



Court of Justice of the European Union

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Advocate General's Opinion in Case C-62/19
Star Taxi App SRL v Unitatea Administrativ Teritorială Municipiul
București prin Primar General et Consiliul General al Municipiului
București

Press and Information

According to Advocate General Szpunar, a service that puts taxi passengers directly in touch, via an electronic application, with taxi drivers constitutes an Information Society service

That service must not be inherently linked to the taxi transport service so that it does not form an integral part of the taxi transport service

S.C. Star Taxi App SRL, a company established in Bucharest (Romania), operates a smartphone application which places users of taxi services directly in touch with taxi drivers. 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 from the list. The company 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.

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 4 500 Romanian lei (RON - approximately € 929) for having infringed those rules.

Taking the view that its activity constituted an Information Society service to which the principle of the exclusion of prior authorisation laid down in the Directive on electronic commerce¹ applies, Star Taxi App brought an action before the Tribunalul București (Regional Court, Bucharest, Romania) seeking annulment of Decision No 626/2017.

Against that background, the Tribunalul București asks the Court of Justice whether a service that puts taxi passengers directly in touch, via an electronic application, with taxi drivers constitutes an 'Information Society service'. If the answer is yes, it asks the Court to assess the validity of Decision No 626/2017 in the light of a number of provisions of EU law.²

¹Directive 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 (OJ 2000 L 178, p. 1).

²Articles 3 and 4 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 (OJ 2000 L 178, p. 1), Articles 9, 10 and 16 of 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), and Article 56 TFEU.

In today's Opinion, Advocate General Maciej Szpunar notes, first of all, that the service offered by Star Taxi App falls within the definition of Information Society service set out in the Directive on electronic commerce because it is provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.

However, the Advocate General points out that, according to the case-law³ of the Court, a service may not be regarded as falling within the concept of 'Information Society service' even if it displays the characteristics contained in the definition. 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. 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 of the providers of that other service.

In considering Star Taxi App's situation, the Advocate General observes that the company does not need to recruit taxi drivers and does not exercise control or decisive influence over the conditions under which transport services are provided by the taxi drivers. Unlike other similar services, such as Uber, the service provided by Star Taxi App is an add-on to a pre-existing and organised taxi transport service. Star Taxi App's role is thus 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.

The Advocate General goes on to examine Decision No 626/2017 in the light of EU law.

The Directive on electronic commerce prohibits Member States from making the taking up and pursuit of the provision of Information Society services subject to prior authorisation or any other requirement having equivalent effect. However, the Advocate General points out that that prohibition does not affect authorisation schemes which are not specifically and exclusively targeted at Information Society services, as is the case here.

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.

The Services Directive⁴ allows Member States, under certain conditions, to make access to a service activity subject to such a scheme. 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. In that connection, the Advocate General takes the view that it will 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.

³Judgment of 20 December 2017, Asociación Profesional Elite Taxi ([C-434/15](#), paragraph 35. See also Press Release No [136/17](#)).

⁴Articles 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 (OJ 2006 L 376, p. 36).

However, the Advocate General makes clear that an authorisation scheme is not based on criteria justified by an overriding reason relating to the public interest when the grant of authorisation is subject to requirements that are technologically unsuited to the applicant's intended service.

The Advocate General concludes, first of all, 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.**

Next, he considers that **the Directive on electronic commerce does not preclude 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.**

Lastly, the Advocate General states that **the Services Directive precludes the application of such an authorisation scheme unless it complies with the criteria laid down in that legal instrument, which is a matter for the national court to determine.**

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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