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From:	BE delegation
To:	Working Party on Technical Harmonisation (Explosives Precursors)
Subject:	Comments from the Belgian delegation on the proposal for a Regulation of the European Parliament and of the Council on the marketing and use of explosives precursors, amending Annex XVII to Regulation (EC) No 1907/2006 and repealing Regulation (EU) no 98/2013 on the marketing and use of explosives precursors

Comments from the Belgian delegation on the proposal for a Regulation of the European Parliament and of the Council on the marketing and use of explosives precursors, amending Annex XVII to Regulation (EC) No 1907/2006 and repealing Regulation (EU) no 98/2013 on the marketing and use of explosives precursors

The Austrian Presidency invited Member States to provide them with written comments on its "compromise proposal" for amending Regulation 98/2013 (document WK 8721/2018 INIT).

The following contribution contains the written remarks and proposals for amendments from the Belgian delegation. Most of our remarks were already made during previous meetings of the Council working party technical harmonization explosives precursors.

Proposal for a Regulation on the Marketing and Use of Explosives Precursors to replace Regulation (EU) No 98/2013 – COM (2018) 209 final 17.04.2018 – 2018/0103 (COD)			
Article	Current text	Suggested modification	Comment and justification
2.2(g)	medicinal products legitimately made available to a member of the general public on the basis of a medical prescription in accordance with then applicable national law.	REACH Regulation Article 2(5) The provisions of Titles II, V, Vii shall not apply to the extent that a substance is used: (a)in medicinal products for human or veterinary use within the scope of Regulation (EC) No 726/2004, Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products (4) and Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use	We support the comments made by Ireland. Question for Commission: In the REACH Regulation when excluding certain medicinal products in Article 2(5) it refers to “ <i>medicinal products for human or veterinary use</i> ”. Is the same required here?
3.7 et 8	‘member of the general public’ means any natural or legal person who has a need for a restricted explosives precursor for purposes	‘member of the general public’ means any natural or legal person who has a demonstrable need for a restricted explosives precursor for purposes that are	We support the comments made by Ireland. Addition of the word ‘demonstrable’ in correlation with the definition of professional user

	that are not connected with their trade, business, craft or profession; 'professional user' means any natural or legal person who has a demonstrable need for a restricted explosives precursor for purposes connected with their trade, business, craft or profession which exclude making that restricted explosives precursor available to another person.	not connected with their trade, business-or profession; 'professional user' means any natural or legal person who has a demonstrable need for a restricted explosives precursor for purposes connected with their trade, business, or profession which exclude making that restricted explosives precursor available to another person.	
3.12	'regulated explosives precursor' means a substance listed in Annexes I or II and includes a mixture or other substance in which a substance listed in those Annexes is present; ,excluding mixtures in which the concentration of any such substance is below 1 %,	'regulated explosives precursor' means a substance listed in Annexes I or II and includes a mixture or other substance in which a substance listed in those Annexes is present; excluding mixtures in which the concentration of any such substance is below 1 % and the composition of the mixture is at least 3 ingredients.	The last part of the sentence (in red) should be added in order to avoid, as far as possible, any attempts of circumvention of the definition. Many products are two component mixtures containing the precursor and water. Under controlled conditions it is possible to concentrate such a 1% mixture to much higher precursor concentrations, rendering the 1% rule rather useless. We therefore propose that all two component mixtures, regardless of the components' concentration, will remain considered as a regulated precursor. >2 component mixtures are much rarer and much harder to separate in its individual components and are of much less interest to illicit bomb makers.
3.13 et 14	'agricultural activity' means the production, rearing or growing of agricultural products including harvesting, milking, breeding animals and keeping animals for farming purposes, or maintaining the land in good agricultural and environmental condition as		What is the purpose of specifically adding farmers and agricultural activities? We fail to see in which concrete instances the activities of professional farmers would not fall under the definition of the professional user. Does the current text allow an individual person to purchase ammonium nitrate for private purposes or for handicraft (our interpretation of current text)? The text

	established under Article 94 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council³⁹; ‘farmer’ means a natural or legal person, or a group of natural or legal persons, regardless of the legal status granted to such group and its members by national law, whose holding is situated within the territorial scope of the Treaties, as defined in Article 52 TEU in conjunction with Articles 349 and 355 TFEU, and who exercises an agricultural activity.		should explicitly and clearly spell out that this would not be possible. What is the criterion to assess whether someone who claims to be a farmer, does or does not satisfy this claim; the criterion to be registered as a professional user which conducts agricultural activity and therefore essentially a professional user? Would there be other criteria that would imply that such use would not fall within the category such as having a garden, a vegetable garden or farm animals to oneself, even in the capacity of a private individual? Are there non-professional farmers? Do we want a member of the general public having an agricultural activity, such as having a vegetable garden, but not being a professional to be able to buy ammonium nitrate with high nitrogen content for his private needs?
4	Unless otherwise provided for in this Regulation or in other legal acts of the Union, Member States shall not prohibit, restrict or impede the making available of a regulated explosives precursor.		What would be the impact of this modification of the former Article 6 on the fact that a State could invoke a compelling reason of national security or public order, to go beyond what is provided for by the regulation but for another reason than the precursors?
5.2	Paragraph 1 shall not apply to ammonium nitrate (CAS RN 6484-52-2) that is made available to, or introduced, possessed or used by farmers for agricultural activity, either full time or part time and not necessarily related to the size of the land area.		We have difficulties to conceive the proposed exception for farmers. Will it be possible for a non-professional farmer, thus somehow a member of the general public, to buy at a high concentration of ammonium nitrate? The current formulation of the proposal would imply a significant weakening of the ban, which will allow that this hazardous material becomes freely available. This will probably also render

			it more difficult to control sales. In our interpretation, the simple fact of owning a vegetable garden or possibly selling some vegetables would suffice to qualify as an agricultural activity and this person would therefore be able to consider himself a farmer. (see above). We reiterate that the current definition is not sufficiently clear. It would therefore be desirable to adapt the definitions to make it clear who is allowed to buy ammonium nitrate with a high nitrogen content.
6.1	Each Member State which issues licences to members of the general public with a legitimate interest to acquire, introduce, possess or use restricted explosives precursors shall lay down rules for granting the licence provided for in Article 5(3). When considering whether to grant a licence, the competent authority of the Member State shall take into account all relevant circumstances, in particular: (c) the background of the applicant, including information on previous criminal convictions of the natural persons applying for a licence or		

	representing a legal person applying for a licence applicant anywhere within the Union;		
6.7.	<i>A Member State with a licensing regime referred to in Article 5(3) may recognise licences granted by other Member States</i>	<i>A Member State with a licensing regime referred to in Article 5(3) may recognise licences granted by other Member States</i>	What happens when the country of introduction into the European area is not the country issuing the license for a member of the general public (transit country)? How will the verification of licenses take place in practice? Who will take care of this verification: the customs authorities of the country of introduction or of the country of destination? Another complication could occur in case of a stronger safeguard clause or restriction by a country. Is an electronic system for recognizing licenses or encoding provided for at European level? Will it be possible to recognize the licenses granted in another country if our country chooses not to use the licensing system? According to current Article 6.7. this would not be possible. Should parcels intercepted by our customs authorities be blocked?
7.1.	An economic operator who makes available a restricted explosives precursor to another economic operator shall inform that economic operator that the acquisition, possession or use of that restricted explosives precursor by members of the general public is subject to a restriction as set out in Article 5(1) and (3).	An economic operator who makes available a regulated explosives precursor to another economic operator shall proactively inform that economic operator that the acquisition, possession or use of that regulated explosives precursor by members of the general public is subject to a restriction as set out in Article 5(1) and (3) or a reporting obligation as set out in Article 9.	We are of the view that this information should be transmitted proactively .
8.1.	An economic operator who makes		Quid the difference in treatment between a

8.2.	available a restricted explosives precursor to a member of the general public in accordance with Article 5(3) shall for each transaction verify the proof of identity and licence in compliance with the regime established by the Member State where the restricted explosives precursor is made available and record the amount of the restricted explosives precursor on the licence. For the purpose of verifying that a prospective customer is a professional user or a farmer, an economic operator who makes available a restricted explosives precursor to a professional user or a farmer shall for each transaction request the following: (aa) the name and address of the prospective customer, together with a proof of identity (a) the trade, business or profession of the prospective customer; (b) the intended use of the restricted		professional user and a licensee? Professional users are subject to systematic controls and registrations whilst they have a greater, continuing and legitimate need for these substances compared to licensees? Would this be legitimate? We therefore prefer the obligation to apply as well to the holders of a license in the countries concerned and to the economic operators. In addition, we query whether the text should not provide that one has to check whether the information requested is accurate and that this verification is applied. In practice, all this can be useful but will generate a great additional workload for both economic operators but also for the control authorities. Is not it too burdensome and is it really useful to identify malicious acts if it is not done instantly when there is knowledge that a terrorist attack can be planned and executed within only a few months? All this while the registration system has been deleted because it is inefficient? We are not totally convinced by the measure. We nevertheless understand the reason for this and would like the verification to be done for each new customer, at regular intervals or in the event of major order changes.
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	explosives precursors by the prospective customer.		
9.1	For the purpose of detecting and preventing the illicit manufacture of explosives, economic operators shall report transactions concerning regulated explosives precursors, including transactions involving professional users and farmers, where there are reasonable grounds for suspecting that the substance or mixture is intended for the illicit manufacture of explosives.	For the purpose of detecting and preventing the illicit manufacture of explosives, economic operators shall report all the suspicious transactions concerning regulated explosives precursors, including transactions involving professional users and farmers, where there are reasonable grounds for suspecting that the substance or mixture is intended for the illicit manufacture of explosives.	The addition of these terms ensures that all conceivable situations are covered.
9.2.	Economic operators, other than online marketplaces that act as an intermediary, shall have in place procedures to detect suspicious transactions, targeted to the environment in which the regulated explosives precursors are offered.	Economic operators, other than online marketplaces that act as an intermediary, shall have in place procedures to detect suspicious transactions, targeted to the environment in which the regulated explosives precursors are offered.	Economic operators should comply with procedures in order to detect suspicious transactions. Platforms are used to purchase precursors by criminals. Exempting online market places would create a huge loophole. They can easily detect suspicious transactions by using algorithms. We propose to delete the words “other than online marketplaces that act as an intermediary”. However Belgium understands that the ecommerce directive would have to be adjusted in order to accomplish this recommendation. We have no intention to “force” this, but would like to mention that exempting online market places that act as an intermediary from the reporting obligation will reduce the efficiency of this legislation to combat the manufacturing of illegal home made explosives.
9.5			Same remark as under 9.1
10.2	Member States shall organise, at least twice once a year, awareness-	Member States shall organise, at least once a year, awareness-raising actions;	As currently drafted, this obligation appears to be too cumbersome despite the oral precisions provide by the

	raising actions, targeted to the specificities of each different sector using regulated explosives precursors.	targeted to the specificities of each different sector using regulated explosives precursors.	Commission on the subject in that it would not consist of a sectoral action. We prefer that this would flow directly from the text
11.1	Each Member State shall ensure that competent authorities are in place for inspection and controls for the correct application of Articles 4 to 9 of this Regulation.	Each Member State shall ensure that competent authorities are in place for inspection and controls for the correct application of Articles 4 5 to 9 of this Regulation.	
14.6	6. Without prejudice to paragraph 5, the Commission may, after consulting the Member State and, if appropriate, third parties, decide that the measure taken by the Member State is not justified and request the Member State to withdraw it.	6. Without prejudice to paragraph 5, the Commission may, after consulting the Member State and, if appropriate, third parties, decide that the measure taken by the Member State is not justified and request the Member State to withdraw it.	We support this proposal made by other country as well.
15.1	The Commission shall adopt delegated acts in accordance with Article 16 concerning the addition of substances to Annex I and changes of the limit values in Annex I to the extent necessary to accommodate developments in the misuse of substances as explosives precursors, or on the basis of research and testing, as well as concerning the addition of substances to Annex II, where necessary to accommodate developments in the misuse of substances as explosives	On the proposal of at least 1/3 of the member states inside the Standing Committee on Precursors the Commission shall adopt delegated acts in accordance with Article 16 concerning the addition of substances to Annex I and changes of the limit values in Annex I to the extent necessary to accommodate developments in the misuse of substances as explosives precursors, or on the basis of research and testing. The Commission shall adopt delegated acts in accordance with Article 16 as well as concerning the addition of substances	We understand the arguments of both Member States that underscore the importance of this addition but also reluctance towards it. In the spirit of compromise, we would like to propose an alternative to the current text.

	precursors. The Commission shall, as part of the preparation of the delegated acts, consult relevant stakeholders, in particular the chemical industry and the retail sector.	to Annex II, where necessary to accommodate developments in the misuse of substances as explosives precursors. The Commission shall, as part of the preparation of the delegated acts, consult the Standing Committee on Precursors and relevant stakeholders, in particular the chemical industry and the retail sector.	
20.3		The commission on the basis of the information referred to in paragraphs 1 and 2 shall report the results back to the member states.	Addition of a paragraph to Article 20
22	No sooner than <i>[six years after the date of application of this Regulation]</i> , the Commission shall carry out an evaluation of this Regulation and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. The evaluation shall be conducted according to the Commission's better regulation Guidelines. Member States shall provide the Commission with the information necessary for the preparation of that report.		We prefer a shorter evaluation period: maximum 3 or 4 years. On several occasions, the Commission has referred to urgency as a justification. This is the reason why it appears to be appropriate for the evaluation to take place at an earlier point in time
23	This Regulation shall enter into force on the twentieth day following that of its publication in		In order to limit the impact on small traders who would be affected by the changes to the Regulation,

	the Official Journal of the European Union. It shall apply from [<i>one year 18 months after the date of entry into force</i>].		we propose to combine the "transitional period" with the possibility of returning products that were purchased during the "transitional period" to suppliers given that the sulfuric acid stock of retailers will become unusable to consumers. Sulfuric acid is used for the preparation of TATP It should also be noted that TATP can as well be prepared by using a different type of acid that is not regulated. A ban on sulfuric acid is therefore not a major obstacle for those who want to make TATP. We would like to know whether the Commission has researched these alternative sources for the manufacturing of TATP or to propose a delegated act in the future? The limitation of sulfuric acid is not to likely to contribute significantly to improving public safety. Has the risk of shifting of TTAP to other types of explosives been duly taken into account?
Annex I, sulfuric acid			
Annex I , Ammonium Nitrate			In order to achieve a better safety level, professional farmers should not be authorized to all types of ammonium nitrate, but only those which meet the requirements of Regulation (EC) No 2003/2003 of 13 October 2003 on fertilizers. Other types of ammonium nitrate (explosion quality) would then be available only

			to legitimate users of such materials, such as laboratories, the chemical industry and blast furnace factories. We also draw attention to the fact that the French version contains an error.
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