCCAA if they would like to purchase any of the following explosives precursors above their specific concentration limit:</p> <ol style="list-style-type: none">1. Hydrogen peroxide (>12% weight for weight (w/w));2. Nitromethane (>30% w/w); and3. Nitric acid (>3% w/w). <p>The licence shall be issued for every single use of a particular substance listed above. The licence shall expire after 3 years.</p> <p>Economic operators selling the above restricted explosives precursors in Malta should ask members of the general public for a licence before selling these products.</p>
5 - Registration of transactions	<p>The registration regime requires that an economic operator, who makes the following specific substances available for sale to the general public, maintains a register of each transaction:</p> <ol style="list-style-type: none">1. Hydrogen peroxide in concentrations between 12% and 35% w/w;2. Nitromethane in concentrations between 30% and 40% w/w; and3. Nitric acid in concentrations between 3% and 10% w/w. <p>Members of the general public shall identify themselves by means of an official identification document.</p>

	<p>The register shall comprise at least the following information:</p> <ul style="list-style-type: none"> (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 of the restricted precursor; (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, and where applicable the delivery address (e) the date and place of the transaction; (f) the signature of the member of the general public. <p>Documentation: 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 MCCA. The register shall be kept on paper, electronically or on another durable medium and shall be available for inspection at any time during 5 years from the date of transaction.</p> <p>Any data stored shall:</p> <ul style="list-style-type: none"> (a) match the format and content of the corresponding paper documents; and (b) be readily available at any time during 5 years from the date of transaction. <p>Registers of operators having ceased their activity shall be transferred to the operators that take over their activity or, alternatively, to the MCCA.</p>
<p>6 - Reporting of suspicious transactions, disappearances and thefts</p>	<p>Beyond the main focus of Regulation (EU) No. 98/2013, which is to restrict the availability to the general public of substances or mixtures that could be misused for the illicit manufacture of explosives, the Regulation identifies a number of other substances which could also be used for illicit purposes and which are difficult to control because, in addition to professional use, they are widely used in common consumer products within a vast supply chain (those listed in Annex 2). Any suspicious transactions involving these substances shall be reported.</p> <p>'Suspicious transaction,' as defined in Article 3 of Regulation (EU) No. 98/2013, 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. In line with this definition, a suspicious transaction is any (attempted) purchase of one or more explosives precursors, or mixture containing precursors, which deviates from ordinary expectations or interactions.</p> <p>Article 9 of Regulation (EU) No. 98/2013 gives economic operators the right to refuse a suspicious transaction and also imposes a duty on them to report any suspicious transactions as well as significant disappearances and thefts involving</p>

these substances to the MCCA. Disappearances and thefts of amounts that are unusual to the business should be reported. Reporting should be done without undue delay.

In order to comply with the reporting obligation, all economic operators along the supply chain need to be aware that a specific substance is contained in a product. This implies that, as a general guide, reporting requirements apply only where a substance is listed as an ingredient on the label or in the safety data sheet. A collaborative approach based on commercial contracts between operators could foresee and ensure that the relevant information is transmitted from suppliers.

The names below may also be used to commonly refer to substances listed in the Schedule/Annexes of the Regulation. The lists are not exhaustive and are intended for reference purposes only.

Other names for First Schedule substances found in the draft Legal Notice:

Hydrogen peroxide:

- Peroxide
- Dioxidane
- Hydrogen Dioxide

Nitromethane

- Nitrocarbol

Nitric acid

- Aqua fortis
- Fuming nitric

Other names for Annex II substances listed in Regulation (EU) No. 98/2013:

Hexamine:

- Methenamine
- Hexamethylenetetramine
- Urotropine

Acetone:

- Propanone
- Propan-2-one
- 2-Propanone

It may be difficult to extract an explosive precursor from a complex mixture (i.e., nitrates in toothpaste), so this should be taken into account when identifying affected products. This does not preclude operators, however, from reporting when they consider it appropriate.

In order to be attractive as an explosive precursor a product must generally fulfil either of the following requirements:

- (a) the precursor substance is available pure or in a simple mixture regardless of concentration, or
(b) the precursor substance is available in a complex mixture but in a relatively high concentration.

Examples of (a) are pure precursors and mixtures/solutions of a precursor in one or only a few other substances/solvents. Regardless of concentration, it may in many cases be relatively simple to extract and enrich the precursor from such a product. For products that fall into this description, all suspicious transactions, thefts and disappearances should be reported, unless there are good reasons not to do so. For example thefts or disappearances of a very small amount (a few grams or millilitres) of a simple mixture does not necessarily trigger the obligation to report if it can be explained e.g. as a “normal” occurrence of shoplifting.

Examples of (b) are mixtures containing many ingredients, but where the precursor is available in such a high amount that even with a complicated extraction procedure with bad yield, the precursor can be extracted in an amount that could be used. Products that fall into this description need normally only be reported if the amounts exceed normal household quantities. Mixtures containing more than five ingredients are in general complex enough to make extraction so complicated that it is not very likely that they will be used as precursors, unless the precursor is the dominant ingredient in the mixture. Products where the concentration of any precursor(s) is below 1% (or 3% N by weight for nitrogenous fertilisers) are in general not a concern.

5. Concluding Section

These regulations shall apply as from 2nd September 2014.