

Case C-475/22**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

15 July 2022

Referring court:

Tribunal Supremo (Spain)

Date of the decision to refer:

20 May 2022

Appellant:

Maxi Mobility Spain, S. L. U.

Respondents:

Comunidad de Madrid

Asociación Nacional del Taxi

Asociación Taxi Project 2.0

Subject matter of the main proceedings

- 1 Appeal against a judgment dismissing an administrative appeal against a decision of an autonomous community – Licence for provision of services involving hire of private hire vehicles with driver (PHV) – Restrictions – Limitation on the number of PHV licences depending on the number of taxi licences.

Subject matter and legal basis of the request

Request for a preliminary ruling on interpretation – Article 267 TFEU – Freedom of establishment – State aid – Articles 49 and 107 TFEU – Limitations on the provision of services involving hire of private hire vehicles with driver (PHV) – National legislation limiting the number of PHV licences to a ratio of one for every 30 taxi licences – Consolidation of a request for a preliminary ruling with a request lodged by another referring court.

Questions referred for a preliminary ruling

Spanish national legislation considers the maintenance of a taxi service to be a form of urban transport using vehicles with driver in the public interest and therefore subjects it to intense administrative regulation in order to guarantee quality objectives, user protection, transport policy and environmental policy, including fare control. In view of that national legislation,

1. Is it compatible with the principle of freedom of establishment to impose limitations on other urban transport services using vehicles with driver, such as PHV, subject to the principle of proportionality, in order to ensure the compatibility and complementarity of those other models of the same activity with that of taxis?
2. If the answer to the previous question is in the affirmative, is it compatible with the principle of freedom of establishment to impose, as regards urban transport services using vehicles with driver other than taxi services, such as PHV, the specific restrictive measure of establishing a maximum ratio of authorisations in respect of taxi licences, such as the 1/30 ratio laid down in the Spanish legislation, subject in its application by the competent administration to the principle of proportionality?
3. Is the restrictive measure for PHV of establishing a 1/30 licence ratio as described in the previous question compatible with the prohibition on State aid under Article 107 of the Treaty on the Functioning of the European Union?

Provisions of European Union law and case-law relied on

Articles 49, 56, 102 and 107 TFEU.

Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market.

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).

Commission Notice on well-functioning and sustainable local passenger transport-on-demand (taxis and PHV) 2022/C 62/01.

Judgment of the Court of Justice of 20 December 2017, *Asociación Profesional Elite Taxi* (C-434/15, EU:C:2017:981).

Judgment of the Court of Justice of 14 January 2015, *Eventech* (C-518/13, EU:C:2015:9).

Provisions of national law and case-law relied on

Ley 16/1987, de 30 de julio, de Ordenación de los Transportes Terrestres (Law No 16/1987 of 30 July 1987 on the organisation of land transport) (BOE No 182 of 31 July 1987), amended by Real Decreto-ley 3/2018, de 20 de abril (Royal Decree-Law No 3/2018 of 20 April 2018) (BOE No 97 of 21 April 2019), ‘the LOTT’.

In accordance with Article 48 of the LOTT:

‘1. The grant of a public transport licence shall be non-discretionary and may therefore be refused only where the necessary requirements are not satisfied.

2. However, in accordance with European Union laws and any other applicable provisions, where the supply of public hire vehicles is subject to quantitative limits within the autonomous community or at a local level, regulations may be made establishing limits on the number of new licences granted for the provision of interurban transport by the aforesaid class of vehicles and for private hire vehicles.

3. Without prejudice to the provisions of the previous paragraph, in order to maintain an appropriate balance in the supply of both forms of transport, the grant of new licences for private hire vehicles may be refused where the proportion of existing licences in the territory of the autonomous community in which the vehicles are intended to be established is more than one for every 30 licences issued for public hire vehicles.

However, those autonomous communities to which responsibility in respect of licences for private hire vehicles has been delegated by the national government may alter the rule on proportionality set out in the previous paragraph, provided that the rule they establish is less restrictive.’

Reglamento de la Ley 16/1987, de 30 de julio, de Ordenación de los Transportes Terrestres (Regulation implementing Law No 16/1987 of 30 July 1987 on the organisation of land transport), approved by Real Decreto 1211/1990, de 28 de septiembre (Royal Decree No 1211/1990 of 28 September 1990) (BOE No 241 of 8 October 1990).

Ley 20/2013, de 9 de diciembre, de garantía de la unidad de mercado (Law No 20/2013 of 9 December 2013 on market unity) (BOE No 295 of 10 December 2013), ‘the LGUM’.

In accordance with Article 5 of the LGUM, entitled ‘Principle of necessity and proportionality of the actions of the competent authorities’:

‘1. Competent authorities that, in the exercise of their respective powers, establish limits on access to or the exercise of an economic activity in accordance with the provisions of Article 17 of this Law or demand compliance with certain

requirements for the performance of an activity, must justify the need to do so in order to safeguard an overriding reason relating to the general good shall justify their necessity in the safeguarding of an overriding reason of public interest from among those listed in Article 3(11) of Ley 17/2009, de 23 de noviembre, sobre el libre acceso a las actividades de servicios y su ejercicio (Law No 17/2009 of 23 November 2009 on free access to and exercise of service activities).

2. Any limit or requirement under the previous paragraph must be proportionate to the overriding reason of public interest invoked, and must be such that there is no other means that is less restrictive or distortive of economic activity.’

Law No 17/2009 of 23 November 2009 on free access to and exercise of service activities (BOE No 283 of 24 November 2009), ‘Law No 17/2009’.

According to Article 3(11) of Law No 17/2009, the following definition applies:

“Overriding reason of public interest”: reasons defined and interpreted by the case-law of the Court of Justice of the European Communities, limited to the following: public policy; public security; public safety; public health; preservation of the financial equilibrium of the social security system; protection of the rights, safety and health of consumers, recipients of services and workers; fairness of trade transactions; fraud prevention; protection of the environment and the urban environment; animal health; intellectual and industrial property; conservation of national historic and artistic heritage; social policy objectives and cultural policy objectives.’

Judgment No 921/2018 of 4 June 2018 of the Sala de lo Contencioso-Administrativo, Sección Tercera, del Tribunal Supremo (Administrative Chamber (Third Division), Supreme Court).

Succinct presentation of the facts and procedure in the main proceedings

- 2 Taxis and private hire vehicles (PHV) compete in the urban passenger transport market.
- 3 Taxi services are conceived as a form of urban transport using passenger vehicles that constitutes a service of public interest and for which the responsible authorities try to guarantee certain levels of quality, safety and accessibility. These services are therefore subject to intense regulation intended to ensure that those characteristics are met, including by limiting the number of licences and establishing regulated fares.
- 4 PHV services have also been subject to a limitation on the number of licences granted, in particular through the application of a ratio of one PHV to 30 taxis. The corresponding fares are not subject to prior authorisation, but are subject to an agreed price system that allows the user to know the total amount of the service in

advance (and, where applicable, to pay it electronically). Unlike taxis, PHV do not have stands on public roads and cannot pick up passengers on the street unless they have previously contracted the service through the corresponding computer application.

- 5 The appellant, Maxi Mobility Spain, SLU, is an undertaking that provides PHV services. It brought an administrative appeal before the Sala de lo Contencioso-Administrativo (Sección Octava) del Tribunal Superior de Justicia de Madrid (Administrative Chamber (Eighth Division) of the Madrid High Court of Justice) against the decision of 14 November 2018 by the Viceconsejería de Transportes, Vivienda e Infraestructuras de la Comunidad de Madrid (Office of the Deputy Minister of Transport, Housing and Infrastructures of the Autonomous Community of Madrid), which dismissed the appeal brought by the (then) applicant against the decision of the Director-General for Transport of 25 April 2018. The last of the abovementioned administrative decisions rejected the appellant's application for 1 000 PHV licences. The appeal was dismissed by judgment of 10 February 2021, which was appealed in cassation by the appellant before the referring court (the Administrative Chamber (Third Division) of the Supreme Court).
- 6 The appeal in cassation was admitted by the referring court by a decision of 9 September 2021, in which that court stated that it was of cassational interest to strengthen, qualify or correct the case-law on the 1/30 ratio between private hire vehicles (PHV) and taxis in the light of Articles 49 TFEU (freedom of establishment), 102 TFEU (abuse of a dominant position) and 107 TFEU (State aid) and to decide whether it was relevant to refer the question for a preliminary ruling as requested by the appellant.

The essential arguments of the parties in the main proceedings

- 7 The appellant submits that the judgment under appeal infringed the principle of freedom of establishment and the prohibition on State aid, thus infringing Articles 49, 102 and 107 TFEU, in considering that the refusal to grant the PHV licences applied for on the basis of Article 48 of the LOTT, in the wording in force at the time when the application was submitted, on the basis that the 1/30 ratio of PHV to taxis had been exceeded, was in accordance with the law. It also considers that the Madrid High Court of Justice infringed its right to effective judicial protection by failing to refer the matter for a preliminary ruling. The appellant has asked the referring court to refer a question to the Court of Justice of the European Union for a preliminary ruling. Moreover, it has also requested that the appeal proceedings and other similar proceedings be stayed until the Court of Justice of the European Union has ruled on the questions concerning, inter alia, the 1/30 ratio of PHV to taxis referred for a preliminary ruling by the Sala de lo Contencioso-Administrativo del Tribunal Superior de Justicia de Cataluña (Administrative Chamber of the Catalonia High Court of Justice) in the

proceedings in Case C-50/21. The latter request was rejected by the referring court after hearing the other parties to the proceedings.

- 8 The respondents (the Autonomous Community of Madrid, the Asociación Nacional del Taxi and the association Taxi Project 2.0) deny any such infringements of EU law, invoke judgment No 921/2018 of 4 June 2018 of the Administrative Chamber (Third Division) of the Supreme Court, and reject the contention that the Madrid High Court of Justice should have referred a question for a preliminary ruling, with the result that the right to effective judicial protection was not infringed. The Autonomous Community of Madrid contends that the action should be dismissed and does not consider it necessary to refer the matter for a preliminary ruling. The Asociación Nacional del Taxi and Taxi Project 2.0 submit, however, that the question referred for a preliminary ruling by the Catalonia High Court of Justice in Case C-50/21 misinterprets the case-law of the referring court and does not objectively reflect the regulatory and factual framework within the sector. They therefore consider that a different question should be referred for a preliminary ruling in the present case in the terms indicated in their notices of opposition. In any event, both entities consider that the appeal before the Supreme Court must be dismissed.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 9 In order to better understand the legal dispute at issue, the referring court, on the basis of its judgment No 921/2018 of 4 June 2018, has reviewed the development of the legislation governing limitations on PHV services and the case-law on the matter. In particular, it focuses on Article 48 of the LOTT, which establishes the ratio of one PHV to 30 taxis, and on Article 5 of the LGUM and Article 3(11) of Law No 17/2009, which concern the concept of overriding reasons of public interest making it possible to impose limitations on an economic activity.
- 10 The referring court submits that the abovementioned limitations imposed by the national legislation on PHV services and, in particular, the ratio of one PHV to 30 taxis, raise doubts as to the compatibility of that legislation with the freedom of establishment (Article 49 TFEU) and the prohibition on State aid (Article 107 TFEU).
- 11 With regard to the doubts in terms of freedom of establishment, the referring court considers that the public policy objective of maintaining an urban taxi transport service subject to intense regulation, including fare control, in order to ensure compliance with certain requirements in the public interest and in the interest of users, constitutes an overriding reason in the public interest within the meaning of Article 5 of the LGUM and Article 3(11) of Law No 17/2009, which make it possible to impose limitations on an economic activity.
- 12 Likewise, the referring court points out that although it is true that both taxis and PHV services are subject to administrative regulation, this is not of the same degree or intensity, and is much greater for taxis, including fare control, in order

to ensure a certain level of quality and alignment with the needs of urban transport determined by the public authorities. The regulation of PHV is thus limited to certain minimum levels of quality, safety and service to users. In this respect, the referring court emphasises, in reference to the Commission's submissions on the question referred for a preliminary ruling by the Catalonia High Court of Justice in Case C-50/21, that it is a question of competition in the same activity not so much between different undertakings but between two chauffeur-driven urban transport systems. In contrast to PHV regulation, which is limited to ensuring minimum quality standards and user rights, the more intense regulation of taxis makes it possible to meet objectives such as ensuring accessibility for people without smartphones, such as the elderly or people with more limited economic resources or people with disabilities, which are more problematic for the PHV business model. In short, according to the referring court, the national law regards the safeguarding of the urban taxi transport model as an overriding reason in the public interest, which entitles it to impose certain restrictions on other models of chauffeur-driven urban transport, which the appellant considers an infringement of the freedom of establishment.

- 13 As regards the doubts from the perspective of the prohibition on State aid, the referring court refers to the judgment of the Court of Justice of 14 January 2015, *Eventech* (C-518/13, EU:C:2015:9) on the use of bus lanes by London taxis, and to the Commission's arguments on this point in the question referred for a preliminary ruling by the Catalonia High Court of Justice in Case C-50/21. It explains that in view of the difference between the limitation of licences and the bus lane measure examined in the *Eventech* case, and taking into account the European scale of the dispute between taxis and other vehicle-with-driver services, in the light of the appellant's request, it considers it appropriate to dispel all the doubts raised in relation to State aid. It therefore considers it appropriate to ask whether a limitation on the number of PHV licences that may be granted in proportion to the number of taxi licences granted is compatible with the prohibition on State aid laid down in Article 107 TFEU, given that the taxi service is a model of urban transport considered to be in the public interest by the national legislature and is heavily regulated, including the approval of fares by the competent local authority.
- 14 The referring court makes a number of observations on the request for a preliminary ruling from the Catalonia High Court of Justice (Case C-50/21). It points out that the decision of the Catalonia High Court of Justice to refer the questions for a preliminary ruling is based on the premiss that the ratio of one PHV to 30 taxis lacks any justification and cites judgment No 921/2018 of 4 June 2018 of the referring court in support of that assertion. In its view, the conclusion drawn by the Catalonia High Court of Justice in judgment No 921/2018 does not reflect the actual situation. First, the referring court states that its judgment examines the justification present in the Spanish legal system for imposing limitations on the activity of PHV, namely the legitimate choice of the public authorities to maintain an urban taxi transport service, with significant administrative intervention, in the public interest. Second, with regard to the

quantitative limitation of one PHV to 30 taxis, that court points out that in its judgment it demonstrated that although the specific 1/30 ratio had not been justified by the administration, neither had it been contested by the parties opposing it. Above all, the court highlighted the fact that it is a maximum limitation that the regional and local authorities can reduce if required by the principle of proportionality. In other words, a numerical limitation on PHV licences compared to taxis would only be justified in so far as it is essential to ensure the proper functioning of the taxi service, and always with a maximum limit of a ratio of 1/30 in terms of the number of PHV licences. The referring court also takes the view that the questions put by the Catalonia High Court of Justice in Case C-50/21, as they are worded, are leading and prejudice the response. In addition, the referring court asks the Court of Justice of the European Union to consolidate its questions referred for a preliminary ruling with those referred by the Catalonia High Court of Justice in Case C-50/21.