



Press and Information

Court of Justice of the European Union
PRESS RELEASE No 162/19
Luxembourg, 19 December 2019

Judgment in Case C-390/18
Airbnb Ireland

France cannot require Airbnb to hold an estate agent's professional licence as it did not notify the Commission of that requirement in accordance with the Directive on electronic commerce

By its judgment of 19 December 2019, Airbnb Ireland (C-390/18), the Grand Chamber of the Court held, first, that an intermediation service which, by means of an electronic platform, is intended to connect, for remuneration, potential guests with professional or non-professional hosts offering short-term accommodation services, while also providing a certain number of services ancillary to that intermediation service, must be classified as an 'information society service' under Directive 2000/31 on electronic commerce.¹ Secondly, the Court found that, in criminal proceedings with an ancillary civil action, an individual may oppose the application to him or her of measures of a Member State restricting the freedom to provide such a service which that individual provides from another Member State, where those measures were not notified in accordance with the second indent of Article 3(4)(b) of that directive.

The dispute in the main proceedings concerns criminal proceedings brought in France following a complaint, together with an application to be joined as a civil party to the proceedings, lodged against Airbnb Ireland by the Association pour un hébergement et un tourisme professionnels (Association for professional tourism and accommodation, AHTOP). Airbnb Ireland is an Irish company that manages an electronic platform which, in return for payment of a commission, makes it possible to establish contact, particularly in France, between professional hosts and private individuals offering short-term accommodation services and people looking for such accommodation. In addition, Airbnb Ireland offers those hosts ancillary services, such as a format for setting out the content of their offer, civil liability insurance, a tool for estimating their rental price or payment services for the provision of those services.

AHTOP which lodged the complaint against Airbnb Ireland maintained that that company did not merely connect two parties through its platform of the same name; it also acted as an estate agent without holding a professional licence, in breach of the act known as the 'Hoguet Law' which applies to the activities of real estate professionals in France. For its part, Airbnb claimed that, on any view, Directive 2000/31 precluded that legislation.

Asked about the classification of the intermediation service provided by Airbnb Ireland, the Court pointed out, referring to the judgment in *Asociación Profesional Elite Taxi*,² that if an intermediation service satisfies the conditions laid down in Article 1(1)(b) of Directive 2015/1535,³ to which Article 2(a) of Directive 2000/31 refers, then, in principle, it is an 'information society service', distinct from the subsequent service to which it relates. However, this will not be the case

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 ('the Directive on electronic commerce') (OJ 2000 L 178, p. 1).

² Judgment 20 December 2017, *Asociación Profesional Elite Taxi* (C-434/15); see also Press Release No. [136/17](#).

³ 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).

if it appears that that intermediation service forms an integral part of an overall service whose main component is a service coming under another legal classification.

In the present case, the Court found that an intermediation service such as that provided by Airbnb Ireland satisfied those conditions, and the nature of the links between the intermediation service and the provision of accommodation did not justify departing from the classification of that intermediation service as an 'information society service' and thus the application of Directive 2000/31 to that service.

To underline the separate nature of such an intermediation service in relation to the accommodation services to which it relates, the Court noted, first, that that service is not aimed only at providing immediate accommodation services, but rather it consists essentially of providing a tool for presenting and finding accommodation for rent, thereby facilitating the conclusion of future rental agreements. Therefore, that type of service cannot be regarded as being merely ancillary to an overall accommodation service. Second, the Court pointed out that an intermediation service, such as the one provided by Airbnb Ireland, is in no way indispensable to the provision of accommodation services, since the guests and hosts have a number of other channels in that respect, some of which are long-standing. Finally, third, the Court stated that there was nothing in the file to indicate that Airbnb sets or caps the amount of the rents charged by the hosts using that platform.

The Court further stated that the other services offered by Airbnb Ireland do not call that finding into question, since the various services provided are merely ancillary to the intermediation service provided by that company. In addition, it stated that, unlike the intermediation services at issue in the judgments in *Asociación Profesional Elite Taxi* and *Uber France*,⁴ neither that intermediation service nor the ancillary services offered by Airbnb Ireland make it possible to establish the existence of a decisive influence exercised by that company over the accommodation services to which its activity relates, with regard both to determining the rental price charged and selecting the hosts or accommodation for rent on its platform.

In addition, the Court examined whether Airbnb Ireland may, in the main proceedings, oppose the application to that company of a law restricting the freedom to provide information society services provided by an operator from another Member State, such as the Hoguet Law, on the ground that that law was not notified by France in accordance with the second indent of Article 3(4) of Directive 2000/31. The Court stated that the fact that that law predates the entry into force of Directive 2000/31 cannot have had the consequence of freeing France of its notification obligation. Next, drawing on the reasoning followed in the judgment in *CIA Security International*,⁵ it found that that obligation, which constitutes a substantial procedural requirement, must be recognised as having direct effect. It therefore concluded that a Member State's failure to fulfil its obligation to give notification of such a measure may be relied on by an individual, not only in criminal proceedings brought against that individual, but also in a claim for damages brought by another individual who has been joined as civil party.

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

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⁴Judgment 10 April 2018, *Uber France* ([C-320/16](#)); see also Press Release No. [39/18](#).

⁵Judgment 30 avril 1996, *CIA Security International* ([C-194/94](#)).