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WORKING PAPER

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From:	CZ delegation
To:	Working Party on Technical Harmonisation (Explosives Precursors)
Subject:	Comments from the Czech 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

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Comments of the Czech Republic 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 (document 8342/18)

Article 3 paragraph 11

CZ suggests to amend the text of the definition of the restricted explosives precursor in paragraph 11 of the Article 3 as follows:

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

....

- (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 therein and includes a mixture or another substance in which such a listed substance 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 and includes also mixture containing two or more substances listed in Annex I having analogous chemical properties in concentrations lower than the corresponding limit value set out in column 2 therein, provided the overall concentration of all those substances is higher than the corresponding limit value set out in column 2 therein of any of those substances;”*

Justification:

As far as the definitions of “substance” and “mixture” according to the REACH Regulation apply, there is serious doubt that a demonstrative mixture containing e.g. 33 % w/w of potassium perchlorate, 33 % w/w of sodium perchlorate and 33 % w/w of potassium chlorate would be classified as the “restricted explosives precursor”. It is a “mixture” according to the Article 3 paragraph 2 of REACH Regulation in which the concentration of none of the key substances exceeds the limit stipulated in the Annex I of the proposal. However, the oxidizing properties of such a mixture are strong and exceed, beyond any doubt, the oxidizing properties of each mentioned compounds in its concentration stipulated in the Annex I that normally falls into the group of the “restricted explosives precursors”. Thus, danger posed by misusing of such demonstrative mixture may persist unless changes to the definition of “restricted explosives precursor” are made. Alternatively, lowering concentration limits of oxidizers in Annex I may eliminate the danger in a similar way.

Article 6 paragraph 1 letter c)

CZ suggests to amend the text of the Article 6 paragraph 1 letter c) in order to allow for a proper assessment of the background of a legal person when issuing 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 granting the licence provided for in Article 5(3). When considering whether to grant a licence, the competent authority of the Member State shall take into account all relevant circumstances, in particular:*

- (a) 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, and including information of previous criminal convictions of natural persons being members of the applicant's statutory body in case of legal person;*
- (d) *the proposed storage arrangements to ensure that the restricted explosives precursor is kept securely;“*

Justification:

If the definition of the “member of the general public” includes legal person, different approach will be needed when assessing the background of such entity when compared to natural person.

Article 8

CZ suggests to amend the text of the Article 8 as follows in order to provide for a more stringent framework:

- “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 request and verify the proof of identity and licence in compliance with the regime established by the Member State where the restricted explosives precursor is made available.*
- 2. 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:*
 - (a) the trade, business, craft or profession of the prospective customer;*
 - (b) the intended use of the restricted explosives precursors by the prospective customer.*
- 3. 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 1 and 2, together with the name and address of the customer, type of restricted explosives precursor and date of transaction, for one year from the date of transaction. Member States may set longer period for the obligation to retain such data in their national legislation. During that period, the data shall be made available for inspection at the request of the 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.*
- 5. Member States may choose to extend the obligation of data retaining referred to in paragraph 3 mutatis mutandis to an economic operator who makes available a restricted explosives precursor to another economic operator.”*

Justification:

According to the proposed paragraph 3 of the Article 8 data retention applies only to situations when economic operators supply the explosives precursors to professional users and farmers. However all economic operators, professional users and members of the general public may potentially be perpetrators of crime using improvised explosives. In order to facilitate prevention

and investigation of deeds with explosives precursors, the recordkeeping should apply to the economic operators no matter who is the customer. Moreover, Member States should be allowed to prolong the period for data retention and to extend the obligation to transactions between economic operators if they wish so in their national legislation.

Article 10 paragraph 2

CZ suggests to delete the frequency of awareness-raising actions from Article 10 paragraph 2:

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

Justification:

Law enforcement authorities in each country face different number of economic operators and face different attitude of those operators. Stipulating the frequency of awareness-raising actions is therefore not in line with the principle of subsidiarity. Each Member State should be able to decide on its own how to raise awareness of the explosives precursors restrictions.

Article 23

CZ suggests two years period for implementation of the Regulation in Article 23 as follows:

“This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from ~~[one year two years~~ after the date of entry into force].”

Justification:

National implementing regulations will set up duties and restrictions applicable to persons. Such measures need to be set up by the Acts adopted in national ordinary legislative procedure regardless of whether a whole new Act or just amending Act is needed. One-year implementation period is therefore not sufficient for the preparation and adoption of national legislation. Moreover, longer period may provide economic operators with sufficient time to adapt to new restrictions (e.g. applicable to sulphuric acid).

ANNEX I

CZ suggests to correct a typo in Annex I as follows:

<i>1. Name of the substance and Chemical Abstracts Service Registry number (CAS RN)</i>	<i>2. Limit value</i>	<i>3. Upper limit value for the purpose of licensing under Article 5(3)</i>	<i>4. Combined Nomenclature (CN) code for a separate chemically defined compound meeting the requirements of Note 1 to Chapter</i>	<i>5. Combined Nomenclature (CN) code for a mixture without constituents (e.g. mercury, precious or rare-earth metals or radioactive</i>

			28 or 29 of the CN, respectively (1)	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	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)	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	N/A	ex 2829 19 00	ex 3824 99 96
Potassium perchlorate (CAS RN 7778-74-7)	40 % w/w	N/A	ex 2829 90 10	ex 3824 99 96
Sodium chlorate (CAS RN 7775-09-9)	40 % w/w	N/A	2829 11 00	ex 3824 99 96
Sodium perchlorate (CAS RN 7601-89-0)	40 % w/w	N/A N/A	ex 2829 90 10	ex 3824 99 96

Justification:

A mistype has been made that may cause problems when translating the text into national languages (and thus also for the implementation of the Regulation).