

COMMISSION OF THE EUROPEAN COMMUNITIE

COM(92) 123 final - SYN 409

Brussels, 13 April 1992

Proposal for a
COUNCIL DIRECTIVE
on the supervision and placing on the market of explosives for
civil uses and the mutual recognition of authorizations and
approvals relating to such explosives

(presented by the Commission)

SUMMARY

The purpose of this proposal for a Directive is to define conditions to govern transfers of explosives and for mutual recognition of marketing authorizations and to establish the bases for harmonization of provisions governing the placing of explosives on the market.

As regards transfers of explosives, the proposal, in keeping with the objective of creating an area without internal frontiers, expressly provides that the checks to be carried out shall no longer take the form of frontier controls, and an alternative Community system of checks is set up.

In addition, in order to prevent repetitive testing for product approval from acting as an unjustified barrier to trade, the proposal provides for conditions under which it will be possible to achieve mutual recognition of marketing authorizations granted by the twelve Member States.

EXPLANATORY MEMORANDUM

A. General

1. Explosives are subject to detailed national regulations directed towards ensuring by law that such products are manufactured, tested, stored, transported and used under optimum conditions as regards the security and safety of property, persons and the environment.

In order to provide such a high level of protection and safety, all stages in the life of an explosive are subject to regulation. In almost all cases, supervision is based on authorizations and licences which must be obtained in order, for example, to produce, use or store explosives.

The conditions under which such authorizations and licences are granted differ from one Member State to another, although such differences do not arise from divergent approaches regarding the imperative need to verify conformity of the explosives with the safety and security objectives.

For this reason, in view of the differences between supervision procedures rather than between the levels of supervision, transfers of explosives from one Member State to another must undergo checks carried out at the point of entry by the authorities of the recipient country. Such a system of checking must be adapted to meet the requirements of an area without internal frontiers as provided for under Article 8a of the EEC Treaty.

Furthermore, the placing of explosives on the market is subject in all Member States to the granting of an authorization which certifies that the explosive in question has satisfactorily undergone a series of tests intended to ensure that it meets the security and safety requirements.

In most cases, such tests are carried out by laboratories and under the supervision of the public authorities. National experts acknowledge that the test procedures applied in the Member States are different without necessarily implying that the safety and security levels which they are intended to measure differ from one Community country to another.

The national regulations at present in force do not require that tests carried out in other Member States or authorizations granted in those States be taken into account as a prerequisite for the granting of a marketing authorization.

In order to avoid the proliferation of checks amounting to so many barriers to trade, save where they can be justified on legitimate grounds of safety or security, it is necessary to provide for conditions under which there can be mutual recognition of marketing authorizations granted by each Member State.

Such mutual recognition of authorizations is one of the factors which will enable controls at intra-Community frontiers to be abolished insofar as acceptance of a transfer of explosives by a recipient country can be based, *inter alia*, on acceptance of the provisions governing marketing authorization in another Member State.

2. General harmonization of provisions governing marketing authorizations for explosives would require harmonization of the tests and criteria which are now applicable in respect of such authorizations.

Such harmonization, although desirable in order to ensure the free movement of products without any lowering of the supervision level, cannot be achieved in the short term. It would appear that extensive work is necessary if this objective is to be attained, particularly since harmonized standards do not yet exist in this area.

Consequently, one of the aims of this Directive is to provide for the conditions under which such standards can be drawn up. Furthermore, in accordance with the method termed the "new approach", the proposal for a Directive defines the essential requirements which must be met by the explosives tested before they can be approved. The standards to be laid down will be prepared on the basis of these requirements. The principal aim of the essential requirements concerned will be to attain safety objectives.

3. It is not the intention of this Directive to lower the level of safety required for transfers or the marketing of explosives. Such safety must be maintained at as high a level as possible, and it is this aspect which militates in favour of keeping the transfer and marketing conditions under strict regulation in such a way as to ensure compliance with the provisions of the Treaty. Moreover, explosives give rise to differing safety problems in the different Member States and therefore require differing levels of supervision. In this connection, it would appear right and proper to provide in this Directive that Member States be allowed to incorporate in their laws provisions modified so as to meet specific requirements in respect of movements or transfers of explosives, while ensuring that the effects of such an option do not run counter to the objectives of the Treaty, particularly with regard to the setting-up of a common area without internal frontiers.

4. Finally, this Directive does not alter the conditions under which explosives can be stored or used. Practices in this connection remain governed by national laws aimed, in particular, at providing for the protection of workers using explosives or handling them in storage facilities.

B. Contents of the Directive

Article 1 determines the scope of this Directive.

It is proposed that the definition of the explosives covered by the Directive be that already adopted at international level in keeping with the Community's practice in the sector of dangerous products. For example, the proposal for a Directive on the risks inherent in the carriage of dangerous goods defines such goods as those considered to be dangerous in the United Nations Recommendations. These Recommendations, moreover, are applied in all the Member States.

The United Nations Recommendations do not cover explosive products which are not likely to be transported owing to the risks inherent in such transfers (certain types of non-desensitized nitroglycerine). Since products of this type cannot be transported or released for circulation, it is logical to exclude them from the scope of this Directive in view of its objectives.

Incorporating the definition set out in the United Nations Recommendations hence appears to be the best means of covering exhaustively and unequivocally those explosives likely to be placed on the market.

In so far as the United Nations Recommendations are liable to be amended subsequently as the result of work carried out by United Nations experts, as in the case of the abovementioned texts on dangerous products, it is the version of the Recommendations in force when this Directive enters into force which should be adopted. At present, some 484 different products are considered to be explosives within the meaning of the Recommendations.

It is also intended to exclude from the scope of this Directive explosives directly connected with military uses or with use by police forces in view of the questions concerning Community jurisdiction that might be raised by such uses. Finally, the Directive does not cover pyrotechnical articles used for entertainment purposes or displays, for which other measures will

be prepared. Such products raise special problems with regard to consumers' protection needs and the security of the general public. For this reason, it appears justifiable not to make them subject to provisions suitable for the supervision of explosives for civil uses.

Article 2 defines the objective of this Directive. Since the Treaty requires the setting-up of an area without internal frontiers, the Directive lays down requirements governing the movements of explosives while ensuring that the checks conducted do not take the form of frontier controls and establishes the conditions for mutual recognition of marketing authorizations together with the bases for harmonization of provisions governing the placing of explosives on the market.

Article 3 covers approvals of such products and authorizations to place them on the market.

All Member States make the initial placing of explosives on the market subject to an approval or authorization relating to the product in question. In all Member States, such approval or authorization is granted only if the product has satisfactorily undergone a series of tests for verification of its compliance with requirements concerning the security and safety of property, persons and the environment.

The purpose of Article 3 is to ensure that such procedures are indeed applied as part of the mechanism for approving explosives. It will hence be possible to establish with certainty that similar procedures are followed in all Member States with regard to the initial placing of products on the market, with similar safety and security requirements and in accordance with comparable methods, since the tests in question have to be carried out in a laboratory approved by the competent authority or in accordance with an equivalent method.

Article 4 is one of the most important Articles in this Directive. The tests carried out by the Member States as a means of verifying compliance with requirements governing authorization to place explosives on the market, even if they differ from one Member State to another, are similar and are aimed at attaining the same objectives. This being the case, a fact acknowledged by the governmental experts consulted in this connection, and since repeating the tests might act as a barrier to trade, the Directive provides for mutual recognition of approvals of explosives and of marketing authorizations.

Article 5 establishes the bases for future harmonization of provisions governing the placing of explosives on the market in accordance with the principles of the "new approach".

Harmonization of these provisions requires, in particular, that differing national rules relating to approval procedures be harmonized. The present lack of harmonization is not attributable to the pursuit of different objectives in verification of conformity through testing, but to the fact that these tests, although often similar, are not identical.

As things stand at present, there are neither tests recognized as sufficient and satisfactory by all the Member States nor even initial harmonization measures in this area. It is evident that harmonized standards are indispensable at European level for the test methods and tests to ensure the conformity of explosives.

For this reason, and in accordance with the "new approach", Article 5 of this Directive defines the essential requirements which explosives must meet. In order to facilitate verification of compliance with the essential requirements, it is necessary to establish harmonized standards.

Compliance with the essential requirements makes it possible to attain a twofold objective: (1) avoidance of barriers to trade and (2) the placing on the market of products exhibiting a high level of protection, security and safety.

Article 6 specifies the rules to be followed when drawing up declarations of conformity of explosives that have undergone tests to verify compliance with standards defined on the basis of the essential requirements.

Article 7 stipulates the conditions under which transfers of explosives can take place in the Community. In accordance with the objective of establishing an area without internal frontiers, it is laid down first of all that the checks to be carried out will no longer take the form of frontier controls, but comprise routine checks conducted in a non-discriminatory manner throughout the territory of a Member State. This provision is similar to that set out in other texts with the same objective in view, such as Regulation 4060/89 of 21 December 1989 on the elimination of controls performed at the frontiers of Member States in the field of road and inland waterway transport.

Furthermore, in order to achieve precisely such elimination of frontier controls, this Article establishes an alternative system. This measure is necessary in order to ensure that explosives will continue to be subject by law to supervision, but without requiring such supervision to be based on physical controls at frontiers. In cases in which transfers of explosives require specific checks as a result of special circumstances, it is provided that information relating to such transfers must be imparted to the competent authorities. This information must be such as to enable the authorities to verify that the transfer conditions are satisfactory, particularly with regard to safety aspects.

Since special circumstances requiring this type of verification will not apply throughout the entire territory of the Community and transfers can also be performed mainly by regular operators possessing licences or authorizations for transport and/or use, transfers of explosives within the Community will be carried out on the basis of a general authorization valid for one year.

Article 8 deals with intra-Community cooperation between the supervisory authorities. Such cooperation is essential for, on the one hand, satisfactory verification of the transfer conditions in particular, but not only between Member States, and, on the other hand, mutual recognition of manufacturing and marketing authorizations.

This Article refers to Regulation (EEC) No 1468/81 on mutual assistance in relation to the law on customs or agricultural matters and hence provides not only for a proven mechanism of administrative assistance, but also for protection of the confidentiality of all information obtained and disseminated under this Directive.

In order to enable this Directive to be adapted to scientific and technical progress and to take account of future amendments to the United Nations Recommendations used as a basis for defining the scope of the Directive, Articles 9 and 10 provide for the setting-up of a committee comprising representatives from the Member States and chaired by a Commission representative.

The decision-making procedures of this committee comply with the provisions of Article 2 of the Council Decision of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission¹.

Article 11 lays down the requirements concerning documents that must be kept available. It ensures that the competent authorities can have immediate access to documents and records for the purpose of verification. Such an obligation is indispensable to the application of proper supervision and the establishment of mutual confidence between the different national authorities who must exercise such supervision on the basis of information of equivalent accuracy.

Article 12, while avoiding any interference with Member States' competence in criminal matters, ensures that infringements of this Directive will be subject to appropriate penalties within a Community framework.

1 OJ No L 197, 18.7.1987, p. 33.

ANNEX 1: ESSENTIAL REQUIREMENTS

This Annex sets out the general and specific requirements with which the explosives must comply. The tests envisaged for the purpose of determining compliance with the essential requirements are directly related to the safety and security aspects of the manufacture, use or transfer of explosives. As regards the special essential requirements, reference is made to the tests at present singled out and mentioned in the United Nations Recommendations on the Transport of Dangerous Goods.

ANNEX 2: "CONTENTS OF THE MANUFACTURER'S DECLARATION"

This Annex sets out the same general provisions as those laid down in similar Directives based on the "new approach".

II

(Preparatory Acts)

COMMISSION

Proposal for a Council Directive on the supervision and placing on the market of explosives for civil uses and the mutual recognition of authorizations and approvals relating to such explosives

(92/C 121/24)

COM(92) 123 final — SYN 409

(Submitted by the Commission on 13 April 1992)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas Article 8a provides that the internal market must be established not later than 31 December 1992; whereas the internal market must comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty;

Whereas the free movement of goods presupposes that certain basic conditions are fulfilled; whereas, in particular, the free movement of explosives presupposes, *inter alia*, mutual recognition of approvals and authorizations as a prelude to harmonization of laws on explosives;

Whereas explosives for civil uses are covered by detailed national regulations, mainly in respect of safety and security requirements; whereas such national regulations provide, in particular, that marketing authorizations be granted only where explosives have satisfactorily undergone a series of tests;

Whereas the existing supervision procedures are directed towards ensuring that such products meet safety and security requirements; whereas such supervision procedures may differ appreciably from one Member State to another without, however, adversely affecting compliance with safety and security requirements;

whereas, in order to avoid repetitive checks each amounting to barriers to trade, it is advisable to provide initially for mutual recognition of authorizations granted by the Member States to place explosives for civil uses on the market;

Whereas harmonization of provisions governing the placing of such explosives on the market presupposes that divergent national rules relating to approval and authorization procedures will be harmonized in order to ensure the free movement of these products without lowering existing and justified levels of safety and security in the Member States;

Whereas this Directive defines only the essential requirements which must be met by explosives conformity tests; whereas, in order to facilitate the process of demonstrating compliance with the essential requirements, it would be very useful to possess standards harmonized at European level, concerning, *inter alia*, methods for testing explosives; whereas such standards do not exist at present;

Whereas standards harmonized at European level are drawn up by private bodies and must retain their status as non-mandatory (voluntary) standards; whereas, in this connection, the European Committee for Standardization (CEN) has been recognized as one of the two bodies competent to adopt harmonized standards in accordance with the general guidelines for cooperation between the Commission and CEN and Cenelec, ratified on 13 November 1984; whereas, for the purposes of this Directive, 'harmonized standard' means a text setting out technical specifications adopted by CEN under a mandate conferred by the Commission, in accordance with Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations⁽¹⁾, as last amended by Commission Decision 90/230/EEC⁽²⁾, and in keeping with the abovementioned general guidelines;

⁽¹⁾ OJ No L 109, 26. 4. 1983, p. 8.

⁽²⁾ OJ No L 128, 18. 5. 1990, p. 15.

Whereas the rules concerning the transport of explosives are covered by international conventions and agreements; whereas, at international level, there are United Nations Recommendations on the transport of dangerous goods (including explosives), the scope of which extends beyond the Community alone; whereas, in consequence, this Directive does not concern the transport rules;

Whereas pyrotechnical articles for display or entertainment purposes require special measures to ensure the protection of consumers and the safety of the general public; whereas, in consequence, this Directive does not concern such products;

Whereas the definition of the products covered by this Directive should be identical with the definition of such products as set out in the abovementioned United Nations Recommendations;

Whereas the health and safety of workers producing or using explosives must also be protected; whereas a Directive is to be prepared covering, *inter alia*, the health and safety of workers engaged in activities relating to the manufacture, storage and use of explosives;

Whereas it is essential to establish administrative cooperation mechanisms; whereas it is appropriate in this connection for the competent authorities to base their approach on Council Regulation (EEC) No 1468/81 of 19 May 1981 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 ⁽¹⁾, as amended by Regulation (EEC) No 945/87 ⁽²⁾,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Definitions

1. This Directive shall apply to explosives as defined in paragraph 2.
2. For the purposes of this Directive, 'explosives' means the materials and articles considered to be such in the United Nations Recommendations on the transport of dangerous goods and falling within Category 1 of those Recommendations.

⁽¹⁾ OJ No L 144, 2. 6. 1981, p. 1.
⁽²⁾ OJ No L 90, 2. 4. 1987, p. 3.

3. This Directive shall not apply to:
 - explosives used under military control or under the control of police forces,
 - pyrotechnical articles used for purposes of display or entertainment.
4. For the purposes of this Directive:
 - 'United Nations Recommendations' means the recommendations drawn up by the UN Committee of Experts on the transport of dangerous goods (Orange Book), as published by the United Nations and as amended on the date of this Directive's adoption,
 - 'undertaking in the explosives sector' means any natural or legal person possessing a licence or authorization which entitles him to engage in the manufacture, storage, use and transfer of explosives or in trade in explosives,
 - 'placing on the market' means any disposal against payment or free of charge to third parties of explosives or the release of explosives for circulation in the Community.
5. This Directive shall be without prejudice to the definitions of explosives set out in the national regulations.

Article 2

Member States shall take all measures necessary to ensure that supervision of transfers within the Community, the approval of explosives and the provisions governing the placing of explosives on the market are subject to the requirements laid down in this Directive.

CHAPTER 2

HARMONIZATION OF LAWS RELATING TO EXPLOSIVES

Article 3

Approval of explosives

Member States shall ensure that the placing of explosives on the market is subject to approval of the product, substances or preparations. Such approval shall be granted only where the explosive has satisfactorily undergone a series of tests intended to demonstrate its compliance with requirements concerning the security, safety and health of persons and the protection of property. Such tests shall be carried out in a laboratory approved by the competent authority or, failing this, in accordance with procedures providing guarantees similar to those that would be provided by an approved laboratory.

*Article 4***Mutual recognition of authorizations**

Approvals of explosives and authorizations to place explosives on the market which have been granted in a Member State pursuant to this Directive shall be accepted by the other Member States as approvals of explosives and marketing authorizations which are valid within their territories.

*Article 5***Essential requirements**

1. Member States shall take all appropriate measures to ensure that explosives are placed on the market only if they comply with the essential requirements set out in Annex I.

2. Member States shall presume as complying with the essential requirements explosives which meet the relevant national standards adopted pursuant to harmonized standards of which the reference numbers have been published in the *Official Journal of the European Communities*; Member States shall publish the reference numbers of the said national standards.

3. Where a Member State or the Commission considers that harmonized standards do not fully comply with the essential requirements, the Commission or the Member State concerned shall place the matter before the Standing Committee set up under Directive 83/189/EEC.

That Committee shall deliver an opinion as soon as possible. In the light of that opinion, the Commission shall notify the Member States of the measures to be taken with regard to the standards and the publication thereof.

*Article 6***Declaration of conformity**

1. Member States shall presume as complying with the essential requirements referred to in Article 5 all explosives in respect of which the manufacturer or the agent responsible for placing them on the market can produce on request the declaration of conformity described in Annex II.

2. Where an explosive does not comply with the requirements set out in Annex I, Member States shall take appropriate measures in respect of the person responsible for the declaration of conformity. They shall inform the Commission and the other Member States thereof.

CHAPTER 3

PROVISIONS RELATING TO THE MOVEMENT AND SUPERVISION OF EXPLOSIVES IN THE COMMUNITY*Article 7***Supervision of transfers of explosives**

1. Checks carried out under Community law or national law in the event of transfers of explosives shall no longer take the form of controls at frontiers, but shall be conducted solely within the context of routine checks performed in a non-discriminatory manner throughout the territory of a Member State.

2. Where special safety requirements such as those referred to in paragraph 3 are unnecessary or in the case of regular customers, explosives can be transferred without prior provision of information within the meaning of paragraph 3. The competent authorities shall then grant an approval valid for a maximum period of one year and liable to suspension or withdrawal at any time on the basis of a reasoned decision. The document referred to in paragraph 4 shall refer solely to such approval and must accompany the explosives until they arrive at their destination.

3. Where transfers of explosives must be specially supervised in order to comply with special safety requirements in the territory or part of the territory of a Member State, the following information shall be imparted by the operator in question to the competent authorities in the Member State to which the explosives are to be transferred or through which the shipment is to transit:

- the name and address of the vendor or consignor, the purchaser or consignee or, where appropriate, the owner; these particulars must be detailed enough to enable the operators to be contacted and confirmation to be obtained that the persons in question hold the requisite approvals or authorizations,
- the number and quantity of explosives being transferred,
- a full description of the explosive in question and of the means of identification,
- particulars of the approval referred to in Article 3,
- the means of transfer,
- the dates of departure and of arrival.

The competent authorities shall examine the conditions under which the transfer is to take place, in particular with regard to special safety and security requirements.

In the event of transit through the territory of a third Member State, that State shall likewise examine the transfer conditions.

4. Where a Member State authorizes a transfer, it shall issue a document which includes all the information referred to in paragraph 3. Such a document must accompany the explosives until they arrive at their destination. It must be produced for perusal by the competent authorities whenever they so request.

5. Each Member State shall forward all relevant information at its disposal on the subject of definitive transfers of explosives to Member States from which explosives are to be transferred, through the territory of which they are to transit or to which they are to be transferred.

Article 8

1. Member States shall set up information exchange networks for the implementation of this Directive not later than 31 December 1992. They shall notify the other Member States and the Commission of the national authorities responsible for forwarding or receiving information and for applying the procedures referred to in Articles 3 and 7.

2. For the purpose of implementing this Directive, the provisions of Regulation (EEC) No 1468/81, in particular those relating to confidentiality, shall apply *mutatis mutandis*.

CHAPTER 4

OTHER PROVISIONS

Article 9

Any amendments necessary to adapt the Annexes to scientific and technical progress in the fields covered by this Directive and to take account of future amendments to the United Nations Recommendations shall be adopted in accordance with the procedure laid down in Article 10.

Article 10

The Commission shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

Article 11

Documents

Member States shall compile a register of all undertakings in the explosives sector which hold approvals or authorizations.

Member States shall determine whether such undertakings possess a system for keeping track of explosives such that those holding explosives can be identified at any time.

Undertakings in the explosives sector shall keep such records of their transactions as are necessary to fulfil the obligations set out in this Article.

The records must be kept for a period of not less than three years from the end of the calendar year in which the transaction recorded took place, even if the undertaking has ceased trading.

The records must be kept readily available for inspection by the competent authorities at their request.

Article 12

Penalties

Each Member State shall take appropriate measures to ensure proper implementation of all the provisions of this Directive and, in particular, shall specify the penalties to be imposed in case of breach of the said measures; such penalties must be effective, proportionate and dissuasive.

Article 13

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive before 31 December 1992. They shall forthwith inform the Commission thereof. They shall apply the provisions as from 1 January 1993.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

law which they adopt in the field governed by this Directive.

2. Member States shall communicate to the Commission the texts of the provisions of national

Article 14

This Directive is addressed to the Member States.

ANNEX I

ESSENTIAL REQUIREMENTS

I. General requirements

1. Explosives must be so designed, manufactured and tested that their use does not compromise the safety, security and health of persons or jeopardize property or the environment.
2. Explosives must attain the levels of effectiveness intended by their manufacturer without giving rise to risks or other nuisance factors.
3. Explosives must be so designed, manufactured and packaged that their safety features and the effectiveness thereof are not impaired under the conditions of storage, transfer or use to which the product is likely to be exposed.
4. Risk levels and categories:

the optimum safety level to be taken into account during the design of the product shall be that beyond which constraints arising during manufacture, transfer, storage or use would preclude the product's being placed on the market or used.

II. Additional requirements specific to the hazards to be averted

1. *Stability in heat*

Explosives must remain stable at temperatures to which they may be exposed during their storage, transfer or use.

2. *Sensitivity to impact and friction*

Explosives must meet minimum safety criteria in respect of impact and friction so that they can be manufactured, stored, transferred and used without danger.

3. *Detonation sensitivity*

Explosives must be reliably detonated by the recommended detonator series. Where explosives are in the form of cartridges, the detonation must be reliably transmitted through a set of cartridges.

4. *Compatibility of components*

Explosives must contain only chemically and physically compatible components and must not give rise to any risk of chemical instability.

ANNEX II

Contents of the declaration by the manufacturer or by the agent responsible for placing the product on the market

The declaration by the manufacturer or by the agent responsible for placing the product on the market, which is referred to in Article 6 (1), must contain the following information:

- the name and address of the manufacturer or the agent,
 - a description of the tests undergone by the explosive,
 - the identity of the person responsible for the declaration.
-

FINANCIAL STATEMENT

SECTION 1: FINANCIAL IMPLICATIONS

1. Title of operation

Supervision and placing on the market of explosives for civil uses and the mutual recognition of authorizations and approvals relating to such explosives.

2. Budget headings involved

- Item A-2510: expenditure on meetings of Committees whose consultation is compulsory in the procedures for drafting Community legislation;
- Article B5-300: measures for completing the internal market.

3. Legal basis

- Article 100a of the Treaty;
- Council Resolution of 7 May 1985 on a new approach to technical harmonization and standards.

4. Description of operation

4.1 Specific objectives of operation

The operation in question comprises:

- the setting-up of a system for supervising transfers of explosives to replace that based on frontier controls;
- determination of conditions for mutual recognition of approvals and authorizations;
- a contribution to the preparation of harmonized standards which will facilitate implementation of the Directive and strengthen the competitiveness of Community industry.

4.2 Duration

Specific operation (this operation will continue beyond 1992, the decisions being taken on an ad hoc basis every year).

4.3 Target population

National administrations, industrial circles, citizens and consumers.

5. Classification of expenditure or revenue

- Item A-2510: non-differentiated appropriation;
- Article B5-300: differentiated appropriation.
Non-compulsory expenditure.

6. Type of expenditure or revenue

Apart from administrative expenditure associated with the management of Community texts, expenditure will comprise financial support from the Commission for the standardization bodies. As in the case of the other "New Approach" Directives, the Commission intends to entrust the task of preparing the relevant harmonized standards to CEN. The mandate necessary for this task is covered by the framework contract signed on 10 October 1985, which provides for precisely such financial support from the Commission.

7. Financial impact on appropriations for operations

7.1 Method of calculating total cost of operation

An explanation is required here of the method of calculation in connection with Article B5-300.

At the European Committee for Standardization (CEN), the financing amount calculated on the basis of experience with existing mandates shows that the average cost to the Commission per new standard is ECU 50 000.

It is difficult to estimate the number of standards that will need to be prepared in the case of explosives.

At this stage, however, it can be assumed that the number of CEN standards of the A/B type (family of products) will be in the region of 25. Nevertheless, it is necessary to provide for a safety margin of 5 additional standards. In this way, the impact could be estimated, for 30 standards, as the expenditure of ECU 1 500 000 in commitment appropriations in 1993.

7.2 Proportion of mini-budget in total cost of operation

Not applicable.

7.3 Indicative schedule of commitment and payment appropriations
(Article B5-300).

Not applicable.

8. What anti-fraud measures are planned in the proposal for the operation?

The anti-fraud measures (checking, possible audit, contractor's obligation under the relevant contract) are included in the contracts between the Commission and the body entrusted with the task.

SECTION 2: ADMINISTRATIVE EXPENDITURE

In the administrative sphere, the cost of three new types of activity has to be borne:

- periodic meetings of the Committee of experts from the Member States, provided for under Article 10 for the purpose of continuously monitoring the proper functioning of the system and its adaptation to technical progress;
- the setting-up of a management structure within the Commission for the purpose of providing liaison with the Member States in order to fulfil the information obligations under Article 9;
- finally, in order to ensure that Article 6 and 7 are implemented, provision of a technical consultation link between the Commission and the standardization bodies for the purpose of interpreting the essential requirements.

Staff requirements in this regard will be covered by the existing staff of DG III. As regards the abovementioned meetings, provision should be made for two meetings per year of experts from the Member States as from 1993, or an expenditure of ECU 23 000 for each financial year, the sum of ECU 480 to be earmarked per meeting and per expert (Item A-2510, Group 3).

SECTION 3: ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

1. Objectives and coherence with financial programming

(1) The purpose of the proposed operation is to:

- bring about the completion of a single market without internal frontiers which will allow the free movement of explosives, but will not lower the requisite level of supervision of such products;
- remove the barriers to trade that can result from the proliferation of tests for the approval of explosives through mutual recognition of approvals;
- finally, work towards harmonization in this sector, a corollary necessary to market unity.

These are obligations within the meaning of the Treaty, for which no alternative solution can be contemplated.

It should be pointed out that work in the field of explosives has already been performed within the framework of the United Nations with regard to tests for the conformity and harmonization of explosives. References are made to this work in the essential requirements, and the inclusion of new specific measures can be envisaged in order to ensure compliance with the essential requirements defined by the Commission. Such measures will form a solid basis for the European standardization activities. The achievements described above are such as to reduce the amount of work required in the field of standards and consequently the impact on the Community budget.

(2) The operation is incorporated in the financial programming of DG III and covered by the appropriations allocated to technical standardization and harmonization.

(3) The broader objective is completion of the internal market.

II. Grounds for the operation

Standardization is necessary in order to achieve real harmonization of provisions governing the placing of explosives on the market; without such harmonization, tests and conditions considered to be essential for placing such products on the market might prove to have the effect of barriers to trade.

III. Monitoring and evaluation of the operation

The implementation of this Directive will be monitored by the Committee set up under the Directive. The evaluation will be based on reports to be prepared on the state of progress achieved in adoption of the standards. Such evaluation will be performed annually.

Statement of impact on competitiveness, employment and businesses,
in particular small and medium-sized enterprises (SMEs)

I. What is the main reason for introducing the measure?

This proposal for a Directive has two objectives in view:

- to avoid physical controls at frontiers by setting up an alternative supervision system based on authorizations for transfers of explosives;
- to bring about mutual recognition of authorizations for the manufacture and marketing of explosives so as to ensure that checks for conformity with the requisite standards do not have the effect of barriers to trade.

Such a proposal is necessary and inevitable if the provisions of the Treaty are to be implemented, in particular Articles 8a and 30.

II. Features of the businesses concerned

The impact to be taken into account differs according to whether the businesses involved are:

- explosives producers;
- explosives users.

As regards producers, some 26 firms manufacture explosives within the Community. With 50/60 dealers and distributors, they achieve a turnover of ECU 900 million, of which ECU 200 million is attributable to intra-Community trade. The firms in question are not SMEs.

In the case of users, it is difficult to provide evaluations. It should be pointed out, however, that the Directive will have no impact on them.

As regards the geographical distribution of the businesses, it can be demonstrated that explosives producers are concentrated in much the same manner as firms in the chemical sector in all, or almost all, the Member States (with the exception of Denmark) and are to be found in heavily industrialized areas.

Are they concentrated in less advantaged regions of the Community which are:

(a) eligible for national regional aid schemes?

NO.

(b) eligible for ERDF assistance?

NO.

III. What direct obligations does this measure impose on businesses?

The Directive does not change the existing situation with regard to the obligations of explosives producers and users.

On the other hand, the economic environment of such businesses will improve as barriers to trade are removed.

IV. What is the likely effect on:

(a) employment? None.

(b) investments and the setting-up of new undertakings? The economic environment will be improved, although it is not possible to determine whether there will be any perceptible effect on investments and new undertakings.

(c) business competitiveness? See reply to question III.

V. Do any special measures apply in respect of SMEs?

No.

VI. Have both sides of industry been consulted?

The proposal for a Directive has been discussed with experts from the industrial federations (CEFIC, FEEM). These bodies support the Commission's approach and therefore hope that the work in this sector can bring about real harmonization of provisions governing the placing of the products in question on the market. In addition, the representatives of the Mines Safety and Health Commission have been fully consulted. That body expressed a favourable opinion at its meeting on 23 January 1992.

DOCUMENTS

EN

14

Catalogue number : CB-CO-92-137-EN-C

ISBN 92-77-42432-X
