



NEWSLETTER

From: IP/IT DEPARTMENT

Subject: UBER SUBJECT TO NATIONAL LAW

Date: 20 DECEMBER 2017

Must Uber hold the legal authorizations required for taxi services in each country in which she offers its services ? The Court of Justice responds positively : Uber may therefore be subject to national rules regarding the exploitation of taxi services.

([CJCE, 20 décembre 2017, C-434/15, Asociación Profesional Elite Taxi](#))

To oppose the application of the national rules applicable in each country where it is active, Uber invoked the rule of the "country of origin", i.e. an European rule according to which the (sole) legal requirements applicable to the provision of services are those of the country in which the service provider is established, even if the service is provided in another Member State.

This rule can be found in two important texts: (i) the Electronic Commerce Directive (Directive 2000/31) and (ii) the Services Directive (Directive 2006/123).

In its decision of 20 December 2017, the ECJ considers that the service offered by Uber does not fall under Directive 2006/123, neither under Directive 2000/31.

As for the application of the E-Commerce Directive, the Court notes that, in principle, an intermediation service consisting of linking a non-professional driver using his own vehicle to a person who wishes to make a journey does, in principle, constitute a service independent from the transportation service which consists of the physical act of moving people or goods from one place to another by means of a vehicle.

An intermediation service allowing the transmission of information related to the booking of a transportation service, between the passenger and a non-professional driver using his own vehicle, by means of a smartphone application, should therefore in principle qualify as a "service of the information society" within the meaning of the

Electronic Commerce Directive. Such service is indeed a "*service normally provided for remuneration, remotely by electronic means and at the individual request of a recipient of services*".

In the case of Uber, however, the Court observes that the service offered is not limited to an intermediation service consisting in linking a driver using his own vehicle and a person who wants to go from one place to another place.

Uber's service goes beyond this, and actually creates an offer of urban transportation services, the general operation of which is organized by Uber: the Court indeed finds that the service Uber is based on the selection of drivers, to which Uber provides an application in absence of which these drivers would not be able to provide the transportation services and, on the other hand, persons wishing to make the trip would not use the services of such drivers. In addition, Uber has a decisive influence on the conditions for the provision of the services: it appears in particular that Uber establishes (at least) the maximum price for the trip, that Uber collects the payment from the customer before forwarding part of it to the driver, and that it exercises a certain quality control on the vehicles and their drivers as well as on their behavior.

Under these conditions, the Court rules that the service of Uber must be considered an integral part of an overall service whose main element is a transportation service and hence, does not qualify as a "service of the information society" within the meaning of the Electronic Commerce Directive.

With regard to the application of the Services Directive, the Court finds that the service of Uber falls within the qualification of service in the field of transport, which are expressly excluded from the scope of that Directive.

Finally, the court also rules that Article 56 of the Treaty on the Functioning of the European Union (article on freedom to provide services) is not applicable, but article 58 of that treaty according to which the free movement of services in the field of transport is governed by the provisions of the Title relating to transport. As these provisions are not harmonized (yet), it is therefore up to the Member States to regulate the conditions for the provision of these services.

Uber's services may therefore be subject to the national laws of the countries in which the drivers are active.

In addition to the practical importance of this decision for Uber, it also provides interesting information on how to approach the definition of "*service of the information society*", when intermediation services are provided in regulated sectors: to remain an intermediary, stay away from the organization of the underlying services.

Wish to contact our legal experts?

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