

Explosives Precursors and Sulphuric acid

New rules as of February 2021: what Economic Operators are supposed to do

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Disclaimer

This document is intended for ESA members and partners, who are here considered as economic operators as per the new Explosives Precursors regulation (*see below for the definition*). It aims to give an overview of the obligations that economic operators dealing with Sulphuric acid have to follow under the new regulation.

It is not meant as a legal document, and it has indeed no legal value. It is a tool produced by the ESA Sector Group manager to support ESA members and partners in the reading of the new rules which will become applicable from February 2021.



Legal context and main definitions

The Explosives Precursors regulation is the EU legislative tool aimed to avoid that legally manufactured chemicals are misused for the illicit manufacture of homemade explosives. The current regulation, Regulation (EU) No 98/2013, which is applicable since September 2014, was reviewed in the past years to improve citizens' protection.

In 2019, the new Explosives Precursors regulation ([Regulation \(EU\) 2019/1148](#)) was approved and published, and it will become fully applicable as of the 1st of February 2021. In June 2020, the Commission published the [Guidelines for its implementation](#).

According to the new rules, **Sulphuric acid will be considered a restricted explosive precursor**, i.e. a substance not to be made available to, or introduced, possessed or used by, members of the general public, whether on its own or in mixtures or substances that include sulphuric acid, unless the concentration is not above 15% w/w, and for which suspicious transactions and significant disappearances and thefts are to be reported within 24 hours.

A Member State may establish a licensing regime allowing Sulphuric acid to be made available to, or to be introduced, possessed or used by members of the general public at concentrations not higher than 40% w/w.

Here you have a reminder of some definitions as per art. 3 of the new regulation (for the full list of definitions, please check the regulation itself):

- **Restricted explosives precursor:** a substance listed in Annex I that is at a concentration higher than the corresponding limit value set out in column 2 of the table in Annex I, including a mixture or another substance in which a substance listed in that Annex is present at a concentration higher than the corresponding limit value;
- **Regulated explosives precursor:** a substance listed in Annex I or II including a mixture or another substance in which a substance listed in those Annexes is present, excluding homogeneous mixtures of more than 5 ingredients in which the concentration of each substance listed in Annex I or II is below 1 % w/w;
- **Substances of Annex I:** restricted explosives precursors;
- **Substances of Annex II:** reportable explosives precursors;
- **Member of the general public:** any natural or legal person who is acting for purposes not connected with that person's trade, business, or profession;
- **Professional user:** any natural or legal person or public entity or group of such persons or entities that has a demonstrable need for a restricted explosives precursor [*for ESA: Sulphuric acid*] for purposes connected with its trade, business, or profession, including agricultural activity, conducted either on a full-time or part-time basis and not necessarily related to the size of the area of land on which that agricultural activity is conducted, provided that such purposes do not include making that restricted explosives precursor [*for ESA: Sulphuric acid*] available to another person;

- **Economic operator:** any natural or legal person or public entity or group of such persons or entities which make regulated explosives precursors [for ESA: Sulphuric acid] available on the market, either offline or online, including on online marketplaces.

List of obligations for economic operators

The **first basic obligation** is, of course, not to make Sulphuric acid available to, or introduced, possessed or used by members of the general public at concentrations above 15% w/w, or, in case of a licensing regime established by a Member State, at concentrations above the limit set by that Member State (and in any case not above 40 % w/w).

The other obligations, applying to economic operators dealing with Sulphuric acid, are the following.

Informing the supply chain (art. 7 of the regulation)

Information to another economic operator

When making available Sulphuric acid to another economic operator, you must inform them about:

- The restrictions linked to the Explosives Precursors regulation (i.e. that it is a restricted explosive precursor not to be made available to the general public as per thresholds above indicated);
- There are reporting obligations (see below).

Information to a professional user or to a member of the general public

When making available, under the specific circumstances that make it possible, Sulphuric acid to a professional user or to a member of the general public, you must ensure and be able to demonstrate to the national inspection authorities that the personnel involved in the sale of Sulphuric acid is aware that it is a restricted explosive precursor, and that there are specific obligations.

Verification upon sale (art. 8 of the regulation)

Two cases are here considered: making available sulphuric acid to a member of the general public in case of a licencing regime; and making available sulphuric acid to a prospective customer.

Sales to a member of the general public in case of a licensing regime

When making available, under the specific circumstances that make it possible (i.e. licensing regime), Sulphuric acid to a member of the general public, you must for each transaction:

- verify the proof of identity and the licence of that member of the general public;
- record the amount of the restricted explosives precursor on the licence.

Sales to a prospective customer

When making available sulphuric acid to a prospective customer, you need to verify that it is a professional user or another economic operator. To do that, for each transaction you must request the following information, unless such a verification for that prospective customer has already occurred within a period of one year prior to the date of that transaction and the transaction does not significantly deviate from previous transactions:

- proof of identity of the individual entitled to represent the prospective customer;
- the trade, business, or profession together with the company name, address and the value added tax identification number or any other relevant company registration number, if any, of the prospective customer;
- the intended use of the restricted explosives precursors by the prospective customer.

To gather this information, it is recommended to use the **customer's statement** set out in Annex IV of the regulation. It is not an obligation, though.

To verify the intended use of the restricted explosives precursor, you must assess whether the intended use is consistent with the trade, business or profession of the prospective customer.

In case you have reasonable grounds for doubting the legitimacy of the intended use or the intention of the prospective customer to use the restricted explosives precursor for a legitimate purpose, you can refuse the transaction. You must report such transactions or such attempted transactions as suspicious (*see below*).

You must keep the information collected to verify the prospective customer for 18 months from the date of transaction. In that period, please, be ready to make available that information for inspection at the request of the national inspection authorities or law enforcement authorities.

Please, note that there are data protection provisions that apply to the processing and free movement of personal data of natural persons. Therefore, the processing of personal data involved in, inter alia, licensing should be carried out in accordance with the General Data Protection Regulation ([Regulation \(EU\) 2016/679](#)).

Reporting of suspicious transactions, disappearances and thefts (art. 9 of the regulation)

You must report suspicious transactions or attempted suspicious transactions of sulphuric acid, as well as significant disappearances and thefts of sulphuric acid (**reporting obligations**).

For suspicious transactions, you must particularly pay attention if a prospective customer:

- appears unclear about the intended use of Sulphuric acid;
- appears unfamiliar with the intended use of Sulphuric acid or cannot plausibly explain it;

- intends to buy Sulphuric acid in quantities, combinations or concentrations uncommon for legitimate use;
- is unwilling to provide proof of identity, place of residence or, where appropriate, status as professional user or economic operator;
- insists on using unusual methods of payment, including large amounts of cash.

You need to have in place appropriate, reasonable and proportionate procedures to detect suspicious transactions, adapted to the specific environment in which Sulphuric acid is made available. You can refuse a suspicious transaction, but you are not obliged to.

To decide whether a disappearance or theft is significant, you must take into account whether the amount is unusual considering all circumstances of the case.

Timing for reporting:

- suspicious transaction or attempted suspicious transaction of sulphuric acid within 24 hours of considering that it is suspicious;
- significant disappearances and thefts of Sulphuric acid within 24 hours of detection.

Training (art. 10 of the regulation)

It is up to Member States to organise regular exchanges between law enforcement authorities, national supervisory authorities, economic operators, online marketplaces and representatives of the sectors that use regulated explosives precursors.

However, economic operators are responsible for:

- Providing information to their personnel on how Sulphuric acid is to be made available according to the explosives precursors regulation, and
- Raising personnel awareness in this regard.

Additional aspects

You can refer to the [guidelines](#) for more insights on what economic operators should/could do with regards to the obligations of verification, reporting, information. Here below only a couple of aspects of relevance will be highlighted, for your convenience.

Recommendations to inform the supply chain

Take note of the following recommendations to inform the supply chain (they are recommendation, no obligations):

- The form of the obligation to inform the supply chain is up to the economic operator.
- It is recommended to provide the information in writing.
- You could include the information in the safety data sheet (SDS) compiled in accordance with Annex II to REACH Regulation (Regulation (EC) No 1907/2006), in Section 15 on Regulatory information.
- Other ways to inform the next economic operator are, for example, to include the information on the invoice, in contracts or on the delivery note.
- Text suggestion for informing the supply chain (for restricted explosives precursors such as Sulphuric acid):

Acquisition, introduction, possession or use of this product by the general public is restricted by Regulation (EU) 2019/1148. All suspicious transactions, and significant disappearances and thefts should be reported to the relevant national contact point. Please see [include link to the [national contact points](#)]

Security of storage

There are no specific obligations, but guidelines contain some recommendations for to ensure that a regulated explosives precursor (in this case Sulphuric acid) is securely stored and avoid disappearances or thefts.

Checklists

In the guidelines you can find some useful checklists, and namely:

Checklist for economic operators

- Do you inform the next economic operator in the supply chain about the application of the Regulation to the product that they provide (Article 7(1) and Section VI)? Can you demonstrate it?
- Are your personnel that sells regulated explosives precursors aware of which products contain explosives precursors, and are the personnel instructed regarding the obligations of the Regulation (Article 7(2) and Section VI)? Can you demonstrate it?
- Do you carry out your verification upon sale obligations, including the obligation to record transactions, and do you keep these records for 18 months from the date of transaction (Article 8 and Section IV) (18)? Can you demonstrate it?
- Do you have procedures in place to detect suspicious transactions (Article 9(2) and Section V)? Can you demonstrate it?
- Do you report suspicious transactions within 24 hours of detection (Article 9(4) and Section V)? Can you demonstrate that you know how to report suspicious transactions?

- Do you report significant disappearances and thefts of regulated explosives precursors within 24 hours of detection (Article 9(5) and Section V)? Can you demonstrate that you know how to report significant disappearances and thefts?

Checklist for professional users

- Do you report significant disappearances and thefts of regulated explosives precursors within 24 hours of detection (Article 9(5) and Section V)? Can you demonstrate that you know how to report significant disappearances and thefts?

Recap

Obligations

- **No access for members of the general public to Sulphuric acid at concentrations above 15% w/w**
 - Exception: licensing regime in Member States that establish it, at concentrations not higher than 40 % w/w.
- **Information to your customers**
 - If to another economic operator: you must inform them that the acquisition, introduction, possession or use of sulphuric acid is subject to sales restrictions and reporting obligations.
 - If to professional user or member of general public (under the specific circumstances making it possible): you must ensure and be able to demonstrate that the personnel involved in the sale of sulphuric acid is aware of the specific restrictions and obligations.
- **Training of your personnel** (particularly the one involved in sales) on how to make available sulphuric acid according to the explosives precursors regulation.
- **Verification upon sale**
 - Sales to a member of general public (licensing regime): for each transaction, you must verify the proof of identity and the licence; you must record the amount of sulphuric acid on the licence.
 - Sales to a prospective customer: you must verify that it is a professional used or another economic operator (for each transaction, unless the verification has already been done in the last year and the transaction is similar to the previous), by checking:
 - Proof of identity;
 - Trade/business/profession together with the company name & VAT;
 - Intended use of sulphuric acid they want to purchase (the use must be consistent but the business).
 - You must keep the information collected for 18 months, and available for inspection.
 - Keep in mind GDPR provisions.

- **Reporting obligations:** you must report suspicious transactions or attempted suspicious transactions of sulphuric acid, as well as significant disappearances and thefts of sulphuric acid, within 24 hours (of considering that it is suspicious/ of detection of disappearance/theft).

Recommendations

- Provide information in writing;
- Include the information in the safety data sheet (SDS), on the label, in the invoice, in contracts or on the delivery note;
- Gather the information on the prospective customer with the customer's statement set out in Annex IV of the regulation;
- Ensure that sulphuric acid is securely stored so to avoid disappearances or thefts.