

Guidance on the European Union Marketing and Use of Explosives Precursors Regulations

**EU No 98/2013 and
S.I. No 611 of 2014**



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1. What is an explosives precursor?

An explosives precursor is a chemical substance which can be made into an explosive with relative ease e.g. by mixing or blending with other substances, or by simple chemical processing. The vast majority of chemicals are used for legitimate purposes by consumers, in end products such as cleaning solutions, or by industry to produce products such as fertilisers, paint or food ingredients, or as solvents to dissolve materials, to name but a few legitimate uses. Some chemicals do however have the potential to be misused for the illicit manufacture of home made or improvised explosive using simple kitchen chemistry recipes and using various household chemicals available to all. Indeed, relatively small amounts of certain chemicals can be sufficient to manufacture a significant amount of explosives.

2. What is the background to this Regulation?

In recent years, the EU has experienced more and more terrorist and criminal attacks using explosives, home made explosives (HMEs) and improvised explosive devices (IEDs), not to mention various attacks that were prevented or which failed. Europol (the European Union's law enforcement agency) reports confirm that HMEs, fabricated from chemical precursors, are the means most frequently used to carry out attacks.

Following on from the Madrid (2004), London (2005) and other bombings, an EU Action Plan on Enhancing the Security of Explosives was approved in April 2008. Included in this plan was a measure to regulate and control the marketing and use of explosives precursors. This led to the publication in 2013 of: **Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 Jan 2013 on the marketing and use of explosives precursors**¹.

3. What is in the EU Regulation (EU) No. 98/2013?

a) Objectives of the Regulation

The overall aim of the Regulation is to establish harmonised rules across the EU concerning the making available, introduction into the State², acquiring, possession and use of substances or mixtures that could be used for the illicit manufacture of homemade explosives, with a view to limiting their availability to the general public³, and ensuring that appropriate reporting of suspicious transactions throughout the supply chain is introduced.

¹ This Regulation was amended on 1st March 2017 with three additional substances being added to Annex II (see Table II on page 9)

² e.g. importing.

³ member of the general public' is defined as "any natural person who is acting for purposes not connected with his trade, business or profession."

b) Main Provisions of the Regulation

In accordance with the provisions of the Regulation, Member States essentially had a choice of:

- Introducing a general prohibition (ban) on the availability of restricted explosive precursors⁴ (Article 4.1 of the Regulation) i.e. in concentrations higher than those listed in Annex 1 of the Regulation
- As an alternative to the ban mentioned above, a Member State may establish a licensing regime where licences are issued by a competent authority to members of the general public who wish to introduce into the State, acquire, possess or use the restricted explosives precursors, listed in Annex I, for legitimate purposes (Article 4.2). The licence must be produced to the economic operator⁵, if requested, for each transaction. The Member State shall lay down rules for the granting of these licences and they may be issued for single or multiple transactions and be valid for up to three years.
- A registration system is also allowed for certain precursors, where each sale is recorded by the retailer.

Following consultation between the Department of Justice and Equality, An Garda Síochána, the Department of Jobs, Enterprise and Innovation, the Revenue Commissioners and the Department of Agriculture and Food, the option chosen by Ireland was the introduction of a licensing system whereby the applicant applies for a “Garda Restricted Explosives Precursor Certificate” in order to acquire, possess, use, or introduce into the State any of the listed restricted precursors.

c) In all cases;

- economic operators must report to a national contact point⁶ any suspicious transaction⁷ or attempted suspicious transaction or significant disappearance or theft involving the substances listed in either Annex I or Annex II of the Regulation and ensure that the substances are properly labelled indicating that their possession or use is subject to certain restrictions.
- it will continue to be possible for members of the general public to acquire the various chemicals listed in Annex 1 of the Regulation (See Appendix 1) once the concentration level is just below, or equal to, the particular thresholds given, and
- in addition, professional users of the substances will not be affected, other than being subject to the provisions concerning the reporting of suspicious transactions (see below).

⁴ ‘Restricted explosive precursor’ means a substance listed in Annex I of the Regulation, in a concentration higher than the corresponding limit value set out therein.

⁵ “economic operator” means any natural or legal person or public entity or group of such persons and/or bodies which delivers products or services on the market

⁶ The contact point is in Garda HQ and the details are in Section 8 of this Guidance

⁷ ‘suspicious transaction’ means any transaction concerning the substances listed in the Annexes, or mixtures or substances containing them, including transactions involving professional users, where there are reasonable grounds for suspecting that the substance or mixture is intended for the illicit manufacture of explosives. Note that this requirement applies to all concentrations of the listed precursors and not just the threshold limits in the Annexes

4. Which Irish legislation covers explosives precursors?

- a) The EU Regulation takes direct effect across the Community; however a Statutory Instrument (S.I.) was required to give effect to Ireland's approach to implementing the Regulation. Each Member State is also obliged to lay down rules on penalties applicable to infringements and measures to ensure they are implemented. In this context the Irish legislation, which complements the EU Regulation, is S.I. No 611 of 2014, the European Union (Marketing and Use of Explosives Precursors Regulations 2014).
- b) It should also be noted that Ireland already has, since the 1970s, experience of controlling certain precursors under explosives legislation which had been used to manufacture explosives by subversive groups. (See Para 7 below)

5. What is in the new Irish regulation S.I. No 611 of 2014?

This regulation reflects the EU Regulation described above and comprises the following measures:

- a) Restrictions (Regs 3,4 & 5)
 - An economic operator (normally the retailer), shall not make restricted precursors available to the public unless a valid Certificate is produced for the acquisition, possession, use etc, and the transaction is recorded on the Certificate.
 - The economic operator, if intending to make the restricted explosive precursors available to the public, must either affix an appropriate label, or verify that such a label is affixed to the packaging, so that the relevant restrictions are clearly indicated (e.g. "The acquisition, possession or use by the general public is restricted").
 - A member of the general public shall not acquire, introduce into the State, possess, or use a restricted precursor without a valid Certificate.
- b) Application for Certificate (Regs 6,7,8 9, 10, 11)
 - Application is made to An Garda Siochana on the form provided, together with a fee of €25, before the proposed acquisition or introduction into the State. It is an offence to provide false or misleading information when applying.
 - Gardai may seek additional information and make such enquiries as necessary, and may consider intended use and legitimate interest, security arrangements, public safety, security and order, and whether the applicant is a fit and proper person, or any other relevant circumstances.
 - The Gardai can issue a Certificate with or without conditions, (including relating to use, period, amount, concentration, location or storage), or refuse a Certificate if not satisfied on the grounds

considered above. Refusal and reasons will be notified to the applicant along with information on appeal.

- A Certificate can cover single or multiple transactions up to a maximum of a three year period.
- The certificate must be produced on request from a Government Inspector of Explosives, Officer of Customs and Excise or a member of the Garda Siochana.
- A Certificate can be suspended or revoked for breaches of conditions including acquiring, introducing into the State, possessing or using a REP otherwise than in accordance with the certificate, failing to comply with a specified condition, or not being a fit person to acquire, introduce into the State, possess or use the REP.
- An appeal can be made to the District Courts for refusal, suspension or revocation of a Certificate and imposition of a condition.

c) Suspicious Transactions (Reg 12)

- Economic operators can refuse a suspected suspicious transaction and shall report such suspicious transactions or attempted suspicious transactions and/or any significant thefts or disappearances to the specified Garda Contact point.

d) Offences (Reg 13,14)

- Reg 3(2): Economic operator making restricted explosive precursors (REPs) available to general public without being satisfied that a valid Certificate is produced for the product.
- Reg 3(2): Economic Operator not recording transaction(s) on the Certificate.
- Reg 4 (1): Economic Operator not affixing appropriate label on REP product, or where the label is already fixed, not ensuring that it is an appropriate label.
- Reg 5 : Person acquiring, introducing into State, possessing, or using an REP unless they are the holder of a valid Certificate for same.
- Reg 6(3): Person supplying false/misleading information in application for Garda Certificate.
- Reg 8(2): Person not complying with conditions on Certificate
- Reg 9(1): Not producing a Certificate when requested by Government Inspector of Explosives, Officer of Customs & Excise, or a member of An Garda Siochána.
- Reg 10 (2): Person with suspended/revoked certificate not being

compliant in returning the certificate to the Competent Authority..

- Reg 12 (2): Economic Operator not reporting suspicious transactions, attempted suspicious transactions, or significant disappearances, or thefts of precursors
- Reg 14: Offences by “bodies corporate” are also specified in Reg 14.

e) Penalties (Reg 13)

A standard scale of penalties applies to the specified offenses;

- On summary conviction, to a Class A fine, up to €5,000 or imprisonment up to 12 months, or both.
- On indictment conviction, to a fine up to €20,000 or imprisonment up to three years, or both
- Forfeiture of the precursors.

f) Other information included in the Irish Regulation (S.I. No 611 of 2014)

- Schedule 1: Application Form for Garda Restricted Explosives Precursor Certificate.
- Schedule 2: Sample Garda Restricted Explosives Precursor Certificate

6. Which chemical substances are of concern?

Table 1 below outlines the substances of main concern, i.e. the **restricted explosive precursors**, the threshold limits, and the main commercial uses of these. When setting the threshold limits, the intention was to identify threshold limits that a member of the public would not normally require and so to minimise the disruption to normal legitimate trade in these substances. Following EU consultation and negotiation, the list of restricted explosives precursors was agreed as follows:

Table 1
List of Substances in Annex I of the Regulation
Substances not to be made available unless concentration is equal to or lower than the limit values set out below, (known as Restricted Explosive Precursors)

	Substance	Limit Value	Main commercial uses
1	Hydrogen Peroxide	12% w/w	Bleaching agent, (e.g. paper, textile and cosmetic industries) antiseptic and water disinfectant, (e.g swimming pool steriliser)
2	Nitromethane	30% w/w	Fuel for model kits and drag racing, varnish & paint
3	Nitric acid	3% w/w	Fertiliser and explosives industry, pharmaceutical products, plastics.
4	Potassium Chlorate*	40% w/w	Safety matches, pyrotechnics, laboratory.
5	Potassium Perchlorate	40% w/w	Bleaching and pyrotechnics
6	Sodium Chlorate*	40% w/w	Bleaching, oxygen generators and formerly weed control (now banned in EU as a herbicide)
7	Sodium Perchlorate	40% w/w	Used to make other perchlorates and rocket fuel

* **Note:** The substances in bold text are also restricted under existing Irish Legislation as “deemed explosives”. (See Para 4 above)

Whilst the main focus of the regulation is to restrict ready access to the restricted explosive precursors outlined above, other substances are also used for illicit purposes. However, due to their wide-spread use within a vast supply chain their control is more difficult. Article 9 of Regulation (EU) 98/2013 therefore imposes a duty on Economic Operators to monitor sales of both the substances listed in Annex I as well as of a number of other identified substances, as detailed in Annex II of the Regulation, and to report any suspicious transactions, significant disappearances and thefts to authorities.

The reporting of suspicious transactions, significant disappearances or thefts applies regardless of listed concentrations⁸ and regardless of whether the sale is to the general public or business to business transactions. Therefore industry also has a role to play in monitoring ‘Business to Business’ transactions to determine any suspicious activity and then report this to authorities. In addition to the reporting of restricted precursors listed in Table I above, the following Table II lists additional precursors which must also be reported.

⁸ Notwithstanding this, for very low concentrations (i.e. products containing less than 1%, or where mixtures contain 5 or more other ingredients, or where fertilisers are not labelled for nitrogen (N) content), these may be ignored for reporting purposes.

Table II
List of Substances in Annex II of the Regulation (as amended on 1st March 2017)
Substances on their own or in mixtures or in substances for which suspicious transactions, disappearances and thefts shall be reported

	Substance	Main Commercial Uses
1	Hexamine	Plastics, camping and hobby fuel tablets, medicine and laboratory
2	Sulphuric Acid	Widespread chemical industrial use for fertilisers, detergents, petrochemicals, battery acid, drain cleaning products
3	Acetone	Solvent, paints, varnish, adhesives, cleaning agent
4	Potassium Nitrate*	Food preservative, rocket fuel, ceramics, toothpaste
5	Sodium Nitrate*	Food additive, water treatment, rocket fuel, ceramics
6	Calcium Nitrate	Fertilisers, concrete, laboratory
7	Calcium ammonium nitrate	Fertilisers
8	Ammonium Nitrate^{9*} > 16%	Fertilisers,
9	Aluminium Powder ¹⁰	Paints, chemicals, metallurgical industry
10	Magnesium Nitrate Hexahydrate ¹¹	Fertiliser, chemicals, ceramics
11	Magnesium Powder ¹²	Petrochemicals, aircraft, engineering

7. Does Ireland already restrict explosives precursors?

⁹ Note that Ammonium Nitrate (>16%N) currently cannot be sold to the general public under REACH regulations which is enforced by the Health and Safety Authority in Ireland

¹⁰ Commission Delegated Regulation (EU) 2017/2014 which came into effect on 1st March 2017

¹¹ Commission Delegated Regulation (EU) 2017/2015 which came into effect on 1st March 2017

¹² Commission Delegated Regulation (EU) 2017/2016 which came into effect on 1st March 2017

Ireland has, since the 1970s, experience of controlling certain precursors under explosives legislation which had been used to manufacture explosives by subversive groups. Five substances are currently treated as ‘deemed explosives’¹³ under Sec 104 of the Explosives Act 1875, and consequently require the same licensing and control regime as conventional explosives.

The same restrictions and controls as applies to explosives apply to these substances, including importation, supply, storage, sales and “keeping for private use” restrictions (the latter requiring the purchaser to have a Garda Certificate which must be presented for purchase). These substances are:

- Ammonium nitrate (and mixtures containing >79% AN)
- Sodium Chlorate
- Potassium Nitrate (and mixtures containing >5% PN)
- Sodium Nitrate (and mixtures containing >5% SN), and
- Nitro-benzene.

These restrictions are still in place and the status of these “deemed explosives” is unchanged under the EU Regulation. They will however be reviewed in the context of a new Explosives Bill which is due to be published in 2015.

8. Where can additional information be found?

Information	Location
Regulation S.I. No 611 of 2014 on the marketing and use of explosives precursors	http://www.irishstatutebook.ie/eli/2014/si/611/made/en/pdf or http://www.justice.ie/en/JELR/Pages/explosives_precursors
Regulation (EU) No. 98/2013 on the marketing and use of explosives precursors	http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0098&from=EN
Commission Delegated Regulation (EU) 2017/214 on Aluminium Powder	http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R0214
Commission Delegated Regulation (EU) 2017/215 on Magnesium Nitrate Hexahydrate	http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2017.034.01.0003.01.ENG

¹³ The relevant Statutory Instruments are :

- S.I. No. 191 of 1972, Explosives (Ammonium Nitrate and Sodium Chlorate) Order, 1972, declares that ammonium nitrate, sodium chlorate and mixtures containing > 79% Ammonium Nitrate to be explosives
- S.I. No. 233 of 1972 Explosives (Nitrobenzene) Order, 1972: Declares Nitrobenzene to be an explosive and
- S.I. No. 273 of 1986 Explosives (Potassium Nitrate and Sodium Nitrate) Order, 1986: Declares that Potassium Nitrate, Sodium Nitrate and mixtures containing > 5% of either of these to be explosives

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Commission Delegated Regulation (EU) 2017/216 on Magnesium Powder	http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R0216
Guidelines by the EU Commission on the marketing and use of explosives precursors	https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/crisis-and-terrorism/explosives/explosives-precursors/docs/guidelines_on_the_marketing_and_use_of_explosives_precursors_en.pdf
GD 2/2014 - Guidance for Retail Sector on the Sale of Explosives Precursors	http://www.justice.ie/en/JELR/Pages/explosives_precursors
GD 3/2014: Guidance for Members of the General Public on the introduction, acquisition, possession and use of explosives precursors	http://www.justice.ie/en/JELR/Pages/explosives_precursors
“Deemed explosives regulations” S.I. No 191 of 1972 S.I. No 233 of 1972 S.I. No 273 of 1986	http://www.irishstatutebook.ie
GD 2013-5 Guidance for Import Storage etc of Deemed Explosives Rev 15 May 2013	http://justice.ie/en/JELR/Pages/WP15000174
Point of Contact for reporting suspicious transactions or thefts/disappearances of explosives precursors	<p>Detective Chief Superintendent Liaison & Protection Garda Headquarters Phoenix Park Dublin 8</p> <p><u>Phone:</u> +353 1 6661782(office hours), <u>or</u> Garda 24hr Confidential Line: 1800 666 111. <u>or</u> 999 or 112 (in the event of a serious or imminent threat)</p> <p><u>Email:</u> Liaisonandprotection_DV@garda.ie</p>