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WORKING PAPER

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

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Updated comments of the Dutch 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 – 17 September 2018

Art. 8, paragraph 2

The goal of the revision is to close security gaps. Although the current proposal provides a good basis, it still contains risks from a security perspective. Therefore, the following is suggested:

- If someone claims to be a professional user, the economic operator should check the trade, business or profession of the prospective customer in order to justify the intended use. However, the measures regarding verification upon sale just give a false sense of security, since the accuracy of the given answers cannot be verified. These weak criteria may give rise to members of the general public to circumvent the licensing system by pretending to be a professional user. Therefore, it is suggested that at least **verification of the proof of identity, business and address of the prospective customer** should be introduced;
- It is considered important to **continuously perform the checks on transactions by professional users**. In this respect, the Netherlands cannot support the suggestion to introduce a “waiver” construction with just one check on professional use per year.

Proposal:

*For the purpose of verifying that a prospective customer is a professional user or another economic operator, the economic operator who makes available a restricted explosives precursor to a professional user or another economic operator shall for each transaction **verify the proof of identity, business and address of the prospective customer and** request the following, ~~unless such a check for that recipient has already occurred within a period of one year and the transaction does not significantly deviate from previous transactions:~~*

~~(a) the name and address of the prospective customer, together with a proof of identity;~~

*(b) the trade, **business,** or profession of the prospective customer;*

(c) the intended use of the restricted explosives precursors by the prospective customer.

Art. 8, paragraph 3

The Netherlands cannot support proposals to increase data collection (*art. 8, paragraph 3*) for the single purpose of inspection. The proposed administrative burden for economic operators is assessed as disproportionate, since it does not contribute to enhanced security. Knowing that little time is needed to produce an explosive, data collection of transactions by professional users without active sharing of this information with enforcement authorities will not contribute to detection and prevention of the illicit manufacture. Because these authorities have limited time to intervene in the process of explosives manufacturing, they should be enabled with more and better reports of suspicious transactions. Accordingly, economic operators should **focus on investment in qualitative and quantitative improvement of reports instead of introducing high administrative burdens by data collection.**

*Proposal: **delete art. 8 (3)***

Art. 12, paragraph 1

Economic operators should be supported by clear **guidelines on how to perform the verification checks** as suggested in art. 8, paragraph 2. Moreover, **guidelines on how to link the business and the intended use of the restricted explosives precursor by the prospective customer** should be provided.

Proposal:

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 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 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) information on how to verify the proof of identity, business and address of the prospective customer claiming to be a professional user;***
- (f) information on how to link the business and the intended use of the restricted explosives precursor by the prospective customer to justify its professional use;***
- (g) other information which may be deemed useful.*

Art. 23, paragraph 2

The suggested implementation period of 1,5 year is considered too short to allow for the adaptation of national legislation. In order to facilitate accurate amendment of national legislation the transition period should be extended. In the meantime, it is considered very important to start working on the implementation by competent authorities and the chemical sector in order to close the identified security gaps as soon as possible.

Proposal:

*It shall apply from **two years** after the date of entry into force.*