Provisional text

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 10 September 2020 (1)

Case C-62/19

Star Taxi App SRL
v
Unitatea Administrativ Teritorială Municipiul Bucureşti prin Primar General,
Consiliul General al Municipiului Bucureşti,
interested parties
IB,
Camera Naţională a Taximetriştilor din România,
D'Artex Star SRL,
Auto Cobălcescu SRL,
Cristaxi Service SRL

(Request for a preliminary ruling from the Tribunalul București (Regional Court, Bucharest, Romania))

(Reference for a preliminary ruling – Directive (EU) 2015/1535 – Article 1(1)(b) – Definition of 'Information Society services' – Service putting taxi customers directly in touch with taxi drivers – Mandatory taxi booking service for taxis of authorised carriers – Article 1(1)(e) – Rule on services – Notification obligation – Directive 2000/31/EC – Article 4 – Prior authorisation – Authorisation schemes not specifically and exclusively targeted at Information Society services – Directive 2006/123/EC – Articles 9 and 10 – Authorisation schemes for service activities)

Introduction

1. EU legislation lays down special rules for a specific category of services, namely 'Information Society' services, that is to say, services provided at a distance by electronic means or, put simply, mainly via the internet. Under EU law, such services benefit from the principle of mutual recognition between Member States as well as a number of facilitations as regards establishment in the providers' respective Member States of origin.

2. However, it is not always easy to distinguish between an Information Society service and a 'traditional' service when different kinds of services form an integral part of a composite service. That is particularly the case for urban transport services booked by electronic means. The Court has already had

the opportunity to provide some guidance on that distinction in specific circumstances. (2) However, such guidance is not necessarily intended to apply in different circumstances.

3. A second difficulty comes to light where national rules govern 'traditional' services of the same economic nature as Information Society services. It is therefore necessary to determine to what extent and, as the case may be, under what circumstances EU law allows those rules to be applied to the latter category of services. A further question arises where there is doubt as to whether the rules adopted to regulate 'traditional' services are actually intended to apply to Information Society services, due to the latter's specificity or novelty. (3)

4. All of those different issues emerge in the present case and thus give the Court the opportunity to clarify its case-law on the matter.

Legal context

European Union law

5. Under Article 2(a) of 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 particular electronic commerce, in the Internal Market ('Directive on electronic commerce'): (4)

'For the purpose of this Directive, the following terms shall bear the following meanings:

(a) "information society services": services within the meaning of Article 1(2) of Directive 98/34/EC as amended by Directive 98/48/EC; [(5)]'

6. Article 4 of that directive provides:

'1. Member States shall ensure that the taking up and pursuit of the activity of an information society service provider may not be made subject to prior authorisation or any other requirement having equivalent effect.

2. Paragraph 1 shall be without prejudice to authorisation schemes which are not specifically and exclusively targeted at information society services …'

7. Article 2(1) and Article 2(2)(d) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (6) provides:

'1. This Directive shall apply to services supplied by providers established in a Member State.

2. This Directive shall not apply to the following activities:

…

(d) services in the field of transport, including port services, falling within the scope of Title [VI] of the [TFEU];

…'

8. Under the first sentence of Article 3(1) of that directive:

'If the provisions of this Directive conflict with a provision of another Community act governing specific aspects of access to or exercise of a service activity in specific sectors or for specific professions, the provision of the other Community act shall prevail and shall apply to those specific sectors or professions.'

9. Article 9(1) of that directive provides:

‘1. Member States shall not make access to a service activity or the exercise thereof subject to an authorisation scheme unless the following conditions are satisfied:

(a) the authorisation scheme does not discriminate against the provider in question;

(b) the need for an authorisation scheme is justified by an overriding reason relating to the public interest;

(c) the objective pursued cannot be attained by means of a less restrictive measure, in particular because an a posteriori inspection would take place too late to be genuinely effective.’

10. Lastly, Article 10(1) and (2) of that directive states:

‘1. Authorisation schemes shall be based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner.

2. The criteria referred to in paragraph 1 shall be:

(a) non-discriminatory;

(b) justified by an overriding reason relating to the public interest;

(c) proportionate to that public interest objective;

(d) clear and unambiguous;

(e) objective;

(f) made public in advance;

(g) transparent and accessible.’

11. Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (7) provides:

‘1. For the purposes of this Directive, the following definitions apply:

…

(b) “service” means any Information Society service, that is to say, any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.

For the purposes of this definition:

(i) “at a distance” means that the service is provided without the parties being simultaneously present;

(ii) “by electronic means” means that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

(iii) “at the individual request of a recipient of services” means that the service is provided through the transmission of data on individual request.

An indicative list of services not covered by this definition is set out in Annex I;

…

(e) “rule on services” means a requirement of a general nature relating to the taking-up and pursuit of service activities within the meaning of point (b), in particular provisions concerning the service provider, the services and the recipient of services, excluding any rules which are not specifically aimed at the services defined in that point.

For the purposes of this definition:

(i) a rule shall be considered to be specifically aimed at Information Society services where, having regard to its statement of reasons and its operative part, the specific aim and object of all or some of its individual provisions is to regulate such services in an explicit and targeted manner;

(ii) a rule shall not be considered to be specifically aimed at Information Society services if it affects such services only in an implicit or incidental manner;

(f) “technical regulation” means technical specifications and other requirements or rules on services, including the relevant administrative provisions, the observance of which is compulsory, de jure or de facto, in the case of marketing, provision of a service, establishment of a service operator or use in a Member State or a major part thereof, as well as laws, regulations or administrative provisions of Member States, except those provided for in Article 7, prohibiting the manufacture, importation, marketing or use of a product or prohibiting the provision or use of a service, or establishment as a service provider.

…

This comprises technical regulations imposed by the authorities designated by the Member States and appearing on a list drawn up and updated, where appropriate, by the Commission, in the framework of the Committee referred to in Article 2.

…’

12. Under the first subparagraph of Article 5(1) of that directive:

‘Subject to Article 7, Member States shall immediately communicate to the Commission any draft technical regulation, except where it merely transposes the full text of an international or European standard, in which case information regarding the relevant standard shall suffice; they shall also let the Commission have a statement of the grounds which make the enactment of such a technical regulation necessary, where those grounds have not already been made clear in the draft.’

13. Finally, Article 10 of the directive provides:

‘Directive 98/34/EC, as amended by the acts listed in Part A of Annex III to this Directive, is repealed, without prejudice to the obligations of the Member States relating to the time limits for the transposition into national law of the Directives set out in Part B of Annex III to the repealed Directive and in Part B of Annex III to this Directive.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex IV.’

Romanian law

14. Article 1a(j) and Article 15 of Legea nr. 38/2003 privind transportul în regim de taxi și în regim de închiriere (Law No 38/2003 on transport by taxi and hire vehicle) of 20 January 2003 (8) ('Law No 38/2003') provide:

'Article 1a

…

(j) taxi dispatching ("dispatching") means an activity related to the transport by taxi consisting in receiving customer bookings by telephone or other means and forwarding them to a taxi driver via a two-way radio;

…

Article 15

1. Taxi dispatching may be carried on only within the area covered by the authorisation by any legal person ("the booking centre") holding an authorisation granted by the competent authority in accordance with this law.

2. A taxi dispatching authorisation may be obtained by submitting the following documents:

(a) a copy of the registration certificate issued by the commercial register;

(b) a sworn declaration by the taxi or hire vehicle transport operator that the booking centre is equipped with the necessary technical means, a two-way radio, a secure radio frequency, authorised staff and the necessary spaces;

(c) a copy of the radio telephony operator certificate for the employees of the taxi booking centre issued by the competent communications authority;

(d) a copy of the licence to use radio frequencies issued by the competent authority.

…

5. Authorised carriers providing taxi services shall use a booking centre in accordance with this law on the basis of a dispatching agreement concluded with that centre under non-discriminatory conditions.

6. Dispatching services shall be mandatory for all taxis of authorised carriers operating in an area other than areas where less than 100 taxi licences have been issued or where that service is optional.

…

8. Taxi dispatching agreements concluded with authorised carriers must contain terms setting out the parties' obligations to comply with the rules on quality and legality of the service provided and the agreed fares.

9. Taxis served by a booking centre may provide transport services on the basis of a flat fare or fare scale depending on vehicle category, in accordance with the dispatching agreement.

10. The booking centre shall supply the authorised carriers it serves with a two-way radio for installation in taxis on the basis of a lease agreement concluded under non-discriminatory conditions.'

15. In the municipality of Bucharest (Romania), taxi services are regulated by the Hotărârea Consiliului General al Municipiului București nr. 178/2008 privind aprobarea Regulamentului-cadru, a Caietului de sarcini și a contractului de atribuire în gestiune delegată pentru organizarea și executarea serviciului public de transport local în regim de taxi (Decision No 178/2008 of Bucharest Municipal Council approving the framework regulation, contract documents and concession agreement for the delegated management of the organisation and provision of local public taxi services) of 21 April 2008 ('Decision No 178/2008'). Article 21(1) of Annex 1 to that decision was originally worded as follows:

'In the municipality of Bucharest, dispatching services shall be mandatory for all taxis of authorised carriers and may be provided only by booking centres authorised by the competent authorisation authority of the municipality of Bucharest, under conditions ensuring that customers are able to request those services by telephone or other means through booking centres.'

16. Decision No 178/2008 was amended by the Hotărârea Consiliului General al Municipiului București nr. 626/19.12.2017 pentru modificarea și completarea Hotărârii Consiliului General al Municipiului București nr. 178/2008 privind aprobarea Regulamentului-cadru, a Caietului de sarcini și a contractului de atribuire în gestiune delegată pentru organizarea și executarea serviciului public de transport local în regim de taxi (Decision No 626/19.12.2017 of Bucharest Municipal Council amending and supplementing Decision No 178/2008) of 19 December 2017 ('Decision No 626/2017').

17. Article 3 of Annex 1 to Decision No 178/2008 as amended, resulting from Article I of Decision No 626/2017, states:

'The terms and concepts used and defined in Law No 38/2003 have the same meaning herein and, for the purposes of this framework regulation, the following definitions shall apply:

…

(Ia) dispatching by any other means: activity carried out by a booking centre authorised by the competent authority to receive bookings from customers by means of an IT application or bookings made on the website of an authorised booking centre and to forward them to taxi drivers via a two-way radio.

(Ib) IT application: software installed and functioning on a mobile or fixed device, belonging exclusively to the authorised booking centre and bearing its name.

…'

18. Article 21 of Annex 1 to Decision No 178/2008 as amended, resulting from Articles II and III of Decision No 626/2017, is worded as follows:

'1. In the municipality of Bucharest, dispatching services shall be mandatory for all taxis of authorised carriers and may be provided only by booking centres authorised by the competent authorisation authority of the municipality of Bucharest, under conditions ensuring that customers are able to request those services by telephone or other means, including through applications connected to the internet that must bear the name of the booking centre appearing in the dispatching authorisation granted by the competent authorisation authority of the municipality of Bucharest.

…

3a. Dispatching services shall be mandatory for all taxis of authorised carriers operating a taxi in the municipality of Bucharest and may be provided only by booking centres authorised by the competent authorisation authority of the municipality of Bucharest, under conditions ensuring that customers are able to request those services by telephone or other means (IT applications, bookings made on the website of a booking centre) and to forward them to taxi drivers via a two-way radio.'

19. Article 41(2a) of Annex 1 to that decision as amended, resulting from Article IV of Decision No 626/2017, provides that in the pursuit of taxi activities, taxi drivers are required, inter alia, to refrain from using telephones or other mobile devices when providing transport services.

20. Article 59(6a) of Annex 1 to that decision as amended, resulting from Article V of Decision No 626/2017, states:

‘Failure to comply with the obligations laid down in Article 21(3a), which are applicable to all comparable activities irrespective of the way and the circumstances in which they are carried out, resulting in an unauthorised driver or an authorised taxi carrier being contacted to transport a person or group of persons in the municipality of Bucharest, shall be punishable by a fine of between 4 500 and 5 000 [Romanian lei (RON) (between approximately EUR 929 and 1 032)].’

Dispute in the main proceedings, procedure and questions referred for a preliminary ruling

21. S.C. Star Taxi App SRL (‘Star Taxi App’), a company incorporated under Romanian law established in Bucharest, operates an eponymous smartphone application placing users of taxi services directly in touch with taxi drivers.

22. That application makes it possible to run a search which displays a list of taxi drivers available for a journey. The customer is then free to choose a particular driver. Star Taxi App does not forward bookings to taxi drivers and does not set the fare, which is paid directly to the driver at the end of the journey.

23. Star Taxi App concludes contracts for the provision of services directly with taxi drivers authorised and licensed to provide taxi services, without carrying out any selection or recruitment process. Under those contracts, drivers are given access to an IT application and are equipped with a smartphone on which the application is installed and a SIM card including a limited amount of data to enable use of the application, in exchange for a monthly payment from the taxi driver to Star Taxi App. Furthermore, that company does not control either the quality of the vehicles and their drivers or the drivers’ conduct.

24. On 19 December 2017, Bucharest Municipal Council adopted Decision No 626/2017, which extended the scope of the obligation to apply for authorisation for the activity of ‘dispatching’ to cover operators of IT applications such as Star Taxi App. Star Taxi App was fined RON 4 500 (approximately EUR 929) for having infringed those rules.

25. Taking the view that its activity constituted an Information Society service to which the principle of the exclusion of prior authorisation laid down in Article 4(1) of Directive 2000/31 applies, Star Taxi App lodged a prior administrative complaint requesting revocation of Decision No 626/2017. That request was refused on the ground that the disputed rules, first, had become necessary on account of the considerable scale on which unauthorised legal entities were found to be unlawfully taking bookings and, secondly, did not infringe the freedom to provide services by electronic means since they provided a framework for an intermediation service in connection with the activity of passenger transport by taxi.

26. Star Taxi App therefore brought proceedings before the Tribunalul București (Regional Court, Bucharest, Romania) seeking annulment of Decision No 626/2017.

27. In those circumstances the Tribunalul București (Regional Court, Bucharest) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Are the provisions of Directive [98/34] (Article 1(2)), as amended by Directive [98/48], and of Directive [2000/31] (Article 2(a)), which state that an Information Society service is a “service … provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services”, to be interpreted as meaning that an activity such as that carried on by Star Taxi App SRL (namely a service consisting in putting taxi passengers directly in touch, via an

electronic application, with taxi drivers) must be regarded specifically as an Information Society and collaborative economy service (bearing in mind that Star Taxi App SRL does not fulfil the criteria for being a transport undertaking considered by the Court of Justice of the European Union in paragraph 39 of its judgment in Case C-434/15 with reference to Uber)?

(2) In the event that [the application operated by] Star Taxi App SRL is to be regarded as an Information Society service, do the provisions of Article 4 of Directive [2000/31], of Articles 9, 10 and 16 of Directive [2006/123] and of Article 56 TFEU entail the application of the principle of the freedom to provide services to the activity carried on by Star Taxi App SRL? If the answer to that question is in the affirmative, do those provisions preclude rules such as those set out in Articles I, II, III, IV and V of [Decision No 626/2017]?

(3) In the event that Directive [2000/31] applies to the service provided by Star Taxi App SRL, are restrictions imposed by a Member State on the freedom to provide Information Society services which make the provision of such services conditional on the possession of an authorisation or licence valid measures derogating from Article 3(2) of Directive [2000/31] in accordance with Article 3(4) of that directive?

(4) Do the provisions of Article 5 of Directive [2015/1535] preclude the adoption, without first notifying the European Commission, of regulations such as those set out in Articles I, II, III, IV and V of [Decision No 626/2017]?'

28. The request for a preliminary ruling was received at the Court on 29 January 2019. Written observations were submitted by Star Taxi App, Unitatea Administrativ Teritorială Municipiul Bucureşti prin Primar General (Territorial Administrative Unit of Bucharest; 'the municipality of Bucharest'), the Netherlands Government and the Commission. Star Taxi App and the Commission also replied in writing to the questions put by the Court, which decided to rule on the case without a hearing owing to the risks associated with the Covid-19 pandemic.

Analysis

29. The national court has referred four questions for a preliminary ruling concerning the interpretation of several provisions of EU law in a context such as that at issue in the main proceedings. I will examine those questions in the order in which they have been put, dealing with the second and third questions together. It should be noted, however, that not all of the provisions of EU law mentioned by the national court are applicable in a situation such as this one. The questions referred must therefore be reformulated.

The first question referred

Preliminary observations

30. First of all, in the first question referred, the national court mentions Article 1(2) of Directive 98/34 as amended by Directive 98/48. However, Directive 98/34 was repealed and replaced by Directive 2015/1535 before Decision No 626/2017 was adopted. Under the second paragraph of Article 10 of Directive 2015/1535, references to the repealed directive are to be construed as references to Directive 2015/1535.

31. Next, as the Commission rightly points out in its observations, the concept of 'collaborative economy' has no legal meaning in EU law, since EU law confers a special status only on Information Society services.

32. Therefore, by its first question, the national court asks, in essence, whether Article 2(a) of Directive 2000/31, read in conjunction with Article 1(1)(b) of Directive 2015/1535, must be interpreted as meaning

that a service consisting in putting taxi passengers directly in touch, via an electronic application, with taxi drivers constitutes an ‘Information Society service’.

Article 1(1)(b) of Directive 2015/1535

33. To recapitulate, Article 2(a) of Directive 2000/31 defines ‘Information Society service’ by reference to Article 1(1)(b) of Directive 2015/1535.

34. Under that latter provision, an Information Society service is ‘any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services’. Those terms are themselves defined. In particular, a service is provided by electronic means where it is ‘sent initially and received at its destination by means of electronic equipment for the processing … and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means’.

35. There appears to be no doubt that a service such as that offered by Star Taxi App meets the abovementioned definition.

36. First, that service is provided for remuneration, since taxi drivers pay a fee for its use. Although that use is free of charge for passengers, they must also be regarded as recipients of the service. That does not affect the fact that the service provided by Star Taxi App is paid for. It is sufficient if that service is subject to payment for one of the categories of users, in this case taxi drivers. (9)

37. Secondly, the service at issue is provided at a distance: it does not require the simultaneous presence of the service provider (Star Taxi App) and the recipients (drivers and passengers). The simultaneous presence of both categories of users of that service is, of course, necessary for the provision of the subsequent transport service. However, that service is separate from the connection service at issue in these proceedings.

38. Thirdly, the service at issue in the instant case is also provided at the individual request of a recipient of the service. Specifically, the simultaneous request of two recipients is needed here: the request of the driver when he or she is connected to the service and the request of a passenger wishing to obtain information on available drivers.

39. Fourthly, and lastly, the service is provided by electronic means. It operates via an application, namely smartphone software, and thus uses electronic equipment for the processing and storage of data. It is transmitted by cellular telephony or other forms of internet access, and thus uses means of electronic communication.

40. It is true that, according to the information submitted by the national court, Star Taxi App also supplies taxi drivers with smartphones on which its application is installed so that they can use the service at issue. That aspect of the service is not provided at a distance or by electronic means and does not therefore meet the abovementioned definition. The supply of smartphones is, however, an ancillary aspect of the service, the purpose of which is to facilitate the provision of the primary service of connecting drivers with passengers. It does not therefore affect the nature of Star Taxi App’s activity as a service provided at a distance.

41. Accordingly, an activity such as that operated by Star Taxi App falls within the definition of ‘Information Society service’ within the meaning of Article 1(1)(b) of Directive 2015/1535. (10)

Judgment in Asociación Profesional Elite Taxi

42. It is nevertheless clear from the Court’s case-law that, in some circumstances, a service may not be regarded as falling within the concept of ‘Information Society service’ even if it displays, at least as

regards some of its constituent elements, the characteristics contained in the definition in Article 1(1)(b) of Directive 2015/1535. (11)

43. That is particularly the case where the service provided by electronic means is inherently linked to the provision of another service, which is the primary service and is not provided by electronic means, such as a transport service. (12)

44. According to the Court, that inherent link is characterised by the fact that the provider of the service provided by electronic means controls the essential aspects of the other service, including the selection (13) of the providers of that other service. (14)

45. However, the situation seems to be different in the case of a service such as that provided by Star Taxi App. First, Star Taxi App does not need to recruit taxi drivers because they are licensed and have the necessary means to provide urban transport services. Star Taxi App offers them nothing more than its service as an add-on to enhance the efficiency of their own services. According to Star Taxi App, the taxi drivers are not employees, like Uber's drivers, but customers, in other words, recipients of the service. Secondly, Star Taxi App does not exercise control or decisive influence over the conditions under which transport services are provided by the taxi drivers, who are free to determine those conditions subject to any limits imposed by the legislation in force. (15)

46. I do not therefore share the municipality of Bucharest's view that the situation in the main proceedings is comparable to that in the case which gave rise to the judgment in *Asociación Profesional Elite Taxi*. (16)

47. It is true that Star Taxi App's service is ancillary to the taxi transport services and is economically dependent on those services, since it would make no sense without them.

48. However, that dependence differs completely from the dependence which characterises the relationship between the operator of the UberPop application and the drivers operating within the framework of that application. In order to be able to provide its intermediation service by means of that application, Uber had to create *ex nihilo* the corresponding transport service provided by non-professional drivers – which previously did not exist – and, consequently, organise its general operation. (17) Thus, the UberPop application could not operate without the services provided by drivers and drivers could not offer those services in an economically viable way without that application. For that reason, Uber's economic model and commercial strategy require it to determine the essential terms of the transport service, starting with the price, so that it becomes, albeit indirectly, the de facto provider of those services. (18)

49. By contrast, the service provided by Star Taxi App is an adjunct to a pre-existing and organised taxi transport service. Star Taxi App's role is confined to that of an external provider of an ancillary service, which is important but not essential for the efficiency of the primary service, being the transport service. Although the service provided by Star Taxi App is thus economically dependent on the transport service, it may be functionally independent and be provided by a service provider other than the transport service providers. Those two services are therefore not inherently linked within the meaning of the Court's case-law referred to in the preceding point. (19)

50. The municipality of Bucharest submits that Star Taxi App's service must be regarded as an integral part of the taxi transport service, since national legislation classifies such a service as a 'dispatching service', which is mandatory for all taxi transport providers.

51. Suffice it to note that, within the framework of the rules on transport services, Member States are free to require carriers to have recourse to other services, including Information Society services. That requirement cannot, however, exclude the latter services from the ambit of the rules laid down in Directive 2000/31 and exempt Member States from the obligations flowing from them.

Answer to the first question referred

52. An intermediation service between professional taxi drivers and passengers by means of a smartphone application, such as that provided by Star Taxi App, therefore displays the characteristics of an Information Society service within the meaning of Article 1(1)(b) of Directive 2015/1535, without, however, being inherently linked to the transport service within the meaning of the case-law of the Court referred to above. (20)

53. I therefore propose that the answer to the first question referred for a preliminary ruling should be that Article 2(a) of Directive 2000/31, read in conjunction with Article 1(1)(b) of Directive 2015/1535, must be interpreted as meaning that a service consisting in putting taxi passengers directly in touch, via an electronic application, with taxi drivers constitutes an Information Society service where that service is not inherently linked to the taxi transport service so that it does not form an integral part of the taxi transport service within the meaning of the judgment in *Asociación Profesional Elite Taxi*. (21)

The second and third questions referred

54. By its second and third questions, the national court asks the Court to assess Decision No 626/2017 in the light of Articles 3 and 4 of Directive 2000/31, Articles 9, 10 and 16 of Directive 2006/123 and Article 56 TFEU. I shall examine those questions in relation to each legislative act mentioned by the national court, beginning with the act whose provisions deal most closely with Information Society services, namely Directive 2000/31.

Directive 2000/31

55. By its second and third questions, the national court essentially asks, in particular, whether Articles 3 and 4 of Directive 2000/31 must be interpreted as precluding legislation of a Member State which, like Decision No 178/2008 as amended by Decision No 626/2017, makes intermediation services, provided by electronic means, between taxi drivers and potential passengers subject to the same requirement to obtain authorisation as that imposed on operators of taxi ‘dispatching’ services provided by other means, including radio.

– *Article 3 of Directive 2000/31*

56. It should be noted at the outset that, since Star Taxi App is a company incorporated under Romanian law with its registered office in Bucharest, the dispute in the main proceedings is confined within a single Member State.

57. Article 3(1) of Directive 2000/31 simply requires Member States to ensure that Information Society services provided by service providers established in their territory comply with the national provisions in force which fall within the coordinated field as defined in Article 2(h) thereof. Moreover, Article 3(2) of that directive prohibits Member States, as a rule, from restricting the freedom to provide Information Society services from another Member State, with Article 3(4) thereof introducing exceptions to that prohibition.

58. Article 3 of Directive 2000/31 therefore establishes a kind of principle of mutual recognition of Information Society services between Member States. It follows that that article does not apply in the situation of an Information Society service provider in its Member State of origin. Article 3 of Directive 2000/31 is thus not applicable to the dispute in the main proceedings.

– *Article 4 of Directive 2000/31*

59. Article 4 of Directive 2000/31 prohibits Member States from making the taking up and pursuit of the activity of an Information Society service provider subject to prior authorisation or any other requirement having equivalent effect.

60. That provision appears in Chapter II of Directive 2000/31, entitled ‘Principles’, in Section 1 ‘Establishment and information requirements’. Chapter II lays down a series of rights and obligations for Information Society service providers with which Member States must ensure compliance. The purpose of those provisions is to harmonise the laws of the Member States relating to those services to ensure the effectiveness of the principle of mutual recognition flowing from Article 3 of Directive 2000/31. The provisions of Chapter II of that directive therefore harmonise the rules which Member States impose on Information Society service providers established in their territory. (22)

61. It is a matter of logic that the same holds for the prohibition of any authorisation scheme for such services. That prohibition is therefore valid in the situation of Information Society service providers in their Member States of origin. Thus, Article 4(1) of Directive 2000/31 is, in principle, applicable to the dispute in the main proceedings.

62. However, under Article 4(2) of that directive, the prohibition laid down in Article 4(1) thereof is without prejudice to authorisation schemes which are not specifically and exclusively targeted at Information Society services. It is therefore necessary to determine whether the authorisation scheme at issue in the main proceedings is specifically and exclusively targeted at Information Society services.

63. I must state at the outset that Article 4(2) of Directive 2000/31 is more exacting than the similar proviso set out in Article 1(1)(e) of Directive 2015/1535 in the definition of ‘rule on services’. The latter provision excludes any rules which are not *specifically* aimed at Information Society services. By contrast, under Article 4(2) of Directive 2000/31, the prohibition laid down in Article 4(1) thereof is to apply only to authorisation schemes which are both *specifically* and *exclusively* targeted at Information Society services.

64. According to the information in the request for a preliminary ruling, under Romanian law, the requirement to obtain authorisation for access to the activity of taxi dispatching follows from Article 15(1) of Law No 38/2003. The rest of that article sets out the requirements to be satisfied in order to obtain authorisation, the conditions for the grant of such authorisation and the rules applicable to the pursuit of the activity.

65. Those provisions are thereafter implemented at local level by the various authorities with power to grant authorisation, in this case the municipality of Bucharest. To that end, the municipality of Bucharest adopted Decision No 178/2008. That decision was subsequently amended by Decision No 626/2017, which, by introducing the concept of ‘dispatching by any other means’, (23) made clear that the requirement for authorisation applied to services of the kind provided by Star Taxi App, namely Information Society services consisting of intermediation between taxi drivers and passengers.

66. The legal question which must therefore be answered is whether a national provision which has the result of requiring Information Society service providers to obtain authorisation – a requirement that, moreover, already exists for providers of similar services which are not Information Society services – constitutes an authorisation scheme specifically and exclusively targeted at providers of that second category of services, within the meaning of Article 4(2) of Directive 2000/31.

67. I believe that question must be answered in the negative.

68. The rationale for Article 4(2) of Directive 2000/31 is to prevent unequal treatment between Information Society services and similar services which do not fall within that concept. Where a general authorisation scheme is intended to apply also to services supplied at a distance by electronic means, it is likely that those services constitute, in economic terms, substitutes for the services provided by ‘traditional’ means and are, as a result, in direct competition with that second category of services. In the absence of a requirement to obtain authorisation, Information Society services would be placed in a preferential competitive position, in breach of the principles of fair competition and equal treatment. (24) In other words, while the EU legislature’s aim in adopting Directive 2000/31 was to encourage the development of Information Society services, its intention was not to enable economic operators to evade

all legal obligations solely because they operate ‘online’. It seems to me that those concerns were implicit in the case which gave rise to the judgment in *Asociación Profesional Elite Taxi*. (25)

69. Since Information Society services are the result of the particularly rapid technological developments seen in recent years, they often enter markets already occupied by ‘traditional’ services. Those traditional services may be subject to authorisation schemes. Depending on the subject matter and wording of the national provisions at issue, it may be more or less obvious that some rules, including authorisation schemes, designed for services that are not provided at a distance and by electronic means, apply to similar services that are provided in that manner and thus fall within the concept of ‘Information Society service’. It may therefore be necessary to clarify the existing rules, at legislative or implementation level, in order to confirm their application to Information Society services. Such legislative or administrative action, which makes Information Society services subject to existing rules, does not, however, amount to the creation of a new authorisation scheme specifically and exclusively targeting those services. It is more akin to an adjustment of the existing scheme to take account of new circumstances.

70. My view is that it would therefore run counter to the effectiveness of Article 4(2) of Directive 2000/31 if, as a result of such ‘technical’ action, the prohibition in paragraph 1 of that article precluded the application of some existing authorisation schemes to Information Society services, while other schemes could be applicable to them *proprio vigore*, thanks to Article 4(2).

71. The same reasoning applies where the extension of a pre-existing authorisation scheme to cover Information Society services requires adjustments because of the specific features of those services as compared with the services for which the scheme was initially designed. Those adjustments may concern, among other things, the conditions for obtaining authorisation. As I will show below, it is precisely the lack of such adjustments that may call into question the lawfulness of applying the authorisation scheme to Information Society services.

72. Finally, I do not think, as the Commission suggests, that the Court’s approach in *Falbert and Others* (26) is applicable by analogy to the present case. In that judgment, (27) the Court held that a national rule which has the aim and object of extending an existing rule to cover Information Society services must be classified as a ‘rule on services’ within the meaning of Article 1(5) of Directive 98/34. (28) However, as I have already stated in point 63 of this Opinion, rules on services within the meaning of Directive 2015/1535 are rules which concern Information Society services specifically, while Article 4(1) of Directive 2000/31 prohibits only authorisation schemes which concern those services specifically *and* exclusively. Furthermore, the Court has consistently held that national provisions that merely lay down the conditions governing the establishment or provisions of services by undertakings, such as provisions making the exercise of a business activity subject to prior authorisation, do not constitute technical regulations within the meaning of Directive 2015/1535, since that principle also applies to rules on services. (29) It would therefore be inconsistent to draw an interpretative analogy between Article 1(1)(e) of Directive 2015/1535 and Article 4(2) of Directive 2000/31, which precisely concerns authorisation schemes.

73. For those reasons, I consider that Article 4(2) of Directive 2000/31 must be interpreted as meaning that a national provision which extends the requirement to obtain authorisation to Information Society service providers – a requirement to which providers of similar services that are not Information Society services were already subject – does not constitute an authorisation scheme specifically and exclusively targeted at providers of that second category of services. The prohibition in Article 4(1) of that directive does not therefore preclude the application of such a scheme to Information Society services.

74. That finding is, however, subject to the condition that the services covered by the existing authorisation scheme which are not provided by electronic means and the Information Society services to which that scheme is extended are actually equivalent in economic terms. That equivalence must be assessed from the perspective of the user of the service, in other words, the services must be interchangeable from his or her perspective.

75. That issue appears to be in dispute between the parties to the main proceedings. The municipality of Bucharest submits in its observations that an activity such as that carried on by Star Taxi App is equivalent to the taxi dispatching activity within the meaning of Law No 38/2003 and is therefore caught by the requirement to obtain booking centre authorisation under that law. Consequently, Decision No 626/2017, like Decision No 178/2008, was adopted pursuant to that law. Star Taxi App, on the other hand, disputes that assertion, maintaining that its activity is of a different nature, does no more than put taxi drivers in touch with customers and is therefore not caught by the provisions of Law No 38/2003.

76. Regrettably, that point does not appear to have been settled by the national court, which cites Law No 38/2003 as one of the relevant legal acts for resolution of the dispute in the main proceedings but also states that the extension of the concept of 'dispatching' to cover IT applications 'goes beyond the legal framework'. The Court's interpretation of Directive 2000/31 alone cannot resolve that dilemma, since it depends on findings of fact that only the national court is in a position to make.

77. Article 4(1) of Directive 2000/31 does not therefore preclude national provisions such as those of Decision No 178/2008, as amended by Decision No 626/2017, provided that the services governed by those provisions are found to be economically equivalent. If, however, the national court were to find that services such as those provided by Star Taxi App are not economically equivalent to taxi dispatching services, so that Decision No 626/2017 would have to be regarded de facto as a self-standing authorisation scheme, that scheme would be caught by the prohibition laid down in Article 4(1) of Directive 2000/31. (30)

– *Concluding remark*

78. In its observations, the Commission notes that the combined provisions of Decision No 626/2017, particularly those relating to the obligation to forward bookings to drivers by radio and the ban on drivers using mobile phones when providing transport services, (31) may be interpreted as prohibiting de facto the provision of services such as those offered by Star Taxi App.

79. However, that issue was not raised by the national court in its request, which concerns the requirement to obtain authorisation. In addition, in its reply to a specific question put by the Court on that subject, Star Taxi App acknowledged that it was able to continue its activity provided it complied with the requirements imposed on booking centres and obtained authorisation.

80. I therefore consider that any prohibition on Star Taxi App's activity is too hypothetical for the present case to be analysed from that standpoint. Furthermore, the Court does not have sufficient information on the issue.

Directive 2006/123

81. As I have stated, the prohibition of any authorisation scheme laid down in Article 4(1) of Directive 2000/31 must be considered not to apply to the scheme at issue in the main proceedings, since that scheme does not specifically and exclusively concern Information Society services but also concerns similar services not falling under that classification. However, those other services potentially fall under Directive 2006/123. It is therefore necessary to determine whether that directive is applicable to the present case and, if so, whether it precludes an authorisation scheme such as that at issue in the main proceedings.

– *Applicability of Directive 2006/123*

82. Under Article 2(1) of Directive 2006/123, that directive applies to services supplied by providers established in a Member State, which undoubtedly includes the services at issue in the main proceedings.

83. However, Article 2(2) of that directive excludes some services from the scope of the directive, particularly services in the field of transport falling within the scope of Title VI of the TFEU. (32)

Recital 21 of Directive 2006/123 makes clear that ‘transport’ within the meaning of that provision includes taxis. Does that term also include intermediation services between taxi drivers and their customers?

84. Article 2(2)(d) of Directive 2006/123 has been interpreted by the Court before. It held that, as regards vehicle roadworthiness testing services, that provision covers not only any physical act of moving persons or goods from one place to another by means of a vehicle, aircraft or waterborne vessel, but also any service inherently linked to such an act. (33)

85. The Court found that roadworthiness testing services were inherently linked to transport services in the strict sense, in so far as they are an indispensable pre-condition for the latter by helping to ensure road safety. (34)

86. The Court also observed that the measures harmonising those roadworthiness testing services were adopted on the basis of the provisions of the TFEU on transport. (35) Contrary to the view expressed by the Commission in the instant case, that finding seems to me to be decisive for the interpretation of Article 2(2)(d) of Directive 2006/123. That provision expressly refers to the title of the TFEU relating to transport (now Title VI of the TFEU). This is because, under Article 58(1) TFEU, the freedom to provide services in the field of transport is governed by the title of the TFEU relating to transport. Directive 2006/123 cannot therefore regulate the freedom to provide services in that field. By adopting the directives relating to vehicle roadworthiness testing services on the basis of the provisions of Title VI of the TFEU, the EU legislature implicitly included those services in the field of transport within the meaning of both Article 58(1) TFEU and Article 2(2)(d) of Directive 2006/123. That choice of legal basis for the harmonisation measures is therefore decisive for the exclusion of the services at issue from the scope of Directive 2006/123. (36)

87. As regards intermediation services such as those at issue in the main proceedings, these do not appear to be inherently linked to taxi services within the meaning of the Court’s case-law cited above, since they are not an indispensable pre-condition for the provision of the latter services in the same way as roadworthiness tests. It is true that Romanian legislation requires every taxi service provider to use dispatching services. However, such a requirement imposed at national level cannot determine the classification of a category of services from the standpoint of EU law.

88. Moreover, those intermediation services are not the subject of any specific harmonisation measure adopted on the basis of the provisions of the TFEU on transport.

89. I therefore see no reason to exclude those services from the scope of Directive 2006/123 under Article 2(2)(d) thereof.

90. In addition, Article 3(1) of Directive 2006/123 contains a rule according to which the provisions of specific acts of EU law governing access to and the exercise of services in specific sectors take precedence over those of Directive 2006/123 in the event of conflict. Although Article 3(1) of that directive does not expressly refer to Directive 2000/31 in its second sentence, which lists other directives, it nevertheless seems clear to me that that rule also concerns Directive 2000/31. Directive 2000/31, in so far as it regulates access to and the exercise of Information Society services, constitutes a *lex specialis* in relation to Directive 2006/123. (37)

91. However, since the prohibition of any authorisation scheme laid down in Article 4(1) of Directive 2000/31 does not apply to services such as those at issue in the main proceedings, there is no conflict between the two directives. The exclusion of the applicability of that prohibition which follows from Article 4(2) of Directive 2000/31 does not mean that Member States are given the unconditional power to apply authorisation schemes in the situations covered by that provision. Only Article 4(1) of Directive 2000/31 is inapplicable; those authorisation schemes remain subject to other rules of EU law, such as Directive 2006/123, including in so far as they concern Information Society services.

92. Article 3(1) of Directive 2006/123 does not therefore preclude the application of that directive to the authorisation scheme at issue in the main proceedings, including in so far as it concerns Information Society services.

93. In the question submitted for a preliminary ruling, the national court mentions Articles 9, 10 and 16 of Directive 2006/123. However, Article 16 of that directive concerns the freedom to provide services in Member States other than that of the place of establishment of the provider. As stated in point 56 of this Opinion, the dispute in the main proceedings concerns the exercise of a service activity by a Romanian company in Romanian territory. Article 16 of Directive 2006/123 is therefore not applicable to this dispute.

94. By contrast, the provisions of that directive relating to the freedom of establishment, namely Articles 9 to 15, do apply. The Court has held that those articles are applicable to purely internal situations. (38)

– *Articles 9 and 10 of Directive 2006/123*

95. Article 9 of Directive 2006/123 is based on the principle that service activities must not be subject to authorisation schemes. Nevertheless, under certain conditions, Member States may make access to a service activity subject to such a scheme. (39) Those conditions are as follows: the scheme must not be discriminatory, it must be justified by an overriding reason relating to the public interest, and there must not be less restrictive measures capable of achieving the same objective.

96. No information was provided in connection with the justification for the authorisation scheme for taxi dispatching activities flowing from Law No 38/2003. Concerning Decision No 626/2017, the municipality of Bucharest relies in its observations on the need to ensure equal conditions of competition between 'traditional' taxi booking centres and electronic intermediation services. However, that does not explain the rationale for the authorisation scheme as such.

97. It will therefore be for the national court to ascertain whether there are overriding reasons relating to the public interest justifying the authorisation scheme for taxi dispatching services. I would only point out that that scheme concerns an intermediation service on a market which is already subject to an authorisation scheme, namely that for the provision of taxi transport services. (40) It therefore appears that, for example, the public interest in consumer protection is already satisfied. Thus, the task of the national court will be to ascertain what other overriding reasons are capable of justifying that additional authorisation scheme.

98. The following final remarks should also be made. Article 10(1) and (2) of Directive 2006/123 requires authorisation to be granted on the basis of criteria that are justified by an overriding reason relating to the public interest and proportionate to that public interest objective.

99. In order to obtain authorisation, Article 15(2) of Law No 38/2003 requires the applicant, among other things, to have a two-way radio, a secure radio frequency, staff holding a radio telephony operator certificate and a licence to use radio frequencies. It is not clear from the documents before the Court whether those requirements apply to providers of intermediation services between taxi drivers and customers by means of a smartphone application. However, that possibility does not appear to be excluded.

100. Those requirements, designed for radio-based taxi booking centres, are plainly unsuited to services provided by electronic means, imposing as they do unjustified burdens and costs on providers. Accordingly, they cannot by definition be justified by any overriding reason relating to the public interest or be regarded as proportionate to any public interest objective when they apply to Information Society service providers. Under those requirements, providers must not only have the technologies they use, but must also be in possession of skills and equipment specific to a different technology.

101. For those reasons, I consider that an authorisation scheme is not based on criteria justified by an overriding reason relating to the public interest, as required by Article 10(1)(b) and (c) of Directive 2006/123, when the grant of authorisation is subject to requirements that are technologically unsuited to the applicant's intended service.

Article 56 TFEU

102. In the question submitted for a preliminary ruling, the national court also refers to Article 56 TFEU establishing the freedom to provide services. However, as observed in point 56 of this Opinion, the dispute in the main proceedings concerns the exercise of a service activity by a Romanian company in Romanian territory. The Court has consistently held that the provisions of the TFEU on the freedom to provide services do not apply to a situation which is confined in all respects within a single Member State. (41) Article 56 TFEU is therefore not applicable to the present case.

Answer to the second and third questions referred

103. I propose that the answer to the second and third questions referred for a preliminary ruling should be that Article 4 of Directive 2000/31 must be interpreted as not precluding the application to an Information Society service provider of an authorisation scheme applicable to providers of economically equivalent services that are not Information Society services. Articles 9 and 10 of Directive 2006/123 preclude the application of such an authorisation scheme unless it complies with the criteria laid down in those articles, which is a matter for the national court to determine. An authorisation scheme does not comply with the criteria laid down in Article 10 of Directive 2006/123 when the grant of authorisation is subject to requirements that are technologically unsuited to the applicant's intended service. Article 3 of Directive 2000/31, Article 16 of Directive 2006/123 and Article 56 TFEU are not applicable in the situation of a provider wishing to provide Information Society services in the Member State in which he or she is established.

The fourth question referred

104. By its fourth question, the national court asks, in essence, whether Decision No 626/2017 constitutes a technical regulation within the meaning of Article 1(1)(f) of Directive 2015/1535 which ought to have been notified to the Commission under Article 5 of that directive.

105. Under the third paragraph of Article 1(1)(f) of Directive 2015/1535, that provision covers technical regulations imposed by the authorities designated by the Member States and appearing on a list drawn up and updated, where appropriate, by the Commission in the framework of the committee referred to in Article 2 of that directive. Such a list was published on 31 May 2006, (42) namely before Romania's accession to the European Union, and therefore does not include the Romanian authorities. Nonetheless, the Commission states in its observations that, at the time of its accession, Romania had notified that only its central authorities were empowered to prescribe technical regulations within the meaning of Directive 2015/1535. Acts of the municipality of Bucharest are thus not subject to the notification obligation under Article 5 of that directive.

106. That does not, however, fully resolve the problem since, as I have already mentioned, there is doubt as to whether the requirement to obtain authorisation in order to provide services such as those at issue in the main proceedings results solely from Decision No 626/2017 or Article 15 of Law No 38/2003, of which that decision is merely an implementing measure. It is therefore reasonable to enquire whether that law should have been notified to the Commission.

107. In my opinion, the answer must nonetheless be 'no'. Article 1(1)(e) of Directive 2015/1535 excludes from the concept of 'rule on services' – the only category of technical regulations that may come into play here – any rules which are not specifically aimed at Information Society services. The second paragraph of Article 1(1)(e) provides that rules are specifically aimed at such services where their specific aim and

object is to regulate such services *in an explicit and targeted manner*. On the other hand, rules which affect them only *in an implicit or incidental manner* are not considered to be specifically aimed at them.

108. It must be pointed out that Law No 38/2003 does not contain any reference to Information Society services. On the contrary, it overlooks them to such an extent that it even requires every provider of taxi dispatching services to possess frequencies and radio equipment whether they operate by radio or by means of IT resources. It is therefore obvious in my view that if that law is applicable to Information Society services, as the municipality of Bucharest claims it is, its object is not to regulate those services in an explicit and targeted manner and it affects them only in an implicit manner, arguably by inertia.

109. That is moreover easily explained by the fact that Law No 38/2003 dates from 2003, whereas the company Uber, a pioneer in smartphone-based transport service bookings, was established only in 2009.

110. Article 15 of Law No 38/2003 is therefore not specifically aimed at Information Society services within the meaning of Article 1(1)(e) of Directive 2015/1535.

111. Consequently, the answer to the fourth question referred for a preliminary ruling should be that Decision No 626/2017 does not constitute a technical regulation within the meaning of Article 1(1)(f) of Directive 2015/1535.

Conclusion

112. In the light of all the foregoing considerations, I propose that the Court should answer the questions referred for a preliminary ruling by the Tribunalul București (Regional Court, Bucharest, Romania) as follows:

(1) Article 2(a) of 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 particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), read in conjunction with Article 1(1)(b) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, must be interpreted as meaning that a service consisting in putting taxi passengers directly in touch, via an electronic application, with taxi drivers constitutes an Information Society service where that service is not inherently linked to the taxi transport service so that it does not form an integral part of the taxi transport service.

(2) Article 4 of Directive 2000/31 must be interpreted as not precluding the application to an Information Society service provider of an authorisation scheme applicable to providers of economically equivalent services that are not Information Society services.

Articles 9 and 10 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market must be interpreted as precluding the application of such an authorisation scheme unless it complies with the criteria laid down in those articles, which is a matter for the national court to determine. An authorisation scheme does not comply with the criteria laid down in Article 10 of Directive 2006/123 when the grant of authorisation is subject to requirements that are technologically unsuited to the applicant's intended service.

Article 3 of Directive 2000/31, Article 16 of Directive 2006/123 and Article 56 TFEU are not applicable in the situation of a provider wishing to provide Information Society services in the Member State in which he or she is established.

(3) The Hotărârea Consiliului General al Municipiului București nr. 626/2017 pentru modificarea și completarea Hotărârii Consiliului General al Municipiului București nr. 178/2008 privind aprobarea

Regulamentului-cadru, a Caietului de sarcini și a contractului de atribuire în gestiune delegată pentru organizarea și executarea serviciului public de transport local în regim de taxi (Decision No 626/2017 of 19 December 2017 of Bucharest Municipal Council amending and supplementing Decision No 178/2008 of 21 April 2008 approving the framework regulation, contract documents and concession agreement for the delegated management of the organisation and provision of local public taxi services) does not constitute a technical regulation within the meaning of Article 1(1)(f) of Directive 2015/1535.

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1 Original language: French.

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2 Judgment of 20 December 2017, *Asociación Profesional Elite Taxi* (C-434/15, EU:C:2017:981).

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3 See, in connection with a similar doubt, judgment of 19 December 2019, *Airbnb Ireland* (C-390/18, EU:C:2019:1112, paragraphs 28 to 31), and my Opinion in that case (C-390/18, EU:C:2019:336, points 93 to 99).

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4 OJ 2000 L 178, p. 1.

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5 Directive of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (OJ 1998 L 204, p. 37), as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998 (OJ 1998 L 217, p. 18).

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6 OJ 2006 L 376, p. 36.

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7 OJ 2015 L 241, p. 1.

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8 *Monitorul Oficial al României*, Part I, No 45, of 28 January 2003.

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9 See, to that effect, judgment of 19 December 2019, *Airbnb Ireland* (C-390/18, EU:C:2019:1112, paragraph 46).

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10 See, also, to that effect, judgment of 20 December 2017, *Asociación Profesional Elite Taxi* (C-434/15, EU:C:2017:981, paragraph 35).

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11 Judgment of 20 December 2017, *Asociación Profesional Elite Taxi* (C-434/15, EU:C:2017:981, paragraphs 38 to 42).

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12 See, to that effect, judgment of 20 December 2017, *Asociación Profesional Elite Taxi* (C-434/15, EU:C:2017:981, operative part).

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13 Although the Court did not use the term ‘recruitment’, presumably to sidestep the controversy over the status of Uber’s drivers under employment law, it is in that sense that the word ‘selection’ must be construed.

14 Judgment of 20 December 2017, *Asociación Profesional Elite Taxi* (C-434/15, EU:C:2017:981, paragraph 39).

15 The municipality of Bucharest submits in its observations that, on 1 February 2018, Star Taxi App launched new services enabling payments to be made by bank card and setting a minimum fare. However, Star Taxi App vigorously disputed that assertion in its reply to a specific question put by the Court on that subject. This is therefore a matter of fact which has not been established in the main proceedings. In any event, it does not appear that those additional services are capable of altering the overall assessment of Star Taxi App's activity (see, to that effect, judgment of 19 December 2019, *Airbnb Ireland* (C-390/18, EU:C:2019:1112, paragraphs 58 to 64)).

16 Judgment of 20 December 2017 (C-434/15, EU:C:2017:981).

17 As the Court observed in paragraph 38 of its judgment of 20 December 2017, *Asociación Profesional Elite Taxi* (C-434/15, EU:C:2017:981). See, also, as regards the correlation between the creation of a supply of services and the exercise of control over those services, my Opinion in *Airbnb Ireland* (C-390/18, EU:C:2019:336, points 64 and 65).

18 For a fuller description of how Uber operates, I refer to my Opinion in *Asociación Profesional Elite Taxi* (C-434/15, EU:C:2017:364).

19 See, to that effect, judgment of 19 December 2019, *Airbnb Ireland* (C-390/18, EU:C:2019:1112, paragraph 55), and my Opinion in that case (C-390/18, EU:C:2019:336, points 57 to 59).

20 Judgment of 20 December 2017, *Asociación Profesional Elite Taxi* (C-434/15, EU:C:2017:981).

21 Judgment of 20 December 2017 (C-434/15, EU:C:2017:981).

22 See, also, Article 1(2) of Directive 2000/31, under which '[that] Directive approximates, to the extent necessary for the achievement of the objective set out in paragraph 1, certain national provisions on information society services relating to the internal market, the establishment of service providers, commercial communications, electronic contracts, the liability of intermediaries, codes of conduct, out-of-court dispute settlements, court actions and cooperation between Member States'.

23 That is to say, other than radio, in practice by means of IT resources.

24 I recall that although, under EU law, all authorisation schemes are prohibited for Information Society services pursuant to Article 4(1) of Directive 2000/31, such schemes are authorised, subject to certain conditions, for other categories of services in accordance with Articles 9 and 10 of Directive 2006/123 or Article 49 TFEU.

25 Judgment of 20 December 2017 (C-434/15, EU:C:2017:981).

26 Judgment of 20 December 2017 (C-255/16, EU:C:2017:983).

27 Judgment of 20 December 2017, *Falbert and Others* (C-255/16, EU:C:2017:983, paragraph 35).

28 Now Article 1(1)(e) of Directive 2015/1535.

29 Judgment of 20 December 2017, *Falbert and Others* (C-255/16, EU:C:2017:983, paragraphs 16 to 18).

30 I must point out that, in that scenario, the question of the lawfulness of Decision No 626/2017 under national law would also arise, since Legea nr. 365/2002 privind comerțul electronic (Law No 365/2002 on electronic commerce) of 7 June 2002 (*Monitorul Oficial al României*, Part I, No 483, of 5 July 2002), which transposes Directive 2000/31 into Romanian law, reproduces, in Article 4(1) thereof, the prohibition laid down in Article 4(1) of that directive.

31 See points 18 and 19 of this Opinion.

32 Article 2(2)(d) of Directive 2006/123.

33 Judgment of 15 October 2015, *Grupo Itevelesa and Others* (C-168/14, EU:C:2015:685, paragraph 46).

34 Judgment of 15 October 2015, *Grupo Itevelesa and Others* (C-168/14, EU:C:2015:685, paragraph 47).

35 Judgment of 15 October 2015, *Grupo Itevelesa and Others* (C-168/14, EU:C:2015:685, paragraph 49).

36 See, also, my Opinion in Joined Cases *Trijber and Harmsen* (C-340/14 and C-341/14, EU:C:2015:505, points 27 and 28).

37 See, to that effect, judgment of 19 December 2019, *Airbnb Ireland* (C-390/18, EU:C:2019:1112, paragraphs 40 to 42).

38 Judgment of 30 January 2018, *X and Visser* (C-360/15 and C-31/16, EU:C:2018:44, paragraph 3 of the operative part). See, also, my Opinions in Joined Cases *Trijber and Harmsen* (C-340/14 and C-341/14, EU:C:2015:505, points 44 to 57), and in Joined Cases *X and Visser* (C-360/15 and C-31/16, EU:C:2017:397, point 106 et seq.).

39 The term ‘authorisation scheme’ is defined in Article 4(6) of Directive 2006/123 as ‘any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof’. In my view, there is no doubt that the activity of taxi dispatching is, under Romanian law, subject to an authorisation scheme within the meaning of that definition. That scheme is based on Article 15 of Law No 38/2003 and implemented at the level of the municipality of Bucharest by Decision No 178/2008, as amended by Decision No 626/2017.

40 Since we are dealing with a transport service on this occasion, that scheme is excluded from the scope of Directive 2006/123.

41 See, most recently, judgment of 13 December 2018, *France Télévisions* (C-298/17, EU:C:2018:1017, paragraph 30 and the case-law cited).

42 OJ 2006 C 127, p. 14.