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Subject: Notification 2023/683/FR

Decree authorising access to publicly accessible data from multimodal travel information services for authorised agents of the Transport Regulatory Authority for the performance of its tasks

Issue of the detailed opinion provided for in accordance with Article 6(2) of Directive (EU) 2015/1535 of 9 September 2015

Excellency,

As part of the notification procedure provided for in Directive (EU) 2015/1535 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society Services ⁽¹⁾ (hereinafter 'Directive 2015/1535') the French authorities notified the Commission on 6 December 2023 of the draft '*Decree authorising access to publicly accessible data from multimodal travel information services for authorised agents of the Transport Regulatory Authority for the performance of its tasks*' (hereinafter referred to as 'the notified draft').

According to the notification message, the notified draft aims to supplement the Transport Code and Law No 2019-1428 of 24 December 2019 on the orientation of mobility, which entrusts new tasks to the Transport Regulatory Authority (ART) in order to comply with the provisions of Articles 3 to 9 of Commission Delegated Regulation (EU) 2017/1926 of 31 May 2017 ⁽²⁾ (hereinafter 'Delegated Regulation 2017/1926') ⁽³⁾. The notification message also specifies that Article L. 1264-2 of the Transport Code, as

¹ (1) Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, OJ L 241, 17.9.2015, p. 1.

² (2) Commission Delegated Regulation (EU) 2017/1926 of 31 May 2017 supplementing Directive 2010/40/EU of the European Parliament and of the Council with regard to the provision of EU-wide multimodal travel information services, C/2017/3574, OJ L 272, 21.10.2017, p. 1–13.

amended by Article 37 of Law No 2023-171 of 9 March 2023, allows ART to automatically collect publicly accessible data or information on digital mobility services, in particular in the form of computer queries.

The notified draft shall specify the scope of the data and information concerned by the automated collection carried out by the ART in the context of its tasks, as well as the resulting obligations for digital mobility service providers. The notified draft and the underlying law would impose an obligation on these suppliers to comply with requests for information submitted by the ART.

In the context of the notified draft, the Commission services sent a request for additional information to the French authorities on 16 January 2024 in order to obtain clarifications on the measures in the notified draft. The replies provided by the French authorities on 25 January 2024 are taken into account in the following assessment.

The examination of the relevant notified provisions led the Commission to issue the following detailed opinion.

1. Introduction

The Commission takes note of the notification message accompanying the notified draft, according to which the notified Decree is intended to supplement Article 37 of Law No 2023-171 of 9 March 2023, which amends the Transport Code, and which is intended to implement the obligations incumbent on Member States under Articles 3 to 9 of Commission Delegated Regulation (EU) 2017/1926 with regard to the provision of EU-wide multimodal travel information services.

The Commission fully shares the objective of the notified draft to give effect to Commission Delegated Regulation 2017/1926, in particular by specifying the possibility for ART to collect data or information automatically.

In this respect, the Commission notes that Commission Delegated Regulation 2017/1926 sets out the necessary specifications to ensure that EU-wide multimodal travel information services are accurate and available across borders for users of intelligent transport services. In particular, Article 3 requires Member States to establish a single national access point through which the actors concerned fulfil their obligations under Articles 4 to 8 of the said Regulation. However, the Commission notes that Delegated Regulation 2017/1926 does not regulate the possibility for a national transport authority to collect automated data or information and that the French authorities have not explained how the notified measures derive from the Regulation and the need to enforce them. The notified draft therefore appears to go beyond what is provided for by the special regime established by the Delegated Regulation.

³ (O)Commission Delegated Regulation (EU) 2024/490 of 29 November 2023 amending Delegated Regulation (EU) 2017/1926 supplementing Directive 2010/40/EU of the European Parliament and of the Council with regard to the provision of EU-wide multimodal travel information services shall enter into force on 4 March 2024.

In addition, this objective should nevertheless be achieved in a manner compatible with Union law, including Directive 2000/31/EC ⁽⁴⁾ (hereinafter ‘Directive on electronic commerce’) as described below.

2. Detailed opinion

2.1. Evaluation in the light of the e-Commerce Directive

a) Applicability of the Directive on electronic commerce

The notified draft falls within the scope of the Directive on electronic commerce.

First, concerning the personal scope of the notified provisions. The notified draft imposes obligations on ‘digital service operators’. According to the information provided by the French authorities in their replies to the questions asked by the Commission services, these service operators may include information society service providers within the meaning of the Directive on electronic commerce, insofar as they are engaged in the sale of mobility and parking services and the provision of online information services.

Therefore, the notified draft applies to information society services within the meaning of Article 1(1)(b) of Directive (EU) 2015/1535 and thus also within the meaning of Articles 1 and 2 of the Directive on electronic commerce, insofar as they fulfil the conditions set out therein.⁽⁵⁾ This assessment was also confirmed by the French authorities in their replies to the questions put by the Commission services.

Second, concerning the scope of the notified draft: The rules set out in the notified draft concern in particular the obligation for information society service providers to provide access to data following requests from ART. As the French authorities have explained in more detail in their reply to the request for additional information, in the notified draft and in the underlying law amending the Transport Code, these service providers would be required, inter alia, to transmit the requested information and data to ART, including via application programming interfaces, within the deadlines set by ART. Service providers are not able to refuse or limit the scope of the request made by ART.

Under the amended Transport Code, ART would be responsible for controlling and monitoring compliance with the obligations of the notified draft, and non-compliance would result in sanctions.

These obligations therefore fall within the coordinated field of the Directive on electronic commerce, as set out in Article 2(h) and (i) thereof and have therefore been analysed in the light of this Directive.

b) Article 3(1), (2) and (4) of the Directive on electronic commerce

The Commission notes that the notified draft and the underlying law apply to information society services offering their services on French territory, irrespective of their Member

⁴ ()Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (‘Directive on electronic commerce’), OJ L 178, 17.7.2000 p. 1–16

⁵() In particular, ‘any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services’.

State of establishment ⁽⁶⁾. Consequently, the considerations set out in the Commission’s detailed opinion on notifications 2023/461/FR and 2023/632/FR regarding the lack of conformity between the notified draft and the Directive on electronic commerce also apply to certain provisions of this notification.

In particular, the Commission recalls that Article 3(1) and (2) of the Directive on electronic commerce establishes the ‘principle of control by the country of origin’ according to which information society services must be regulated at the source of the activity. They are, therefore, as a general rule, subject to the law of the Member State in which the providers of these services are established.

Article 3(4) of the Directive on electronic commerce defines the circumstances and procedures under which a Member State of destination may derogate from this principle in order to impose certain measures. The Commission draws the attention of the French authorities to the recent case law of the CJEU, which recalls the limits of the scope of Article 3(4) of the Directive as regards, in particular, measures of general and abstract application such as the notified draft. ⁽⁷⁾

The Commission notes that, on the basis of the information available, the scope of the notified draft would go beyond what is required under Commission Delegated Regulation (EU) 2017/1926 of 31 May 2017.

The Commission invites the French authorities to take into account the above considerations in order to ensure the compatibility of the notified draft with Article 3 of the Directive on electronic commerce.

* * *

For the reasons set out above, the Commission hereby issues a detailed opinion pursuant to Article 6(2) of Directive (EU) 2015/1535.

The Commission reminds the French authorities that, in accordance with this Article, the issuing of a detailed opinion requires the Member State which is the author of the draft technical Regulation concerned to postpone its adoption for 4 months from the date of its notification. This deadline therefore expires on 6 April 2024.

⁶ () In their reply to the request for additional information, the French authorities specified that, where an actor not established on French territory offers their service on French territory or for French citizens, it is subject to compliance with the provisions of Article L1264-2 of the Transport Code and its implementing decree. In addition, the French authorities indicate that the number of service providers concerned that are not established in France is likely to increase rapidly.

⁷ ()Case C-376/22, ECLI:EU:C:2023:835, of 9 November 2023. In particular, paragraphs 59 and 60:
“59 On the contrary, the consequence of such an interpretation is that Member States are not, as a matter of principle, authorised to adopt such measures, so that verification that those measures are necessary to satisfy overriding reasons in the general interest is not even required.

60 In the light of all the foregoing considerations, the answer to the first question is that Article 3(4) of Directive 2000/31 must be interpreted as meaning that general and abstract measures aimed at a category of given information society services described in general terms and applying without distinction to any provider of that category of services do not fall within the concept of measures taken against a ‘given information society service’ within the meaning of that provision.

In addition, the Commission draws the attention of the French authorities to the fact that, under this provision, the Member State to which a detailed opinion is addressed is required to inform it of the action it intends to take on this opinion.

If the French authorities fail to comply with the obligations laid down in Directive (EU) 2015/1535 or if the text of the draft technical Regulation is adopted without taking into account objections raised or contrary to EU law, the Commission reserves the right to initiate proceedings against France in accordance with Article 258 TFEU.

The Commission services are open to close cooperation and to discuss with the French authorities in order to help them fulfil their obligation to ensure the compatibility of the notified draft with EU law.

Yours sincerely,

For the Commission,

Thierry Breton
Member of the Commission

CERTIFIED COMPLIANT AMPLIFICATION
For the Secretary-General

Martine DEPREZ
Director