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WORKING PAPER

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From:	NL delegation
To:	Working Party on Technical Harmonisation (Explosives Precursors)
Subject:	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 NL delegation on WK 11040/2018 (Presidency compromise proposal)

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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

15 October 2018

These comments are a reaction on the Presidency compromise proposal, d.d. 21 September 2018.

Article 3, paragraph 12:

Suggested text: '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 homogeneous mixtures ~~of more than 5 ingredients~~ in which the concentration of each substance listed in Annexes I or II is below 1 % w/w that contain at least four other ingredients in concentrations above 1 % w/w.

Justification: The Netherlands support the proposal from the Swedish delegation to specify the definition of a mixture.

Article 8, paragraph 2:

Suggested text: "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 identity 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~~:

- (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;
- (c) check and assess if the intended use is in line with the profession of the prospective customer;**
- (d) check and assess if the substance is the most suitable substance for the intended use by the prospective customer.**

Justification:

- *The Netherlands support the suggestion by the UK that a potential one year gap between checks creates a security loophole for prospective customers. Checks on transactions should be performed on a continuous basis;*
- *The Netherlands argue for a solid check on the prospective sale and use of the restricted substances, from the point of view: know your product, know your customer. The purpose of this article should be to verify the legitimacy of the intended professional use. Therefore, additional checks and assessments to link the profession to the intended use and evaluate the suitability of alternatives are proposed.*

Article 9, paragraph 1 – 3:

Suggested text: "...online marketplaces **(where the transaction takes place via their platform)**..."

Justification: monitoring (detecting and reporting) of suspicious transactions is not possible if the online marketplace just facilitates the connection between supply and demand (e.g. Marktplaats.nl).

Article 9, paragraph 5 and 6:

Suggested text: "...shall report significant disappearances and thefts of restricted explosives precursors **without undue delay within 24 hours after detection** to the national contact point of the Member State where the disappearance or theft has taken place."

Justification: in this way the obligations, imposed in paragraph 5 and 6, will be in line with the reporting obligation in paragraph 3.

Article 12, paragraph 1:

Suggested text: "The Commission shall regularly update, after consulting the Standing Committee on Explosives 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: [...]"

- (e) information on how to verify the proof of identity and business 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"**

Justification: In this Revision, economic operators are confronted with many new obligations. Some of them are clear and objectifiable; some of them are more difficult, e.g. determining whether the prospective customer is a professional user. To make sure that the Regulation is implemented correctly, economic operators would be greatly assisted if guidelines on the mentioned topics were to be issued by the Commission.

Annex I - Restricted explosives precursors

*Note: The Netherlands attach – given the security purposes – a great deal of importance to the **transfer of sulphuric acid to Annex I.***