Message 201

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Forwarding of the response of the Member State notifying a draft (Italy) to request for supplementary information (INFOSUP) of European Commission.

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1. MSG 201 IND 2025 0085 IT EN 13-05-2025 26-03-2025 IT ANSWER 13-05-2025

2. Italy

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

5.

6. 1) The Commission invites the Italian authorities to clarify whether the provisions of the notified project are intended to apply to providers of information society services within the meaning of Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce').
In particular, it should be noted that in Article 2(a), in order to define ‘information society services’, the aforementioned Directive refers to Article 1(2) of Directive 98/34/EC, now replaced by Directive (EU) 2015/1535 - which lays down an information procedure in the policy area of technical regulations and of rules on Information Society services - which defines these services as: any information society service, that is to say, any service normally provided for remuneration, remote, by electronic means and at the individual request of a recipient of services.
(a) If so, the Commission asks whether the notified project would apply to service providers established in the territory of Member States other than Italy, and from the wording of Article 8(a) the draft technical regulation would also appear to apply to them.
b) In this case, the Commission asks how the Italian authorities intend to comply with the requirements of Article 3(4) of Directive 2000/31/EC, particularly in light of case C-376/22 of the Court of Justice.
Article 3 (4) of the Directive on electronic commerce provides that Member States may adopt measures derogating from paragraph 2, that is to say, restricting the free movement of information society services under the conditions laid down therein, which lay down ‘exceptional’ conditions, in respect of which the Commission itself shall also act within the meaning of paragraph 6 of that article. In addition, the judgment of the Court of Justice in Case C-376/22, which deals primarily with the scope of the definition of ‘a given information society service’ in Article 3 (4), lays down the following principles:
- interpret the concept of 'measures adopted in respect of a given information society service' within the meaning of

Article 3(4) of Directive 2000/31 as allowing Member States to adopt general and abstract measures applicable without distinction to all providers of a category of information society services, thereby de facto undermining the principle of home country control underlying that directive and the objective of the proper functioning of the internal market which it pursues;
- Directive 2000/31 is therefore based on the application of the principles of control in the home Member State and of mutual recognition, so that, within the regulated framework defined in Article 2(h) of that directive, information society services are governed only in the Member State in the territory of which the providers of such services are established;
- To authorise the second Member State to adopt, pursuant to Article 3(4) of Directive 2000/31, measures of a general and abstract nature applicable without distinction to any provider of a category of such services, whether or not established in the latter Member State, would encroach on the regulatory competence of the first Member State and would have the effect of subjecting those providers to the legislation of both the Member State of origin and that of the Member State or Member States of destination;
- To allow the Member States to adopt, on the basis of Article 3(4) of Directive 2000/31, measures of a general and abstract nature relating to a category of certain information society services, described in general terms and applicable without distinction to all providers of that category of services, would ultimately lead to the application of different rules to the providers of those services and thus to the reintroduction of the legal obstacles to the free movement of services which that directive seeks to abolish.;
- In short, Article 3(4) of 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, must be interpreted as meaning that:
general and abstract measures concerning a category of given information society services, described in general terms, and applicable without distinction to any service provider in that category, do not fall within the concept of ‘measures adopted relating to a given information society service’, within the meaning of that provision.
The above seems to render incompatible the imposition, in a general and abstract manner, of any additional obligation which is not provided for by the legislation of establishment on providers of information society services established in other Member States.
In connection with the above, the Commission asks for clarification of which obligations would apply to these service providers.
a) In addition, the Commission asks for clarification of the system of checks on the implementation of these obligations, and whether penalties are provided for non-compliance.
b) still insists on the interaction of the aforementioned Article 4 of Directive 2000/31/EC with the project, in particular with Article 7, which provides for the obligation of registration for operators in a specific section of the Data Processing Centre of the Ministry of Infrastructure and Transport.
With reference to point 1), reference is made to the established case law of the CJEU, which finds its basis in a decision delivered by the Courts of Luxembourg (Case C.434-15, 20 December 2017) on a reference for a preliminary ruling made under Article 267 of the Treaty on the Functioning of the European Union (TFEU) by the Juzgado de lo Mercantil No. 3 de Barcelona (Commercial Court No. 3 of Barcelona, Spain) in which the referring court had asked to know whether the services provided by Uber should be considered as transport services, services proper to the information society or a combination of both.
Although the case before the Court concerned the intermediation service offered by UberPop, where the intermediation consisted in putting in contact a non-professional driver - who uses his own vehicle - and a person who intends to make a journey in an urban area, the Court was unequivocal about the legal nature of the service offered by the US company.
In other words, the question was whether the intermediation activity was attributable to a transport service or whether it was merely a technological service aimed at intermediating between users and drivers.
There, the Court clarified that the service offered by Uber does not fall under Article 56 TFEU, relating to the freedom to provide services in general, but rather under Article 58(1) TFEU, a specific provision under which 'the free movement of services, in the field of transport, is governed by the provisions of the Title relating to transport'.
Moreover, it is specified there that, for non-collective transport services in urban areas and related services, no common rules or other measures within the meaning of Article 91(1) TFEU have been approved, and, therefore, it is up to the Member States to regulate the conditions for the provision of services, including intermediation, in compliance with the general rules of the TFEU.
For the above reasons, the Court has ruled that: ‘Article 56 TFEU, read in conjunction with Article 58(1) TFEU, and Article

2(2)(d) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market and Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998, to which Article 2(a) of Directive 2000/31/EC of in conjunction with 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') refers, must be interpreted as meaning that an intermediation service, such as that at issue in the main proceedings, which concerns the connection, by means of a smartphone application, for remuneration, of non-professional drivers using their own vehicle with persons wishing to make a journey in the urban area, must be regarded as being inextricably linked to a transport service and, therefore, as falling within the classification of 'services in the transport sector', within the meaning of Article 58(1) TFEU. Such a service must therefore be excluded from the scope of Article 56 TFEU, Directive 2006/123 and Directive 2000/31.'
The Court of Justice reiterated its position in the CJEU judgment (10 April 2018, Case C-320/16) at the request of the Court of First Instance of Lille, France.
In that case, the referring court asked, in essence, whether Article 1 of Directive 98/34 and Article 2(2)(d) of Directive 2006/123 must be interpreted as meaning that a national rule, which makes it a criminal offence to organise a system for putting customers in touch with persons who provide, for consideration, road passenger transport services using vehicles with fewer than 10 seats without holding a licence for that purpose, must be classified as a rule relating to information society services, subject to the obligation of prior notification to the Commission laid down in the first subparagraph of Article 8(1) of Directive 98/34, or, on the contrary, does such a rule concern a service in the field of transport, excluded from the scope of Directive 98/34 and of Directive 2006/123.
The Court's decision reiterates the same statements of principle as the aforementioned judgement of 20 December 2017, stating that a non-collective transport service in an urban area, such as a taxi service, must be qualified as a 'service in the field of transport', within the meaning of Article 2, paragraph 2, letter d) of Directive 2006/123, read in the light of recital 21 thereof (see, to that effect, judgment of 10 October 2015, Trijber and Harmsen, C-340/14 and C-341/14, EU:C:2015:641, paragraph 49).
Such an intermediary service must therefore be regarded as forming an integral part of an overall service in which the main element is a transport service and, consequently, falling within the definition not of an 'information society service' within the meaning of Article 1(2) of Directive 98/34, to which Article 2(a) of Directive 2000/31 refers, but of a 'service in the field of transport' within the meaning of Article 2(2)(d) of Directive 2006/123.
The case-law of the Court further supports such a qualification according to which the concept of 'service in the field of transport' encompasses not only transport services considered as such, but also any service intrinsically linked to a physical act of transferring persons or goods from one place to another by a means of transport [see to that effect, judgment of 15 October 2015, Grupo Itevelesa and Others, C-168/14, EU:C:2015:685, paragraphs 45 and 46, as well as Opinion 2/15 (Free Trade Agreement with Singapore) of 16 May 2017, EU:C:2017:376, paragraph 61].
Moreover, the 2018 ruling also specifies that Article 1, point 5, of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998, laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998, read in conjunction with point 2 of that article, must be interpreted as meaning that a provision of national law which prohibits and penalises the organisation of a system that puts clients in contact with persons engaged in passenger transport in violation of the regulations applicable to such transport activities does not constitute a rule on services subject to the notification requirement referred to in Article 8 of that directive'.
An examination of the case law in this area therefore allows us to confirm the full compatibility with EU law of any national legislation that makes the activity of intermediary between the supply and demand of non-scheduled public transport services subject to licensing or authorisation, as is the case in other European situations.
The function of the electronic platform in relation to these services is not an end in itself, but rather a mere means to an end in relation to the overall service offered, which in the present case is the transport service.
It is by virtue of what the Luxembourg judges themselves have affirmed that we can affirm that the intermediation activity offered by technological platforms cannot sic et simpliciter be brought within the scope of the freedom to provide services in general but must necessarily be subject to the national rules that govern the regulation of the non-scheduled public transport sector.
2) Under the second point, the Commission asks whether and which provisions of the project would apply to online

intermediary service providers within the meaning of Regulation (EU) 2022/2065 (Digital Services Regulation). If the provisions apply, the Commission asks:
- the concrete obligations arising from the project for online platforms as defined in the regulation;
- how platforms should comply with their obligations under Articles 6 and 8 of the regulation, which provide, with exceptions, that the service provider is not liable for information stored at the request of a recipient of the service and that there are no obligations to monitor and establish facts;
- in general, the intended interaction between the notified project and Regulation (EU) 2022/2065, in view of its maximum harmonising effect (since it is directly applicable), and in particular with Articles 14 (Terms and conditions), 27 (Transparency of recommendation systems), 34 (Risk assessment) and 35 (Risk mitigation);
- Also in this case, the Commission asks for clarification of the system of checks on the implementation of these obligations, and whether there are sanctions for non-compliance, as well as the interaction with Chapter IV of Regulation (EU) 2022/2065.
3) Finally, the Commission requests information on the interaction of the project with Regulation (EU) 2019/11501 that promotes fairness and transparency for business users of online brokerage services.
With regard to points 2) and 3) - which must be examined in the light of what has been said in point 1) concerning the correct legal classification of brokering services - it should be noted that the outline of the Prime Minister's Decree on brokering platforms allows one to understand the principles on which it is inspired, which are set out in a specific article:
• the principle of neutrality: platforms cannot constitute a means of circumventing national regulations which - similarly to what happens in other European countries - distinguish between taxi and NCC services;
• the principle of typicality: the reservation or assignment takes into account the peculiarities of the two services, whereby the taxi is a service aimed at an undifferentiated and 'on the square' clientele, whereas the NCC is a service aimed at a differentiated and reservation-based clientele;
• the principle of territoriality: the territoriality constraint is a constraint that remains even after the recent Constitutional Court rulings;
• the principle of equal access to the platform, in the sense that access to the platform's services must be offered on equal and non-discriminatory terms with respect to both users and drivers and carriers.
It is, therefore, a regulation that is neutral with respect to the activity carried out by the platforms and limited to ensuring that the activity of non-scheduled public transport is carried out in accordance with Italian law governing the matter even when services are 'intermediated'.
In this sense, the electronic platform can be linked with the 'TaxiNCC Management' system that is being set up, within which companies carrying out non-scheduled public Taxi and NCC services by means of cars, scooters or boats will be registered, following a registration process and subsequent checks to verify the regularity of licences and authorisations and the associated vehicles over time, thanks to the involvement of the entities that have issued the licences and to cooperation with the national vehicle registry of the Motor Vehicle Authority.
The registration of platforms in a public register and the identification of homogeneous requirements and obligations for the managing entities have the sole objective of ensuring that the use of platforms is carried out in accordance with the regulatory constraints on the conditions for taxi and NCC services: the compulsory or non-compulsory nature of the service; the differentiated or undifferentiated nature of the users; the territorial scope of reference; the different pricing regime of the transport service; the different constraints on the hourly coverage of the service.
On this point, it is reiterated that the rule that the NCC service is bound to a reservation cannot be surreptitiously altered depending on the instrument through which the request for the service is conveyed. If this were the case, we would have to assume that the use of technological tools is not a neutral factor with respect to the regulation of public transport services, but can radically alter their nature, which - obviously - would be manifestly unreasonable, as well as contrary to current legislation.
The 'rationale' behind the regulation of the draft provision under consideration is to ensure respect for the differentiated nature of the two taxi and NCC services, which under current primary legislation are not fully fungible by virtue of the different authorisation and regulatory framework that distinguishes them.

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EUROPEAN COMMISSION
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Notification of Regulatory Barriers

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