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COM(2018) 209 final

2018/0103 (COD)

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**

{SWD(2018) 104 final} - {SWD(2018) 105 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Reasons for and objectives of the proposal

Explosives precursors are chemical substances that can be used for legitimate purposes but also misused to manufacture explosives. With a view to prevent the illicit manufacture of explosives, Regulation (EU) No 98/2013 on the marketing and use of explosives precursors<sup>1</sup> ("the Regulation") restricts the making available, introduction, possession and use of selected explosives precursors to the general public and sets up rules on the reporting of suspicious transactions.

Following the entry into force of the Regulation on 1 March 2013<sup>2</sup>, the amount of explosives precursors available on the market for public consumption has decreased. Member States also reported an increase in the number of reported suspicious transactions, disappearances and thefts. However, explosives precursors continue to be used for the illicit manufacture of explosives. These "homemade explosives" have been used in the vast majority of terrorist attacks in the EU, including those in Madrid in 2004, London in 2005, Paris in 2015, Brussels in 2016, as well as Manchester and Parsons Green in 2017. Attacks with homemade explosives have also been responsible for the vast majority of victims of such attacks in the last decades.

By setting restrictions and controls at Union level, the Regulation aims to create a level playing field for all companies concerned. However, the Regulation only achieved this partially, because it allows for different levels of restrictions across Member States. This does not ensure the greatest possible degree of uniformity for economic operators. Furthermore, it does not guarantee a sufficient level of protection of the safety of the general public. There are reports of criminals seeking to acquire explosives precursors in Member States with more lenient restrictions, or online, where the Regulation is not always applied.

The existing restrictions and controls have proven to be insufficient to prevent the illicit manufacture of homemade explosives. For instance, the requirement of registering transactions does not deter or prevent criminals from acquiring explosives precursors. Legal persons can also acquire explosives precursors for which they have no professional need. Since the entry into force of the Regulation, the threat has also changed. Terrorists are using new tactics and develop new recipes and bomb-making techniques, which are – at least in part – intended to circumvent existing restrictions and controls.

Furthermore, the Regulation lacks provisions that facilitate compliance and enforcement. This contributes to a number of systemic deficits along the supply chain: not all actors are aware of the obligations of the Regulation and not all economic operators conduct checks to ensure compliance. Inspections are also not systematically carried out in all Member States. Finally, the Regulation is not clear enough as regards several of the obligations it imposes, including those that seek to ensure transmission of information along the supply chain. This proposal for a Regulation aims to address the abovementioned problems by strengthening and clarifying the Regulation. In parallel, the Commission will continue its non-legislative work aimed at reducing the misuse of explosives precursors and removing obstacles to the free movement of such substances in the internal market, in particular through continuation of the work

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<sup>1</sup> 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).

<sup>2</sup> It became applicable on 2 September 2014.

conducted in the Standing Committee on Precursors and the refinement and updating of guidelines, as mandated by the Regulation.

This initiative falls within the Regulatory Fitness Programme (REFIT). A REFIT platform opinion acknowledged the above-mentioned problems arising out of the divergent application of the Regulation and suggested exploring opportunities to ensure its unified application, in particular by establishing common conditions and criteria for licences as well as clarification of ambiguities regarding requirements on supply chain actors.

- **Institutional background of the proposal**

Regulating the availability of explosives precursors on the market was identified as a policy priority in the 2008 EU Action Plan on Enhancing the Security of Explosives<sup>3</sup>. Following the adoption of the Action Plan, the European Commission established a Standing Committee on Precursors, an expert group that brings together experts from Member State authorities and stakeholders from the chemicals industry and retail. Based on the recommendations of the Standing Committee on Precursors and the outcomes of an impact assessment of the possible options<sup>4</sup>, the Commission adopted a proposal for a Regulation on explosives precursors in 2010<sup>5</sup>. On 15 January 2013, Regulation (EC) No 98/2013 on the marketing and use of explosives precursors ("the Regulation") was adopted.

The importance of such restrictions and controls for disrupting the activities of terrorist networks by make it more difficult to attack targets and to access and deploy dangerous substances was again emphasised in the European Agenda on Security<sup>6</sup>, adopted by the Commission in April 2015.

After the attacks in Paris on 13 November 2015 and in Brussels on 22 March 2016, the Commission highlighted in the Action Plan against illicit trafficking in and use of firearms and explosives<sup>7</sup> and the Communication on delivering on the EU agenda on security to fight against terrorism<sup>8</sup> that explosives precursors remained too easily available and that existing controls should be reinforced.

In February 2017, the Commission adopted a report on the application of the Regulation<sup>9</sup>. The report outlined a series of challenges faced by Member States and the supply chain to implement the Regulation and the need to increase the capacity of all those involved in implementing and enforcing the restrictions and controls. The report brought forward limitations of the legislation relating to awareness in the supply chain, and the multiplicity of

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<sup>3</sup> Council of the European Union, 'EU Action Plan on Enhancing the Security of Explosives', 8109/08.

<sup>4</sup> Commission Staff Working Document: Impact Assessment Accompanying the Proposal for a Regulation of the European Parliament and of the Council on the Marketing and Use of Explosives Precursors, SEC(2010) 1041 final of 20.9.2010.

<sup>5</sup> Proposal for a Regulation of the European Parliament and of the Council on the marketing and use of explosives precursors, COM(2010)0473 final of 20.9.2010.

<sup>6</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Agenda on Security, COM(2015) 185 final of 30.4.2015.

<sup>7</sup> Communication from the Commission to the European Parliament and the Council Implementing the European Agenda on Security: EU Action Plan Against Illicit Trafficking in and use of Firearms and Explosives, COM(2015)624 final of 2.12.2015.

<sup>8</sup> Communication from the Commission to the European Parliament, the European Council and the Council delivering on the European Agenda on Security to fight against terrorism and pave the way towards an effective and genuine Security Union, COM(2016)230 final of 20.4.2016.

<sup>9</sup> Report from the Commission to the European Parliament and the Council on the application of, and delegation of power under, Regulation (EU) 98/2013 of the European Parliament and of the Council on the marketing and use of explosives precursors, COM(2017)103 final of 28.2.2017.

different regimes across the EU, which creates important security gaps and challenges for the supply chain actors which conduct business across the EU.

A Commission Recommendation on immediate steps to prevent misuse of explosives precursors<sup>10</sup> was adopted in October 2017. Member States were urged to take all necessary measures under the existing Regulation to prevent terrorists from accessing restricted substances and invited to carry out a thorough assessment of the prohibition, licensing or registration systems they had put in place.

The Council of the European Union welcomed the Recommendation on 7 December 2017 and called on Member States to limit the availability of explosives precursors to the general public<sup>11</sup>. The European Parliament also expressed its concern about the wide availability of firearms and explosive precursors on hidden networks and growing links between terrorism and organised crime<sup>12</sup>.

- **Consistency with existing policy provisions in the policy area**

Substances and mixtures that can be used to manufacture illicit explosives are also subject to several other EU legal instruments. These instruments aim, like this proposal, to ensure the functioning of the internal market. They all have another objective as well, which is usually related to public health, safety and the environment. By contrast, the secondary objective of this proposed Regulation is security-oriented, namely to detect and prevent the illicit manufacture of explosives.

Restrictions on chemical substances for security-purposes can also be found in Regulation (EC) No 1259/2013<sup>13</sup> and (EC) No 273/2004<sup>14</sup>, which address the trade in drug precursors between the EU and third countries, and within the EU respectively. Several explosives precursors can also be used as drug precursors. Moreover, Council Regulation (EC) No 428/2009<sup>15</sup> provides for common EU control rules and a common EU list of dual-use items, which include some explosives precursors.

With the aims to ensure a high level of protection of human health and the environment, Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures (CLP Regulation)<sup>16</sup> lays down EU-wide criteria to determine whether a chemical substance or mixture which is manufactured or imported into the European market must be classified as hazardous. Suppliers must then communicate the identified hazards of these substances or mixtures to their customers, including to consumers. The most common tool for hazard communication is the labelling on the packaged substance or mixture, but also the Safety Data Sheet which is provided to actors downstream in the supply chain.

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<sup>10</sup> Commission Recommendation on immediate steps to prevent misuse of explosives precursors, C(2017) 6950 final of 18.10.2017 .

<sup>11</sup> Council conclusions on strengthening the European Union response to CBRN related risks, reducing access to explosive precursors and protecting public spaces', 15648/17.

<sup>12</sup> European Parliament Resolution of 3 October 2017 on the fight against cybercrime (2017/2068(INI)).

<sup>13</sup> Council Regulation (EC) No 1259/2013 of 20 November 2013 amending Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Community and third countries in drug precursors, (OJ L 330, 10.12.2013, p. 30).

<sup>14</sup> Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors (OJ L 47, 18.2.2004. p. 1).

<sup>15</sup> Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, (OJ L 134, 29.5.2009, p.1).

<sup>16</sup> Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006, (OJ L 353, 31.12.2008, p. 1).

For the purpose of public health, the environment and safety aspects, Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)<sup>17</sup> includes a registration procedure for chemical substances and lists restrictions on the manufacture, placing on the market and use of certain dangerous substances, mixtures and articles. This includes the explosives precursor ammonium nitrate. Regulation (EC) No 2003/2003 relating to fertilisers<sup>18</sup> lays down precise rules concerning safety and control measures for ammonium nitrate fertilisers.

This proposal for a Regulation does not require any prior registration or classification of chemical substances. The approach of this proposed Regulation is that all chemical substances can be made available, including to the general public, unless this Regulation (or other Union law) stipulates otherwise (see Article 4).

Directive 2014/28/EU on the harmonisation of the laws of the Member States relating to the making available on the market and supervision of explosives for civil uses<sup>19</sup> deals with explosives, whereas this proposed Regulation is about explosives precursors, i.e. substances that can be used for the illicit manufacture of explosives. This proposal for a Regulation also does not cover pyrotechnic articles. The making available of such articles are regulated in Directive 2013/29/EU on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles<sup>20</sup> which categorises pyrotechnic articles according to their type of use, or their purpose and level of hazard. The most dangerous category of fireworks (F4) is for professional use only.

- **Consistency with other Union policies**

This proposal complements the 2017 EU Action Plan to enhance Preparedness against Chemical, Biological, Radiological and Nuclear security risks<sup>21</sup>, and in particular the measures in that action plan for the chemical sector, such as work on detection and mitigation of chemical threats, such as detection by the customs authorities, or on the prevention of insider threats to chemical facilities. Furthermore, the 2017 EU Action Plan to support protection of public spaces<sup>22</sup> provides a framework for cooperation and sharing of information and best practices between Member states on terrorist threats, including those related to homemade explosives.

The proposed Regulation will complement the criminal legal framework set out by Directive 2017/541 on combating terrorism<sup>23</sup>, in particular where the reporting of suspicious transaction

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<sup>17</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, (OJ L 396, 30.12.2006, p.1).

<sup>18</sup> Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers, (OJ L 304, 21.11.2003, p. 1).

<sup>19</sup> Directive 2014/28/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market and supervision of explosives for civil uses(OJ L 96, 29.3.2014, p. 1).

<sup>20</sup> 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).

<sup>21</sup> COM(2017) 610 final of 18.10.2017.

<sup>22</sup> COM(2017) 612 final of 18.10.2017.

<sup>23</sup> Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).



under this proposal can lead to an investigation on the basis of a suspicion of a terrorist offence. Insofar as online content publically provokes the commission of terrorist offences with homemade explosives, that Directive requires Member States to take measures to take down such content.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The legal basis for this proposal is Article 114 TFEU, which allows for the European Parliament and the Council in accordance with the ordinary legislative procedure to adopt legislative measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.

- **Subsidiarity (for non-exclusive competence)**

The need for EU action was already acknowledged by adopting Regulation (EU) No 98/2013, which establishes Union-wide rules regarding the restrictions and controls of explosives precursors. Whereas the existing legal framework established some common approach in the EU, its evaluation also showed a significant divergence at legislative and operational level. Regulation (EU) No 98/2013 not only allows Member States to set different types of restrictions, it also leaves room for to divergent interpretations and diverging degrees of practical application.

Different rules and practices affect economic operators throughout the EU, in particular when they sell or buy products intra-EU. This is an internal market problem, which limits the freedom of movement of explosives precursors in the EU. The problem cannot be solved by unilateral actions of Member States, because the barriers and uncertainties stem from differences between Member States' laws and procedures. Similarly, the uncertainties about the existing EU framework ask for an EU solution, as national measures would only lead to different interpretations of the Regulation.

Different rules and practices may be exploited to illegally acquire explosives precursors. If criminals can obtain explosives precursors in Member States with fewer restrictions and/or lower control levels, this is impacting the security of each Member State and raise security concerns at EU level. EU intervention is necessary as this practice can only be prevented if Member States harmonise their control systems and all enforce the rules properly.

The restrictions and controls have to be brought in line with the evolving threat. In the absence of an appropriate level of restrictions and controls in some Member States, others might judge it necessary to adopt measures at national level that go beyond the remit of this Regulation. This would have a negative effect on the free movement of people and goods and services across the Union.

The added value of action at Union level would therefore lead in more harmonised restrictions and controls as regards explosives precursors, which would improve security and facilitate the free movement of such substances.

- **Proportionality**

The accompanying impact assessment preferred the approach of this proposal over non-legislative actions aimed at increasing the application of the Regulation, as well as over a more significant legislative revision of the current framework. This proposal strengthens and clarifies the existing legal framework without touching upon its essential characteristics. Whilst the proposal would significantly contribute to security and the functioning of the

internal market, it would not be disproportionate in view of their limited expected impacts on the market, in terms of implementation or enforcement burden and costs.

The increased harmonised restrictions will affect companies that specialise in the supply of (highly concentrated) restricted explosives precursors more than those that offer a much broader range of products, including alternatives to the restricted explosives precursors. However, whereas such restrictions can decrease the consumption and demand of restricted products, they can also increase the consumption and demand for lower concentrations which have the same effect, or alternative products which will continue to be developed. This can reduce the business for companies that are producing or selling restricted goods but it can create new opportunities for companies producing or selling alternative goods and lower concentrations and provides an incentive to innovative companies. All things considered, there would therefore not be a significant impact on the turnover of the chemical sector as a whole.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

In line with the Commission Work Programme 2018 envisaging a possible revision of the Regulation, a study was commissioned to analyse the present situation, identify gaps and issues, and assess the impact of possible policy changes. The study supported the Commission in examining ways to improve the effectiveness and efficiency of the EU restrictions and controls which limit availability to explosives precursors and ensure the appropriate reporting of suspicious transactions through the supply chain.

The study showed that the overall objectives of the Regulation remain relevant to the current needs due to the continued terrorist threat in Europe and that the Regulation has been overall effective in contributing to limiting the availability of explosives precursors to the general public. The Regulation contributed to national efforts towards improving detection through increased information exchange and increasing the awareness on the emerging threat related to explosives precursors by giving wide visibility to the threat of explosives precursors, and creating the political momentum to push for the prompt adoption of national restrictive measures.

The evaluation also pointed out a number of issues and areas for improvement of the current framework. Specifically, the analysis showed that the Regulation does not cover and clearly define all relevant explosives precursors and concerned stakeholders. The application and enforcement of the Regulation is limited by the lack of uniform controls and the diverse ways in which controls have been implemented. The fragmentation of control regimes across the EU has created challenges for compliance of economic operators and poses a security concern. A potential for simplification and cost savings has been identified through further harmonizing the system of restrictions and controls, clarifying the labelling obligation, and a faster and more flexible EU procedure to change the list of restricted explosives precursors.

- **Stakeholder consultations**

In preparation of the evaluation and possible revision of the existing legal framework, the Commission held a number of consultations of different stakeholders groups, such as members of the general public, national competent authorities, economic operators, including manufacturers, distributors and retailers. The key stakeholders consulted include the

Commission's Standing Committee on Precursors, which brings together experts from Member State authorities and stakeholders from the chemicals industry and retail.

The public has been consulted on a possible revision of existing legal framework between 6 December 2017 and 14 February 2018. The 83 replies received are predominantly from representatives of businesses or associations connected to the production, distribution, sale or use of explosives precursors. The majority replied that the current system of controls and restrictions on the marketing and use of explosives precursors has entailed relatively low costs but ensured also only partially the security of the general public. They also submitted that the Regulation did not substantially contribute to harmonising controls across Member States. Finally, the majority replied that the availability on the market of certain non-regulated, but potentially dangerous substances as well as the online sales of explosives precursors pose security concerns.

Respondents of the public consultation showed that respondents support future improvement of the legal framework, in particular through clarification of the scope of the framework with regard to online sales, more harmonised application across the Member States and improved transmission of information along the supply chain. These suggestions have all been taken up in this proposal. The vast majority of the Standing Committee on Precursors and industry representatives of manufacturers and distributors expressed support for the measures to improve the existing legal framework, as presented in this proposal. They also suggested that this proposal should be accompanied with a number of non-legislative actions identified in the impact assessment.

- **Impact assessment**

The Impact Assessment supporting this proposal received a positive opinion by the Regulatory Scrutiny Board, with few suggestions for improvement.<sup>24</sup> Following this opinion, the impact assessment was amended to more clearly explain how the different policy options were designed, and why these particular options were selected. Specific attention was also given to online sales, both under the current framework and the different policy options. The impact assessment has been further amended to explicitly mention the criteria used to determine the appropriate restrictions and controls and to better reflect stakeholders' views on the specific options and measures. Finally, a section was added detailing the enforcement actions undertaken by the Commission.

Three policy options were considered besides the baseline scenario (Option 0). Policy Option 1 (Non legislative) would reinforce the application of the Regulation with non-legislative measures. Policy Option 2 (Legislative – revision of the existing framework) would increase the effectiveness and efficiency of the restrictions, enforcement by public authorities, and compliance by the supply chain and finally, Policy Option 3 (Legislative – overhaul of the current framework) would introduce further controls along the supply chain.

Having analysed and compared the different options, Policy Option 2 was identified as the preferred policy option. This option would address both the identified problems and contribute to the identified general and specific objectives. Moreover, the proposed measures would strengthen and clarify the existing legal framework, without touching upon the essential characteristics. As the existing Regulation has at least partially reached its main objectives, a complete overhaul seems unnecessary.

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<sup>24</sup> [Link to RSB opinion on RegDoc.](#)



The main costs of the preferred option relate to enforcement costs for public authorities and profit foregone for companies by the restrictions relating to the making available to the general public. This may also slightly negatively affect the labour market. Overall however, the preferred option will decrease the costs of compliance and administrative burdens due to harmonisations and clarifications of the existing obligations. The Impact Assessment estimated the costs for business throughout the Union between 5 and 25 € million upon introduction, followed by annual costs between 24 and 83 € million. For public administrations, these costs have been estimated around 5 € million upon introduction and between 8 and 18 € million annually. The main benefits follow from the savings in compliance costs, estimated between 25 and 75 € million annually as well as a reduction of crime, including terrorist attacks, potentially up to 500 € million.

- **Regulatory fitness and simplification**

As this is a revision of an existing piece of legislation falling under the Commission's Regulatory Fitness and Performance Programme REFIT, the Commission has looked at opportunities to simplify and reduce burdens. The nature of this legislation means that it applies to all traders, hence no exemption is being made for micro-enterprises under this proposal.

In the framework of the REFIT Platform, stakeholders recommended the Commission to explore possibilities for facilitating a unified application of the Regulation in the Member States such as establishing common conditions and criteria for licences as well as clarification of ambiguities. It was also agreed that there was a need to clarify requirements on supply chain actors.<sup>25</sup>

This proposal will clarify and improve the efficiency of the control measures currently applied. The impact assessment estimated this to lead to a decrease of around 10% (€25 and 75 million per year) of the current costs of companies to comply with the Regulation. This proposal will limit the divergences in restriction on explosive precursors across the EU, which will simplify the legal framework and will make it clearer and easier to comply with the rules. This is especially useful for companies operating across the EU, who currently have to adapt to different regimes.

The proposed Regulation establishes a more harmonised framework for making available restricted explosives precursors to the general public, in particular by setting more common conditions for licensing and by discontinuing the registration regime from Regulation (EC) No 98/2013. The proposal for a Regulation makes clear it applies online as well, and provides directions on how the Regulation can be applied online. 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, will be facilitated by introducing a definition of both concepts. The proposal addresses the confusion regarding the labelling obligation, by making clear that every step in the supply chain will bear the burden of informing the next that the product supplied is subject to the restrictions of this Regulation. This can be done through a label, but also through the use of existing tools such as the safety data sheet under Regulation (EC) No 1907/2006.

At present, there are provisions on ammonium nitrate in this Regulation (EC) No 1907/2006 and Regulation (EU) No 98/2013 on the marketing and use of explosives precursors. Under

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<sup>25</sup> REFIT Platform Opinion on the submission by Detailhandel Nederland and a citizen (LTL 494) on Regulation (EU) No 2013/98 on the marketing and use of explosives precursors, 21.9.2017.

Regulation (EC) No 1907/2006, ammonium nitrate containing nitrogen at or above a certain concentration is prohibited to be placed on the market except for the supply to downstream users, distributors, farmers for the use in agricultural activities and natural or legal persons engaged in professional activities. Regulation (EU) 98/2013 subjects the supply of ammonium nitrate to a mechanism for reporting suspicious transactions, and also enables Member States, via a safeguard clause, to put in place further restrictions if there are reasonable grounds for doing so.

As identified by the Commission in 2015,<sup>26</sup> the regulatory framework would be simplified by transferring the relevant security-oriented restrictions on making available ammonium nitrate from Regulation (EC) 1907/2006 to this Regulation. This will complement the restrictions regarding ammonium nitrate in more than 28% under Regulation (EC) No 1907/2006. This transfer will make the legal framework more coherent and hence the more likely to be complied with and enforced.

- **Fundamental rights**

The proposal has a slightly negative impact on the freedom to conduct a business, because it expands EU-wide restrictions on the making available of explosives precursors to the general public. The impact is however marginal, as this is a very small market. Moreover, the decrease in the consumption and demand of restricted products can be accompanied with the increase in consumption and demand for lower concentrations which have the same effect, or alternative products which will continue to be developed.

This proposal does not significantly change the impact on the protection of personal data that exists already under the current legal framework. On the one hand, this proposal aims to discontinue the registration of transactions by the general public. On the other hand, this proposal obliges companies to verify the legality of each transaction, which brings about the collection and processing of personal data. Overall, there may therefore be a slight increase in the amount of data being collected and processed. This proposal aims to minimise the interferences with the right to protection of personal data by establishing clear purpose limitation rules for the processing and collection of data, and in case of verification of sales, a maximum retention period of one year.

#### **4. BUDGETARY IMPLICATIONS**

The legislative proposal does not have an impact on the Union budget.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

In order to ensure an effective implementation of the measures foreseen, and monitor its results, the Commission will continue working closely with the Standing Committee on Precursors, as well as any other relevant stakeholders from the Member State authorities, the chemical supply chain, and EU agencies and institutions.

The Commission will adopt a monitoring programme for monitoring the outputs, results and impacts of this Regulation. The monitoring programme shall set out the means by which and

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<sup>26</sup> Report pursuant to Article 18 of 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, examining the possibilities to transfer relevant provisions on ammonium nitrate from Regulation (EC) No 1907/2006, COM (2015) 122 final of 12.3.2015.

the intervals at which the data and other necessary evidence will be collected. Member States should report to the Commission one year after the start of application and subsequently on an annual basis, some information that is considered essential to effectively monitor the application of this Regulation. Most of this information will be gathered by the competent authorities during the course of their duties and will therefore not require additional data collection efforts. Through the Standing Committee on Precursors, the Commission will also aim to collect data and information from the economic operators along the supply chain.

The Commission will evaluate the effectiveness, efficiency, relevance, coherence and EU added value of the resulting legal framework, no sooner than 6 years after the start of the application to ensure that there is enough data relating to the application of the Regulation. The evaluation shall include stakeholders' consultations to collect feedback on the effects of the legislative changes and the soft measures implemented. The benchmark against which progress will be measured is the baseline situation when the legislative act enters into force.

- **Detailed explanation of the specific provisions of the proposal**

*Article 1: Subject matter* – The subject matter of the proposed Regulation is identical to that of Regulation (EU) 98/2013. The proposed Regulation sets 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. In addition, it provides rules to ensure the appropriate reporting of suspicious transactions throughout the supply chain.

*Article 2: Scope* – This provision sets out that the substances or mixtures covered by the harmonised rules of this Regulation are those listed in the Annexes I and II. This proposal for a Regulation makes some changes as to those Annexes as compared to Regulation (EU) 98/2013, which are detailed in the explanations regarding Articles 3 and 5 below.

Like Regulation (EU) No 98/2013, this proposal for a Regulation excludes "articles" within the meaning of point (3) of Article 3 of Regulation (EC) No 1907/2006, as well as specified pyrotechnic articles and equipment, percussion caps for toys and specified medicinal products.

*Article 3: Definitions* – This provision sets out definitions of concepts that are used in the proposed Regulation. Whereas most definitions remain unchanged as to Regulation (EU) 98/2013, this provision introduces some further definitions and amends existing ones, as explained below.

The proposed Regulation maintains the definition of a "restricted explosives precursor", which cannot be made available, introduced, possessed or used to members of the general public (see Article 5(1)). The concept of "restricted explosives precursor" includes both substances and mixtures, but excludes "articles" (see also Article 2(2), point (a)). The explosives precursors listed in Annex I are "restricted" from a concentration limit higher than or, in the case of ammonium nitrate, in a concentration equal to or higher than that specified in column 2 therein.

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 (see recital 5).

The scope of "restricted explosives precursors" is extended in comparison to Regulation (EU) No 98/2013 through Annex I in three ways. First, this proposal for a Regulation introduces

sulphuric acid in Annex I. Illicit explosives used in several terrorist attacks committed in the EU in the recent years have been manufactured with sulphuric acid. The placing on the market of sulphuric acid is already regulated in the EU due to its hazardous properties as a skin corrosive chemical substance (Annex VI of Regulation (EC) No 1272/2008). Below the concentration limit of 15% w/w set in column 2 of Annex I, it is significantly more difficult to manufacture illicit explosives with sulphuric acid, while it could still be used for the legitimate purposes for which it is made available. Although the volume of trade in sulphuric acid in the EU is significant, it is estimated that only around 0,5% of that sulphuric acid is made available to members of the general public.

Secondly, in comparison to Regulation (EU) No 98/2013, this proposal for a Regulation lowers the concentration limit for nitromethane in Annex I from 30% w/w to 16% w/w. Below the limit of 16% w/w, it is significantly more difficult to manufacture illicit explosives with nitromethane, while it could still be used for the legitimate purposes for which it is made available. The volume of trade in nitromethane in the EU is small, as well as the proportion of nitromethane that is made available to members of the general public.

Third, the existing restriction concerning ammonium nitrate in 16% or more in weight of nitrogen in relation to ammonium nitrate already exists in Regulation (EC) No 1907/2006 (Annex XVII) and is transferred to this Regulation (Annex I, see also Articles 5(2) and 18). These restrictions on ammonium nitrate are better placed in this Regulation that addresses security risks, instead of Regulation (EC) No 1907/2006 which aims to ensure public health, the environment and safety.<sup>27</sup>

The transfer does not affect the scope of the existing restriction. For that reason, Article 5(2) states that farmers will retain access to ammonium nitrate equal to or higher than 16% weight of nitrogen in relation to ammonium nitrate for agricultural activities. As part of the transfer, this proposed Regulation therefore also introduces the definition of "agricultural activity" as provided for in Annex XVII to Regulation (EC) No 1907/2006.

The proposed Regulation introduces a definition of "regulated explosives precursor" which not only covers the restricted explosives precursors listed in Annex I, but also the (reportable) explosives precursors listed in Annex II. In comparison to Regulation (EU) No 98/2013, this proposal for a Regulation takes out the references in Annex II to sulphuric acid and ammonium nitrate, because these are now included in Annex I. Article 9 requires economic operators to report suspicious transactions concerning the regulated explosives precursors listed in Annexes I or II.

The definition of "economic operator" in this Regulation is made more specific to cover only those entities that place regulated explosives precursors on the market or services related to regulated explosives precursors. Furthermore, it is clarified that an "economic operator" includes also entities operating online, including digital marketplaces that allow consumers and/or traders to conclude transactions with each other on the same online marketplace's website or on another website that uses computing services provided by the online marketplace.

The definition of "member of the general public" is extended to also include "legal persons" and a definition is introduced for a "professional user". The distinction between a "professional user", to which restricted explosives precursors can be made available, and "a

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Report pursuant to Article 18 of 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, examining the possibilities to transfer relevant provisions on ammonium nitrate from Regulation (EC) No 1907/2006, COM (2015) 122 final of 12.3.2015.

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.

The distinguishing feature with a "professional user" is that an "economic operator" makes a restricted explosives precursor available to another person while "a professional user" does not. Any natural or legal person who makes available an explosive precursor to another person is to be considered an economic operator and has to comply with the obligations of this Regulation.

*Article 4: Free movement* – This provision sets out the principle of free movement in relation to the explosives precursors regulated by the proposed Regulation. This provision accommodates for other restrictions based on Union law relating to the explosives precursors, such as for instance Union rules regarding the classification, labelling and packaging of these substances. The provision differs from the corresponding provision in Regulation (EU) No 98/2013 in two ways. First, the principle of free movement applies to restricted explosives precursors of all concentrations, and not only to those not exceeding the concentration limit. Secondly, by referring in a more generic way to exceptions to free movement "provided in this Regulation", it is not necessary to refer to specific provisions of this Regulation, as was the case in Regulation (EU) No 98/2013.

*Article 5: Making available, introduction, possession and use* – This provision prohibits the making available, introduction, possession and use of restricted explosives precursors at concentrations above the limit values set in column 2 of Annex I of this Regulation.

Paragraph 2 provides for an exception to this prohibition for ammonium nitrate for the purposes of agricultural activity, in line with the existing restrictions in Annex XVII to Regulation (EC) No 1907/2006. Farmers, insofar as they are not already covered by the definition of "professional users", can acquire, introduce, possess and use, for agricultural purposes, ammonium nitrate of 16% or more weight of nitrogen in relation to ammonium nitrate.

The exception to the prohibition provided by Regulation (EU) No 98/2013, whereby Member States may maintain or establish a registration regime allowing certain restricted explosives precursors to be made available to, or to be possessed or used by, members of the general public if the economic operator who makes them available registers the transaction, is discontinued under this proposal for a Regulation.

By contrast, the possibility to maintain or establish a licensing regime is safeguarded in paragraph 3 of this proposal. This enables members of the general public to be able to acquire, introduce, possess or use restricted explosives precursors above the concentration limit set out in column 2 of Annex I for legitimate purposes if they hold a licence to do so.

This proposal for a Regulation tightens the existing parameters for licensing in two ways. First of all, for some restricted explosives precursors above the concentration limit provided for by this Regulation there exists no legitimate use by members of the general public. Therefore, it is proposed to discontinue licensing for potassium chlorate, potassium perchlorate, sodium chlorate and sodium perchlorate. Licences could only be requested for a limited number of restricted explosives precursors for which there exists substantial legitimate use by members of the general public, i.e. only the already restricted hydrogen peroxide, nitromethane and nitric acid and the newly proposed sulphuric acid.

Secondly, under the proposed Regulation, licences may only be provided for the latter substances in concentrations not exceeding an upper limit set in column 3 of Annex 1 of 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 which alternatives or lower concentrations can achieve the same effect. This is already reflected in Regulation (EU) No 98/2013, which sets the same upper limits in registration regimes for acquiring hydrogen peroxide, nitromethane and nitric acid. For the newly proposed sulphuric acid, the upper limit is set at 40%, above which concentration sulphuric acid becomes increasingly dangerous, including for the manufacture of explosives. The legitimate use by the general public of high concentrated sulphuric acid is insignificant, and ample alternatives exist.

Under paragraph 4, Member States notify without delay to the Commission the restricted explosives precursors in respect of which the Member State provides for a licensing regime, which the Commission will publish in line with paragraph 5.

*Article 6: Licenses* – This provision sets out rules governing the criteria and procedures for issuing and granting licenses. Regulation (EU) No 98/2013 requires the competent authorities to take into account all relevant circumstances, and in particular the legitimacy of the intended use. The proposed Regulation makes more specific what other relevant circumstances are to be taken into account, namely the availability of lower concentrations or alternative substances that would achieve a similar effect, the proposed storage arrangements to ensure that the restricted explosives precursor is kept securely and the background of the individual applying for a licence, including his or her criminal records.

Information on criminal records is to be exchanged under Council Framework Decision 2009/315/JHA of 26 February 2009<sup>28</sup>. The usage of this European Criminal Records Information System (ECRIS) system for obtaining information on previous convictions will ensure that when issuing licenses, the authorities of the Member States will not only take account of convictions rendered in their own Member State, but also those handed down in other Member States. This will ensure that all relevant available information on previous convictions will be taken into account when deciding whether or not to grant a license. In addition, the provision ensures that all Member States will be obliged to respond to requests for such information, irrespective of the provisions of their national law on this point.

Licences issued by a Member State in line with Article 7 of Regulation (EU) No 98/2013 lose their validity after the entry into application of this Regulation because they do not necessarily take into account all of the circumstances identified by this Regulation. Nevertheless, Member States may decide, upon request of the individual license holder, to confirm, renew or prolong such licences issued in that Member State if the competent authority considers that all of the criteria of this Regulation are met in respect of the license at issue.

Regulation (EU) No 98/2013 mandated the Commission, in consultation with the Standing Committee on Precursors, to set up guidelines on the technical details of licences in order to facilitate their mutual recognition, including a draft format for such licence. The format established in 2014 is included in an Annex III of the proposed Regulation to facilitate the mutual recognition of licences between Member States that apply a licensing regime.

*Article 7: Informing the supply chain* – This provision aims to improve the practical application of the Regulation by codifying good practices relating to the transfer of information. Paragraph 1 will ensure that every actor in the supply chain is aware that the product they are handling is subject to the restrictions of this Regulation. Under Regulation (EU) No 98/2013, an economic operator who intends to make available restricted explosives

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<sup>28</sup> 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).

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 as set out in Regulation (EC) 98/2013. This provision has led to uncertainty as regards who is responsible to label the explosives precursors, namely those manufacturing or those selling the relevant product, with the result that many products are not labelled.

The proper application of the Regulation requires that the retail and wholesale level is aware that the acquisition, possession or use by the general public of a specific product is restricted. The economic operator best placed to determine whether the product falls within the scope of this Regulation is the economic operator manufacturing or packaging the product. A label is not always the most appropriate means of information, because this can facilitate criminals making their purchases. Economic operators in the chemical sector are accustomed to inform each other throughout the supply chain by way of other means, such as by including information in the Safety Data Sheet compiled in accordance with Annex II to Regulation (EC) No 1907/2006. For these reasons, the proposed Regulation replaces the labelling provision by a more generic provision requiring each economic operator to inform the receiving economic operator that the product is subject to restrictions under Article 5 of this Regulation.

Paragraph 2 introduces a more specific requirement as to personnel involved in the sale of restricted explosives precursors. Upon receiving the information referred to in paragraph 1, retail and wholesale are to ensure that their personnel involved in the sale is aware of the products that it offers and that contain explosives precursors, and that this personnel is instructed regarding the obligations of the Regulation. This could for instance be facilitated in an automatic manner, such as through including this information in bar-codes, but also by letting only specialised sales personnel carry out transactions involving restricted explosives precursors.

*Article 8: Verification upon sale* – This provision introduces an explicit obligation on economic operators to verify that they are not carrying out transactions that would violate Article 5 of this Regulation. Regulation (EU) No 98/2013 requires economic operators to verify the licence when making available of restricted explosives precursors to a member of the general public in accordance with the licensing regime as referred to in Article 5(3). Paragraph 1 adds that in such cases, economic operators are to verify proof of identity of the prospective customer.

A member of the general public should not be able to acquire restricted explosives precursors by claiming to be a professional user. Paragraph 2 codifies good practice of economic operators that verify for each transaction that the prospective customer indeed has a need for a restricted explosives precursor for purposes connected with their trade, business, craft or profession, in line with the definition of "professional user" set out in point (8) of Article 3.

The proposed Regulation stipulates that the prospective customer should at least be questioned about their trade, business, craft or profession and their intended use of the restricted explosives precursors. Should the economic operator suspect that the prospective customer does not have a professional need for the required restricted explosives precursor, the transaction should be refused and reported to the competent authorities in line with Article 9 if there are reasonable grounds for suspecting that the substance or mixture is intended for the illicit manufacture of explosives.

*Article 9: Reporting of suspicious transactions, disappearances and thefts* – This provision sets out requirements regarding the reporting of suspicious transactions, disappearances and

thefts. This provision restructures the existing requirement from Regulation (EU) No 98/2013 to make it clearer and chronological and specifies that the reports are made "for the purpose of detecting and preventing the illicit manufacture of explosives".

The proposed Regulation aims to raise the level of detection of the illicit manufacture of explosives by requiring economic operators to have in place procedures to detect suspicious transactions. The procedures should be targeted to the environment in which the regulated explosives precursors are offered, such as on- or offline and aimed at the general public, professional users or other economic operators.

Regulation (EU) No 98/2013 requires economic operators to report suspicious transactions in particular when the prospective customer intends to buy regulated explosives precursors in quantities, combinations or concentrations that are uncommon for "private" use. However, professional users can also be prospective customers and their transactions do not become suspicious just because they intend to use the regulated explosive precursor for other than "private" purposes. In this proposal for a Regulation, transactions are therefore to be considered suspicious when the prospective customer intends to buy regulated explosives precursors in quantities, combinations or concentrations that are uncommon for "legitimate" use.

Should economic operators have reasonable grounds for suspecting that the substance or mixture is intended for the illicit manufacture of explosives, they should report it to the existing national contact points referred to in paragraph 5, which under this proposed Regulation should be available on a 24/7 basis. As time is of the essence to prevent possible terrorist attacks, the report is to be made within 24 hours.

Under Regulation (EU) No 98/2013, economic operators 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. The proposed Regulation extends this obligation to professional users (paragraph 3) and insofar as restricted explosives precursors are concerned to members of the general public that have acquired restricted explosives precursors with a licence.

*Article 10: Training and awareness-raising* – This provision introduces obligations on Member States to organise training and awareness-raising actions. Paragraph 1 requires that training is to be provided to law enforcement, first responders and customs authorities to enable them to recognise regulated explosives precursors substances and mixtures during the course of their duties and to be able to react in a timely and appropriate manner to suspicious activity. Under paragraph 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.

*Article 11: National inspection authorities* – This provision introduces the requirement for Member States to have in place competent authorities to inspect and control the correct application of Articles 4 to 9 of this Regulation. Under paragraph 2, these authorities are to have the investigative powers necessary to ensure the proper administration of their tasks.

*Article 12: Guidelines* – This provision mandates the Commission to regularly update, after consulting the Standing Committee on Precursors, the existing guidelines and to expand these in relation to three new areas. First, with the introduction of the obligation to set up inspection authorities, guidelines will be set up on how to conduct such inspection and at which intervals.

Secondly, explosives precursors are increasingly being offered online. This Regulation reiterates that its restrictions also apply to consignments ordered at a distance and clarifies therefore that economic operators also have to comply with the obligations of the Regulation when operating online (see Article 3). The guidelines will address practical issues that arise from ordering at a distance, such as how to conduct the required verifications under Article 8 and to detect suspicious transactions under Article 9.

Third, there are several legal frameworks in place that allow the competent authorities to exchange information on suspicious transactions, disappearances, thefts, and other suspicious incidents or licence applications, when this appears to have a cross-border element.<sup>29</sup> Practitioners have highlighted that the main obstacle in the exchange of information in cross-border cases relates to practical issues such as the method of the exchange, which will be addressed in guidelines.

*Article 13: Penalties* – This provision maintains the existing rule from Regulation (EC) 98/2013 that effective, proportionate and dissuasive penalties must be in place for infringements of this Regulation.

*Article 14: Safeguard clause* – This provision maintains the safeguard clause from Regulation (EU) No 98/2013 which allows Member States to introduce further restrictions by introducing substances under the regime of Annexes I or II or by lowering the concentration limits in Annex I. Member States are to provide their reasons for such further restrictions, which the Commission shall examine immediately. The Commission is already entitled to amend or to propose to amend the Annexes as a result of the examination. This proposal for a Regulation also provides the Commission with the authority to decide, after consulting the Member State concerned, 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* – This provision allows the Commission to adopt delegated acts concerning the addition of substances to Annexes I and II 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 Under Regulation (EU) No 98/2013, the Commission cannot adopt delegated acts to add substances to Annex I of the Regulation. The Commission shall, as part of the preparation of the delegated acts, endeavour to consult relevant stakeholders, in particular the chemical industry and the retail sector. For each change in the Annex, the Commission shall adopt a separate delegated act, after consulting all relevant stakeholders and 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* – This provision sets out the conditions for adopting delegated acts in line with the principles set out for such adoption in the Interinstitutional Agreement of 13 April 2016, which in comparison to Regulation (EC) 98/2013 introduces an obligation upon the Commission to consult experts designated by each Member State.

*Article 17: Urgency procedure* – This provision allows for a faster procedure to adopt delegated acts if, pursuant to Article 15(1), imperative grounds of urgency so require.

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<sup>29</sup> For instance, Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences (OJ L 253, 29.9.2005, p. 22) and Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 82 of 22.3.97, p.1).

*Article 18: Amendment of Annex XVII to Regulation (EC) No 1907/2006* – This provision completes the transfer of the restrictions with regard to ammonium nitrate in 16% or more by weight of nitrogen in relation to ammonium nitrate under Regulation (EC) No 1907/2006 to this proposed Regulation by deleting paragraph 2 from entry 58 in Annex XVII of Regulation (EC) No 1907/2006. Paragraph 3 in entry 58 allowed for an exception to the restriction until 1 July 2014 and is therefore also deleted.

*Article 19: Repeal of Regulation (EU) No 98/2013* – This provision repeals Regulation (EU) No 98/2013 with effect from the entry into force of the proposed Regulation and stipulates that references to Regulation (EU) No 98/2013 shall be construed as references to this Regulation.

*Article 20: Reporting* – This provision requires Member States to report specific information related to the application of the Regulation, with a view to assist the Commission in the exercise of its duties under Articles 21 and 22.

*Article 21: Monitoring* – This provision sets out that the Commission shall establish a detailed programme for monitoring the outputs, results and impacts of this Regulation.

*Article 22: Evaluation* – This provision sets out that the Commission shall carry out an evaluation of this Regulation in line with the Commission's better regulation Guidelines and paragraph 22 of the Interinstitutional Agreement of 13 April 2016 and present a report on the main findings of that evaluation to the European Parliament, the Council and the European Economic and Social Committee.

*Article 23: Entry into force* – This provision stipulates the date of the entry into force of the Regulation. Due to the urgency to address the existing threats, the Regulation should apply one year after the date of its entry into force. This period provides Member States and economic operators time to make the necessary arrangements to comply with the new legal framework.



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 Committee<sup>30</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EU) No 98/2013 of the European Parliament and of the Council<sup>31</sup> 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 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

<sup>30</sup> OJ C , , p. .

<sup>31</sup> 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).

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 Council<sup>32</sup>.
- (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 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,

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<sup>32</sup> 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).

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 Council<sup>33</sup>, 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 should be without prejudice to Articles 14 and 15 of Directive 2000/31/EC of the European Parliament and of the Council<sup>34</sup>.
- (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.

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<sup>33</sup> 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).

<sup>34</sup> 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).

- (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 2016<sup>35</sup>. 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 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 Council<sup>36</sup> 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.

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<sup>35</sup> OJ L123, 12.5. 2016, p1.

<sup>36</sup> 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).

- (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:

### *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 Council<sup>37</sup>;
  - (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 Council<sup>38</sup>;
  - (e) pyrotechnic articles intended for use in the aerospace industry;
  - (f) percussion caps intended for toys;

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<sup>37</sup> 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).

<sup>38</sup> 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).



- (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.

### *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;
- (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 Council<sup>39</sup>;
- (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 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 and using restricted explosives precursors, issued in accordance with Article 6 by a competent authority 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.

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<sup>39</sup> 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).

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 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/JHA<sup>40</sup>. Responses to requests for such information

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<sup>40</sup> 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).

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 explosives precursor to another economic operator shall inform that economic operator that the acquisition, possession or use of that restricted explosives precursor by members of the general public is subject to a restriction as set out in Article 5(1) and (3).
2. An economic operator who makes available regulated explosives precursors to a professional user 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.
3. An online marketplace that acts as an intermediary shall take measures to ensure that its users, when making available 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.
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 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, 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, 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 and professional users 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.



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

#### *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 [*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 after the date of entry into force*].

Done at Strasbourg,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*





Brussels, 17.4.2018  
COM(2018) 209 final

ANNEXES 1 to 3

## **ANNEXES**

**to 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**

{SWD(2018) 104 final} - {SWD(2018) 105 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 ) | N/A  | 3102 30 10 (in aqueous solution)<br>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/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<br>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).

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