Reports of Cases

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 15 December 2022[1]

Case C-50/21

Prestige and Limousine, S.L.
v
Área Metropolitana de Barcelona,
Asociación Nacional del Taxi (ANTAXI),
Asociación Profesional Elite Taxi,
Sindicat del Taxi de Catalunya (STAC),
TAPOCA VTC1 SL,
Agrupació Taxis Companys

(Request for a preliminary ruling from the Tribunal Superior de Justicia de Cataluña ((High Court of Justice, Catalonia, Spain))

(Reference for a preliminary ruling – Articles 49 and 107 TFEU – Private hire vehicles (PHVs) – Limitation of the number of PHV operating licences in relation to the number of taxi licences – Authorisation scheme involving the obtaining of a second operating licence)

I. Introduction

1. Markets in transition are a tricky business for lawmakers and those interpreting and applying the law. Geopolitical circumstances, technology and society and, with them, consumer demands are in constant evolution. Concomitantly, new players, technologies and suppliers are appearing. They are having a disruptive effect on existing circumstances. They are changing the status quo, sometimes provisionally, often for good. If a market is subject to a certain degree of regulation, newcomers, often using new business models, tend to have a difficult outlook.

2. The taxi business throughout Europe could provide a case study of a market in transition. In many places across the European Union, suppliers of taxi services have traditionally been shielded from competition thanks to State regulation,[2] while web-based platforms have started offering local passenger transport-on-demand services with a high degree of zeal, precision and efficiency. This has contributed not only to more transparency at all stages of the provision of local transport services, where supply and demand is being matched with a higher degree of

[1] Original language: English.

[2] For a comprehensive overview, see 'Study on passenger transport by taxi, hire car with driver and ridesharing in the EU. Final Report', Brussels, 2016, pp. 8, 31 and 32. The study is available at: https://transport.ec.europa.eu/system/files/2017-05/2016-09-26-pax-transport-taxi-hirecar-w-driver-ridesharing-final-report.pdf.

precision than before, but has also increased both supply and demand. As far as drivers are concerned, it is nowadays far easier than before to become a driver and to offer services through a platform, while customers have greater control over how, where and at what cost they are transported. Furthermore, local private transport has become more affordable and the economic barrier to entry for consumers has been lowered considerably. People who could not afford private transport before are now in many instances in a position to do so. All this has led to a state of affairs in which the distinction between traditional taxi services and new players on the market has become blurred and where their services converge. Moreover, this has led to a certain cross-fertilisation in the sense that traditional taxi operators increasingly resort to web-based applications to match supply and demand.

3. As the Court is well aware, the Metropolitan Area of Barcelona ('the AMB') is not immune to this trend, and this is not the first time that the Court has been faced with the issue of local passenger transport-on-demand services in Barcelona. Notably, in the seminal judgment in *Asociación Profesional Elite Taxi*,[3] the Court clarified that certain web-based platforms provide a service in the field of transport, the consequence being that neither the provisions of Directive 2006/123/EC[4] nor those of Directive 2000/31/EC,[5] nor the freedom to provide services under Article 56 TFEU applies, which means that measures adopted by Member States cannot be scrutinised against those provisions. In particular, such undertakings cannot evade any obligations they might have as undertakings offering transport services by 'escaping' Member State regulation through Directive 2000/31, which, by definition, entails little obligation for internet service providers.

4. At the same time, it is well known that the freedom of establishment under Article 49 TFEU does apply to services in the field of transport. This is the point of departure of the present case. The Court is invited to rule on whether the balance, struck by the Spanish regulator, between traditional taxi services and transport services carried out with private hire vehicles (PHVs)[6] meets the requirements of Article 49 TFEU.

5. In Barcelona too, the traditional taxi model has come under challenge. A system of local passenger transport-on-demand services has evolved in parallel to the traditional taxi market and PHVs have started to appear on the scene. In Spain, PHVs were traditionally conceived to cater for the market for *inter*-town transport, yet they have found their way into *intra*-town transport. In particular, as regards the latter aspect, from the perspective of the customer in particular, they are taxis in almost all but name, in that they offer transport services to customers in return for a fare. At the same time, in the AMB they have fewer rights (using bus and taxi lanes, for instance, is forbidden) and fewer obligations (there are no fixed fares and they are not obliged to accept a customer).

[3] See judgment of 20 December 2017 (C-434/15, EU:C:2017:981, paragraph 48). This is so, in particular, because Uber exerts control over all of the relevant aspects of an urban transport service: over the price, obviously, but also over the minimum safety conditions by means of prior requirements concerning drivers and vehicles, over the accessibility of the transport supply by encouraging drivers to work when and where demand is high, over the conduct of drivers by means of the ratings system and over possible exclusion from the platform. See my Opinion in *Asociación Profesional Elite Taxi* (C-434/15, EU:C:2017:364, point 51).

[4] Directive of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36).

[5] Directive 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).

[6] Often, PHVs are also referred to as 'VTCs': tourism (passenger) cars (vehicles) with driver. In the present Opinion, for ease of reference, I shall refer to the term 'PHVs' throughout.

6. As the PHV model became a victim of its own success and more and more suppliers appeared, the Spanish regulator stepped in at national and local level. Specific licences were required for the AMB and such licences were limited to 1 licence for every 30 taxi licences. In practice, as the number of taxi licences has remained stable for the past 35 years, newcomers to the PHV market are prevented from accessing those licences.

7. In this Opinion, I shall propose that the Court rule that the system, as it currently exists in the AMB, is contrary to the freedom of establishment under Article 49 TFEU, in so far as the ratio of 1 PHV licence to 30 taxi licences is concerned. It constitutes a disproportionate restriction on that fundamental freedom.

II. Legal Framework

8. Under Article 43 of Ley 16/1987 de Ordenación de los Transportes Terrestres (Law 16/1987 on the regulation of land transport) of 30 July 1987 (BOE No 182 of 31 July 1987), as amended by Royal Decree-Law 3/2018 of 20 April 2018 (BOE No 97 of 21 April 2018) ('the LOTT'), the grant of a public transport licence is conditional on the provision of evidence by the applicant undertaking that, amongst other things, it satisfies such other specific conditions required for the proper performance of the services as may be established by regulation, having regard to principles of proportionality and non-discrimination.

9. Article 48 of the LOTT provides as follows:

'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 inter-urban 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 1 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.'

10. Article 91 of the LOTT provides that public transport licences shall be valid for the provision of services throughout the national territory, with no restrictions as regards the starting point or destination of the journey, with the exception, amongst others, of licences for private hire vehicles, which must comply with any conditions imposed by regulations as regards the starting point, destination or route offered by services.

11. The LOTT is implemented by the Reglamento de la Ley de Ordenación de los Transportes Terrestres (Regulation implementing the Law on the regulation of land transport) ('the ROTT'), which has been amended several times.

12. A part of the ROTT is, in turn, implemented by Orden FOM/36/2008 por la que se desarrolla la sección segunda del capítulo IV del título V, en materia de arrendamiento de vehículos con conductor, del Reglamento de la Ley de Ordenación de los Transportes Terrestres (Order FOM/36/2008 implementing the second section of Chapter IV of Title V of the Regulation implementing the Law on the regulation of land transport, concerning private hire vehicles) of 9 January 2008 ('the PHV order'), which was in turn amended by Order FOM/2799/2015 of 18 December 2015. Article 1 of the PHV order, entitled 'Mandatory licensing requirement', stipulates that 'in order to carry on private hire vehicle services, a licence must be obtained for each vehicle that is to be used for such services'.

13. The main proceedings concern a challenge to the Reglamento de ordenación de la actividad de transporte urbano discrecional de viajeros con conductor en vehículos de hasta nueve plazas que circula íntegramente en el ámbito del Área Metropolitana de Barcelona (Regulation governing non-scheduled urban transport services provided by private hire passenger vehicles with up to nine seats operating solely within the AMB; 'the RVTC'), approved on 26 June 2018 by the Consejo Metropolitano del Área Metropolitana de Barcelona (Metropolitan Council of the AMB) and published in the *Boletín Oficial de la Provincia de Barcelona* (Official Gazette of the Province of Barcelona) on 9 July 2018 and also in the *Diari Oficial de la Generalitat de Catalunya* (Official Gazette of the Government of Catalonia) number 7897 of 14 June 2019, which came into force on 25 July 2018.

14. After citing the legal bases for the regulation in national law and the law of the Autonomous Community of Catalonia, the preamble to the RVTC notes that the passenger transport model in question is subject to government regulation by means of various different techniques, in a manner completely different from the models adopted elsewhere, under which passenger transport in its various different forms is 'liberalised' in a way that favours private transport. The model is justified by reference to the pursuit of environmental and financial sustainability and the provision of new spaces to be used for public purposes other than vehicle traffic. The preamble states that this is incompatible with promoting an increase in urban private hire vehicles hired for individual use or for the total capacity of the vehicle.

15. Article 1 establishes that the purpose of the RVTC is to regulate non-scheduled urban passenger transport provided by vehicles with up to nine seats operating solely within the AMB. Article 2 establishes that the geographical scope of the regulations is restricted to the AMB. In Article 3, private hire vehicle services provided by vehicles with up to nine seats including the driver are defined as services which are provided for hire in return for payment, which do not operate in accordance with linear routes or area networks or at pre-determined times, and for which payment is effected by means of a contract with a single user or in respect of the total capacity of the vehicle. Under Article 5, powers of administrative intervention in those services lie with the AMB (the local authority), acting through the Instituto Metropolitano del Taxi (Metropolitan Taxi Council; 'IMET').

16. Under Article 6 of the RVTC, the AMB is responsible for issuing licences to provide such services, for reviewing the conditions governing the issue of licences and, where appropriate, for revoking licences. Oversight of the activity includes, amongst other things, regulating the activity, the licensing system and the penalties regime.

17. Article 7 of the RVTC stipulates that, in order to provide the above service within the unitary urban transport management area comprising the territory of the AMB, a licence must first be obtained which authorises the licence-holder in respect of each vehicle that is to provide the service. Pursuant to Article 7(4) and (5), services starting and ending within that geographical area may be provided only under a licence granted by the AMB, and that licence must be held in conjunction with any other licences to be issued by other authorities pursuant to their powers.

18. Article 10 of the RVTC, entitled 'Determining the number of licences', establishes that it is for the AMB to fix the maximum number of licences at any given time, having regard to the need to ensure a sufficient supply of high-quality services to the public and to enable operators to remain profitable.

19. The transitional provision in the RVTC recognises the validity of licences granted previously that were still in effect on the entry into force of the RVTC, and stipulates that they are governed by and subject to the new regulation. Under the first additional provision, the total number of licences is limited to those granted in accordance with the transitional provision. The same provision also establishes that the IMET is responsible for proposing the commencement of the process for determining the maximum number of licences over and above those provided for in the transitional provision, and stipulates that the number of licences in force at any time may not exceed the ratio of 1 PHV licence to 30 taxi licences.

III. Facts, procedure and questions referred

20. Prestige and Limousine S.L. (P&L) is a holder of licences to operate a PHV service within the AMB. It challenges before the Tribunal Superior de Justicia de Cataluña (High Court of Justice, Catalonia, Spain) and seeks to have annulled the RVTC, which aims to regulate PHV services in the whole AMB and which makes use of the possibility offered by Article 48(3) of the LOTT to limit the number of licences for PHV services to 1 for every 30 licences granted for taxi services.

21. There are several such cases pending before the referring court. Fourteen of the companies that were already providing PHV services in the area, including P&L and companies linked to international platforms, consider that, given the limitations and restrictions imposed on them by the RVTC, the sole purpose of its adoption was to hinder their activity, and only to protect the interests of the taxi industry. P&L and those other companies therefore asked the referring court to declare the RVTC null and void.

22. The Tribunal Superior de Justicia de Cataluña (High Court of Justice, Catalonia) notes that taxis and PHVs are in competition with each other as regards urban passenger transport service. The taxi service is subject to regulation and limitation of the number of licences, and its fares are subject to prior administrative authorisation. Taxis can use bus lanes, have on-street stops and can pick up customers on the street. Although their most characteristic field of action is the urban area, taxis may nevertheless provide inter-city transport services, subject to the relevant requirements.

23. According to the referring court, PHV services are, moreover, limited by the number of licences. At the material time, PHVs were able to provide inter-city and urban transport services throughout the national territory at rates which were not subject to prior authorisation, but to a system of agreed prices enabling the customer to know in advance – and normally to pay via the

internet – the total price of the service. Unlike taxis, PHVs were not allowed to use bus lanes, had no on-street stops and could not pick up customers on the street unless the service had been agreed in advance via the relevant computer application.

24. The referring court explains that, further to the abolishment of the statutory limitation of the number of PHV licences to 1 for every 30 taxi licences in 2009, a significant increase in the number of PHV providers in the AMB until 2015 could be detected. It is this phenomenon which the Metropolitan Council of the AMB intended to reverse with the adoption of the RVTC and the limitation of PHV service licences.

25. The referring court notes that, in 2018, the Tribunal Supremo (Supreme Court, Spain) ruled that the ratio chosen (1:30) had never been justified by any objective consideration. It concludes that Article 48(3) of the LOTT, which allowed the RVTC to limit the licences of PHV services, can be characterised as arbitrary and therefore contrary to Article 49 TFEU, in that it would make it practically impossible for undertakings offering PHV services in the European Union to establish themselves in the AMB, and to the prohibition in Article 107(1) TFEU on hindering trade within the European Union.

26. The Tribunal Superior de Justicia de Cataluña (High Court of Justice, Catalonia) has the same doubts as to the compatibility with those provisions of EU law of the 'dual licence' regime to which PHVs have been subject in the AMB. As Article 91 of the LOTT and Article 182(2) of the ROTT provided, at the time of the events, that licences to operate as a PHV allowed for the provision of 'urban and inter-urban services throughout the national territory', the addition by the Metropolitan Council of the AMB of a licence requirement to be able to provide urban PHV services in the AMB, subject to additional requirements, could be seen as a strategy aimed at minimising competition from PHV services vis-à-vis taxis. This suspicion would be corroborated by the fact that subsequently, on the basis of Royal Decree-Law 13/2018 of 20 April 2018 (BOE 97 of 21 April 2018), amending the LOTT, a new AMB regulation would have limited PHV services to 'interurban' transport and would have provided for the disappearance of urban or metropolitan PHV services within four years.

27. The justifications for the RVTC put forward by the AMB were that, first, PHVs would threaten the economic viability of taxis, provide them with 'unfair competition' and lead to intensive use of transport routes. Secondly, the 10 523 metropolitan taxi licences granted would be sufficient to meet the needs of the population and at the same time ensure the profitability of the taxi business. Lastly, the AMB relied on environmental protection.

28. However, according to the national court, economic considerations relating to the situation of taxis cannot justify the RVTC measures. As regards the considerations relating to the use of transport routes, the AMB failed to weigh up the effect that PHV services may have on reducing the use of private cars. In addition, PHV vehicles would be required to have a parking space and would not be able to park on the public highway while waiting for customers. Similarly, environmental considerations would disregard existing techniques that could guarantee the provision of the service by means of low or non-polluting vehicles. Furthermore, it would be curious if, in this context, the taxi fleet were described as clean without any indication as to why that description does not extend to the PHV fleet.

29. The reasoning for the RVTC would thus seem to seek to conceal the essential purpose of the measure, namely, presumably, to preserve or protect the interests of the taxi sector, which would have been mobilised to such an extent as to lead the legislature to echo the existing climate of

tension linked to a situation of conflict between the two professional sectors concerned, taxis and PHVs. Furthermore, the provisional assessment of the court of first instance was largely influenced by the critical reports on the RVTC drawn up by the independent competition authorities, both Spanish and Catalonian.

30. It is against this background that, by order of 19 January 2021, received at the Court on 29 January 2021, the Tribunal Superior de Justicia de Cataluña (High Court of Justice, Catalonia) decided to stay the proceedings and to refer the following questions for a preliminary ruling:

'(1) Do Article 49 and Article 107(1) TFEU preclude national laws – statutory and regulatory provisions – which, without any reasonable justification, limit PHV licences to 1 for every 30 taxi licences or fewer?

(2) Do Article 49 and Article 107(1) TFEU preclude a rule of national law which, without any reasonable justification, requires a second licence and the fulfilment of additional requirements for PHVs wishing to provide urban services?'

31. Written observations were submitted by the parties to the main proceedings, with the exception of Sindicat del Taxi de Catalunya, by the Czech and Spanish Governments and by the European Commission. All parties, with the exception of the AMB and the Czech Government, took part in the hearing, which was held on 5 October 2022.

IV. Assessment

32. As requested by the Court, this Opinion will focus its analysis on the freedom of establishment under Article 49 TFEU.

A. Admissibility

33. Some of the parties argue that the questions referred are not admissible. Their arguments shall be examined in turn.

1. Formal requirements under Article 94 of the Court's Rules of Procedure

34. First, the AMB states that the referring court does not mention the entirety of the applicable national, regional and local legislation. It is claimed that the rules forming the basis for the adoption of the RVTC are not properly set out.

35. I do not share those concerns, for it appears to me to be very clear which issues the referring court seeks guidance on: the ratio of 1 PHV licence to every 30 taxi licences and the requirement of a second licence for PHVs to operate in the AMB. In this respect, it is immaterial to the Court which precise provisions of national, regional or local law are applicable. What matters is that the referring court, which is solely competent to determine the need for a preliminary ruling,[7] clearly describes the legal framework it applies. This has been done.

[7] See, by way of example, judgment of 20 October 2022, *Centre public d'action sociale de Liège (Withdrawal or suspension of a return decision)* (C-825/21, EU:C:2022:810, paragraph 34).

36. Secondly, P&L has reservations that go in a similar direction. It claims that, to the extent that the questions refer to national laws in the sense of statutory and regulatory provisions, those questions are beside the point given that the case at issue before the national court is (only) about the legality of the RVTC.

37. Again, I fail to see an impediment to the Court replying to the questions here. Contrary to the contention of P&L, it is not for the Court to determine precisely which provisions of national law apply to the case at issue. Instead, this is a factual question to be determined by the referring court.

2. Scope of application of EU law

38. Thirdly, the AMB points to the fact that, in the case pending before the referring court, all the elements of the dispute take place in Spain and, therefore, constitute a purely internal situation, the consequence being that the present case would be inadmissible because Article 49 TFEU is not triggered. Concerning that objection, I believe that one can safely rely on the Court's judgment in *Ullens de Schooten*,[8] where the Court has neatly summarised and classified the four situations in which cases arising from purely internal situations are nevertheless admissible[9] for a preliminary ruling to be given. Two of those situations can be said to apply in the case at issue: (1) when it is not inconceivable that nationals established in other Member States had been or were interested in making use of those freedoms for carrying on activities in the territory of the Member State that had enacted the national legislation in question and, consequently, that the legislation, applicable without distinction to nationals of that Member State and those of other Member States, was capable of producing effects which were not confined to that Member State;[10] and (2) where the referring court makes a request for a preliminary ruling in proceedings for the annulment of provisions which apply not only to its own nationals but also to those of other Member States, the decision of the referring court that will be adopted following the Court's preliminary ruling will also have effects on the nationals of other Member States.[11]

39. In this connection, it should be recalled that the case at issue before the referring court is but 1 of 14 cases pending before that court on the validity of the RVTC, some of those cases having been brought by foreign companies. This is a clear demonstration that, while the facts in the specific case may be confined to Spain, the subject matter at issue certainly is not and the judgment of the Court will have direct repercussions for economic operators from within the EU, but outside Spain. There is, therefore, nothing hypothetical about the present case as regards foreign operators and the above-mentioned criteria in *Ullens de Schooten*[12] are fulfilled.

[8] See judgment of 15 November 2016 (C-268/15, EU:C:2016:874, paragraphs 50 to 53). For a comprehensive summary of the Court's case-law in the matter before that judgement, see Opinion of Advocate General Wahl in Joined Cases *Venturini and Others* (C-159/12 to C-161/12, EU:C:2013:529). See also my Opinion in *BONVER WIN* (C-311/19, EU:C:2020:640, point 33 et seq.).

[9] See, to that effect, also my Opinion in Joined Cases *X and Visser* (C-360/15 and C-31/16, EU:C:2017:397, point 115).

[10] See judgment of 15 November 2016, *Ullens de Schooten* (C-268/15, EU:C:2016:874, paragraph 50).

[11] See judgment of 15 November 2016, *Ullens de Schooten* (C-268/15, EU:C:2016:874, paragraph 51).

[12] See judgment of 15 November 2016 (C-268/15, EU:C:2016:874, paragraphs 50 to 53).

40. Moreover, as the Commission correctly points out, the criteria of *Fremoluc* are met, according to which the request for a preliminary ruling must clearly set out specific factors, that is, not hypothetical considerations but specific evidence, such as complaints or applications brought by operators situated in other Member States or involving nationals of those Member States, on the basis of which the required connecting link may be positively established. [13]

41. This has been done by the referring court.

42. In the light of the foregoing considerations, I propose to the Court to consider the questions of the referring court to be admissible. I shall therefore now proceed to propose answers to the questions.

B. Substance

1. Preliminary remarks on private local passenger transport

43. Local passenger transport is a key issue currently facing municipalities, regions, Member States and the European Union. It plays a crucial role in the everyday life of citizens and residents. It is closely intertwined with - and shapes and determines - issues of economic, environmental and social policy and plays a part in the way in which aspects of people's ways of life are governed. It has ramifications for town and countryside planning, (access to) housing and air pollution. Hence, it is only natural that the European Union, Member States and other entities on a national level, including the municipalities, grapple with this issue and seek solutions. Typical questions in this respect are: how much *public* transport is provided? How is it financed? What is the degree of State intervention in *private* transport? How dense is the regulation?

44. Local passenger transport-on-demand services are transport services with a car and a driver that are carried out on demand of the passenger. [14] They typically come in the form of taxis and what is known as PHVs. While the supply of taxi services has, by and large, remained stable throughout the European Union, in the sense that new licences are rarely issued in this densely regulated (and often protected) market, PHV services are a more recent phenomenon.

45. More specifically, local passenger transport-on-demand services, which are by their very nature a *private* form of transport in that service providers are not public entities, are not currently subject to harmonisation in the European Union. As a consequence, Member States are free to intervene and regulate as long as they comply with primary law, which means, above all, respecting the freedom of establishment under Article 49 TFEU. [15]

[13] More particularly, the referring court may not merely submit to the Court evidence suggesting that such a link cannot be ruled out or which, considered in the abstract, could constitute evidence to that effect, and must, on the contrary, provide objective and consistent evidence enabling the Court to ascertain whether such a link exists. See judgment of 20 September 2018, *Fremoluc* (C-343/17, EU:C:2018:754, paragraph 29).

[14] See Commission Notice on well-functioning and sustainable local passenger transport-on-demand (taxis and PHV), OJ 2022 C 62, p. 1.

[15] As per Article 58(1) TFEU, Article 56 TFEU is not applicable to services in the field of transport, these being governed by the transport chapter in the TFEU, meaning that there has to be harmonisation first. The same goes for the application of Directive 2006/123, which, in Article 2(2)(d), contains a provision which mirrors that of Article 58(1) TFEU. See judgments of 1 October 2015, *Trijber and Harmsen* (C-340/14 and C-341/14, EU:C:2015:641, paragraph 49), and of 20 December 2017, *Asociación Profesional Elite Taxi* (C-434/15, EU:C:2017:981, paragraph 36).

46. The second question of the referring court refers to the *existence* of a licence, while the first question deals with the *number* of licences which can be granted. Both questions are about the compatibility with Article 49 TFEU. Under these circumstances, I shall deal with them in the following manner: I shall join them in the sense that, in following the classical examination under Article 49 TFEU, I shall first deal with the issue of restriction and then with its possible justification. In the examination of restriction and its justification, I shall first deal with the question of the existence and then with that of the number of licences, thereby somewhat reversing the questions referred. Moreover, the questions should be marginally rephrased and understood in the following manner:[16] '(1) Does Article 49 TFEU preclude national measures requiring economic operators wishing to provide PHV services within the confines of a metropolitan area to obtain a related licence, if such operators are already in possession of a national licence allowing them to provide 'inter-urban' and 'urban' PHV services throughout the national territory? (2) Does Article 49 TFEU preclude limiting the number of such PHV licences to 1 for every 30 taxi licences or fewer, in the same metropolitan area?'

47. Although the questions, as reformulated, arise in the context of proceedings challenging the RVTC, that is to say, the regulation enacted by the AMB, some parties to the proceedings allege that the referring court, in an incidental manner, is also enquiring about the compatibility with Article 49 TFEU of national law, which, internally, that is to say in the Spanish legal order, ranks higher than the RVTC.

48. As I have already set out in the assessment of the admissibility of the present case, while this may very well be true,[17] the interplay of internal Spanish law is not a matter for the Court but for the national court to determine. As a consequence, I shall, in the present Opinion, refer to the 'measures in question' in order to describe (a) the licence requirement and (b) the ratio of 1 PHV licence to every 30 taxi licences in the AMB.

2. Restriction

49. Article 49(1) TFEU prohibits restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State. This also applies to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of another Member State.

50. It constitutes settled case-law that all measures which prohibit, impede or render less attractive the exercise of the freedom guaranteed by Article 49 TFEU must be regarded as restrictions on the freedom of establishment.[18] In particular, the concept of restriction (or obstacle) goes beyond discrimination based on nationality and covers measures taken by a Member State which, although applicable without distinction, affect access to the market for economic operators from other Member States and thereby hinder intra-Community

[16] This should also counter the argument made by several parties to the proceedings that the questions of the referring court are phrased in a biased way, already somewhat prejudging the result.

[17] However, I would like to mention in passing that, according to consistent case-law, a Member State may not rely on provisions, practices or situations of its internal legal order to justify non-compliance with its obligations under EU law. The internal allocation of competences within a Member State, such as between central, regional or local authorities, cannot, for example, release that Member State from its obligation to fulfil those obligations. See judgments of 13 September 2001, *Commission* v *Spain* (C-417/99, EU:C:2001:445, paragraph 37), and of 8 September 2010, *Carmen Media Group* (C-46/08, EU:C:2010:505, paragraph 69).

[18] See, by way of example, judgments of 6 October 2020, *Commission v Hungary (Higher education)* (C-66/18, EU:C:2020:792, paragraph 40), and of 7 September 2022, *Cilevičs and Others* (C-391/20, EU:C:2022:638, paragraph 61).

trade.[19] Moreover, in accordance with the case-law of the Court, the freedom of establishment is distinguished from the freedom to provide services first and foremost by the stability and continuity of the activity in question, as opposed to an activity of a temporary nature.[20]

51. By those standards, the measures in question restrict the freedom of establishment of foreign economic operators offering PHV services, as those operators are impeded from entering the market for PHV services in the AMB. There can be no doubt as to the restrictive nature of the measures in question and neither the referring court nor the intervening parties appear to question this in any way, as is evidenced by the fact that the submissions concentrate on the next step consisting in a possible justification of the very restriction in question.

52. Indeed, the measures at issue effectively restrict access to the market for any newcomer, including a foreign operator, which wishes to establish itself in or around the AMB and to offer local-transport passenger services to prospective customers.

53. A licence requirement *as such* already constitutes a textbook example of a restriction.[21] Indeed, licence and authorisation requirements, in the case-law of the Court, *ipso facto* constitute restrictions on the freedom of establishment (or, conversely, the freedom to provide services).[22]

54. In addition, by freezing access to the market at a ratio of 1 to 30, the measures in question have the effect of hindering those who wish to establish a PHV business within the territory of the AMB from doing so and, thus, will hinder the establishment of economic operators from another Member State.[23]

55. In conclusion, both the licence requirement as such and the ratio of 1 to 30 constitute a restriction on the freedom of establishment under Article 49 TFEU.

[19] This is consistent case-law since the judgment of 30 November 1995, *Gebhard* (C-55/94, EU:C:1995:411, paragraph 37). See, moreover, among many, judgment of 29 March 2011, *Commission* v *Italy* (C-565/08, EU:C:2011:188, paragraph 46). See also judgment of 5 October 2004, *CaixaBank France* (C-442/02, EU:C:2004:586, paragraph 12).

[20] See only judgment of 30 November 1995, *Gebhard* (C-55/94, EU:C:1995:411, paragraph 25 et seq.). On the distinction between the freedom to provide services and the right of establishment, see also Opinion of Advocate General Cruz Villalón in *Yellow Cab Verkehrsbetrieb* (C-338/09, EU:C:2010:568, points 15 to 18).

[21] See, by way of example, Müller-Graff, P.-Chr., in Streinz, R. (ed.), *EUV/AEUV Kommentar*, C.H. Beck, Munich, 3rd edition, 2018, Art. 49 AEUV, point 67 et seq. and Forsthoff, U., in Grabitz, E., Hilf, M and Nettesheim, M. (eds), *Das Recht der Europäischen Union*, 76. EL., updated May 2022, C.H. Beck, Munich, Art. 49 AEUV, point 104. See also Kainer, F., in Pechstein, M. Nowak, C. Häde, U. (eds), *Frankfurter Kommentar zu EUV, GRC und AEUV*, Band II, Mohr Siebeck, Tübingen, 2017, Art. 49 AEUV, point 63 and Wendland, H.M., 'Die binnenmarktrechtliche Niederlassungsfreiheit der Selbständigen', in Müller-Graff, P.-Chr. (ed.), *Europäisches Wirtschaftsordnungsrecht (Enzyklopädie Europarecht, Band 4)*, Nomos, Baden-Baden, 2nd edition, 2021, pp. 177 to 234, point 4.

[22] See judgments of 25 July 1991, *Säger* (C-76/90, EU:C:1991:331, paragraph 14); of 9 August 1994, *Vander Elst* (C-43/93, EU:C:1994:310, paragraph 15); of 20 February 2001, *Analir and Others* (C-205/99, EU:C:2001:107, paragraph 22); of 22 January 2002, *Canal Satélite Digital* (C-390/99, EU:C:2002:34, paragraph 29); and of 10 March 2009, *Hartlauer* (C-169/07, EU:C:2009:141, paragraph 34).

[23] See, to that effect, concerning the establishment of pharmacies, Opinion of Advocate General Poiares Maduro in Joined Cases *Blanco Pérez and Chao Gómez* (C-570/07 and C-571/07, EU:C:2009:587, point 11).

3. Justification

56. A restriction on the freedom of establishment cannot be justified unless it serves, in the first place, an overriding reason relating to the public interest and, in the second place, observes the principle of proportionality, meaning that it is suitable for securing, in a consistent and systematic manner, the attainment of the objective pursued and does not go beyond what is necessary in order to attain it. [24]

57. The following overriding reasons in the public interest are invoked as grounds of justification by the AMB (and the Spanish Government): guaranteeing the quality, security and accessibility of *taxi services*, such services purportedly constituting 'services of a public interest'; maintaining the right equilibrium between taxis and PHV service providers; managing local transport, traffic and the use of public space; and the protection of the environment.

(a) Identifying an overriding reason relating to the public interest

(1) Guaranteeing the quality, security and accessibility of taxi services

58. All the parties to the proceedings, which originate from Spain, and in particular the AMB and the Spanish Government refer to the taxi sector as being pivotal to providing a 'service of a public interest'. Whether this is invoked as a specific overriding reason relating to the public interest is not clear. In any event, it is claimed that, because taxis provide a service of a public interest, they are *ipso facto* worthy of protection.

59. To the extent that the AMB argues that there is a public interest in there being a functioning taxi system, the following remarks are called for.

(i) No purely economic grounds of justification

60. An objective of a purely economic nature can never constitute an overriding reason relating to the public interest justifying a restriction of a fundamental freedom guaranteed by the Treaty. [25] Thus, for instance, the objective of ensuring the profitability of a competing bus service, as a reason of a purely economic nature, cannot, in accordance with the settled case-law, constitute such an overriding reason relating to the public interest. [26]

61. For the case at issue, this implies that the economic viability of taxi services cannot in itself constitute an overriding reason relating to the public interest.

[24] See, to that effect, judgments of 23 February 2016, *Commission* v *Hungary* (C-179/14, EU:C:2016:108, paragraph 166); of 6 October 2020, *Commission* v *Hungary (Higher education)* (C-66/18, EU:C:2020:792, paragraph 178); and of 7 September 2022, *Cilevičs and Others* (C-391/20, EU:C:2022:638, paragraph 65). This constitutes, in essence, consistent case-law since the judgment of 30 November 1995, *Gebhard* (C-55/94, EU:C:1995:411, point 37).

[25] See, by way of example, judgments of 26 April 1988, *Bond van Adverteerders and Others* (352/85, EU:C:1988:196, paragraph 34); of 11 March 2010, *Attanasio Group* (C-384/08, EU:C:2010:133, paragraph 55); and of 24 March 2011, *Commission* v *Spain* (C-400/08, EU:C:2011:172, paragraph 74).

[26] See judgment of 22 December 2010, *Yellow Cab Verkehrsbetrieb* (C-338/09, EU:C:2010:814, paragraph 51). See also judgment of 11 March 2010, *Attanasio Group* (C-384/08, EU:C:2010:133, paragraph 55).

(ii) Taxi services as 'services of a public interest'

62. Moreover, more generally, the Court has not recognised the existence of a 'service of a public interest'[27] as constituting an overriding reason relating to the public interest. Indeed, the expression 'service of a public interest' is not an expression used in EU law. Resorting to such an expression, from the perspective of EU law, could lead to confusion. Should the parties, however, be referring to a 'service of general economic interest', an expression very well known in EU law, this still does not relieve the AMB from proving that the measures in question are fit for purpose. I shall come back to this point in the examination of proportionality below.

(iii) 'Services of general economic interest'

63. The expression 'services of general economic interest', which initially stems from Article 106(2) TFEU and also appears (in primary law)[28] in Article 14 TFEU[29], in Protocol (No 26) on services of general interest[30] as well as in Article 36 of the Charter of Fundamental Rights of the European Union, has already been interpreted by the Court a number of times. However, the expression as such, namely what exactly constitutes a 'service of general economic interest', has not been defined by the Court in the abstract, which is due to the fact that it is essentially the prerogative of Member States to define what they regard as a service of general economic interest.[31] Nevertheless, while a Member State has a broad discretion with respect to that definition, it must ensure that every service of general economic interest satisfies certain minimum criteria common to all missions of such a service. It must demonstrate that those criteria are satisfied in the particular case.[32] These are, notably, the presence of an act of the public authority entrusting the operators in question with an service of general economic interest mission and the universal and compulsory nature of that mission.[33] Furthermore, a Member State must indicate the reasons why it considers that the service in question, because of its specific nature, deserves to be characterised as a service of general economic interest and to be distinguished from other economic activities.[34]

64. Regarding the definition of a service of general economic interest, we can lean on the one proposed by Advocate General Ruiz-Jarabo Colomer: 'the service should be uninterrupted (continuity); for the benefit of all consumers throughout the relevant territory (universality); at uniform tariff rates and of similar quality, irrespective of specific situations or of the degree of economic profitability of each separate transaction (equality)'.[35] To this, he then added

27 In Spanish: 'un servicio de interés público'.

28 In secondary law, that expression appears in Article 15(4) of Directive 2006/123. See my Opinion in *Hiebler* (C-293/14, EU:C:2015:472, points 56 et seq.).

29 Since the Treaty of Amsterdam, as completed and amended by the Treaty of Lisbon. On the genesis of this provision, see Krajewski, M., in Pechstein, M. Nowak, C. Häde, U. (eds), *Frankfurter Kommentar zu EUV, GRC und AEUV*, Band II, Mohr Siebeck, Tübingen, 2017, Art. 14 AEUV, point 3 et seq.

30 See Article 1 of the Protocol. On the (less clear) genesis of the protocol, which is attached to the Treaty of Lisbon, see Damjanovic, D., de Witte, B., 'Welfare integration through EU law: the overall picture in the light of the Lisbon Treaty' in Neergaard, U., R. Nielsen, R., Roseberry, L. (eds.), *Integrating welfare functions into EU law – From Rome to Lisbon*, DJØF Publishing, Copenhagen, 2009, pp. 88 and 89.

31 See, to that effect, judgment of 12 February 2008, *BUPA and Others* v *Commission* (T-289/03, EU:T:2008:29, paragraphs 166 and 167). See also judgment of 20 April 2010, *Federutility and Others* (C-265/08, EU:C:2010:205, paragraph 29): 'Member States are entitled, while complying with the law of the Union, to define the scope and the organization of their services in the general economic interest.'

32 See judgment of 12 February 2008, *BUPA and Others* v *Commission* (T-289/03, EU:T:2008:29, paragraph 172).

33 Ibid.

34 Ibid. See also judgment of 10 December 1991, *Merci convenzionali Porto di Genova* (C-179/90, EU:C:1991:464, paragraph 27).

35 See Opinion in *Federutility and Others* (C-265/08, EU:C:2009:640, point 54).

transparency and affordability.[36] The Commission's definition, to which I can equally subscribe, goes in a similar direction: '[Services of general economic interest] are economic activities which deliver outcomes in the overall public good that would not be supplied (or would be supplied under different conditions in terms of quality, safety, affordability, equal treatment or universal access) by the market without public intervention. The [public service obligation] is imposed on the provider by way of an entrustment and on the basis of a general interest criterion which ensures that the service is provided under conditions allowing it to fulfil its mission.'[37]

65. Furthermore, Article 106(2) TFEU is typically invoked for the purpose of derogating from the rules of competition, although there have been instances in which that provision also played a role in derogating from the rules on free movement.[38] This results both from the fact that that provision appears among the rules on competition[39] and that it refers '*in particular* to the rules on competition'.[40]

66. Based on the case-law referred to in the preceding paragraphs, it is questionable whether *taxi* services can be regarded as a service of general economic interest. Indeed, the 'market definition' applied by the AMB appears to me to be too narrow. It may be that local transport as a whole may constitute a service of general economic interest, but not the sub-segment of (traditionally) *private* local transport in the form of taxi services. While there is undeniably a need for individuals to be able to travel locally by means of transport, this is not necessarily true of travelling by taxi. To illustrate my point with an example: on the assumption that child care could be classified, by a Member State, as a service of general economic interest, surely such child care would not amount to a claim to have singular childcare in the form of a dedicated nanny, but collective childcare in the form of a (collective) nursery. The same goes for local transport. To the extent that this can be regarded as a service of general economic interest, this does not imply that individuals can expect a town or a region to set up, for them, a functioning taxi network. Other forms of transport, collective in nature, must do so.

67. Moreover, in big agglomerations such as Barcelona, there should be various other modes of transport at the citizens' disposal. One could also wonder whether the existence of a functioning taxi system can really be compared to other, more traditional services of general economic interest that either require large investments or expertise in sourcing (such as the supply of water, gas, electricity, telecommunications and postal services), are special skills (such as healthcare) or have inherent in them an element of collectivity (such as childcare).

68. That said, private local transport can certainly fill the gap in emergency situations, for instance to make sure someone can quickly be transported to a hospital (even though in such a situation a hospital ambulance may be the more appropriate mode of transport). In such a situation, however, enlarging the *supply* of local transport services would surely contribute to having a functioning system in place. Why such supply should not, for instance, include PHVs remains a mystery to me.

[36] Ibid., point 55.

[37] See Communication of 20 December 2011 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'A Quality Framework for Services of General Interest in Europe', COM(2011) 900 final, p. 3.

[38] See Martucci, F., *Droit du marché intérieur de l'Union européenne*, Presses Universitaires de France, Paris, 2021, points 129 and 253.

[39] In Part Three, Title VII, Chapter 1, Section 1 (Rules applying to undertakings), of the FEU Treaty.

[40] My emphasis.

69. Yet, to sum up, I will not call into question the AMB's desire to have in place a functioning system of private local transport which serves to convey customers at any time of day to any place.

70. In any event, it is doubtful that taxi service operators carry out a public service obligation. Guidance may be sought here in the definition provided for elsewhere in secondary law, according to which a 'public service obligation' means a requirement defined or determined by a competent authority in order to ensure public passenger transport services in the general interest that an operator, if it were considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions without reward'.[41] By contrast, a mere licence requirement under which taxi services are universal does not constitute an act mandating a public service obligation.[42]

71. In conclusion, the AMB can pursue the desire to guarantee the quality, security and accessibility of taxi services only in so far as it does not pursue economic objectives in doing so. What it cannot do is to shield taxi services from any further scrutiny just because they could constitute a service of general economic interest.

(2) Maintaining the right equilibrium between PHV and taxi service providers

72. To the extent that the measures in question are designed to 'maintain an equilibrium' between the two modes of transport of taxis and PHVs, suffice it to state that it is questionable whether such an equilibrium should be maintained between two services which are, as established above, converging to the point of being almost similar. Besides, one may wonder whether the best way to maintain an equilibrium is through a system other than through state intervention.[43] In the logic of the internal market established by the TFEU, an equilibrium is normally maintained through concepts which tend to be forgotten in the midst of discussions surrounding cases such as the one at issue: supply and demand.

73. Therefore, maintaining an equilibrium between PHV and taxi services cannot be regarded as a valid overriding reason relating to the public interest. Instead, if the real intention is to provide for an adequate system of local private transport, as stated above, enlarging supply by admitting more PHVs would surely be more conducive to solving the issue.

(3) Managing local transport, traffic and the use of public space, protecting the environment

74. To the extent that the reasons invoked do not consist in economically shielding the taxi market from the realities of economic life, they can, in principle, be regarded as overriding reasons relating to the public interest.

[41] See Article 2(e) of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70, OJ 2007 L 315, p. 1.

[42] See, by analogy, judgment of 11 July 2013, *Femarbel* (C-57/12, EU:C:2013:517, paragraph 49).

[43] I would like to stress that this question is independent of that of whether and to what extent new transport companies, through new business models they come up with, not only match supply to demand, but also *create* the supply itself. The activities of platforms such as Uber are a good example in this respect, see my Opinion in *Asociación Profesional Elite Taxi* (C-434/15, EU:C:2017:364, point 43).

75. It should be stressed that the Court has previously accepted the overriding reasons of the protection of the urban environment [44] and of the need to ensure road safety. [45] Those reasons do not quite match what is being invoked in the present case. Nevertheless, I consider the objectives of managing local transport, traffic and the use of public space to constitute an overriding reason relating to the public interest. It almost goes without saying that cities and agglomerations do have an interest in providing for free-flowing traffic, in avoiding congestion and, more generally, in providing for public spaces that guarantee a high level of quality of living.

76. Also, the protection of the environment can, in principle, constitute an overriding reason relating to the public interest. [46]

(b) Suitability

77. Next, the measures in question must be suitable to attain the purported overriding reason relating to the public interest, that is to say, the licence requirement and the ratio of 1 to 30 must be suitable to contribute to guaranteeing the quality, security and accessibility of taxi services, managing local transport, traffic and the use of public space as well as to the protection of the environment. Such suitability also implies that the purported objective is pursued in a coherent and systematic manner. It will be for the referring court to assess the suitability of the measure. Yet, based on the information the Court has been provided with and the submissions of the various parties, while I do not, in principle, see problem with a licence requirement, I am left somewhat puzzled and cannot see any argument in favour of such suitability as far as the ratio of 1 to 30 is concerned.

(1) The licence requirement

78. The starting point is that there is no general impediment under EU law that, within the confines of its jurisdiction, a regional entity such as the AMB requires aspiring operators of PHV services to obtain a licence which caters for the specificities of the region in question. Should the AMB find that there are issues not addressed by the national (first) licence, then it is, in principle, free to require PHV operators to obtain a second licence. It is clear that the situation of each city or agglomeration across the European Union is different when it comes to local issues such as congestion and pollution. Elements not covered by or examined in the context of the granting of a national licence can therefore, in principle, be addressed in a local licence. This amounts to a practical example of 'subsidiarity' in the literal, non-technical sense of the term.

79. That said, conversely, such a second licence must be based on additional considerations not addressed in a first licence. As the Czech Government correctly recalls, a measure introduced by a Member State cannot be regarded as not going beyond what is necessary to attain the objective pursued if it duplicates controls which have already been carried out in the context of other procedures, either in the same State or in another Member State. [47] This implies for the case at issue that a second licence must, under no circumstances, require economic operators wishing to

[44] See judgment of 29 November 2001, *De Coster* (C-17/00, EU:C:2001:651, paragraph 38). See also Article 4, point 8, of Directive 2006/123. Such protection includes maintaining the viability of a city centre of a municipality and avoiding any vacant premises in a city, in the interests of good town and county planning. See judgment of 30 January 2018, *X and Visser* (C-360/15 and C-31/16, EU:C:2018:44, paragraph 134).

[45] See judgment of 15 October 2015, *Grupo Itevelesa and Others* (C-168/14, EU:C:2015:685, paragraph 74 and the case-law cited).

[46] See judgment of 24 March 2011, *Commission* v *Spain* (C-400/08, EU:C:2011:172, paragraph 74).

[47] See judgments of 22 January 2002, *Canal Satélite Digital* (C-390/99, EU:C:2002:34, paragraph 36), and of 10 November 2005, *Commission* v *Portugal* (C-432/03, EU:C:2005:669, paragraph 45).

offer PHV services to go through the same controls as is necessary for obtaining the first licence. In this connection, I note that at no point has it been argued, let alone proven, that offering taxi services in the absence of a closed system of licences would not be viable. Instead, one could argue that the examples of other towns and areas in the European Union, where taxi services are only very lightly regulated, clearly point in a different direction in this respect. [48]

(2) The ratio of 1 to 30

80. Here, it must be stated that, apart from mentioning the objectives pursued and explaining them in an abstract manner, the AMB does not provide the Court with any information as to why the measures in question are suitable to attain the management of local transport, of local traffic and of the use of public space.

81. At no point has it been proven by the AMB that restricting the issuing of licences to a ratio of 1 for every 30 taxi licences is suitable to attain the management of local transport, of local traffic, of the use of public space and the protection of the environment. There is no indication whatsoever that the objective is pursued in a coherent and systematic manner. Such insufficient explanation of the reasons opens up more questions than can be answered. I am still not in the clear as to how the AMB intends to reform and regulate coherently non-public local transport: Why are taxi services and PHV services subject to different legal regimes if they cater for one and the same demand (private individual local transport) and if they are, as established by the referring court, in competition with each other? Why is the regime applicable to taxis not addressed and, instead, access to the PHV market is restricted to the point of being made impossible? The number of taxi licences has been stable for the past decades. Although, as explained in the introduction of this Opinion, times and markets change, the taxi system is, figuratively speaking, set in stone and it is merely for the newcomers to adapt. This may have its logic from the perspective uniquely of Spanish law. However, it does not meet the suitability test under Article 49 TFEU. It is for the AMB to reply to such questions. It has failed to do so in the present proceedings.

82. It emerged during the hearing that the number of taxi licences has been stable since the late 1980s. No new licences have been issued. Instead, once a licence holder ceases to carry on his or her activity, the licence can be sold on the secondary market. While 'initial' licences, directly obtained from the State at the time, cost less than EUR 100, licences nowadays trade on the secondary market for more than EUR 100 000. If the AMB intended to regulate the taxi and PHV market in a regular and coherent manner, drying up that secondary market might be an appropriate starting point. Incidentally, this state of affairs aptly demonstrates that fixed taxi tariffs have the effect of cross-subsiding the said fees for licences obtained on the secondary market. In other words, if the AMB were serious about reforming the system it would tackle it at its root. 'Reforming' on the back of PHVs amounts to tinkering with the margins. It may be understandable that genuinely reforming and liberalising the entire system of taxi and PHV services places those who have dearly paid for a licence and seek to recover the costs by way of fixed (high) taxi charges at a considerable disadvantage. However, there are other ways to offset the risk of such people being left out in the cold than doing this on the back of PHVs and the freedom of establishment.

[48] Indeed, a study carried out for the Commission by a law firm and Bocconi University shows that a number of Member States and major cities have *not* introduced quantitative restrictions at all. See 'Study on passenger transport by taxi, hire car with driver and ridesharing in the EU. Final Report', op. cit., pp. 8, 31 and 32. The study is available at: https://transport.ec.europa.eu/system/files/2017-05/2016-09-26-pax-transport-taxi-hirecar-w-driver-ridesharing-final-report.pdf.

(3) Conclusion

83. Based on the information provided by the referring court and the parties during the course of the proceedings, the measures in question, insofar as they concern the ratio of 1 PHV licence to every 30 taxi licences, are not suitable to attain the objective of managing local transport, traffic and the use of public space or protecting the environment and therefore constitute a disproportionate restriction on the freedom of establishment under Article 49 TFEU.

V. Conclusion

84. In the light of the foregoing, I propose that the Court answer the questions referred by the Tribunal Superior de Justicia de Cataluña (High Court of Justice, Catalonia, Spain) as follows:

(1) Article 49 TFEU

must be interpreted as not precluding national measures requiring economic operators wishing to provide PHV services within the confines of a metropolitan area to obtain a related licence, if such operators are already in possession of a national licence allowing them to provide 'inter-urban' and 'urban' PHV services throughout the national territory and if the licence in question does not require a duplication of controls already carried out.

(2) Article 49 TFEU

must be interpreted as precluding limiting the number of such PHV licences to 1 for every 30 taxi licences or fewer, in the same metropolitan area.