



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
Single Market Enforcement
Notification of Regulatory Barriers

Message 201

Communication from the Commission - TRIS/(2025) 0464

Directive (EU) 2015/1535

Notification: 2025/0022/IT

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 0022 IT EN 22-04-2025 18-02-2025 IT ANSWER 22-04-2025

2. Italy

3A. Ministero delle imprese e del Made in Italy

Dipartimento Mercato e Tutela

Direzione Generale Consumatori e Mercato

Divisione II. Normativa tecnica - Sicurezza e conformità dei prodotti, qualità prodotti e servizi

00187 Roma - Via Molise, 2

3B. Ministero delle Imprese e del Made in Italy

Ufficio Legislativo

4. 2025/0022/IT - SERV20 - Electronic commerce

5.

6. In response to the questions raised in the above-mentioned request for additional information on the draft annual law on small and medium-sized enterprises – Chapter IV (Articles 12 to 17) on ‘Countering false reviews’ (hereinafter the ‘notified draft’), in relation to the requests made by the Commission, the following is stated.

On 12 February 2025, before the expiry of the deadlines set out in the European Commission’s first message requesting information on the above-mentioned notified draft (of 31 January 2025), a further message was received, containing new requests for information (MSG 301 IND 2025 0022 IT IT 22-04-2025 11-02-2025 COM INFOSUP COM 22-04-2025), for which the deadline of 18 February 2025 had been set.

This note addresses both messages in response to the Commission's request for information.

1. The Italian authorities are kindly invited to clarify whether the provisions in the notified draft are intended to apply to providers of information society services as per the meaning of Directive 2000/31/EC. In the affirmative, the Commission services would like to receive further information on:

- (a) whether the notified draft would apply to providers of information society services established in the territory of Member States other than Italy;
- (b) if so, how the Italian authorities intend to comply with the requirements of Article 3(4) of Directive 2000/31/EC, in particular in the light of the case-law C-376/22 of the Court of Justice;
- (c) which obligations would apply to those service providers arising from the notified draft, in particular from Articles 13, 14 and 15;
- (d) what the system for supervising compliance and enforcement of those obligations applicable to information society services would be, and in particular whether any non-compliance would lead to the imposition of fines or other types of sanctions or penalties.



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While there is no doubt that reviews can facilitate competition and trade by mitigating information asymmetries, the dissemination of fake reviews nevertheless negatively affects competition. Such conduct constitutes an unfair commercial practice and a tort and may also constitute a criminal offence.

From that perspective, the notified draft is not addressed to information society service providers, but to the parties actually involved in the contractual relationship, namely consumers and facilities providing the service covered by the review, with the aim of preventing unlawful conduct.

In particular, Art. 13 of the notified draft imposes specific obligations on the authors of reviews, including proving their identity and the actual use of services or performances, and regulates the right of reviewed facilities to have misleading, untruthful or excessive reviews removed. Article 14 of the aforementioned draft, on the other hand, prohibits the purchase and transfer, for any reason, of reviews, appreciations, or interactions.

With specific reference to Article 13, entitled 'Requirements for reviews and rights of reviewed facilities', it is noted that this provision complies with the rules referred to by the European Commission in its request for information. The article in question does not impose any obligation on the operators of platforms hosting reviews, but merely provides that consumers, in order to issue a reasoned review, are required to prove their identity and the actual use of the service or performance that is the subject of the review.

The provision therefore does not impose on platform operators any obligation of prior (ex ante) monitoring, nor does it require them to adopt specific technical measures, nor does it provide for penalties for them in the event of infringement of the prohibitions imposed on reviewers. However, in accordance with the current European regulatory framework, if platform providers become aware of the unlawfulness of hosted content, they must take appropriate measures to remove it without delay, as provided for in Article 6 of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services ('DSA Regulation').

This provision shall comply with:

- the DSA Regulation, in so far as, pursuant to Article 8 thereof, no general obligation to monitor or actively ascertain the facts is imposed on platform providers;
- 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 so far as it does not introduce obligations incompatible with the principle of the free movement of information society services. Moreover, contrary to the provisions of the legislation examined in the judgment of the Court of Justice of the European Union cited by the Commission (C-376/22, 9 November 2023, Google v. Austria), which required service providers to put in place an effective and transparent procedure for managing and resolving reports of alleged unlawful content, in the present case there is no general and abstract obligation towards information society service providers that could call into question the principle of control in the Member State of origin, instead limiting itself to establishing mere obligations on consumers.

In addition to the above, it should be noted that failure to comply with the provisions of Article 13 of the notified draft standard falls within the protection mechanisms already provided for by the legislation in force. By way of example, if a facility signals the presence of a false review, the platform operator is required to intervene through its internal complaint management system and, if the review is actually false or unlawful, to promptly remove it, in accordance with the provisions of Articles 6 and 20 of the DSA Regulation.

Furthermore, in the event that the platform operator does not comply with the order to combat unlawful content, pursuant to Article 9 of the DSA Regulation, the Competition and Market Authority ("AGCM") may exercise its enforcement powers pursuant to the Consumer Code, referred to in Legislative Decree No 206/2005 laying down the "Consumer Code, pursuant to Article 7 of Law No 229 of 29 July 2003," within the framework of the rules on unfair commercial practices, pursuant to Directive 2005/29/EC.

2. The Commission services note that Article 12 of the notified draft mentions that the definition in Article 3 of Regulation (EU) 2022/2065 shall apply. The Commission services would welcome clarifications on:

- (a) concrete obligations for online platforms providers as defined in Regulation (EU) 2022/2065 stemming from the notified draft;
- (b) how online platforms providers would be required to comply with those obligations in such a way as to comply with Articles 6 and 8 of Regulation (EU) 2022/2065;
- (c) the expected interaction between the notified draft and Regulation (EU) 2022/2065, in view of its maximum harmonisation effect, in particular, but not limited to, with regard to the requirements set out in Articles 14, 16, 17, 20,



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34, 35 and 45;

(d) the expected interaction between the notified draft and Article 19 of Regulation (EU) 2022/2065;

(e) what the system for supervising compliance and enforcement of those obligations applicable to online platforms providers would be, and in particular whether any non-compliance would lead to the imposition of fines or other types of sanctions or penalties, and the envisaged interaction with Chapter IV of Regulation (EU) 2022/2065;

(f) whether the codes of conduct referred to in Article 15 of the notified draft are binding on all online platforms providers falling within the scope of the notified draft and their intended interaction with Regulation (EU) 2022/2065, in particular Article 45 thereof;

(g) the objectives pursued by the notified draft and their interaction with the objectives of user and consumer protection set out in Regulation (EU) 2022/2065.

With reference to the request for additional information in points (a), (b), (c), (d) and (e) of section 2, reference is made to section 1) and it is reiterated that the notified draft does not impose any concrete obligations on online platform providers. However, the latter remain required to fulfil the duties already laid down in Regulation (EU) 2022/2065 ('Digital Services Act'), such as, for example, under Article 16, in accordance with the procedures set out therein and with all the other provisions referred to by the Commission.

With reference to the request under point 2(f) concerning codes of conduct (Art. 15, paragraphs 1, 2 and 3 of the notified draft), it is represented that the Italian authorities, in order to clearly ensure the full adherence of the Regulation to the EU law, reserve the right to further deepening and amending the regulatory text (currently at the draft stage) so that it is unequivocally clear that, in compliance with the EU law, this is a provision addressed to the sector authority (Communications Guarantee Authority - AGCOM) for the preparation of guidelines to promote voluntary codes of conduct by platforms, without determining any obligation to adopt them on the part of the platform providers themselves. AGCOM will also monitor the adoption of the guidelines and the effectiveness of the law to improve the quality of reviews.

It is recalled that, under Article 45(3) of the Digital Services Act, together with paragraphs 1 and 2, the European Commission, the Board, and, where appropriate, other relevant bodies – including AGCOM – must ensure that codes of conduct clearly define their specific objectives, include key performance indicators to measure the achievement of those objectives, and take due account of the needs and interests of all stakeholders, in particular citizens, at Union level.

It should also be noted that Article 15(4) of the notified draft standard, which entrusts the Italian Competition Authority (AGCM) with the task of adopting guidelines to guide companies in ensuring that reviews are genuine, complies with the European regulatory framework referred to by the Commission.

In this regard, it should be noted that these guidelines, being non-binding, are structurally incapable of imposing additional constraints on platform providers, whose adherence remains entirely voluntary. They will be prepared in full compliance with the guidance provided by the European Commission, as outlined in its Guidelines on unfair commercial practices (see European Commission Guidelines on the interpretation and application of Directive 2005/29/EC – 2021/C, p. 95).

3. The Italian authorities are kindly requested to clarify whether the notified draft would apply only as regards reviews submitted by users in their capacity as consumers or would also apply to reviews submitted by business users, as per the meaning of Article 2 of Regulation (EU) 2019/1150. In the latter scenario, the Commission services would like to receive further information on the intended interplay between the notified draft and Regulation (EU) 2019/1150.

The notified draft standard applies exclusively to reviews issued by consumers for purposes unrelated to their business activity (see Article 12 of the notified draft standard, which refers to Article 18 of the Consumer Code) and, therefore, does not affect the application of the P2B Regulation (Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services). It follows that there is no interference with the P2B Regulation.

With reference to the further requests for clarification sent by the European Commission to the Italian authorities, as mentioned in the subsequent message of 11 February 2025, the following is noted.

The Unfair Commercial Practices Directive 2005/29/EC ("the UCPD") provides for specific provisions in the area of consumer reviews and endorsements. Specifically, Point 23b of Annex I prohibits traders from stating that reviews of a product are submitted by consumers who have actually used or purchased the product without taking reasonable steps to check that they originate from such consumers. Point 23c prohibits submitting or commissioning another legal or



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natural person to submit false consumer reviews in order to promote products. It also prohibits misrepresenting consumer reviews in order to promote products. Finally, traders giving access to reviews must inform consumers about whether and how they ensure that the published reviews originate from consumers in accordance with Article 7(6). The UCPD is based on the principle of full harmonisation (Articles 4 and Recitals 5, 12 and 13 of the Directive). Member States may not adopt stricter rules than those provided for in the Directive, even in order to achieve a higher level of consumer protection unless so permitted by the Directive itself.

The notified draft standard does not affect the scope and application of Directive 2005/29/EC on unfair commercial practices (UCPD), which has already been transposed into national law.

As explained in detail in the previous arguments, it merely regulates the contractual relations between consumers and the reviewed facilities, without introducing provisions imposing direct obligations on information society service providers or digital platforms. In particular, the draft standard does not amend or extend the provisions of the UCPD Directive on consumer reviews and approvals.

The measures envisaged are part of the existing regulatory framework and have the sole objective of ensuring the transparency and veracity of reviews in relations between consumers and economic operators, without derogating from the principles of full harmonisation enshrined in the aforementioned Directive. Therefore, the notified legislation does not introduce more restrictive constraints than those provided for by the UCPD, but merely regulates the ways in which consumers can issue reviews and the reviewed facilities can exercise the right to reply or request the removal of misleading, untrue, or manifestly excessive reviews.

In order to allow the Commission services to complete their analysis under the relevant provisions of EU law, the Italian authorities are kindly invited to reply to the following request for supplementary information:

Who are the addressees of the obligations provided in the draft measure? Does the measure target review platforms that collect and make available reviews concerning various other businesses, in this case the Italian hospitality businesses? Regarding the envisaged time-limit of 15 days to submit a review: does the obligation to respect it only fall on the consumers (reviewers) or it also implies obligations for businesses that collect and make available these reviews (such as review platforms) to ensure that consumers can only submit a review during this time frame?

With regard to the obligations of platform operators under the draft law, it is reiterated that, as already noted above, Article 13 of the draft law does not impose any obligation on platform operators, but requires only consumers, in order to provide their reasoned review, to prove their identity and the actual use of the service or performance.

The provision therefore does not impose ex ante monitoring obligations on platform operators with regard to the acquisition and processing of information (including of a personal nature) provided by reviewers, nor does it burden them with the adoption of specific technical measures, including with regard to the collection and verification of such information, nor does it provide for sanctions for the violation of the prohibitions imposed on reviewers.

Furthermore, only consumers, as defined in Article 18 of the Consumer Code referred to in Legislative Decree No 206/2005, are required to comply with the 15-day deadline for submitting the review, without there being any burden of supervision or ex ante control on platform operators (see Articles 12 and 13(1) of the draft law).

What is the scope of the prohibition of incentivized reviews (Article 14 of the draft law: '(...) the promotion and conditioning of the content of reviews by means of incentives are also prohibited'). Does the prohibition also apply to reviews whose incentivised nature is duly disclosed and the incentive serves to encourage the consumer to submit the review without prescribing its content?

As regards the prohibition on the promotion and conditioning of the content of reviews by means of incentives under Article 14 of the draft law, only incentives directly aimed at influencing the content of reviews are relevant.

It is basically a manipulative practice capable of making the review inherently false within the meaning of consumer law, undermining the reliability and genuineness of the judgment.

It is recalled that this practice has also been mentioned by the Commission in its Guidelines on unfair commercial practices, according to which "In order to promote their products, traders organise the publication of false positive reviews, for example by using specialised companies that recruit real consumers through social networks or other means. These consumers then buy the products of their traders on online platforms and leave five-star ratings in exchange for specific benefits" (see European Commission Guidelines on the interpretation and application of Directive 2005/29/EC – 2021/C, p. 96).

The situation in question is therefore different from the case, referred to by the Commission, in which the consumer is



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incentivised to review a particular product or service, which may be legitimate if the sponsorship is genuinely disclosed.

What is the scope of the obligation to identify the reviewers - does it require the businesses (such as review platform) that collect and make available the reviews to obtain and verify the personal information of the persons submitting the review? If so, what is the purpose of collecting such personal information and how will its availability ensure that the person submitting the review has, in fact, used the service regarding which he/she wants to submit a review, for example, café or restaurant service?

As already explained in the previous replies, the notified draft standard does not introduce any obligation of prior (ex ante) monitoring on review platforms, nor does it require the adoption of specific technical measures aimed at the prior verification of reviewers' personal information. The identification of the author of the review is only a requirement to ensure the transparency and genuineness of the reviews, without imposing a burden of prior checking on the platforms.

To the extent that the obligations provided in the draft measure entail obligations for businesses (such as review platforms) in business-to-consumer commercial relations, what is the intended interplay between the draft measure and the current rules regarding reviews in Directive 2005/29/EC?

As for the prohibition of the purchase and sale of reviews, appreciations or interactions between entrepreneurs and intermediaries in Article 14, it is aimed at targeting the phase of the generation and subsequent purchase and sale of reviews between professionals, irrespective of and regardless of their subsequent distribution and publication on platforms. The provision in question therefore concerns only the 'upstream' phase relating to the production and bulk supply of false reviews between professionals, which is entirely distinct from that relating to the sending of false reviews or the provision of false information regarding reviews already published, as provided for in Article 23(1)(bbc) of the Consumer Code. This is therefore a situation that does not fall within the scope of Directive 2005/29/EC on unfair commercial practices, in respect of which the draft law merely provides that the AGCM has the same powers of investigation and decision-making as it does under the Consumer Code.

Furthermore, the Commission recalls that Article 6 of the Regulation (EU) 2016/679 (GDPR) lays down the conditions for the lawful processing of personal data. When a Member States law provides for a lawful ground for processing of personal data, such as it this case, the conditions of paragraph 3 of the Article 6 GDPR must be met. One of these conditions are that the law meets an objective of public interest and is proportionate to the legitimate aim pursued. This includes that personal data in line with paragraph 5 letter c of Article 5 GDPR are "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation')". In addition, the provision must be clear and precise and its application should be foreseeable. Recital 41 of the GDPR clarifies that a legal basis "should be clear and precise and its application should be foreseeable to persons subject to it, in accordance with the case-law of the Court of Justice of the European Union (the 'Court of Justice') and the European Court of Human Rights."

In this context, the Commission would welcome clarifications regarding the obligation to identify the reviewers:

- Why is the identification of reviewers necessary to achieve the aim of this draft law to raise the levels of reliability and authenticity of reviews? Can the Italian authorities clarify whether identification of reviewers is the only possible way to achieve this aim? Have less intrusive means been considered and assessed?
- What type of identification do the Italian authorities envisage by this obligation? Can you clarify what the identification of reviewers would entail?
- Has the Italian data protection authority been consulted on this draft law?

Finally, with regard to the relationship between the draft law and the GDPR, it is noted that the provision in Article 13 on the identification of consumers is proportionate, as it is in line with the European Commission's Guidelines on unfair commercial practices, which consider the registration of the authors of reviews as a suitable measure to ensure that reviews come from consumers who have actually purchased or used the products.

The specific methods by which the consumer is required to prove their identity will be defined, as provided for in Article 15 of the draft law, through subsequent guidelines, following consultation with the Data Protection Authority.

In this context, account will be taken of the principle of data minimisation set out in the GDPR and of the fact that, according to the established practice of the Data Protection Authority, personal identification does not necessarily have to take place through the presentation of an identification document (see e.g. Authority 30 July 2003).



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European Commission

Contact point Directive (EU) 2015/1535

email: grow-dir2015-1535-central@ec.europa.eu