



Council of the European Union
General Secretariat

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

Brussels, 13 July 2018

WK 8724/2018 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:	ES delegation
To:	Working Party on Technical Harmonisation (Explosives Precursors)
Subject:	Comments from the Spanish 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

WK 8724/2018 INIT

LIMITE

EN

Comments of Spain 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.

General comments:

- Definitions. Exclusion term "CRAFT". Article 3 (7)(8) and 8.2
- Elimination of chlorates and perchlorates from the licensing regime. Article 5.3
- Inclusion of term "Demonstrable need". Article 6.1 (a)
- Licensing transition period. Article 6 (9)
- Inclusion of new paragraph. Article 7
- Verification upon sale. Article 8
- Reporting of suspicious transactions, disappearances and thefts. Article 9
- Training and awareness-raising. Article 10.2
- Guidelines. Article 12.1
- License model. Annex III

Specific comments:

Article 3 (7) (8) and 8.2

If we understand "craft" as "art", the cases of people who are dedicated to fine arts would be included here. It is considered that, when this is their means of living, they should be registered as autonomous or as companies and therefore, their activity could be framed in the concepts of "profession" or "trade" and therefore they would already be included in the definition of "professional users ". When it comes to a hobby, it is reasonable that they are considered "private" (members of the general public).

Proposal 3 (7): 'member of the general public' means any natural or legal person who has a need for a restricted explosives precursor for purposes that or not connected with their trade business, ~~craft~~ or profession;

Proposal 3 (8): 'professional user', means any natural or legal person who has a demonstrable need for a restricted explosive precursor for purposes connected with their trade, business, ~~craft~~ or profession which exclude that restricted explosives precursor available

Proposal 8.2: 'Verification upon sale'. Apart 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'*

Article 5.3

In the section "Detailed explanation of the provisions of the proposal" (p. 13 of document 8342/18, article 5, paragraph 3 (1)), it explains that this proposal cancels the licensing regime

for potassium chlorate, potassium perchlorate, sodium chlorate and so. However, this is not clear in the wording of article 5.3, which could lead to different interpretations of the regulation.

Proposal: to introduce a paragraph in this section that explains this extreme.

In accordance with the consultation made by the Commission at the last meeting of the Working Group on 20 June, we inform you, that to date, licenses for chlorates and perchlorates have not been issued in our country,

Article 6.1 (a)

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”

Proposal: ‘the demonstrable need and the legitimacy of the intended use of the substance’

Article 6 (9)

The licenses still in force have been issued on the basis of a decision of the competent authority. Licit uses, as assessed by the competent national authority, remain in force for existing licensors. Therefore, in order to avoid additional administrative burdens and unnecessary obligations for existing licensors, it is suggested that existing licenses expire as set out in the existing individual licenses.

Proposal: There must be a certain period of transition, at least one year.

Article 7

The problem of lack of legal certainty when economic operators can fulfil their obligation to report suspicious transactions, thefts and disappearances could be sorted out by introducing the following paragraph before article 7.1.

Proposal: ‘Economic operators who make available to other economic operators, precursors of regulated explosives, must inform the economic operator that this is a product affected by the regulation on the marketing and use of explosives precursors’.

Article 8

With regard to article 8.2 and similarly to the control measure of communication of suspicious transactions, it is considered that sales to other economic operators should also be included here as they may be diversion points. On the other hand, this would facilitate the implementation of this obligation on the part of the distributors who have, among their clients, both economic operators and professional users.

In addition, and as a measure to facilitate the application of article 8.2, it is proposed to introduce a written "Declaration of use". It would be a document signed by the client in which the information referred to in article 8 (2) should be recorded.

In this sense, we include at the end of this document, a model proposed by the Spanish competent authority that is being used by economic operators as a good practice to undertake their national obligations in relation to law 8/2017, of 8 November on explosives precursors,

which as article 8 of the new regulation, obliges them to register the use declared by their clients.

Proposal: Add the declaration of use in writing.

Article 9

In paragraph 2 of this article, the "online marketplaces that act as an intermediate" are exempted from the obligation to have suspicious transaction detection protocols. This would be a major obstacle to the communication of suspicious transactions by those who are in one of the best positions to be able to do so.

Proposal: Do not exempt markets online or at least justify the reason for which it is exempt.

Article 10.2

We believe that in terms of information and awareness-raising actions, it should be the Member States who decide how to raise awareness, in terms of mode and time, about updating the new regulations on explosives precursors. Article 10.2 could be drafted as follows

Proposal: "Member States shall organise awareness-raising actions, targeted to the specificities of each different sector using regulated explosives precursors."

Article 12.1

The competent authorities of Member States which have opted for a licensing regime and in order to facilitate compliance with article 6.1 (b), will need guidelines on alternative substances. Therefore, we propose the addition a new subparagraph.

Proposal: Addition of a subparagraph (f) information for the competent authorities on alternative substances to the explosives precursors restricted for the particular uses for which this is possible.

ANNEX III

We miss a section in which the economic operators must record the amount dispensed in each transaction, so that the private individual may not exceed with his multiple purchases the maximum amount authorized. To illustrate this proposal, we attach the model of license authorized in Spain

Proposal: Add in the Licensing Model a section in which the economic operators must record the amount dispensed in each transaction.

MODEL OF DECLARATION OF USE

Customer's statement concerning the specific use or uses of an annex I substance or mixture containing it in relation to law 8/2017 of the Explosives Precursors Act. - Fill in capital letters -

The undersigned, representing:

Company (client).....

Company Registration number.....

The following information is required by:

Company (Suppliers).....

Address.....

Regarding the products that we will request during this year and that we quote below: (*)

Substance /mixture/ commercial product	Substance Annex I Rgto. (EU) 98/2013/	CAS	Concentration¹	Maximum expected²	Intended use³

We declare to know the obligations established for the marketing and use of the same. We certify that the commercial/product substance/mixture that contains it shall be used only for the indicated use, which is in any case legitimate, and will be sold or delivered to a customer only if it makes a similar declaration of use, respecting the limitations and Obligations established by law for the making available to individuals.

Signature.....Name

Funtion..... Date

(*)You can add the required rows in the table of substances.

¹ When there are several products for the same substance and for the same use, indicate at least the concentration range.

² If this amount is exceeded, a declaration of additional use must be submitted

³ Indicate the use to which the substance/mixture/commercial product indicated in the first column is destined. For the usage description companies can use the use description used for REACH, which can be consulted in the following guide: https://echa.europa.eu/documents/10162/13632/information_requirements_R12es.pdf/444d54aa-a704-490e-b9ea-f467b5a8f504

Applications that cannot be framed in any of these categories should be specified

MODEL OF LICENSE AUTHORIZED IN SPAIN

EXPLOSIVES PRECURSOR LICENSE

(Article 4, Law 8/2017, of 8 November, on the precursors of explosives)

1. LICENSE DATA

License number:	Valid until:
-----------------	--------------

2. PERSONAL DATA

Name and surname: Identification Document number: Address: Email:
--

3. MENTIONS AND RESTRICTIONS

A. This license authorizes its holder to acquire, possess, use and introduce in Spain the substance/s precursor/s of explosives indicated/s. B. The economic operator shall verify that the license data coincides with the data of its holder, which appear in its identity document C. The holder of the same undertakes to allocate the substances referred to in paragraph 4 only for authorized purposes and to duly guard them. Also, you must communicate any changes in the conditions or requirements that determine the issuance of this license, such as the data that works on it, for its consequent modification. D. The Supplier shall verify in paragraph 5 that the sum of the amounts acquired to date does not exceed the maximum authorized amount. You must also fill in the paragraph with the information corresponding to each transaction.

Date and place

Signature of the authority

4. DATA OF THE SUBSTANCE (S)

Substance (name and CAS No.)	Limit concentration	Maximum Amount
Hydrogen peroxide (Nº CAS 7722-84-1)	35 %	1000 liters
Use	Place of storage	Place of use
Swimming pool Water Treatment (disinfection)		

5. TRANSACTION LOG

(To be checked and completed by the supplier)

Date	Substance	Concentration	Quantity (kg / l)	NIF supplier	Supplier stamp and signature

6. OBSERVATIONS

--