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WORKING PAPER

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

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
- Presidency compromise suggestions doc nr. **WK 11040/2018 INIT**

HUNGARIAN written comments

Article	Current text	Suggested text	Comments and justification
3.7	‘member of the general public’ means any natural or <u>legal person</u> who has a need for a restricted explosives precursor for purposes that are not connected with their trade, business, craft or profession;	‘member of the general public’ means any natural person or <u>legal person</u> who has a need for a restricted explosives precursor <u>to be used</u> for purposes that are not connected with <u>any trade, business, craft, profession or agricultural activity</u> ;	Amendments are suggested to be in line with the definition of professional user. Further to this, it should be clarified, what is understood under the legal person term. Do we mean all legal persons for example undertakings, foundations etc., either some of them, or the representatives of those.
5.3	A Member State may maintain or establish a licensing regime allowing certain restricted explosives precursors in concentrations not higher than the corresponding limit values set out in column 3 of Annex I to be made available to, or to be introduced, possessed or used by, members of the general public. Under such regime, a member of the general public shall obtain, and, if requested, present a licence for acquiring, introducing, possessing or and using restricted explosives precursors, <u>issued</u> in accordance with Article 6 <u>by a competent authority of the Member State where that restricted explosives precursor is going to be acquired</u> ,	A Member State may maintain or establish a licensing regime allowing certain restricted explosives precursors in concentrations not higher than the corresponding limit values set out <u>in column 3 of Annex I.</u> Under such regime, a member of the general public shall obtain, and, if requested, present a licence for <u>using and related acquiring, introducing and possessing of a</u> restricted explosives precursor. <u>Such licence shall be issued</u> in accordance with Article 6 <u>by a</u>	It needs to be clarified, which Member State has to issue the license in accordance with Article 6, because the place of acquiring, introducing, possessing and use may differ. Our suggestion is that the licenses should be issued by the competent authority of that Member State where the restricted explosives precursor is intended to be used, because in any other cases the inspection and the control is difficult and not efficient. Furthermore Article 5. 3. uses “acquiring, introducing, possessing or using” and Article 6. 1. uses “acquire, introduce, possess or use”, meanwhile the title of licence in Annex III. operates with „acquire, introduce, possess and use”. We suggest to use „and” in every Articles, because in our opinion every licence will be issued for acquiring, introducing, possessing and using of explosives precursors. There is no possibility to issue a licence only for possessing or introducing without the licence for use issued by the Member

	introduced, possessed or used.	competent authority of the Member State where that restricted explosives precursor is intended to be used.	State where explosives precursor is intended to be used.
6.1 (c)	the background of the applicant and, in case the applicant is a legal person, of the members of its statutory bodies, including information on previous criminal convictions of the applicant anywhere within the Union;		There is a need to specify as to which criminal acts are to be taken into account, like in REGULATION (EU) No 258/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL , Article 11. 1. (a): „1. Member States shall refuse to grant an export authorisation if the applicant has a criminal record concerning conduct constituting an offence listed in Article 2(2) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States , or concerning any other conduct provided that it constituted an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;”
8.2. (aa) and (a)	(aa) the name and address of the prospective customer, together with a proof of identity the trade, business, craft or profession of the prospective customer;	(aa) the name and address of the prospective customer and, together with a proof of identity <u>of the prospective customer and the natural person representing the customer, and a proof of the right of that natural person to represent the customer, where appropriate.</u> the trade, business, craft agricultural activity -or profession of the prospective customer;	It is also important that the right of a natural person to represent a legal person shall be proven.

8.3.	For the purpose of verifying compliance with this Regulation and detecting and preventing the illicit manufacture of explosives, economic operators shall retain the data referred to in paragraphs 1 and 2, together with the name and address of the customer, for one year from the date of transaction. During that period, the data shall be made available for inspection at the request of the competent inspection authorities or law enforcement authorities.	For the purpose of verifying compliance with this Regulation and detecting and preventing the illicit manufacture of explosives, economic operators shall require, record and retain the data referred to in paragraphs 1 and 2, together with the name and address of the customer, for one year two years from the date of transaction. During that period, the data shall be made available for inspection at the request of the competent inspection authorities or law enforcement authorities.	It is important to emphasize the need for keeping records of transactions in order to ensure the availability of data. To this end, we also suggest increasing the retention period of these data for at least two years.
9.1	For the purpose of detecting and preventing the illicit manufacture of explosives, economic operators and online marketplaces shall report transactions concerning regulated explosives precursors, including transactions involving professional users and other economic operators 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 and online marketplaces shall report all transactions concerning regulated explosives precursors, including transactions involving professional users and other economic operators and farmers , where there are reasonable grounds for suspecting that the substance or	We suggest deleting the phrase “including transactions involving professional users and other economic operators and farmers”, because all suspicious transactions are to be reported irrespectively of the potential buyer (other economic operator, professional user or member of the general public).

		mixture is intended for the illicit manufacture of explosives.	
Anne x III point 4. and 5.			If the addresses are located in another Member State i.e. different from the one where the Authority of the Member State issued the licence then the issuing Authority will not be able to verify whether the substances on the licences are stored or used properly. Therefore, we believe that the text of the proposal needs to declare that the licenses should be issued by the competent authority of that Member State where the restricted explosives precursor is intended to be used like in our suggestion to Article 5.3