Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

30 May 2024*

(Reference for a preliminary ruling – Freedom to provide services – Providers of information society services – Obligation to be entered in the register of communications operators – Obligation to provide information on structure and organisation – Obligation to make a financial contribution – Directive 2000/31/EC – Coordinated field – Principle of control in the home Member State – Exemptions – Concept of measures 'taken against a given information society service' – Regulation (EU) 2019/1150 – Objective)

In Joined Cases C-662/22 and C-667/22,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy), made by decisions of 10 October 2022, received at the Court on 19 and 21 October 2022, in the proceedings

Airbnb Ireland UC (C-662/22),

Amazon Services Europe Sàrl (C-667/22)

v

Autorità per le Garanzie nelle Comunicazioni,

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, F. Biltgen, N. Wahl (Rapporteur), J. Passer and M.L. Arastey Sahún, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Airbnb Ireland UC, by F. Angeloni, M. Berliri, S. Borocci, G. Gelera, L. Nascimbene, I. Perego, G.M. Roberti, avvocati, and D. Van Liedekerke, advocaat,

* Language of the case: Italian.

– Amazon Services Europe Sàrl, by F. Angeloni, M. Berliri, S. Borocci, G. Gelera and F. Moretti, avvocati,

– the Italian Government, by G. Palmieri, acting as Agent, and by L. Delbono and R. Guizzi, avvocati dello Stato,

– the Czech Government, by M. Smolek, T. Suchá and J. Vláčil, acting as Agents,

– Ireland, by M. Browne, Chief State Solicitor, A. Joyce and M. Tierney, acting as Agents, and by D. Fennelly, Barrister-at-Law,

– the European Commission, by L. Armati, M. Escobar Gómez, S.L. Kalėda and L. Malferrari, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 January 2024,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (OJ 2019 L 186, p. 57), 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') (OJ 2000 L 178, p. 1), 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), 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), as well as Article 56 TFEU.

2 The requests have been made in proceedings between, in Case C-662/22, Airbnb Ireland UC ('Airbnb'), a company incorporated under Irish law, and, in Case C-667/22, Amazon Services Europe Sàrl ('Amazon'), a company incorporated under Luxembourg law, and the Autorità per le Garanzie nelle Comunicazioni (Communications Regulatory Authority, Italy) ('AGCOM') concerning measures adopted by the latter with regard to providers of online intermediation services.

Legal context

European Union law

Regulation 2019/1150

3 Recitals 3, 7 and 51 of Regulation 2019/1150 state as follows:

‘(3) Consumers have embraced the use of online intermediation services. A competitive, fair, and transparent online ecosystem where companies behave responsibly is also essential for consumer welfare. Ensuring the transparency of, and trust in, the online platform economy in business-to-business relations could also indirectly help to improve consumer trust in the online platform economy. Direct impacts of the development of the online platform economy on consumers are, however, addressed by other Union law, especially the consumer acquis.

…

(7) A targeted set of mandatory rules should be established at [European] Union level to ensure a fair, predictable, sustainable and trusted online business environment within the internal market. In particular, business users of online intermediation services should be afforded appropriate transparency, as well as effective redress possibilities, throughout the Union in order to facilitate cross-border business within the Union and thereby improve the proper functioning of the internal market and to address possible emerging fragmentation in the specific areas covered by this Regulation.

…

(51) Since the objective of this Regulation, namely to ensure a fair, predictable, sustainable and trusted online business environment within the internal market, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 [TEU]. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.’

4 Article 1 of that regulation states:

‘1. The purpose of this Regulation is to contribute to the proper functioning of the internal market by laying down rules to ensure that business users of online intermediation services and corporate website users in relation to online search engines are granted appropriate transparency, fairness and effective redress possibilities.

2. This Regulation shall apply to online intermediation services and online search engines provided, or offered to be provided, to business users and corporate website users, respectively, that have their place of establishment or residence in the Union and that, through those online intermediation services or online search engines, offer goods or services to consumers located in the Union, irrespective of the place of establishment or residence of the providers of those services and irrespective of the law otherwise applicable.

…

5. This Regulation shall be without prejudice to Union law, in particular Union law applicable in the areas of judicial cooperation in civil matters, competition, data protection, trade secrets protection, consumer protection, electronic commerce and financial services.'

5 Article 2(1) of that regulation provides:

'For the purposes of this Regulation, the following definitions apply:

(1) "business user" means any private individual acting in a commercial or professional capacity who, or any legal person which, through online intermediation services offers goods or services to consumers for purposes relating to its trade, business, craft or profession'.

Directive 2000/31

6 Under Article 1 of 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.

…

5. This Directive shall not apply to:

(a) the field of taxation;

…'

7 Article 2(h) of that directive provides:

'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;

…'

8 Article 3 of that directive states:

‘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 [European] Commission and the Member State referred to in paragraph 1 of its intention to take such measures.

…’

Directive 2006/123

9 Article 1(1) of Directive 2006/123 provides:

‘This Directive establishes general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services, while maintaining a high quality of services.’

10 According to Article 3(1) of that directive:

'If the provisions of this Directive conflict with a provision of another Community act governing specific aspects of access to or exercise of a service activity in specific sectors or for specific professions, the provision of the other Community act shall prevail and shall apply to those specific sectors or professions. …'

11 Article 16 of that directive states:

'1. Member States shall respect the right of providers to provide services in a Member State other than that in which they are established.

The Member State in which the service is provided shall ensure free access to and free exercise of a service activity within its territory.

Member States shall not make access to or exercise of a service activity in their territory subject to compliance with any requirements which do not respect the following principles:

(a) non-discrimination: the requirement may be neither directly nor indirectly discriminatory with regard to nationality or, in the case of legal persons, with regard to the Member State in which they are established;

(b) necessity: the requirement must be justified for reasons of public policy, public security, public health or the protection of the environment;

(c) proportionality: the requirement must be suitable for attaining the objective pursued, and must not go beyond what is necessary to attain that objective.

2. Member States may not restrict the freedom to provide services in the case of a provider established in another Member State by imposing any of the following requirements:

…

(b) an obligation on the provider to obtain an authorisation from their competent authorities including entry in a register or registration with a professional body or association in their territory, except where provided for in this Directive or other instruments of Community law;

…'

Directive 2015/1535

12 Article 1(1) of Directive 2015/1535 provides:

'For the purposes of this Directive, the following definitions apply:

…

(b) "service" means any Information Society service, that is to say, any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.

…

(e) "rule on services" means a requirement of a general nature relating to the taking-up and pursuit of service activities within the meaning of point (b), in particular provisions concerning the service provider, the services and the recipient of services, excluding any rules which are not specifically aimed at the services defined in that point.

…

(f) "technical regulation" means technical specifications and other requirements or rules on services, including the relevant administrative provisions, the observance of which is compulsory, *de jure* or de facto, in the case of marketing, provision of a service, establishment of a service operator or use in a Member State or a major part thereof, as well as laws, regulations or administrative provisions of Member States, except those provided for in Article 7, prohibiting the manufacture, importation, marketing or use of a product or prohibiting the provision or use of a service, or establishment as a service provider.

…'

13 The first subparagraph of Article 5(1) of that directive provides:

'Subject to Article 7, Member States shall immediately communicate to the Commission any draft technical regulation, except where it merely transposes the full text of an international or European standard, in which case information regarding the relevant standard shall suffice; they shall also let the Commission have a statement of the grounds which make the enactment of such a technical regulation necessary, where those grounds have not already been made clear in the draft.'

Italian law

Law No 249/97

14 Legge n. 249 – Istituzione dell'Autorità per le garanzie nelle comunicazioni e norme sui sistemi delle telecomunicazioni e radiotelevisivo (Law No 249 establishing the Communications Regulatory Authority and telecommunications and broadcasting standards) of 31 July 1997 (Ordinary Supplement to GURI No 177 of 31 July 1997), as amended by legge n. 178 – Bilancio di previsione dello Stato per l'anno finanziario 2021 e bilancio pluriennale per il triennio 2021-2023 (Law No 178 on the State budget for the 2021 financial year and the multiannual budget for the three-year period 2021-2023) of 30 December 2020 (Ordinary Supplement to GURI No 322 of 30 December 2020) ('Law No 249/97'), provides, in Article 1(6)(a)(5) and (c)(14-bis):

'The responsibilities of [AGCOM] are identified as follows:

(a) the Infrastructure and Networks Committee has the following functions:

…

(5) it shall maintain the Register of Communications Operators [("the RCO")], in respect of which, pursuant to the present law, … providers of online intermediation services and online search engines offering services in Italy, even if they are not established in Italy …, shall be required to be

entered … [It] shall adopt a regulation specifically concerning the organisation and maintenance of the [RCO] and the definition of criteria for determining [which] persons are required to register other than those already registered in the [RCO] on the date of entry into force of the present law;

…

(c) the Board:

…

(14-bis) shall ensure the adequate and effective enforcement of Regulation [2019/1150], including by adopting guidelines, encouraging codes of conduct to be drawn up and gathering relevant information'.

15 Article 1(31) of Law No 249/97 provides:

'Persons who fail to comply with orders and formal notices issued by [AGCOM] under the present law shall be liable to a fine …. If the non-compliance concerns measures taken so far as concerns the infringement of the rules on dominant positions or pursuant to Regulation [2019/1150], each person concerned shall be fined a sum which shall not be less than 2% and not more than 5% of that person's turnover in the last financial year for which the accounts have been closed prior to notification [of the notice of non-compliance] …'

Law No 266/05

16 Article 1(66-bis) of legge n. 266 – Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge finanziaria 2006) (Law No 266 laying down provisions for the preparation of the annual and multiannual State budget (Finance Law 2006)) of 23 December 2005 (Ordinary Supplement to GURI No 302 of 29 December 2005), as amended by Law No 178 of 30 December 2020 ('Law No 266/05'), provides:

'For the year 2021, the amount of the contribution due by the providers of online intermediation services and online search engines referred to in Article 1(6)(a)(5) of Law [No 249/97] shall be set at a level equal to 0.15% of the revenues generated in national territory, even if those revenues are recorded in the financial statements of undertakings established abroad, relating to the value of production, which results from the financial statements for the previous year, or, for persons not required to draw up such financial statements, from equivalent elements in other accounting records which certify the total value of production. For subsequent years, any change in the level and terms of the contribution may be decided by [AGCOM] up to a maximum of 0.2% of the revenues assessed in accordance with the preceding sentence.'

Decision No 666/08

17 On 26 November 2008, AGCOM adopted delibera n. 666/08/CONS – Regolamento per l'organizzazione e la tenuta del Registro degli operatori di comunicazione (Decision No 666/08/CONS, governing the organisation and maintenance of the Register of Communications Operators) (GURI No 25 of 31 January 2009) ('Decision No 666/08').

18 Article 2 of the rules for the organisation and maintenance of the RCO ('the AGCOM rules on the RCO'), which are set out in Annex A to Decision No 666/08, lists the categories of persons who are required to be entered in the RCO.

19 Under Article 5 of the AGCOM rules on the RCO:

'1. The persons referred to in Article 2 of these rules shall submit to [AGCOM] [their] application for entry in the [RCO]

…

3. The persons referred to in Article 2, each according to its legal nature, shall submit the declarations relating to the objects of the company, the administrative body, the structure of the company and the activity carried out in accordance with Annex B [to Decision No 666/08].

…'

20 Article 24 of those rules provides:

'Infringements of these rules shall be punished in accordance with Article 1(29) [to] (32) of Law [No 249 of 31 July 1997].'

21 Annex B to Decision No 666/08 concerns the declarations required for entry in the RCO.

Decision No 200/21

22 On 17 June 2021, AGCOM adopted delibera n. 200/21/CONS – Modifiche alla delibera n. 666/08/CONS recante 'regolamento per la tenuta del Registro degli Operatori di Comunicazione' a seguito dell'entrata in vigore della legge 30 dicembre 2020, n. 178 – Bilancio di previsione dello Stato per l'anno finanziario 2021 e bilancio pluriennale per il triennio 2021-2023 (Decision No 200/21/CONS, amending Decision No 666/08/CONS containing the 'rules for maintaining the Register of Communications Operators' following the entry into force of the Law of 30 December 2020, No 178, concerning the State's forecast balance sheet for the financial year 2021 and the multiannual balance sheet for the three-year period 2021-2023) ('Decision No 200/21').

23 As set out in the preamble to Decision No 200/21:

'…

[having regard to] Regulation [2019/1150] and, in particular, Article 1(2) [thereof] …

[whereas] Law [No 178 of 30 December 2020] provided, pursuant to Regulation 2019/1150, inter alia, for the obligation to be entered in the [RCO] for providers of online intermediation services and online search engines offering services in Italy, even if they are not established there …'

24 Article 1(1) of that decision amended the list in Article 2 of the AGCOM rules on the RCO to include the following categories of persons:

'…

m. providers of online intermediation services: natural or legal persons which, even if they are not established or resident in national territory, provide or offer to provide online intermediation services, as defined by Regulation 2019/1150, to business users established or resident in Italy;

n. providers of online search engine: natural or legal persons which, even if they are not established or resident in national territory, provide or offer to provide an online search engine, as defined by Regulation 2019/1150, in the Italian language or to users established or resident in Italy.

…'

25 Article 3 of that decision amended Annex B to Decision No 666/08, in particular by inserting the following text:

'…

Declarations concerning the shareholding of providers of electronic communications services, economic operators engaged in call centre activities, persons making indirect use of national numbering resources, providers of online intermediation services and providers of online search engines:

1. Providers of electronic communications services, economic operators engaged in the activity of call centres, persons making indirect use of national numbering resources, providers of online intermediation services and providers of online search engines, in the form of joint stock companies or cooperatives, shall, when submitting their application for registration, produce a declaration, drawn up in accordance with models 5/1/RCO, 5/2/RCO, 5/3/RCO and 5/4/RCO, containing:
   (a) an indication of the share capital, the list of shareholders and the ownership of their voting rights. Companies listed on the Stock Exchange must disclose only those shareholdings carrying voting rights in excess of 2% of the share capital, indicating for each of them – using the 5/5/RCO model – the respective controlling shareholdings ….
   (b) an indication of the share capital, the list of shareholders and their shareholdings carrying voting rights in excess of 2% of the companies holding the shares or units in the company to be registered;
   (c) an indication of any fiduciary titles, interpositions of persons or the existence of other limits on the shares or units of the companies referred to in points (a) and (b).

2. Providers of electronic communications services, economic operators engaged in the activity of call centres, persons making indirect use of national numbering resources, providers of online intermediation services and providers of online search engines, in the form of a partnership, shall produce, at the time of filing the application for registration, a declaration, drawn up in accordance with model 5/3/RCO, indicating the list of their partners.'

Decision No 14/21

26 Provvedimento presidenziale n. 14/21/PRES – recante 'Misura e modalità di versamento del contributo dovuto all'Autorità per le Garanzie nelle Comunicazioni per l'anno 2021 dai soggetti che operano nel settore dei servizi di intermediazione online e dei motori di ricerca online' (Presidential Decision No 14/21/PRES, on the 'Rates and manner of payment of the contribution payable to the Communications Regulatory Authority for the year 2021 by persons operating in the online intermediation services and online search engines sector') of 5 November 2021,

ratified by AGCOM by delibera n. 368/21/CONS (Decision No 368/21/CONS) of 11 November 2021 (GURI No 304 of 23 December 2021) ('Decision No 14/21'), specified the level and terms of payment, by providers of online intermediation services and online search engines, of the contribution provided for in Article 1(66-bis) of Law No 266/05.

The disputes in the main proceedings and the questions referred for a preliminary ruling

27 Airbnb, which has its registered office in Ireland, operates the eponymous online property intermediation portal, which facilitates the connection of renters who have accommodation with persons seeking accommodation. Airbnb collects from the customer the payment relating to the provision of the accommodation before the start of the rental period and, retaining a commission, transfers that payment to the lessor after the rental period has begun, if there has been no challenge on the part of the lessee.

28 Amazon, which has its registered office in Luxembourg, operates an online platform seeking to connect sellers and consumers with a view to carrying out transactions between them for the sale of goods.

29 Following amendments to the national legal framework resulting, on the one hand, from Law No 178 of 30 December 2020 and, on the other, from Decisions No 200/21 and No 14/21, adopted by the Italian authorities inter alia with a view to ensuring the application of Regulation 2019/1150 ('the contested national measures'), Airbnb and Amazon, as providers of online intermediation services, are now required, on pain of penalties, to be entered in a register maintained by AGCOM, the RCO, and to communicate, as a result, certain information to that authority, as well as to pay a financial contribution to it.

30 Airbnb and Amazon each brought an action before the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy), which is the referring court, seeking, inter alia, the annulment of Decisions No 200/21 and No 14/21.

31 Before the referring court, Airbnb and Amazon submit that the contested national measures, in so far as they impose on them the obligations referred to in paragraph 29 of the present judgment, are contrary to the principle of the freedom to provide services, to Regulation 2019/1150 and to several directives.

32 In that regard, that court recalls, in the first place, that, following the adoption of Regulation 2019/1150, the Italian legislature amended, by Law No 178 of 30 December 2020, Law No 249 of 31 July 1997 and Law No 266 of 23 December 2005.

33 Thus, first, the obligation to be entered in the RCO, maintained by AGCOM, was extended to providers of online intermediation services and online search engines ('the service providers concerned') offering services on the territory of the Italian Republic, even if they are not established in that Member State (Article 1(6)(a)(5) of Law No 249/97).

34 Secondly, AGCOM is responsible for ensuring that Regulation 2019/1150 is implemented, in particular by gathering information (Article 1(6)(c)(14-bis) of Law No 249/97).

35 Thirdly, in the event of non-compliance with the measures adopted by AGCOM pursuant to Regulation 2019/1150, the person concerned would have a fine imposed on it of not less than 2% and not more than 5% of that person's turnover in the last financial year for which the accounts have been closed prior to notification of the notice of non-compliance (second sentence of Article 1(31) of Law No 249/97).

36 Fourthly, the service providers concerned are now required to pay a financial contribution to cover the total administrative costs incurred in the exercise of the regulatory, supervisory, dispute resolution and sanctioning functions conferred on AGCOM by Law No 178 of 30 December 2020 (Article 1(66-bis) of Law No 266/05).

37 In the second place, the referring court states that, by Decision No 200/21, AGCOM amended Decision No 666/08, Annex A to which contains the AGCOM rules on the RCO, in order to take account of the measures adopted by the Italian legislature with a view to implementing Regulation 2019/1150.

38 That court specifies that, in order to be entered in the RCO, the service providers concerned must complete several forms relating not only to the activity carried out, but also to their organisation. Thus, they are required to communicate information on the share capital, the names of the shareholders and their respective shareholdings with voting rights, the composition and term of office of the administrative body and the identity of the legal representative and the directors. The information communicated must be updated annually. Fines are imposed for infringements of the provisions of the AGCOM rules on the RCO.

39 In the light of those factors, the referring court considers that the obligation to pay a financial contribution and to be entered in the RCO could, in several respects, be incompatible with EU law, in particular with the principle of the freedom to provide services, Regulation 2019/1150 and several directives.

40 With regard to Regulation 2019/1150, that court considers that there is no connection between compliance with the obligations laid down therein and the information required for entry in the RCO, which relates mainly to the 'ownership structure' and administrative organisation of the persons concerned. That court considers that the Italian authorities have introduced into their legal system provisions providing for a monitoring of factors inherent in those providers, which is completely different from the monitoring provided for by that regulation, which relates to their compliance with the obligations laid down by that regulation.

41 As regards Directive 2015/1535, the referring court, referring to Articles 1 and 5 of that directive, takes the view that the national provisions requiring providers of the services concerned to be entered in the RCO specifically introduce a general requirement concerning the provision of information society services, so that, unless they have been notified to the Commission in advance, they are not enforceable against individuals.

42 As regards the principle of the freedom to provide services, referred to in Article 56 TFEU and specified in Directives 2000/31 and 2006/123, the referring court notes that Article 3 of Directive 2000/31 establishes the principle that, in the 'coordinated field', within the meaning of Article 2(h) of that directive, information society services must be subject to the legal system of the Member State in which the service provider is established, and Member States may adopt measures

derogating from that principle only in compliance with certain substantive and procedural conditions laid down in Article 3(4) of that directive. According to the referring court, the contested national measures do not satisfy those conditions.

43 The referring court also points out that, under Article 16 of Directive 2006/123, Member States may not restrict the exercise of the freedom to provide services in the case of a provider established in another Member State by requiring that service provider to obtain authorisation from their competent authorities, including entry in a register, except where provided for in that directive or in other instruments of EU law. However, according to the referring court, the contested national measures do not fall within such cases.

44 In those circumstances, the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does Regulation [2019/1150] preclude a national provision that, in order to promote fairness and transparency for business users of online intermediation services, including by adopting guidelines, encouraging codes of conduct to be drawn up and gathering relevant information, requires providers of online intermediation services and providers of online search engines to be entered in a register, which involves the communication of relevant information about their organisation and payment of a financial contribution, a failure to comply with which results in the imposition of penalties?

(2) Does Directive [2015/1535] oblige Member States to notify the Commission of measures that require providers of online intermediation services and providers of online search engines to be entered in a register, which involves the communication of relevant information about their organisation and payment of a financial contribution, a failure to comply with which results in the imposition of penalties? If so, does [that] directive allow a private individual to object to measures not notified to the Commission being applied to him or her?

(3) Does Article 3 of [Directive 2000/31] preclude the adoption by national authorities of provisions that, in order to promote fairness and transparency for business users of online intermediation services, including by adopting guidelines, encouraging codes of conduct to be drawn up and gathering relevant information, impose additional administrative and financial obligations on operators established in another [Member State], such as entry in a register, which involves the communication of relevant information about their organisation and payment of a financial contribution, a failure to comply with which results in the imposition of penalties?

(4) Does the principle of freedom to provide services laid down in Article 56 TFEU and Article 16 of [Directive 2006/123] preclude the adoption by national authorities of provisions that, in order to promote fairness and transparency for business users of online intermediation services, including by adopting guidelines, encouraging codes of conduct to be drawn up and gathering relevant information, impose additional administrative and financial obligations on operators established in another [Member State], such as entry in a register, which involves the communication of relevant information about their organisation and payment of a financial contribution, a failure to comply with which results in the imposition of penalties?

(5) Does Article 3(4)(b) of Directive [2000/31] require Member States to notify the Commission of measures requiring providers of online intermediation services and providers of online search engines to be entered in a register, which involves the communication of relevant information about their organisation and payment of a financial contribution, a failure to comply with which results in the imposition of penalties? If so, does [that] directive allow a private individual to object to measures not notified to the Commission being applied to him or her?'

Consideration of the questions referred

The first, third and fourth questions

45 By its first, third and fourth questions, which it is appropriate to examine jointly and in the first place, the referring court asks, in essence, whether Article 56 TFEU, Article 16 of Directive 2006/123 or Article 3 of Directive 2000/31 must be interpreted as precluding measures adopted by a Member State, with the stated aim of ensuring the adequate and effective enforcement of Regulation 2019/1150, under which, on pain of penalties, providers of online intermediation services established in another Member State are subject, with a view to providing their services in the first Member State, to the obligation to be entered in a register maintained by an authority of that Member State, to communicate to that authority certain detailed information about their organisation and to pay a financial contribution to that authority.

46 As a preliminary point, it should be noted that, as is apparent from Article 1(1) thereof, Directive 2006/123, adopted on the basis of Article 47(2) EC and Article 55 EC, the terms of which have been reproduced, in essence, in Article 53(1) TFEU and Article 62 TFEU respectively, is intended, inter alia, to facilitate the free movement of services. For its part, Directive 2000/31, adopted on the basis of Article 47(2) EC, Article 55 EC and Article 95 EC, the terms of which have been reproduced, in essence, in Article 53(1) TFEU, Article 62 TFEU and Article 114 TFEU respectively, has as its objective, as set out in Article 1(1) thereof, to contribute to the proper functioning of the internal market by ensuring the free movement of information society services between the Member States.

47 Since those two directives give concrete expression to the freedom to provide services enshrined in Article 56 TFEU, if it were established that one of them precluded national measures such as those at issue in the main proceedings, there would be no need to examine the first, third and fourth questions in the light of that article.

48 As regards Article 56 TFEU, as the Advocate General pointed out in point 6 of his Opinion, it is true that, according to the case-law, it is applicable to measures in the field of taxation, which is excluded from the scope of Directive 2000/31 by virtue of Article 1(5)(a) thereof (see, to that effect, judgment of 22 December 2022, *Airbnb Ireland and Airbnb Payments UK*, C-83/21, EU:C:2022:1018, paragraph 38). However, in the present case, neither the referring court nor the Italian Government argues that the contested national measures are related to the need to ensure the fulfilment of tax obligations.

49 Furthermore, it should be noted that Article 3(1) of Directive 2006/123 provides, inter alia, that, if its provisions conflict with a provision of another European Union act governing specific aspects of access to or exercise of a service activity in specific sectors, the provision of that other act is to prevail and is to apply to those specific sectors.

50 Having regard to the fact that Article 3 of Directive 2000/31 concerns specific aspects of access to and the exercise of the activity of an information society service, as set out, in essence, by the Advocate General in points 204 to 207 of his Opinion, if it were established, first, that national measures such as those at issue in the main proceedings fall within the scope of that provision and, secondly, that that provision precludes those measures, there would be no need to examine the first, third and fourth questions in the light of Directive 2006/123.

51 Accordingly, it is appropriate, in the first place, to interpret Article 3 of Directive 2000/31.

52 In that respect, it should be recalled that Article 3(1) of Directive 2000/31 states that each Member State is to 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. Article 3(2) of Directive 2000/31 states that Member States may not, for reasons falling within the coordinated field, restrict the freedom to provide information society services from another Member State.

53 Moreover, under Article 3(4) of Directive 2000/31, Member States may, in respect of a given information society service falling within the coordinated field, take measures that derogate from the principle of the freedom to provide information society services, subject to certain cumulative conditions (see, to that effect, judgment of 19 December 2019, *Airbnb Ireland*, C-390/18, EU:C:2019:1112, paragraph 83).

54 As regards the 'coordinated field' referred to in Article 3 of Directive 2000/31, it should be pointed out that Article 2(h) of that directive defines that field as covering the 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. That field relates to requirements which the service provider must meet and which concern access to the activity of an information society service, such as qualification, authorisation or notification requirements, and the exercise of the activity of an information society service, such as requirements concerning the behaviour of the service provider, the quality or content of the service.

55 Directive 2000/31 is thus based on the application of the principles of control in the home Member State 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 (judgment of 9 November 2023, *Google Ireland and Others*, C-376/22, EU:C:2023:835, paragraph 42).

56 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 (judgment of 9 November 2023, *Google Ireland and Others*, C-376/22, EU:C:2023:835, paragraph 43).

57 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 (judgment of 9 November 2023, *Google Ireland and Others*, C-376/22, EU:C:2023:835, paragraph 44).

58 It follows that Article 3 of Directive 2000/31 precludes, subject to the exemptions authorised under the conditions laid down in paragraph 4 of that article, a provider of an information society service wishing to provide that service in a Member State other than that in which he or she is established from being subject to requirements in the coordinated field imposed by that other Member State.

59 In the present case, it is common ground that the contested national measures, in so far as they require, on pain of penalties, compliance with the obligations referred to in paragraph 29 of the present judgment by providers of online intermediation services established in Member States other than the Italian Republic, impose on those providers conditions which are not laid down in the Member State in which they are established.

60 Similarly, it is not disputed that those services fall within the scope of the 'information society services' referred to in Article 2(a) of Directive 2000/31.

61 By contrast, the Italian Government submits that the obligations laid down by the contested national measures do not fall within the 'coordinated field' within the meaning of Article 2(h) of that directive, since, first, the service providers concerned may de facto begin and continue to provide those services without complying with the obligation to be entered in the RCO and, secondly, the obligation to transmit information to AGCOM and to pay it a financial contribution is intended to enable it to carry out its supervisory functions. Thus, such obligations would not seek to ensure that providers of such services obtain authorisation to access an information society service activity or to exercise such an activity.

62 In that respect, as the Advocate General pointed out, in essence, in points 157 to 161 of his Opinion, as regards, first, the obligation to be entered in a register, on pain of penalties in the event of failure to comply with that obligation, the fact that, without complying with that obligation, a provider may de facto commence and continue to provide an information society service has no bearing on the need to fulfil that obligation in order to be able lawfully to exercise the activity in question.

63 As regards, secondly, the obligation to transmit to an authority of a Member State information relating to the structure and organisation of the undertaking concerned and the obligation to pay to that authority a financial contribution, also on pain of penalties in the event of failure to comply with those obligations, the fact that they are imposed for the purposes of the supervision, by that authority, of the lawfulness of the exercise of the activity of the information society services in no way affects the scope of those obligations, pursuant to which providers of such services which are established in another Member State and which wish to provide those services in the first Member State are required to comply with the same obligations.

64 Accordingly, contrary to what the Italian Government maintains, obligations such as those laid down by the contested national measures constitute requirements relating to the exercise of the activity of an information society service, so that those obligations fall within the 'coordinated field' within the meaning of Article 2(h) of Directive 2000/31.

65 Consequently, Article 3 of Directive 2000/31 precludes measures adopted by a Member State under which, on pain of penalties, providers of online intermediation services established in another Member State are subject, with a view to providing their services in the first Member State, to the obligation to be entered in a register maintained by an authority of that Member

State, to communicate to that authority certain detailed information about their organisation and to pay a financial contribution to that authority, unless those measures fulfil the conditions laid down in Article 3(4) of Directive 2000/31.

66 That interpretation cannot be called into question by the Czech Government's argument that Article 3 of Directive 2000/31 might not preclude such measures, in the light of the case-law relating to Article 56 TFEU, which is applicable by analogy, according to which the prohibition laid down in that article is not contravened by national legislation which is applicable to all operators exercising their activity on national territory, the purpose of which is not to regulate the conditions concerning the provision of services by the undertakings concerned and any restrictive effects of which on the freedom to provide services are too uncertain and indirect for the obligation laid down to be regarded as being capable of hindering that freedom (judgment of 22 December 2022, *Airbnb Ireland and Airbnb Payments UK*, C-83/21, EU:C:2022:1018, paragraph 45 and the case-law cited).

67 As the Advocate General set out, in essence, in points 166 and 167 of his Opinion, on the one hand, requirements falling within the coordinated field cannot satisfy the conditions resulting from that case-law since, by definition, their purpose is to regulate access to the activity of providing an information society service and the exercise of that activity. On the other hand, by an act of secondary legislation, the EU legislature may give effect to a fundamental freedom enshrined in the FEU Treaty by creating conditions even more favourable to the proper functioning of the internal market than those resulting from primary law (see, to that effect and by analogy, judgment of 16 June 2015, *Rina Services and Others*, C-593/13, EU:C:2015:399, paragraph 40).

68 It is therefore necessary to ascertain whether national measures such as those mentioned in paragraph 65 of the present judgment satisfy the conditions laid down in Article 3(4) of Directive 2000/31.

69 To that end, in the first place, it should be noted that, as is clear from the very terms of that provision, only measures 'taken against a given information society service' may fall within the scope of that provision.

70 In that regard, it is important to recall that, in the judgment of 9 November 2023, *Google Ireland and Others* (C-376/22, EU:C:2023:835), the Court ruled 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.

71 In the present case, subject to verification by the referring court, it appears that the contested national measures are general and abstract in scope, so that they cannot be classified as measures 'taken against a specific information society service' within the meaning of Article 3(4)(a) of Directive 2000/31.

72 Furthermore, under that provision, in order to be considered compliant with that provision, national measures must be necessary to ensure public policy, the protection of public health, public security or the protection of consumers.

73 Accordingly, it is appropriate to determine whether that is the case in relation to national measures adopted with the stated aim of ensuring the application of Regulation 2019/1150.

74 In that regard, it should be recalled that, according to Article 1(5) of Regulation 2019/1150, that regulation is to be without prejudice to the EU law applicable, in particular, in the area of electronic commerce.

75 Since Directive 2000/31 manifestly falls within that area, measures such as the contested national measures cannot be regarded as complying with Article 3(4)(a) of that directive, on the ground that they are intended to ensure the application of Regulation 2019/1150, unless it is established that the objective of the regulation corresponds to one of the objectives listed in that provision.

76 However, it is clear from recitals 7 and 51 of Regulation 2019/1150 that the regulation aims to establish a targeted set of mandatory rules at Union level in order to create a fair, predictable, sustainable and trusted online business environment within the internal market. In particular, business users within the meaning of Article 2(1) of that regulation ('business users') should be afforded appropriate transparency, as well as effective redress possibilities, throughout the Union in order to facilitate cross-border business within the Union and thereby improve the proper functioning of the internal market.

77 Article 1(1) of that regulation specifies that the regulation contributes to the proper functioning of that market by laying down rules to ensure that business users and corporate website users in relation to online search engines are granted appropriate transparency, fairness and effective redress possibilities.

78 As the Advocate General pointed out, in essence, in points 186 to 190 of his Opinion, even assuming that national measures such as the contested national measures are intended to secure the objective of Regulation 2019/1150, there is no direct link between (i) that objective and (ii) those listed in Article 3(4)(a)(i) of Directive 2000/31, referred to in paragraph 72 of the present judgment.

79 It is common ground that the objective of Regulation 2019/1150 does not concern public policy, the protection of public health or public security.

80 As far as consumer protection is concerned, it should first be noted that it does not cover the protection of businesses. Regulation 2019/1150 lays down rules on relationships between providers of online intermediation services and business users.

81 Next, it follows from recital 3 of Regulation 2019/1150 that the link between 'the transparency of, and trust in, the online platform economy in business-to-business relations' and '[helping] to improve consumer trust in the online platform economy' is only indirect.

82 Finally, recital 3 of Regulation 2019/1150 states that 'direct impacts of the development of the online platform economy on consumers are, however, addressed by other Union law, especially the consumer acquis'.

83 It should be added that Article 3(4) of Directive 2000/31, as an exception to the principle of control in the home Member State, must be interpreted strictly (see, by analogy, judgments of 22 November 2012, *Probst*, C-119/12, EU:C:2012:748, paragraph 23, and of 21 June 2022, *Ligue*

des droits humains, C-817/19, EU:C:2022:491, paragraph 70). Accordingly, that exception cannot be applied to measures which are likely, at most, to have only an indirect link with one of the objectives referred to in that provision.

84 Therefore, it cannot be inferred from the fact that national measures were adopted with the stated aim of ensuring the application of Regulation 2019/1150 that those measures are necessary to secure one of the objectives listed in Article 3(4)(a)(i) of Directive 2000/31.

85 Consequently, measures adopted by a Member State under which, on pain of penalties, providers of online intermediation services established in another Member State are subject, with a view to providing their services in the first Member State, to the obligation to be entered in a register maintained by an authority of that Member State, to communicate to that authority certain detailed information about their organisation and to pay a financial contribution to that authority do not satisfy the conditions laid down in Article 3(4)(a) of Directive 2000/31.

86 Since the contested national measures fall within the coordinated field covered by Directive 2000/31 and since the interpretation of that directive makes it possible to answer the first, third and fourth questions, as rephrased in paragraph 45 of the present judgment, there is no need, in accordance with the considerations set out in paragraphs 46 to 50 of the present judgment, also to interpret Article 56 TFEU or Directive 2006/123.

87 In the light of all the foregoing, the answer to the first, third and fourth questions is that Article 3 of Directive 2000/31 must be interpreted as precluding measures adopted by a Member State, with the stated aim of ensuring the adequate and effective enforcement of Regulation 2019/1150, under which, on pain of penalties, providers of online intermediation services established in another Member State are subject, with a view to providing their services in the first Member State, to the obligation to be entered in a register maintained by an authority of that Member State, to communicate to that authority certain detailed information about their organisation and to pay a financial contribution to that authority.

The second and fifth questions

88 The second and fifth questions concern the prior notification requirements laid down in Directives 2000/31 and 2015/1535, failure to comply with which means that measures that should have been notified but were not are not enforceable against individuals.

89 However, in view of the answers given to the first, third and fourth questions, there is no need to answer the second and fifth questions.

Costs

90 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

Article 3 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 ('Directive on electronic commerce')

must be interpreted as precluding measures adopted by a Member State, with the stated aim of ensuring the adequate and effective enforcement of Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services, under which, on pain of penalties, providers of online intermediation services established in another Member State are subject, with a view to providing their services in the first Member State, to the obligation to be entered in a register maintained by an authority of that Member State, to communicate to that authority certain detailed information about their organisation and to pay a financial contribution to that authority.

[Signatures]