



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-320/16
Uber France SAS

According to Advocate General Szpunar, Member States may prohibit and punish, as a matter of criminal law, the illegal exercise of transport activities in the context of the UberPop service, without notifying the Commission of the draft law in advance

The French company Uber France operates an electronic platform which enables users, with the aid of a smartphone equipped with the corresponding application, to order urban transport services in the cities covered. The UberPop service is a service whereby non-professional private drivers transport passengers using their own vehicles.

Criminal law proceedings have been brought against Uber France for having organised, by means of the UberPop service, a system for putting customers in touch with non-professional drivers who transport passengers for consideration using vehicles with fewer than ten seats. Uber France maintains that the provision of French law on which those proceedings are based constitutes a technical regulation which directly concerns an information society service within the meaning of the directive on technical standards and regulations.¹ That directive requires Member States to notify the Commission of any draft law or rules laying down technical regulations relating to products and information society services. The French authorities did not notify the draft law to the Commission before its promulgation. Uber France infers, therefore, that it may not be prosecuted on the charges set out above.

The tribunal de grande instance de Lille (Regional Court, Lille, France), before which the matter was brought, has asked the Court of Justice whether the French authorities were required to notify the Commission of the draft law in advance.

In today's Opinion, Advocate General Maciej Szpunar takes the view that, irrespective of whether the UberPop service falls within the scope of the directive, **Member States may prohibit and punish the illegal exercise of a transport activity such as UberPop without having to notify the Commission of the draft law in advance.**

More specifically, the Advocate General recalls that, in accordance with his Opinion of 11 May 2017 in the *Uber Spain* case,² **the UberPop service falls within the field of transport and, consequently, does not constitute an information society service within the meaning of the directive.** In such a situation, the directive is not applicable and **notification of the draft law to the Commission is unnecessary.**

The Advocate General also examines the **situation should the Court find that the UberPop service constitutes an information society service** within the meaning of the directive. In that situation, the Advocate General concludes that prohibiting and punishing the activity of an

¹ Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (OJ 1998 L 204, p. 37), as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998 (OJ 1998 L 217, p. 18).

² Case [C-434/15](#), *Asociación Profesional Elite Taxi v Uber Systems Spain* see Press Release [No 50/17](#).

intermediary, such as Uber, in the illegal exercise of a transport activity does not constitute a 'technical regulation' within the meaning of the directive, with the result that **notification of the draft law to the Commission would not be necessary in that situation either.**

The Advocate General recalls, in this connection, that the notification obligation applies only, *inter alia*, to technical regulations having the specific aim and object of regulating, in an explicit and targeted manner, the taking-up and exercise of information society services; by contrast, rules which affect those services only in an implicit or incidental manner are excluded from the notification obligation. The Advocate General takes the view that the **provision of French law at issue in the present case affects information society services only in an incidental manner:** even though it principally concerns an information society service (namely a system for connecting the two parties by electronic means), it is not directed at regulating that service *specifically* (which would be the case if it prohibited or regulated in some other way the activity of putting customers in touch with providers of transport services in general), but only at ensuring the effectiveness of the rules relating to transport services (services which are not covered by the directive).

Accordingly, the fact that UberPop's economic model is irreconcilable with the French rules on the transportation of passengers (the non-professional drivers not having the authorisations required under French law in order to carry on that transport activity) does not mean that the provision in question constitutes a technical regulation that governs the activities of intermediation in the field of transport in general.

The Advocate General notes that, if every national provision that prohibited or punished intermediation in illegal activities had to be regarded as a technical regulation merely because the intermediation most likely takes place by electronic means, a great number of internal rules in the Member States would have to be notified as technical regulations. That would lead to an unwarranted extension of the obligation to notify, without really contributing to the attainment of the objectives of the notification procedure, the purpose of which is to prevent the adoption by the Member States of measures that are incompatible with the internal market and to enable economic operators to make more of the advantages of the internal market.

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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