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Judgment of the Court in Case C-339/21 | Colt Technology Services and Others

Telecommunications operators may be obliged to provide, upon request from a judicial authority, communication interception operations in return for a fixed rate

EU law does not require full reimbursement of the costs actually incurred

In Italy, telecommunications operators are required, in the event of a request from the judicial authorities, to carry out interception of communications (voice, computer, telematic and data) in return for a fixed rate. The amounts which they receive were modified by a decree of 2017, which established a reduction of at least 50% of the reimbursements of the costs associated with those interception operations. The telecommunications operators concerned sought annulment of that decree from the Italian judicial authorities, claiming that the fees provided for do not fully cover the costs incurred. The Italian Council of State, hearing the case on appeal, asks the Court of Justice **whether EU law requires full reimbursement of the costs actually incurred by operators in carrying out such interceptions.**

By today's judgment, the Court answers that question in the negative. EU law does not preclude national legislation which does not require full reimbursement of the costs actually incurred by providers of electronic communications services when they enable the legal interception of electronic communications by the competent national authorities, provided that that legislation is non-discriminatory, proportionate and transparent.

The Court notes that the European Electronic Communications Code provides that a general authorisation for the provision of electronic communications networks or services may be made subject, by the Member States, to certain conditions, among which the enabling of legal interception by the competent national authorities.

According to the Court, it follows from this that **the EU legislature neither imposed nor excluded reimbursement, by the Member States, of the costs that would be incurred by the undertakings which enable legal interception.** As a consequence, Member States have discretion.

The Court considers that that discretion was exercised by Italy in accordance with the principles of non-discrimination, proportionality and transparency. Indeed, the reimbursements provided for are comparable for all operators offering electronic communications services in Italy, since the reimbursements are provided for on the basis of fixed unit rates. Those rates are calculated by taking account of technological progress in the sector which has made certain services less expensive, and of the fact that those services are essential to the pursuit of general aims of an overriding public interest and that they can be provided only by telecommunications operators. Lastly, those rates are fixed by means of a formal administrative act, which is published and freely accessible.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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