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WK 13496/2018 INIT

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WORKING PAPER

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WORKING DOCUMENT

From:	Presidency
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 - Final Presidency compromise text

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The Presidency kindly invites Delegations to the next Council Working Group Meeting, to be held on **21 November 2018**, from **10.00 to 13.00**

Delegations find attached the final Presidency compromise text for approval. The text is based on the written comments received by 2 November and the discussions in the last Meeting on 5 November concerning the Articles and Annexes of the proposal on the marketing and use of explosives precursors.

Given that the LIBE Committee will adopt their final report in the week of 10 December 2018, the Presidency invites the delegations to take note of the Draft Report (2018/0103(COD), PE627.056) of the LIBE Committee published on 18 September 2018 to be discussed in the next meeting.

The Presidency asks Member States for their approval to obtain a mandate from COREPER on **12 December 2018** on the basis of the attached Presidency Compromise Text with a view to start the Trilogue with the European Parliament as soon as possible.

As usual, previous amendments are in **bold underline (black)**, deleted Cion proposal wording in simple ~~strike through~~ (black). New text is in **bold underline (red)**, newly deleted Cion proposal wording in simple ~~strike through~~ (red).

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EU) No 98/2013 of the European Parliament and of the Council² established harmonised rules concerning the making available, introduction, possession and use of substances or mixtures that could be misused for the illicit manufacture of explosives, with a view to limiting their availability to the general public, and ensuring the appropriate reporting of suspicious transactions throughout the supply chain.
- (2) Although Regulation (EU) No 98/2013 has contributed to reducing the threat posed by explosives precursors in the Union, it is necessary to strengthen the system of controls **of precursors that can be used for manufacturing** around homemade explosives. Given the number of changes needed, for the sake of clarity it is appropriate to replace Regulation (EU) No 98/2013.
- (3) Regulation (EU) No 98/2013 restricted access to and use of explosive precursors by members of the general public. Notwithstanding this prohibition, Member States could however decide to grant the general public access to those substances through a system of licences and registration. The restrictions and controls on explosives precursors in the Member States were therefore divergent and liable to cause barriers to trade within the Union, thus impeding the functioning of the internal market. Furthermore, the existing restrictions and controls were not ensuring sufficiently levels of public security, as they were not adequately preventing criminals from acquiring explosives precursors. The threat posed by homemade explosives remained high and continues to evolve.
- (4) The system to prevent the illicit manufacture of explosives should therefore be further strengthened and harmonised in view of the evolving threat to public security caused by terrorism and other serious criminal activities. This should also ensure the free movement of explosives precursors in the internal market, as well as promote

¹ OJ C , , p. .

² Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors (OJ L 39, 9.2.2013, p. 1).

competitiveness between economic operators and encourage innovation, by for example facilitating the development of safer chemicals to replace explosives precursors.

- (5) The criteria for determining which measures should apply to which explosives precursors include the level of threat associated with the explosives precursor concerned, the volume of trade in the explosives precursor concerned, and the possibility of establishing a concentration level below which the explosives precursor could still be used for the legitimate purposes for which it is made available and is significantly less likely to be able to be used for the illicit manufacture of explosives.
- (6) Members of the general public should not be able to acquire, introduce, possess or use ~~those~~ **certain** explosives precursors **in** at concentrations ~~at or~~ above certain limit values **in percent by weight (w/w)**. However, it is appropriate to provide for members of the general public to be able to acquire, introduce, possess or use some explosives precursors **in concentrations** above ~~those~~ **limit values** ~~concentration limit~~ for legitimate purposes, only if they hold a licence to do so. **Where the applicant is a legal person, the competent authority of the Member State should take into account the background of the legal person and of any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on one of the following: either (a) a power of representation of the legal person, (b) an authority to take decisions on behalf of the legal person or (c) an authority to exercise control within the legal person.**
- (7) **For some restricted explosives precursors in concentrations above the concentration limit value provided for set out in by this Regulation, there exists no legitimate use by members of the general public. Therefore, For example, licensing should be discontinued for potassium chlorate, potassium perchlorate, sodium chlorate and sodium perchlorate. Licences Licensing should** may only be permitted provided for **a limited number of restricted explosives precursors** substances in concentrations not exceeding the upper limit **provided for** set by this Regulation **and for which there exists substantial a legitimate use by members of the general public**. Above that upper limit **and in case licensing is not permitted**, the risk in relation to the illicit manufacture of explosives outweighs the negligible legitimate use by the general public of ~~these~~ **those** explosives precursors, for which ~~hom~~ alternatives or lower concentrations can achieve the same effect. This Regulation should also determine **the** ~~which~~ circumstances **which** the competent authorities, should, as a minimum, take into account when considering whether to ~~grant~~ **issue** a licence. This should, together with the **format of a licence** annexed to this Regulation, facilitate the recognition of licences **issued by** in other Member States ~~that apply licensing regime~~.
- (8) In order to apply the restrictions and controls of this Regulation, those economic operators selling to professional users or members of the general public **holding** with a licence should rely on information made available upstream in the supply chain. Each economic operator in the supply chain should therefore inform the recipient of that ~~restricted~~ **regulated** explosives precursor that the making available, introduction, possession or use of that ~~restricted~~ explosives precursor by members of the general public is subject to ~~a restriction as set out in~~ this Regulation, for instance by affixing an appropriate label or by verifying that an appropriate label is affixed or by including

~~that~~^{is} information in the safety data sheet compiled in accordance with Annex II to Regulation (EC) No 1907/2006 of European Parliament and of the Council³.

- (9) The difference between an economic operator and a professional user is that the economic operator makes a restricted explosives precursor available to another person, whereas a professional user acquires or introduces a restricted explosives precursor only for their own use. Economic operators selling to professional users, other economic operators or members of the general public with a licence should ensure that their personnel involved in the sale of the explosives precursors ~~is~~ are aware which of the products ~~that the economic operator it offers and that~~ contain explosives precursors, for instance by including ~~this~~ that information in the barcode of the product.
- (10) The distinction between a professional user, to ~~which~~ whom restricted explosives precursors can be made available and a member of the general public, to ~~which~~ whom they cannot, depends on whether the person intends to use that explosives precursor for purposes connected to their specific trade, ~~craft~~ business or profession, including forestry, horticultural and agricultural activity, either full time or part time and not necessarily related to the size of the land area. Economic operators, should therefore not make available a restricted explosives precursor, neither to a natural or legal person that is professionally active in an area where that specific restricted explosives precursor does not tend to be used for professional purposes, nor to natural or legal persons engaged in activities not connected to any professional purpose.
- (10a) Transaction data retained by economic operators provide information that will substantially assist the authorities in preventing, investigating, detecting and prosecuting serious crime carried out with homemade explosive devices and in verifying compliance with this Regulation. The identification of all supply chain actors and customers is essential for this purpose, be it members of the general public, professional users or economic operators. As the illicit manufacture and use of home made explosives might be carried out only after some time, the data should be retained for a sufficient and appropriate period to take investigations forward and with a view to average inspection periods.
- (11) The obligations under ~~of~~ this Regulation should apply also to companies that operate online, including on online marketplaces. Therefore, online economic operators should also train their personnel ~~staff~~ and have in place appropriate procedures to detect suspicious transactions. Furthermore, they should not make available restricted explosives precursors to a member of the general public in Member States other than those that maintain or establish a licensing regime in line with this Regulation and only after verifying that that member of the general public has a licence. After having verified the identity of the prospective customer, for instance through mechanisms referred to in Regulation (EU) No 910/2014 of the European Parliament and of the Council⁴, the economic operator should verify that a licence has been issued for the intended transaction, for instance through a physical inspection of the licence at the time of delivery of the precursor or, with the consent of the prospective customer, by contacting the competent authority of Member States that issued the licence. ~~enable to~~

³ Regulation (EC) No 1907/2006 of European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ L 396, 30.12.2006, p.1).

⁴ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

~~be consulted on the licenses they have issued.~~ Companies operating online should also, like those operating offline, request end-use declarations of professional users.

- (12) **Online market places** act as mere intermediaries between economic operators on the one ~~side~~ **hand**, and members of the general public, ~~or~~ professional users ~~or farmers~~ on the other ~~side~~ **hand**. ~~they~~ **Therefore online marketplaces should not fall under the definition of an economic operator and** should not be required to instruct their personnel involved in the sale of restricted explosives precursors or verify the identity and, where appropriate, the licence of the prospective customer or request other information from the prospective customer. However, given the central role which online marketplaces ~~that act as an intermediary~~ play in online economic transactions, including as regards the sales of **regulated** ~~restricted~~ explosives precursors, it is appropriate that they should inform, in a clear and effective manner, users who aim to make available **regulated** ~~restricted~~ explosives precursors through the use of their services of the obligations under this Regulation. In addition, ~~it is appropriate that~~ online marketplaces ~~that act as an intermediary~~ **should** take measures to help ensure that their users comply with their obligations regarding verification, for instance by offering tools to facilitate verification of licences. **Given the increasing significance of online markets for all kinds of offers and the importance of this procurement channel, also for terroristic purposes, online marketplaces should be subject to the same detection and reporting obligations as economic operators. In applying those obligations, the competent authority should strike a fair balance between public security needs and the affected interests and fundamental rights. All such obligations on online marketplaces that act as an intermediary under this Regulation should be without prejudice to Articles 14 and 15 of Directive 2000/31/EC of the European Parliament and of the Council.**

- (12a) This Regulation should lay down specific obligations for online marketplaces concerning the detection and reporting of suspicious transactions taking place on their website or using their computing services. These obligations should apply notwithstanding Article 15 of Directive 2000/31/EC, whilst at the same time ensuring, under certain conditions, that an online marketplace can benefit from the exemption of liability provided for by Article 14 of that Directive. Therefore, online marketplaces should not be held liable, on the basis of this Regulation, for transactions that were not detected despite the marketplace having in place appropriate, reasonable and proportionate procedures to detect such a suspicious transaction.**

- (12b) Unless excluded from the scope of application the obligations relating to regulated explosives precursors should apply to all substances listed in the respective column I of Annexes I and II, irrespective of their concentration.**

- (13) To improve the practical application of ~~this~~ Regulation, both economic operators and public authorities should provide for adequate training regarding the obligations of this Regulation. Member States should have in place inspection authorities and organise regular awareness-raising actions, targeted at the specificities of each different sector, and maintain a permanent dialogue with the supply chain, including those operating online.
- (14) The choice of substances used by criminals for the illicit manufacture of explosives can change rapidly. It should, therefore, be possible to bring additional substances under the regime provided by this Regulation, where necessary as a matter of urgency. In order to accommodate **possible** developments in the misuse of substances as explosives

precursors, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission **in respect of to list additional substances that are not to be made available to the general public, to amending the concentration** limit values above which certain substances restricted under this Regulation are not to be made available to the general public, and ~~to listing~~ of additional substances in respect of which suspicious transactions are to be reported. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁵. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

- (15) In order to deal with substances not already ~~restricted by this Regulation~~ **listed in Annex I or II** but in respect of which a Member State discovers reasonable grounds for believing that they could be used for the illicit manufacture of explosives, a safeguard clause for an adequate Union procedure ~~is~~ **should be** provided. Moreover, in view of the specific risks to be addressed in this Regulation, it is appropriate to allow Member States, in certain circumstances, to adopt safeguard measures, including in respect of substances already subject to measures under this Regulation. **Furthermore, Member States should be allowed to maintain national measures, which they have already previously notified to the Commission in line with Article 13(6) of Regulation (EU) No. 98/2013.**
- (16) The regulatory framework would be simplified by ~~transferring~~ **integrating** the relevant security-oriented restrictions on making available ammonium nitrate from Regulation (EC) No 1907/2006 **into** ~~to~~ this Regulation. For that reason, paragraphs 2 and 3 of entry 58 to Annex XVII to Regulation (EC) No 1907/2006 should be deleted.
- (17) Regulation (EU) No 98/2013 should be repealed.
- (18) This Regulation requires the processing of personal data and their further disclosure to third parties in case of suspicious transactions. That processing and disclosure imply an interference with the fundamental rights to private life and the right to the protection of personal data. Accordingly, it should be ensured that the fundamental right to the protection of personal data of individuals whose personal data are processed in application of this Regulation is duly protected. Regulation (EU) 2016/679 of the European Parliament and of the Council⁶ governs the processing of personal data carried out in the framework of this Regulation. Therefore, the processing of personal data that licensing and the reporting of suspicious transactions entail, should be carried out in accordance with Regulation (EU) 2016/679, including the general data protection principles of lawfulness, fairness and transparency, purpose limitation, data minimisation, accuracy, storage limitation, integrity and confidentiality and the requirement to show due respect for the data subject's rights.
- (19) The Commission should carry out an evaluation of this Regulation based on the five criteria of efficiency, effectiveness, relevance, coherence and EU value added and

⁵ OJ L123, 12.5. 2016, p1.

⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

should provide the basis for impact assessments of possible further measures. Information should be collected regularly and in order to inform the evaluation of this Regulation.

- (20) Since the objective of this Regulation, namely limiting access by the general public to explosives precursors, cannot be sufficiently achieved by the Member States but and can rather therefore, by reason of the scale and effects of the limitation, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation establishes harmonised rules concerning the making available, introduction, possession and use of substances or mixtures that could be misused for the illicit manufacture of explosives, with a view to limiting their availability to the general public, and ensuring the appropriate reporting of suspicious transactions throughout the supply chain.

This Regulation is without prejudice to other more stringent provisions of Union law concerning the substances listed in ~~the~~ Annexes I and II.

Article 2

Scope

1. **This** Regulation applies to the substances listed in Annexes I and II and to mixtures and substances containing them.
2. This Regulation does not apply to:
 - (a) articles as defined in point (3) of Article 3 of Regulation (EC) No 1907/2006;
 - (b) pyrotechnic articles as defined in point (1) of Article 3 of Directive 2013/29/EU of the European Parliament and of the Council⁷;
 - (c) pyrotechnic articles intended for non-commercial use, in accordance with national law, by the armed forces, the law enforcement authorities or the fire department;
 - (d) pyrotechnic equipment falling within the scope of Directive 2014/90/EU of the European Parliament and of the Council⁸;
 - (e) pyrotechnic articles intended for use in the aerospace industry;
 - (f) percussion caps intended for toys;
 - (g) medicinal products legitimately made available to a member of the general public on the basis of a medical prescription in accordance with the applicable national law.

Article 3

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) ‘substance’ means a substance within the meaning of point (1) of Article 3 of Regulation (EC) No 1907/2006;
- (2) ‘mixture’ means a mixture within the meaning of point (2) of Article 3 of Regulation (EC) No 1907/2006;

⁷ Directive 2013/29/EU of the European Parliament and of the Council of 12 June 2013 on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles (OJ L 178, 28.6.2013, p. 27).

⁸ Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC (OJ L 257, 28.8.2014, p. 146).

- (3) 'article' means an article within the meaning of point (3) of Article 3 of Regulation (EC) No 1907/2006;
- (4) 'making available' means any supply, whether in return for payment or free of charge;
- (5) 'introduction' means the act of bringing a substance into the territory of a Member State, **irrespective of its destination within the European Union**, whether from another Member State or from a third country, **under any customs procedure including transit as defined in the Union Customs Code of Regulation (EU) No. 952/2013⁹**;
- (6) 'use' means any processing, formulation, **consumption**, storage, **keeping**, treatment **of an article, filling into containers, transfer from one container to another**, or mixing, production of an article, or any other utilisation;
- (7) 'member of the general public' means any natural or legal person who ~~has a need for a restricted explosives precursor~~ **is acting** for purposes ~~that are~~ not connected with their trade, business, ~~craft~~ or profession;
- (8) 'professional user' means any natural or legal person **or public entity or group of such persons**, who has a demonstrable need for a restricted explosives precursor for purposes connected with their trade, business, ~~craft~~ or profession, **including agricultural activity, either full time or part time and not necessarily related to the size of the land area**, which exclude making that restricted explosives precursor available to another person.
- (9) 'economic operator' means any natural or legal person or public entity or group of such persons and/or bodies which ~~delivers~~ **makes** regulated explosives precursors ~~or services related to regulated explosives precursors~~, **available** on the market, either off- or online, and including **on** online marketplaces;
- (10) 'online marketplace ~~that acts as an intermediary~~' means a provider of an intermediary service that allows economic operators on the one hand, and members of the general public **or** professional users ~~or farmers~~ on the other hand, to conclude transactions regarding regulated explosives precursors via online sales or service contracts with economic operators either on the online marketplace's website or on an economic operator's website that uses computing services provided by the online marketplace;
- (11) 'restricted explosives precursor' means a substance listed in Annex I, in a concentration higher than, ~~or, in the case of ammonium nitrate, in a concentration equal to or higher than~~ the corresponding limit value set out in column 2 **of the table in Annex I** therein and includes a mixture or another substance in which ~~such a substance~~ **a substance listed in that Annex** is present in a concentration higher than, ~~or, in the case of ammonium nitrate, in a concentration equal to or higher than~~ the corresponding limit value;
- (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**;
- (13) 'agricultural activity' means the production, rearing or growing of agricultural products including harvesting, milking, breeding animals and keeping animals for farming

⁹ **Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1–101)**

purposes, or maintaining the land in good agricultural and environmental condition as established under Article 94 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council.¹⁰;

- (14) ~~'farmer' means a natural or legal person, or a group of natural or legal persons, regardless of the legal status granted to such group and its members by national law, whose holding is situated within the territorial scope of the Treaties, as defined in Article 52 TEU in conjunction with Articles 349 and 355 TFEU, and who exercises an agricultural activity.~~

Article 4

Free movement

Unless otherwise provided for in this Regulation or in other legal acts of the Union, Member States shall not, **on grounds related to the prevention of the illicit manufacture of explosives**, prohibit, restrict or impede the making available of a regulated explosives precursor.

Article 5

Making available, introduction, possession and use

1. Restricted explosives precursors shall not be made available to, or introduced, possessed or used by members of the general public.
- 1a. The obligation under paragraph 1 also applies to mixtures containing chlorates or perchlorates listed in Annex I, if the overall concentration of those substances in the mixture exceeds the limit value of one of those substances set out in column (2) of the table in Annex I.**
- ~~2. Paragraph 1 shall not apply to ammonium nitrate (CAS RN 6484-52-2) that is made available to, or introduced, possessed or used by farmers for agricultural activity, either full time or part time and not necessarily related to the size of the land area.~~
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.

4. Member States shall, without delay, notify to the Commission all measures they take in order to implement the licensing regime provided for in paragraph 3. The notification shall set out the restricted explosives precursors in respect of which the Member State provides for a licensing regime in accordance with paragraph 3.

¹⁰ Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ L 347, 20.12.2013, p. 549).

5. The Commission shall make publicly available a list of measures notified by Member States in accordance with paragraph 4.

Article 6

Licences

1. Each Member State which issues licences to members of the general public with a legitimate interest to acquire, introduce, possess or use restricted explosives precursors shall lay down rules for ~~issuing~~ ~~granting~~ the licence provided for in Article 5(3). When considering whether to ~~issue~~ ~~grant~~ a licence, the competent authority of the Member State shall take into account all relevant circumstances, in particular:
- (a) the demonstrable need for the restricted explosives precursor and the legitimacy of the intended use ~~of the substance~~;
 - (b) the availability of lower concentrations or alternative substances that would achieve a similar effect;
 - (c) the background of the applicant including information on previous criminal convictions of the applicant anywhere within the Union;
 - (d) the proposed storage arrangements to ensure that the restricted explosives precursor is kept securely;
2. The licence shall be refused if there are reasonable grounds for doubting the legitimacy of the intended use or the intentions of the user to use the explosives precursor ~~it~~ for a legitimate purpose.
3. The competent authority may choose how to limit the validity of the licence, through permitting single or multiple use for a period not exceeding three years. The competent authority may oblige the licence holder to demonstrate until the designated expiry of the licence that the conditions under which the licence was issued ~~granted~~ are still fulfilled. The licence shall mention the restricted explosives precursors in respect of which it is issued.
4. The competent authority~~ies~~ may require applicants to pay a licence application fee. Such a fee shall not exceed the cost of processing the application.
5. The competent authority may suspend or revoke the licence where there are reasonable grounds for believing that the conditions under which the licence was issued ~~granted~~ are no longer fulfilled.
6. Appeals against any decision of the competent authority, and disputes concerning compliance with the conditions of the licence, shall be heard by an appropriate body responsible under national law.
7. A Member State ~~with a licensing regime referred to in Article 5(3)~~ may recognise licences issued ~~granted~~ by other Member States.

Member States may use the format for ~~issuing~~ a licence provided for in Annex III.

8. The competent authority shall obtain the information on previous criminal convictions of the applicant in other Member States as referred to in paragraph 1, point (c) ~~shall be obtained~~ through the system established by Council Framework

Decision 2009/315/JHA¹¹. The central authorities referred to in Article 3 of that Framework Decision **shall**, within **20 10** working days from the date the request was received ~~shall~~ provide responses to requests for such information.

9. ~~Licences issued by a Member State in accordance with Article 7 of Regulation (EC) No 98/2013 which are still valid on [the day of entry into application of this Regulation] shall lose their validity on that date. Each Member State may decide, upon request of the licensee holder, to confirm, renew or prolong such licences issued in that Member State if the restricted explosives precursors can be subject to a licence in accordance with the limit values set out in column 3 of Annex I and if the competent authority considers that the requirements for granting the licence as referred to in paragraph 1 are met. Such confirmation, renewal or prolongation should respect the time limit set in paragraph 3 of this Article.~~

Article 7

Informing the supply chain

1. An economic operator who makes available a ~~restricted~~ **regulated** explosives precursor to another economic operator shall **proactively** inform that economic operator that the acquisition, possession or use of that ~~restricted~~ **regulated** explosives precursor by members of the general public is subject to a restriction as set out in Article 5(1) and (3) **or a reporting obligation as set out in Article 9.**
2. An economic operator who makes available regulated explosives precursors to a professional user, ~~to a farmer~~ or to a member of the general public ~~in accordance with Article 5(3)~~ shall ensure and be able to demonstrate to the competent authorities referred to in Article 11 that ~~their~~ **its** personnel involved in the sale of regulated explosives precursors is:
 - (a) aware **which** of the ~~fact that~~ products ~~that~~ it offers ~~and~~ contain regulated explosives precursors;
 - (b) instructed regarding the obligations pursuant to Articles 5 to 9 of this Regulation.
3. An online marketplace ~~that acts as an intermediary~~ shall take measures to ensure that its users, when making available **regulated** ~~restricted~~ explosives precursors through its services, are informed of their obligations pursuant to this Regulation.

Article 8

Verification upon sale

1. An economic operator who makes available a restricted explosives precursor to a member of the general public in accordance with Article 5(3) shall for each transaction verify the proof of identity and licence **of that member of the general public** in compliance with the **licensing** regime established by the Member State where the restricted explosives precursor is made available: **and record the amount of the restricted explosives precursor on the licence.**
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

¹¹ Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (OJ L 93, 7.4.2009, p. 23).

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 the value added tax identification number (VATIN)** of the prospective customer;
- (b) the intended use of the restricted explosives precursors by the prospective customer.

2a. 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.

- 3. For the purpose of verifying compliance with this Regulation and detecting and preventing the illicit manufacture of explosives, economic operators shall retain the **information** data referred to in paragraphs **1 and 2**, ~~together with the name and address of the customer~~, for ~~one~~ **two** years from the date of transaction. During that period, the ~~data~~ **information** shall be made available for inspection at the request of the **national** ~~competent~~ inspection authorities or law enforcement authorities.
- 4. An online marketplace ~~that acts as an intermediary~~ shall take measures to help ensure that its users, when making available restricted explosives precursors through its service, comply with their obligations under this Article.

Article 9

Reporting of suspicious transactions, disappearances and thefts

- 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~~, where there are reasonable grounds for suspecting that the substance or mixture is intended for the illicit manufacture of explosives.

Economic operators **and online marketplaces** shall report such suspicious transactions after having regard to all the circumstances and in particular, where the prospective customer **acts in** ~~displays~~ one or more of the following **ways**:

- (a) appears unclear about the intended use of the regulated explosives precursors;
- (b) appears unfamiliar with the intended use of the regulated explosives precursors or cannot plausibly explain it;

- (c) intends to buy regulated explosives precursors in quantities, combinations or concentrations uncommon for legitimate use;
 - (d) is unwilling to provide proof of identity, place of residence or, where appropriate, status as professional user or economic operator;
 - (e) insists on using unusual methods of payment, including large amounts of cash.
2. **Notwithstanding Article 15 of Directive 2000/31/EC, 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.~~
3. Economic operators **and online marketplaces** may refuse the suspicious transaction and shall report the suspicious transaction or attempted transaction within 24 hours **of determining that it was suspicious**, including if possible the identity of the customer, to the national contact point of the Member State where the suspicious transaction was concluded or attempted.
4. Each Member State shall set up one or more national contact points with a clearly identified telephone number and e-mail address for the reporting of suspicious transactions. The national contact points shall be available **24 hours a day, seven days a week** ~~on a 24/7 basis~~.
5. Economic operators, ~~farmers~~ and professional users shall report significant disappearances and thefts of regulated explosives precursors ~~without undue delay~~ **within 24 hours after detection** to the national contact point of the Member State where the disappearance or theft **took** ~~has taken~~ place. In deciding whether a disappearance or theft is significant, they shall take into account whether the amount is unusual in all circumstances of the case.
6. Members of the general public that have acquired restricted explosives precursors in accordance with Article 5(3) shall report significant disappearances and thefts of restricted explosives precursors ~~without undue delay~~ **within 24 hours of their detection** to the national contact point of the Member State where the disappearance or theft **took** ~~has taken~~ place.

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.
2. Member States shall organise, at least **once** ~~twice~~ a year, awareness-raising actions, targeted to the specificities of each different sector using regulated explosives precursors.

Article 11

National inspection authorities

1. Each Member State shall ensure that competent authorities are in place for inspection and controls ~~for~~ **of** the correct application of Articles 4 ~~5~~ to 9 of this Regulation.
2. Each Member State shall ensure that the competent authorities referred to in paragraph 1 have the **resources and** investigative powers necessary to ensure the proper administration of their tasks.
3. ~~Each Member State shall place adequate resources at the disposal of the competent authorities referred to in paragraph 1 to enable them, together with any other available resources, to fulfil their tasks under this Regulation in a timely and effective manner.~~

Article 12

Guidelines

1. The Commission shall regularly update, after consulting the Standing Committee on Precursors, guidelines to assist **actors in** 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~~ **this** 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 **the** competent authorities and **the** national contact points and between Member States;
 - (e) other information, which may be deemed useful.
2. The competent authorities shall ensure that the guidelines provided for in paragraph 1 are regularly disseminated in a manner deemed appropriate by the competent authorities in accordance with the objectives of the guidelines.
3. **The Commission shall ensure that the guidelines referred to in paragraph 1 are available in all official languages of the European Union.**

Article 13

Penalties

Member States shall lay down rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

Article 14

Safeguard clause

1. Where a Member State has reasonable grounds for believing that a specific substance not listed in ~~the~~ Annex I or II could be used for the illicit manufacture of explosives, it may restrict or prohibit the making available, possession and use of that substance, or of any mixture or substance containing it, or it may provide that the substance be subject to the reporting of suspicious transactions in accordance with Article 9.
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.
3. Where a Member State has reasonable grounds for establishing a ~~concentration~~ limit value above which a substance listed in Annex II should be subject to the restrictions otherwise applying to restricted explosives precursors, it may restrict or prohibit the making available, possession and use of that substance by imposing a maximum permitted concentration.
4. A Member State restricting or prohibiting substances in accordance with paragraph 1, 2 or 3 shall immediately inform the Commission and the other Member States thereof, giving its reasons.
5. In the light of the information communicated pursuant to paragraph 4, the Commission shall immediately examine whether to prepare amendments to the Annexes in accordance with Article 15(1) or to prepare a legislative proposal to amend the Annexes. The Member State concerned shall, where appropriate, amend or repeal its national measures to take account of any such amendment to the Annexes.
6. Without prejudice to paragraph 5, the Commission may, after consulting the Member State and, if appropriate, third parties, ~~decide~~ **take a decision within 60 days of receipt of the information from the Member State**, that the measure taken by the Member State is not justified, and **require** ~~request~~ the Member State to ~~withdraw it~~ **revoke or amend the provisional measure**.
7. **Without prejudice to paragraphs 2 and 3, Member States may maintain national Measures previously notified by Member States to the Commission under Article 13(6) of Regulation (EU) No 98/2013 shall be unaffected by this Article.**

Article 15

Amendments to the Annexes

1. The Commission shall adopt delegated acts in accordance with Article 16 concerning ~~the addition of substances to Annex I and~~
 - a)** changes of the limit values in Annex I to the extent necessary **in order** to accommodate developments in the misuse of substances as explosives precursors, or on the basis of research and testing,
 - b)** ~~as well as concerning the addition of~~ **adding** substances to Annex II, where necessary to accommodate developments in the misuse of substances as explosives precursors.

The Commission shall, as part of the preparation of the delegated acts, consult relevant stakeholders, in particular the chemical industry and the retail sector.

Where, in the case of a sudden change in the risk assessment as far as the misuse of substances for the illicit manufacture of explosives is concerned, imperative grounds of urgency so require, the procedure provided for in Article 17 shall apply to delegated acts adopted pursuant to this Article.

2. The Commission shall adopt a separate delegated act in respect of ~~each addition of substances to Annex I and~~ each change of the limit values in Annex I and each new substance added to Annex II. Each delegated act shall be based on an analysis demonstrating that the amendment is not likely to lead to disproportionate burdens on economic operators or consumers, having due regard to the objectives sought to be achieved.

Article 16

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 15 shall be conferred on the Commission for a period of five years from [*entry into force*]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 15 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement **of 13 April 2016** on Better Law-Making ~~of 13 April 2016~~.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 15 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 17

Urgency procedure

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.
2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 16(6). In such a case, the Commission shall repeal the act immediately following the notification of the decision to object by the European Parliament or by the Council.

Article 18

Amendment of Annex XVII to Regulation (EC) No 1907/2006

In Annex XVII to Regulation (EC) No 1907/2006, in entry 58. **Ammonium nitrate (AN)** of the table setting out the designation of the substances, groups of substances and mixtures and the conditions of restriction, ~~in the column 2~~, paragraphs 2 and 3 **in column 2**, are deleted.

Article 19

Repeal of Regulation (EU) No 98/2013

1. Regulation (EU) No 98/2013 is repealed **with effect** from [*date of application of this Regulation*].
2. References to **the repealed** Regulation (EU) No 98/2013 shall be construed as references to this Regulation.

Article 20

Reporting

1. Member States shall report to the Commission [*one year after the date of application of this Regulation*] and subsequently on an annual basis, the following information:
 - (a) the number of reported suspicious transactions, **significant** disappearances and thefts respectively;
 - (b) the number of licence applications received as referred to in Article 5(3), as well as the number of licences **issued** ~~provided~~, and the most common reasons for refusing to **issue** ~~grant~~ licences;
 - (c) information on awareness-raising actions as referred to Article 10(2);
 - (d) information on inspections carried out as referred to in Article 11, including the number of inspections and economic operators covered.
2. Member States shall, in submitting the information referred to in ~~points paragraph 1(a),~~ (c) and (d) **of paragraph 1** to the Commission, distinguish which reports, actions and inspections relate to on- and offline activities.

Article 21

Monitoring programme

By [*one year after the entry into force of this Regulation*] at the latest, the Commission shall establish a detailed programme for monitoring the outputs, results and impacts of this Regulation.

The monitoring programme shall set out the means by which and the intervals at which the data and other necessary evidence are to be collected. It shall specify the action to be taken by the Commission and by the Member States in collecting and analysing the data and other evidence.

Member States shall provide the Commission with the data and other evidence necessary for the monitoring

Article 22

Evaluation

~~No sooner than~~ **By [insert: the date six *five* years after the date of application of this Regulation]**, the Commission shall carry out an evaluation of this Regulation and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. The evaluation shall be conducted according to the Commission's better regulation Guidelines.

Member States shall provide the Commission with the information necessary for the preparation of that report.

Article 23

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
2. It shall apply from **24 months** [*one year after the date of entry into force*].

This Regulation shall be binding in its entity and directly applicable in all Member States.

3. **Notwithstanding paragraph 2, licences validly issued under Regulation (EU) No. 98/2013 shall remain valid until the date originally stated by the competent authority that issued the licence, or 18 months [after the date of application of this Regulation], whichever is the sooner.**
4. **Any applications for the renewal of such licences made after the date of application of this Regulation shall be made in accordance with this Regulation.**
5. **Notwithstanding Article 5 paragraph 1, possession and use by members of the general public of restricted explosives precursors legally acquired before [date of application of this Regulation] shall be allowed until 18 months after the [date of application of this Regulation]**

Done at Strasbourg,

For the European Parliament
The President

For the Council
The President

ANNEX I - RESTRICTED EXPLOSIVES PRECURSORS

Substances which shall not be made available to, or introduced, possessed or used by, members of the general public on their own, or in mixtures or substances including them, except if the concentration is equal to or lower than the limit values set out in column 2:

1. Name of the substance and Chemical Abstracts Service Registry number (CAS RN)	2. Limit value	3. Upper limit value for the purpose of licensing under Article 5(3)	4. Combined Nomenclature (CN) code for a separate chemically defined compound meeting the requirements of Note 1 to Chapter 28 or 29 of the CN, respectively (1)	5. Combined Nomenclature (CN) code for a mixture without constituents (e.g. mercury, precious or rare-earth metals or radioactive substances) which would determine classification under another CN code (1)
Nitric acid (CAS RN 7697-37-2)	3 % w/w	10% w/w	ex 2808 00 00	ex 3824 99 96
Hydrogen peroxide (CAS RN 7722-84-1)	12 % w/w	35 % w/w	2847 00 00	ex 3824 99 96
Sulphuric acid (CAS RN 7664-93-9)	15 % w/w	40% w/w	ex 2807 00 00	ex 3824 99 96
Nitromethane (CAS RN 75-52-5)	16 % w/w	40% w/w 100%w/w)	ex 2904 20 00	ex 3824 99 92
Ammonium nitrate (CAS RN 6484-52-2)	16 % by weight of nitrogen in relation to ammonium nitrate (2)	<u>No licensing permitted</u> N/A	3102 30 10 (in aqueous solution) 3102 30 90 (other)	ex 3824 99 96
Potassium chlorate (CAS RN 3811-04-9)	40 % w/w	<u>No licensing permitted</u> N/A	ex 2829 19 00	ex 3824 99 96
Potassium perchlorate (CAS RN 7778-74-7)	40 % w/w	<u>No licensing permitted</u> N/A	ex 2829 90 10	ex 3824 99 96

Sodium chlorate (CAS RN 7775-09-9)	40 % w/w	<u>No licensing permitted</u> N/A	2829 11 00	ex 3824 99 96
Sodium perchlorate (CAS RN 7601-89-0)	40 % w/w	<u>No licensing permitted</u> N/AS	ex 2829 90 10	ex 3824 99 96

(1) Commission Implementing Regulation (EU) No 2017/1925 of 12 October 2017 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 282, 31.10.2017, p. 1). Subsequent amendments of Annex I to Regulation (EC) No 2658/87 should be consulted as regards updated CN codes.

(2) **16 % by weight of nitrogen in relation to ammonium nitrate corresponds to 45,7% Ammonium nitrate, discarding impurities.** ~~Ammonium nitrate can only be made available to, or introduced, possessed or used by, members of the general public on its own, or in mixtures or substances including it in concentrations lower than 16% by weight of nitrogen in relation to ammonium nitrate.~~

ANNEX II - REPORTABLE EXPLOSIVES PRECURSORS

Substances on their own or in mixtures for which suspicious transactions shall be reported:

1. Name of the substance and Chemical Abstracts Service Registry number (CAS RN)	2. Combined Nomenclature (CN) code (1)	3. Combined Nomenclature (CN) code for mixtures without constituents (e.g. mercury, precious or rare-earth metals or radioactive substances) which would determine classification under another CN code (1)
Hexamine (CAS RN 100-97-0)	ex 2933 69 40	ex 3824 99 93
Acetone (CAS RN 67-64-1)	2914 11 00	ex 3824 99 92
Potassium nitrate (CAS RN 7757-79-1)	2834 21 00	ex 3824 99 96
Sodium nitrate (CAS RN 7631-99-4)	3102 50 00	ex 3824 99 96
Calcium nitrate (CAS RN 10124-37-5)	ex 2834 29 80	ex 3824 99 96
Calcium nitrate (CAS RN 15245-12-2)	ex 3102 60 00	ex 3824 99 96
Magnesium, <i>powders</i> (CAS RN 7439-95-4) (2) (3)	ex 8104 30 00	
Magnesium nitrate hexahydrate (CAS RN 13446-18-9)	ex 2834 29 80	ex 3824 99 96
Aluminium, <i>powders</i> (CAS RN 7429-90-5) (2) (3)	7603 10 00 ex 7603 20 00	

(1) Commission Implementing Regulation (EU) No 2017/1925 of 12 October 2017 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 282, 31.10.2017, p. 1). Subsequent amendments of Annex I to Regulation (EC) No 2658/87 should be consulted as regards updated CN codes.

(2) With a particle size less than 200 µm.

(3) As a substance or in mixtures containing 70 % or more, by weight, of aluminium and/or magnesium.

ANNEX III - FORMAT FOR A LICENCE

Format for a document proving possession of a licence for a member of the general public to acquire, introduce, possess and use restricted explosives precursors, as referred to in Article 6(7).

1. Member of the general public (Name and address) Name: Identification Document Number: Address: Country: Tel.: Email:						
2. Licence Number:						
3. Licence for single use or multiple use <i>please tick</i> ☐ single purchase, introduction, possession and use of a restricted precursor name of precursor(s): maximum amount: maximum concentration: licensed use: ☐ multiple purchase, introduction, possession and use of a restricted precursor name of precursor(s): maximum amount in possession at any time: maximum concentration: licensed use:						
4. If different than box 1 and required by national law, address where the precursor(s) will be stored:						
5. If different than box 1 and required by national law, address where the precursor(s) will be used:						
6. Written consent to the acquisition, introduction, possession and use of restricted precursor(s) in block 3 by [name country]: Name of the competent authority: Valid from: _____ until: _____ Special requirements applicable to this licence: () yes, this licence is only valid with the special requirements attached to this licence () No <u>Date</u> , Stamp and/or signature:						
7. Record of Acquisitions						
<u>Date</u>	<u>Commercial name of product</u>	<u>Actual restricted explosives precursor and its concentration (%)</u>	<u>Quantity (kg or l)</u>	<u>Retailer and location</u>	<u>Sales assistant name</u>	<u>Signature of sales assistant</u>

ANNEX IV – CUSTOMER'S STATEMENT

concerning the specific use or uses of an Annex I substance or mixture containing it in relation to the Regulation (EU) No. /No. /on the marketing and use of explosives precursors,

(Fill in capital letters)

The undersigned,

Name (customer):

Proof of Identity (Number, issuing authority):

Authorised representative of:

Company (principal):

Value added tax identification number (VATIN)**:

Company Address:

Trade/Business/Profession:

<u>Trade name (commercial product)</u>	<u>Substance listed in Annex 1 of /this regulation/</u>	<u>CAS No.</u>	<u>Amount (kg/litre)</u>	<u>Concen- tration</u>	<u>Intended use (1)</u>

I hereby declare that the commercial product and the substance or mixture that it contains shall be used only for the indicated use, which is in any case legitimate, and will be sold or delivered to another customer only if they make a similar declaration of use, respecting the restrictions established in [this Regulation (EU)No.] for the making available to individuals.

Signature: _____ Name: _____

Function: _____ Date: _____

(*)You can add the required rows in the table of substances.

(**)You can verify the validity of a VAT number of an economic operator through the VIES website of the European Commission. Depending on the national rules on data protection, some Member States will also provide the name and address linked to the given VAT number as they are recorded in the national databases