



Council of the European Union
General Secretariat

**Interinstitutional files:
2018/0103(COD)**

Brussels, 10 July 2018

WK 8498/2018 INIT

LIMITE

**COMPET
CHIMIE
ENFOPOL
ENV
MI
ENT
UD
CODEC**

WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

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

Comments of the Dutch 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 – 9 July 2018

General comments

- Farmers should be considered as professional users and related measures should apply to them. The proposed distinction between farmer and professional user, because of the alignment with REACH, poses a security risk concerning the availability of ammonium nitrate (Articles 3, 5, 7 and 9);
 - Enforcement criteria regarding professional users must be verifiable (Article 8);
 - Overlap between target groups, due to revised (e.g. member of the general public) and new definitions (e.g. professional user), should be avoided (Article 3);
 - Data gathering on professional users poses a disproportionate burden on economic operators while it does not contribute to closing security gaps (Article 8);
 - Importance of awareness raising is recognized, but the proposed burden on competent authorities is disproportionate and does not include cross-sectoral exchange of information on experiences and best practices (Article 10);
 - The implementation deadline should be extended to enable accurate amendment of national legislation (Article 23);
 - Evaluation should take place sooner than after the proposed six years (Article 22).
-

Specific comments:

Article 3 (6)

The term 'storage' should be omitted from the definition for use, because economic operators may store but they do not use precursors. A strict distinction between these target groups is important and the current proposal does not provide for this need.

Proposal: 'use' means any processing, formulation, ~~storage~~, treatment or mixing, including in the production of an article, or any other utilization;

Proposal: separate definition for 'storage', which applies to economic operators, professional users, and members of the general public with a license

Article 3 (7) and (8)

Some words in the definitions for member of the general public and professional user could be misinterpreted and should therefore be omitted:

- 'craft' vs. hobby (usual reason that a member of the general public would require a restricted explosives precursor);
- 'trade' vs. deliver regulated explosives precursors on the market (part of the definition for economic operator)

Proposal: '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;

Proposal: '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

Article 3 (9)

The term 'delivers services related to regulated explosives precursors on the market' should be omitted, because it suggests that an economic operator could use explosives precursors for service provision. This is incorrect. Only professional users and members of the general public with a license should be allowed to use explosives precursors.

Proposal: 'economic operator' means any natural or legal person or legal entity or group of such persons and/or bodies which delivers regulated explosives precursors ~~or services related to regulated explosives precursors~~, on the market, either off- or online and including online marketplaces

Article 3 (13) and (14)

Farmers are professional users of ammonium nitrate and must be covered by the same definition.

Proposal: delete article 3 (13) and (14)

Article 5 (2)

There should be no exceptional arrangements for farmers, as they should be considered as professional users.

Proposal: delete article 5 (2)

Article 7 (1) and (3)

The proposed measures in these paragraphs of article 7 should also apply to regulated precursors.

Proposal 7 (1): An economic operator who makes available a ~~restricted~~ regulated explosives precursor to another economic operator shall 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);

Proposal 7 (3): An online marketplace that acts as an intermediary shall take measures to ensure that its users, when making available ~~restricted~~ regulated explosives precursors through its services, are informed of their obligation pursuant to this Regulation

Article 7 (2)

If a separate definition for farmers is maintained, the personnel involved in sale to them should comply with the measure proposed in this paragraph.

Note: This specification is not necessary if farmers are considered to be professional users.

Proposal: An economic operator who makes available regulated explosives 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 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.*

Article 8 (1)

Every single transaction should be subject to the verification proposed in this paragraph, and not – as suggested during the discussion in the Working Party on Technical Harmonization – only those of new customers. The latter would cause a security risk.

Article 8 (2)

The proposed enforcement criteria are weak. The accuracy of the given answers cannot be verified. These weak criteria may give rise to members of the general public to circumvent the licensing system by pretending to be a professional user.

Article 8 (3)

The proposed administrative burden for economic operators is assessed as disproportionate, since it does not contribute to enhanced security. Data collection only for the purpose of inspection is not sufficient to agree with this burden.

During the Working Party on Technical Harmonization a proposal to extend the data collection to members of the general public was discussed. In line with the above statement, The Netherlands cannot support this proposal.

Proposal: delete article 8 (3)

Article 9 (1) and (5)

If a separate definition for farmers – despite our objection – will be remained, the measures proposed in these paragraphs should also apply to this target group.

Note: This specification is not necessary if farmers are considered as professional users.

Proposal 9 (1) : For the purpose of detecting and preventing the illicit manufacture of explosives, economic operators shall report transactions concerning regulated explosives precursors, including transactions involving professional users and farmers, where there are reasonable grounds for suspecting that the substance or mixture is intended for the illicit manufacture of explosives.

Proposal 9 (3): Economic operators, 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 deciding whether a disappearance or theft is significant, they shall take into account whether the amount is unusual in all circumstances of the case.

Article 10 (2)

The proposed burden on Member States is disproportioned. In addition, the term 'actions' lacks clarity (e.g. how does this relate to the one-off provision of resources for long-term use, such as e-learning?). The current proposal does not focus on information exchange between sectors, while experience in The Netherlands has shown that this has much added value.

Moreover, the Netherlands does not support the proposal – as discussed during the Working Party on Technical Harmonization – to add a new paragraph on the provision of resources necessary to the authority responsible for the training and awareness raising.

Proposal: Member States shall organise, at least once a year, awareness-raising for sectors using regulated explosives precursors.

Article 14 (6)

The Netherlands wishes to make a scrutiny reservation on the term 'request' (as discussed during the Working Party on Technical Harmonization).

Article 15

The Netherlands supports the proposal concerning amendments to the Annexes, specifically the adoption of delegated acts in accordance with Article 16 concerning the addition of substances to Annex I by the Commission. This is considered necessary for a quick response to changes in threat.

Article 22

The evaluation term of six years after date of application is assessed as too long. Moreover, the term 'no sooner than' is considered not specific enough.

Proposal: [Three 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

The implementation period of 1 year is considered too short to allow for the adaptation of national legislation. The Netherlands places a scrutiny reservation on a proposal for new transition period (as mentioned during the Working Party on Technical Harmonization).

Annex I

- The Netherlands supports the transition of sulphuric acid to Annex I;
- Column 3 of Annex I should be clarified in order to specify that (per)chlorates are excluded from licensing regime.

Proposal: upper limit value of 40% for (per)chlorates

Annex III

The maximum amount of purchases by a licensed member of the general public should be enforceable. In view of this the Netherlands supports the proposal – as discussed during the Working Party on Technical Harmonization – to add a record of acquisitions.