

*courtesy translation*

**Preliminary opinion of the Council of State of 27 May 2015. ART opinion to the Ministry of Interior (ref. no. 577/ST/138.022.04/1556)**

With reference to the request for opinion referred to in the a.m. note, in its meeting of 30 September 2015, the Authority has made the following considerations, which are based on the premise that the question concerning the applicability of the provisions referred to in Law no. 21 of 15 January 1992 - *Framework Law on the carriage of passengers by non-scheduled car and coach public services* - to new forms of organisation and telematic management of passenger transport by means of non-scheduled public services has been authoritatively resolved by the Council of State, First Chamber, by its interlocutory opinion no. 757 of 27 May 2015. Accordingly, the request for the Authority's opinion on the matter at issue, as addressed to other institutions as well, is to be considered as pertaining to its direct responsibilities, i.e. to relevant issues in the economic regulation of this area.

In this regard it is worth noting that the advisability of an ad hoc action aimed at bringing out and regulating the new market of the above-mentioned services, so that demand and supply can operate transparently and in compliance with the rules applicable to the economic activity of the undertakings concerned, has been recently brought up by the Authority in the framework of the provision of initial indications to the Government and the Parliament on non-scheduled road transport passenger services: taxi, car-and-driver (C&D) hire and technology mobility services (hereinafter referred to as "the Authority's indications"), adopted on 21 May 2015. For an extensive description of the issues addressed reference is made to the full text of the document which is enclosed herewith for a quick reference.

In particular, one of the issues covered is the use of "technology mobility services" (TMS) provided through technology platforms that integrate intermediation, transport and financial services and connect passengers, means of transport and drivers, including non-professional, falling outside the areas referred to in law no. 21/1992, which regulates taxi services and C&D hire. In this respect, the Authority has made operational proposals, trusting that the Government and the Parliament will take them into account in the definition of policy objectives pertaining to public policy and relevant civil and tax legislation.

The proposals contained in the document arise from a survey carried out by the Authority at the beginning of this year, which involved all major stakeholders. The hearings with them and the following examination of the findings of the survey have confirmed the increased use of different types of technology platforms which, thanks to geo-localization, allow to catch the demand for services which are typically less expensive than those provided by taxi and C&D hire and are available through the use of smartphones and tablets. This points towards the creation of a new market segment for non-scheduled urban transport services which fits in with the development of sustainable mobility and the pursuit of indirect deflation effects as for traffic and pollution reduction. Its development requires to re-consider whether the existing legal instruments and categories regulating this area are still satisfactory and, at the same time, ensure safety and quality of the services provided, privacy of passengers and enhanced and different ways of satisfying the new mobility demand, thereby reducing the risk of distortions.

In particular, the analysis carried out by the Authority showed that the commercial purpose of the service is an essential element to determine its regulatory content and scope.

Indeed, it is necessary to distinguish two different cases of shared use of private vehicles (car-pooling):

- on the one hand, platforms of a non-commercial, "courtesy" nature, provided in a non-professional manner by drivers who share, in whole or in part, a predetermined route travelled by their own vehicle, with one or more other persons getting in touch through dedicated services provided by intermediaries, including through technological tools;
- on the other hand, platforms offering technology mobility services on demand and for commercial purposes. In the latter case, even if the driver's activity is carried out in a non-professional manner, the service is provided at a price that does not merely share the cost of the travelled route, defined at the passenger's request, but also ensures a profit margin to platform and driver, albeit at an affordable cost. This case appears to be more easily comparable to radio-taxi services rather than to traditional taxi or C&D hire services referred to in Law no. 21 of 1992. Radio taxi provide, under exclusivity agreements between a taxi association (usually a cooperative) and its members, services aimed at matching demand and supply of transport services, taxi call handling and location of the vehicle as close as possible to the user.

In accordance with the Authority's relevant regulatory purposes and without prejudice to any further operating conditions to be made pursuant to public, civil and tax law provisions, the commercial nature of transport services should involve specific obligations pertaining to mediation services and drivers' requirements. These obligations should not be imposed on non-commercial, "courtesy" services. In particular:

a) undertakings providing TMS which, through the use of a technology platform, connect passengers and drivers so as to provide upon request paid-for services which are supplied in the national territory may be qualified as "intermediaries". They should be enrolled in the regions which in the proposed approach, given the assumed inter-municipal - if not also inter-regional - nature of the service, should also carry out the related administrative functions, either directly or by authorisation.

b) several people may be qualified as "drivers": taxi license holders, C&D license holders and private drivers using their own vehicle. In the latter case, private drivers should be casual workers, who are required to comply with a maximum annual income and a limited weekly working time not exceeding fifteen hours. All drivers should be enrolled in a special register established on a regional basis, have additional insurance to cover any damages caused to passengers, set clear and transparent fares and carry out regular checks on drivers and cars, taking into account that the latter cannot be registered for more than seven years.

In the Authority's opinion, the regulatory proposals set out above would address the social risks censured by traffic rules.

The Authority trusts that the its proposals for regulatory changes will be taken into consideration by the legislative in order to open up the market of non-scheduled transport services to new modes of providing the service.

The President  
Andrea Camanzi