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WORKING PAPER

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WORKING DOCUMENT

From:	SE delegation
To:	Working Party on Technical Harmonisation (Explosives Precursors)
Subject:	Comments from the Swedish 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



Regeringskansliet

Memorandum

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Ministry of Justice

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Comments of the Swedish 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

Sweden suggests the following modifications of the proposal (printed in bold and underlined).

Article 3, Definitions

Proposal

Article 3.12: ‘regulated explosives precursors’ 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, **unless it is a mixture where;**

- a. **the concentration of any substance listed in the Annexes is not higher than 1% by weight, and**
- b. **there are at least four ingredients not listed in the Annexes, each present at a higher concentration than 1 % by weight, and**
- c. **a substance listed in the Annexes is not significantly different from the other ingredients with regard to physical state, solubility or particle size.**

Comments

It is possible to extract explosives precursors also from products with a low concentration e.g. if the mixture is simple (i.e. contains few ingredients e.g. only one precursor and one solvent), if the precursor is in a different physical state (e.g. solid in a liquid) or has a very different solubility or particle size. Thus, there is a need to formulate the Regulation in a way that exclude mixtures of low precursor concentration under certain additional conditions only.

Comments on Article 3.13 and 3.14

Foresters need ammonium nitrate as a fertilizer in their forestry activity in the same way as farmers need the substance for agricultural activity. Therefore, it is reasonable to argue that forestry and foresters should be part of Article 3.13 and 3.14 in the same way as farmers and agricultural activity.

Article 4, Free movement

Proposal

Article 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 **with regard to their potential as explosives precursors.**

Comments

There might be other reasons for member states to regulate the substances in Annex 1 of the Regulation. For example, due to a substance inherent hazardous property such as corrosive properties of strong acids (for instance nitric acid and sulphuric acid).

As an alternative to the proposed wording, a similar wording as the one in Article 6 of the current regulation (98/2013) would serve the same purpose.

Article 8, Verification upon sale

Proposal

Article 8.2 For the purpose of verifying that a prospective customer is **an economic operator**, a professional user or a farmer, an economic operator who makes available a restricted explosives precursor to **another economic operator**, a professional user or a farmer shall for each ~~transaction~~ **new customer**, 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 explosives precursors by the prospective customer.

The same information as above shall be requested from all customers at their first transaction after entry into force of this regulation and also when a known regular customer significantly changes its conduct in respect of ordered amount, order frequency, delivery address, delivery route or other relevant information regarding a transaction.

Comments

The requirement should also apply when an economic operator provides explosives precursors to another economic operator. However, it is not realistic nor reasonable

for an economic operator to require the information for every single transaction with known regular customers.

Article 11, National inspection authorities

Proposal

Article 11.1 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.

Comments

Member states cannot designate authorities to inspect the free movement clause as it is a fundamental provision of the Lisbon treaty.

Article 23, Entry into force

Proposal

Article 23: The Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from ~~18 months~~ two years after the date of entry into force.

Comments

The period for the entry into force of the Regulation should be at least two years to provide member states enough time to complete their internal procedures. The suggested period of 18 months is not sufficient.