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Amsterdam, March 18, 2025

To the kind attention of

**European Commission**

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

GROW.E.3

N105 5/25

B-1049 Brussels

Sent via email

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**SUBJECT: Notification 2025/0085/IT (Italy)**

Dear Officers of the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs,

Uber B.V. ("**Uber**"), as the leading company in the online intermediation of mobility services, welcomes the opportunity to comment on the notified draft regulation of the Italian President of the Council of Ministers entitled "*Rules governing the activity of technological platforms for intermediation between supply and demand for non-scheduled public car services within the meaning of Article 10a(8) of Decree Law No 135 of 14 December 2018, converted, with amendments, into Law No 12 of 11 February 2019*" ("**Draft Platforms Decree**").

As detailed below, it is Uber's strong opinion that the Draft Platforms Decree threatens the freedom of online platforms to provide services in the internal market from their country of origin and negatively impacts the mobility and rights of millions of European businesses and citizens, setting a worrying precedent for the European Union's internal market.

Accordingly, we encourage the European Commission to issue a detailed opinion under Directive (EU) 2015/1535 to warn Italy not to enact the Draft Platforms Decree.

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**1. INTRODUCTION TO THE DRAFT PLATFORMS DECREE**

By means of Italian Law No 21 of 1992 (the "**Taxi and PHV Law**"), as amended in 2019 by Law No 12 of 2019, the President of the Council has been granted by the Italian Parliament with the power to adopt rules on online platforms that intermediate Private Hiring Vehicles ("**PHV**") and/or taxi services in Italy (each of them, a "**Platform**"). Accordingly, the President of the Council has worked on the Draft Platforms Decree notified to the European Commission with Notification 2025/0085/IT.

Under the Draft Platforms Decree, Platforms providing an intermediary activity in PHV and taxi sectors must register before the Ministry of Transportation. In addition, at the time of registration Platforms are required to commit to the obligations arising from the Platforms Decree (including monitoring obligations on PHVs and taxis) and provide the Ministry of Transportation, *inter alia*, with the list of PHVs and taxis that are registered in the relevant Platform. Failure to comply with the Draft Platforms Decree obligations implies the cancellation from the Ministry of Transportation's Platforms register.

More specifically, the Draft Platforms Decree includes the following obligations:

- Platforms must register before the Ministry of Transportation.
- Platforms must verify the existence of the relevant PHV/taxi licenses. Users must be provided with the identification data of the relevant PHV or taxi (including licence number, name of the municipality that issued the licence, car plate). This information must remain available to users for 72 hours after the trip.
- Platforms must ensure that trips are assigned solely to taxi drivers that are on duty, in accordance with official scheduling.
- PHV must accept trip requests in compliance with the obligations arising from the current PHV waybill legal framework, which requires – except in some very specific circumstances – to return to the garage after each trip or alternatively to ensure a minimum waiting time between trips of 20 minutes.<sup>1</sup> Although this obligation is formally addressed to PHVs rather than Platforms, it is *de facto* reflected as a Platform obligation by virtue of the provision under Article 7, paragraph 4 of the Draft Platforms Decree.
- The price of the trip must be displayed to the user only after the user has opted for the taxi or PHV service. The price of the trip can be displayed to the taxi driver only once the taxi is at the pick-up location (not earlier).
- If the Platform provides intermediation services for both PHV and taxi drivers, then the Platform can display to the user the price or the estimated price of the PHV or taxi service and the estimated time of arrival of the PHV or taxi driver only after the user has been assigned to the relevant carrier (i.e., users cannot freely see if there are available PHV or taxi drivers nearby).
- Platform must provide a communication means between the passenger and the PHV or taxi driver.
- Platforms cannot apply prices that are lower or higher than the taxi public tariffs that are in force in the relevant territorial area (i.e., no discounts are permitted).
- Trips data must be kept by the Platform for 1 year. The Ministry of Transportation and the Ministry of Enterprises and Made in Italy can access to trips data under certain conditions.
- Electronic payment must always be allowed.

Considering the above, we strongly believe that the notified Draft Platforms Decree violates EU law, as further detailed below.

## **2. THE DRAFT PLATFORMS DECREE VIOLATES BOTH THE COUNTRY-OF-ORIGIN PRINCIPLE PROVIDED UNDER DIRECTIVE 2000/31/EC (“E-COMMERCE DIRECTIVE”) FOR INFORMATION SOCIETY SERVICES, SUCH AS UBER, AND THE FREEDOM TO PROVIDE SERVICES WITHIN THE EU PROVIDED UNDER ARTICLE 56 OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION.**

The Draft Platforms Decree clearly violates our rights under Article 56 of the TFUE and, more specifically, the country-of-origin principle of the E-Commerce Directive, which provides that information society services are subject to the laws of the Member State in which they are incorporated – in our case the Netherlands – allowing other Member States to exceptionally intervene only upon special circumstances and in any case solely on a case-by-case basis against a given information society service. There are no significant legitimate interests or necessity to impose registration obligations or to regulate the details of Platforms' activities.. Indeed, as the Court of Justice of the European Union (“CJEU”) has recently confirmed in several judgments, the country-of-origin

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<sup>1</sup> For the sake of completeness, the waybill legal framework (regulated by means of Decree No 226 of 2024 jointly issued by the Ministry of Transport and the Ministry for Home Affairs) is currently being scrutinized by the Administrative Court of Rome, which has suspended some of its obligations (including the 20 minutes minimum waiting time) in January 2025. The hearing on the merits is scheduled in June 2025. In addition, the Italian Constitutional Court is also expected to issue a decision on the lawfulness of the waybill legal framework in April/May 2025.

principle prohibits Member States from adopting laws or other measures of a general and abstract nature that apply to a category of information society service providers based in other Member States. This results from the CJEU interpreting the exception from the principle in Article 3 (4) e-Commerce Directive to mean that Member States may only take national "*measures*" on an individual and case-by-case basis, and not to take rules of a general and abstract nature.<sup>2</sup> Notwithstanding the foregoing, by means of the Draft Platforms Decree, Italy would adopt provisions of a general and abstract nature relating to a specific category of information society services, namely the category of online intermediation mobility services, affecting providers established in other Member States like Uber.

### **3. VIOLATION OF THE PRINCIPLE OF ABSENCE OF A MONITORING OBLIGATION FOR INFORMATION SOCIETY SERVICES AS PROVIDED BY ARTICLE 8 OF REGULATION (EU) 2022/2065 ("DSA")**

Article 8 of the DSA, in consistency with the previous framework of the E-Commerce Directive, clearly provides "*No general obligation to monitor the information which providers of intermediary services transmit or store, nor actively to seek facts or circumstances indicating illegal activity shall be imposed on those providers*".

Nevertheless, the Draft Platforms Decree bounds platforms to monitor the activities of taxi and/or PHVs, such as in relation to the mentioned return to garage and the 20 minutes minimum waiting time obligations (see Article 5, Draft Platforms Decree). This would suffice to challenge the Draft Platforms Decree as in breach of Article 8, DSA.

Moreover, the European Commission has clarified in 2022 that "*Drivers should not be prevented to carry on with their activities by an obligation to return to their premises*" (Commission Notice 2022/C 62/01)<sup>3</sup> and the CJEU has stated that restrictions on the exercise of freedom of establishment can only be adopted in the field of transport if they are justified by an overriding reason relating to the public interest and if they are suitable for ensuring, in a consistent and systematic manner, the achievement of the objective pursued, without going beyond what is necessary to secure it (Case C-50/21, *Prestige and Limousine SL*). In this respect, there is no reasoning for limiting PHVs and Platforms' economic freedoms in Italy, if not for a mere protective and irrational measure aimed at illicitly protecting taxi operators while breaching the above-mentioned EU law principles.

### **4. VIOLATION OF CONSUMERS' RIGHTS PROVIDED UNDER THE CONSUMERS' RIGHTS DIRECTIVE 2011/83/EU AND FAIR COMPETITION PRINCIPLES DERIVING FROM ARTICLES 101-109 OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION**

Prohibiting Platforms like Uber from displaying essential pre-contractual information — such as the availability of nearby PHVs or taxis, estimated arrival times, and pricing — before the user selects a service directly contravenes core EU principles of transparency, fairness, and consumer protection. This restriction forces Uber into non-compliance with EU law, including the Consumer Rights Directive, which guarantees consumers the right to receive such information before being bound by a distance contract (see Article 6). Moreover, by obstructing access to clear and accurate market information, the Draft Platforms Decree undermines the principle of free competition enshrined in Articles 101-109 TFEU, which is designed to foster a dynamic and competitive market based on transparency and informed consumer choice. Hence, the estimated time of arrival and the price are the key factors

<sup>2</sup> Case C-376/22, *Google Ireland Limited and Others v Kommunikationsbehörde Austria (Komm Austria)*, ECLI:EU:C:2023:835; Cases C-662/22 and C-667/22, *Airbnb and Amazon Services Europe SARL v. AGCOM*, ECLI:EU:C:2024:432.

<sup>3</sup> European Commission Notice on well-functioning and sustainable local passenger transport-on-demand (taxis and PHV) 2022/C 62/01. The Commission Notice is consistent also with the considerations expressed in the past by the European Commission in a case started against of Italy on a similar initiative (see EU Pilot case ref. no. 623/09/TREN).

influencing the choice between two services that, as recently affirmed by the Italian Constitutional Court<sup>4</sup>, consumers regard as interchangeable and should therefore be subject to competition.

#### **5. VIOLATION OF EU DATA PROTECTION PRINCIPLES DERIVING FROM THE EU CHARTER AND THE GENERAL DATA PROTECTION REGULATION (EU) 679/2016 (“GDPR”)**

The irrational deployment of significant monitoring obligations and data retention periods appears to conflict with privacy principles of proportionality of processing, data minimization, limitation in storage and privacy-by-design deriving from the EU law. No level of protection would thus be granted to EU citizens, with detriment of the rights provided by the EU Charter under Articles 7 (Respect for private and family life) and 8 (Protection of personal data), and the GDPR.

#### **6. OTHER CRITICAL ISSUES UNDER ITALIAN LAW, INCLUDING BREACH OF CONSTITUTIONAL PRINCIPLES THAT REINFORCE EU LAW PRINCIPLES**

While we recognize that the European Commission’s primary competence lies in assessing compliance with EU law, we believe it is important to highlight that the Draft Platforms Decree also raises serious concerns under Italian constitutional law, particularly in areas where national principles align with and reinforce EU law principles, including those upheld by the CJEU.

In particular, the provision of a return-to-garage obligation and a minimum waiting time are in direct contradiction with the Italian Constitutional Court’s case law, which has established the need of proportionality and reasonableness. More into the details, Judgment No 56 of 2020 of the Italian Constitution Court has declared unlawful any return-to-garage obligations, holding that it was disproportionate, unreasonable, and lacking a legitimate public interest justification — elements that are equally required under EU law for any restriction on fundamental freedoms (see CJEU, Case C-50/21, *Prestige and Limousine SL*). Similarly, the Italian Constitutional Court in Judgment No 36 of 2024 has emphasized consumer rights and freedom of choice in mobility services, in line with the same principles enshrined in the EU Consumers’ Rights Directive.

Finally, since the Draft Platforms Decree practically introduces obligations towards PHV and taxi activities, there are serious concerns regarding the regulatory competence of the Italian Government in this matter, as the Constitutional Court has consistently affirmed that the regulation of PHV and taxi services falls primarily within regional competence under Article 117 of the Italian Constitution (see Judgement 56 of 2020). This issue is not only a matter of domestic law but also a matter of legal certainty and rule of law that must be guaranteed within the whole European Union and thus to all EU-based businesses, wherever established in its territory.

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In light of the above, we respectfully urge the European Commission to take action to uphold the fundamental rights and freedoms enshrined in EU law and to safeguard the integrity of the single market as a space of fair competition and open opportunity for both businesses and consumers. It is crucial that the European Commission closely scrutinizes the Draft Platforms Decree and takes appropriate measures to prevent any unjustified restriction on the free provision of services within the EU.

We look forward to your prompt attention to this critical issue and are at your disposal for any further information or discussion that may be required.

Sincerely,

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<sup>4</sup> Italian Constitutional Court, decision n.137/2024

**Uber B.V.**

A handwritten signature in black ink, appearing to read "Giorgiana Alexandru", written over a horizontal line.

Giorgiana Alexandru, Legal representative, Uber B.V.