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WORKING PAPER

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From:	PL delegation
To:	Working Party on Technical Harmonisation (Explosives Precursors)
Subject:	Comments from the Polish delegation on the proposal and its Annexes 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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Warsaw, 5 July 2018

Polish comments

to the 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 COM(2018) 209 final

Article 3 Definitions

PL proposes changes to Article 3, definitions (6), (7), (8) and (11):

(6) *'use'* means any processing, formulation, consumption, storage, keeping, treatment, filling into containers, transfer from one container to another, mixing, production of an article or mixing, including in the production of an article, or any other utilisation;

Komentarz [PZ1]: Proposal in line of the REACH Regulation.

(7) *'member of the general public'* means any natural or legal person who has a need for a ~~restricted-regulated~~ explosives precursor for purposes that are not connected with their trade, business, craft or profession;

(8) *'professional user'* means any natural or legal person who has a demonstrable need for a ~~restricted-regulated~~ explosives precursor for purposes connected with their trade, business, craft or profession which exclude making that ~~restricted-regulated~~ explosives precursor available to another person;

Komentarz [PZ2]: PL propose to add "farmer" to the definition of the "professional user"

(11) *'restricted explosives precursor'* means a substance listed in Annex I, in a concentration equal to or 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 equal to or higher than, ~~or, in the case of ammonium nitrate, in a concentration equal to or higher than~~ the corresponding limit value;

Komentarz [PZ3]: Proposal in line of recital 6

Article 5 Making available, introduction, possession and use

PL proposes changes to Article 5 paragraph 2:

2. Paragraph 1 shall not apply to restricted explosives precursors 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.

Article 6 Licences

PL proposes changes to Article 6 paragraph 9:

9. Licences issued by a Member State in accordance with Article 7 of Regulation (EC) No 98/2013 which are still valid on [the day of entry into application of this Regulation] shall lose their validity 12 month after [the day of entry into application of this Regulation] ~~on that date~~. Each Member State may decide, upon request of the licence holder, to confirm, renew or prolong such licences issued in that Member State if the restricted explosives precursors can be subject to a license in accordance with the limit values set out in column 3 of Annex I and if the competent authority considers that the requirements for granting the licence as referred to in paragraph 1 are met. Such confirmation, renewal or prolongation should respect the time limit set in paragraph 3 of this Article.

Article 8 Verification upon sale

PL proposes to add new paragraph 1a in Article 8:

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 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.
- 1a. An economic operator who intends to make available restricted explosives precursors to a member of the general public, shall ensure, either by affixing an appropriate label or by verifying that an appropriate label is affixed, that the packaging clearly indicates that the acquisition, possession or use of that restricted explosives precursor by members of the general public is subject to a restriction.

Komentarz [PZ4]: PL proposes to add new para 1a – in line of the recital 8

Article 9 Reporting of suspicious transactions, disappearances and thefts

PL proposes changes to Article 9 paragraph 5 and 6:

5. *Economic operators and professional users shall report without delay 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.*
6. *Members of the general public that have acquired restricted explosives precursors in accordance with Article 5(3) shall report without delay significant disappearances and thefts of restricted explosives precursors to the national contact point of the Member State where the disappearance or theft has taken place.*

Article 12 Guidelines

PL proposes new paragraph 3 in Article 12:

3. *The Commission shall make available the guidelines provided for in paragraph 1 in all official UE languages.*

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Article 14 Safeguard clause

PL proposes changes to Article 14 paragraph 6:

6. *Without prejudice to paragraph 5, the Commission may, after consulting the Member State and, if appropriate, third parties, decide that the measure taken by the Member State is not justified and request the Member State to withdraw it without delay.*

Article 15 Amendments to the Annexes

PL proposes changes to Article 15 paragraph 1 and 2:

1. *The Commission shall adopt delegated acts in accordance with Article 16 concerning the addition of substances ~~to Annex I and changes of the limit values in~~*

~~Annex I to the extent necessary to accommodate developments in the misuse of substances as explosives precursors, or on the basis of research and testing, as well as concerning the addition of substances to Annex II, where necessary to accommodate developments in the misuse of substances as explosives precursors. The Commission shall, as part of the preparation of the delegated acts, consult relevant stakeholders, in particular the chemical industry and the retail sector.~~

Where, in the case of a sudden change in the risk assessment as far as the misuse of substances for the illicit manufacture of explosives is concerned, imperative grounds of urgency so require, the procedure provided for in Article 17 shall apply to delegated acts adopted pursuant to this Article.

2. The Commission shall adopt a separate delegated act in respect of each addition of substances ~~to Annex I and each change of the limit values in Annex I and each new substance added to Annex II~~. Each delegated act shall be based on an analysis demonstrating that the amendment is not likely to lead to disproportionate burdens on economic operators or consumers, having due regard to the objectives sought to be achieved.

Article 20 Reporting

PL proposes changes to Article 20 paragraph 1:

1. Member States shall report to the Commission by 30 March [the year after the year of the entry into force of the Regulation] ~~[one year after the date of application]~~ and subsequently on an annual basis, the following information:
 - (a) the number of reported suspicious transactions, disappearances and thefts respectively;
 - (b) the number of licence applications received as referred to in Article 5(3), as well as the number of licences provided, and the most common reasons for refusing to grant licenses;
 - (c) information on awareness-raising actions as referred to Article 10(2);
 - (d) information on inspections carried out as referred to in Article 11, including the number of inspections and economic operators covered.

Article 22 Evaluation

PL proposes changes to Article 22:

~~No sooner than [fivesix years after the date of application of this Regulation], the Commission shall carry out an evaluation of this Regulation and present a report on~~

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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 Entry into force

PL proposes changes to Article 23:

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~~ two years] after the date of entry into force[.]

Warsaw, 5 July 2018

Annex

to the Polish comments

to the 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 COM(2018) 209 final

ANNEX I - RESTRICTED EXPLOSIVES PRECURSORS

Substances which shall not be made available to, or introduced, possessed or used by, members of the general public on their own, or in mixtures or substances including them, except if the concentration is equal to or lower than the limit values set out in column 2.

1. Name of the substance and Chemical Abstracts Service Registry number (CAS RN)	2. Limit value	3. Upper limit value for the purpose of licensing under Article 5(3)	4. Combined Nomenclature (CN) code for a separate chemically defined compound meeting the requirements of Note 1 to Chapter 28 or 29 of the CN, respectively (1)	5. Combined Nomenclature (CN) code for a mixture without constituents (e.g. mercury, precious or rare-earth metals or radioactive 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)	<u>100% w/w</u> 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	<u>100% w/w</u> N/A	ex 2829 19 00	ex 3824 99 96
Potassium perchlorate (CAS RN 7778-74-7)	40 % w/w	<u>100% w/w</u> N/A	ex 2829 90 10	ex 3824 99 96
Sodium chlorate (CAS RN 7775-09-9)	40 % w/w	<u>100% w/w</u> N/A	2829 11 00	ex 3824 99 96
Sodium perchlorate (CAS RN 7601-89-0)	40 % w/w	<u>100% w/w</u> N/A	ex 2829 90 10	ex 3824 99 96

(1) Commission Implementing Regulation (EU) No 2017/1925 of 12 October 2017 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 282, 31.10.2017, p. 1). Subsequent amendments of Annex I to Regulation (EC) No 2658/87 should be consulted as regards updated CN codes.

(2) Ammonium nitrate can only be made available to, or introduced, possessed or used by, members of the general public on its own, or in mixtures or substances including it in concentrations lower than 16% by weight of nitrogen in relation to ammonium nitrate.

ANNEX II - REPORTABLE EXPLOSIVES PRECURSORS

Substances on their own or in mixtures for which along with substances on their own or in mixtures listed in Annex I suspicious transactions shall be reported

1. Name of the substance and Chemical Abstracts Service Registry number (CAS RN)	2. Combined Nomenclature (CN) code (1)	3. Combined Nomenclature (CN) code for mixtures without constituents (e.g. mercury, precious or rare-earth metals or radioactive substances) which would determine classification under another CN code (1)
Hexamine (CAS RN 100-97-0)	ex 2933 69 40	ex 3824 99 93
Acetone (CAS RN 67-64-1)	2914 11 00	ex 3824 99 92
Potassium nitrate (CAS RN 7757-79-1)	2834 21 00	ex 3824 99 96
Sodium nitrate (CAS RN 7631-99-4)	3102 50 00	ex 3824 99 96
Calcium nitrate (CAS RN 10124-37-5)	ex 2834 29 80	ex 3824 99 96
Calcium ammonium nitrate (CAS RN 15245-12-2)	ex 3102 60 00	ex 3824 99 96
Magnesium, <i>powders</i> (CAS RN 7439-95-4) (2) (3)	ex 8104 30 00	
Magnesium nitrate hexahydrate (CAS RN 13446-18-9)	ex 2834 29 80	ex 3824 99 96
Aluminium, <i>powders</i> (CAS RN 7429-90-5) (2) (3)	7603 10 00 ex 7603 20 00	

(1) Commission Implementing Regulation (EU) No 2017/1925 of 12 October 2017 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 282, 31.10.2017, p. 1). Subsequent amendments of Annex I to Regulation (EC) No 2658/87 should be consulted as regards updated CN codes.

(2) With a particle size less than 200 µm.

(3) As a substance or in mixtures containing 70 % or more, by weight, of aluminium and/or magnesium.

ANNEX III - FORMAT FOR A LICENCE

Format for a document proving possession of a licence for a member of the general public to acquire, introduce, possess and use restricted explosives precursors, as referred to in Article 6(7).

1. Member of the general public (Name and address) Name: Identification Document Number: Address: Country: Tel.: Email:
2. Licence Number:
3. Licence for single use or multiple use <i>please tick</i> ☐ single purchase, introduction, possession and use of a restricted precursor name of precursor(s): maximum amount: maximum concentration: licensed use: ☐ multiple purchase, introduction, possession and use of a restricted precursor name of precursor(s): maximum amount in possession at any time: maximum concentration: licensed use:
4. If different than box 1 and required by national law, address where the precursor(s) will be stored Address:
5. If different than box 1 and required by national law, address where the precursor(s) will be used: Address:
6. Written consent to the acquisition, introduction, possession and use of restricted precursor(s) in block 3 by [name country]: Name of the competent authority: Valid from: _____ until: _____ Special requirements applicable to this licence: ☐ yes, this licence is only valid with the special requirements attached to this licence ☐ No Stamp and/or signature: <u>Date the licence was issued:</u>