

## **Non-paper of the Commission services (February 2020)**

### **Draft guidelines for the implementation of Regulation (EU) 2019/1148 on the marketing and use of explosives precursors**

#### **Disclaimer**

**These guidelines are intended to assist Member States' national authorities, economic operators, and online marketplaces in the application of Regulation (EU) 2019/1148. Only the Court of Justice of the European Union is competent to interpret Union law authoritatively.**

This draft was prepared by DG HOME.D.2 and has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission. The information transmitted is intended only for the Member State or entity to which it is addressed for discussions and may contain confidential and/or privileged material.

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## INTRODUCTION

In modern day society there are numerous chemicals used on a daily basis in a wide variety of industrial processes, professional functions as well as in the large and diverse consumer sector. Chemicals are utilised, among others, as intermediates to produce other chemicals, as solvents to dissolve materials, to produce products such as paint, as food ingredients and in end products such as cleaning solutions. The vast majority of these chemicals are traded between businesses for legitimate purposes. In addition, natural or legal persons may also have a legitimate interest in acquiring or using these chemicals outside a professional context, e.g. for hobby purposes.

However, some chemicals have the potential to be misused for the illicit manufacture of homemade explosives. Terrorists and other criminals may seek to purchase the precursor ingredients necessary to produce homemade explosives from the open market or divert them from legitimate uses.

Since 2014, EU-wide rules on the marketing and use of explosives precursors were in place under Regulation (EU) No 98/2013. However, the threat from homemade explosives remains high and continues to evolve. It was therefore necessary to further strengthen and harmonise the system for preventing the illicit manufacture of homemade explosives. Regulation (EU) 2019/1148 of the European Parliament and of the Council of 20 June 2019 on the marketing and use of explosives precursors (hereafter “the Regulation”)<sup>1</sup> was thus adopted, repealing Regulation (EU) No 98/2013 with effect from 1 February 2021.

The 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.

Pursuant to Article 12 of the Regulation, this guidelines document is intended to assist actors in the chemical supply chain and the competent authorities in the implementation of their obligations under the Regulation and to facilitate cooperation between the competent authorities and economic operators. The Standing Committee on Precursors has been consulted on the draft guidelines on 9-10 December 2019. Only the Court of Justice of the European Union is competent to interpret Union law authoritatively.

Generally, the words “should”, “shall”, and “are required to” point to an obligation under the

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<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 (Official Journal of the European Union L 186/62, 11.07.2019).

Regulation, whereas “could” and “are recommended to” point to recommendations and good practices.

### **Scope**

The Regulation applies to the making available, introduction, possession and use of substances as well as mixtures containing these substances listed in its Annexes I and II, irrespective of their concentration, with the exception of the following goods:

**Article 2(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;**
- (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;**
- (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.**

Excluded from the definition of “regulated explosives precursors” are “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” (**Article 3(13)**). By contrast, products that contain 5 ingredients or less or with a higher concentration of explosives precursors are covered by the Regulation.

**Article 5** of the Regulation stipulates that “restricted explosives precursors shall not be made available to, or introduced, possessed or used by members of the general public” in the EU. It also follows from the definition of ‘economic operator’ in Article 3(10) of the Regulation that this Regulation applies to the making available, of the substances covered by its Annexes I and II, by “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” in the EU. It therefore applies irrespectively of the place where an economic operator making regulated explosives precursors available in the Union might be established. This therefore includes economic operators established outside, but

making regulated explosives precursors available within, the EU.

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## SECTION I: VERIFICATION UPON SALE

Economic operators are required to verify, before they make available a restricted explosives precursor to a prospective customer, that this person is entitled to acquire such a precursor (**Article 8**).

If a Member State established a licensing regime in accordance with Article 5(3), economic operators may make available a restricted explosives precursor to a member of the general public, if and after the necessary licence has been verified.

A restricted explosives precursor may be made available to a professional user or economic operator if the economic operator has verified that the prospective customer is in fact a professional user or another economic operator.

For sales to any person, professional or not, the economic operator is required to verify the proof of identity of the prospective customer. In case of legal persons, this verification concerns the individual entitled to represent the prospective customer.

With a view to facilitate investigations and inspections, economic operators are required to record each transaction and retain that information for 18 months from the date of transaction (**Article 8(4)**). During the 18-months period, the information shall be made available for inspection at the request of the national inspection authorities or law enforcement authorities, without undue delay. Economic operators are therefore recommended to keep their records in order and have them accessible.

The rules regarding verification upon sale apply to all sales, regardless of whether the seller and the customer are physically present or not. For this latter case (“remote sales”), the process of verification of the identity and licences is addressed separately below.

Economic operators and online marketplaces are reminded that there are data protection provisions that apply to the processing and free movement of personal data of natural persons (**Recital 22**). Therefore, the processing of personal data involved in, inter alia, licensing should be carried out in accordance with the General Data Protection Regulation ([Regulation \(EU\) 2016/679](#)<sup>2</sup>) (see also **Recital 22**).

### **I.1 Sales to members of the general public – for economic operators operating a licensing regime**

If a Member State established a licensing regime in accordance with Article 5(3), a restricted explosives precursor may only be made available to a member of the general public if the

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<sup>2</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) (Official Journal of the European Union L 119/1, 27.04.2016).

necessary licence has been verified (**Article 8(1)**). Only some Member States offer the possibility to make available restricted explosives precursors to the general public with a licence, or recognise licences issued by the competent authorities of other Member States. In other cases, the transaction should be refused.

The economic operator is required to verify that a licence has been issued covering the intended transaction, and assess whether the licence and proof of identity appear authentic. It is recommended that Member States use the format for a licence included in Annex III of the Regulation. Economic operators could verify the licence, with the consent of the prospective customer, by contacting the competent authority of the Member State that issued the licence. If consent is not given, this could be an indicator of a suspicious transaction.

In addition, the economic operator is required to retain the information regarding the proof of identity and licence of that member of the general public, for 18 months after the date of transaction. As a minimum, economic operators should record the name on the proof of identity and licence, and the document numbers of both documents. Economic operators are not required to keep a copy of the licence and the ID, but they may do so in accordance with applicable data protection legislation. There is a dedicated European Commission [webpage](#) where businesses and organisations can find out what they should do to comply with EU data protection rules<sup>3</sup>.

Finally, the economic operator is required to record the amount of the restricted explosives precursor on the licence. The purpose of recording purchases of restricted explosives precursor on the licence is that economic operators can spot whether a licence holder is potentially exceeding the maximum amount of restricted explosives precursors in possession, or if there is anything suspicious about the combination of purchases. For example, if a licence holder in a relatively short timeframe has made purchases that together exceed the maximum amount of restricted explosives precursors they may have in possession, this could be an indicator of suspicious behaviour. In this case, the economic operator is recommended to contact the national contact point (**Article 9(4)**).

### **1.1.1 Specific recommendations for remote sales**

Economic operators are recommended to request a scanned copy of the customer's licence and proof of ID, so they can verify this information as early as possible (e.g. before finalising the transaction), but at the latest before the time of delivery of the restricted explosives precursors (cf. **Recital 14**). Economic operators are not required to keep a copy of the licence and the ID, but they may do so in accordance with applicable data protection legislation. There is a dedicated European Commission [webpage](#) where businesses and organisations can find out what they should do to comply with EU data protection rules<sup>4</sup>.

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<sup>3</sup> [https://ec.europa.eu/info/law/law-topic/data-protection/reform/rules-business-and-organisations\\_en](https://ec.europa.eu/info/law/law-topic/data-protection/reform/rules-business-and-organisations_en)

<sup>4</sup> [https://ec.europa.eu/info/law/law-topic/data-protection/reform/rules-business-and-organisations\\_en](https://ec.europa.eu/info/law/law-topic/data-protection/reform/rules-business-and-organisations_en)

The proof of identity could additionally be verified in person upon delivery or through other means, for instance through mechanisms provided for in [Regulation \(EU\) No 910/2014](#)<sup>5</sup>. It is important to note that the verification responsibility stays with the economic operator, even if delivery services are instructed to verify documents.

The fact that the licence and proof of ID have been verified, and the manner in which this was done, needs to be recorded.

The transaction could be recorded on the licence upon delivery, in which case the economic operator should instruct the delivery person to that end.

Steps to take by the economic operator:

- Ask the customer to provide a scanned copy of their licence and their proof of ID (or verify their ID electronically). Check that the person holding the licence is the same as the person on the proof of ID.
- Check that the product being purchased matches the licence conditions: i) Substance; ii) Concentration; iii) Quantity.
- If you require customers to register for a customer account, you could allow them to upload a scanned copy of their licence to their account record.

Steps to take by the delivery person before handing over the restricted explosives precursor:

- Check that the photographic ID matches the person, and that the ID reference matches the ID reference on the licence front page. The restricted explosives precursor should only be given to the licence holder. It cannot be left with another individual.

## **I.2 Sales to professional users or other economic operators**

A member of the general public should not be able to acquire restricted explosives precursors by claiming to be a professional user or an economic operator. If a prospective customer claims to be a professional user or economic operator, the Regulation requires economic operators to verify for each transaction that the prospective customer is a professional user or another economic operator. This verification is required 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 (**Article 8(2) and 8(3)**).

The economic operator is required to question the prospective customer about their trade, business, or profession and the intended use of the restricted explosives precursors by the prospective customer. For verifying the intended use of the restricted explosives precursor, the economic operator is required to assess whether the intended use is consistent with the

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<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 (Official Journal of the European Union L 257/73, 23.07.2014).



trade, business or profession of the prospective customer. Economic operators may contact their competent authority if they have any questions regarding common uses of restricted explosives precursors and typical products containing them.

If there are 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 may refuse the transaction. The transaction should be reported to the national contact point if there are reasonable grounds for suspecting that the substance or mixture is intended for the illicit manufacture of explosives (see also Section II on reporting suspicious transactions).

Economic operators should also check whether the prospective customer is authorised to act on behalf of their company or institution. The person representing the prospective customer should be able to present confirmation from their employer that they are authorised to purchase or receive restricted explosives precursors on the employer's behalf. For example, a university student is not likely authorised to purchase products on behalf of their university, even when the student might know all the information of the university (address, VAT number etc.) and might seem a professional user because the student knows the common uses of products well.

For 18 months from the date of transaction, the economic operator is required to retain the information regarding:

- the proof of identity of the individual entitled to represent the prospective customer;
- their 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;
- the intended use of the restricted explosives precursor.

In order to ensure that all information is provided, the economic operator is recommended to ask the prospective customer to fill in the “customer's statement”, in Annex IV of the Regulation. For retaining the information regarding the proof of identity, economic operators should, as a minimum, record the name on and the document number of the proof of identity. Economic operators are not required to keep a copy of the ID, but they may do so in accordance with applicable data protection legislation. There is a dedicated European Commission [webpage](#) where businesses and organisations can find out what they should do to comply with EU data protection rules<sup>6</sup>.

The information to be provided in the context of the verification should be provided upon each transaction, 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

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<sup>6</sup> [https://ec.europa.eu/info/law/law-topic/data-protection/reform/rules-business-and-organisations\\_en](https://ec.europa.eu/info/law/law-topic/data-protection/reform/rules-business-and-organisations_en)

significantly deviate from previous transactions. Examples of indications of a significant deviation are:

- If the prospective customer wants to buy a much bigger quantity of the restricted explosives precursor without a logical explanation;
- If the address of the prospective customer changes;
- If the delivery address or delivery method changes;
- If the payment method changes;
- If the contact details of the prospective customer change.

### **I.2.1 Specific recommendations for remote sales**

Economic operators are recommended to use the customer's statement in Annex IV of the Regulation to request the necessary information from professional users or other economic operators to verify that the prospective customer is a professional user or another economic operator.

Economic operators are recommended to request a scanned copy of the customer's proof of ID, so they can verify this information as early as possible (e.g. before finalising the transaction), but at the latest before the delivery of the restricted explosives precursors (**Recital 14**). Economic operators are not required to keep a copy of the ID, but they may do so in accordance with applicable data protection legislation. There is a dedicated European Commission [webpage](#) where businesses and organisations can find out what they should do to comply with EU data protection rules<sup>7</sup>.

The proof of identity could additionally be verified in person upon delivery or through other means, for instance through mechanisms provided for in [Regulation \(EU\) No 910/2014](#)<sup>8</sup>. It is important to note that the verification responsibility stays with the economic operator, even if delivery services are instructed to verify documents. The fact that the proof of ID has been verified, and the manner in which this was done, needs to be recorded.

The Regulation requires that economic operators, upon selling to a professional user or another economic operator, request the proof of identity of the individual entitled to represent the prospective customer (**Article 8(2)**). The Regulation also explains that the identification of all actors in the supply chain and all customers is essential, be it members of the general public, professional users or economic operators (**Recital 13**). Restricted explosives precursors could cause significant harm if they were diverted and misused to manufacture homemade explosives, and so it should be ascertained that an individual purchasing or

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<sup>7</sup> [https://ec.europa.eu/info/law/law-topic/data-protection/reform/rules-business-and-organisations\\_en](https://ec.europa.eu/info/law/law-topic/data-protection/reform/rules-business-and-organisations_en)

<sup>8</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 (Official Journal of the European Union L 257/73, 23.07.2014).

receiving restricted explosives precursors on their employer's behalf is indeed authorised to represent their employer for these specific actions. It is also recommended to request a proof of delivery of the restricted explosives precursor and an identifiable signature of the person acting on behalf of the customer to help identify all actors in the supply chain.

Steps to take by the economic operator:

- Ask the customer to fill in the customer's statement and to provide a scanned copy of their proof of ID (or verify their ID electronically).
- Check whether the person purchasing the goods is authorised to purchase restricted explosives precursors on behalf of their company or institution.
- Check that the product being purchased matches information on the customer's statement:  
i. Substance ii. Concentration iii. Quantity.
- Assess whether the intended use is consistent with the trade, business or profession of the prospective customer. If not consistent, the (attempted) transaction should be reported as a suspicious transaction (see Section II), and may be refused.
- Check whether the person receiving the goods is authorised to receive restricted explosives precursors on behalf of their company or institution.

### **I.3 Possible measures by online marketplaces**

Online marketplaces are required to take measures to help ensure that their users, when making available restricted explosives precursors through the services of the online marketplaces, comply with the verification and recording obligations (**Article 8(5)**).

This requirement for online marketplaces applies in addition to the requirement of Article 7(3) that online marketplaces must ensure that the relevant users are informed of their obligations under the Regulation (see Section III.3 below). However, where Article 7(3) relates to users who make available *regulated* explosives precursors, Article 8(5) relates to users who make available *restricted* explosives precursors through the services of online marketplaces.

For sales to a member of the general public, economic operators should verify the proof of ID and the licence (**Article 8(1)**). For sales to a professional user or another economic operator, economic operators should verify whether the prospective customer is a professional user or another economic operator, by requesting certain information, including the proof of ID of the prospective customer (**Article 8(2)**). As a first measure, online marketplaces should inform the economic operator of these verification obligations, e.g. by informing an economic operator upon subscription to the service of the online marketplace, by using alert messages etc.

As Recital 15 of the Regulation indicates, apart from this first measure, online marketplaces should under Article 8(5) also take other measures to help users comply with the above obligations. For example, online marketplaces could offer tools that either allow relevant users who make available restricted explosives precursors on the online marketplace to check the authenticity of a licence (for business to consumer transactions) or the customer's statement of Annex IV of the Regulation (for business to business transactions), or give relevant users easy access to such documents.

It follows from Recital 16 of the Regulation that Article 8(5) does not require online marketplaces to generally monitor their services for the purposes of ensuring that the relevant users comply with their own obligations under Article 8 (or any other provision) of the Regulation. Indeed, the wording of Article 8(5) makes it clear that online marketplaces must *help* ensure that the relevant *users* comply with the verification obligations of Article 8. In other words, notwithstanding the obligations for online marketplaces under Article 8(5), the responsibility for the verification continues to lie with the users who make available regulated explosives precursors through the services provided by online marketplaces.

## **SECTION II: RECOGNISING AND REPORTING SUSPICIOUS TRANSACTIONS, AND SIGNIFICANT DISAPPEARANCES AND THEFTS**

Economic operators and online marketplaces are required to report (attempted or concluded) suspicious transactions, and significant disappearances and thefts of regulated explosives precursors to the Member States' national contact points (**Article 9(4) and 9(5)**). Members of the general public that have acquired restricted explosives precursors are required to report significant disappearances and thefts of restricted explosives precursors to the Member States' national contact points (**Article 9(6)**).

The contact details of the national contact points can be found on the [website](#) of the European Commission<sup>9</sup>. Suspicious transactions should be reported to the national contact point of the Member State where the transaction was concluded or attempted.

Member States are recommended to ensure that the person reporting a suspicious transaction, or significant disappearance or theft is well protected (i.e. not disclosing any details about the reporter unnecessarily, e.g. to their workplace).

**Article 3(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.**

A suspicious transaction includes any (attempted) purchase of one or more regulated explosives precursors, or mixture containing such precursors, which deviates from ordinary expectations or interactions, irrespective of the concentration of the regulated explosives precursors, unless excluded from the definition of "regulated explosives precursors" pursuant to Article 3(13).

Excluded from the definition of "regulated explosives precursors" are "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" (**Article 3(13)**). By contrast, products that contain 5 ingredients or less or with a higher concentration of regulated explosives precursors are covered by the Regulation.

Additionally, there are cases when products containing precursors become so hard to use for making homemade explosives that they are not likely to constitute a threat. This depends on many factors, including the concentration of the precursor in the product, the amount of the product and the complexity of the product.

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<sup>9</sup> [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/crisis-and-terrorism/explosives/explosives-precursors/docs/list\\_of\\_competent\\_authorities\\_and\\_national\\_contact\\_points\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/crisis-and-terrorism/explosives/explosives-precursors/docs/list_of_competent_authorities_and_national_contact_points_en.pdf)

A product is attractive as an explosives precursor if it fulfils either of the following requirements:

- (i) the precursor substance is available pure or in a simple mixture regardless of concentration, or
- (ii) the precursor substance is available in a complex mixture but in a relatively high concentration.

Examples of (i) are pure precursors and mixtures/solutions of a precursor in one or only a few other substances/solvents. Regardless of concentration, it may in many cases be relatively simple to extract and enrich the precursor from such a product. For products that fall into this description, all suspicious transactions, thefts and disappearances should be reported, unless there are good reasons not to do so.

Examples of (ii) are mixtures containing many ingredients, but where the precursor is available in such a high concentration that even with a complicated extraction procedure with bad yield, the precursor can be extracted in an amount that could be used for making a homemade explosive. Products that fall into this description need normally only be reported if the amounts of the (attempted) transaction exceed normal household quantities.

Nitrogenous fertilisers where the concentration of nitrogen (N) in relation to ammonium nitrate or any of the nitrate salts listed in Annex III is below 3% N by weight are in general not a concern.

## II.1 Scope of the obligation

- The obligation to report covers sales to **any person**, whether they are a member of the general public, a professional user or an economic operator.
- Economic operators and online marketplaces have the **right to refuse** a suspicious transaction. The right to refuse a transaction should not place retail staff at risk. They are not required to refuse the transaction, especially if they have concerns regarding their personal safety (i.e. if they consider the potential customer might be dangerous). If a transaction is refused out of concern for the staff's personal safety, it should be reported as an attempted suspicious transaction. If a transaction is not refused out of concerns for the personal safety of retail staff, the transaction should be reported as a suspicious transaction after the transaction is concluded.
- As time is of the essence to prevent possible terrorist attacks, reporting should take place **within 24 hours** of determining that the transaction was suspicious (**Article 9(4)**). It is recommended to report the suspicious transaction as soon as possible.

- In order to detect suspicious transactions, economic operators and online marketplaces should 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 (see section II.4).
- The obligation to report applies to **all substances** listed in Annexes I and II of the Regulation **irrespective of their concentration**. However, 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, are excluded from the definition of “regulated explosives precursor”. This means there is no obligation to report suspicious transactions, and significant disappearances and thefts of such homogeneous mixtures.

## II.2 What is suspicious?

**Article 3(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.**

A suspicious transaction includes any (attempted) purchase of one or more regulated explosives precursors, or mixture containing such precursors, which deviates from ordinary expectations or interactions.

Whether a transaction is suspicious has to be judged on a case-by-case basis. The presence of one (or more) indicator(s) should raise the level of attention of the economic operator or online marketplace, but does not necessarily trigger the obligation to report a transaction as suspicious. At the same time, in some cases, the presence of one indicator could be perceived by the economic operator or online marketplace as suspicious, in which case the transaction should be reported as soon as possible and within 24 hours.

This section provides a list of indicators of suspicious behaviour, building on the indicators provided by the Regulation (**Article 9(1)**). The indicators were developed in consultation with representatives of the Member States and the chemical industry, based on experiences of suspicious transactions.

Not all indicators apply to all settings or situations (e.g. online sales vs offline sales); online marketplaces and economic operators could use it to identify what is relevant for their business setting. The list is not exhaustive but intended as a reference tool for identifying potential suspicious transactions.

Possible **indicators** of suspicious behaviour include, for example, when a customer:

- Appears nervous or avoids questions, or is not a regular type of customer.



- Attempts to purchase an unusual amount of a product, unusual combinations, or unusual concentrations of products.
- Is not familiar with the regular use(s) of the product(s), nor with the handling instructions.
- Is not willing to share what he/she plans to use the product(s) for.
- Refuses alternative products or products with a lower (but for the proposed use sufficient) concentration.
- Insists on using unusual methods of payment, including large amounts of cash.
- Is unwilling to provide proof of identity, place of residence or, where appropriate, status as professional user or economic operator when requested.
- Requests packaging or delivery methods that deviate from what would be ordinary, advised, or expected.

## **II.2 What is suspicious? (continued – not public)**

### **II.2.1 Business to Consumer Transactions**

#### 1. Identity

- New customer or identity unknown.
- Unusual customer type.
- Failure to provide identity documents if requested.
- Failure to provide additional information (i.e., telephone number, address, email, tax numbers, etc.).
- Additional information provided, but telephone number, address etc. do not exist or do not correspond to the other information provided.
- Post office box as delivery address.
- Nervous or evasive behaviour.

#### 2. Order

- Reluctance to supply a written order.
- The way in which a written or e-mail order is presented (letterhead, style, vocabulary, professionalism).
- Large volumes of small packages.
- Large volumes of a substance with a low concentration.
- An order from a client with no obvious need for the products.
- Order includes other bomb-making materials.
- Orders from within a Member State made in another Member State or outside of the EU, which are uneconomic given the transport costs and the availability of chemicals in the home state, or seek to circumvent controls.

#### 3. Payment



- Cash payment for large purchases.
- Refusal to pay by credit card or bank account if requested.
- Readiness to pay or offering a higher price. (i.e. "money is no problem").

#### 4. Use

- Unable to explain the intended use.
- Unwilling to accept suggested alternatives or substitutes.
- Indications of intended use not consistent with chemical(s) ordered.
- Purchase of unusual combinations of substances.

#### 5. Quantity

- Proportionality of the amount of ordered chemicals to the needs for the intended end use. E.g., the customer wants to purchase an entire display box of numerous hexamine fuel tablets (preparations for single use).
- Unusual quantities of other products ordered together with the precursors.

#### 6. Percentage

- The requested concentration of the substance cannot be justified by the intended use.
- The customer refuses to purchase the substance in a lower concentration.

### **II.2.2 Business-to-Business transactions**

#### 1. Client identification

- The enquirer is a new customer. For example, use Internet business directory searches, company registration data, internet mapping services and national postal services to check address and postcode listings.
- The enquirer is a walk-in customer arriving unannounced.
- The enquirer is evasive.
- The enquirer's profile or appearance is not as you would expect for the kind of business the client claims to represent.
- There is a reluctance or refusal to give a 'landline' telephone number or address or other information (email, tax number).
- The enquirer lacks proper business acumen or refuse to give trade & bank references.
- The enquirer does not use proper business stationery. Stationery does not have company and VAT registration numbers.
- There is a reluctance or refusal to provide an order in writing.
- The order is destined for a company which is not known and does not have a company website, and which cannot be traced in trade directories.
- The client acts as an intermediate. The client does not know the whole downstream supply chain and the final end use of the product.

- Names of other companies, forwarding agents or retailers/distributors are mentioned as ultimate consignees of a product.
- The client provides a post office box as delivery address.
- The client cannot provide proof of business/ VAT registration/ other documentary evidence such as business accounts.
- The client is not a member of a registered association.
- The client is based at a university or institute but is not buying through official channels.

## 2. Business practices

- The delivery address or address from which the order was made appears to be a private residence or a PO Box. Use, for example, this [website](#) to check the registered VAT address is the same as the delivery address. Google Earth can also be used to check the delivery address.
- The customer is ordering at irregular intervals.
- The enquirer is willing to pay an excessive price for a product or for rapid delivery.
- The enquirer is willing to pay cash for the goods, even large purchases.
- The enquirer is willing to pay above the going rate without negotiating a better price.
- The order is for a university/college or well-known company made by the usual procedures, but delivery is requested to a specific individual.
- The enquirer is not registered with credit rating agencies.
- Delivery is to a third person whose activities or position are unconnected with the supposed activities of the end-user.
- The customer has given the name of a different forwarding agent or dealer/distributor as the ultimate recipient of the goods.

## 3. Delivery methods

- The enquirer wishes to collect the goods and/or use a private vehicle.
- The enquirer requests purchase in small containers where goods are said to be for industrial use.
- The client requested an unduly complicated or unusual route of transportation, e.g. there is a request for delivery by airfreight.
- The delivery or transport cost (i.e. shipping costs) exceed the cost of the goods themselves.
- There is a request for delivery via a dubious or complicated transit route.
- The client is asking for delivery in non-trade or unlabelled packages.
- The client requests you to add their own labels that do not comply with European/ other regulations.

## 4. Use of the products

- The client lacks competence in understanding storage and handling requirements associated with the substances that can be used as explosives precursors.

- The order is for unusual products or abnormal quantities. E.g., the customer wants to purchase an entire display box of numerous hexamine fuel tablets (preparations for single use).
- The declared use is inconsistent with the chemicals to be ordered.
- The order is for more than one substance of concern.
- The order is for export to a country where there are no real manufacturing or use requirements for the goods ordered.
- The order or purchase is from companies with no obvious need for the products.
- The order is for a combination of chemicals, which can be used, together in the manufacture of illicit products or items.
- This purchase can be connected with a group of individual purchases.
- The requested concentration of the substance cannot be justified by the intended use.

#### 5. Order

- The order or purchase is requested from a company with no obvious need for the products.
- The client is reluctant to supply a written order.
- The way in which the written or e-mail order is presented (letterhead, style, vocabulary, professionalism).
- The client refuses to fill out a company contact information sheet.
- Large volumes of small packages.
- Large volumes of a substance with a low concentration.
- The order is for more than one precursor or essential chemical.
- The order is from a well-known company, but delivery is requested to a specific person and alternate address.
- The order comes from an individual who is based at a university or institute but not buying through official channels.
- It is the same inquiry after being refused, coming in through another channel.
- It is difficult to trace the company e.g. through a website/ directory.
- Orders from within a Member State made in another Member State or outside of the EU, which are uneconomic given the transport costs and the availability of chemicals in the home state, or seek to circumvent controls.

### **II.3 What to report?**

Once a (attempted) suspicious transaction, or significant disappearance or theft has taken place (for indicators, see Section II.2), it is recommended to report details to the national contact point that may be of importance to prevent the misuse of regulated explosives precursors, to the extent that these details are known to the economic operator, online marketplace, professional user or member of the general public.

Relevant details may include:

- Personal details, such as the name of the person
- Transaction details such as transaction number, time of purchase, products and amounts
- Height, body type, hair style & colour, facial hair (for offline sales)
- Any distinguishing features, for example: tattoos, piercings, scars (for offline sales)
- CCTV footage (for offline sales)
- Registration, make and model of any vehicle used by the customer (for offline sales)

Economic operators, as well as professional users, should report (attempted) suspicious transactions to their national contact point within 24 hours of considering it is suspicious (**Article 9(4)**). Economic operators, professional users and members of the general public should report significant disappearances and thefts within 24 hours of detection (**Article 9(5) and 9(6)**).

The processing of personal data involved in the reporting of suspicious transactions should be carried out in accordance with the General Data Protection Regulation and [Directive \(EU\) 2016/680](#) (see also **Recital 22**).

## **II.4 Procedures to detect suspicious transactions**

### **II.4.1 Introduction**

**Article 9(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.**

All economic operators and online marketplaces should integrate measures, checks and/or mechanisms into their work methods that allow for the identification of suspicious activity, for which they could draw on the list of possible indicators of Section II.2. These measures, checks and/or mechanisms should be adapted to the specific environment in which the regulated explosives precursors are made available. The detection procedures outlined below will, therefore, not always apply to all business environments.

What detection procedures are appropriate, reasonable and proportionate depends on different factors such as the size and economic capacity of the economic operator or online marketplace. The detection procedures should be adapted to the specific environment in which the regulated explosives precursors are made available, e.g. detection procedures might differ for economic operators that operate offline and those that operate online. Another factor to take into account is the effect of such procedures on the fundamental rights of the members of the general public, professional users, and economic operators concerned (see also Section II.4.3 below).

For online marketplaces, as noted in Recitals 15 and 16 respectively, the relevant procedures

should be properly adapted to the specific online environment, and the obligations in question should not amount to a general monitoring obligation. In addition, online marketplaces should not be held liable for transactions that were not detected despite the online marketplace having in place appropriate, reasonable and proportionate procedures to detect such suspicious transactions.

#### **II.4.2 Procedures**

It is crucial that suspicious transactions are spotted as early as possible, as there may be limited time from the suspicious transaction to the actual use of a homemade explosive. For identifying suspicious activity based on the indicators of Section II.2, awareness among personnel is key. To raise this awareness and to be able to spot the possible indicators of Section II.2, **economic operators** can take a number of measures:

- Hang up leaflets or posters listing the indicators of suspicious behaviour for personnel dealing with the making available of regulated explosives precursors (outside of the view of the customers);
- In physical stores, products containing regulated explosives precursors could be placed in dedicated aisles that make the products and potential customers more visible to staff;
- In face-to-face transactions, sellers could ask questions to the customer built upon the above-mentioned indicators, such as the intended use of the product.

More generally and to comply with the obligation to have appropriate, reasonable and proportionate procedures in place, for both **economic operators and online marketplaces**, the procedures referred to in Article 9(2) could involve automated procedures, e.g. searching for potentially suspicious transactions by using keywords related to the names of regulated explosives precursors. Such automated procedures could take into account purchases concerning a combination of regulated explosives precursors, and substances that together can be used to manufacture certain typical explosives, where feasible. Such automated procedures could also take into account multiple purchases by the same customer (e.g. a number of smaller purchases that taken together might be suspicious), e.g. by matching certain customer information.

Economic operators and online marketplaces are encouraged to discuss with the national contact points or competent authorities of the Member States in which they operate what kind of keywords could be used for possible algorithms, and to establish a feedback loop regarding suspicious transactions reports, enabling economic operators and online marketplaces to further refine their detection procedures. A [list](#)<sup>10</sup> of national contact points and competent authorities can be found on the website of the European Commission.

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<sup>10</sup> [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/crisis-and-terrorism/explosives/explosives-precursors/docs/list\\_of\\_competent\\_authorities\\_and\\_national\\_contact\\_points\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/crisis-and-terrorism/explosives/explosives-precursors/docs/list_of_competent_authorities_and_national_contact_points_en.pdf)

Economic operators and online marketplaces could also deploy retroactive measures to detect suspicious transactions. One such measure is a retroactive data query, i.e. regularly making an overview of past transactions of regulated explosives precursors, whether in physical stores or on a website. Economic operators and online marketplaces are recommended to perform such an overview at regular intervals, for instance once a week or once a month (depending on e.g. the number of transactions), focusing on the number of regulated explosives precursors sold, their quantities, and geographic location of the transactions. In case of an anomaly, economic operators and online marketplaces are recommended to contact the Member State's national contact point.

Finally, online marketplaces could have a “report” button so that economic operators can flag suspicious transactions. In any case, economic operators and online marketplaces should report suspicious transactions to their national contact point within 24 hours of considering that it is suspicious. A report button could offer an extra layer of security, allowing online marketplaces to be alerted directly by economic operators of potential suspicious transactions happening on their platform. Online marketplaces could also have a “report” button so that customers can flag listings of prohibited or restricted items.

#### **II.4.3 Respect for rights and applicable legislation**

When designing and operating the detection procedures discussed above, economic operators and online marketplaces should always ensure that the (fundamental) rights of the persons concerned and applicable legislation are duly respected.

In particular, where the procedures involve the processing of personal data, the rules of the General Data Protection Regulation should be respected. In order to help businesses implement these rules, there is a dedicated European Commission [webpage](#) where businesses and organisations can find out what they should do to comply with EU data protection rules<sup>11</sup>. Also, especially where algorithms or other automated means are used, adequate safeguards should be provided for, such as ensuring human review by appropriately trained personnel, in order to avoid errors.

In designing automated procedures, economic operators and online marketplaces should always ensure that fundamental rights are duly protected. The high-level expert group on Artificial Intelligence has drafted Ethics Guidelines for trustworthy Artificial Intelligence (“AI”)<sup>12</sup>. Economic operators and online marketplaces are recommended to take these

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<sup>11</sup> [https://ec.europa.eu/info/law/law-topic/data-protection/reform/rules-business-and-organisations\\_en](https://ec.europa.eu/info/law/law-topic/data-protection/reform/rules-business-and-organisations_en)

<sup>12</sup> According to the Ethics Guidelines, the key requirements of trustworthy AI are: Human agency and oversight, Technical robustness and safety, Privacy data and governance, Transparency, Diversity, non-discrimination and fairness, Societal and environmental well-being, and Accountability. For more information, see the Commission [Communication](#): Building Trust in Human Centric Artificial Intelligence, and the Ethics [Guidelines](#) for trustworthy AI drafted by the high-level expert group on Artificial Intelligence.

guidelines into account, where relevant, in designing automated procedures.

## **II.5 Detecting and reporting significant disappearances and thefts**

Economic operators and professional users are required to report to their national contact point significant disappearances and thefts involving regulated explosives precursors within 24 hours of detection (**Article 9(5)**). Members of the general public that have acquired restricted explosives precursors with a licence are required to report to their national contact point significant disappearances and thefts of restricted explosives precursors within 24 hours of detection (**Article 9(6)**). Economic operators, professional users and members of the general public should assess on a case-to-case basis whether disappearances or thefts are significant.

Whether a theft or disappearance is “significant” depends on whether the amount is unusual considering all circumstances of the case (e.g., circumstances pointing to a normal occurrence of shoplifting might not be suspicious). It is important to note that explosives with lethal potential can be manufactured out of relatively small amounts of precursors. In case of doubt whether a theft or disappearance is significant, economic operators, professional users and members of the general public are required to contact the Member States’ national contact point.

There are a number of suggested measures to detect disappearances and thefts:

- Establish detailed records on purchases, selling and stock keeping of regulated explosives precursors and mixtures;
- Check periodically the stock to identify disappearances.

To prevent significant disappearances and thefts, it is important that storage is secure. Please see Section IV for more information on measures that economic operators, professional users and members of the general public could take to make their storage area more secure.



## SECTION III: INFORMING THE SUPPLY CHAIN

### III.1 Sales to other economic operators

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.

**Article 7(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 precursors 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.**

As explained in Section II, regulated explosives precursors concern any of the substances listed in Annexes I and II of the Regulation, 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, (**Article 3(12)**).

The Regulation leaves the form of the obligation to inform the supply chain to the economic operator. It is recommended to provide the information in writing, so that there will be documentation on whether the supply chain was informed. Inspection authorities may request documentation on whether and how the supply chain was informed upon inspection. In addition, written information makes it easier for all actors in the supply chain to demonstrate compliance with their obligations under the Regulation.

The economic operator could include the information in the safety data sheet compiled in accordance with Annex II to [Regulation \(EC\) No 1907/2006](#)<sup>13</sup> (the REACH Regulation), in Section 15 on Regulatory information. An advantage of the safety data sheet is that it is widely used in the chemical industry, so that many economic operators are accustomed to receiving the most updated information through the safety data sheet. Articles 31(9) and 32 of the REACH Regulation obliges economic operators<sup>14</sup> that supply to other economic

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<sup>13</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 (Official Journal of the European Union L 396, 30.12.2006).

<sup>14</sup> These economic operators are included in the definition of “supplier”, pursuant to Article 3(32) of the REACH Regulation.



operators<sup>15</sup> a substance or mixture to update the information in the safety data sheet without delay, among others, when new information which may affect the risk management measures, or new information on hazards becomes available, or when a restriction has been imposed. Other ways to inform the next economic operator are, for example, to include the information on the invoice, in contracts or on the delivery note.

### **Text suggestions for informing the supply chain**

#### **For restricted explosives precursors:**

“Acquisition, introduction, possession or use of this product by the general public is restricted by Regulation (EU) 2019/1148. All suspicious transactions, and significant disappearances and thefts should be reported to the relevant national contact point. Please see [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/crisis-and-terrorism/explosives/explosives-precursors/docs/list\\_of\\_competent\\_authorities\\_and\\_national\\_contact\\_points\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/crisis-and-terrorism/explosives/explosives-precursors/docs/list_of_competent_authorities_and_national_contact_points_en.pdf).”

#### **For regulated explosives precursors that are not restricted:**

“This product is regulated by Regulation (EU) 2019/1148: all suspicious transactions, and significant disappearances and thefts should be reported to the relevant national contact point. Please see [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/crisis-and-terrorism/explosives/explosives-precursors/docs/list\\_of\\_competent\\_authorities\\_and\\_national\\_contact\\_points\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/crisis-and-terrorism/explosives/explosives-precursors/docs/list_of_competent_authorities_and_national_contact_points_en.pdf).”

## **III.2 Sales to professional users or members of the general public**

**Article 7(2): An economic operator who makes available regulated explosives precursors to a professional user or 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.**

To ensure that personnel is aware which of their products contain regulated explosives precursors, economic operators could include information that a product contains an explosives precursor in the barcode of that product. Moreover, economic operators could make posters for its personnel (without making those posters publicly available) listing the products they sell that contain such regulated explosives precursors. Another method is to have dummy products on the shelf for products containing regulated explosives precursors. Upon sale, personnel will have to go to the storeroom to get the actual product, which helps trigger their awareness that it is a product to which specific obligations apply. Alternatively,

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<sup>15</sup> These economic operators are included in the definition of “recipient”, pursuant to Article 3(34) of the REACH Regulation.

products that contain regulated explosives precursors could be stored behind the counter, i.e. not freely accessible, obliging an interaction with the personnel upon acquisition.

### **III.3 Measures by online marketplaces to inform their users**

**Article 7(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.**

To comply with Article 7(3), online marketplaces should provide information on the obligations of the Regulation in a manner that is both clear and effective (see **Recital 15**). The requirement of clarity implies that the information in question should, in particular, be specific and easy to understand. The requirement of effectiveness implies, in particular, that the information should be provided in a proactive, timely and easily accessible manner. Therefore, where possible, online marketplaces could inform new users of their obligations in the stage of registering on the platform or uploading their listing, i.e. before regulated explosives precursors are actually made available. Online marketplaces could also include in their terms of reference and frequently asked questions (or similar documents) information on the obligations of relevant users under the Regulation, including information on how to report suspicious transactions and significant disappearances and thefts.

## **SECTION IV: SECURITY OF STORAGE**

The Regulation (**Article 12**) requires the Commission to provide information on storage arrangements that ensure that a regulated explosives precursor is securely stored. This section provides such guidance for members of the general public, professional users, and economic operators.

### **IV.1 Recommendations for members of the general public**

Secure storage arrangements is one of the circumstances to be taken into account by competent authorities when assessing a licence application by a member of the general public to acquire a restricted explosives precursor pursuant to Article 6(1)(d) of the Regulation. Competent authorities are recommended to consider whether several or all of the following provisions are in place to ensure safe storage:

- There will be control over who has access to the storage facility, e.g. whether the restricted explosives precursor will be kept in a locked room or cabinet.
- Access to the property is restricted, e.g. by installing gates around the property.
- Areas of vulnerability around the property are illuminated.
- Locks on doors, ground floor windows and any other easily accessible windows are installed.
- An intruder alarm is installed.
- Video surveillance is used.

The measures that members of the general public could take to make their storage area more secure depend on a number of factors, e.g. the amount of restricted explosives precursors they possess, the concentration by weight of the restricted explosives precursors they possess, potential combinations of restricted explosives precursors they possess etc.

### **IV.2 Recommendations for professional users and economic operators**

The measures that economic operators and professional users could take to make their storage area more secure depends on a number of factors, e.g. the size of their company, the amount of regulated explosives precursors they possess, the concentration by weight of the regulated explosives precursors they possess, potential combinations of regulated explosives precursors they possess etc.

Companies involved in activities involving regulated explosives precursors are recommended to control access to their premises.

Access by other persons (visitors and contractors) to company premises is recommended to be restricted and monitored in relation to premises where regulated explosives precursors are manufactured or stored. Companies are recommended have a written policy on safe storage and procedures in place that has relevance for regulated explosives precursors.

Companies could e.g. undertake checks on persons and companies visiting their premises. Companies could keep records of visitors to the company's premises where regulated explosives precursors are manufactured or stored.

Although diversion of chemicals generally occurs after sale, companies need to be aware of the potential for diversion or theft from within their own sites and take adequate measures to secure business premises against theft. Companies concerned by this risk are operating along the whole supply chain:

- Manufacturers
- Distributors
- Logistic Service Providers
- Customers

It is recommended to increase the level of security in areas where regulated explosives precursors are stored, as appropriate and practical. There are several measures that economic operators and professional users could take to make their storage area more secure:

- Secure stock room or cages against break in.
- Restrict access to the areas where regulated explosives precursors are stored (e.g. no access for shop assistants, interns, customers, visitors etc.).
- Restrict access around the property, e.g. by installing gates around the property.
- Illuminate areas of vulnerability around the property.
- Lock doors, ground floor windows and any other easily accessible windows as much as possible.
- Install an intruder alarm.
- Use video surveillance.
- Check periodically the stock to identify disappearances or thefts.

## **APPENDIX ONE: TRANSITION PERIODS**

### **1.1 Transition period for licences**

Regulation 2019/1148 repeals and replaces Regulation 98/2013 with effect from 1 February 2021. The Regulation provides, in its transitional provision (Article 23), for a transition period concerning licenses in those cases where a licensing regime has already been established under the old Regulation.

For those Member States that already have established a licensing regime under Regulation (EU) No 98/2013, the new Regulation foresees a transition period from Regulation (EU) No 98/2013.

**Article 23(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.**

**Article 23(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.**

Licences issued before 1 February 2021 remain valid until 2 February 2022, unless the licence's date of validity is sooner than 2 February 2022. On and after 2 February 2022, licences issued under Regulation (EU) No 98/2013 are no longer valid, even if their validity date is later than 2 February 2022.

Licences issued on or after 1 February 2021 are valid for the period determined by the Member State, not exceeding three years (**Article 6(3)**).

If after 1 February 2021, a member of the general public wants to renew a licence issued before 1 February 2021, this is done in accordance with the new Regulation (in particular in accordance with **Article 6**).

Member States' competent authorities are recommended to ensure that the national inspection authorities are aware of the transition period for licences, so that they are able to raise awareness about the transition period during inspection visits. Additionally, Member States are advised to raise awareness about licence validity with relevant economic operators and online marketplaces, and with members of the general public, where possible.

Economic operators are recommended to seek contact with their competent authority in case of doubts about the validity of a licence issued under Regulation (EU) No 98/2013.

### **1.2 Transition period for possession, introduction and use by members of the general public of restricted explosives precursors**

The Regulation provides, in its transitional provision (Article 23), a transition period for the possession, introduction and use by members of the general public of restricted explosives precursors that were legally acquired under Regulation (EU) No 98/2013.

**Article 23(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 transition period does not extend to the making available of restricted explosives precursors. It is therefore not a transition period for economic operators, but only for possession, introduction and use by members of the general public.

Restricted explosives precursors legally acquired before 1 February 2021 that on and after 1 February 2021 can no longer be legally acquired, can be possessed by, introduced by and used by members of the general public until 2 February 2022.

Member States' competent authorities are recommended to ensure that the national inspection authorities are aware of the transition period for possession, introduction and use by members of the general public of restricted explosives precursors. Additionally, Member States are advised to raise awareness about the transition period for possession, introduction and use with members of the general public, where possible.

**Example**

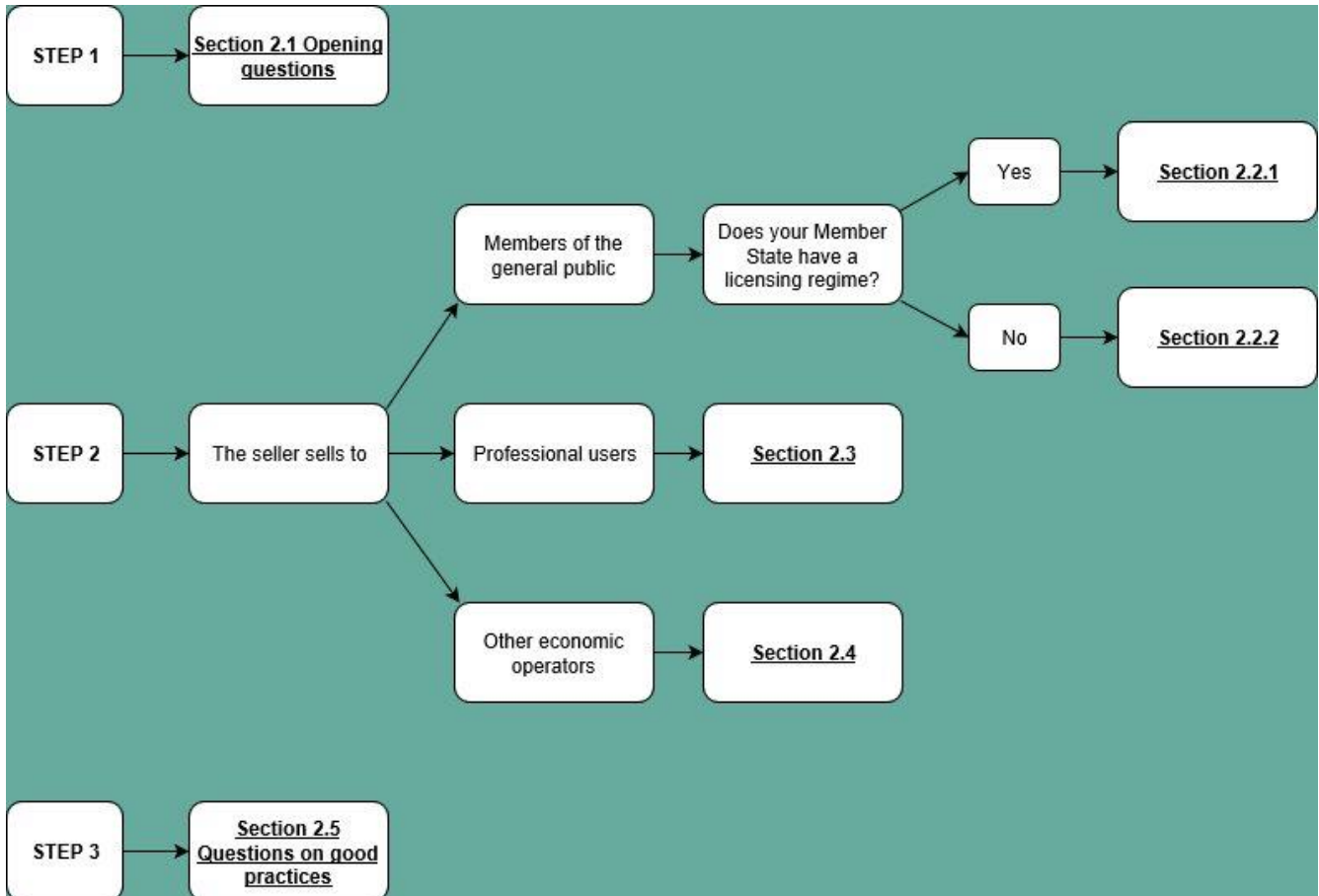
A member of the general public bought nitromethane with a concentration of 25% w/w on 15 January 2021, as was allowed under Regulation (EU) No 98/2013.

This member of the general public is allowed to possess, introduce and use that nitromethane until 2 February 2022. On and after 2 February 2022, the making available to, or possession, introduction and use by a member of the general public of that nitromethane with a concentration of 25% w/w is only allowed with a licence, provided that the Member State has established a licensing regime for nitromethane.

If the individual wants to make the same purchase a month later, on 15 February 2021, the economic operator should refuse the transaction – unless the member of the general public has a licence.

## APPENDIX TWO: INSPECTION CHECKLIST FOR NATIONAL INSPECTION AUTHORITIES [not public]

Please note that the list of questions below is not exhaustive, and that national inspection authorities may pose additional questions. If the answer to any of the questions below is “no”, national inspection authorities are recommended to gather more information to assess why that is the case.



### 2.1 Opening questions

- Is the seller aware that there is a regulation on explosives precursors?
- Does the seller know what explosives precursors are?
- Does the seller know what typical products relevant to their business are regulated according to the regulation?
- Does the seller know what obligations they have according to the Regulation; i.e. informing the supply chain, verification upon sale, and reporting suspicious transactions, significant disappearances and thefts?

## 2.2 Sales to members of the general public

### 2.2.1 Questions in case of a licensing regime

- Does the seller know how to distinguish members of the general public?
- Is the seller aware that they can sell restricted explosives precursors to members of the general public only if they have a licence (**Article 5(3)**)?
- Does the seller know how to verify the licence and proof of ID of a customer (**Article 8(1) and Section I**)?
- Does the seller record transaction data for 18 months from the date of transaction (notably the identity of the customer, the licence and the amount of the restricted explosives precursor (on the licence)) (**Article 8(4) and Section I**)?
- Is the personnel of the seller that deals with purchase requests for regulated explosives precursors aware which of their products contain the regulated substances (**Section III.2**)?
- Is the personnel of the seller that deals with purchase requests for regulated explosives precursors instructed on the obligations of the Regulation (**Article 7(2) and Section III.2**)?
- Does the personnel of the seller know what kind of indicators point to suspicious behaviour (**Section II.2**)?
- Does the personnel of the seller have procedures to detect suspicious transactions (**Article 9(2) and Section II.4**)?
- Is the personnel of the seller aware of the national contact point? Does the seller have the contact details of the national contact point (telephone number, e-mail address, web form or other) at hand for the reporting of suspicious transactions and significant disappearances and thefts (**Article 9(4) and Article 9(5)**)?
- Has the seller reported any suspicious transactions, or significant disappearances and thefts already (**Article 9(4) and Article 9(5)**)?
- Has the seller refused any transactions on the basis that they are suspicious (**Article 9(4)**)?
- Do the transaction records from the seller show any suspicious transaction not reported?



### **2.2.2 Questions in case of a prohibition**

- Does the seller know how to distinguish members of the general public?
- Is the seller aware that they cannot sell restricted explosives precursors to members of the general public, i.e. persons without a professional, trade or business need (**Article 5(1)**)?
- Is the personnel of the seller that deals with purchase requests for regulated explosives precursors aware which of their products contain the regulated substances (**Section III.2**)?
- Is the personnel of the seller that deals with purchase requests for regulated explosives precursors instructed on the obligations of the Regulation (**Article 7(2) and Section III.2**)?
- Does the personnel of the seller know what kind of indicators point to suspicious behaviour (**Section II.2**)?
- Does the personnel of the seller have procedures to detect suspicious transactions (**Article 9(2) (Section II.4)**)?
- Is the personnel of the seller aware of the national contact point? Does the seller have the contact details of the national contact point (telephone number, e-mail address, web form or other) at hand for the reporting of suspicious transactions and significant disappearances and thefts (**Article 9(4) and Article 9(5)**)?
- Has the seller reported any suspicious transactions, or significant disappearances and thefts already (**Article 9(4) and Article 9(5)**)?
- Has the seller refused any transactions on the basis that they are suspicious (**Article 9(4)**)?
- Do the transaction records from the seller show any suspicious transaction not reported?

### **2.3 Sales to professional users**

- Does the seller know how to distinguish professional users?
- Is the seller aware that they can only sell the restricted explosives precursors to a customer that is a professional user when the customer can prove that they have a need for the substances for purposes connected with that customer's trade, business or profession? I.e. substances cannot be sold to (customers representing) businesses

without a professional need for the explosives precursor (**Article 5(1)**).

- Is the personnel of the seller that deals with purchase requests for regulated explosives aware which of their products contain the regulated substances (**Section III.2**)?
- Is the personnel of the seller that deals with purchase requests for regulated explosives instructed on the obligations of the Regulation (**Article 7(2) and Section III.2**)?
- Does the personnel of the seller know how to verify the proof of ID of a customer (**Article 8(2) and Section I.2**)?
- Does the personnel of the seller know what common usages are of the product, in order to verify the intended use of the product (**Article 8(2)**)?
- How does the personnel of the seller verify the intended use of the product (**Section I.2**)?
- Does the personnel of the seller record transaction data for 18 months from the date of transaction (notably the identity of their customer, the customer's trade, business or profession, the company name, address and value added tax identification number (or any other relevant company registration number), and the intended use of the restricted explosives precursors) (**Article 8(4) and Section I.2**)?
- Does the personnel of the seller know what kind of indicators point to suspicious behaviour (**Section II.2**)?
- Does the seller have procedures to detect suspicious transactions (**Article 9(2) and Section II.4**)?
- Is the personnel of the seller aware of the national contact point and does the seller have the contact details of the national contact point (telephone number, e-mail address, web form or other) at hand for the reporting of suspicious transactions and significant disappearances and thefts (**Article 9(4) and Article 9(5)**)?
- Has the seller reported any suspicious transactions, or significant disappearances and thefts already (**Article 9(4) and Article 9(5)**)?
- Has the seller refused any transactions on the basis that they are suspicious (**Article 9(4)**)?
- Do the transaction records from the seller show any suspicious transaction not reported?

## 2.4 Sales to other economic operators

- Does the seller know how to distinguish other economic operators?
- Does the seller communicate information on the obligations of the Regulation to the customer upon sale (**Article 7(1)**), e.g. by including the information on the invoice or on the safety data sheet (**Section III.1**)?
- Does the personnel of the seller know what kind of indicators point to suspicious behaviour (**Section II.2**)?
- Does the seller have procedures to detect suspicious transactions (**Article 9(2)** and **Section II.4**)?
- Is the personnel of the seller aware of the national contact point and does the seller have the contact details of the national contact point (telephone number, e-mail address, web form or other) at hand for the reporting of suspicious transactions and significant disappearances and thefts (**Article 9(4)** and **Article 9(5)**)?
- Has the seller reported any suspicious transactions, or significant disappearances and thefts already (**Article 9(4)** and **Article 9(5)**)?
- Has the seller refused any transactions on the basis that they are suspicious (**Article 9(4)**)?
- Do the transaction records from the seller show any suspicious transaction not reported?

## 2.5 Questions on good practices

- Is the seller aware of the quantity of regulated explosives precursors they have in stock?
- Does the seller inform professional users and members of the general public upon sale that they should report significant disappearances and thefts?
- Does the seller have in place procedures to detect significant disappearances and thefts?
- How quickly would the seller detect significant disappearances and thefts?
- Did the seller perform a risk assessment to detect any risks in the storage of restricted explosives precursors?

- Does the seller have in place measures to prevent thefts during operational and non-operational hours?
- Are restricted explosives precursors stored in such a way that they are inaccessible to unauthorised persons (anyone other than the seller and their personnel)?
- Are restricted explosives precursors stored in an enclosed area with controlled access?
- Does the seller train new employees on the obligations of the regulation?
- Does the seller keep training records for all employees?
- Does the seller offer alternative products without or with a lower concentration of regulated explosives precursors to its customer?

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## **APPENDIX THREE: COMPLIANCE CHECKLIST FOR ECONOMIC OPERATORS, ONLINE MARKETPLACES, PROFESSIONAL USERS AND MEMBERS OF THE GENERAL PUBLIC**

Member States are required to ensure that competent authorities ('national inspection authorities') are in place to control and inspect the correct application of Articles 5 to 9 of the Regulation (**Article 11**) (see also Appendix Two).

The compliance checklist in this appendix could be used as a tool by economic operators, online marketplaces, professional users and members of the general public to assess whether they are able to demonstrate compliance with Articles 5 to 9. Please note that national inspection authorities may also inspect other matters; the checklist is therefore non-exhaustive.

### **3.1 Checklist for economic operators**

- Do you inform the next economic operator in the supply chain about the application of the Regulation to the product that they provide (**Article 7(1) and Section III**)? Can you demonstrate it?
- Are your personnel that sells regulated explosives precursors aware of which products contain explosives precursors, and are the personnel instructed regarding the obligations of the Regulation (**Article 7(2) and Section III**)? Can you demonstrate it?
- Do you carry out your verification upon sale obligations, including the obligation to record transactions, and do you keep these records for 18 months from the date of transaction (**Article 8 and Section I**)? Can you demonstrate it?
- Do you have procedures in place to detect suspicious transactions (**Article 9(2) and Section II**)? Can you demonstrate it?
- Do you report suspicious transactions within 24 hours of detection (**Article 9(4) and Section II**)? Can you demonstrate that you know how to report suspicious transactions?
- Do you report significant disappearances and thefts of regulated explosives precursors within 24 hours of detection (**Article 9(5) and Section II**)? Can you demonstrate that you know how to report significant disappearances and thefts?

### **3.2 Checklist for online marketplaces**

- Do you take measures to ensure that your users, when making available regulated explosives precursors through its services, are informed of their obligation pursuant to the Regulation (**Article 7(3) and Section III**)? Can you demonstrate it?
- Do you take measures to help ensure that your users, when making available restricted explosives precursors through your service, comply with their obligations under Article 8 (**Article 8(5) and Section I**)? Can you demonstrate it?
- Do you have appropriate, reasonable and proportionate procedures in place to detect suspicious transactions (**Article 9(2) and Section II**)? Can you demonstrate it?
- Do you report suspicious transactions within 24 hours of considering that the transaction is suspicious (**Article 9(4) and Section II**)? Can you demonstrate that you know how to report suspicious transactions?

### **3.3 Checklist for professional users**

- Do you report significant disappearances and thefts of regulated explosives precursors within 24 hours of detection (**Article 9(5) and Section II**)? Can you demonstrate that you know how to report significant disappearances and thefts?

### **3.4 Checklist for members of the general public**

- Do you introduce, possess or use restricted explosives precursors, and if so, do you have a licence for that (**Article 5**)? Can you demonstrate it?
- Do you report significant disappearances and thefts of restricted explosives precursors you have acquired within 24 hours of detection (**Article 9(6) and Section II**)? Can you demonstrate that you know how to report significant disappearances and thefts?

## APPENDIX FOUR: FURTHER GUIDANCE AND OTHER NAMES FOR SUBSTANCES IN THE ANNEXES OF THE REGULATION

### 4.1 Further guidance on specific substances

#### Ammonium nitrate

- The content of ammonium nitrate is expressed in terms of nitrogen (N) content, because ammonium nitrate is a component in fertilisers where the nitrogen content is the relevant parameter. For other products, however, this way of expressing the content of ammonium nitrate is not relevant. As indicated in Annex I of the Regulation, 16 weight % nitrogen in relation to ammonium nitrate corresponds to 45.7 weight % ammonium nitrate.
- With the introduction of Regulation 2019/1148, ammonium nitrate is included as a restricted explosives precursor in Annex I. The corresponding paragraphs of the restriction on the placing on the market of ammonium nitrate of Regulation (EC) 1907/2006 (REACH) were therefore removed.

#### Calcium ammonium nitrate

- Whereas reference is made in Annex II to Calcium ammonium nitrate (with CAS number : 15245-12-2), the entry refers to “ammonium calcium nitrate” or “nitric acid, ammonium calcium salt”, alternative names provided in the REACH registration dossier and included in the ECHA database for this substance<sup>16</sup> (chemical formula  $5\text{Ca}(\text{NO}_3)_2 \cdot \text{NH}_4\text{NO}_3 \cdot 10\text{H}_2\text{O}$ ).

#### Magnalium powder

- Magnalium is a mixture (an alloy) of aluminium (CAS RN 7429-90-5) and magnesium (CAS RN 7439-95-4), both of which are listed in Annex II of the regulation. Therefore magnalium powders (particle size  $<200 \mu\text{m}$ ), as well as products containing  $\geq 70\%$  of such powders, are subject to the reporting requirements of the regulation.

#### Nitrogenous fertilisers

- Regulation (EU) 2019/1148 lists in Annex II the common nitrate salts used in nitrogenous fertilisers, which means that such fertilisers are subject to the reporting requirements as contained in Article 9 of the regulation. Fertilisers containing high amounts of these nitrates are of most concern. Thefts and disappearances may be prevented by keeping these fertilisers in places where they are not easily accessed by unauthorised persons, as far as that is possible in relation to the normal handling. It may facilitate the discovery of any thefts or disappearances to keep an inventory and to regularly check the stock.
- Some Member States may have rules applicable to the storage of fertilisers. In addition, guidance materials on the secure storage of fertilisers have been issued by

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<sup>16</sup> <http://echa.europa.eu/substance-information/-/substanceinfo/100.035.702>

the fertiliser industry as well as by many authorities. You can ask your supplier for advice on this and/or approach the applicable authority in your country or region.

#### Nitromethane

- The content of nitromethane in blends with methanol and oil(s) intended for use as fuels for model vehicles is often given in percent by volume. It is difficult in practice to derive the corresponding content of nitromethane in percent by weight, since necessary parameters for the conversion are in most cases not known. Therefore, for the purpose of Regulation (EU) 2019/1148, fuel blends containing methanol, nitromethane and oil(s), intended for use in model vehicles and with not more than 12 percent nitromethane by volume, may be regarded as containing not more than 16 percent nitromethane by weight.

#### 4.2 Other names for specific substances

The names below may also be used to commonly refer to substances listed in the Annexes of the Regulation. The lists are not exhaustive and are intended for reference purposes only.

Other names for Annex I substances	Other names for Annex II substances
<p>Hydrogen peroxide:</p> <ul style="list-style-type: none"> <li>• Peroxide</li> <li>• Dioxidane</li> <li>• Hydrogen Dioxide</li> </ul> <p>Nitromethane</p> <ul style="list-style-type: none"> <li>• Nitrocarbonyl</li> </ul> <p>Nitric acid</p> <ul style="list-style-type: none"> <li>• Aqua fortis</li> <li>• Fuming nitric</li> </ul> <p>Perchlorates:</p> <ul style="list-style-type: none"> <li>• Chlorate (VII)</li> <li>• Hyperchlorate</li> </ul> <p>Chlorates:</p> <ul style="list-style-type: none"> <li>• Chlorate (V)</li> </ul>	<p>Hexamine</p> <ul style="list-style-type: none"> <li>• Methenamine</li> <li>• Hexamethylenetetramine</li> <li>• Urotropine</li> </ul> <p>Acetone</p> <ul style="list-style-type: none"> <li>• Propanone</li> <li>• Propan-2-one</li> <li>• 2-Propanone</li> </ul>