



Court of Justice of the European Union

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Advocate General's Opinion in Case C-390/18
Eoin Michael Hession and AIRBNB Ireland UC v Hôtelière Turenne SAS and
Association pour un hébergement et un tourisme professionnel (AHTOP)
and Valhotel

Press and Information

According to Advocate General Szpunar a service such as that provided by the AIRBNB portal constitutes an information society service

AIRBNB Ireland, a company incorporated under Irish law, established in Dublin (Ireland), administers, for all users established outside the United States, an on-line portal designed to connect hosts (professionals and individuals) with accommodation available to rent with persons seeking that type of accommodation.

Following a complaint against X brought, inter alia, by the Association pour un hébergement et un tourisme professionnel as a civil party, the Prosecutor's Office, Paris (France) on 16 March 2017 filed an indictment for infringement of the law regulating the conditions for the exercise of activities related to certain transactions concerning real property and financial goodwill (Hoguet Law), in particular, the activities of real estate agents. AIRBNB Ireland denies acting as a real estate agent and argues that the Hoguet Law is inapplicable on the ground that it is incompatible with the directive on certain legal aspects of information society services¹.

The investigating judge of the Tribunal de grande instance de Paris (Regional Court, Paris) (France) decided to make a reference to the Court of Justice for a preliminary ruling on whether the services provided in France by AIRBNB Ireland, via an electronic portal managed from Ireland, benefit from the freedom to provide services laid down by the directive on certain legal aspects of information society services, and whether the restrictive rules relating to the exercise of the profession of real estate agent in France are applicable to it.

In order to answer the first question referred to the Court, Advocate General Maciej Szpunar, in his Opinion delivered today, examines whether the service provided by AIRBNB Ireland may be regarded as an information society service.

After setting out the definition contained in the directive laying down a procedure for the provision of information in the field of technical regulations and of rules on information society services², the Advocate General states that it is necessary to consider the nature of the service provided by AIRBNB Ireland, that is whether it is a service provided at a distance, without the parties being simultaneously present, and whether it is entirely provided by the use of electronic equipment and has no relation to services having a material content even though they are provided by electronic means.

The Advocate General notes that, in its case-law, the Court has already established certain criteria for mixed services, consisting of an element provided electronically and another which is not provided in that way.

¹ Directive 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 (OJ 2000 L 178, p. 1).

² Directive 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).

After examining AIRBNB Ireland's service, taking account of those criteria, the Advocate General proposes that the answer to the first question should be that **a service consisting in connecting potential guests with hosts offering short-term accommodation, via an electronic portal, in a situation in which the provider of that service does not exercise control over the essential procedures for the provision of those services, constitutes an information society service.** He points out that the fact that the provider also offers other services having a material content does not prevent the service provided by electronic means from being classified as an information society service, on condition that the latter service does not form an inseparable whole with those services.

As regards the possibility of applying the Hoguet Law to AIRBNB Ireland, the Advocate General observes that, as regards the case submitted to the Court, that law falls prima facie within the scope of the directive on certain legal aspects of information society services, because it is legislation of a Member State other than the Member State of origin which is liable to restrict information society services. He continues by pointing out that, in order for a requirement laid down by a Member State other than that in which the provider of the information society services is established to be enforceable against that service provider and to result in the restriction of the free movement of those services, that requirement must be a measure that satisfies the substantive and procedural conditions laid down by that directive.

In the light of the substantive requirements laid down by the directive on certain legal aspects of information society services, the Advocate General takes the view that a Member State other than the Member State of origin may derogate from the free movement of information society services only by measures taken on a 'case-by-case' basis. He continues by pointing out that, in any event, it is for the national court to determine whether, having regard to all the factors brought to its attention, the measures at issue are necessary in order to ensure the protection of consumers and do not go beyond what is necessary to attain the objective pursued.

As to the procedural conditions, the Advocate General observes that a Member State which proposes to adopt measures restricting the free movement of information society services originating in another Member State must first notify the Commission of its intention and ask the Member State of origin to take measures in respect of information society services. The Advocate General states that there is no indication that France requested Ireland to take the necessary measures in relation to information society services, and it seems that the condition relating to notification of the Commission was not fulfilled either, whether during or after the transposition period of the directive. In relation to the latter point, the Advocate General takes the view that failure to notify entails the sanction of unenforceability of a measure against the provider of those services.

Therefore, as regards the question whether a Member State other than the Member State of origin may impose, on its own initiative and without examining the substantive requirements, conditions relating to the practice of the profession of real estate agent, such as those laid down by the Hoguet Law, on providers of a category of information society services, the Advocate General considers that **the directive precludes a Member State from being able to restrict, in such circumstances and in such a manner, the free movement of information society services from another Member State.**

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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