



EUROPEAN COMMISSION

Brussels, 17.2.2025
C(2025) 1183 final

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Subject: Notification 2024/623/FR

Draft Decree on digital travel assistance services (pursuant to Article L.1214-8-3 of the Transport Code)

Delivery of a detailed opinion pursuant to 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 ⁽¹⁾, the French authorities notified to the Commission on 18 November 2024 the draft “*Draft Decree on digital travel assistance services (pursuant to Article L.1214-8-3 of the Transport Code)*” (hereinafter referred to as “the notified draft”).

According to the notification message, the notified draft aims at implementing Article L.1214-8-3 of the Transport Code and Article 109 of the Climate and Resilience Act (CRA) which objective is to facilitate the transition to decarbonised mobility by regulating digital travel assistance services. More specifically, the notified draft establishes the arrangements on access to relevant data from digital travel assistance services by the Mobility Organising Authorities, notably the scope of the data concerned (mainly users' location data). In this context, the notified draft imposes obligations on the providers of digital assistance services concerning, among others, the methods of transmission to the competent authorities, the limitation of the data transmitted, the prior anonymisation of the data, providing information to users, and data security, in particular the methods of anonymisation of the concerned data.

The French authorities have explained that compliance of the providers of digital mobility services with the provisions of the notified draft will be monitored by the

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 rules on Information Society services, OJ L 241 dated 17.9.2015, p. 1.
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Transport Regulatory Authority in accordance with Law No 2019-1428 of 24 December 2019 on the orientation of mobilities.

In relation to the notified draft, the Commission services addressed to the French authorities on 25 November 2024 a request for supplementary information to obtain clarifications on the provisions of the notified draft. The answers provided by the French authorities on 12 December 2024 are taken into account in the following assessment.

The examination of the notified draft has led the Commission to issue the following detailed opinion.

1. Detailed opinion

1.1. Assessment in light of Directive 2000/31/EC

a) Applicability of Directive 2000/31/EC

The notified draft would also fall within the scope of application of Directive 2000/31/EC.

First, concerning the personal scope of the notified draft: The notified draft imposes obligations on providers of “digital travel assistance services”. According to the information provided by the French authorities in their reply to the request for supplementary information sent by the Commission services, digital travel assistance services are digital information services whose objective is to inform users about transport (timetables, fares, incidents, etc.) and may be considered as information society services within the meaning of Directive 2000/31/EC.

Therefore, the notified draft applies to providers of 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 Directive 2000/31/EC, insofar as they fulfil the conditions set out therein ⁽²⁾.

Secondly, 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, in as much as they would offer digital travel assistance services, to provide access to data following requests by the French competent authorities (i.e. Mobility Organising Authorities). In particular, the providers of digital travel assistance services would be required, *inter alia*, to transmit the requested information and data to the Mobility Organising Authorities, while guaranteeing anonymisation of the data and complying with other requirements on the format, use and exploitability, as well as inform the users about the implementation of a processing operation aimed at anonymising their travel data ⁽³⁾.

²⁾ In particular, “any service normally provided for remuneration, remotely by electronic means and at the individual request of a recipient of services”.

³⁾ According to the notified draft, this is to be carried out in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1–88.

These obligations therefore fall within the coordinated field of Directive 2000/31/EC, as set out in Article 2(h) and (i) thereof and have therefore been analysed in the light of this Directive.

Further, in accordance with the information received from the French authorities in their reply to the request for supplementary information submitted by the Commission services, the Transport Regulatory Authority is responsible for controlling and monitoring compliance with the above obligations of the notified draft.

b) Article 3(1), (2) and (4) of Directive 2000/31/EC

The Commission notes that the provisions of the notified draft apply to providers of information society services offering their services in France (i.e., digital travel assistance services which inform users about transport: timetables, dates, incidents, etc), irrespective of the Member State of establishment of those providers. This has been confirmed by the French authorities in their replies to the request for supplementary information.

In this respect, the Commission recalls that Article 3(1) and (2) of the Directive 2000/31/EC establishes the “home state control principle” according to which information society services may only be regulated at the source of their activity. Providers of such services are therefore, as a general rule, subject only to the law of the Member State in which the providers of these services are established.

Article 3(4) of the Directive 2000/31/EC lays down the circumstances and procedures under which a Member State of destination, i.e., the Member State in which information society services are provided by a provider established in another Member State, may derogate from the home state control principle where necessary, for the reasons exhaustively listed in Article 3(4)(a) of the Directive and in compliance with the substantive and procedural requirements set out in its Article 3(4)(a) and (b). The Commission draws the attention of the French authorities to the case law of the Court of Justice which recalls the limits of relying on Article 3(4) of Directive 2000/31/EC for this purpose. According to that case law, measures of general and abstract application that are not limited to a given information society service cannot benefit from the exemption provided for by Article 3(4) of Directive 2000/31/EC ⁽⁴⁾.

In the Commission’s view the notified draft in form notified constitutes such a measure of general and abstract nature that will apply indistinctively to domestic and foreign providers of information society services in France. In any event, even if the draft were to be adapted to take the form of a measure in respect of a given information society service, based on the information available to it, it is not possible for the Commission to verify whether and how the French authorities intend to ensure that both the substantive

⁴) Judgment of 9 November 2023 in Case C-376/22, ECLI:EU:C:2023:835, 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. Having regard to all the foregoing considerations, the answer to the first question must be that Article 3(4) of Directive 2000/31 must be interpreted as meaning that general and abstract measures aimed at a given category of information society services described in general terms and applying indiscriminately 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.”

See also Judgment of 30 May 2024 in joint cases *Airbnb Ireland UC and Amazon Services Europe Sàrl v Autorità per le Garanzie nelle Comunicazioni*, C-662/22 and C-667/22, EU:C:2024:432, paragraph 70.

and procedural requirements set out in Article 3(4) of Directive 2000/31/EC are or could be fulfilled.

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 entails that the Member State which is the author of the draft technical regulation concerned is required to postpone its adoption for 4 months from the date of its notification. This deadline therefore ends on 19 March 2025.

Furthermore, 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 the Commission of the action it intends to take on such an 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 under consideration is adopted without taking account of the objections raised or is otherwise contrary to Union law, the Commission is ready to initiate proceedings against France in accordance with Article 258 of the TFEU.

Following the dialogue with the Commission and alignment of the notified draft with relevant Union law, the French authorities are invited to communicate the definitive text to the Commission once it has been adopted, in accordance with Article 5(3) of Directive (EU) 2015/1535.

I remain, your Excellency, yours faithfully,

For the Commission,

Henna Virkkunen
Executive Vice-President