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WORKING PAPER

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From:	PT delegation
To:	Working Party on Technical Harmonisation (Explosives Precursors)
Subject:	Comments from the Portuguese 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 Portugal

Article	Page	Current Text	Suggested Text	Comment and Justification
3.13 3.14	24	'agricultural activity' 'farmer'	Remove definitions	We do not consider that the definitions of farmer and agricultural activity are necessary. This group of people should be included in the category of professional users. It is noted that the definitions of farmer and agricultural activity in Article 3 of the proposal are too general and basically allow anyone to purchase product (in this case ammonium nitrate) without any restriction.
5.2	24	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.	Remove this paragraph.	There should be no exceptional arrangements for farmers, who must be considered as professional users, so that paragraph 2 of this article is not necessary. If this exception is to be maintained, paragraph 2 of this Article should be reviewed, inasmuch as it confers disproportionate scope on the farmers to purchase ammonium nitrate. It even details that the quantities of this product do not depend on the size of the land area, what is exaggerated. Given the risks inherent in ammonium nitrate and the principles which have made it "migrate" from REACH to this regulation - security - it makes no sense to admit such vulnerability in this Regulation. In short, there is a clear contradiction in the particular provisions that the proposal for a regulation applies to NA, which are softer, when it is, according to the data we have, one of the most important precursor of explosives.
7.2	26	An economic operator who makes available regulated explosives precursors to a professional user or to a member of the general public	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	Paragraph 2 of this article does not require this type of obligation when the economic operator sells explosives precursors to farmers, and these transactions should not be exempted from these obligations. This specification should

		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; (b) instructed regarding the obligations pursuant to Articles 5 to 9 of this Regulation.	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; (b) instructed regarding the obligations pursuant to Articles 5 to 9 of this Regulation.	not be necessary if farmers are considered professional users.
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 precursor to a professional user or a farmer shall for each transaction request the following:	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 user or a farmer shall for each transaction verify the proof of identity and address of the prospective customer and request the following:	As in paragraph 1 of this article, also in the sales of explosives precursors to professionals pursuant to paragraph 2, there must be an obligation to identify the buyer through the identity card, in addition to the requirements established there in a) and b).
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	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	Data from members of general public should also be retained in order to verify the compliance with this Regulation and detecting and preventing the illicit manufacture of explosives.

		be made available for inspection at the request of the competent inspection authorities or law enforcement authorities.	competent inspection authorities or law enforcement authorities.	
9.5	27	Economic operators and professional users shall report significant disappearances and thefts of regulated explosives precursors to the national contact point of the Member State where the disappearance or theft 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.	Economic operators, farmers and professional users shall report significant disappearances and thefts of regulated explosives precursors to the national contact point of the Member State where the disappearance or theft 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.	Paragraph 5 of this article should also provide for the reporting of the disappearance and / or theft of precursors by farmers, in particular ammonium nitrate. The current wording does not create any obligation for farmers.