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CJUE, C-62/19: a service putting taxi users in touch with taxi drivers trough an app is an Information Society service, where it does not form an integral part of the taxi transport service

On 3 December 2020, the Court of Justice of the European Union ("CJEU") issued a decision in case C-62/19 on the interpretation of Art. 56 TFEU, Art. 1 of Directive 98/34/EC, as amended by Directive 98/48/EC, Art. 2, 3 and 4 of Directive 2000/31/EC (the "e-Commerce Directive"), Art. 9, 10 and 16 of Directive 2006/123 (the "Bolkenstein Directive") and, finally, Art. 5 of Directive 2015/1535.

***Background* of the case**

Star Taxi App SRL, the applicant, is a Romanian company operating a smartphone application (the "App") which links users of taxi services with taxi drivers. Upon ordering a taxi, the users are shown a list of drivers with different fares and ratings from previous customers.

The applicant concludes agreements for the provision of services directly with the drivers authorised to provide taxi services, without carrying out any selection or recruitment process. Under those agreements, drivers are given access to the App and are equipped with a smartphone. While the applicant does not receive remuneration from the users - as they pay the fare directly to the drivers who set it - it receives a fixed monthly fee from the Drivers.

On 19 December 2017, the Bucharest Municipal Council adopted a Decision (No 626/2017), which extended the scope of the obligation to apply for an authorisation for the activity of "dispatching"[1] to cover operators of IT applications. The applicant had not applied for such authorisation, hence it was fined.

The Applicant brought an action before the Regional Court of Bucharest seeking the annulment of the Decision, taking the view that the requirement for a prior authorization should therefore not apply, pursuant to the e-Commerce Directive[2].

The questions referred to the CJEU

In this context, the Court of Bucharest issued a request for preliminary ruling to the CJEU asking: (i) whether a service consisting in putting taxi users directly in touch, via an electronic application, with taxi drivers must be regarded specifically as an Information Society service within the meaning of the e-Commerce Directive; (ii) if so, whether, in such event, the e-Commerce Directive - together with the Bolkenstein Directive[3] - entails the application of the principle of the exclusion of prior authorization, thus precluding the application the Decision at issue; (iii) whether 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, are valid measures; and (iv) whether the Decision at issue constitutes a technical regulation

[1] Decision No 626/2017 provides that dispatching services may be provided only by taxi-booking centers authorised by the competent authority, under conditions allowing the customer to use these services by telephone or by other means, including Internet-based applications bearing the name of the taxi-booking center appearing on the authorisation issued by the competent authority.

[2] Article 4(1) of the e-Commerce Directive provides that *"**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".*

[3] Specifically, Articles 9 and 10 of the Services Directive.

within the meaning of the Information Directive which, as such, should have been notified to the EU Commission.[4]

Findings of the CJEU

As for question (i), the CJEU recalled that, under Art. 1(1) of Directive 98/34 and Art. 2(a) of the e-Commerce Directive, 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".*

In the present case, all the conditions above are met. In particular, given that the contact between the user and the driver is made without the simultaneous presence of the person providing the intermediary service, that service must be regarded as provided at a distance and by electronic means. Moreover, since the service involves a request, made by means of the App, it is provided at the individual request of the user. Finally, although the service is free of charge for users, that does not affect the fact that it is subject to payment by drivers.

However, according to the case-law of the CJEU[5], where an intermediary service provider operates a transport service, which it makes accessible by electronic means, the provided intermediary service must be regarded as an integral part of an overall service in which the main component is the provision of transport, and, as a result, it does not fall within the meaning of "Information Society service", as it must be qualified as a service in the field of transport.

In the CJEU's view, however, the service at issue cannot be regarded as forming an integral part of an overall service as it merely consists in putting users directly in touch with drivers. Hence, **it constitutes an Information Society service pursuant to the e-Commerce Directive**.

As for question (iv), the CJEU considered that the scope of the Decision was not to regulate the Information Society service in an explicit and targeted manner and, as such**, it does not constitute a technical regulation pursuant to Art. 1(1) of Directive 98/48/EC**[6]. Thus, in this case there is no obligation to communicate anything to the Commission.

Finally, the CJEU jointly addressed questions (ii) and (iii). Firstly, it recalled that, under Art. 4(2) of the e-Commerce Directive, the principle of exclusion of a prior authorization shall be without prejudice to authorisation schemes which are not specifically and exclusively targeted at Information Society services. Since the Decision extends the scope of the obligation to apply for authorisation for the activity of "dispatching" to also cover operators of IT applications, it does not specifically and exclusively concern Information Society services. Therefore, **the principle of exclusion of prior authorization**, pursuant to Art. 4(1) of the e-Commerce Directive, is not applicable **to the Decision at issue.**

By contrast, it must be noted that the application for such an authorisation – which may be requested by a Member State – is precluded by the Bolkenstein Directive unless it complies with the conditions and criteria laid down in Art. 9 and 10. Pursuant to Art. 9, the authorisation scheme must not be discriminatory, and the need for an authorization 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. Pursuant to Art. 10,

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[4]Article 5 of the Directive provides that *"(…)* ***Member States shall immediately communicate to the Commission any draft technical regulation*** *(…)"*.

[5] Judgment of 20 December 2017, Asociación Profesional Elite Taxi, C-434/15, paragraphs 38 to 44.

[6] In particular, Article 1(e) of the Directive provides that *"(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****".*

authorisation schemes must be based on criteria preventing the competent authorities from making their assessment arbitrarily.

Notwithstanding that it is for the Referring Court to determine whether the conditions and criteria laid down in Art. 9 and 10 are met, in the CJEU's view **the criteria provided for in Art. 10 cannot be fulfilled when the grant of an authorisation is subject to requirements that are technologically unsuited to the service**, as this would generate unjustified burdens for the supplier of services.

This may happen if providers of an intermediary service that, via a smartphone app, allows to put in touch users and drivers, and the drivers themselves have an obligation to have a transmission device (and, therefore, also staff in charge of transmitting the request for riders to the drivers). Indeed, this would be unnecessary, and would have no link with the features of a service that entirely relies on smartphones.