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WORKING PAPER

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From:	IE delegation
To:	Working Party on Technical Harmonisation (Explosives Precursors)
Subject:	Comments from the Irish 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 on the Marketing and Use of Explosives Precursors to replace Regulation (EU) No 98/2013 – COM (2018) 209 final 17.04.2018 – 2018/0103 (COD) Comments from DJE Ireland				
Article	Page	Current Text	Suggested Text	Comment and Justification
2.2(g)	23	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.	REACH Regulation Article 2(5) <i>The provisions of Titles II, V, Vii shall not apply to the extent that a substance is used:</i> <i>(a)in medicinal products for human or veterinary use within the scope of Regulation (EC) No 726/2004, Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products (4) and Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use</i>	Question for Commission: In the REACH Regulation when excluding certain medicinal products in Article 2(5) it refers to “ <i>medicinal products for human or veterinary use</i> ”. Is the same required here?
3(7)	23	‘member of the general public’ means any natural or legal person 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 or legal person who has a demonstrable need for a restricted explosives precursor for purposes that are not connected with their trade, business, craft or profession;	The word “demonstrable” should be included here so as to be consistent with the definition of “professional user” (see also Article 6.1(a)) The usual reason that a member of the general public would require a restricted explosives precursor would be connected with their

				involvement in a “hobby”. This would include such things as cleaning their swimming pool, fuel for model aeroplanes or boats or preserving antlers. In the modern English language the words “hobby” and “craft” are sometimes taken to mean the same thing and thus including the word “craft” in this definition could lead to some confusion. Therefore the term should either be omitted from the definition or else clearly defined that it means professional use and I would suggest that it should be omitted
3(8)	23	'professional user' means any natural or legal person who has a demonstrable need for a restricted explosives precursor for purposes connected with their trade, business, craft or profession which exclude making that restricted explosives precursor available to another person.	'professional user' means any natural or legal person who has a demonstrable need for a restricted explosives precursor for purposes connected with their trade, business, craft or profession which exclude making that restricted explosives precursor available to another person.	This term should be omitted. Same reasoning as for “member of the general public”
5.3	24	A Member State may maintain or establish a licensing regime allowing 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	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	Including the word “certain” here indicates that the licensing regime may only be established for some and not all of the restricted explosives precursors.

		general public.	general public	
5.3	24	Under such regime, a member of the general public shall obtain, and, if requested, present a licence for acquiring, introducing, possessing and using restricted explosives precursors, issued in accordance with Article 6 by a competent authority of the Member State where that restricted explosives precursor is going to be acquired, introduced, possessed or used.	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, issued in accordance with Article 6 by a competent authority of the Member State where that restricted explosives precursor is going to be acquired, introduced, possessed or used.	The word “and” should be replaced by “or” as the licence issued may only for some of the activities listed. For example a person may receive a licence to acquire, possess and use a restricted explosives precursor but not to introduce it into the Member State.
6.1(a)	25	the legitimacy of the intended use of the substance;	the demonstrable need and the legitimacy of the intended use of the substance;	Include the phrase “the demonstrable need” as part of this consideration for the competent authority in order to link it to the definition of “member of the general public”
7.2	26	An economic operator who makes available regulated explosives precursors to a professional user 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 personnel involved in the sale of regulated explosives precursors is: (a) aware of the fact that products that it offers and contain regulated explosives precursors;	An economic operator who makes available restricted explosives precursors regulated explosives precursors to a professional user 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 personnel involved in the sale of restricted explosives precursors regulated explosives precursors are is: (a) aware of the fact that products that	There is a mismatch between Article 7.1 which refers to economic operators providing information in relation to the restricted explosives precursors they supply to the next economic operator in the supply chain and Article 7.2 which refers to economic operators who supply to professionals or the general public providing information to their staff in relation to all regulated explosives precursors. As there is no obligation on economic operators at the start of the supply chain to provide information on which products contain regulated explosives precursors it

		(b) instructed regarding the obligations pursuant to Articles 5 to 9 of this Regulation.	it offers and contain restricted explosives precursors regulated explosives precursors ; (b) instructed regarding the obligations pursuant to Articles 5 to 9 of this Regulation.	would then be impossible for the economic operator at the end of that supply chain to know which products contain these regulated explosives precursors. These regulated explosives precursors are contained in multitudes of products and in many cases in very low concentrations. Additionally, Article 7.2 itself is incorrect as it states “ <i>An economic operator who makes available regulated explosives precursors to a professional user or to a member of the general public in accordance with Article 5(3)</i> ”. There is no mention of regulated explosive precursors in Article 5(3) as this article relates directly to establishing a licensing regime for restricted explosives precursors.
8.1	26		New Additional text: An economic operator who makes a restricted explosives precursor available in this manner shall record the transaction on the licence produced by the member of the general public	In order to prevent a member of the general public using their licence and going from one economic operator to another getting restricted explosives precursors, the economic operator should record each transaction on the licence. See also Annex III.
8.2	26	For the purpose of verifying that a prospective customer is a professional user or a farmer, an economic operator who makes available a restricted explosives	For the purpose of verifying that a prospective customer is a professional user or a farmer, an economic operator who makes available a restricted explosives precursor to a professional	With the text as written in Articles 8.2 and 8.3 there is no requirement for an economic operator to verify the name and address of the prospective professional user. The only requirement is to request general information

		precursor to a professional user or a farmer shall for each transaction request the following:	user or a farmer shall for each transaction verify the proof of identity and address of the prospective customer and request the following:	on their profession and to record and retain the name and address. This new text would require the economic operator to actually verify that the name and address are correct.
8.3	27	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 paragraph 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 retain the data referred to in paragraph 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	This text is not required if Article 8.2 is amended as suggested above
10.3	28		New additional text: Member States shall place adequate resources at the disposal of the authority responsible for the training and awareness raising referred to in paragraphs 1 and 2 to enable them, together with any other available resources, to fulfil their tasks under this Article in a timely and effective manner.	This is similar text to that currently used in Article 11.3 to place a legal requirement on each Member State to provide the resources necessary to the authority so as to be able to carry out their training and awareness raising responsibilities.
12.1(e), (f) &	28		New additional text: (e) information on how to provide	The requirement to conduct both training and awareness-raising actions for authorities will

(g)			training for law enforcement, first responders and customs authorities to recognise regulated explosives precursors substances and mixtures during the course of their duties and to react in a timely and appropriate manner to suspicious activity. (f) information on how to organise awareness-raising actions (g) other information which may be deemed useful	be very onerous and these would be greatly assisted if Guidelines were to be issued by the Commission
Annex I	1		In Column 3 of this Annex an upper limit value for the purpose of licensing under Article 5(3) should be inserted as follows Ammonium nitrate – 16% w/w Potassium Chlorate – 40% w/w Potassium perchlorate – 40% w/w Sodium chlorate – 40% w/w Sodium perchlorate – 40% w/w	This is to give clarity as to what is meant in Article 5.3.
Annex III	3		Additional information required at the end of the licence as set out below this table:	In order to prevent a member of the general public using their licence and going from one economic operator to another getting restricted explosives precursors, the economic operator should record each transaction on the licence. See also Article 8.1.

Annex III

Record of Acquisitions

- To be used by the economic operator to record transaction(s) permitted on the Licence
- Before completing any transaction, the economic operator must ensure that the holder of the Licence is authorised to acquire, possess or use the restricted explosives precursor(s) concerned
- It is an offence not to record the transaction

Date	Commercial Name of Product	Actual Restricted Explosives Precursor & Concentration (%)	Quantity (Kg/L)	Retailer Name and Location	Sales Assistant Name	Signature of Sales Assistant