

Since 1 February 2021, the provisions of the European Regulation on the marketing and use of explosives precursors (Regulation (EU) 2019/1148), hereinafter referred to as EU Explosives Regulation, which replaced the previous Regulation (EU) 98/2013, have to be applied. It regulates the marketing, possession and use of substances that could be misused for illicit purposes (in particular for terrorist purposes). The EU Explosives Regulation is directly applicable in the EU Member States, i.e. also in Germany, and does not require further implementation by national laws.

When supplying so-called restricted explosives precursors into the B2B sector, extended obligations must be observed. Restricted explosives precursors are substances or mixtures listed in Annex I of the Regulation that are at a concentration higher than the corresponding limit value set out in column 2 of the table (§ 3 para. 12, see table next page). Irrespective of the quantity, the supplier (seller) must ensure through a corresponding customer declaration that the prospective customer (buyer) uses the substances for trade, business or professional reasons only. In particular, the seller must obtain a proof of identity of the person entitled to represent the customer (Art. 8 para. 2 a)).

The EU Explosives Regulation contains a template for this declaration in Annex IV, which provides the data of an official identity document for the proof of identity. In Germany, this is the "Personalausweis" (identity card) or "Reisepass" (passport). In our view, this data on the customer declaration are to be regarded as the minimum of what is required. This follows from section IV.2. of the EU Guidelines on the EU Explosives Regulation. There it literally states:

"For retaining the information regarding the proof of identity, economic operators should, as a minimum, record the name on and the document number of the proof of identity."

Sellers must keep the information for 18 months from the date of the transaction. For recurring transactions, the declaration must be collected once a year, but only if the same person always represents the customer's company and if the transaction does not differ significantly from previous transactions.

In order to fulfil their obligations when supplying restricted precursors, supplier have to verify or collect personal data of their customers. The directly applicable EU Explosives Regulation contains the necessary legal basis for this in Art. 8(2). Art. 8 Paragraph 4 also contains the permission under data protection law to store the information pursuant to Article 8(2) for 18 months from the date of the transaction and to make it available to the competent national authorities on request.

**Restricted explosives precursors**

| <b>Substance</b>      | <b>Limit value</b>                                  |
|-----------------------|---|
| Nitric acid           | 3 % w/w   |
| Hydrogen peroxide     | 12 % w/w  |
| Sulphuric acid        | 15 % w/w  |
| Nitromethane          | 16 % w/w  |
| Ammonium nitrate      | 16% w/w of nitrogen in relation to ammonium nitrate |
| Potassium chlorate    | 40 % w/w  |
| Potassium perchlorate | 40 % w/w  |
| Sodium chlorate       | 40 % w/w  |
| Sodium perchlorate    | 40 % w/w  |