



# **Public Consultation: Preventing terrorism – new rules on the marketing and use of high-risk chemicals**

Factual Summary Report

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## 1 Introduction

The EU is committed to taking measures to address the evolving chemical threat resulting from terrorist activity. In the 2017 Action Plan to enhance preparedness against chemical, biological, radiological and nuclear (CBRN) security risks, the Commission: (i) stressed that the capability of terrorists to carry out CBRN attacks depends on the accessibility of CBRN materials; and (ii) identified the need to better control access to high-risk CBRN materials. In May 2018, following the nerve-agent attack in Salisbury in the UK, the Commission published a Joint Communication on hybrid threats, in which it committed to work with Member States to develop a list of dangerous chemical substances in order to reduce their accessibility in the future. The Security Union Strategy and the Counter-terrorism Agenda confirmed the Commission's ongoing work to restrict access to certain dangerous chemicals that could be subject of misuse for malicious purposes. In 2020, the Commission launched a study on the feasibility of restricting access to dangerous chemicals, which confirmed the necessity of regulating access to a short list of nine chemical substances of most concern that could be used by terrorists and other malicious actors to conduct an attack.

The problem that the initiative aims to tackle is the risk of potential terrorists and criminal actors accessing and misusing high-risk chemicals to stage an attack in Europe. A great many chemicals are used every day in industrial processes, professional functions, and a diverse consumer sector. Most high-risk chemicals react upon intimate mixing with other readily available materials to produce highly toxic gases. If these highly toxic gases are produced in sufficiently high concentrations, they can kill and injure those in the immediate proximity. The risk of misuse of high-risk chemicals is high due to their easy accessibility in the market, as well as the low levels of technical skill needed to stage an attack.

Current national measures aimed at restricting or controlling access to high-risk chemicals differ widely between Member States. There are no legislative measures to restrict access to high-risk chemicals for members of the general public in most European Economic Area (EEA) countries. This makes it easier for any potential terrorists and criminal actors to access these chemicals.

The new rules on the marketing and use of high-risk chemicals were covered by this public consultation, providing citizens and stakeholders with an opportunity to voice their opinions on current problems in the field and on the impacts of potential policy options to address the problems identified.

This document provides an overview of the evidence and views collected via the replies to the Public Consultation questionnaire and the position papers received as part of the consultation process. This summary examines the aggregate responses to the various thematic areas addressed in different sections of the questionnaire.

**Disclaimer:** Contributions received through consultations cannot be regarded as the official position of the Commission and its services and thus do not bind the Commission. Additionally, the contributions cannot be considered as a representative sample of the EU population.

## 2 Public Consultation questionnaire and methodology

The online Public Consultation on "Preventing terrorism – new rules on the marketing and use of high-risk chemicals", was open for 12 weeks from 28 November 2022 until 20 February 2023. It received 243 responses. In addition, 10 written contributions were received from 8 individuals and 2 organisations.

The questionnaire was composed of five main sections: (i) general information on the respondents, (ii) sector of activity, (iii) problems and objectives, (iv) need for EU action and possible policy options, (v) impact of a possible EU intervention.

### **3 General information on the respondents**

The following paragraphs provide an overview of respondents' profile, country of origin and sector of activity.

#### **Profile of respondents (N = 243)**

The vast majority of respondents answered as individuals (89% or 216 responses out of all responses). Out of those, 87% (187 responses) were EU citizens and 13% (29 responses) were non-EU citizens. The rest of the respondents answered the Public Consultation as organisations (10% or 25 responses) or "others" (1% or 2 responses).

The main types of organisations represented in the Public Consultation were companies/businesses (44% or 11 out of 25) and public authorities (28% or 7 out of 25). In addition, responses from academic/research institutions accounted for 12% (3 out of 25), business associations for 12% (3 out of 25) and NGOs for 4% (1 out of 25).

#### **Country of origin of respondents (N = 243)**

Responses were received from all members of the European Economic Area (EEA), except for Latvia, Malta, Iceland and Lichtenstein. The most represented country was Germany (32% or 78 responses), followed by Poland (7% or 17), The Netherlands (6% or 14), France (5% or 13) and Italy (5% or 12). Responses from eight Member States<sup>1</sup> were modest and accounted for less than 1% of the total responses, respectively.

In addition, 10 countries not part of the EEA were indicated as countries of origin in the responses.<sup>2</sup> The highest number of responses were received from the United States (13), followed by Canada (6), the United Kingdom (4) and Australia (2). Also, single responses were received from six countries.<sup>3</sup>

#### **Sector of activity (N = 243)**

Responses were submitted as replies to a structured questionnaire.<sup>4</sup> The opening questions were dedicated to gathering general information on the respondents and on their sector of activity. 47.7% (116) of respondents did not indicate a precise sector of activity and selected the option "Other". Besides this group, 36.2% (88) indicated "Chemicals" as their sector activity, representing the majority of respondents.

Among the responding businesses, 22.6% (55) classified themselves as "Professional users", 10.3% (25) as "Manufacturer/Producer", while the vast majority (62.1%, or 151) as "Other". However, as most respondents were private citizens, 79% of respondents (193) declared to use the high-risk chemicals for non-professional activities (e.g. hobbies, household maintenance, etc.). Out of 226 respondents among producers, sellers and users of substances from the four classes in scope, 73% (166) declared to be involved with the use of hypochlorites, 49% (111) with sulphides, 37% (84) with cyanides and 19% (44) with phosphide salts, whereas 23% (51) of the respondents declared to not be involved with any of the substances. Among the respondents who produce or sell chemical substances, 63% of them (24) sell high-risk chemicals to professional users and to members of the general public (55%, or 21). Companies involved in business-to-business (B2B) transactions represented a smaller share of respondents, with 37% (14) selling to other economic operators for further processing or industrial manufacturing, 24% (9) selling to distributors and wholesalers and 24% (9) selling to retailers. An equal share of respondents declared to only use offline channels to sell chemicals and to use both online and offline channels (44%, or 7).

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<sup>1</sup> Croatia, Cyprus, Estonia, Greece, Lithuania, Luxembourg, Portugal, Slovenia.

<sup>2</sup> This includes countries of origin mentioned by non-EU citizens, EU citizens and organisations.

<sup>3</sup> Hong Kong, Indonesia, Israel, New Zealand, Russia, Switzerland.

<sup>4</sup> For multiple-choice questions the shares might not add up to 100% as respondents may be counted more than once within different answers.

## **4 Results of the Public Consultation**

### **Feedback on problems and objectives for a possible EU intervention**

Overall, most respondents perceived all pre-defined issues as not problematic. The main pre-defined issues included, but were not limited to, improper storage of high-risk chemicals, deliberate misuse by members of the general public, theft and disappearances, uncontrolled internet sales and intra-EU cross-border movement of high-risk chemicals. In fact, the overall percentage of respondents answering with not at all and low extent that these issues are problematic equalled or exceeded 50% in all options. Among the remaining respondents, the issues that were considered to be a likely source of security concerns in Europe either to a moderate, high or very high extent were import and circulation of high-risk chemicals labelled ambiguously or incorrectly, including deliberate mislabelling to avoid 'Dangerous Goods' classification for shipping (46%, or 112), low levels of awareness of security risks linked to high-risk chemicals among relevant authorities such as law enforcement, first responders and customs (44% or 108), improper shipment and transportation of high-risk chemicals (43%, or 104) and low levels of awareness of security risks linked to high-risk chemicals along the supply chain (41%, or 99).

In terms of non-legislative measures to tackle the issues raising security concerns, 49% of respondents (120) favoured awareness-raising activities and an equal share chose the exchange and adoption of good practices. 41% of respondents (100) identified training programs for economic operators as one of the best options, and an equal share of 34% (83) picked the adoption of voluntary codes of conducts and cross-border cooperation between law enforcement and customs authorities. In general, respondents showed a preference for non-legislative measures over regulation. This is also illustrated by the fact that 72% of them (176) attributed economic losses due to the unavailability of chemicals because of the existing legislative framework. 51% of respondents (124) also attributed improvements in security to the combination of existing non-legislative and legislative measures. 39% of respondents (95) attributed security improvements to regulatory measures, whereas 51% of them (124) associated them with non-legislative measures.

### **Feedback on the need for EU action and possible policy options**

Low appetite for regulation was clearly displayed in the results of the consultation. 76% of participants (185) thought that access to the high-risk chemicals should either not be regulated at all or to a low extent. Among those who seek an EU intervention, 54% (132) expressed their preference for measures that create or increase awareness on security risks among economic operators, 47% (114) for the introduction of reporting obligations for economic operators in case of suspicious transactions, disappearances and thefts, 36% (87) for the introduction of obligations to keep records of transactions and 25% (61) for the monitoring and traceability of sales of high-risk chemicals via online channels. Many respondents gave their view on the potential barriers for the adoption of EU actions. 70% of participants (171) expected a reduction in consumer choice, 63% (153) foresaw an increase in compliance costs, administrative burden and stifled competitiveness from the implementation of legislative measures and 60% (145) expected increases in administrative burden and costs for public authorities as well. Additionally, 44% of respondents (107) believed that new legislation might result in overlap with existing regulations and an equal share perceive the chemical threat level to be low. As a matter of fact, 56% (135) also believed that existing chemical legislation already addresses security concerns either to a complete, high or moderate extent.

In line with previous answers, reporting obligations and information sharing along the supply chain were considered the most effective measures in tackling the security risks stemming from high-risk chemicals and were selected by, respectively, 66% (160) and 64% (155) of respondents. Around half of participants underlined the importance of increasing the capacity of law enforcement and customs authorities. In this regard, 50% (122) of participants would prioritise support measures to improve the capacity of customs authorities to identify and control high-risk chemicals upon import from third

countries, and 49% (120) would step up support for law enforcement and customs authorities to recognise high-risk chemicals in the course of their duties and to react promptly to a suspicious activity.

### **Feedback on the impact of a possible EU intervention**

With regard to the expected impacts of a ban of the high-risk chemicals for members of the public, a large majority of 88% of respondents (214) believed that this would have a moderate to strong impact on reducing consumers' choice, 78% (189) that it would increase compliance costs for suppliers of the chemicals, 77% (187) that it increase the administrative burden for professional users and suppliers, while 76% (185) indicated that a ban would heighten implementation and enforcement costs for public authorities and would raise costs and administrative burden for members of the general public. Only a few participants anticipated some security or other benefits stemming from the introduction of a ban.

A similar feedback was collected with regard to the expected impacts of introducing a licensing system for members of the general public. With regard to the different types of stakeholders potentially involved by legislative intervention, a large majority of respondents were of the opinion that licensing would raise costs or administrative burden for members of the general public and suppliers of the high-risk chemicals (80% or 195), professional end-users (73% or 178), and that it would inflate implementation and enforcement costs borne by public authorities (77% or 186). Similarly to what was mentioned for the introduction of a ban, few respondents seemed to foresee significant security (or any other) benefits.

Customer verification measures upon transaction obtained a similar feedback. Costs and administrative burden were expected to rise for suppliers (74% or 181), public authorities (70% or 169) members of the public (67% or 162) and professional users (66% or 160). 68% of respondents (166) also believe customer verification measures can reduce consumer choice.

With regard to requirements to keep record of transactions, respondents expect them to increase administrative burden or costs for suppliers of the high-risk chemicals (71% or 173) for public authorities (64% or 155), for professional users (58% or 141) and for members of the public (51% or 125). 51% of respondents also foresaw a reduction in consumer choice.

As to reporting of suspicious transactions, disappearances and thefts, the overall share of respondents foreseeing increases in costs was lower. 58% (140) indicated that this measure would raise costs for suppliers, 57% (138) for public authorities, 49% for professional users (120). However, 55% of participants (133) also thought that reporting would be effective in improving information on and traceability of suspicious transactions, disappearances and thefts of high-risk chemicals.

The notification of downstream recipients and users of the high-risk chemicals along the supply chain (via labels on packaging or safety data sheets) collected favourable feedback. 53% of respondents (128) indicated that it would improve the health and safety of workers and the general public, while 52% (126) that it would reduce the likelihood and scale of environmental risks.

As anticipated above, measures to foster the capacity of law enforcement and customs authorities were also considered to generate observable positive outcomes. 50% of respondents (121) believed measures addressing law enforcement authorities would increase security and 58% (140) thought the same about measures to improve customs authorities' capacity. However, this latter type of measure is also anticipated to create greater costs for suppliers (47% or 114) and to reduce consumers' choice (49% or 120).

Awareness-raising and capacity-building activities for supply chain actors were expected to reduce the likelihood and scale of environmental risks by 49% of respondents (118), to improve safety and health of workers and the general public by 49% (120) and to increase the level of security against the misuse of high-risk chemicals by 56% of respondents (135).

The main expected benefits resulting from the establishment of a new EU expert group on high-risk chemicals include the reduction of the risk of business disruptions and subsequent economic losses (83% or 202), the improvement of the functioning of the internal market (77% or 188), the improvement of the health and safety of workers (77% or 187), the reduction of the scale and likelihood of environmental incidents (76% or 186) and the improvement of security against the misuse of high-risk chemicals (76% or 185). As a main source of concern, 53% of respondents (129) foresaw the increase of implementation and enforcement costs for public authorities.

Finally, respondents to the Public Consultation also saw with favour the establishment of a single contact point for online marketplaces and public authorities across the EEA to rapidly remove listings of high-risk chemicals available for purchase on online platforms. 70% of respondents (170) thought such measure would reduce security risks from the misuse of high-risk chemicals, 74% (180) believed that would improve the functioning of the internal market and 82% (199) that it would reduce the risk of business disruptions and subsequent economic losses. However, this was also regarded as a potentially costly measure for suppliers of high-risk chemicals (61% or 149), public authorities (58% or 140) and members of the public, by reducing consumers' choice (55% or 134).

#### **Overview of written contributions received within the Public Consultation**

Overall, all position papers expressed some sceptical views about the introduction of stricter measures for the control of chemicals. On the contrary, they pointed out that it could have negative effects on hobbyists, workers, employees and the general public. To that end, some proposed investing more in awareness and information to educate the general public and commercial actors on how to use chemicals safely and responsibly, rather than imposing restrictions.

### **5 CONCLUSIONS AND NEXT STEPS**

The outcome of the public consultation points to support from members of the general public for awareness raising and capacity-building among law enforcement and customs authorities regarding the security risks stemming from the misuse of high-risk chemicals. While this summary report provides a broad overview of responses, the individual responses and position papers submitted provide further insight. The Commission will take the feedback received through the public consultation into account.