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COMMISSION STAFF WORKING DOCUMENT

Monitoring Programme for Regulation (EU) 2019/1148 of the European Parliament and of the Council of 20 June 2019 on the marketing and use of explosives precursors amending Regulation (EC) No 1907/2006 and repealing Regulation (EU) No 98/2013

1. Context

In line with the Interinstitutional Agreement on Better Law-Making¹, Union legislation should be comprehensible and clear, allow citizens, administrations and businesses to easily understand their rights and obligations, include appropriate reporting, monitoring and evaluation requirements, avoid overregulation and administrative burdens, in particular on Member States.

Regulation (EU) 2019/1148 of the European Parliament and of the Council of 20 June 2019 on the marketing and use of explosives precursors amending Regulation (EC) No 1907/2006 and repealing Regulation (EU) No 98/2013, hereafter “the Regulation”, entered into force on 1 August 2019 and will apply as of 1 February 2021. Pursuant to Article 20 of the Regulation, the Commission shall establish a detailed programme for monitoring the outputs, results and impact of the Regulation, by 1 August 2020. Pursuant to Article 21 of the Regulation, the Commission shall carry out an evaluation of the Regulation by 2 February 2026.

2. Aim and purpose

Monitoring is a continuous and systematic process of data collection about an intervention. It generates factual information for future evaluations and helps identify actual problems in the application of legislation. Monitoring is necessary to allow policy makers and stakeholders to check if policy implementation is ‘on track’ and to generate information that can be used to evaluate whether it has achieved its objectives. While monitoring looks at “what” changes have occurred since the entry into force of a policy intervention, evaluation looks at “whether” the intervention has been effective in reaching its objectives, and whether the objectives have been met efficiently (i.e. at least cost), as well as the reasons for the success or otherwise of an intervention.

This monitoring programme sets out the means by which, and the intervals at which data and other necessary evidence are to be collected to monitor the Regulation. Subject of the monitoring are the application of the Regulation, compliance with its obligations and its enforcement. To this end, it sets out the objectives of the Regulation, as well as indicators to measure the achievement of those objectives. It devises a strategy to collect reliable data and evidence on the indicators at regular intervals. It specifies the actions to be taken by the Commission and Member States in collecting and analysing those data and other evidence.

In addition, the Commission will gather contextual information, such as on the evolving threat posed by explosives precursors. This contextual information is important also to measure the wider impacts of the application of the Regulation. This monitoring programme should enable the Commission to assess progress towards the objectives by monitoring the outputs, results and, to the extent possible, the impacts of the Regulation.

The evaluation of Regulation (EU) No 98/2013 showed several limitations in terms of data collection.² In general, accurate data and statistics were rarely available (e.g. number of granted licences, number of suspicious transactions, costs for application). Furthermore,

¹ OJ 2016 L 123/1 of 12.5.2016.

² SWD (2018) 104.

information on the misuse of explosives precursors is often not publicly accessible. With the monitoring programme, the Commission aims to set up a framework for the regular and comprehensive collection of data. This will not only aid to see whether the Regulation is on track, but also facilitate its evaluation by February 2026.

Pursuant to the Regulation, Member States are required to provide the Commission with a targeted set of information. In order to measure adequately all the indicators set out below, reviewing additional information seems necessary. With a view to minimising the administrative burden on national authorities as much as possible, the Commission will collect most of this additional information itself.

3. Objectives of the Regulation

The Regulation pursues four general objectives:

- I. Limiting the availability of restricted explosives precursors to the general public across the EU;
- II. Improving detection of potential threat and misuse of explosives precursors throughout the EU;
- III. Raising awareness along the supply chain of relevant restrictions and obligations as regards the marketing and use of restricted explosives precursors, including online;
- IV. Facilitating the free movement of explosives precursors within the EU.

4. Indicators

An indicator is a quantitative or qualitative measure of how close one is to achieving a set goal (e.g. policy outcome). They help to analyse and compare performance and can be useful for determining policy priorities. Indicators should only give one perspective of the performance of a policy intervention, which is highly dependent on the type of indicator selected, data, other influences, etc. It is important, therefore, to use other complementary approaches to monitoring, such as qualitative analysis or surveys.

This section identifies a number of indicators for measuring the achievement of the four objectives of the Regulation. These indicators are divided into outputs on the one hand, and results and impacts on the other hand.

Implementation – Outputs

4.1 Limiting the availability of restricted explosives precursors to the general public across the EU

The Regulation prohibits the making available of restricted explosives precursors to members of the general public, unless a Member State chooses to set up a system of licensing.

As regards Member States that issue licences to members of the general public:

- a. The restricted explosives precursors in respect of which the Member State provides for a licencing system;
- b. Number of licence applications and licences issued for each Member State;
- c. Most common reasons in each Member State for refusing to issue licences;

- d. The criteria applied when issuing a licence;
- e. The number of requests made and responses received to/from the European Criminal Records Information System (ECRIS) for the purpose of cross-border background checks in the application for licenses;

As regards all Member States:

- f. The availability of restricted explosives precursors in stores and marketplaces that focus on the general public, online and offline in Member States;
- g. Restrictions going beyond those required by the Regulation (use of the safeguard clause).

Application – Results and impacts

4.2 Improving detection of potential threat and misuse of explosives precursors throughout the EU

- a. The number of reported suspicious transactions, significant disappearances and thefts per Member State, distinguishing between offline and online activities;
- b. The kind of procedures to detect suspicious transactions applied by economic operators and online marketplaces, distinguishing between offline and online activities;
- c. The evolving threat of regulated and non-regulated explosives precursors throughout the EU;
- d. The number of contacts between National Contact Points;
- e. The use and attempted use of explosives precursors to manufacture homemade explosives (terrorist and criminal) in Member States.

4.3 Raising awareness along the supply chain of relevant restrictions and obligations as regards the marketing and use of restricted explosives precursors, including online

- a. Information on inspections carried out, including the number of inspections and economic operators and online marketplaces covered, distinguishing between offline and online activities;
- b. Information on awareness-raising actions (e.g. number and types of actions);
- c. The degree to which economic operators record transaction data, and the length of retention of transaction data;
- d. The degree to which the obligations of the Regulation are correctly understood by economic operators, online marketplaces, professional users, members of the general public and competent authorities;
- e. The number of regular exchanges between law enforcement authorities, national supervisory authorities, economic operators, online marketplaces and representatives of the sectors that use regulated explosives precursors.

4.4 Facilitating the free movement of explosives precursors within the EU

- a. Whether Member States recognise licences issued by another Member State under the Regulation, and if so, by how many Member States;
- b. The number of EU cross border purchases of restricted explosives precursors;
- c. Whether the format for a licence as provided in the Regulation is used, either always or sometimes;

- d. The use of the customer declaration provided for by the Regulation (e.g. number of instances).

The Commission will assess all of these indicators over time to identify trends.

5. Data collection and intervals

In listing this set of data for collection, and by whom and at which intervals, the Commission took into account the burden and costs on competent authorities, economic operators and online marketplaces.

In view of the 1 February 2022 deadline for yearly reporting (1 January - 31 December) by Member States pursuant to Article 19(1) of the Regulation, the additional data collection pursuant to this monitoring programme also will start on 1 February 2022 and subsequently take place every two years.

5.1 Collection by Member States:

Member States that maintain or establish a licensing regime shall notify all measures that they take in order to implement the licensing regime provided for in Article 5(3) of the Regulation to the Commission. This includes information on:

- a. the restricted explosives precursors in respect of which the Member State provides for a licencing system; (indicator 4.1.a)
- b. the criteria applied when issuing a licence. (4.1.d)

When after this initial notification, changes occur in the national framework for licensing, the Member State shall inform the Commission without undue delay.

Member States shall provide the Commission with the data and other evidence necessary for the monitoring (Article 20(3) of the Regulation). In particular, Article 19 of the Regulation obliges Member States to provide the Commission annually with information on:

- c. the numbers of reported suspicious transactions, significant disappearances and thefts respectively; (4.2.a)
- d. the number of licence applications, licences issued, and the most common reasons for refusing to issue licences; (4.1.b/4.1.c)
- e. information on awareness-raising actions; (4.3.b)
- f. information on inspections, including the number of inspections and economic operators and online marketplaces covered. (4.3.a)

Member States are to distinguish between reports, actions and inspections that relate to online activities or to offline activities. The Commission will provide a template that Member States may use to report this information.

Under Article 14 of the Regulation, Member States are to notify safeguard measures. The notification of safeguard measures until 1 February 2021 is covered by Article 13 of Regulation (EU) No 98/2013. (4.1.g)

In order to measure all indicators, more information is needed to complement the data that Member States are legally obliged to collect. With a view to avoiding administrative burden on national authorities as much as possible, the Commission itself will collect most of the additional information, as explained below. Nevertheless, there is some information necessary to measure the indicators that only Member States can provide. Member States therefore are invited to provide the Commission with the following data:

- g. The number of regular exchanges between law enforcement authorities, national supervisory authorities, economic operators, online marketplaces and representatives of the sectors that use regulated explosives precursors; (4.3.e)
- h. The number of requests made and responses received to/from the European Criminal Records Information System (ECRIS) for the purpose of cross-border background checks in the application for licenses; (4.1.e)
- i. Whether it recognises licenses issued by other Member States, and if so, by how many Member States; (4.4.a)
- j. Whether the format for a licence as provided in the Regulation is used, either always or sometimes (Annex III of the Regulation); (4.4.c)

These three categories of data can only be collected by the Member States themselves. They are key to measure how the strengthened licensing system works, and to what extent licences are recognised in other Member States than where they were issued.

5.2 Collection by the Commission

With a view to obtaining further evidence, available beyond the Member States' remits, the Commission will collect the following data and information to the extent possible:

- The kind of procedures to detect suspicious transactions applied by economic operators and online marketplaces, distinguishing between offline and online activities; (4.2.b)
- The degree to which economic operators record transaction data, and the length of retention of transaction data; (4.3.c)
- Indication of the share of EU cross border purchases of restricted explosives precursors; (4.4.b)
- Indication of the share of transactions in which the customer declaration provided for by the Regulation is used; (4.4.d)
- The number of contacts between National Contact Points (reported in the Standing Committee on Precursors, potentially in ranges of numbers); (4.2.d)
- The evolving threat of regulated and non-regulated explosives precursors throughout the EU (from Europol); (4.2.c)
- The use and attempted use of explosives precursors to manufacture homemade explosives (terrorist and criminal) in Member States (from Europol); (4.2.e)
- Which and to what degree restricted explosives precursors are being made available to the general public offline and online in stores and marketplaces that focus on the general public; (4.1.f)
- Awareness of the guidelines on the Regulation, cf. Article 20 of the Regulation, among economic operators and competent authorities; (4.3.d)
- Degree of awareness of the obligations and definitions of Regulation among economic operators and online marketplaces. (4.3.d)

The abovementioned data relates directly to a specific indicator. In the context of the evaluation of Regulation (EU) 98/2013 on explosives precursors and the impact assessment for a proposal for the current Regulation (EU) 2019/1148, the Commission also collected important contextual information, including:

- Estimation of the number of economic operators and online marketplaces offering services in the EU (from external contractor);
- Market analysis - volume of trade in explosives precursors in the internal market (PRODCOM - external contractor);
- Estimated proportion of volume and value sold to members of the general public for restricted explosives precursors (from external contractor);
- Legitimate use by the general public of restricted explosives precursors (from external contractor);
- Availability of alternative products to those containing restricted explosives precursors and substances at a concentration below the threshold of restriction (from external contractor).

The Commission will, subject to available resources, conduct surveys every other year on the supply and demand of explosives precursors by the general public, as well as on the knowledge in different sectors regarding the obligations pursuant to the Regulation. The Commission will, as appropriate, share the information received from Member States with the external contractor.

The Commission will, subject to available resources, establish a baseline by collecting data in 2021 on the situation in 2020, just ahead of the entry into application of the Regulation. The data collected would resemble the data collected in 2017 as part of the evaluation and impact assessment of Regulation (EU) No 98/2013, which Regulation (EU) 2019/1148 replaces.

6. Review of the monitoring programme

The constantly evolving context within which the Regulation operates, as well the maturity of legislation and its application, mean that the relevance of many aspects of reporting will continue to change over time. The monitoring programme should therefore be reviewed in the context of the evaluation that the Commission is required to conduct by February 2026 at the latest.

7. Timeline

Year	2019	2020	2021	2022	2023	2024	2025	2026
Milestones	01/08/19 Entry into force	Adoption Monitoring Programme & Guidelines by 01/08/20	01/02/21 Date of application	02/02/2022 First report by Member States				Evaluation and review monitoring programme
Data collection								
- Reporting Member States				x	x	x	x	x
- Surveys Commission			x		x		x	

8. Table linking indicators (section 4) to data collection (section 5)

Indicator	Definition	Source of data	Reporting frequency	Baseline
Licensed restricted explosives precursors	The restricted explosives precursors in respect of which the Member States provide for a licencing system (4.1.a)	Collection by Member States	Annually	January – December 2020
Licence applications	Number of licence applications and licences issued for each Member State (4.1.b)	Collection by Member States	Annually	January – December 2020
Licence refusal	Most common reasons in each Member State for refusing to issue licences (4.1.c)	Collection by Member States	Annually	January – December 2020
Licence criteria	Information on the criteria applied when issuing a licence (4.1.d)	Collection by Member States	Annually	January – December 2020
The use of ECRIS	The number of requests made and responses received to/from the European Criminal Records Information System (ECRIS) for the purpose of cross-border background checks in the application for licenses (4.1.e)	Additional collection by Member States	Bi-annually	January – December 2020
Availability of restricted explosives precursors	The availability of restricted explosives precursors in stores and marketplaces that focus on the general public, online and offline in Member States (4.1.f)	Collection by the Commission	Annually	January – December 2020

Further restrictions	Restrictions going beyond those required by the Regulation (use of the safeguard clause) (4.1.g)	Collection by Member States	Annually	January – December 2020
Reported suspicious transactions, significant disappearances and thefts	The number of reported suspicious transactions, significant disappearances and thefts per Member State, distinguishing between offline and online activities (4.2.a)	Collection by Member States	Annually	January – December 2020
Detection procedures	The kind of procedures to detect suspicious transactions applied by economic operators and online marketplaces, distinguishing between offline and online activities (4.2.b)	Collection by the Commission	Annually	January – December 2020
Threat	The evolving threat of regulated and non-regulated explosives precursors throughout the EU (4.2.c)	Collection by the Commission	Annually	January – December 2020
Cooperation between National Contact Points	The number of contacts between National Contact Points (4.2.d)	Collection by the Commission	Annually	January – December 2020
Malicious use of explosives precursors	The use and attempted use of explosives precursors to manufacture homemade explosives (terrorist and criminal) in Member States (4.2.e)	Collection by the Commission	Annually	January – December 2020
Inspections	Information on inspections carried out, including the number of	Collection by Member States	Annually	January – December 2020

	inspections and economic operators and online marketplaces covered, distinguishing between offline and online activities (4.3.a)			
Awareness-raising actions	Information on awareness-raising actions (4.3.b)	Collection by Member States	Annually	January – December 2020
Transaction data recording	The degree to which economic operators record transaction data, and the length of retention of transaction data (4.3.c)	Collection by the Commission	Annually	January – December 2020
Public awareness of obligations	The degree to which the obligations of the Regulation are correctly understood by economic operators, online marketplaces, professional users, members of the general public and competent authorities (4.3.d)	Collection by the Commission	Annually	January – December 2020
Cross-sectoral exchanges	The number of regular exchanges between law enforcement authorities, national supervisory authorities, economic operators, online marketplaces and representatives of the sectors that use regulated explosives precursors (4.3.e)	Collection by Member States	Annually	January – December 2020
Recognition of licences	Whether Member States recognise licences issued by another Member State under the Regulation, and if so, by how many Member States (4.4.a)	Additional collection by Member States	Bi-annually	January – December 2020
Cross-border	The number of EU cross border	Collection by the	Annually	January – December 2020

purchases	purchases of restricted explosives precursors (4.4.b)	Commission		
Use of licence format	Whether the format for a licence as provided in the Regulation is used, either always or sometimes (4.4.c)	Additional collection by Member States	Bi-annually	January – December 2020
Use of customer declaration	The use of the customer declaration provided for by the Regulation (4.4.d)	Collection by the Commission	Annually	January – December 2020