

IMI notification No 422076 by FRANCE (28/7/2022)
Request for clarifications by the Commission services

Within the framework of the notification procedure laid down under Article 15(7) and Article 39(5) of the Directive 2006/123/EC relating to the provision of information in the field of the freedom of establishment as well as the freedom to provide services, the French authorities notified via the IMI system the 'Draft Decree No XX of XX implementing Article L. 6224-1 of the Transport Code'. The Commission would like to thank the French authorities for this IMI notification with the notification number No 422076.

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

The Commission notes that Article 1 of the draft decree notified by France contains the following provision amending the Civil Aviation Code:

Art. R. 133-6-1. - The administrative authority shall receive a request, the content and procedures for which shall be laid down by an order of the Prime Minister and which shall specify in particular:

- (1) The purposes of aerial data collection;*
- (2) The methods of collecting the data;*
- (3) The conditions for storing, using, transmitting or disseminating the data and destroying it if necessary;*
- (4) Where applicable, the persons, other than the applicant for authorisation, likely to use them.*

If the administrative authority remains silent in response to a request after a period of two months has elapsed, this shall be deemed to be a equivalent to a decision to reject it.

The Commission services note that if the activity of capturing, recording, transmitting, storing, using or disseminating data collected from aircraft is a service activity falling within the scope of Directive 2006/123/EC, the provisions of Article 13 of that Directive apply.

Article 13(3) states that: *"Authorisation procedures and formalities shall provide applicants with a guarantee that their application will be processed as quickly as possible and, in any event, within a reasonable period which is fixed and made public in advance"*

Article 13(4) provides that: *" Failing a response within the time period set or extended in accordance with paragraph 3, authorisation shall be deemed to have been granted. Different arrangements may nevertheless be put in place, where justified by overriding reasons relating to the public interest, including a legitimate interest of third parties"*

However, the provisions of the draft decree stipulate that the silence of the administrative authority is equivalent to an implicit decision to reject the application.

In the context of this, the Commission services would like to ask the French authorities the following questions:

1. What are the reasons why France refuses to apply the tacit authorisation mechanism on expiry of the two-month period, as provided for in Article 13(4) of Directive 2006/123/EC?
2. Given that the tacit authorisation mechanism in principle allows sufficient time for the competent authorities to examine the application for authorisation, for what reasons does France consider that the two-month period may not be sufficient to grant an authorisation as provided for in the notified draft decree?

The Commission would like to highlight that this request for clarifications aims only to clarify the scope, objective and aim of the notified measure and does not constitute a formal position.

The Commission would like to thank in advance the French authorities for their co-operation.