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From:	Commission
To:	Working Party on Technical Harmonisation (Explosives Precursors)
Subject:	Proposal for a Regulation of the European Parliament and of the Council on the marketing and use of explosives precursors, amending Annex XVII to Regulation (EC) No 1907/2006 and repealing Regulation (EU) No 98/2013 on the marketing and use of explosives precursors - Non-paper by the Commission

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COMMISSION NON-PAPER

Online marketplaces – procedures to detect suspicious transactions

Introduction

The Commission proposal exempts ‘online marketplaces that act as an intermediary’ from the obligation to have in place procedures to detect suspicious transactions, to avoid inconsistencies with Articles 14 and 15 of the e-Commerce Directive 2000/31/EC. The Council eliminates this exemption while adding safeguards to ensure consistency with the e-Commerce Directive. By contrast, the similar amendment made by the Parliament deletes this exemption without any further change.

In terms of safeguards, the Council added the following qualifications (in cursive) “Economic operators and online marketplaces shall have in place “*appropriate, reasonable and proportionate* procedures to detect suspicious transactions, targeted to the *specific* environment in which the regulated explosives precursors are offered”. As a result, the wording proposed by Council is sufficiently circumscribed to ensure that the obligation imposed on online market places shall not amount to a general monitoring obligation as prohibited by Article 15 of the e-Commerce Directive 2000/31/EC.

Moreover, in the spirit of Article 14 of the e-Commerce Directive 2000/31/EC, an additional safeguard is included in the operative part of the Regulation, which ensures that online marketplaces shall not be held liable for transactions that were not detected despite their due diligence.

Nevertheless, the Commission considers that the recitals should be improved by setting out the relationship with the relevant provisions of the e-Commerce Directive, and making clear that it is not upon the competent authority to further define and/or impose obligations on online marketplaces, as – pursuant to the enacting terms - this is done by the Regulation as such.

Suggested changes to recitals 12 and 12a

(changes to the Council position in ~~striketrough~~ or **bold and underline**

(12) Online market places act as mere intermediaries between economic operators on the one side, and members of the general public, or professional users on the other side. they 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 or verify the identity and, where appropriate, the licence of the prospective customer or request other information from the prospective customer. However, given the central role which online marketplaces play in online transactions, including as regards the sales of regulated restricted explosives precursors, it is appropriate that they should inform, in a clear and effective manner, users who aim to make available regulated explosives precursors through the use of their services of the obligations under this Regulation. In addition, online marketplaces should take measures to help ensure that their users comply with their obligations regarding verification, for instance by offering tools to facilitate verification of licences. Given the increasing significance of online markets for all kinds of offers and the importance of this procurement channel, also for terroristie purposes, online marketplaces should be subject to the same detection and reporting obligations as economic operators, **while procedures to detect suspicious transactions should be properly adapted to the specific online environment.** ~~In applying those obligations, the competent authority should strike a fair balance between public security needs and the affected interests and fundamental rights.~~

(12a) The obligations on online marketplaces under this Regulation leave Articles 14 and 15 of Directive 2000/31/EC unaffected, and in particular do not amount to a general monitoring obligation.

This Regulation ~~should~~ lays down only specific obligations for online marketplaces concerning the detection and reporting of suspicious transactions taking place on their website or using 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 a suspicious transaction.

Detailed explanation

It is proposed to add a sentence to recital 12a that clarifies that there is no issue of consistency with the e-commerce Directive, because as recital 12a already states, this Regulation only lays down specific obligations

Secondly, it is proposed to strike the last sentence of recital 12 “In applying those obligations, the competent authority should strike a fair balance between public security needs and the affected interests and fundamental rights.” As stated above, this incorrectly implies that competent authorities can further define or impose obligations, whereas this is done by the Regulation as such. The line is taken from the Terrorist Content Online proposal, which does provide for further measures to be taken at national level.

Finally, it is suggested to reflect in the recital the qualification laid down in article 9(2) that the procedures have to be targeted to the specific environment.