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WORKING PAPER

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From:	Presidency
To:	Working Party on Technical Harmonisation (Explosives Precursors)
Subject:	Presidency non-paper for the discussion

PRESIDENCY NON-PAPER for 5 November 2018

New Recital 11a:

(11a) Data on transactions retained by economic operators may conduce not only to ex-post controls of compliance with this Regulation but also to investigations, detections and prosecutions of possible illegal activities carried out by homemade explosives prepared using explosives precursors. In that case revealing parties of a supply chain is of great importance, no matter if the customer is member of the general public, professional user of economic operator. As the illegal activities may be carried out after a lapse of time after gaining such explosives precursors, the data on transactions with explosives precursors shall be retained for sufficient and appropriate period of time.

Article 3

Definitions

- (12) 'regulated explosives precursor' means a substance listed in Annexes I or II and includes a mixture or **another** 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 Annex I or II is below 1 % w/w;**

Article 5

Making available, introduction, possession and use

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 **and/or** using restricted explosives precursors; **Such a licence shall be** issued in accordance with Article 6 by a competent authority of the Member State where that restricted explosives precursor is **going intended** to be **acquired, introduced, possessed and/or** used.

Article 8

Verification upon sale

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

(aa) proof of identity of the individual entitled to represent the prospective customer;

- (a) the trade, business, ~~craft~~ or profession **together with the company name and address** of the prospective customer;

- (b) the intended use of the restricted explosives precursors by the prospective customer OPTION 1: which must be consistent with their trade, business or profession.]

2a. OPTION 2: For the purpose of verifying the intended use of the restricted explosives precursor, the economic operator shall assess if the intended use is consistent with the trade, business or profession of the prospective customer. The transaction may be refused if there are reasonable grounds for doubting the validity of the intended use of the restricted explosives precursor. The economic operator shall report the suspicious or attempted transaction in accordance with Article 9 of this Regulation.]

Member States may use the format for the customer's statement provided for in Annex IV.

Article 9

Reporting of suspicious transactions, disappearances and thefts

2. Notwithstanding Article 15 of Directive 2000/31/EC, e Economic operators ~~and, other than online marketplaces that act as an intermediary,~~ shall have in place appropriate, reasonable and proportionate procedures to detect suspicious transactions, targeted to the specific environment in which the regulated explosives precursors are offered.

Provided that economic operators and online marketplaces have in place such procedures, Article 14(1) of Directive 2000/31/EC shall apply mutatis mutandis. Online marketplaces shall not be held liable, on the basis of this provision, for transactions that were not detected despite their due diligence.

Article 10

Training and awareness-raising

1. Member States shall ensure adequate resources for and the provision of ~~provide~~ training for law enforcement authorities, first responders and customs authorities to recognise regulated explosives precursors substances and mixtures in during the course of their duties and to react in a timely and appropriate manner to a suspicious activity.

Article 14

Safeguard clause

2. Where a Member State has reasonable grounds for believing that a specific substance listed in Annex I could be used for the illicit manufacture of explosives, at a concentration equal to or lower than the limit values set out ~~laid down~~ in column 2 or 3 of the table in Annex I, it may further restrict or prohibit the making available, possession and use of that substance by imposing a lower concentration limit value.