Commission Delegated Regulation (EU) 2017/216 of 30 November 2016 amending Regulation (EU) No 98/2013 of the European Parliament and of the Council, as regards adding magnesium powder to the list of explosives precursors in Annex II (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2017/216

of 30 November 2016

amending Regulation (EU) No 98/2013 of the European Parliament and of the Council, as regards adding magnesium powder to the list of explosives precursors in Annex II

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors[(1)], and in particular Article 12 thereof,

Whereas:

(1) Annex II to Regulation (EU) No 98/2013 lists explosives precursors which are subject to harmonised rules concerning their availability to the general public and ensuring the appropriate reporting of suspicious transactions, disappearances and thefts throughout the supply chain.

(2) Substances listed in Annex II are available to the members of the general public but are subject to the reporting obligation that covers both professional users throughout the supply chain and members of the general public.

(3) Member States have demonstrated that aluminium powder has been used in, and acquired for, the production of homemade explosives in Europe. Magnesium powder is a substance with properties very similar to aluminium.

(4) The marketing and use of aluminium and magnesium powders is currently not harmonised at Union level. However, at least one Member State already limits their availability to the general public, and the World Customs Organisation monitors the shipments of aluminium powder worldwide, to identify instances of illicit trade for the purpose of manufacturing improvised explosives precursors.

(5) Developments in the misuse of aluminium and magnesium powders do not currently justify restricting access by the members of the general public, in view of the level of threat or the volume of trade associated with these substances.

(6) Increased control is necessary to allow national authorities to prevent and detect the possible illicit use of these substances as explosives precursors, and this can be achieved through the reporting mechanism established under Regulation (EU) No 98/2013.

Changes to legislation: Commission Delegated Regulation (EU) 2017/216 is up to date with all changes known to be in force on or before 28 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(7) Aluminium powder is the subject of a separate delegated act which adds it to Annex II. This would leave magnesium powder as a realistic non-controlled alternative.

(8) In the light of the risk posed by the availability of magnesium powder, and considering that the reporting obligation will have no significant impact on economic operators or consumers, it is justified and proportionate to add this substance to Annex II of Regulation (EU) No 98/2013,

HAS ADOPTED THIS REGULATION:

Article 1

In the table in Annex II to Regulation (EU) No 98/2013, the following substance is added:

Magnesium, *powders* (CAS RN 7439-95-4) ([2]) ([3])	ex 8104 30 00	

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30 November 2016.

For the Commission

The President

Jean-Claude JUNCKER