Message 201

Communication from the Commission - TRIS/(2024) 2950

Directive (EU) 2015/1535

Notification: 2024/0405/IT

Forwarding of the response of the Member State notifying a draft (Italy) to of Malta.

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1. MSG 201 IND 2024 0405 IT EN 18-11-2024 04-11-2024 IT ANSWER 18-11-2024

2. Italy

3A. Ministero delle imprese e del Made in Italy
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4. 2024/0405/IT - H10 - Games of chance

5.

6. With reference to the detailed opinion issued by the Republic of Malta on the draft Technical Regulations referred to in notification 2024-0405-IT, the Customs and Monopolies Agency has submitted the following.

The Republic of Malta, in its detailed opinion, noted that in the Technical Regulations 'various requirements have been established that, when considered cumulatively, substantially restrict the offering of remote gaming by Italian concessionaire holders.' Additionally, it is Malta's understanding that the provision of certain information society services, notably, the provision of business-to-business ('B2B') gambling services are being exclusively reserved for Italian concessionaire holders, i.e., 'service-providing concessionaires', as an amendment to what is currently established. Apart from this, Malta also has concerns with the general lack of clarity and transparency surrounding certain concepts and requirements established in the Draft Technical Regulations, believing that some requirements, introduced from scratch, are not adequately described.
With regard to these comments, we refer to the below.
With the draft Technical Regulations, which are the subject of the information procedure, the intention was solely to reiterate an obligation already present in the national legislation since 2006 and strictly maintained in all subsequent European public tendering procedures for the award of concessions for the operation of public games via physical and remote networks.
It should be noted, in fact, that the provision requiring the Service Provider (SP) to hold a concession is an obligation, consistently applied and never contested, in all the following public tendering procedures:
• Selection procedure for the award of concessions for the operation of public games referred to in Article 38(2) and (4) of Decree-Law No 223 of 4 July 2006, converted, with amendments and additions, into Law No 248 of 4 August 2006;
• Procedure for the award of concessions for the operation of public games referred to in Article 10(9g) of Decree-Law No

16 of 2 March 2012, converted with amendments into Law No 44 of 26 April 2012;
• Selection procedure for the award of concessions for the operation of public games referred to in Article 1a of Decree-Law No 149 of 25 September 2008, converted with amendments into Law No 184 of 19 November 2008, as amended by Article 2(49) and (50) of Law No 203 of 22 December 2008;
• Procedure for the award of concessions for the operation of public games referred to in Article 24(11)(A) to (F) of Law No 88 of 7 July 2009, published in the Official Journal of the European Union of 10 March 2011 S 48-079188;
• Procedure for the award of concessions for the remote operation of public games referred to in Article 1(935) of Law No 208/2015, published in the Official Journal of the European Union of 10 January 2018 s - 006-009338.
All the procedures referred to above were submitted to the Member States for consideration and, not only were no observations submitted that would point to obstructive or discriminatory grounds, but the innovations introduced by the aforementioned procedures have, in reality, made it possible to overcome the reasons for the infringement procedures, upholding all the grounds for complaint identified in the judgments of the European Court of Justice, leading to the definitive recognition of compliance by the national legislation with the principles of the European Treaties.
More specifically, the Republic of Malta complains about the absence of a specific definition of the term 'service-providing concessionaire' and, on the basis of this incorrect premise, assumes that 'the offering of B2B gambling services may only be provided by a "service-providing concessionaire"', which raises the fear that 'the provisions in the Draft Technical Regulations relating to "service-providing concessionaires" are incompatible with the principle of the freedom to provide services under Article 56 of the TFEU' and that, consequently, 'B2B gambling operators planning to provide their services to Italian concessionaire holders must first obtain a concession that is being issued solely for the purposes of offering business-to-consumer ("B2C") gambling services', stressing, finally, 'the discriminatory effect that such restrictive measures will have on any small and medium-sized enterprises that are focused and specialised in the provision of B2B gambling services'.
In reality, together with the document relating to the Technical Regulations, the document entitled 'Single Nomenclature' was also presented, accessible to the European Commission and the Member States, where, in point 7, there is the definition of 'service-providing concessionaire', which has generated so much concern.
According to this definition, the service provider concessionaire is 'the concessionaire who grants the use, in whole or in part, of their own gaming system, already certified by the ADM, ensuring communication with the centralised system also for user concessionaires'.
The Republic of Malta's doubt, likely, might arise from the confusion between 'B2B' concessionaires — which do not exist in Italian law and are not provided for in any way in the draft Technical Regulations — and gaming software companies which now offer their products to concessionaires with B2B services and which, of course, will be able to continue their activities freely, without the need to acquire any ad hoc concession rights.
According to the draft technical rules, the development of the concessionaire's system can be carried out by any software house, provided that this system is then certified by the Customs and Monopolies Agency or by specific Verification Bodies agreed with the Agency.
The concessionaire, in particular, may also choose to use a gaming system from another service-providing concessionaire, already certified by the ADM. If this is the case, only the integration of the gaming system with the rest of the concessionaire's system will be subject to certification.
Certification of the concessionaire's system is necessary for the purposes of transaction security, compliance with anti-money laundering rules, protection of players' rights and, more generally, to guarantee the fundamental principle of the protection of public faith and public order and must be carried out independently of any certification carried out by another Member State, since it must, of course, comply with the specific technical rules laid down in Italy for the collection of remote gaming.
However, as is apparent from the Technical Regulations, such certification does not place any limit or barrier on the entry into the market of national or foreign operators.
There is therefore no restriction on the free entrepreneurial activity of software companies, and there are no so-called B2B concessionaires in the Italian remote gaming system, which, clearly, are provided for in Maltese law and duly authorised. There is therefore no restriction or limitation on the principles set out in Article 56 TFEU, simply because there are no B2B concessionaires, nor are there any provisions for them, but there are free service providers who, without any concession, can continue to deal with concessionaires, providing software, IT platforms and IT services.
It would therefore appear to be an interpretation based on a partial reading of the documentation submitted by Italy.
It follows that all the observations of the Republic of Malta, concerning the lack of justification for the provision of

discriminatory measures, the absence by the Italian authorities of specific objectives 'that justify this deviation from fundamental EU principles', and, in particular, concerning 'the lack of evidence-based research and due to the general ambiguity surrounding the Draft Technical Regulations' such as to lead the Republic of Malta to declare the measure non-compliant with EU law, cannot be upheld even with reference to the terminology used, simply because the alleged discriminatory measure, the result of a clear misunderstanding on the part of the Republic of Malta, is not present in the articles.
Then, in point 2.3, the Republic of Malta raises further concerns regarding the implementation of 'restrictive and inconsistent player account limits as well as the disproportionate measures that have been implemented in relation to website domains. Malta is also unsure of the necessity of the extensive registration procedure which has to be adopted by Italian concessionaire holders.'
The detailed opinion on this issue is, at the very least, unclear. In fact, it expresses doubts, which are not further explained, about 'the extensive registration procedure which has to be adopted by Italian concessionaire holders', without clarifying what the issues are.
The procedure for registering player accounts provided for by the new Technical Regulations in no way differs from that already provided for and in force in Italy for about 15 years, in implementation of the 2009 EU law.
In order to ensure the identity of the applicant for the opening the gaming account, as well as their age of majority, the identity document and certain personal information necessary for the activation of the gaming account are simply required.
It is possible to add (and not replace), in the future, player identification procedures based on other digital identification tools, even with second-level security, without prejudice to the need to use the player account in compliance with the current provisions, including those of EU origin, on the prevention of the use of the financial system for money laundering purposes.
It is not clear, therefore, what the extensive registration procedure required is, nor does the Republic of Malta clarify this in any way.
Regarding the presence of 'monetary and session limits applicable to 18–24-year-olds', on which 'Malta is concerned with the current inconsistent application of such limits
within the Draft Technical Regulations. This, given that Malta has noted that the aforementioned limits applicable to 18–24-year-olds are seemingly only made applicable at account registration stage and will therefore not be made applicable to existing player account holders', it should be noted, however, that the Agency has already provided, in the documents implementing the Technical Regulations, currently being drawn up, that during the initial phase of the new concessions, all gaming accounts, even if already existing, will be renewed and, therefore, subject to a declaration of consent by the player to the continuation of the gaming contract which provides for the obligation to make explicit the monetary and session limits (as has been the case since 2009 during the first activation phase), also in relation to the age of the player.
There will therefore be no discrimination between new gaming accounts and existing gaming accounts: for both, it will be necessary to make these choices.
It should be noted, moreover, that these aspects do not relate to the general rules covered by the Technical Regulations, but to procedural methodology provisions that the Agency provides to its concessionaires by means of ad hoc communications, which are binding on them, compliance with which is ensured by IT tools prepared for that purpose by the Agency itself.
It is not considered, in fact, that the Technical Regulations can go to that level of detail, as they are not inherent to the concept of technical regulation.
Finally, the Republic of Malta notes that 'within the Draft Technical Regulations, Italy has failed to consider the principle of technological neutrality, specifically in relation to the requirements on the use of a website for remote gaming vs. the use of an application. Malta reminds Italy that the principle of technology neutrality allows for the freedom of individuals and organisations to choose the most appropriate and suitable technology for their needs. Therefore, Malta is concerned that the current requirements imposed in the Draft Technical Regulations discriminate in favour of the usage of applications, since additional burdensome and restrictive requirements have been imposed by the Italian authorities for the usage of websites and the applicable domain names relating to the same.'
Once again, the interpretation provided does not seem to be in line with what is contained in the Technical Regulations. The measures and features provided for the website and the apps are the same and do not provide for any difference or preference.

These measures are explained in detail in Chapter 10 of the Technical Regulations. In each of the paragraphs in Article 10, when specifying the technical characteristics required, both the website and the apps are always expressly referred to, denoting absolute compliance with the principle of technological neutrality.
Legislative Decree No 41 of 25 March 2024 expressly provides in Article 6(6)(c) and (d) that the concessionaire is obliged to provide 'players with access to the area of operation of the
website or gaming apps of the concessionaire dedicated to the offer of the games referred to in paragraph 1, letters a) to f), as well as those referred to in letters g), h), i) in the cases referred to in paragraph 4; d) in the event of access to each type of game subject to concession, through a specific app, subject to certification, the relevant technical characteristics are defined by the Agency', in this case referring also to both technologies.
The only specific requirement which concerns only the website and which is intended to give specific effect to the provision laid down in Article 6(5)(o) of the aforementioned Legislative Decree is that that website be accessed via an internet domain registered by the concessionaire himself, the first-level extension of which must necessarily coincide with the '.it' Top Level Domain.
That specification does not appear in any way to constitute an obstacle to free movement, let alone an infringement of the principle of technological neutrality.
In conclusion, it is considered that the doubts and concerns raised by the Republic of Malta have been fully clarified, excluding, evidently, the presence of any restriction on the freedom to provide services. The proposal for Technical Rules is fully in line with EU principles and law and consolidates and clarifies the technical rules and regulations that have been present in the Italian legal system since 2009, which have never been subject to any observation revealing obstructive or discriminatory causes.
It follows that, as we fully adhere to the rules relating to services, as well as more generally to the principles and EU law, we consider that we do not have to follow up on the detailed opinion issued by the Republic of Malta and, in ensuring absolute abstention from the adoption of the notified measure, until the end of 18 November, we await the Commission's comment on this reply.

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