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WORKING PAPER

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WORKING DOCUMENT

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) Updated Comments from DJE Ireland				
Article	Page	Current Text	Suggested Text	Comment and Justification
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	‘professional user’ means any natural or legal person who has a demonstrable need	This term should be omitted. Same reasoning as for “member of the

		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.	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.	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 general public.	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	Including the word “certain” here indicates that the licensing regime may only be established for some and not all of the restricted explosives precursors.
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”
7.1	26	An economic operator who makes available a restricted explosives precursor to another economic operator shall inform that economic operator that the acquisition, possession or use of that restricted explosives precursor by members of the general public is subject to a restriction as set out in Article 5(1) and (3).	An economic operator who makes available a regulated explosives precursor restricted explosives precursor to another economic operator shall inform that economic operator that (a) the acquisition, possession or use of that restricted explosives precursors by members of the general public is subject to a restriction as set out in Article 5(1) and (3) and (b) suspicious transactions and significant disappearances and thefts of regulated explosives precursors must be reported in accordance with Article 9	The requirement for an economic operator to provide information in relation to the substances they supply should be extended to all regulated explosives precursors so as to ensure that the downstream economic operator has this information and can train their staff accordingly as required in Article 7.2. This will avoid any mismatch between the two Articles. The specific information that the economic operator must supply is dependent on whether the substance is a restricted explosives precursor or just a regulated explosives precursor, consequently (a) and (b) are necessary.
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	An economic operator who makes available regulated explosives precursors to a professional user, 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 personnel involved in the sale of regulated explosives precursors are is: (a) aware of the fact that products that it offers and contain regulated explosives	The “farmer” needs to be included here to ensure that they do not fall outside the loop. Delete reference to Article 5(3) as it is not appropriate. As regulated explosives precursors are contained in multitudes of products and in many cases in very low concentrations there needs to be some cut off point whereby staff do not need training if the concentration or the quantity involved is

		that it offers and contain regulated explosives precursors; (b) instructed regarding the obligations pursuant to Articles 5 to 9 of this Regulation.	precursors in significant concentrations or quantities ; (b) instructed regarding the obligations pursuant to Articles 5 to 9 of this Regulation.	likely to be very low. This is using similar wording as in Article 9(5). Commission could provide Guidelines on this under Article 12
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 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:	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 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	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.	This text is not required if Article 8.2 is amended as suggested above

		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.	During that period, the data shall be made available for inspection at the request of the competent inspection	
8.5			New additional text: An economic operator who makes available a restricted explosives precursor to another economic operator shall verify the validity of that economic operator and record the transaction	Some text of this nature is needed otherwise a person can claim to be an economic operator to get supplied with restricted explosives precursors and there will be no checks on them as would be the case if they were an individual, a professional or a farmer.
9.3	27	Economic operators may refuse the suspicious transaction and shall report the suspicious transaction or attempted transaction within 24 hours, 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.	Economic operators may refuse the suspicious transaction and shall report the suspicious transaction or attempted transaction as soon as practicable within 24 hours , 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.	If we overly prescriptive here it may hinder the reporting of the suspicious transaction as it is likely that it will be an offence in most MS not to report in accordance with this.
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	Economic operators, and professional users and farmers 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	To ensure that there is no loop hole farmers should be included here

		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.	deciding whether a disappearance or theft is significant, they shall take into account whether the amount is unusual in all circumstances of the case.	
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) & (g)	28		New additional text: (e) information on how to provide 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) information on what significant means in Article 7 and Article 9 (h) other information which may be deemed useful	The requirement to conduct both training and awareness-raising actions for authorities will be very onerous and these would be greatly assisted if Guidelines were to be issued by the Commission. To assist all involved in the supply chain some Guidelines will need to be issued to help clarify what is significant in terms of concentrations or quantities.
Annex	1		In Column 3 of this Annex an upper limit	This is to give clarity as to what is meant

I			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	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