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WORKING PAPER

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

Updated Comments from DJE Ireland

Amendment to Article 14 “Safeguard clause”

Justification to retain existing national measures in place restricting certain substances on the grounds that they could be used for the illicit manufacture of explosives.

1. Article 4 of the proposed new Regulation on “Free movement” states that *“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.”*
2. Currently Article 13 of Regulation (EU) No. 98/2013 of the European Parliament and of the Council on the marketing and use of explosives precursors is the “Safeguard clause”. Article 13 (6) required Member States to notify the Commission, by 2 June 2013, *“of any existing measures restricting or prohibiting the making available, possession and use of a substance or of any mixture or substance containing it on the ground that it could be used for the illicit manufacture of explosives.”* Regulation 98/2013 is to be repealed in full by Article 19(1) of the proposed new Regulation.
3. Ireland and a number of other Member States utilised Article 13(6) and notified the Commission of their national measures prior to the June 2013 deadline. Ireland’s notification was that it currently controls the importation, manufacture, transportation, supply and storage of five substances under the Explosives Act 1875. Some of these substances are regulated explosives precursors and the full list is:
 - Ammonium nitrate and mixtures containing > 79% ammonium nitrate
 - Potassium nitrate and mixtures containing > 5% potassium nitrate
 - Sodium nitrate and mixtures containing > 5% sodium nitrate
 - Sodium Chlorate
 - Nitrobenzene
4. The reason that Ireland currently controls these substances is that for many years these have been the primary ingredients in the manufacture of homemade explosives that were used in the various terrorist campaigns on the island of Ireland. If the restrictions controlling these substances were to be removed by the introduction of the new Regulation then it would open the possibility of terrorists again gaining access to these substances and the subsequent unwanted consequences.
5. The “Safeguard clause” in the new proposed Regulation is Article 14. Points 1 to 5 in this proposal are identical to those in the original Regulation 98/2013. However, there is no clause in the proposed Regulation similar to the old Article 13(6) requiring Member States to inform the Commission of any existing national measures. Ireland has raised this question with the Commission and the Commission is of the understanding that all existing

national measures that were previously notified to the Commission would continue to be legal after the new Regulation comes into force.

6. In order to copper fasten this understanding and so as to not lessen the security relating to certain explosives precursors in different Member States, Ireland is proposing that a new paragraph be added to the “Safeguard clause” which would permit Member States which had previously notified the Commission of their domestic legislation under the old Article 13(6) of Regulation 98/2013 to retain that legislation.
7. Proposed new text:

Article 14(6):

Without prejudice to paragraphs 2 and 3, Member States may maintain national measures previously notified to the Commission under Article 13(6) of Regulation (EU) No 98/2013

Proposal for a Regulation on the Marketing and Use of Explosives Precursors to replace Regulation (EU) No 98/2013 – Presidency Compromise Suggestions – Doc 8721/2018 Updated Comments from DJE Ireland				
Article	Page	Current Text	Suggested Text	Comment and Justification
8.2		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, craft or profession of the prospective customer; (b) the intended use of the restricted explosives precursors by the prospective customer.	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 verify the proof of identity and address of the prospective customer and request the following: (aa) the name and address of the prospective customer, together with a proof of identity (a) the trade, business, craft or profession of the prospective customer; (b) the intended use of the restricted explosives precursors by the prospective customer.	The text as currently written requires the economic operator to request the proof of identity for each transaction, even in the cases where the professional user or farmer is known to the economic operator. This amending text only requires the economic operator to verify the identity of the professional user or farmer. In cases where the professional user or farmer is known to the economic operator there would be no requirement to actually request and see the documentation.
8.5			New additional text: An economic operator who makes available a restricted explosives precursor to another economic operator shall verify the validity of that	Some text of this nature is needed otherwise a person can claim to be an economic operator to get supplied with restricted explosives precursors and there will be no checks on them as would be the

			economic operator and record the transaction	case if they were an individual, a professional or a farmer.
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 transactions concerning regulated explosives precursors, including transactions involving other economic operators , professional users and farmers , where there are reasonable grounds for suspecting that the substance or mixture is intended for the illicit manufacture of explosives.	Similar to Article 8.5 above this is required to ensure that there are no loop holes where a person can be excluded by claiming to be an economic operator
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, including 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	For obvious security reasons, there is a need for online marketplaces that act as an intermediary to have procedures in place to help to detect suspicious transactions
12.1(a),		The Commission shall regularly update, after consulting the Standing Committee on Precursors, guidelines to assist the chemical supply chain and, where relevant, the competent authorities to facilitate cooperation between the competent authorities and	The Commission shall regularly update, after consulting the Standing Committee on Precursors, guidelines to assist the chemical supply chain and, where relevant, the competent authorities to facilitate cooperation between the competent authorities and	The requirement to conduct both training and awareness-raising actions for authorities will be very onerous and these would be greatly assisted if Guidelines were to be issued by the Commission.

		economic operators. The guidelines shall, in particular, provide: (a) information on how to conduct inspections; (b) information on how to apply the restrictions and controls of the Regulation to regulated explosives precursors ordered at a distance by members of the general public or professional users; (c) information on possible measures to be adopted by online marketplaces that act as an intermediary to ensure compliance with this Regulation; (d) information on how to exchange relevant information between competent authorities and national contact points and between Member States; (e) other information which may be deemed useful.	economic operators. The guidelines shall, in particular, provide: (a) information on how to conduct inspections and training and how to organise awareness-raising actions (b) information on how to apply the restrictions and controls of the Regulation to regulated explosives precursors ordered at a distance by members of the general public or professional users; (c) information on possible measures to be adopted by online marketplaces that act as an intermediary to ensure compliance with this Regulation; (d) information on how to exchange relevant information between competent authorities and national contact points and between Member States; (e) other information which may be deemed useful.	
14.6			New Additional text: <i>Without prejudice to paragraphs 2 and 3, Member States may maintain national measures previously notified to the Commission under Article 13(6) of Regulation (EU) No 98/2013</i>	See justification in attached document