Message 201

Communication from the Commission - TRIS/(2026) 0961

Directive (EU) 2015/1535

Notification: 2025/0550/IT

Forwarding of the response of the Member State notifying a draft (Italy) to of European Commission.

MSG: 20260961.EN

1. MSG 201 IND 2025 0550 IT EN 07-04-2026 30-03-2026 IT ANSWER 07-04-2026

2. Italy

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4. 2025/0550/IT - V10T - Radio interfaces

5.

6. Summary: Foreward. - 1. The compatibility of the measure proposed by the Italian authorities with the Reg. (UE) 2015/2120. - 2. The objection concerning the alleged breach of Article 34 TFEU. The justification for the measure. - 3. Next: the state of the digital radio market. - 4. Next: the need for regulatory action. - 5. Next: the proportionality of the measure proposed by the Italian authorities and the objective pursued.

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Foreward. As part of the notification procedure referred to in Directive (EU) 2015/1535, on 1 October 2025, the Italian authorities notified the Commission (notification No 2025/0550/IT) of the draft amendment to Article 98-vicies sexies of the Electronic Communications Code referred to in Legislative Decree No 259 of 2003 (hereinafter “the draft amendment”). The draft aims to amend the aforementioned Article 98-vicies-sexies by adding the following sentences to the current wording: “All equipment capable of connecting to the internet and/or fitted with hardware devices capable of reproducing audio content installed in new vehicles of categories M and N from 1 January 2026 and made available on the market, for sale or hire, from 1 January 2027, must also be capable of receiving audio broadcasts using analogue FM and digital DAB+ technology and of reproducing the relevant content. Manufacturers, assemblers, developers, importers and, in any case, the sales networks of the said vehicles and/or equipment shall ensure that these include a functionality enabling the user to freely and easily modify their configuration at any time, whilst also ensuring the continued correct reception of radio broadcasts even when firmware and software updates are carried out.
On 16 December 2025, the Commission sent Italy a detailed opinion pursuant to Article 6(2) of the Directive (EU) 2015/1535, highlighting the existence of critical issues, which can be summarised as follows:
i) Breach of Article 3 of Regulation (EU) 2015/2120, which establishes measures concerning access to an open internet. In the Commission’s view, that article “enshrines the right of end-users to use terminal equipment of their choice and explains that manufacturers or distributors may impose restrictions on the free choice of end-users only to the extent that such restrictions comply with Union law”. According to the Commission, the draft amendment would infringe this

right because “it deprives end-users of choices that do not include analogue and digital car radio receivers and do not have functionality allowing the configuration to be modified. Consumers can be expected to appreciate such choices as vehicles without analogue and digital radio receivers typically would be cheaper than vehicles in compliance with the requirements established by the Italian draft law. This would be an obligation under national legislation, applicable only in Italy, and not in accordance with Union law. The Commission considers that such an obligation would not be compatible with Regulation (EU) 2015/2120, in particular Article 3, regarding open internet access.
(ii) Breach of Article 34 TFEU. In the Commission’s view, the measure results in market segmentation by preventing the placing on the Italian market of vehicles not fitted with radio devices, even though they are lawfully placed on the market in other Member States, and would entail additional costs for manufacturers wishing to make the vehicles in question available on the Italian market, thereby discouraging such placing.
iii) Failure to state reasons. In the Commission’s view, Italy has argued that a derogation from the identified breach of Article 34 TFEU is justified “on the grounds of the need to ensure consumer protection, by promoting wider reception of analogue and digital radio programmes in vehicles and thereby guaranteeing universal access to public radio services”. This reasoning is considered, prima facie, to constitute “an overriding requirement in the public interest, for the exception provided for in the Treaty”. Nevertheless, however, “The Commission considers that the notification letter does not contain any analysis of the appropriateness of the notified draft measure” and that there is a lack of “assessment of the proportionality of the draft measure”, as well as “detailed evidence” regarding the “objective necessity of the measure, with particular reference to the needs of operators in the broadcasting sector”.
In view of this, some initial points of response to the European Commission’s observations are set out below.

In light of the observations contained in the detailed opinion submitted by the European Commission on 16 December 2025, we submit the following.

1.- The compatibility of the measure proposed by the Italian authorities with Reg. (UE) 2015/2120. As already noted, the Commission has raised concerns regarding a possible conflict between the measure proposed by the Italian authorities and Article 3 of Regulation (EU) 2015/2120, which sets out measures concerning access to an open internet.
1.1. Article 3(1) provides that “End-users shall have the right to access and disseminate information and content, as well as to use and provide applications and services, and to use terminal equipment of their choice, irrespective of the location of the end-user or the provider, or the location, origin or destination of the information, content, applications or service, via the internet access service”.
Furthermore, paragraph 2 of the same article stipulates that “Agreements between Internet access service providers and end-users on the commercial and technical conditions and characteristics of Internet access services, such as price, data volumes or speed, and the commercial practices adopted by Internet access service providers shall not restrict the exercise of the rights of end-users referred to in paragraph 1”.
Finally, paragraph 3 provides that “Internet access service providers, when providing such services, shall treat all traffic equally, without discrimination, restriction or interference, and regardless of the source and destination, the content accessed or transmitted, the applications or services used or provided, or the terminal equipment used”.
The provision, as specifically cited, does not preclude the proposed regulatory measure, nor can it be considered incompatible with it.
These provisions, in fact, are intended both to protect the right of end-users accessing the Internet to use network access terminal equipment of their choice, and to prevent Internet access service providers from restricting the exercise of that right. Moreover, the objective set out in the Regulation, as early as Article 1, is (thereby also defining the scope of the regulation) to “ensure fair and non-discriminatory treatment of traffic in the provision of internet access services and the related rights of end-users” (paragraph 1), whilst also establishing, “a new retail pricing mechanism for regulated roaming services within the Union in order to abolish retail roaming surcharges without distorting the home and visited markets” (paragraph 2).
In the present case, the draft amendment, by providing that “devices capable of connecting to the internet and/or equipped with hardware capable of reproducing audio content installed in new vehicles” are “also capable of receiving radio broadcasts using analogue FM and digital DAB+ technology and of reproducing the relevant content”, does not impose any restriction on the right of end-users accessing the internet to use internet access terminal equipment of their choice, nor does it affect the connection to the network of the chosen terminal equipment, nor does it limit, in terms of quality or quantity, access to the internet on the basis of the use of a particular chosen device. If anything, the proposed

amendment expands the scope for end users to “access information and content and to disseminate it”.
1.2. The same conclusion is reached on the basis of the recitals of the Regulation (which, as is well known, provide significant interpretative guidance: see ECJ, 5 March 2024, C-755/21 P, Marián Kočner, § 59), from which it is clear that Article 3 is intended to protect the position of the internet user – those who use the internet access service – against barriers imposed by the service providers themselves
In this regard, recital 3 is also relevant, stating that “The internet has developed over recent decades as an open platform for innovation with few barriers to entry for end-users, content, application and service providers, and internet access service providers. The existing regulatory framework aims to promote end-users’ ability to access and distribute information, or to run applications and services of their choice. However, many end users experience blockages or slowdowns in specific applications or services due to traffic management practices. These trends call for common rules at Union level to ensure that the internet remains an open platform and to prevent measures adopted by individual Member States from causing fragmentation of the internal market.”
Recital 5 further adds that “When accessing the Internet, end-users should be free to choose between various types of terminal equipment, as defined in Commission Directive 2008/63/EC. Internet access service providers should not impose restrictions on the use of terminal equipment connecting to the network other than those imposed by manufacturers or distributors of terminal equipment in accordance with Union law”.
Recital 8 further adds that, “When providing internet access services, providers of such services should process all traffic equally, without discrimination, restriction or interference, regardless of the source or destination, content, applications or services, or terminal equipment”.
The recitals of the Regulation therefore clarify that the right of end-users accessing the Internet to use network access terminal equipment of their choice is guaranteed vis-à-vis Internet access service providers and, consequently, does not preclude the adoption of the draft amendment under consideration.
1.3. The case law of the Court of Justice of the European Union also confirms the above.
In the judgment ECJ, 10 July 2025, C-367/24, Telekom România, the Court held that Article 3 “precludes an option for unlimited internet access, at no additional cost, offered by an internet access service provider to its customers, which, when activated, allows those customers to use video streaming services without the data used in that way being deducted from the data allowance included in the basic monthly data package, but which limits the bandwidth allocated to such content, regardless of who distributes or provides it, compared to that allocated to other categories of traffic, whereas, when that option is not activated by those customers, all traffic, including video streaming, benefits from the same bandwidth, but the volume of data used is deducted from the volume subscribed to by those customers”. As can be seen, the restriction of the rights granted to end-users under Article 3 of the Regulation is imposed by the internet service provider, which sets limits on traffic, bandwidth and access based on the devices or content chosen by the user.
Furthermore, the judgment ECJ, 2 September 2021, C-5/20, Vodafone, stated that “Article 3(3) of Regulation 2015/2120 provides, first of all, in its first subparagraph, that providers of internet access services must treat all traffic equally, without discrimination, restriction or interference, and regardless, in particular, of the applications or services used” (§ 18). It should be added that “the first subparagraph of Article 3(3) of Regulation 2015/2120, read in the light of recital 8 of that Regulation, imposes on providers of internet access services a general obligation of fair treatment, without discrimination, restrictions or interference with traffic, from which there can be no derogation whatsoever through commercial practices adopted by such providers or through agreements concluded by them with end-users (judgment of 15 September 2020, Telenor Magyarország, C-807/18 and C-39/19, EU: C:2020:708, paragraph 47)” (§ 25). This judgment also rules out the validity of the interpretative premise on which the Commission relies.
Similar statements can be found in the judgment ECJ, 2 September 2021, C-854/19, Vodafone, §§17-21. In paragraph 22 below, the Court adds that Article 3 of Regulation 2120 aims “to ensure fair and non-discriminatory treatment of traffic in the provision of internet access services and the related rights of end-users (see, to that effect, judgment of 15 September 2020, Telenor Magyarország, C-807/18 and C-39/19, EU: C:2020:708, paragraphs 23 to 27)”.
1.4. Further evidence of the points made so far is provided by the guidelines of the Body of European Regulators for Electronic Communications (BEREC), a key interpretative tool for the aforementioned Regulation No 2120 of 2015. In commenting on Article 3 of the Regulation and, in particular, the right to use equipment of one’s choice, the guidelines note that “end-users have the right to use the terminal equipment of their choice” and that, “When assessing whether end-users may use the terminal equipment of their choice, NRAs should assess whether an internet service provider supplies equipment to its subscribers and restricts the ability of end-users to replace such equipment with their own, or whether it supplies “obligatory equipment” (“In considering whether end-users may use the terminal equipment of their

choice, NRAs should assess whether an ISP provides equipment for its subscribers and restricts the end-users' ability to replace that equipment with their own equipment, i.e. whether it provides "obligatory equipment"").

It is therefore confirmed that the right of end-users accessing the Internet to use network access terminal equipment of their choice is guaranteed vis-à-vis Internet access service providers and, consequently, does not preclude the approval of the draft amendment. This is also because, in the present case, the obligation to integrate a radio receiver into motor vehicles, even where they have a network connection system, does not in any way affect the ability of end-users to access Internet services using a device of their choice: in fact, anyone using the vehicle or on board the vehicle will certainly be able to continue using the device of their choice to connect to the internet (tablet, phone, laptop, equipped with a SIM card or used in conjunction with a mobile router, etc.).
That said, in addition to the right to access the internet, users also have the right to use the service without it. This safeguards the further right not to be tracked or profiled, or to be required to take out subscriptions or submit to authorisations, in line with the principle of technological neutrality. (see Point 4)
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2. The objection concerning the alleged breach of Article 34 TFEU. The justification for the measure. The Commission acknowledges that the draft amendment seeks to pursue an overriding requirement in the general interest, worthy of protection, identified as "consumer protection in terms of universal access to public radio", thereby justifying a derogation from Article 34 TFEU. A derogation which, as is well known, is permitted under the case law of the Court of Justice, where measures:
(i) which fall within the scope of Article 36 TFEU, or
(ii) which, although not codified in the provisions of Article 36 TFEU, result from overriding requirements deemed worthy of protection under EU law (see CJEU, judgment 20 February 1979, C-120/78, Rewe, para. 8; judgment 26 November 1996, C-313/94, F. Ili Graffione, § 17).
2.1. Indeed, with regard to the measure in question, it is possible to justify a derogation from Article 34 TFEU by invoking both the grounds codified in Article 36 TFEU and imperative requirements of general interest, in addition to that already identified by the Commission in its detailed opinion.
2.2. With regard to the first aspect, the presence of radio receivers in motor vehicles is justified on grounds of public order and public safety, and of the protection of human health and life.
The radio system is, in fact, capable of reaching users in the event of danger or emergencies, even when users do not have an Internet-connected device immediately available or when the IP network has suffered an incident or is otherwise down.
The radio signal receiver installed in vehicles is therefore a vital tool in the event of natural disasters, as it provides a reliable means of communication should other systems fail and can reach people on the move. Moreover, during natural disasters such as hurricanes, earthquakes, or floods, or human-caused accidents, power cuts are common and can render mobile phone masts and internet connectivity inoperable. In such situations, a radio receiver can continue to operate, allowing users to receive up-to-date information from the emergency services (weather updates, evacuation orders, locations of emergency centres, etc.). On 23 May 2024, the EBU – European Broadcasting Union published the study "Radio in times of crisis", in which these aspects are discussed in detail. The study shows how radio broadcasting has demonstrated resilience in critical situations, even severe ones, and even when other networks were down. Furthermore, the study demonstrates that consumers widely regard radio news as reliable and trustworthy. In line with the use of radio broadcasting as a resilient tool in times of crisis and disaster, the market for radio services is also evolving through the ASA (Automatic Safety Alert) system.
It should also be noted that, pursuant to Annex 1 to the public service broadcasting contract between the Ministry of Enterprise and Made in Italy and the public service broadcasting concessionaire, it is the concessionaire's responsibility to ensure, within the scope of public service radio broadcasting, the provision of "public utility" services: news and reports on traffic, road safety and weather conditions, specifically aimed at mobile users; sea and snow reports; emergency and civil protection messages; time signals". Within the scope of public radio broadcasting, therefore, activities relating to the safety and public security of individuals are expressly provided for, and the measure in question guarantees their accessibility.
Article 36 of the Treaty may therefore be invoked as the basis for the measure in question, with reference, it is reiterated, to both reasons of public order and public safety and to those of protecting the health and lives of individuals.
2.3. With regard to the derogations permitted by EU case law in the presence of overriding requirements of general

interest not codified in Article 36 TFEU, the European Commission, in its detailed opinion, recognised, as mentioned, that "the objective of consumer protection, in terms of universal access to public radio services" is considered "an overriding requirement of general interest, for the exception provided for in the Treaty" (this statement, moreover, reflects established principles of the case law of the Court of Justice; for all of them, reference may again be made to the judgment Rewe – Cassis de Dijon). There is no doubt, in fact, that the draft amendment is aimed at ensuring universal access to services of general interest delivered via digital radio.
The proposed amendment, however, also aims to ensure continuity in the provision of information services, including in relation to road safety and emergency management, as well as higher safety standards, given the risks associated with using smartphones whilst driving. In particular, by safeguarding the pluralism of information, which, under EU law, constitutes an imperative requirement worthy of protection.
The Court of Justice, in its judgment 25 July 1991, C-353/89, Commission v Netherlands, stated that "the preservation of pluralism (...) is in fact linked to freedom of expression, protected by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and forms part of the fundamental rights of the Community legal order" (§ 30). In the same vein, see the judgment 14 May 1974, C-4/73, Nold, § 13).
Also in the judgment 26 June 1997, C-368/95, Familiapress, the Court of Justice held that freedom of expression, enshrined in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, constitutes a justification that fulfils a pressing requirement of general interest (§§ 24 and 25). The same judgment recognises that a restriction on fundamental freedoms, even in the sense of causing a shift in demand for information services unrelated to the quality and merit of those services, is justified by the need to maintain a competitive, open and pluralistic information market (§§ 27, 28, 31, 34).
Furthermore, the Court of Justice has held that a legitimate cultural policy objective pursued in a non-discriminatory manner also constitutes an overriding requirement in the public interest, for example, in the case of a national scheme which has the "objective of promoting the creation of cinematographic works without distinction as to their origin" (judgment 11 July 1985, Joined Cases C-60/84 and C-61/84, Cinéthèque SA v Fédération nationale des cinémas français, §23).
It is therefore possible to invoke several grounds of general interest to justify the derogation from Article 34 TFEU.

2.4. The following paragraphs set out the fulfilment of the additional requirements laid down by the Court's case law, with particular reference to the test of reasonableness and proportionality of the measure. In particular, the following aspects will be examined, in connection with the relevance of the general interests outlined above: (i) the state of the digital radio market; (ii) the need for regulatory intervention; (iii) the proportionality of the measure proposed by the Italian authorities and the objective pursued.

2.4.1. Next: the state of the digital radio market. Italy, like other Member States of the European Union, has plans and programmes in place to roll out and promote digital radio. In particular, Italy, through AGCom Resolution No. 286/22/CONS of 27 July 2022, adopted the "Provisional National Plan for the Allocation of VHF-III Band Frequencies for the DAB+ Digital Audio Broadcasting Service" (PNAF-DAB).
This policy to encourage the roll-out and use of DAB+ receivers – including through the identification of spectrum resources not allocated to television – aims to ensure that DAB frequencies a use that is as efficient as possible, the development of the underlying markets and the widespread coverage of digital radio services across the national territory, with positive effects in terms of investment and employment, the development of pluralism and the provision of quality services to end-users, whilst safeguarding the investments made by operators in a sector that is widely followed and appreciated in terms of audience figures.
In order, amongst other things, to assess the state of development of the digital radio market, with Resolution No. 316/24/CONS, AGCom launched "a fact-finding inquiry into the regulation of the terrestrial audio broadcasting platform using DAB+ digital technology", which concluded with the adoption of Resolution No. 44/25/CONS.
As far as this is concerned, the findings of the inquiry highlighted operators' appreciation for the adoption of the PNAF-DAB. Still, also the emergence of significant concern and "uncertainty regarding the uptake of DAB receivers in cars, particularly due to the simplification of infotainment systems, which could limit the adoption of digital radio on board", slowing down, if not halting, the development of the DAB+ platform given that, as was reported to AGCom during the survey, in Italy currently "over 70% of radio listening takes place whilst on the move" (this figure is specifically highlighted by a dedicated study carried out by GFK Italia in 2024 and is confirmed by the specialist press; see, for

example, the article “Farewell to the car radio: we may no longer see it in cars”, Fleet Magazine, 2025, which notes that “Listening to the radio in the car is a long, very long-standing tradition. In fact, it is motorists themselves who are the biggest radio listeners”).

2.4.2. Next: the need for regulatory action. In the context briefly described above, the fact-finding survey conducted by AGCom revealed the need for regulatory action to promote the uptake of DAB+ receivers in motor vehicles and to contribute to the development of digital audio broadcasting.
The regulations currently in force, in fact, are not yet sufficient to facilitate such development, because the provisions require the installation of a DAB+ system only where the vehicle is equipped with a radio system, with the consequence that vehicles in which a car radio is not installed are exempt from the obligation to install a DAB+ receiver. Indeed, as mentioned, during the fact-finding survey, respondents reported “uncertainty regarding the prevalence of DAB receivers in cars, particularly due to the simplification of infotainment systems”, which, in the dynamics of the vehicle market, is moving in the direction—already adopted by some manufacturers—of introducing solutions without car radios, relying exclusively on the IP system via smartphone Bluetooth for radio reception.
Faced with this situation, a twofold regulatory need has emerged in particular.
Firstly, there was a need to introduce a regulatory requirement extending the obligation to receive DAB+ signals not only to traditional FM audio receivers, but also to any device capable of receiving audio content, such as those found in modern cars with broadband connectivity, including smart cars, which are often electric, to ensure comprehensive coverage and uninterrupted access to services via radio broadcasting, a free and secure medium.
Secondly, in the consultation, respondents called for regulatory action to mandate the integration of DAB+ receivers into all smartphones to avoid technological discrimination and ensure technological neutrality in reception.
The need to address the first requirement has been taken on board by AGCom itself.
In the report of 19 May 2025 submitted to the Government pursuant to Article 1, paragraph 6, letter c), no. 1 of Law 249 of 31 July 1997, the Authority highlighted the need to address the “gap in current legislation regarding the interoperability of car radio receivers, as referred to in Article 98-vicies sexies and Annex 11 of the Electronic Communications Code, which stipulates that consumer car radio receivers made available on the market individually or integrated into a new vehicle of categories M and N made available on the market for sale or hire must include a receiver capable of receiving and reproducing at least the radio services provided via digital terrestrial broadcasting”. In particular, AGCom highlighted “the need to revise the aforementioned legislation with the aim of equipping car radios capable of receiving audio broadcasts in all analogue and digital technologies—AM, FM and DAB+, in order to ensure widespread and continuous access to radio broadcasting services throughout the national territory”.
In this context, the aim of addressing this regulatory gap is to prevent car manufacturers from engaging in conduct which, whilst lawful, is nonetheless at odds with the objective of promoting the widespread adoption of DAB+ receivers in vehicles on the road. In AGCom’s view, “the proposed regulatory amendment would not only enable all cars to be fitted with a DAB+ tuner, but would also require all cars to be fitted with a car radio capable of receiving audio broadcasts in all analogue and digital technologies (AM, FM and DAB+ technologies), and to ensure widespread and continuous access to radio broadcasting services throughout the national territory. The car radio, in fact, is a device capable of ensuring the continuity of information services, including in terms of road safety and emergency management, by guaranteeing access to the frequencies to which users are accustomed, with significant implications for the proper functioning of the internal market”.
The effect of this regulatory intervention – the report concludes – is to: “i) remove a potential obstacle to the development of the DAB+ digital services market and eliminate the risk of undermining the effectiveness of regulatory initiatives undertaken to promote the development of this market and the optimal use of a scarce and valuable resource such as the frequencies allocated to digital radio; ii) ensure that all radio frequencies are available in all motor vehicles”.
Specialist press outlets have also endorsed the need to introduce a regulatory requirement that extends the obligation to receive DAB+ signals to all audio reception devices installed in motor vehicles.
In the article “Car radios: do we really have to say goodbye to them? Here’s what’s happening” (Wired, 2025), we read that “Several vehicle manufacturers already do not provide for the option of installing FM/DAB+ car radios in new vehicles” and that “among the models in which car radios are not included are also the AM-category minicars reserved for minors”. For this reason, the article notes that, “Despite the efforts made over the years to promote the DAB+ standard, there is a risk of deadlock, to the detriment of consumers but also of companies in the sector, and thousands of jobs would therefore be at risk”. It adds another significant point: “But how did we get to this point? It all revolves around

a regulatory loophole which the Authority is calling for action on, through a review that will allow us to take remedial action before it is too late".
After all, as an article in Fleet Magazine points out ("Smartphone screens, on the other hand, represent one of the biggest and most dangerous sources of distraction"), it is well known that the use of smartphones (even when connected to the vehicle's media player) poses a critical risk to road safety, which can be mitigated by installing an FM/DAB+ car radio.
In Europe, too, the concerns highlighted in the AGCom report are widely felt. The article "WorldDAB Automotive 2025: broadcasters unite in Madrid to affirm the central role of radio in the dashboard of connected cars", published on Newsline.it, reports on the international event "WorldDAB Automotive 2025", which took place in Madrid on 19 June 2025, dedicated to in-car radio, and brought together around 200 representatives from the broadcasting and automotive industries. During the event, the need to ensure the central role of radio broadcasting, particularly digital DAB+, in the dashboards of connected vehicles was reiterated. The conference was attended by numerous speakers, who reaffirmed the value of radio as a reliable source of entertainment and information for motorists; the need for radio to adopt a hybrid approach was also emphasised, one that effectively integrates DAB+, FM and IP through the correct use of metadata, so as to ensure a simple and accessible listening experience. In other words, with the hybrid approach, the radio service can be delivered automatically via various transmission channels, without the listener having to "switch" in the event of signal unavailability or limited coverage.

2.4.3. Next: the proportionality of the measure proposed by the Italian authorities and the objective pursued. As acknowledged in the Commission's opinion, the draft amendment and, in particular, the measure proposed by the Italian authorities fall outside the scope of European harmonisation and are therefore left to the regulatory discretion of the Member States. It is therefore not the Member States' power to intervene that is at issue, but rather the proportionality of the intervention, which, however, does not appear to be in doubt.
It should be noted that, according to the settled case-law of the Court of Justice of the European Union, "a measure having an effect equivalent to quantitative restrictions may be justified by one of the grounds of general interest listed in Article 36 TFEU or by overriding reasons". In both cases, the national provision must be suitable for ensuring the achievement of the objective pursued and "must not go beyond what is necessary to achieve it" (ECJ, 6 September 2012, C-150/11, Commission v Belgium). It must therefore be proportionate. Proof that these requirements are met must be provided "in concrete terms in the light of the specific case" (ibid.).
According to the case law of the Court of Justice, "national legislation is capable of ensuring the achievement of the objective pursued only if it genuinely reflects the intention to achieve it consistently and systematically" (ECJ, 7 September 2023, C-226-22, Nexive and others, § 47; 31 May 2018, C-259/16 and C-260/16, Confetra and others, § 50 and the case law cited therein) and is applied uniformly to all operators of any kind (judgment Nexive, § 49; ECJ, 8 May 2003, C-14/02, ATRAL). In any event, "it is for the national authorities to demonstrate that such legislation complies with the principle of proportionality, that is to say, that it is necessary to achieve the objective pursued, and that objective could not be achieved by means of prohibitions or restrictions of a lesser scope or which affect trade within the Union to a lesser extent" (ECJ, 23 December 2015, C-333/14, The Scotch Whisky Association and others, §54). The Court of Justice itself has, however, clarified that "that burden of proof cannot extend so far as to require the competent national authorities […] demonstrate, in the affirmative, that no other possible measure allows the same legitimate objective to be achieved under the same conditions" (ibid. §55; in the same sense, ECJ, judgment of 10 February 2009, Commission v Italy, C-110/05, § 66).
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3. The conditions laid down by the Court of Justice are satisfied in the case under discussion.
The circumstances of the present case demonstrate that: 1) there are overriding requirements of general interest; 2) the measure achieves its objective consistently and systematically; 3) the measure does not go beyond what is strictly necessary for its achievement.
Specifically:
a) The measure strengthens the launch of radio markets, a requirement of general interest referred to in AGCom Resolution No. 664/09/Cons (DAB Regulation). These regulations define the market launch phase as: "the period between the date of entry into force of this Regulation and: 1) the achievement of the coverage referred to in Article 13(5)(c) and (d); 2) the commercial availability of receivers for the reception of digital radio programmes via domestic receivers to at least 50% of the population and 70% of newly registered motor vehicles fitted with car radios". With regard to the first condition, it should be noted that private national radio operators – and, by now, local operators too – have, thanks to

substantial investment, achieved coverage of over 90% of the population, which is the maximum coverage possible, as required by the Regulations. The second condition, relating to the distribution of receiving equipment, remains unmet, as argued in the aforementioned fact-finding survey conducted by AGCom (Resolution No. 44/25/CONS). In this context, the measure in question has its own intrinsic coherence and systematic scope, as it completes the process initiated by Law No. 205 of 2017 and subsequently continued by Decree-Law No. 32 of 2019, which mandated the DAB+ system in “M” and “N” category vehicles equipped with a radio system. The need to complete this process by requiring “devices capable of connecting to the internet and/or equipped with hardware suitable for the reproduction of audio content installed in new vehicles of categories M and N” to be capable of receiving radio broadcasts using both analogue FM and digital DAB+ technology is therefore due to this regulatory gap, which theoretically allows cars without radio systems (and, therefore, without a DAB+ system). This intervention is due – it is reiterated – to the state of the radio services market, whose users are overwhelmingly people travelling in road vehicles.
b) Given the nature of the user base, the proposed mechanism is the only one capable of achieving the objective of universal access to radio services and the SGI conveyed through them. In fact, the measure aims not only to ensure the launch and development of the radio market but also to safeguard users’ access to all radio services, regardless of the legal nature of ownership (public or private). The measure, in fact, increases – rather than limits – information sources, in line with the necessary interoperability of electronic media, and is intended to safeguard media pluralism (so-called external pluralism), users’ freedom of choice, and to prevent market failures that are dangerous for the functioning of the European democratic system. The measure proposed by the Italian State must be viewed within this broader framework, also outlined by the European Union, which aims to promote technological diversity in the means of disseminating information. It also prevents a market failure resulting from the inevitable disappearance of radio services if they are no longer available in cars. From this perspective, the measure proposed by the Italian authorities is consistent with the principles underlying Article 3 of the European Media Freedom Regulation (Reg. [EU] 2024/1083), which enshrines the “right of media service users to have access to a variety of editorially independent media content and ensures the existence of framework conditions in accordance with this Regulation to safeguard that right, for the benefit of a free and democratic debate”.
c) The proposed measure is the only one that ensures the continuity of information services, which are also necessary for road safety and emergency management, guaranteeing universal access to GIS without entailing the risks associated with using smartphones whilst driving or, above all, any reception problems linked to the operation of the mobile network. As is well known, Article 110 of the aforementioned Directive (EU) 2018/1972 requires Member States to develop a public warning system “in the event of imminent or ongoing major emergencies and disasters”, through “number-based mobile person-to-person communication services” (§1). §2 allows the alert to be transmitted also via “radio and television broadcasting services”, “provided that the effectiveness of the public warning system is equivalent in terms of coverage and ability to reach end-users, including those present only temporarily in the affected area”. Pursuant to Article 98-vicies-ter of the Electronic Communications Code, alert messages (so-called IT-Alert messages) are transmitted via the Cell Broadcast Service, namely through “one-way transmission of short text messages to mobile devices located within a specific geographical area covered by one or more cells of public mobile networks” (Article 2(1)(bbb) of the Electronic Communications Code). By making it compulsory for all vehicles in categories “M” and “N” to be fitted with devices capable of receiving DAB+ digital radio broadcasts, the warning system can be made even more effective. This would, in fact, benefit from additional technology that complements the Cell Broadcast Service network, thereby ensuring the fastest, most accurate, and most effective possible dissemination of disaster-related alerts, overcoming any transmission issues on the mobile network. In particular, the ASA (Automatic Safety Alert) system could be installed via DAB+, an emergency alert system (ETSI TS 104 089) designed exclusively for DAB+. It operates automatically and continuously and can activate even when the receiver is on standby, regardless of the active tuning mode (including FM). By leveraging the reliability and widespread coverage of the DAB+ digital broadcast transmission system and geolocation, this standard can localise the alert without broadcasting it across the entire network, thereby processing only the area where the emergency is occurring. Alerts are managed directly by the relevant authorities (e.g., Civil Protection, Police) to provide timely support and information to the public.
The complementary nature and capability of the ASA system to provide an integrated warning system prove their full worth when catastrophic events affect mobile networks (4G/5G), making it impossible or extremely difficult to provide such services via the IT-Alert message.
d) Other measures would be unsuitable for achieving a similar result. For example, converting radio stations into apps would be entirely unsuitable: not only because of the costs, which would lead to the disappearance of many local (and

perhaps even national) radio stations, but also because of the difficulty users would face in accessing the service and the structural differences that characterise the broadcasting service compared to other digital content providers. The gradual disappearance of broadcast transmission points, as would occur if cars were sold without DAB+ radio receivers, would definitively replace generalist radio service providers with on-demand content distributors.
e) It should be added that the measure in question cannot be classified as discriminatory on the basis of the nationality or residence of economic operators, as it is not intended to favour a specific national operator and applies indiscriminately to all operators in the market. This circumstance is relevant under the general principles of the Treaties (see Article 18 and Article 36(2) TFEU) and the case law of the Court of Justice of the EU (judgment 24 March 1994, C-275/92, Schindler § 61; judgment 26 June 1997, C-368/95, Familiapress, § 20).
(f) Finally, it should be noted that a large proportion of the vehicle production lines to which the measure would apply are already equipped with radio receivers and, consequently, with DAB+ digital receivers. It is no coincidence, as far as is known, that even vehicles without such a receiver can already be ordered with specifications that include a radio and DAB+ digital receiver. This circumstance demonstrates that the burden imposed on manufacturers is, in very many cases, essentially non-existent and, in a limited number of cases, extremely small.

4. Finally, it should be noted that the aim of the proposed amendment to the Communications Code is to protect end users' identities and personal data.
In fact, under current legislation, audio content and information are reproduced solely via devices that can connect to the internet, thereby placing service users in a situation where their personal data is highly vulnerable to tracking and profiling.
Restricting access to information solely to internet connections inevitably deprives users of the ability to choose how to access the communication service and thus subjects them to profiling.
Data profiling, in fact, where data is also understood as personal information used to predict behaviour, habits or preferences, can pose risks to the freedom and dignity of individuals.
Such considerations, therefore, in addition to leading to the indiscriminate dissemination of personal data, also violate the principle of technological neutrality, which provides for the freedom of individuals and organisations to choose the technology most appropriate and suited to their needs and requirements; consequently, regulatory frameworks that take this principle into account must not impose or introduce discrimination in favour of the use of a particular type of technology.

Notwithstanding the above, the Administration remains willing, following further discussions currently underway with the Commission's offices, to comply with the guidelines intended to bring the aforementioned legislation more fully into line with European law.

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