Message 201

Communication from the Commission - TRIS/(2025) 1539

Directive (EU) 2015/1535

Notification: 2025/0085/IT

Forwarding of the response of the Member State notifying a draft (Italy) to comments (5.2) of Estonia.

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1. MSG 201 IND 2025 0085 IT EN 13-06-2025 12-06-2025 IT ANSWER 13-06-2025

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4. 2025/0085/IT - SERV60 - Internet services

5.

6. This correspondence follows on from previous communications in the context of the Commission's notification 2025/0085/IT, concerning the draft Decree of the President of the Council of Ministers on the ‘Discipline of the activity of technological platforms for the intermediation between supply and demand of non-scheduled public bus services under Article 10-bis, paragraph 8, of Decree-Law No. 135 of 14 December 2018, converted with amendments by Law No. 12 of 11 February 2019’. The purpose of this correspondence is to represent the following.

It is acknowledged that the comments forwarded by the Member State of Estonia under Article 5(2) of Directive (EU) 2015/1535 of 9 September 2015 have been taken into account. The document bearing the reference number 20251249. The IT requests that the Italian draft law be analysed to ascertain its compliance with the country of origin principle, as set out in Article 3 of Directive 2000/31/EC on electronic commerce.

In consideration of the aforementioned correspondence between the remarks set out in the Member State's note and the contents of the Commission's detailed opinion and comments, reference is made to the considerations contained in the relevant feedback document, which is reproduced below for the appropriate parts.

I. ON THE DETAILED OPINION

1. As a preliminary remark, recalling also what has already been deduced in the reply note to the previous requests for clarification, it is pointed out that the provisions of EU Directive No. 2000/31/EC cannot be applied ‘strictu sensu’ to the notified project.

The draft Ministerial Decree, in fact, in addressing the technological infrastructures deputed to the performance of intermediation activities between demand and supply of non-scheduled public transport services, does not lay down rules

on the functioning of the platforms, nor the activities performed by them, but limits itself to providing that such activities be conducted by the framework principles governing the matter.

2. On this point, moreover, it is reiterated that the regulation of this matter is left to the Member States, as stated by the Court of Justice itself in the judgments referred to in the note of this Administration dated 24 March last.

Among the regulatory principles of the subject matter is the distinction between taxi service and rental service with driver, which is reflected not only in national legislation (Law No. 21 of 15 January 1992) but also in supranational regulations, reflecting the structure laid down in Directive 2006/123/EC of the European Parliament and of the Council ('Bolkestein Directive').

The axiological and structural hinge that guides the notified project, therefore, as far as it is relevant here, is neutrality not only concerning the operating technology of the platforms, but also concerning their regulation itself.

From this perspective, the provisions of the decree do not concern platforms as technological infrastructures, but rather as functional tools for intermediating between the supply and demand of non-scheduled public transport services, subject to regulation by the Member State.

Hence, the merely reconnaissance character of the regulations contained in the decree in question.

3. The objective of the notified project is to prevent the use of technological tools from surreptitiously and radically altering the nature of local public transport services as regulated not only in Italy but also in other Member States.

It is necessary to reiterate that the use of intermediation services via a platform cannot lead to undue confusion between taxi services and car hire with driver (NCC) services, nor can it disregard compliance with regulations that clearly distinguish them in certain key regulatory aspects:

(i) the compulsory or non-compulsory nature of the service;

(ii) the differentiated or undifferentiated nature of the user;

(iii) the necessary existence of a prior reservation for the rental service.

4. In the present case, the digital platforms covered by the draft Ministerial Decree do not have as their primary objective the provision of online booking services separate from the provision of transport services.

On the contrary, the notified draft addresses the operation of digital intermediation platforms in a manner closely intertwined with the technical and operational requirements for providing taxi and NCC services. Specifically, according to the draft Ministerial Decree, the platforms above constitute the instrument through which providers of non-scheduled public transport services fulfil their obligations arising from the national law of reference (Law No. 21 of 15 January 1992), the adherence to which with EU regulations cannot be questioned.

Thus, for example, the provisions of the draft Ministerial Decree above ensure compliance with the principles on the booking modalities of taxi and NCC services provided for by the aforesaid Law no. 21/1992, ensuring that NCC services are requested at the garage or premises, under Article 11, paragraph 4, of Law no. 21/1992, which is confirmed by Article 4 of the draft Ministerial Decree.

It follows from the above that the services provided by the digital intermediation platforms referred to in the draft Ministerial Decree are strictly connected to taxi and NCC transport services and form an integral and essential part thereof, since they ensure that the individual service provider, in the performance of its activities, receives bookings and manages the relationship with users by operating methods that comply with the aforementioned state regulations.

Based on the foregoing, it is deemed that the activities provided by the platforms mentioned above qualify as 'transport services' and are therefore outside the scope of the aforementioned Directives No. 2000/31/EC and No. 2015/1535/EU.

In light of this reconnaissance, it can be stated in summary that the outline of the draft Ministerial Decree:

(i) does not introduce any 'technical specification', being completely neutral concerning the technological infrastructure or user interface of the platforms;

(ii) does not prescribe any rules that could 'significantly influence the nature of the product or its marketing', since it merely clarifies how the principles, already in force today, governing the services offered through platforms must be respected by them;

(iii) does not introduce any 'rules relating to services', since it does not lay down any 'requirements of a general nature relating to access to service activities [...] and their exercise, in particular the provisions relating to the service provider, the services and the recipient of services'; in this regard, it should be added that the requirements and provisions that the decree deals with are, precisely, those textually excluded from the scope of Art. 1(1)(e) of Directive 2015/1535, since one is precisely in the presence of 'rules that do not specifically concern the services defined therein'.

Given the above, as a matter of prudence, it was nevertheless deemed necessary to inform the Commission of the draft legislation in question, declaring the concept of a technical regulation very broadly, also to initiate a discussion with the competent Commission Offices, given the importance of the matter also from the point of view of protecting competition.

5. In any event, even if one were to consider the legislation on information society services applicable to the present case, the notified draft complies with Article 3(1) and (2) of EU Directive 2000/31/EC of 8 June 2000, according to which:

(i) EU Member States must ensure that 'information society services' provided by a service provider established on their territory comply with national provisions in force in those Member States in the regulated field;

(ii) Notwithstanding the above, the same Member States may not restrict the movement of information society services for reasons falling within the regulated field.

It follows from these provisions that information society services must be provided by the regulatory framework in force in the Member State where the services are provided, regardless of the Member State of origin of the service provider.

Based on those provisions, if an economic operator from an EU Member State is 'established' in Italian territory - a circumstance which, under Article 49(1) TFEU, is also the case where that provider has set up companies or merely established branches or subsidiaries in that territory - the same operator is required to comply with the regulatory provisions introduced by the Italian legislature in a given area.

In other words, the provision of information society services in a specific regulated field cannot justify the introduction of derogations or, in any case, the alteration of the existing regulatory framework in that field.

The regulatory framework described above is also in line with the jurisprudence of the European Court of Justice (CJEU, 20 December 2017, Grand Chamber, Case C-434/15, Asociación Profesional Élite Taxi/Uber Systems Spain SL), where it stated that:

(i) 'an intermediary service enabling the transmission, using a smartphone application, of information relating to the reservation of a transport service between the passenger and the non-professional driver who, using his vehicle, will carry out the transport operation satisfies, in principle, the criteria for being classified as an 'information society service' within the meaning of Article 1(2) of Directive 98/34';

(ii) however, if the aforesaid intermediation service, also by digital means, is an integral part of the activities of the

carrier, the same is configured as a ‘service in the field of transport’, within the meaning of Article 2(2)(d) of Directive No. 2006/123/EC and, therefore, is not subject to the application of the Information Society Services Directives.

6. The field of non-scheduled public transport services, encompassing both taxi and NCC carriers, undoubtedly constitutes a regulated field, within which the various carriers are permitted to operate by specific requirements and technical and operational prescriptions governing the provision of services.

The provisions of the draft Prime Ministerial Decree notified to the Commission under Directive No. 1535/2015 are intended to regulate the activities of intermediation platforms between end users and providers of non-scheduled public transport services to ensure compliance with the regulations introduced by the Italian legislator on the provision of the taxi above and private hire vehicle services.

The provisions of the draft Ministerial Decree above do not introduce traffic restrictions for information society services, but rather provide a link between the modalities for providing these services and the regulatory framework applicable to the underlying market sectors, specifically taxi and NCC transport services.

It follows that the provision of Article 3(2) of the aforementioned Directive No. 2000/31/EC, according to which ‘Member States may not, for reasons falling within the regulated field, restrict the free movement of information society services from another Member State’, does not apply or take effect.

This provision, on closer inspection, refers to the constraints specifically and exclusively about information society services, without prejudice to the possibility for individual state legislatures to adapt how such services are exercised to ensure compliance with the rules in force in the underlying ‘regulated areas’, within the meaning of Article 3(1) of Directive 2000/31/EC.

It should be noted that ‘the activity of private hire drivers is not a liberalised activity, but is subject to authorisation, which is granted based on certain requirements which are not ‘subjective’ (e.g. criminal records, financial capacity, professional skills, and for which the principle of home country control would undoubtedly apply) but rather ‘objective’ in that they are linked to certain organisational standards (‘operational headquarters’ and ‘garage’, both to be located in the territory of the municipality issuing the authorisation as ‘warning signs’ of this territorial size) and of a functional nature (relating to the need to provide the rental service mainly within the relevant provincial territory)’ (Council of State, Sec. V, 11 July 2022, no. 5765).

As can be deduced from the text of the Prime Minister's Decree, the obligations placed on information society service providers are aimed at transposing the state provisions regulating the provision of taxi and NCC services and ensuring compliance with the provisions contained in Law No. 21 of 15 January 1992, which includes the regulatory framework of reference about the performance of the aforementioned transport services.

This is, we reiterate, legislation that in no way collides with European regulations (such as the Bolkestein Directive), which, moreover, is similar to those of the leading European countries.

7. In any case, the conditions for introducing a possible derogation from Article 3(2) of the Directive above can be considered to be met.

Based on Article 3(3)(a)(i) of that Directive, they are without prejudice to the requirements of public security, providing that ‘Member States may take measures which derogate from paragraph 2, in respect of a given information society service, if the following conditions are fulfilled: (a) the measures are: (i) necessary for one of the following reasons [...] - public security, including the safeguarding of national security, and defence’.

The provisions contained in the notified draft are justified by the need to safeguard public safety, as they aim to introduce a registration mechanism for intermediary platforms that provide non-scheduled public transport services, with the specific purpose of ensuring that checks are carried out on how these operators deliver the respective transport

services.

These controls are aimed at ensuring that non-scheduled public transport services are provided by entities in possession of the necessary professional requirements and compliance with the technical-operating requirements laid down by the state legislature concerning such operators, preventing such operators from circumventing the aforementioned regulatory requirements merely because the service contract with the end user is concluded through the use of a digital platform.

The provisions contained in the draft Ministerial Decree therefore have a fundamental function of guaranteeing the rules set out to protect road traffic safety concerning all cases in which transport services are purchased or booked by telematic means and, therefore, are fully compliant with the requirements of the protection of 'public safety' within the meaning of Article 3, paragraph 3, of Directive no. 2000/31/EC.

8. The necessity to implement rigorous mechanisms to ensure adherence to the aforementioned regulatory provisions is especially pertinent in the domain of non-scheduled public transport services, as substantiated by the substantial number of irregularities that are frequently identified in this sector by the relevant regulatory authorities. By way of example, it should be noted that, within the framework of the inspection activities carried out in 2017 by the Municipality of Rome, it was found that, out of a total of 1,294 checks carried out on taxis and NCCs, 228 violations were detected, i.e. a number corresponding to approximately 17.6 per cent of the vehicles checked.

We appreciate your cooperation and remain at your disposal for any further assistance you may require.

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