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WORKING PAPER

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From:	Presidency
To:	Working Party on Technical Harmonisation (Explosives Precursors)
Subject:	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 - Presidency compromise suggestions

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Delegations find attached some Presidency compromise suggestions concerning the articles and annexes of the proposal on the marketing and use of explosives precursors. New text is in **bold underline**, deleted Cion proposal wording in simple ~~striketrough~~.

At the WP meeting on 23 July, the Presidency wishes to focus the discussion furthermore on the following issues:

- Relationship of "farmers" and "professional users"
- Necessity of a separate definition for "farmer" and "agricultural activity"
- Application date of Article 6 (9) and in this context, necessity of a transitional provision.

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EU) No 98/2013 of the European Parliament and of the Council² established harmonised rules concerning the making available, introduction, possession and use of substances or mixtures that could be misused for the illicit manufacture of explosives, with a view to limiting their availability to the general public, and ensuring the appropriate reporting of suspicious transactions throughout the supply chain.
- (2) Although Regulation (EU) No 98/2013 has contributed to reducing the threat posed by explosives precursors in the Union, it is necessary to strengthen the system of controls around homemade explosives. Given the number of changes needed, for the sake of clarity it is appropriate to replace Regulation (EU) No 98/2013.
- (3) Regulation (EU) No 98/2013 restricted access to and use of explosive precursors by members of the general public. Notwithstanding this prohibition, Member States could however decide to grant the general public access to those substances through a system of licences and registration. The restrictions and controls on explosives precursors in the Member State were therefore divergent and liable to cause barriers to trade within the Union, thus impeding the functioning of the internal market. Furthermore, the existing restrictions and controls were not ensuring sufficiently level of public security as they were not adequately preventing criminals from acquiring

¹ OJ C , , p. .

² Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors (OJ L 39, 9.2.2013, p. 1).

explosives precursors. The threat posed by homemade explosives remained high and continuous to evolve.

- (4) The system to prevent the illicit manufacture of explosives should therefore be further strengthened and harmonised in view of the evolving threat to public security caused by terrorism and other serious criminal activities. This should also ensure the free movement of explosives precursors in the internal market, as well as promote competitiveness between economic operators and encourage innovation, by for example facilitating the development of safer chemicals to replace explosives precursors.
- (5) The criteria for determining which measures should apply to which explosives precursors include the level of threat associated with the explosives precursor concerned, the volume of trade in the explosives precursor concerned, and the possibility of establishing a concentration level below which the explosives precursor could still be used for the legitimate purposes for which it is made available and is significantly less likely to be able to be used for the illicit manufacture of explosives.
- (6) Members of the general public should not be able to acquire, introduce, possess or use those explosives precursors at concentrations at or above certain limit values. However, it is appropriate to provide for members of the general public to be able to acquire, introduce, possess or use some explosives precursors above that concentration limit for legitimate purposes, only if they hold a licence to do so.
- (7) Licences may only be provided for substances in concentrations not exceeding the upper limit set by this Regulation. Above that upper limit, the risk in relation to the illicit manufacture of explosives outweighs the negligible legitimate use by the general public of these explosives precursors, for whom alternatives or lower concentrations can achieve the same effect. This Regulation should also determine which circumstances the competent authorities, should as a minimum, take into account when considering whether to grant a licence. This should, together with the form annexed to this Regulation, facilitate the recognition of licenses in other Member States that apply licensing regime.
- (8) In order to apply the restrictions and controls of this Regulation, those economic operators selling to professional users or members of the general public with a licence should rely on information made available upstream in the supply chain. Each economic operator in the supply chain should therefore inform the recipient of that restricted explosives precursor that the making available, introduction, possession or use of that restricted explosives precursor by members of the general public is subject to a restriction as set out in this Regulation, for instance by affixing an appropriate label or by verifying that an appropriate label is affixed or by including this information in the safety data sheet compiled in accordance with Annex II to Regulation (EC) No 1907/2006 of European Parliament and of the Council³.
- (9) The difference between an economic operator and a professional user is that the economic operator makes a restricted explosives precursor available to another person, whereas a professional user acquires or introduces a restricted explosives precursor

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Regulation (EC) No 1907/2006 of European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ L 396, 30.12.2006, p.1).

only for their own use. Economic operators selling to professional users or members of the general public with a licence should ensure that their personnel involved in the sale of the explosives precursors is aware of the products that the economic operator offers and that contain explosives precursors, for instance by including this information in the barcode of the product.

- (10) The distinction between a professional user, to which restricted explosives precursors can be made available and a member of the general public, to which they cannot, depends on whether the person intends to use that explosives precursor for purposes connected to their specific trade, craft or profession. Economic operators should therefore not make available a restricted explosives precursor to a natural or legal person that is professionally active in an area where that specific restricted explosives precursor does not tend to be used for professional purposes.
- (11) The obligations of this Regulation should apply also to companies that operate online, including online marketplaces. Therefore, online economic operators should also train their staff and have in place appropriate procedures to detect suspicious transactions. Furthermore, they should not make available restricted explosives precursors to a member of the general public in Member States other than those that maintain or establish a licensing regime in line with this Regulation and only after verifying that that member of the general public has a licence. After having verified the identity of the prospective customer, for instance through mechanisms referred to in Regulation (EU) No 910/2014 of the European Parliament and of the Council⁴, the economic operator should verify that a licence has been issued for the intended transaction, for instance through a physical inspection of the licence at the time of delivery or, with the consent of the prospective customer, by contacting the competent authority of Member States that enable to be consulted on the licenses they have issued. Companies operating online should also, like those operating offline, request end-use declarations of professional users.
- (12) Insofar as online marketplaces act as mere intermediaries between economic operators on the one hand, and members of the general public, professional users or farmers on the other hand, they should not be required to instruct their personnel involved in the sale of restricted explosives precursors or verify the identity and, where appropriate, the licence of the prospective customer or request other information from the prospective customer. However, given the central role which online marketplaces that act as an intermediary play in online economic transactions, including as regards the sales of restricted explosives precursors, it is appropriate that they should inform, in a clear and effective manner, users who aim to make available restricted explosives precursors through the use of their services of the obligations under this Regulation. In addition, it is appropriate that online marketplaces that act as an intermediary take measures to help ensure that their users comply with their obligations regarding verification, for instance by offering tools to facilitate verification of licences. All such obligations on online marketplaces that act as an intermediary under this Regulation

⁴ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

should be without prejudice to Articles 14 and 15 of Directive 2000/31/EC of the European Parliament and of the Council⁵.

- (13) To improve the practical application of the Regulation, both economic operators and public authorities should provide for adequate training regarding the obligations of this Regulation. Member States should have in place inspection authorities and organise regular awareness-raising actions, targeted at the specificities of each different sector, and maintain a permanent dialogue with the supply chain, including those operating online.
- (14) The choice of substances used by criminals for the illicit manufacture of explosives can change rapidly. It should therefore be possible to bring additional substances under the regime provided by this Regulation, where necessary as a matter of urgency. In order to accommodate developments in the misuse of substances as explosives precursors the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to list additional substances that are not to be made available to the general public, to amend the concentration limit values above which certain substances restricted under this Regulation are not to be made available to the general public, and to list additional substances in respect of which suspicious transactions are to be reported. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016⁶. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (15) In order to deal with substances not already restricted by this Regulation but in respect of which a Member State discovers reasonable grounds for believing that they could be used for the illicit manufacture of explosives, a safeguard clause for an adequate Union procedure is provided. Moreover, in view of the specific risks to be addressed in this Regulation, it is appropriate to allow Member States, in certain circumstances, to adopt safeguard measures, including in respect of substances already subject to measures under this Regulation.
- (16) The regulatory framework would be simplified by transferring the relevant security-oriented restrictions on making available ammonium nitrate from Regulation (EC) No 1907/2006 to this Regulation. For that reason, paragraphs 2 and 3 of entry 58 to Annex XVII to Regulation (EC) No 1907/2006 should be deleted.
- (17) Regulation (EU) No 98/2013 should be repealed.
- (18) This Regulation requires the processing of personal data and their further disclosure to third parties in case of suspicious transactions. That processing and disclosure imply an interference with the fundamental rights to private life and the right to the

⁵ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('*Directive on electronic commerce*') (OJ L 178, 17.07.2000, p. 1).

⁶ OJ L123, 12.5. 2016, p1.

protection of personal data. Accordingly, it should be ensured that the fundamental right to the protection of personal data of individuals whose personal data are processed in application of this Regulation is duly protected. Regulation (EU) 2016/679 of the European Parliament and of the Council⁷ governs the processing of personal data carried out in the framework of this Regulation. Therefore, the processing of personal data that licensing and the reporting of suspicious transactions entail, should be carried out in accordance with Regulation (EU) 2016/679, including the general data protection principles of lawfulness, fairness and transparency, purpose limitation, data minimisation, accuracy, storage limitation, integrity and confidentiality and the requirement to show due respect for the data subject's rights.

- (19) The Commission should carry out an evaluation of this Regulation based on the five criteria of efficiency, effectiveness, relevance, coherence and EU value added and should provide the basis for impact assessments of possible further measures. Information should be collected regularly and in order to inform the evaluation of this Regulation.
- (20) Since the objective of this Regulation, namely limiting access by the general public to explosives precursors, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the limitation, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

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Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

Article 1

Subject matter

This Regulation establishes harmonised rules concerning the making available, introduction, possession and use of substances or mixtures that could be misused for the illicit manufacture of explosives, with a view to limiting their availability to the general public, and ensuring the appropriate reporting of suspicious transactions throughout the supply chain.

This Regulation is without prejudice to other more stringent provisions of Union law concerning the substances listed in the Annexes I and II.

Article 2

Scope

1. Regulation applies to the substances listed in Annexes I and II and to mixtures and substances containing them.
2. This Regulation does not apply to:
 - (a) articles as defined in point (3) of Article 3 of Regulation (EC) No 1907/2006;
 - (b) pyrotechnic articles as defined in point (1) of Article 3 of Directive 2013/29/EU of the European Parliament and of the Council⁸;
 - (c) pyrotechnic articles intended for non-commercial use, in accordance with national law, by the armed forces, the law enforcement authorities or the fire department;
 - (d) pyrotechnic equipment falling within the scope of Directive 2014/90/EU of the European Parliament and of the Council⁹;
 - (e) pyrotechnic articles intended for use in the aerospace industry;
 - (f) percussion caps intended for toys;
 - (g) medicinal products legitimately made available to a member of the general public on the basis of a medical prescription in accordance with the applicable national law.

⁸ Directive 2013/29/EU of the European Parliament and of the Council of 12 June 2013 on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles (OJ L 178, 28.6.2013, p. 27).

⁹ Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC (OJ L 257, 28.8.2014, p. 146).

Article 3

Definitions

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

- (1) 'substance' means a substance within the meaning of point (1) of Article 3 of Regulation (EC) No 1907/2006;
- (2) 'mixture' means a mixture within the meaning of point (2) of Article 3 of Regulation (EC) No 1907/2006;
- (3) 'article' means an article within the meaning of point (3) of Article 3 of Regulation (EC) No 1907/2006;
- (4) 'making available' means any supply, whether in return for payment or free of charge;
- (5) 'introduction' means the act of bringing a substance into the territory of a Member State whether from another Member State or from a third country;
- (6) 'use' means any processing, formulation, storage, treatment or mixing, including in the production of an article, or any other utilisation;
- (7) '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;
- (8) '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.
- (9) 'economic operator' means any natural or legal person or public 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;
- (10) 'online marketplace that acts as an intermediary' means a provider of an intermediary service that allows economic operators on the one hand, and members of the general public, professional users or farmers on the other hand, to conclude transactions regarding regulated explosives precursors via online sales or service contracts with economic operators either on the online marketplace's website or on an economic operator's website that uses computing services provided by the online marketplace;
- (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;

- (12) 'regulated explosives precursor' means a substance listed in Annexes I or II and includes a mixture or other substance in which a substance listed in those Annexes is present; excluding mixtures in which the concentration of any such substance is below 1 %;
- (13) 'agricultural activity' means the production, rearing or growing of agricultural products including harvesting, milking, breeding animals and keeping animals for farming purposes, or maintaining the land in good agricultural and environmental condition as established under Article 94 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council¹⁰;
- (14) 'farmer' means a natural or legal person, or a group of natural or legal persons, regardless of the legal status granted to such group and its members by national law, whose holding is situated within the territorial scope of the Treaties, as defined in Article 52 TEU in conjunction with Articles 349 and 355 TFEU, and who exercises an agricultural activity.

Article 4

Free movement

Unless otherwise provided for in this Regulation or in other legal acts of the Union, Member States shall not prohibit, restrict or impede the making available of a regulated explosives precursor.

Article 5

Making available, introduction, possession and use

1. Restricted explosives precursors shall not be made available to, or introduced, possessed or used by members of the general public.
2. 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.
3. 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.

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

¹⁰ Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ L 347, 20.12.2013, p. 549).

of the Member State where that restricted explosives precursor is going to be acquired, introduced, possessed or used.

4. Member States shall, without delay, notify to the Commission all measures they take in order to implement the licensing regime provided for in paragraph 3. The notification shall set out the restricted explosives precursors in respect of which the Member State provides for a licensing regime in accordance with paragraph 3.
5. The Commission shall make publicly available a list of measures notified by Member States in accordance with paragraph 4.

Article 6

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 natural persons applying for a licence or representing a legal person applying for a licence applicant anywhere within the Union;
 - (d) the proposed storage arrangements to ensure that the restricted explosives precursor is kept securely;
2. The licence shall be refused if there are reasonable grounds for doubting the legitimacy of the intended use or the intentions of the user to use it for a legitimate purpose.
3. The competent authority may choose how to limit the validity of the licence, through permitting single or multiple use for a period not exceeding three years. The competent authority may oblige the licence holder to demonstrate, until the designated expiry of the licence, that the conditions under which the licence was granted are still fulfilled. The licence shall mention the restricted explosives precursors in respect of which it is issued.
4. The competent authorities may require applicants to pay a licence application fee. Such a fee shall not exceed the cost of processing the application.
5. The competent authority may suspend or revoke the licence where there are reasonable grounds for believing that the conditions under which the licence was granted are no longer fulfilled.

6. Appeals against any decision of the competent authority, and disputes concerning compliance with the conditions of the licence, shall be heard by an appropriate body responsible under national law.
7. A Member State with a licensing regime referred to in Article 5(3) may recognise licences granted by other Member States.

Member States may use the format for issuing a licence provided for in Annex III.

8. Information on previous criminal convictions in other Member States as referred to in paragraph 1, point (c), shall be obtained through the system established by Council Framework Decision 2009/315/JHA¹¹. Responses to requests for such information shall be provided by the central authorities referred to in Article 3 of that Framework Decision within 20 working days from the date the request was received.
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 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 7

Informing the supply chain

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) **or a reporting obligation as set out in Article 9.**
2. 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 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.

¹¹ Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (OJ L 93, 7.4.2009, p. 23).

3. An online marketplace that acts as an intermediary shall take measures to ensure that its users, when making available **regulated** ~~restricted~~ explosives precursors through its services, are informed of their obligations pursuant to this Regulation.

Article 8

Verification upon sale

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- **and record the amount of the restricted explosives precursor on the licence.**
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:

(aa) the name and address of the prospective customer, together with a proof of identity

- (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 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 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.

Article 9

Reporting of suspicious transactions, disappearances and thefts

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.

Economic operators shall report such suspicious transactions after having regard to all the circumstances and in particular where the prospective customer displays one or more of the following:

- (a) appears unclear about the intended use of the regulated explosives precursors;
 - (b) appears unfamiliar with the intended use of the regulated explosives precursors or cannot plausibly explain it;
 - (c) intends to buy regulated explosives precursors in quantities, combinations or concentrations uncommon for legitimate use;
 - (d) is unwilling to provide proof of identity, place of residence or, where appropriate, status as professional user or economic operator;
 - (e) insists on using unusual methods of payment, including large amounts of cash.
2. Economic operators, other than online marketplaces that act as an intermediary, shall have in place procedures to detect suspicious transactions, targeted to the environment in which the regulated explosives precursors are offered.
3. Economic operators may refuse the suspicious transaction and shall report the suspicious transaction or attempted transaction within 24 hours **of determining that it was suspicious**, 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.
4. Each Member State shall set up one or more national contact points with a clearly identified telephone number and e-mail address for the reporting of suspicious transactions. The national contact points shall be available on a 24/7 basis.
5. Economic operators, **farmers** and professional users shall report significant disappearances and thefts of regulated explosives precursors **without undue delay** 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 significant disappearances and thefts of restricted explosives precursors **without undue delay** to the national contact point of the Member State where the disappearance or theft has taken place.

Article 10

Training and awareness-raising

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 ~~once~~ ~~twice~~ a year, awareness-raising actions, targeted to the specificities of each different sector using regulated explosives precursors.
- 2a. **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**

Article 11

National inspection authorities

1. Each Member State shall ensure that competent authorities are in place for inspection and controls for the correct application of Articles 4 to 9 of this Regulation.
2. Each Member State shall ensure that the competent authorities referred to in paragraph 1 have the investigative powers necessary to ensure the proper administration of their tasks.
3. Each Member State shall place adequate resources at the disposal of the competent authorities referred to in paragraph 1 to enable them, together with any other available resources, to fulfil their tasks under this Regulation in a timely and effective manner.

Article 12

Guidelines

1. The Commission shall regularly update, after consulting the Standing Committee on Precursors, guidelines to assist the chemical supply chain and, where relevant, the competent authorities to facilitate cooperation between the competent authorities and economic operators. The guidelines shall, in particular, provide:
 - (a) information on how to conduct inspections;
 - (b) information on how to apply the restrictions and controls of the Regulation to regulated explosives precursors ordered at a distance by members of the general public or professional users;
 - (c) information on possible measures to be adopted by online marketplaces that act as an intermediary to ensure compliance with this Regulation;
 - (d) information on how to exchange relevant information between competent authorities and national contact points and between Member States;
 - (e) other information which may be deemed useful.

2. The competent authorities shall ensure that the guidelines provided for in paragraph 1 are regularly disseminated in a manner deemed appropriate by the competent authorities in accordance with the objectives of the guidelines.

Article 13

Penalties

Member States shall lay down rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

Article 14

Safeguard clause

1. Where a Member State has reasonable grounds for believing that a specific substance not listed in the Annex I or II could be used for the illicit manufacture of explosives, it may restrict or prohibit the making available, possession and use of that substance, or of any mixture or substance containing it, or it may provide that the substance be subject to the reporting of suspicious transactions in accordance with Article 9.
2. Where a Member State has reasonable grounds for believing that a specific substance listed in Annex I could be used for the illicit manufacture of explosives, at a concentration lower than the limit values laid down in column 2 or 3 of Annex I, it may further restrict or prohibit the making available, possession and use of that substance by imposing a lower concentration limit value.
3. Where a Member State has reasonable grounds for establishing a concentration limit value above which a substance listed in Annex II should be subject to the restrictions otherwise applying to restricted explosives precursors, it may restrict or prohibit the making available, possession and use of that substance by imposing a maximum permitted concentration.
4. A Member State restricting or prohibiting substances in accordance with paragraph 1, 2 or 3 shall immediately inform the Commission and the other Member States thereof, giving its reasons.
5. In the light of the information communicated pursuant to paragraph 4, the Commission shall immediately examine whether to prepare amendments to the Annexes in accordance with Article 15(1) or to prepare a legislative proposal to amend the Annexes. The Member State concerned shall, where appropriate, amend or repeal its national measures to take account of any such amendment to the Annexes.
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.

Article 15

Amendments to the Annexes

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 16

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 15 shall be conferred on the Commission for a period of five years from [*entry into force*]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 15 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 15 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 17

Urgency procedure

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.
2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 16(6). In such a case, the Commission shall repeal the act immediately following the notification of the decision to object by the European Parliament or by the Council.

Article 18

Amendment of Annex XVII to Regulation (EC) No 1907/2006

In Annex XVII to Regulation (EC) No 1907/2006, in entry 58 of the table setting out the designation of the substances, groups of substances and mixtures and the conditions of restriction, in the column 2, paragraphs 2 and 3 are deleted.

Article 19

Repeal of Regulation (EU) No 98/2013

1. Regulation (EU) No 98/2013 is repealed from [*date of application*].
2. References to Regulation (EU) No 98/2013 shall be construed as references to this Regulation.

Article 20

Reporting

1. Member States shall report to the Commission [*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.
2. Member States shall, in submitting the information referred to in paragraph 1(a), (c) and (d) to the Commission, distinguish which reports, actions and inspections relate to on- and offline activities.

Article 21

Monitoring programme

By [*one year after the entry into force*] at the latest, the Commission shall establish a detailed programme for monitoring the outputs, results and impacts of this Regulation.

The monitoring programme shall set out the means by which and the intervals at which the data and other necessary evidence are to be collected. It shall specify the action to be taken by the Commission and by the Member States in collecting and analysing the data and other evidence.

Member States shall provide the Commission with the data and other evidence necessary for the monitoring

Article 22

Evaluation

~~No sooner than~~ **By insert: the date** *six 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

Entry into force

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~~ **18 months** *after the date of entry into force*].

Done at Strasbourg,

For the European Parliament
The President

For the Council
The President



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>No licensing possible</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>No licensing possible</u> N/A	ex 2829 19 00	ex 3824 99 96
Potassium perchlorate (CAS RN 7778-74-7)	40 % w/w	<u>No licensing possible</u> N/A	ex 2829 90 10	ex 3824 99 96
Sodium chlorate (CAS RN 7775-	40 % w/w	<u>No licensing possible</u> N/A	2829 11 00	ex 3824 99 96

09-9)				
Sodium perchlorate (CAS RN 7601-89-0)	40 % w/w	<u>No licensing possible</u> N/AS	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 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.

e for a member of the general public to
es precursors, as referred to in Article

(s)

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	
<u>Date</u>, Stamp and/or signature:	
<u>7. Record of Acquisitions</u>	

<u>Date</u>	<u>Commercial Name of Product</u>	<u>Actual Restricted Explosives Precursor and its Concentration (%)</u>	<u>Quantity (Kg/L)</u>	<u>Retailer Name and Location</u>	<u>Sales Assistant Name</u>	<u>Signature of Sales Assistant</u>