Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

30 May 2024*

(Reference for a preliminary ruling – Regulation (EU) 2019/1150 – Articles 1, 15, 16 and 18 – Objective – Application – Monitoring – Review – Measures adopted by a Member State – Obligation to provide information on the economic situation of a provider of online intermediation services)

In Case C-663/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy), made by decision of 10 October 2022, received at the Court on 19 October 2022, in the proceedings

Expedia Inc.

v

Autorità per le Garanzie nelle Comunicazioni,

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, F. Biltgen, N. Wahl (Rapporteur), J. Passer and M.L. Arastey Sahún, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Expedia Inc., by P. Actis Perinetto, F. Brunetti, C. Osti and A. Vitale, avvocati,

– the Italian Government, by G. Palmieri, acting as Agent, and by L. Delbono and R. Guizzi, avvocati dello Stato,

– the Czech Government, by M. Smolek, T. Suchá and J. Vláčil, acting as Agents,

* Language of the case: Italian.

– Ireland, by M. Browne, Chief State Solicitor, A. Joyce and M. Tierney, acting as Agents, and by D. Fennelly, Barrister-at-Law,

– the European Commission, by L. Armati, S.L. Kalėda and L. Malferrari, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 January 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of 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 (OJ 2019 L 186, p. 57).

2 The request has been made in proceedings between Expedia Inc., a company established in the United States, and the Autorità per le Garanzie nelle Comunicazioni (Communications Regulatory Authority, Italy) ('AGCOM') concerning measures adopted by AGCOM in respect of providers of online intermediation services.

Legal context

European Union law

3 Recitals 7, 46 and 51 of Regulation 2019/1150 state as follows:

'(7) A targeted set of mandatory rules should be established at [European] Union level to ensure a fair, predictable, sustainable and trusted online business environment within the internal market. In particular, business users of online intermediation services should be afforded appropriate transparency, as well as effective redress possibilities, throughout the Union in order to facilitate cross-border business within the Union and thereby improve the proper functioning of the internal market and to address possible emerging fragmentation in the specific areas covered by this Regulation.

…

(46) Member States should be required to ensure adequate and effective enforcement of this Regulation. Different enforcement systems already exist in Member States, and they should not be obliged to set up new national enforcement bodies. Member States should have the option to entrust existing authorities, including courts, with the enforcement of this Regulation. This Regulation should not oblige Member States to provide for *ex officio* enforcement or to impose fines.

…

(51) Since the objective of this Regulation, namely to ensure a fair, predictable, sustainable and trusted online business environment within the internal market, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 [TEU]. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.'

4 Article 1 of that regulation states:

'1. The purpose of this Regulation is to contribute to the proper functioning of the internal market by laying down rules to ensure that business users of online intermediation services and corporate website users in relation to online search engines are granted appropriate transparency, fairness and effective redress possibilities.

2. This Regulation shall apply to online intermediation services and online search engines provided, or offered to be provided, to business users and corporate website users, respectively, that have their place of establishment or residence in the Union and that, through those online intermediation services or online search engines, offer goods or services to consumers located in the Union, irrespective of the place of establishment or residence of the providers of those services and irrespective of the law otherwise applicable.

…

5. This Regulation shall be without prejudice to Union law, in particular Union law applicable in the areas of judicial cooperation in civil matters, competition, data protection, trade secrets protection, consumer protection, electronic commerce and financial services.'

5 Article 2(1) of that regulation provides:

'For the purposes of this Regulation, the following definitions apply:

(1) "business user" means any private individual acting in a commercial or professional capacity who, or any legal person which, through online intermediation services offers goods or services to consumers for purposes relating to its trade, business, craft or profession'.

6 Article 15 of the same regulation provides:

'1. Each Member State shall ensure adequate and effective enforcement of this Regulation.

2. Member States shall lay down the rules setting out the measures applicable to infringements of this Regulation and shall ensure that they are implemented. The measures provided for shall be effective, proportionate and dissuasive.'

7 Article 16 of Regulation 2019/1150 states:

'The [European] Commission, in close cooperation with Member States, shall closely monitor the impact of this Regulation on relationships between online intermediation services and their business users and between online search engines and corporate website users. To this end, the Commission shall gather relevant information to monitor changes in these relationships, including by carrying out relevant studies. Member States shall assist the Commission by providing, upon request, any relevant

information gathered including about specific cases. The Commission may, for the purpose of this Article and Article 18, seek to gather information from providers of online intermediation services.'

8 Under Article 18(1) and (3) of that regulation:

'1. By 13 January 2022, and subsequently every three years, the Commission shall evaluate this Regulation and report to the European Parliament, the Council [of the European Union] and the European Economic and Social Committee.

…

3. Member States shall provide any relevant information they have that the Commission may require for the purposes of drawing up the report referred to in paragraph 1.'

Italian law

Law No 249 of 31 July 1997

9 Article 1 of legge n. 249 – Istituzione dell'Autorità per le garanzie nelle comunicazioni e norme sui sistemi delle telecomunicazioni e radiotelevisivo (Law No 249 establishing the Communications Regulatory Authority and telecommunications and broadcasting standards) of 31 July 1997 (Ordinary Supplement to GURI No 177 of 31 July 1997) provides:

'…

29. Persons who, in communications requested by [AGCOM], provide accounting data or facts relating to the exercise of their activity which are not true shall be subject to the penalties provided for in Article 2621 of the Civil Code.

30. Persons who do not communicate, within the prescribed period and in accordance with the prescribed procedure, the documents, data and information requested by [AGCOM] shall be liable to an administrative fine of one million [Italian lire (ITL) (approximately EUR 516) to ITL 200 million (approximately EUR 103 000)] imposed by that authority.

…'

10 Law No 249 of 31 July 1997, as amended by legge n. 178 – Bilancio di previsione dello Stato per l'anno finanziario 2021 e bilancio pluriennale per il triennio 2021-2023 (Law No 178 on the State budget for the 2021 financial year and the multiannual budget for the three-year period 2021-2023) of 30 December 2020 (Ordinary Supplement to GURI No 322 of 30 December 2020), provides, in Article 1(6)(c)(14a):

'The responsibilities of [AGCOM] are identified as follows:

…

(c) the Board:

…

(14a) shall ensure the adequate and effective enforcement of Regulation [2019/1150], including by adopting guidelines, encouraging codes of conduct to be drawn up and gathering relevant information'.

Decision No 397/13

11 On 25 June 2013, AGCOM adopted delibera n. 397/13/CONS, Informativa economica di sistema (Decision No 397/13/CONS on Economic System Information) ('Decision No 397/13').

12 Article 2(1) of Decision No 397/13 sets out the categories of persons who are required to send to AGCOM a document entitled 'Informativa economica di sistema' (Economic System Information) ('the ESI').

13 Article 6 of that decision provides:

'1. Persons who, for the purposes of the obligation referred to in Article 2 of this Decision, communicate data which are not true shall be subject to the penalties in accordance with Article 1(29) of Law No [249 of 31 July 1997].

2. Persons who fail to fulfil, within the prescribed period and in accordance with the prescribed procedure, the obligation referred to in Article 2 shall be subject to the penalties in accordance with Article 1(30) of Law No [249 of 31 July 1997].'

Decision No 161/21

14 On 12 May 2021, AGCOM adopted delibera n. 161/21/CONS – Modifiche alla delibera n. 397/13 del 25 giugno 2013 'Informativa Economica di Sistema' (Decision No 161/21/CONS on Modifications to Decision No 397/13 of 25 June 2013 'Economic System Information') ('Decision No 161/21').

15 As set out in the preamble to Decision No 161/21:

'…

Having regard to Regulation 2019/1150 …

Having regard to Law [No 178 of 30 December 2020] …

…

Whereas the [ESI] is an annual declaration which communication operators are required [to make] and which concerns identification data and economic data relating to the activity carried out by the data subjects, in order to gather the information necessary to meet specific legal obligations, including the valuation of the Sistema integrato delle comunicazioni [(Integrated Communications System) (ICS)] and the verification of [concentration] limits within that system; analyses of the market and of any dominant positions or positions which in any case affect pluralism; the annual report and investigations …, as well as for updating the statistical database of communications operators;

Whereas Law [No 178 of 30 December 2020] confers new powers on [AGCOM], entrusting it with the task of ensuring "the proper and effective application of Regulation [2019/1150], in particular by adopting guidelines, promoting codes of conduct and collecting relevant information";

[Whereas] it is therefore necessary to extend [certain] obligations of communication of the ESI to providers of online intermediation services and online search engines in order to collect relevant information on an annual basis and to carry out activities aimed at ensuring the proper and effective application of Regulation 2019/1150 and the exercise of the functions entrusted to [AGCOM] by Law [No 178 of 30 December 2020];

…'

16 Article 1(1) of that decision amended the list in Article 2 of Decision No 397/13 to extend the obligation to send the ESI to AGCOM to the following two categories of persons:

'…

(h) Providers of online intermediation services: natural or legal persons which, even if they are not established or resident in national territory, provide or offer to provide online intermediation services, as defined by Regulation 2019/1150, to business users established or resident in Italy;

(i) Online search engine providers: natural or legal persons which, even if they are not established or resident in national territory, provide or offer to provide an online search engine, as defined by Regulation 2019/1150, in the Italian language or to users established or resident in Italy.

…'

The dispute in the main proceedings and the questions referred for a preliminary ruling

17 Expedia, a company whose registered office is in Seattle (United States), manages IT platforms allowing the provision of online accommodation and travel reservation services.

18 Following amendments to the national legal framework resulting from Law No 178 of 30 December 2020 and Decision No 161/21, adopted by the Italian authorities, inter alia with a view to ensuring the implementation of Regulation 2019/1150, Expedia, as a provider of online intermediation services, is now subject to the obligation to send the ESI, a document in which information relating to the economic situation of the provider must be inserted, to AGCOM.

19 Expedia brought an action before the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy), which is the referring court, seeking the annulment of Decision No 161/21.

20 Before the referring court, Expedia submits that that decision, in so far as it imposes on it the obligation to send the ESI to AGCOM, is contrary to Regulation 2019/1150, which is a harmonisation measure based on the principle of proportionality and which therefore does not allow the imposition of a heavier burden on the procedural requirements imposed on providers of online intermediation services, whether they are established in the European Union or in a third country.

21 In that regard, that court recalls, in the first place, that, following the adoption of Regulation 2019/1150, the Italian legislature amended, by Law No 178 of 30 December 2020, Law No 249 of 31 July 1997.

22 Accordingly, AGCOM is responsible for ensuring that Regulation 2019/1150 is implemented, in particular by gathering information (Article 1(6)(c)(14a) of Law No 249 of 31 July 1997, as amended by Law No 178 of 30 December 2020).

23 In the second place, the referring court states that, by Decision No 161/21, AGCOM amended Decision No 397/13 in order to take account of the measures adopted by the Italian legislature with a view to implementing Regulation 2019/1150. Consequently, the obligation to send the ESI to AGCOM was extended to providers of online intermediation services and online search engines ('the service providers concerned') offering services in Italy.

24 That court explains that the ESI was initially sent for the purposes of the Garante per la radiodiffusione e l'editoria (Guarantor for broadcasting and publishing, Italy), by virtue of legislative provisions which conferred on it the power to adopt measures to determine the accounting data and other information that certain entities had to communicate to it, and that the powers of that guarantor were transferred to AGCOM.

25 That court considers that, by Decision No 161/21, AGCOM imposed on the service providers concerned an obligation to provide it with important and specific information relating to their economic situation. Thus, for example, those providers would be required to communicate the total revenues from online sales sites, the amounts collected as fees for subscriptions and as registration, membership or subscription fees for the use of those suppliers' online sales platform by users established in Italy to offer goods or services to consumers, fixed and variable commissions charged on sales, made via the online sales platform, of goods or services offered to consumers by undertakings using online intermediation services, within the meaning of Article 2(1) of Regulation 2019/1150 ('business users'), established in Italy, fixed and variable commissions paid by business users established in Italy for sales of goods or services offered to consumers via the online sales platform, other revenues from intermediation services, other than advertising, provided to business users or users other than those undertakings, established in Italy, which offer goods or services to consumers via the online sales platform.

26 The referring court points out that failure to send the ESI to AGCOM or the communication of inaccurate data are punishable by the penalties provided for in Article 1(29) and (30) of Law No 249 of 31 July 1997.

27 In the light of those factors, that court considers that the obligation to send the ESI to AGCOM could be incompatible with Regulation 2019/1150.

28 That court observes that that regulation contains provisions relating to the review of its application and its effects. On the one hand, it recalls that, according to Article 15 thereof, Member States are to ensure the adequate and effective enforcement of that regulation and to set out the measures applicable to infringements thereof, which must be effective, proportionate and dissuasive.

29 On the other hand, the referring court cites Article 16 of Regulation 2019/1150, according to which, first, the Commission, in close cooperation with Member States, is to closely monitor the impact of that regulation on relationships, in particular, between online intermediation services

and business users, next, and to that end, the Commission is to gather relevant information to monitor changes in those relationships, with the assistance of Member States which, upon request, transmit to it any relevant information gathered, including about specific cases, and, lastly, the Commission may gather information from service providers concerned.

30 That court considers, consequently, that there is no connection between compliance with the obligations laid down in Regulation 2019/1150 and the information required under the ESI, which relates mainly to the revenues of the service providers concerned and is not relevant in order to ensure the transparency and fairness of the relationships between those providers and business users. Accordingly, the referring court considers that, by means of the national measures under which providers of online intermediation services are now required to send the ESI to AGCOM ('the contested national measures'), the Italian authorities introduced into their legal system provisions providing for a monitoring of subjective factors inherent in those providers, which is completely different from the monitoring provided for by that regulation, which relates to their compliance with the obligations laid down by that regulation.

31 It states that, if the obligation to send the ESI to AGCOM were incompatible with Regulation 2019/1150, Decision No 161/21 would be invalid, in so far as Law No 178 of 30 December 2020 assigns to AGCOM the sole function of ensuring the adequate and effective enforcement of that regulation.

32 In those circumstances, the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does Regulation [2019/1150] and, in particular, Article 15 thereof, as well as the principle of proportionality, preclude legislation of a Member State or a measure adopted by an independent national authority … requiring foreign providers of online intermediation services to submit a report containing information that is irrelevant as regards the aims of that regulation?

(2) In any event, can the information requested through the submission of the ESI be considered as being relevant and instrumental for the adequate and effective [enforcement] of Regulation 2019/1150?'

Admissibility of the request for a preliminary ruling

33 The Italian Government has doubts as to the admissibility of the request for a preliminary ruling, on the ground that the two questions referred are contradictory, in that the referring court, on the one hand, asserts, without explaining the reasons, that the obligation to send the ESI to AGCOM is irrelevant to the enforcement of Regulation 2019/1150 and, on the other hand, asks the Court of Justice to examine the relevance and usefulness of the information to be inserted in the ESI for the purposes of the correct application of that regulation, even though that examination falls within the jurisdiction of the referring court, in particular in so far as it involves making factual assessments.

34 In the first place, it is important to recall that, in proceedings under Article 267 TFEU, which is based on a clear separation of functions between the national courts and the Court of Justice, any assessment of the facts in the case is a matter for the national court. However, in order to give the

national court a useful answer, the Court may, in a spirit of cooperation with national courts, provide it with all the guidance that it deems necessary (judgment of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraph 30 and the case-law cited).

35 Moreover, while it is not for the Court to interpret the rules of national law of a Member State, it may nevertheless provide the referring court with the necessary clarification as to the provisions of EU law which may preclude those rules (see, to that effect, judgments of 8 November 2016, *Lesoochranárske zoskupenie VLK*, C-243/15, EU:C:2016:838, paragraph 64 and the case-law cited, and of 8 May 2019, *Rossato and Conservatorio di Musica F.A. Bonporti*, C-494/17, EU:C:2019:387, paragraph 29 and the case-law cited).

36 In the second place, it should be noted, as the Advocate General observed in point 80 of his Opinion, that the contradiction relied on by the Italian Government, as referred to in paragraph 33 of the present judgment, stems from the fact that the referring court, in its first question, itself states that the information to be provided under the ESI is, in its assessment, irrelevant as regards the aims of Regulation 2019/1150, while seeking to ascertain, by its second question, whether that information may be relevant and useful to the adequate and effective enforcement of that regulation.

37 The Italian Government's doubts, relating both to the limits of the Court's jurisdiction and to the allegedly contradictory nature of the questions referred, can be dispelled by a joint examination of those questions, namely whether Regulation 2019/1150 precludes national measures such as the contested national measures.

38 It follows that the present request for a preliminary ruling is admissible.

Consideration of the questions referred

39 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Regulation 2019/1150 must be interpreted as justifying the adoption of measures by a Member State under which, on pain of penalties, providers of online intermediation services are subject, with a view to providing their services in that Member State, to the obligation to send periodically to an authority of that Member State a document relating to their economic situation, in which it is necessary to set out a large amount of information relating, in particular, to the revenues of those service providers.

40 As a preliminary point, it must be recalled that, according to the Court's settled case-law, pursuant to Article 288 TFEU and by virtue of the very nature of regulations and of their function in the system of sources of EU law, the provisions of those regulations generally have immediate effect in the national legal systems without it being necessary for the national authorities to adopt measures of application. Nonetheless, some of those provisions may necessitate, for their implementation, the adoption of measures of application by the Member States (judgment of 15 June 2021, *Facebook Ireland and Others*, C-645/19, EU:C:2021:483, paragraph 110 and the case-law cited).

41 In so far as the implementation of certain provisions of a regulation so require, Member States may adopt implementing measures for a regulation provided that (i) they do not thereby obstruct its direct applicability or conceal its nature as an act of EU law, (ii) they specify that they are acting

in exercise of a discretion conferred on them under that regulation, and (iii) they adhere to the parameters laid down thereunder (judgment of 22 January 2020, *Ursa Major Services*, C-814/18, EU:C:2020:27, paragraph 34 and the case-law cited).

42 In that regard, it is by referring to the relevant provisions of the regulation concerned, interpreted in the light of its objectives, that it may be determined whether they prohibit, require or allow Member States to adopt certain implementing measures and, particularly in the latter case, whether the measure concerned comes within the scope of the discretion that each Member State is recognised as having (judgment of 22 January 2020, *Ursa Major Services*, C-814/18, EU:C:2020:27, paragraph 35 and the case-law cited).

43 It is also apparent from the case-law that, when adopting such measures, the Member States are required to comply with the principle of proportionality, which applies to their legislative and regulatory authorities when they apply European Union law and requires that measures implemented by means of a provision be appropriate for attaining the objective pursued and must not go beyond what is necessary to achieve it (see, to that effect, judgment of 12 April 2018, *Commission* v *Denmark*, C-541/16, EU:C:2018:251, paragraphs 49 and 50 and the case-law cited).

44 Thus, in order to answer the questions referred, it is necessary to determine the objective pursued by Regulation 2019/1150 and the provisions thereof which confer a role on the Member States for its application.

45 As regards, first, that objective, it is apparent from recitals 7 and 51 thereof that the regulation aims to establish a targeted set of mandatory rules at Union level in order to establish a fair, predictable, sustainable and trusted online business environment within the internal market. In particular, business users should be afforded appropriate transparency, as well as effective redress possibilities, throughout the Union in order to facilitate cross-border business within the Union and thereby improve the proper functioning of the internal market.

46 Article 1(1) of that regulation specifies that the regulation contributes to the proper functioning of that market by laying down rules to ensure that business users and corporate website users in relation to online search engines are granted appropriate transparency, fairness and effective redress possibilities.

47 In that context, as the Advocate General observed, in essence, in point 100 of his Opinion, Regulation 2019/1150 imposes on the service providers concerned specific obligations relating to the transparency and fairness of the conditions applied to business users and lays down provisions concerning the out-of-court and judicial resolution of disputes between such providers and business users.

48 As regards, secondly, the provisions of Regulation 2019/1150 which confer a role on the Member States for its application, it should be recalled, in the first place, that, under Article 15(1) of that regulation, each ‘Member State shall ensure the adequate and effective enforcement’ of that regulation. Article 15(2) states that ‘Member States shall lay down the rules laying down the measures applicable to infringements [of the same regulation] and shall ensure that they are implemented’ and that those measures ‘shall be effective, proportionate and dissuasive’.

49 Article 15 must be read in the light of recital 46 of Regulation 2019/1150, according to which, inter alia, 'Member States should have the option to entrust existing authorities, including courts, with the enforcement of this Regulation', although that 'Regulation should not oblige Member States to provide for *ex officio* enforcement or to impose fines'.

50 In the second place, Article 16 of Regulation 2019/1150 states, inter alia, that the 'Commission, in close cooperation with the Member States, shall closely monitor the impact of this Regulation on relationships between online intermediation services and their business users'. In particular, 'the Commission shall gather relevant information to monitor changes in these relationships'. As for the Member States, Article 16 provides that they 'shall assist the Commission by providing, upon request, any relevant information gathered including about specific cases'. Furthermore, 'the Commission may … seek to gather information from providers of online intermediation services'.

51 In the third place, Article 18(3) of Regulation 2019/1150 states that 'Member States shall provide any relevant information they have [to the Commission] that [it] may require for the purposes of drawing up the report' which that institution is required to draw up periodically in the context of the review of that regulation provided for in Article 18(1).

52 First, it follows from paragraphs 50 and 51 of the present judgment that the information which the Member States may be called upon to provide to the Commission under Articles 16 and 18 of Regulation 2019/1150 must be relevant in order to enable that institution to monitor changes in those relationships, in particular, between providers of online intermediation services and business users or to draw up reports on the evaluation of that regulation.

53 Since, as is apparent from paragraphs 45 to 47 of the present judgment, the objective of Regulation 2019/1150 is to establish a fair, predictable, sustainable and trusted online business environment operations within the internal market, in which business users are afforded appropriate transparency, fairness and effective redress possibilities, information gathered by the national authorities can be classified as 'relevant', within the meaning of Articles 16 and 18 of that regulation, only if it has a sufficiently direct link with that objective.

54 By contrast, as the Advocate General observed, in essence, in points 113 and 114 of his Opinion, a Member State cannot, under the application of Regulation 2019/1150, gather arbitrarily selected information on the ground that it may subsequently be requested by the Commission in the exercise of its tasks of monitoring and review of that regulation. The possibility of gathering information under such a pretext would allow a Member State to circumvent the requirements arising from the principles referred to in paragraphs 41 to 43 of the present judgment regarding the Member States' adoption of implementing measures for a regulation. Furthermore, Regulation 2019/1150 does not require the Member States to gather, on their own initiative, the information that the Commission might need in order to carry out its tasks, since such information must be submitted only 'upon request' of that institution, which, moreover, may seek to gather information directly from providers of online intermediation services.

55 Secondly, where a Member State entrusts an administrative authority with the task of monitoring, in accordance with Article 15 of Regulation 2019/1150, the enforcement of that regulation, the information which that authority may gather, in exercising that task, is appropriate for attaining the objective of that regulation only if it has a sufficiently direct link with it.

56 In that regard, as the Advocate General observed, in essence, in points 121 to 123 of his Opinion, information relating to the economic situation of providers of online intermediation services does not have a sufficiently direct link with the objective of Regulation 2019/1150, as recalled in paragraphs 45 to 47 of the present judgment. The information required of the providers of those services on the basis of Regulation 2019/1150 must concern the conditions of the service provided, in order to, inter alia, enable the competent authorities to know and assess the fairness of the contractual conditions laid down by those providers to business users within the European Union. The link between, on the one hand, the economic situation of a provider of such services and, on the other hand, the manner in which those services are provided for the benefit of business users, assuming that they exist, can only be indirect. Therefore, in the light of that regulation, the monitoring of the accuracy of the information relating to that economic situation, relied on by the Italian Government, is not relevant. The identification of possible 'distortions of competition', to which that government also refers, does not fall within the scope of the objective of that regulation, since the latter is without prejudice to EU law applicable in the area of competition, as stated in Article 1(5) thereof.

57 Therefore, in the light of the information concerning the content of the ESI provided by way of example by the referring court, as referred to in paragraph 25 of the present judgment, it appears, as the Advocate General, in essence, observed in points 125 to 128 of his Opinion, that the implementation of Regulation 2019/1150 does not justify measures such as the contested national measures.

58 In light of all the foregoing considerations, the answer to the questions referred is that Regulation 2019/1150 must be interpreted as meaning that it does not justify, with a view to the adequate and effective implementation of that regulation, the adoption of measures by a Member State under which, on pain of penalties, providers of online intermediation services are subject, with a view to providing their services in that Member State, to the obligation to send periodically to an authority of that Member State a document relating to their economic situation, in which it is necessary to set out a large amount of information relating, in particular, to the revenues of those service providers.

Costs

59 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

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

must be interpreted as meaning that it does not justify, with a view to the adequate and effective implementation of that regulation, the adoption of measures by a Member State under which, on pain of penalties, providers of online intermediation services are subject, with a view to providing their services in that Member State, to the obligation to send periodically to an authority of that Member State a document relating to their economic situation, in which it is necessary to set out a large amount of information relating, in particular, to the revenues of those service providers.

[Signatures]