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Court of Justice of the European Union

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Advocate General's Opinion in Case C-434/15
Asociación Profesional Elite Taxi v Uber Systems Spain, SL

According to Advocate General Szpunar, the Uber electronic platform, whilst innovative, falls within the field of transport: Uber can thus be required to obtain the necessary licences and authorisations under national law

Uber cannot claim the benefit of the principle of the freedom to provide services guaranteed by EU law for information society services

Uber is an electronic platform which makes it possible, using a smartphone equipped with the Uber application ('the App'), to order urban transport services in the cities where Uber has a presence. The App recognises the location of the user and finds available drivers who are nearby. When a driver accepts a trip, the App notifies the user of such acceptance and displays the driver's profile together with an estimated fare to the destination indicated by the user. Once the trip has been completed, the fare is automatically charged to the bank card which the user is required to enter when signing up to the App. The App also contains a ratings function, enabling drivers to be rated by passengers and vice versa. Average scores falling below a given threshold may result in exclusion from the platform. In the case of the service going by the name UberPop, non-professional private drivers transport passengers using their own vehicles.

In 2014 the Asociación Profesional Elite Taxi ('Elite Taxi'), a professional organisation representing taxi drivers in the city of Barcelona (Spain), brought an action before the Juzgado de lo Mercantil nº 3 de Barcelona (Commercial Court No 3, Barcelona) asking the court, inter alia, to impose penalties on the Spanish company Uber Systems Spain SL ('Uber Spain'), a company that belongs to a group managing the Uber platform, for engaging in unfair competition towards Elite Taxi's drivers. In particular, Elite Taxi maintained that Uber Spain is not entitled to provide the UberPop service in the city of Barcelona. Neither Uber Spain nor the owners or drivers of the vehicles concerned have the licences and authorisations required under the city of Barcelona's regulations on taxi services.

Since it considered that an interpretation of several provisions of EU law was necessary to enable it to give a decision in the case before it, the Juzgado de lo Mercantil nº 3 de Barcelona decided to refer a number of questions to the Court of Justice concerning the classification of Uber's activity in light of EU law and the conclusions which must be drawn from that classification.

In today's Opinion, Advocate General Maciej Szpunar starts by explaining that it must essentially be determined whether the services offered by the Uber platform benefit, as 'information society services',¹ from the principle of the freedom to provide services or whether its services fall within the field of transport,² which is regulated by the law of the Member States. In the first case, the

¹ Directive 98/34/EC 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 — replaced by 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 (OJ 2015 L 241, p. 1); 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') (OJ 2000 L 178, p. 1).

² Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36). That directive, in relation to which the directives mentioned in the previous footnote are special rules, excludes from its scope services in the field of transport, including urban transport and taxis.

licences and authorisations required by the city of Barcelona's regulations concerning the operation of Uber could be incompatible with the principle of the freedom to provide services, whilst, in the second case, the Member States would in principle be free to regulate Uber's activity.

The Advocate General takes the view that, although it is for the national court to determine and assess the facts, the service in question is a **composite service**, since part of it is provided by electronic means while the other part, by definition, is not.

A composite service may fall within the concept of 'information society service' where (1) the supply which is not made by electronic means is economically independent of the service which is provided by that means (as is the case, for example, of intermediation platforms for purchasing flights or making hotel bookings) or (2) the provider supplies the whole service (that is, both the part provided by electronic means and the part provided by other means) or exercises decisive influence over the conditions under which the latter part is provided, so that the two services form an inseparable whole, a proviso being that the main component (or indeed all essential elements of the transaction) is supplied by electronic means (as is the case, for example, of the online sale of goods).

According to the Advocate General, the service offered by Uber does not meet either of those two conditions. In that regard, the Advocate General observes that the drivers who work on the Uber platform do not pursue an autonomous activity that is independent of the platform. On the contrary, that activity exists solely because of the platform, without which it would have no sense. The Advocate General also points out that Uber controls the economically important aspects of the urban transport service offered through its platform. Indeed, Uber (i) imposes conditions which drivers must fulfill in order to take up and pursue the activity; (ii) financially rewards drivers who accumulate a large number of trips and informs them of where and when they can rely on there being a high volume of trips and/or advantageous fares (which thus enables Uber to tailor its supply to fluctuations in demand without exerting any formal constraints over drivers); (iii) exerts control, albeit indirect, over the quality of drivers' work, which may even result in the exclusion of drivers from the platform; and (iv) effectively determines the price of the service.

All those features mean that Uber cannot be regarded as a mere intermediary between drivers and passengers. In addition, in the context of the composite service offered by the Uber platform, it is undoubtedly transport (namely the service not provided by electronic means) which is the main supply and which gives the service meaning in economic terms.

The Advocate General concludes that, in relation to the supply of transport, the supply whereby passengers and drivers are connected with one another by electronic means is neither self-standing (see point 1 above) nor the main supply (see point 2 above). **Consequently, the service offered by Uber cannot be classified as an 'information society service'**. Instead, the service amounts to the organisation and management of a comprehensive system for on-demand urban transport.

Moreover, Uber does not offer a ride-sharing service, since the destination is selected by the passenger and the driver is paid an amount which far exceeds the mere reimbursement of costs incurred.

Taking account of the fact that the supply of transport constitutes, from an economic perspective, the main component, whilst the service of connecting passengers and drivers with one another by means of the smartphone application is a secondary component, the Advocate General proposes that the Court's answer should be that **the service offered by the Uber platform must be classified as a 'service in the field of transport'**.

It follows from that interpretation that Uber's activity **is not governed by the principle of the freedom to provide services** in the context of 'information society services' and that it is thus subject to the conditions under which non-resident carriers may operate transport services within

the Member States³ (in this case, possession of the licences and authorisations required by the city of Barcelona's regulations).

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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 Opinion is published on the CURIA website on the day of delivery.

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³ Article 91 TFEU.