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COMMISSION STAFF WORKING DOCUMENT

**Review of the exemptions on small articles as per Article 15a of Commission Directive
2008/43/EC**

Review of the exemptions for small articles in the Annex to Commission Directive 2008/43/EC

Legal Framework for small articles and review clause

Commission Directive 2008/43/EC sets up a system for the identification and traceability of explosives for civil use¹ and is complementary to Directive 2014/28/EU on the harmonisation of the laws of the Member States relating to the making available on the market and supervision of explosives for civil uses².

Pursuant to Article 51(3) of Directive 2014/28/EU³, Commission Directive 2008/43/EC continues to apply until replaced by a new system on identification and traceability of explosives according to Article 15 of Directive 2014/28/EU⁴.

The aim of Commission Directive 2008/43/EC is to ensure a system for keeping track of explosives in order to be able to identify those holding the explosives at any time. A unique identification allows the traceability of an explosive from its production site and the first placing on the market until its final user.

Commission Directive 2008/43/EC provides for a product identification system in Chapter 2 and requires that undertakings in the explosives sector which manufacture or import explosives or assemble detonators, mark explosives and each smallest packaging unit with a unique identification. Point 1 and 2 of the Annex to Commission Directive 2008/43/EC list

¹ OJ L 94, 5.4.2008, p. 8–12.

² OJ L 96, 29.3.2014, p. 1–44.

³ Article 51 – Transitional provisions:

3. Until replaced by the measures adopted pursuant to Article 15 of this Directive, Commission Directive 2008/43/EC of 4 April 2008 setting up, pursuant to Council Directive 93/15/EEC, a system for the identification and traceability of explosives for civil uses (1) shall continue to apply.

⁴ Article 15 - Identification and traceability of explosives:

1. Economic operators shall adhere to a uniform system for the unique identification and traceability of explosives, that takes into account their size, shape or design, except where it is not necessary to place a unique identification on the explosive due to its low level of hazard, based on its characteristics and factors such as its low detonative effects, its uses and the low security risk it presents due to the low potential effects of misuse.

The system shall not apply to explosives transported and delivered unpackaged or in pump trucks for their direct unloading into the blast-hole, or explosives manufactured at blasting sites, and that are loaded immediately after being produced (in situ production).

2. That system shall provide for the collection and storage of data, including where appropriate by electronic means, enabling the unique identification and traceability of the explosive as well as for the placement of a unique identification on the explosive and/or its packaging enabling access to that data. Those data shall relate to the unique identification of the explosive, including its location while in the possession of economic operators and the identity of those economic operators.

3. The data referred to in paragraph 2 shall be tested at regular intervals and protected against accidental or malicious damage or destruction. Those data shall be stored for 10 years after the transaction took place or, where the explosives have been used or disposed of, 10 years after their use or disposal, even if the economic operator has ceased trading. They shall be immediately available at the request of the competent authorities.

4. The Commission may adopt implementing acts:

(a) laying down the practical arrangements for the operation of the system of unique identification and traceability referred to in paragraph 1, taking into account the size, shape or design of the explosives, in particular the format and structure of the unique identification, as provided for in paragraph 2; EN 29.3.2014 Official Journal of the European Union L 96/11;

(b) identifying the cases referred to in paragraph 1 where it is not necessary, due to the low level of hazard of an explosive, for economic operators to adhere to the system for the unique identification and traceability within the meaning of that paragraph.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 49(3).

the required components of this unique identification (the information under 1(b)(i), 1(b)(ii) and 2 is given in bold letters for ease of reference, see below):

1. a human readable part of the identification containing the following:

(a) the name of the manufacturer;

(b) an alphanumerical code containing:

(i) two letters identifying the Member State (place of production or import onto the Community market, e.g. AT = Austria);

(ii) three digits identifying the name of the manufacturing site (attributed by the national authorities);

(iii) the unique product code and logistical information designed by the manufacturer;

2. an electronic readable identification in barcode and/or matrix code format that relates directly to the alphanumerical identification code.

Example:



This required information does not fit on all products either due to their small size or to their shape or design making it technically impossible to affix the information on the article itself.

Subparagraph 1 of point 3 of the Annex to Directive 2008/43/EC allows marking limited information (foreseen in points 1(b)(i), 1(b)(ii) and 2, given in bold letters above for ease of reference) on articles too small to affix the full information required by the Directive.

Subparagraph 2 of point 3 instead allows the affixing of the unique identification on each *smallest packaging unit* in case:

- (i) the articles are even too small to affix the reduced information as per subparagraph 1 of Point 3; or
- (ii) where it is technically impossible due to size or shape of the articles to affix a unique identification⁵.

⁵ Point 3 of the Annex to Commission Directive 2008/43/EC:

For articles too small to affix the unique product code and logistical information designed by the manufacturer, the information under 1(b)(i), 1(b)(ii) and 2 shall be considered sufficient.

Article 15a of Commission Directive 2008/43/EC foresees the obligation of the Commission to “carry out a review to assess whether technical progress has made it possible to revoke the exemptions set out in point 3 of the Annex” by 31 December 2020.

Technical guidance on the matter is provided under number 12 of a question and answer (Q+A) document endorsed by the Group of experts on Explosives and publicly available on DG GROW’s website⁶. The third column of the table in Q+A 12 is entitled “Marking in accordance with 2012/4/EU⁷ for small (8.5mm or less in diameter) or oddly shaped items that cannot even be partially marked in compliance with 2008/43/EC Annex Para 3”. Guidance is provided for the marking of the following products: plain detonators, boosters, detonating cords.

Results of the review

As part of the review, the Commission services have consulted members and observers of the Group of Experts on Explosives (E01633) on the matter in writing in Q2/2019⁸.

In particular, members and observers were consulted on the existence of any technological developments that would allow removing some or all of the articles from the exempted articles list. More, they were also asked whether they are aware of any problem related to the exemption and if so, to describe the extent and nature of the problem.

The Commission services received 15 replies⁹, 13 from Member States’ experts and 2 from industrial stakeholders.

The replies were uniform and all stated that no technical progress in marking technology has been made that would allow revoking the exemptions and thus, it would be advisable to keep the *status quo*. It was further commented that no problems related to the exemptions exist and that the latter work well in practice requiring neither expansion nor reduction of the scope.

Further, throughout the years in which the Commission services were in regular contact with national and other experts as well as with stakeholders, no comments or feedback were hinting to the availability of new technological developments or any aspects considered as being problematic related to the exemptions.

After consulting the group in writing and as a final step of the review, the Commission services have consulted the expert group in the meeting of 15 October 2019. Two Member States’ representatives commented orally that in certain cases it would be technically possible to affix the unique identification on the article but the exemptions are used anyhow,

For articles too small to affix the information under point 1(b)(i) and (ii) and point 2 or where it is technically impossible due to their shape or design to affix a unique identification, a unique identification shall be affixed on each smallest packaging unit.

Each smallest packaging unit shall be closed with a seal.

Each plain detonator or booster falling under the exemption set out in the second paragraph shall be marked in a durable way so as to ensure that it is clearly legible with the information under point 1(b)(i) and (ii). The number of plain detonators and boosters contained shall be printed on the smallest packaging unit.

Each detonating cord falling under the exemption set out in the second paragraph shall be marked with the unique identification on the reel or spool and, where applicable, on the smallest packaging unit.

⁶ <https://ec.europa.eu/docsroom/documents/32805/attachments/1/translations/>

⁷ Commission Directive 2012/4/EU of 22 February 2012 amending Commission Directive 2008/43/EC.

⁸ <https://circabc.europa.eu/ui/group/d7375ca9-c696-4659-8b57-e9d9833891f9/library/82811554-4d94-4ad8-b398-f935d85d098d/details>

⁹ AT, CZ, DE, EE, EL, HR, IE, PL, PT, RO, SE, SI, UK, FEEM, UEPG.

otherwise the given information would become unreadable. It was also commented that technical progress has been made in the last decade, but that the developments are currently not mature enough to revoke the exemptions. The Commission and the national representatives invited stakeholders to continue exploring such technical possibilities. The Commission highlighted that if at a given point in time technologies reach a sufficient level of development to allow the revoking of the exemptions, the Annex to Commission Decision 2008/43/EC can be amended.

The Commission services asked the group to provide their opinion in the above-mentioned meeting on 15 October 2019, and it was concluded by consensus that the exemptions set out in point 3 of the Annex should not be revoked at this stage.

Conclusion

Given that the Group of experts unanimously endorsed the conclusion that the exemptions set out in point 3 of the Annex to Directive 2008/43/EC should not be revoked at this stage and that the Commission services were made aware that the technical progress made is currently not mature enough to allow for a revocation, and they have not become aware of any problems with the current situation, the Commission services conclude that the exemptions set out in point 3 of the Annex should not be revoked at this stage.