

## I

*(Legislative acts)*

## REGULATIONS

**REGULATION (EU) 2019/1148 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 20 June 2019****on the marketing and use of explosives precursors, amending Regulation (EC) No 1907/2006 and repealing Regulation (EU) No 98/2013****(Text with EEA relevance)**

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>(1)</sup>,Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) Regulation (EU) No 98/2013 of the European Parliament and of the Council <sup>(3)</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 on precursors that can be used for manufacturing homemade explosives. Given the number of changes needed, it is appropriate to replace Regulation (EU) No 98/2013 for the sake of clarity.
- (3) Regulation (EU) No 98/2013 restricted access to, and the use of explosives precursors by, members of the general public. Notwithstanding that restriction, Member States were, however, able to decide to grant members of the general public access to those substances through a system of licences and registration. Restrictions and controls on explosives precursors in the Member States have therefore been divergent and liable to cause barriers to trade within the Union, thus impeding the functioning of the internal market. Furthermore, the existing restrictions and

<sup>(1)</sup> OJ C 367, 10.10.2018, p. 35.

<sup>(2)</sup> Position of the European Parliament of 16 April 2019 (not yet published in the Official Journal) and decision of the Council of 14 June 2019.

<sup>(3)</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).

controls have not ensured sufficient levels of public security, as they have not adequately prevented criminals from acquiring explosives precursors. The threat posed by homemade explosives has remained high and continues to evolve.

- (4) The system for preventing the illicit manufacture of explosives should therefore be further strengthened and harmonised in view of the evolving threat to public security caused by terrorism and other serious criminal activities. Such strengthening and harmonisation should also ensure the free movement of explosives precursors in the internal market and should promote competition between economic operators and encourage innovation, for example, by 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 whether it is possible to establish a concentration level below which the explosives precursor could still be used for the legitimate purposes for which it is made available while making it significantly less likely for that precursor to be used for the illicit manufacture of explosives.
- (6) Members of the general public should not be permitted to acquire, introduce, possess or use certain explosives precursors at concentrations above certain limit values, expressed as a percentage by weight (w/w). However, members of the general public should be permitted to acquire, introduce, possess or use some explosives precursors at concentrations above those limit values for legitimate purposes, provided that they hold a licence to do so. Where the applicant is a legal person, the competent authority of the Member State should take into account the background of the legal person and of any person acting either individually or as part of an organ of the legal person and having a leading position within the legal person, based on a power of representation of the legal person, an authority to take decisions on behalf of the legal person or an authority to exercise control within the legal person.
- (7) For some restricted explosives precursors at concentrations above the limit values provided for in this Regulation, there exists no legitimate use by members of the general public. Therefore, licensing should be discontinued for potassium chlorate, potassium perchlorate, sodium chlorate and sodium perchlorate. Licensing should only be permitted for a limited number of restricted explosives precursors for which there exists a legitimate use by members of the general public. Such licensing should be limited to concentrations that do not exceed the upper limit value provided for in this Regulation. Above that upper limit value the risk of the illicit manufacture of explosives outweighs the negligible legitimate use of those explosives precursors by members of the general public, given that alternatives to, or lower concentrations of, those precursors can achieve the same effect. This Regulation should also determine the circumstances which the competent authorities should, as a minimum, take into account when considering whether to issue a licence. Together with the format of a licence set out in Annex III, this should facilitate the recognition of licences issued by other Member States.
- (8) It should be possible for the mutual recognition of licences issued by other Member States to be done bilaterally or multilaterally, in order to achieve the objectives of the single market.
- (9) In order to apply the restrictions and controls of this Regulation, those economic operators selling to professional users or to members of the general public who hold a licence should be able to rely on information made available upstream in the supply chain. Each economic operator in the supply chain should therefore inform the recipient of regulated explosives precursors that the making available, introduction, possession or use of those explosives precursors by members of the general public is subject to this Regulation, for example, by affixing an appropriate label to the packaging, by verifying that an appropriate label is affixed to the packaging, or by including that information in the safety data sheet compiled in accordance with Annex II to Regulation (EC) No 1907/2006 of the European Parliament and of the Council<sup>(4)</sup>.
- (10) The difference between an economic operator and a professional user is that the economic operators make an explosives precursor available to another person, whereas professional users acquire or introduce an explosives precursor only for their own use. Economic operators selling to professional users, other economic operators or

<sup>(4)</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 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).

members of the general public who hold a licence should ensure that their personnel involved in the sale of the explosives precursors are aware of which of the products they make available contain explosives precursors, for instance by including information that a product contains an explosives precursor in the barcode of the product.

- (11) The distinction between professional users, to whom it should be possible to make restricted explosives precursors available, and members of the general public, to whom they should not be made available, depends on whether the person intends to use the explosives precursor concerned for purposes connected with that person's specific trade, business, or profession, including forestry, horticultural and agricultural activity, conducted either on a full-time or part-time basis and not necessarily related to the size of the area of land on which that activity is conducted. Economic operators should therefore not make restricted explosives precursors available either to natural or legal persons who are professionally active in areas in which the specific restricted explosives precursors tend not to be used for professional purposes or to natural or legal persons who are engaged in activities that are not connected to any professional purpose.
- (12) Personnel of economic operators who are involved in the making available of explosives precursors should be subject to the same rules under this Regulation as apply to members of the general public when using such explosives precursors in their personal capacity.
- (13) Economic operators should retain transaction data to substantially assist the authorities in preventing, detecting, investigating and prosecuting serious crime committed with homemade explosive devices and in verifying compliance with this Regulation. The identification of all actors in the supply chain and all customers is essential for this purpose, be it members of the general public, professional users or economic operators. As the illicit manufacture and use of homemade explosives might occur only a significant amount of time after the sale of the explosives precursor, the transaction data should be retained for as long as is necessary, proportionate and appropriate to facilitate investigations, taking average inspection periods into account.
- (14) This Regulation should also apply to economic operators that operate online, including those that operate on online marketplaces. Therefore, economic operators that operate online should also train their personnel and should also have in place appropriate procedures to detect suspicious transactions. Furthermore, they should only make restricted explosives precursors available to a member of the general public in Member States that maintain or establish a licensing regime in accordance with this Regulation, and only after verifying that that member of the general public holds a valid licence. After having verified the identity of the prospective customer, for instance through mechanisms provided for in Regulation (EU) No 910/2014 of the European Parliament and of the Council<sup>(5)</sup>, the economic operator should verify that a licence has been issued covering the intended transaction, for instance through a physical inspection of the licence at the time of delivery of the explosives precursor or, with the consent of the prospective customer, by contacting the competent authority of the Member State that issued the licence. Economic operators that operate online, like those operating offline, should also request end-use declarations of professional users.
- (15) Online marketplaces act as mere intermediaries between economic operators on the one side, and members of the general public, professional users or other economic operators, on the other side. Therefore, online marketplaces should not fall under the definition of an economic operator and should not be required to instruct their personnel involved in the sale of restricted explosives precursors regarding the obligations under this Regulation or to verify the identity and, where appropriate, the licence of the prospective customer, or to request other information from the prospective customer. However, given the central role which online marketplaces play in online transactions, including as regards the sales of regulated explosives precursors, they should inform their users who aim to make regulated explosives precursors available through the use of their services of the obligations under this Regulation in a clear and effective manner. In addition, online marketplaces should take measures to help ensure that their users comply with their own obligations regarding verification, for instance by offering tools to facilitate the verification of licences. Given the increasing significance of online marketplaces for all kinds of supply and the importance of this procurement channel, including for terrorist purposes, online marketplaces should be subject to the same detection and reporting obligations as economic operators, although procedures to detect suspicious transactions should be properly adapted to the specific online environment.

<sup>(5)</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).

- (16) The obligations on online marketplaces under this Regulation should not amount to a general monitoring obligation. This Regulation should lay down only specific obligations for online marketplaces with respect to the detection and reporting of suspicious transactions that take place on their websites or that use their computing services. Online marketplaces should not be held liable, on the basis of this Regulation, for transactions that were not detected despite the online marketplace having in place appropriate, reasonable and proportionate procedures to detect such suspicious transactions.
- (17) This Regulation requires economic operators to report suspicious transactions, regardless of whether the prospective customer is a member of the general public, a professional user or an economic operator. The obligations that relate to regulated explosives precursors, including the obligation to report suspicious transactions, should apply to all substances listed in Annexes I and II, irrespective of their concentration. However, products that contain explosives precursors only to such a small extent and in such complex mixtures that the extraction of the explosives precursors is technically extremely difficult should be excluded from the scope of this Regulation.
- (18) To improve the application of this Regulation, both economic operators and public authorities should provide for adequate training with respect to the obligations under this Regulation. Member States should have inspection authorities in place, should organise regular awareness-raising actions that are adapted to the specificities of each of the different sectors, and should maintain a permanent dialogue with economic operators at all levels of the supply chain, including economic operators that operate online.
- (19) 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 reporting obligation provided for by this Regulation, where necessary as a matter of urgency. In order to accommodate possible 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 in respect of amending this Regulation by modifying the limit values above which certain substances that are restricted under this Regulation are not to be made available to the members of the general public, and by listing 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 of 13 April 2016 on Better Law-Making<sup>(6)</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.
- (20) In order to deal with substances not already listed in Annex I or II, 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 should be 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. Furthermore, Member States should be allowed to maintain national measures of which they have already informed or notified the Commission in accordance with Article 13 of Regulation (EU) No 98/2013.
- (21) The regulatory framework would be simplified by integrating the relevant security-oriented restrictions on the making available of ammonium nitrate from Regulation (EC) No 1907/2006 into this Regulation. For that reason, Annex XVII to Regulation (EC) No 1907/2006 should be amended accordingly.

<sup>(6)</sup> OJ L 123, 12.5.2016, p. 1.

- (22) This Regulation requires the processing of personal data and their further disclosure to third parties in the case of suspicious transactions. Such processing and disclosure imply an interference with the fundamental rights to respect for one's private life and 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>(7)</sup> governs the processing of personal data carried out in the framework of this Regulation. Therefore, the processing of personal data involved in licensing and the reporting of suspicious transactions 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.
- (23) The Commission should carry out an evaluation of this Regulation based on the criteria of efficiency, effectiveness, relevance, coherence and EU added value. That evaluation should provide the basis for impact assessments of possible further measures. Information should be collected regularly for the purpose of evaluating this Regulation.
- (24) Since the objective of this Regulation, namely limiting access by the members of the general public to explosives precursors, cannot be sufficiently achieved by the Member States but can rather, 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.
- (25) Regulation (EU) No 98/2013 should be repealed,

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 the availability of those substances or mixtures to members of the general public, and with a view to 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 Annexes I and II.

#### *Article 2*

##### **Scope**

1. This Regulation applies to the substances listed in Annexes I and II and to mixtures and substances that contain those substances.
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>(8)</sup>;

<sup>(7)</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 (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>(8)</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).

- (c) pyrotechnic articles intended for non-commercial use in accordance with national law by the armed forces, law enforcement authorities or fire services;
- (d) pyrotechnic equipment falling within the scope of Directive 2014/90/EU of the European Parliament and of the Council <sup>(9)</sup>;
- (e) pyrotechnic articles intended for use in the aerospace industry;
- (f) percussion caps intended for toys;
- (g) medicinal products that have been 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 apply:

- (1) 'substance' means a substance as defined in point (1) of Article 3 of Regulation (EC) No 1907/2006;
- (2) 'mixture' means a mixture as defined in point (2) of Article 3 of Regulation (EC) No 1907/2006;
- (3) 'article' means an article as defined in 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, irrespective of its destination within the Union, whether from another Member State or from a third country, under any customs procedure, as defined in Regulation (EU) No 952/2013 of the European Parliament and of the Council <sup>(10)</sup> including transit;
- (6) 'use' means use as defined in point (24) of Article 3 of Regulation (EC) No 1907/2006;
- (7) 'suspicious transaction' means any transaction concerning regulated explosives precursors for which there are reasonable grounds, after taking account of all relevant factors, for suspecting that the substance or mixture concerned is intended for the illicit manufacture of explosives;
- (8) 'member of the general public' means any natural or legal person who is acting for purposes not connected with that person's trade, business, or profession;

<sup>(9)</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).

<sup>(10)</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

- (9) 'professional user' means any natural or legal person or public entity or group of such persons or entities that has a demonstrable need for a restricted explosives precursor for purposes connected with its trade, business, or profession, including agricultural activity, conducted either on a full-time or part-time basis and not necessarily related to the size of the area of land on which that agricultural activity is conducted, provided that such purposes do not include making that restricted explosives precursor available to another person;
- (10) 'economic operator' means any natural or legal person or public entity or group of such persons or entities which make regulated explosives precursors available on the market, either offline or online, including on online marketplaces;
- (11) 'online marketplace' means a provider of an intermediary service that allows economic operators on the one side, and members of the general public, professional users, or other economic operators, on the other side, to conclude transactions regarding regulated explosives precursors via online sales or service contracts, either on the online marketplace's website or on an economic operator's website that uses computing services provided by the online marketplace;
- (12) 'restricted explosives precursor' means a substance listed in Annex I that is at a concentration higher than the corresponding limit value set out in column 2 of the table in Annex I, including a mixture or another substance in which a substance listed in that Annex is present at a concentration higher than the corresponding limit value;
- (13) 'regulated explosives precursor' means a substance listed in Annex I or II including a mixture or another substance in which a substance listed in those Annexes is present, excluding homogeneous mixtures of more than 5 ingredients in which the concentration of each substance listed in Annex I or II is below 1 % w/w;
- (14) '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 agricultural area 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>(1)</sup>.

#### 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 on grounds related to the prevention of the illicit manufacture of explosives.

#### 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. The restriction under paragraph 1 also applies to mixtures containing chlorates or perchlorates listed in Annex I, where the overall concentration of those substances in the mixture exceeds the limit value for any of the substances set out in column 2 of the table in Annex I.
3. A Member State may maintain or establish a licensing regime allowing certain restricted explosives precursors to be made available to, or to be introduced, possessed or used by members of the general public at concentrations not higher than the corresponding upper limit values set out in column 3 of the table in Annex I.

<sup>(1)</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).

Under such licensing regimes, a member of the general public shall obtain, and, if requested, present a licence for acquiring, introducing, possessing or using restricted explosives precursors. Such licences shall be issued in accordance with Article 6 by a competent authority of the Member State where that restricted explosives precursor is intended to be acquired, introduced, possessed or used.

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

5. The Commission shall make publicly available a list of measures notified by Member States in accordance with paragraph 4.

#### *Article 6*

#### **Licences**

1. Each Member State which issues licences to members of the general public who have a legitimate interest in acquiring, introducing, possessing or using restricted explosives precursors shall lay down rules for issuing licences in accordance with Article 5(3). When considering whether to issue a licence, the competent authority of the Member State shall take into account all relevant circumstances, in particular:

- (a) the demonstrable need for the restricted explosives precursor and the legitimacy of its intended use;
- (b) the availability of the restricted explosives precursor at lower concentrations or alternative substances with a similar effect;
- (c) the background of the applicant, including information on previous criminal convictions of the applicant anywhere within the Union;
- (d) the storage arrangements that have been proposed to ensure that the restricted explosives precursor is securely stored.

2. The competent authority shall refuse to issue a licence if it has reasonable grounds for doubting the legitimacy of the intended use or the intention of the member of the general public to use the restricted explosives precursor for a legitimate purpose.

3. The competent authority may choose to limit the validity of the licence, through permitting single or multiple use. The period of the validity of the licence shall not exceed three years. Until the designated expiry of the licence, the competent authority may require the licence holder to demonstrate that the conditions under which the licence was issued continue to be fulfilled. The licence shall indicate the restricted explosives precursors in respect of which it is issued.

4. The competent authority may require applicants to pay a licence application fee. Such fees shall not exceed the cost of processing the application.

5. The competent authority may suspend or revoke the licence where it has reasonable grounds for believing that the conditions under which the licence was issued are no longer fulfilled. The competent authority shall inform licence holders of any suspension or revocation of their licences without delay, unless this would jeopardise ongoing investigations.

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 that is responsible for such appeals and disputes under national law.

7. A Member State may recognise licences issued by other Member States under this Regulation.
8. Member States may use the format for a licence set out in Annex III.
9. The competent authority shall obtain the information on previous criminal convictions of the applicant in other Member States as referred to in point (c) of paragraph 1 of this Article, through the system established by Council Framework Decision 2009/315/JHA<sup>(12)</sup>. The central authorities referred to in Article 3 of that Framework Decision shall provide replies to requests for such information within 10 working days from the date the request was received.

#### *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, introduction, 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).

An economic operator who makes available a regulated explosives precursor to another economic operator shall inform that economic operator that the acquisition, introduction, possession or use of that regulated explosives precursor by members of the general public is subject to reporting obligations as set out in Article 9.

2. An economic operator who makes available regulated explosives precursors to a professional user or to a member of the general public shall ensure and be able to demonstrate to the national inspection authorities referred to in Article 11 that its personnel involved in the sale of regulated explosives precursors are:

- (a) aware which of the products it makes available contain regulated explosives precursors;
- (b) instructed regarding the obligations pursuant to Articles 5 to 9.

3. An online marketplace shall take measures to ensure that its users, when making available regulated 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 of that member of the general public in compliance with the licensing regime established by the Member State where the restricted explosives precursor is made available and record the amount of the restricted explosives precursor on the licence.

2. For the purpose of verifying that a prospective customer is a professional user or another economic operator, the economic operator who makes available a restricted explosives precursor to a professional user or another economic operator shall for each transaction request the following information, unless such a verification for that prospective customer has already occurred within a period of one year prior to the date of that transaction and the transaction does not significantly deviate from previous transactions:

- (a) proof of identity of the individual entitled to represent the prospective customer;
- (b) the trade, business, or profession together with the company name, address and the value added tax identification number or any other relevant company registration number, if any, of the prospective customer;

<sup>(12)</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).

(c) the intended use of the restricted explosives precursors by the prospective customer.

Member States may use the template of the customer's statement set out in Annex IV.

3. For the purpose of verifying the intended use of the restricted explosives precursor, the economic operator shall assess whether the intended use is consistent with the trade, business or profession of the prospective customer. The economic operator may refuse the transaction if it has reasonable grounds for doubting the legitimacy of the intended use or the intention of the prospective customer to use the restricted explosives precursor for a legitimate purpose. The economic operator shall report such transactions or such attempted transactions in accordance with Article 9.

4. For the purpose of verifying compliance with this Regulation and preventing and detecting the illicit manufacture of explosives, economic operators shall retain the information referred to in paragraphs 1 and 2 for 18 months from the date of transaction. During that period, the information shall be made available for inspection at the request of the national inspection authorities or law enforcement authorities.

5. An online marketplace 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 preventing and detecting the illicit manufacture of explosives, economic operators and online marketplaces shall report suspicious transactions. Economic operators and online marketplaces shall do so after having regard to all the circumstances and, in particular, where the prospective customer acts in one or more of the following ways:

- (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 and online marketplaces shall have in place appropriate, reasonable and proportionate procedures to detect suspicious transactions, adapted to the specific environment in which the regulated explosives precursors are made available.

3. Each Member State shall set up one or more national contact points with a clearly identified telephone number and e-mail address, web form or any other effective tool for the reporting of suspicious transactions and significant disappearances and thefts. The national contact points shall be available 24 hours a day, seven days a week.

4. Economic operators and online marketplaces may refuse the suspicious transaction. They shall report the suspicious transaction or attempted suspicious transaction within 24 hours of considering that it is suspicious. When reporting such transactions, they shall give the identity of the customer if possible and all the details which have led them to consider the transaction to be suspicious to the national contact point of the Member State where the suspicious transaction was concluded or attempted.

5. Economic operators and professional users shall report significant disappearances and thefts of regulated explosives precursors within 24 hours of detection to the national contact point of the Member State where the disappearance or theft took place. In deciding whether a disappearance or theft is significant, they shall take into account whether the amount is unusual considering 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 within 24 hours of detection to the national contact point of the Member State where the disappearance or theft took place.

#### Article 10

##### **Training and awareness-raising**

1. Member States shall ensure adequate resources for and the provision of training for law enforcement authorities, first responders and customs authorities to recognise regulated explosives precursors in the course of their duties and to react in a timely and appropriate manner to a suspicious activity. Member States may request additional specific trainings from the European Union Agency for Law Enforcement Training (CEPOL) established by Regulation (EU) 2015/2219 of the European Parliament and of the Council <sup>(13)</sup>.

2. Member States shall organise, at least once a year, awareness-raising actions adapted to the specificities of each of the different sectors using regulated explosives precursors.

3. With a view to facilitating cooperation and ensuring that all stakeholders implement this Regulation effectively, Member States shall organise regular exchanges between law enforcement authorities, national supervisory authorities, economic operators, online marketplaces and representatives of the sectors that use regulated explosives precursors. Economic operators shall be responsible for providing information to their personnel on the manner in which explosives precursors are to be made available under this Regulation and for raising personnel awareness in this regard.

#### Article 11

##### **National inspection authorities**

1. Each Member State shall ensure that competent authorities are in place for inspection and controls of the correct application of Articles 5 to 9 ('national inspection authorities').

2. Each Member State shall ensure that the national inspection authorities have the resources and investigative powers necessary to ensure the proper administration of their tasks under this Regulation.

#### Article 12

##### **Guidelines**

1. The Commission shall provide regularly updated guidelines to assist actors in the chemical supply chain and the competent authorities, and to facilitate cooperation between the competent authorities and economic operators. The Commission shall consult the Standing Committee on Explosives Precursors on any draft guidelines or updates thereof. The guidelines shall, in particular, provide:

(a) information on how to conduct inspections;

(b) information on how to apply the restrictions and controls under this Regulation to regulated explosives precursors ordered at a distance by members of the general public or professional users;

<sup>(13)</sup> Regulation (EU) 2015/2219 of the European Parliament and of the Council of 25 November 2015 on the European Union Agency for Law Enforcement Training (CEPOL) and replacing and repealing Council Decision 2005/681/JHA (OJ L 319, 4.12.2015, p. 1).

- (c) information on possible measures to be adopted by online marketplaces to ensure compliance with this Regulation;
  - (d) information on how to exchange relevant information between the competent authorities and the national contact points and between Member States;
  - (e) information on how to recognise and report suspicious transactions;
  - (f) information on storage arrangements which ensure that a regulated explosives precursor is securely stored;
  - (g) 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.
  3. The Commission shall ensure that the guidelines referred to in paragraph 1 are available in all official languages of the Union.

#### *Article 13*

##### **Penalties**

Member States shall lay down the 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 that is not listed in Annex I or II could be used for the illicit manufacture of explosives, it may restrict or prohibit the making available, introduction, possession and use of that substance, or of any mixture or substance containing it, or provide that the substance be subject to reporting obligations 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 equal to or lower than the limit values set out in column 2 or 3 of the table in Annex I, it may further restrict or prohibit the making available, introduction, possession and use of that substance by imposing a lower limit value.
3. Where a Member State has reasonable grounds for establishing a limit value above which a substance listed in Annex II is to be subject to the restrictions that otherwise apply to restricted explosives precursors, it may restrict or prohibit the making available, introduction, possession and use of that substance by imposing that limit value.
4. A Member State that restricts or prohibits substances in accordance with paragraph 1, 2 or 3 shall immediately inform the Commission and the other Member States of such restrictions or prohibitions, giving its reasons.
5. A Member State that restricts or prohibits substances in accordance with paragraph 1, 2 or 3 shall raise awareness of such restrictions or prohibitions among economic operators and online marketplaces on its territory.
6. Upon receiving the information referred to in 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. Where appropriate, the Member State concerned shall amend or repeal its national measures to take account of any such amendments to those Annexes.

7. Without prejudice to paragraph 6, the Commission may, after consulting the Member State concerned and, if appropriate, third parties, take a decision that the measure taken by that Member State is not justified and require that Member State to revoke or amend the provisional measure. The Commission shall take such decisions within 60 days of receipt of the information referred to in paragraph 4. The Member State concerned shall raise awareness of such decisions among economic operators and online marketplaces on its territory.

8. Measures of which the Member States informed or notified the Commission prior to 1 February 2021 under Article 13 of Regulation (EU) No 98/2013 shall be unaffected by this Article.

#### Article 15

##### Amendments to the Annexes

1. The Commission shall adopt delegated acts in accordance with Article 16 amending this Regulation by:
  - (a) modifying 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;
  - (b) adding substances to Annex II, where necessary to accommodate developments in the misuse of substances as explosives precursors.

The Commission shall, as part of its preparation of those delegated acts, consult relevant stakeholders, in particular those in the chemical industry and the retail sector.

Where there is a sudden change in the risk assessment as far as the misuse of substances for the illicit manufacture of explosives is concerned and 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 modification of the limit values in Annex I and in respect of each new substance that is added to Annex II. Each delegated act shall be based on an analysis that demonstrates that the amendment is not likely to lead to disproportionate burdens on economic operators or consumers, having due regard to the objectives pursued.

#### 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 31 July 2019. 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 of 13 April 2016 on Better Law-Making.

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 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 Regulation (EC) No 1907/2006**

In Annex XVII to Regulation (EC) No 1907/2006, entry 58. (Ammonium nitrate (AN)), column 2, paragraphs 2 and 3 are deleted.

#### Article 19

##### **Reporting**

1. Member States shall provide to the Commission, by 2 February 2022 and subsequently on an annual basis, information on:

- (a) the numbers of reported suspicious transactions, significant disappearances and thefts respectively;
- (b) the number of licence applications received under any licensing regime that they have maintained or established pursuant to Article 5(3), as well as the number of licences issued, and the most common reasons for refusing to issue licences;
- (c) awareness-raising actions as referred to in Article 10(2);
- (d) inspections carried out as referred to in Article 11, including the number of inspections and economic operators covered.

2. In transmitting the information referred to in points (a), (c) and (d) of paragraph 1 to the Commission, Member States shall distinguish between reports, actions and inspections which relate to online activities and those that relate to offline activities.

#### Article 20

##### **Monitoring programme**

1. By 1 August 2020, the Commission shall establish a detailed programme for monitoring the outputs, results and impact of this Regulation.

2. The monitoring programme shall set out the means by which, and the intervals at which, data and other necessary evidence are to be collected. It shall specify the actions to be taken by the Commission and by the Member States in collecting and analysing those data and other evidence.
3. Member States shall provide the Commission with the data and other evidence necessary for the monitoring.

#### Article 21

##### **Evaluation**

1. By 2 February 2026, the Commission shall carry out an evaluation of this Regulation and present a report on the main findings to the European Parliament, to the Council and to the European Economic and Social Committee. The evaluation shall be conducted according to the Commission's better regulation Guidelines.
2. Member States shall provide the Commission with the information necessary for the preparation of that report.

#### Article 22

##### **Repeal**

1. Regulation (EU) No 98/2013 is repealed with effect from 1 February 2021.
2. References to the repealed Regulation (EU) No 98/2013 shall be construed as references to this Regulation.

#### Article 23

##### **Entry into force and application**

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. It shall apply from 1 February 2021.
3. Notwithstanding paragraph 2, licences that have been validly issued under Regulation (EU) No 98/2013 shall remain valid either until the date of validity originally stated on those licences or until 2 February 2022, whichever is the sooner.
4. Any applications for the renewal of the licences referred to in paragraph 3 that are made on or after 1 February 2021 shall be made in accordance with this Regulation.
5. Notwithstanding Article 5(1), the possession, introduction and use by members of the general public of restricted explosives precursors that were legally acquired before 1 February 2021 shall be allowed until 2 February 2022.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 20 June 2019.

*For the European Parliament*  
*The President*  
A. TAJANI

*For the Council*  
*The President*  
G. CIAMBA

## ANNEX I

## RESTRICTED EXPLOSIVES PRECURSORS

List of substances which are not to be made available to, or introduced, possessed or used by, members of the general public, whether on their own or in mixtures or substances that include those substances, unless the concentration is equal to or lower than the limit values set out in column 2, and for which suspicious transactions and significant disappearances and thefts are to be reported within 24 hours:

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 <sup>(1)</sup>	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 <sup>(1)</sup>
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	100 % w/w	ex 2904 20 00	ex 3824 99 92
Ammonium nitrate (CAS RN 6484-52-2)	16 % w/w of nitrogen in relation to ammonium nitrate <sup>(2)</sup>	No licensing permitted	3102 30 10 (in aqueous solution) 3102 30 90 (other)	ex 3824 99 96
Potassium chlorate (CAS RN 3811-04-9)	40 % w/w	No licensing permitted	ex 2829 19 00	ex 3824 99 96
Potassium perchlorate (CAS RN 7778-74-7)	40 % w/w	No licensing permitted	ex 2829 90 10	ex 3824 99 96
Sodium chlorate (CAS RN 7775-09-9)	40 % w/w	No licensing permitted	2829 11 00	ex 3824 99 96
Sodium perchlorate (CAS RN 7601-89-0)	40 % w/w	No licensing permitted	ex 2829 90 10	ex 3824 99 96

<sup>(1)</sup> Commission Implementing Regulation (EU) 2017/1925<sup>(1)</sup>. Subsequent amendments of Annex I to Council Regulation (EEC) No 2658/87<sup>(2)</sup> should be consulted as regards updated CN codes.

<sup>(2)</sup> 16 % w/w of nitrogen in relation to ammonium nitrate corresponds to 45,7 % ammonium nitrate, discarding impurities.

<sup>(1)</sup> Commission Implementing Regulation (EU) 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).

<sup>(2)</sup> Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

## ANNEX II

## REPORTABLE EXPLOSIVES PRECURSORS

List of substances on their own or in mixtures or in substances for which suspicious transactions and significant disappearances and thefts are to be reported within 24 hours:

1. Name of the substance and Chemical Abstracts Service Registry number (CAS RN)	2. Combined Nomenclature (CN) code <sup>(1)</sup>	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 <sup>(1)</sup>
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, powders (CAS RN 7439-95-4) <sup>(2)</sup> <sup>(3)</sup>	ex 8104 30 00	
Magnesium nitrate hexahydrate (CAS RN 13446-18-9)	ex 2834 29 80	ex 3824 99 96
Aluminium, powders (CAS RN 7429-90-5) <sup>(2)</sup> <sup>(3)</sup>	7603 10 00 ex 7603 20 00	

<sup>(1)</sup> Implementing Regulation (EU) 2017/1925. Subsequent amendments of Annex I to Regulation (EEC) No 2658/87 should be consulted as regards updated CN codes.

<sup>(2)</sup> With a particle size less than 200 µm.

<sup>(3)</sup> As a substance or in mixtures containing 70 % w/w or more of aluminium or magnesium.

## ANNEX III

## FORMAT FOR A LICENCE

Format for a licence for a member of the general public to acquire, introduce, possess and use restricted explosives precursors, as referred to in Article 6(8).

<p>1. Member of the general public (Name and address)</p> <p>Name:</p> <p>Identification Document Number:</p> <p>Address:</p> <p>Country:</p> <p>Tel.:</p> <p>Email:</p>
<p>2. Licence Number:</p>
<p>3. Licence for single use or multiple use (please tick)</p> <p><input type="checkbox"/> single acquisition, introduction, possession and use of a restricted explosives precursor name of the restricted explosives precursor(s):</p> <p>maximum amount:</p> <p>maximum concentration:</p> <p>licensed use:</p> <p><input type="checkbox"/> multiple acquisition, introduction, possession and use of a restricted explosives precursor name of the restricted explosives precursor(s):</p> <p>maximum amount in possession at any time:</p> <p>maximum concentration:</p> <p>licensed use:</p>
<p>4. If different than box 1 and required by national law, address where the restricted explosives precursor(s) will be stored:</p>
<p>5. If different than box 1 and required by national law, address where the restricted explosives precursor(s) will be used:</p>
<p>6. Indicate whether the restricted explosives precursor(s) is/are intended to be introduced or used (or both) in a Member State different from the Member State issuing this licence or outside the European Economic Area:</p> <p><input type="checkbox"/> yes</p> <p><input type="checkbox"/> No</p> <p>Address:</p> <p>Timeframe for the introduction or use (or both) of the restricted explosives precursor(s):</p>



## ANNEX IV

## CUSTOMER'S STATEMENT

concerning the specific use or uses of a restricted explosives precursor as referred to in Regulation (EU) 2019/1148 of the European Parliament and of the Council <sup>(1)</sup>

(Fill in capital letters) (\*)

The undersigned,

Name (customer): \_\_\_\_\_

Proof of identity (number, issuing authority): \_\_\_\_\_

Authorised representative of:

Company (principal): \_\_\_\_\_

Value added tax or another company identification number (\*\*)/Address:

\_\_\_\_\_

Trade/business/profession: \_\_\_\_\_

Commercial name of the product	Restricted explosives precursor	CAS No.	Amount (kg/litre)	Concentration	Intended use

I hereby declare that the commercial product and the substance or mixture that it contains shall be used only for the indicated use, which is in any case legitimate, and will be sold or delivered to another customer only if they make a similar declaration of use, respecting the restrictions established in Regulation (EU) 2019/1148 for the making available to the members of the general public.

Signature: \_\_\_\_\_ Name: \_\_\_\_\_

Function: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_

<sup>(1)</sup> Regulation (EU) 2019/1148 of the European Parliament and of the Council of 20 June 2019 on the marketing and use of explosives precursors, amending Regulation (EC) No 1907/2006 and repealing Regulation (EU) No 98/2013 (OJ L 186, 11.7.2019, p. 1).

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

(\*\*) You can verify the validity of a VAT identification number of an economic operator through the VIES website of the Commission. Depending on the national rules on data protection, some Member States will also provide the name and address linked to the given VAT identification number as they are recorded in the national databases.