

Case C-190/24

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:

7 March 2024

Referring court:

Conseil d'État (France)

Date of the decision to refer:

6 March 2024

Applicant:

Coyote System

Defendant:

Ministre de l'Intérieur et des outre-mer
Premier minister

Subject matter and facts of the dispute

- 1 The company Coyote System brought an action before the Conseil d'État (Council of State, France) seeking the annulment as ultra vires of Decree No 2021-468 of 19 April 2021 implementing Article L. 130-11 of the French Highway Code ('the contested decree').
- 2 Article L. 130-11 of the French Highway Code was introduced by the Mobility Law of 24 December 2019. That law was aimed at preventing, for purposes of public order, security or safety, the evasion of certain roadside checks facilitated by the use of an electronic driving assistance or geolocation-based navigation service to anticipate roadside checks and, if necessary, avoid them.

Provisions of EU law relied on

- 3 Under Article 1(1) and (2) 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 (‘Directive 2000/31’):

‘1. This Directive seeks to contribute to the proper functioning of the internal market by ensuring the free movement of information society services between the Member States.

2. This Directive approximates, to the extent necessary for the achievement of the objective set out in paragraph 1, certain national provisions on information society services relating to the internal market, the establishment of service providers, commercial communications, electronic contracts, the liability of intermediaries, codes of conduct, out-of-court dispute settlements, court actions and cooperation between Member States.’

- 4 Under Article 2(h) and (i) of that directive:

‘For the purpose of this Directive, the following terms shall bear the following meanings:

...

(h) “coordinated field”: requirements laid down in Member States’ legal systems applicable to information society service providers or information society services, regardless of whether they are of a general nature or specifically designed for them.

(i) The coordinated field concerns requirements with which the service provider has to comply in respect of:

– the taking up of the activity of an information society service, such as requirements concerning qualifications, authorisation or notification,

– the pursuit of the activity of an information society service, such as requirements concerning the behaviour of the service provider, requirements regarding the quality or content of the service including those applicable to advertising and contracts, or requirements concerning the liability of the service provider.’

- 5 Under Article 3 of that directive:

‘1. Each Member State shall ensure that the information society services provided by a service provider established on its territory comply with the national provisions applicable in the Member State in question which fall within the coordinated field.

2. Member States may not, for reasons falling within the coordinated field, restrict the freedom to provide information society services from another Member State.

...

4. Member States may take measures to derogate from paragraph 2 in respect of a given information society service if the following conditions are fulfilled:

(a) the measures shall be:

(i) necessary for one of the following reasons:

– public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons,

– the protection of public health,

– public security, including the safeguarding of national security and defence,

– the protection of consumers, including investors;

(ii) taken against a given information society service which prejudices the objectives referred to in point (i) or which presents a serious and grave risk of prejudice to those objectives;

(iii) proportionate to those objectives;

(b) before taking the measures in question and without prejudice to court proceedings, including preliminary proceedings and acts carried out in the framework of a criminal investigation, the Member State has:

– asked the Member State referred to in paragraph 1 to take measures and the latter did not take such measures, or they were inadequate,

– notified the Commission and the Member State referred to in paragraph 1 of its intention to take such measures.

...

6 Under Article 14(3) of Directive 2000/31 which applies where an information society service is provided that consists of the storage of information provided by a recipient of the service:

‘3. This Article shall not affect the possibility for a court or administrative authority, in accordance with Member States’ legal systems, of requiring the service provider to terminate or prevent an infringement, nor does it affect the possibility for Member States of establishing procedures governing the removal or disabling of access to information.’

7 Under Article 15(1) of Directive 2000/31:

‘1. Member States shall not impose a general obligation on providers, when providing the services covered by Articles 12, 13 and 14, to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.’

8 Pursuant to recital 26 of Directive 2000/31:

‘Member States, in conformity with conditions established in this Directive, may apply their national rules on criminal law and criminal proceedings with a view to taking all investigative and other measures necessary for the detection and prosecution of criminal offences, without there being a need to notify such measures to the Commission.’

9 Under recital 47 thereof:

‘Member States are prevented from imposing a monitoring obligation on service providers only with respect to obligations of a general nature; this does not concern monitoring obligations in a specific case and, in particular, does not affect orders by national authorities in accordance with national legislation.’

10 Lastly, as provided in recital 48 thereof:

‘This Directive does not affect the possibility for Member States of requiring service providers, who host information provided by recipients of their service, to apply duties of care, which can reasonably be expected from them and which are specified by national law, in order to detect and prevent certain types of illegal activities.’

Provisions of national law relied on

11 Article L. 130-11 of the French Highway Code sets out provisions allowing for a prohibition on operators of an electronic driving assistance or geolocation-based navigation service from circulating messages and indications published by users of that service relating to certain roadside checks, since it would likely allow other users to evade such checks. The roadside checks in question are listed exhaustively and cover checks relating not only to road safety, but also to police checks pursuing the objective of apprehending perpetrators of serious criminal offences.

12 Article L. 130-12 of the French Highway Code sets out the penalties applicable in the event of a failure to comply with the obligations associated with the broadcast prohibition.

13 Decree No 2021-468 of 19 April 2021 (‘the contested decree’) lays down detailed rules for the application of Article L. 130-11 of the French Highway Code, in particular with regard to the definition of road or sections of road covered by the prohibition, the methods of communication with the operators of an electronic

driving assistance or geolocation-based navigation service for the purposes of implementing that prohibition, and the measures intended to ensure the confidentiality of the information communicated to such operators.

Arguments of the parties

A. Coyote System

- 14 Coyote System submits that the prohibition on broadcasting, laid down in the contested decree, fails to take account of the objectives pursued by Directive 2000/31. It argues that the contested decree infringes Directive 2000/31 in that, first, it was not preceded by the procedure laid down in Article 3 of that directive, and that it imposes on operators established outside of France rules which restrict their freedom to provide services in disregard of that article and, second, in that it imposes on them a general obligation to monitor the information they transmit, which is contrary to Article 15 of that directive.

B. Minister of the Interior and the Overseas

- 15 The Minister of the Interior and the Overseas claims that the Court should dismiss the action. The Minister maintains that the pleas in law raised are unfounded.

Reasons for the reference for a preliminary ruling

- 16 By its judgment of 9 November 2023 in *Google Ireland and Others* (C-376/22, EU:C:2023:835), the Court held, in paragraphs 42 to 44 of that judgment, that ‘Directive 2000/31 is ... based on the application of the principles of home Member State control and mutual recognition, so that, within the coordinated field defined in Article 2(h) of that directive, information society services are regulated solely in the Member State on whose territory the providers of those services are established’, to conclude that ‘consequently, it is the responsibility of each Member State as the Member State where information society services originate to regulate those services and, on that basis, to protect the general interest objectives referred to in Article 3(4)(a)(i) of Directive 2000/31’ and that ‘moreover, in accordance with the principle of mutual recognition, it is for each Member State, as the Member State of destination of information society services, not to restrict the free movement of those services by requiring compliance with additional obligations, falling within the coordinated field, which it has adopted’. For those reasons, the Court held, in paragraph 60, that ‘Article 3(4) of Directive 2000/31 must be interpreted as meaning that general and abstract measures aimed at a category of given information society services described in general terms and applying without distinction to any provider of that category of services do not fall within the concept of measures taken against a “given information society service” within the meaning of that provision’.

- 17 The answer to be given to the pleas put forward by Coyote System depend on the answers to be given to the questions referred for a preliminary ruling set out below. The Conseil d'État (Council of State) considers that those questions are decisive to the outcome of the proceedings pending before it and that they present a serious difficulty.

Questions referred for a preliminary ruling

- 18 The Conseil d'État (Council of State) stays the action before it brought by Coyote System pending a ruling by the Court of Justice of the European Union on the following questions referred for a preliminary ruling:

(a) Must the prohibition, imposed on operators of an electronic driving assistance or geolocation-based navigation service, on circulating messages and indications published by users of that service and likely to allow other users to evade certain roadside checks be regarded as falling within the 'coordinated field' as provided for by Directive 2000/31/EC, whereas, although it concerns the pursuit of the activity of an information society service, in that it relates to the behaviour of the service provider, the quality or content of the service, it does not concern the establishment of the service provider, commercial communications, electronic contracts, the liability of intermediaries, codes of conduct, out-of-court dispute settlements, court actions or cooperation between Member States, and does not therefore relate to any of the matters governed by the harmonising provisions set out in Chapter II of that directive?

(b) Must a prohibition on broadcasting, which aims in particular to prevent persons wanted for crimes or offences, or who present a threat to public order or security, from being able to evade road checks, fall within the scope of the requirements relating to the pursuit of the activity of an information society service that a Member State cannot impose on a provider of information society services established in another Member State, whereas recital 26 of that directive states that the directive cannot preclude Member States from applying their national rules on criminal law and criminal proceedings with a view to taking all investigative and other measures necessary for the detection and prosecution of criminal offences?

(c) Must Article 15 of Directive 2000/31/EC, which prohibits the imposition on service providers of a general obligation to monitor – not including the obligations applicable to a specific case – be interpreted as meaning that it precludes the application of a provision which merely states that the operators of an electronic driving assistance or geolocation-based navigation service must not circulate, in specific cases and within the framework of that service, certain categories of messages and indications, without the operator having to be aware of content thereof?