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WORKING PAPER

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From:	EE, LT, LU, SK delegations
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 - Comments from EE, LT, LU, SK delegations on Article 9

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EE, LT, LU, SK proposal on Article 9

Article 9

Reporting of suspicious transactions, disappearances and thefts

2. ~~Notwithstanding Article 15 of Directive 2000/31/EC, e~~ Economic operators ~~and, other than online marketplaces that act as an intermediary,~~ 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.

~~Provided that economic operators and online marketplaces have in place such procedures, Article 14(1) of Directive 2000/31/EC shall apply mutatis mutandis. Online marketplaces shall not be held liable, on the basis of this provision, for transactions that were not detected despite their due diligence.~~

Changes in **yellow**.

Justification:

General logic:

- First, implementing this provision by online marketplaces means obtaining information about the chemical composition of a variety of products from their users. This would need two types of investment:
 - o Understanding and defining which products potentially have such chemical composition,
 - o Setting up a mechanism to their users to report chemical composition in all or in specific cases.
- Secondly, online marketplaces would need to invest in mechanisms (manual or automated controls) to monitor transactions of such products and establish rules on „suspiciousness“ to those transactions.
- Third, there is a high probability that smaller online marketplaces will have resources to establish these controls.
- Fourth, there is a high probability that the effectiveness of the controls is not absolute. There are many variables in play and some not under the control of online marketplaces. There is a high probability that one or more of these risks will realise in practice:
 - o The types of products the online platforms will monitor might not cover the whole range (not enough specific knowledge, new products etc)
 - o The users of online platforms will not report the chemical composition or will not do it accurately
 - o The rules (whether manual or automated controls) might not be able to catch all relevant transactions

Specific logic:

- **appropriate, reasonable and proportionate**
 - o Clarifies the type of procedure
- **specific**

- Clarifies that the scope of monitoring is limited to e.g. the specific online platform's website
- ~~Provided that economic operators and online marketplaces have in place such procedures, Article 14(1) of Directive 2000/31/EC shall apply mutatis mutandis.~~
 - Art 14(1) "hosting" means e.g. a cloud storage service provider that provides service in a two side market, not three- side market as is meant under 'online marketplaces' in Art 3(10). The liability exception for hosting should still apply.
- **Online marketplaces shall not be held liable, on the basis of this provision, for transactions that were not detected despite their due diligence.**
 - It is important to take into account the potential risks of not being able to efficiently enforce the measures despite the online marketplace's best efforts.