Reports of Cases

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 11 January 2024[1]

Cases C-662/22 to C-667/22

Airbnb Ireland UC (C-662/22)
Expedia Inc. (C-663/22)
Google Ireland Limited (C-664/22)
Amazon Services Europe Sàrl (C-665/22 and C-667/22)
Eg Vacation Rentals Ireland Limited (C-666/22)
v
Autorità per le Garanzie nelle Comunicazioni

(Requests for a preliminary ruling from the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy))

(Reference for a preliminary ruling – Regulation (EU) 2019/1150 – Directive 2000/31/EC – Article 3 – Technical regulations on information society services – National legislation imposing an obligation on providers of online intermediation services and online search engines to be entered in a register of communications operators and to pay a financial contribution)

I. Introduction

1. The questions referred for a preliminary ruling in the cases to which this Opinion relates concern the interpretation of Regulation (EU) 2019/1150[2] and Directives 2000/31/EC,[3] 2006/123/EC[4] and (EU) 2015/1535.[5] Those questions arise from the challenge brought by providers of online intermediation services and online search engines ('providers of online services') against legislation adopted by the Italian Republic requiring them, inter alia, to be entered in a register and to provide information relating to their structure and economic situation.

2. Those questions give the Court the opportunity, on the one hand, to rule, for the first time, on the interpretation of Regulation 2019/1150 and on the discretion available to the Member States when implementing it.

1 Original language: French.

2 Regulation 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).

3 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).

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 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).

3. They also enable the Court, on the other hand, to clarify whether EU law precludes national legislation by which a Member State applies the obligations at issue to service providers providing services in Member States other than those in which they are established. I would point out, at the risk of anticipating my subsequent analysis, that Article 3 of Directive 2000/31 establishes a mechanism which precludes the application of those obligations to such service providers.

4. Admittedly, it could be argued that the mechanism established in Article 3 of Directive 2000/31 confers particularly extensive protection on information society service providers established in the European Union against measures adopted by Member States other than that in which they are established. However, I am of the view that the intention of the EU legislature in adopting that directive, which is a product of its time, was to establish a basic regime which specifically protects the freedom to provide information society services within the European Union.

5. To that end, Directive 2000/31 aims to adapt the solutions provided for in the Treaty to the challenges posed by the development of the internet. At the same time, that directive has served as a starting point for the development of EU law in the field of online services.[6] Where necessary, the legislature may, and indeed must, intervene and introduce harmonised solutions tailored to the socioeconomic reality.[7] Such interventions have taken place over the years[8] and the Digital Services Act[9] is a good recent illustration.

6. Moreover, the economic nature of the information to be supplied by online service providers in accordance with the obligations at issue might suggest that such information is useful for verifying whether those service providers are complying with their tax obligations. However, the mechanism set out in Article 3 of Directive 2000/31 is not to apply in the field of taxation.[10] From the point of view of EU law, the legality of measures excluded from the scope of that directive should be examined in the light of Article 56 TFEU.[11] However, neither the referring court nor the Italian Government argues that the obligations at issue are related to the need to ensure the fulfilment of tax obligations.

6 See recital 21 of Directive 2000/31, which states that that directive 'is without prejudice to future Community harmonisation relating to information society services and to future legislation adopted at national level in accordance with Community law'.

7 Nor, of course, does the Court lose sight of the socioeconomic reality, particularly when interpreting the Treaty (see my Opinion in Joined Cases *X and Visser*, C-360/15 and C-31/16, EU:C:2017:397, points 1 to 5). However, in a harmonised field, it is more difficult to take account of that reality on a case-by-case basis and the intervention of the European legislature is all the more necessary.

8 See, by way of illustration, Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ 2011 L 335, p. 1, and corrigendum OJ 2012 L 18, p. 7) and Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online (OJ 2021 L 172, p. 79).

9 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31 (Digital Services Act) (OJ 2022 L 277, p. 1).

10 See Article 1(5)(a) of Directive 2000/31.

11 See judgment of 22 December 2022, *Airbnb Ireland and Airbnb Payments UK* (C-83/21, EU:C:2022:1018, paragraph 38).

II. Legal framework

A. European Union law

1. Regulation 2019/1150

7. Article 15 of Regulation 2019/1150, entitled 'Enforcement', provides:

'1. Each Member State shall ensure adequate and effective enforcement of this Regulation.

2. Member States shall lay down the rules setting out the measures applicable to infringements of this Regulation and shall ensure that they are implemented. The measures provided for shall be effective, proportionate and dissuasive.'

8. Article 16 of that regulation, entitled 'Monitoring', provides:

'The [European] Commission, in close cooperation with Member States, shall closely monitor the impact of this Regulation on relationships between online intermediation services and their business users and between online search engines and corporate website users. To this end, the Commission shall gather relevant information to monitor changes in these relationships, including by carrying out relevant studies. Member States shall assist the Commission by providing, upon request, any relevant information gathered including about specific cases. The Commission may, for the purpose of this Article and Article 18, seek to gather information from providers of online intermediation services.'

2. Directive 2015/1535

9. 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.

…'

10. 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.'

11. According to Article 7(1) of that directive:

'Articles 5 and 6 shall not apply to those laws, regulations and administrative provisions of the Member States or voluntary agreements by means of which Member States:

(a) comply with binding Union acts which result in the adoption of technical specifications or rules on services;

…'

3. Directive 2000/31

12. Article 2(a) of Directive 2000/31 defines the concept of 'information society services' by reference to Article 1(1) of Directive 2015/1535. [12]

13. Article 2(h) of Directive 2000/31 defines the 'coordinated field' as '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'.

14. Article 3 of that directive, entitled 'Internal market', is worded as follows:

'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.

[12] In the version prior to the entry into force of Directive 2015/1535, Article 2(a) of Directive 2000/31 defined 'information society services' as 'services within the meaning of Article 1(2) of Directive [98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1998 L 204, p. 37), as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998 (OJ 1998 L 217, p. 18) ('Directive 98/34')]. Since the entry into force of Directive 2015/1535, that reference must be understood as being made to Article 1(1)(b) of the latter.

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

3. Paragraphs 1 and 2 shall not apply to the fields referred to in the Annex.

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,

…

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

(iii) proportionate to those objectives;

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

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

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

5. Member States may, in the case of urgency, derogate from the conditions stipulated in paragraph 4(b). Where this is the case, the measures shall be notified in the shortest possible time to the Commission and to the Member State referred to in paragraph 1, indicating the reasons for which the Member State considers that there is urgency.

6. Without prejudice to the Member State's possibility of proceeding with the measures in question, the Commission shall examine the compatibility of the notified measures with Community law in the shortest possible time; where it comes to the conclusion that the measure is incompatible with Community law, the Commission shall ask the Member State in question to refrain from taking any proposed measures or urgently to put an end to the measures in question.'

4. Directive 2006/123

15. Article 16 of Directive 2006/123, entitled 'Freedom to provide services', provides:

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

…

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 …;

…'

B. Italian law

16. In the Italian legal system, the measures to implement Regulation 2019/1150 – that is to say, in particular, Decisions No 14/2021[13] and No 200/2021,[14] and, in all likelihood, Decision No 161/2021 –[15] were adopted under Article 1(515) to (517) of legge n. 178 – Bilancio di previsione dello Stato per l'anno finanziario 2021 e bilancio pluriennale per il triennio 2021-2023 (Law No 178 of 30 December 2020 on the estimated State budget for the 2021 financial year and

[13] Provvedimento presidenziale n. 14/21/PRES, recante 'Misura e modalità di versamento del contributo dovuto all'[Autorità per le Garanzie nelle Comunicazioni (AGCOM)] 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 'Amount and manner of payment of the contribution payable to the [Communications Regulatory Authority (AGCOM)] for the year 2021 by persons operating in the online intermediation services and online search engines sector') of 5 November 2021 (GURI No 304 of 23 December 2021) ('Decision No 14/2021'), ratified by AGCOM by delibera n. 368/21/CONS (Decision No 368/21/CONS).

[14] Delibera n. 200/21/CONS – Modifiche alla delibera n. 666/08/CONS recante 'regolamento per la tenuta del [RCO]' a seguito dell'entrata in vigore della legge 30 dicembre 2020, n. 178, recante 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 following the entry into force of Law No 178/2020) ('Decision No 200/2021').

[15] Delibera n. 161/21/CONS. Modifiche alla delibera n. 397/13 (Decision No 161/21/CONS, amending Decision No 397/13) ('Decision No 161/2021').

the multiannual budget for the three-year period from 2021 to 2023) [16] ('Law No 178/2020'), which amended legge n. 249 – 'Istituzione dell'Autorità per le garanzie nelle comunicazioni e norme sui sistemi delle telecomunicazioni e radiotelevisivo' (Law No 249 of 31 July 1997 establishing the Communications Regulatory Authority and rules on telecommunications and broadcasting systems) [17] ('Law No 249/1997'), which had established AGCOM.

1. Law No 249/1997, as amended by Law No 178/2020, and Decision No 666/2008, as amended by Decision No 200/2021 [18]

17. Article 1(6) of Law No 249/1997 was amended by Article 1(515) of Law No 178/2020, which provides:

'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, Article 1 of Law [No 249/1997] is amended as follows:

(a) in paragraph 6:

…

(2) under (c), … the following [text] shall be added:

"14a [the AGCOM Board] 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";

…'

18. The provisions of Law No 178/2020 imposed certain obligations on providers of online services offering services in Italy, even if they are not established in the territory of that Member State, including, first, the obligation to be entered in the registro degli operatori di comunicazione (Register of Communications Operators; 'the RCO') and, secondly, the obligation to pay an annual contribution to AGCOM.

19. Accordingly, in the first place, with regard to the obligation to be entered in the RCO, on 26 November 2008 AGCOM adopted delibera n. 666/08/CONS, Regolamento per l'organizzazione e la tenuta del [RCO] (Decision No 666/08/CONS, Rules governing the organisation and maintenance of the [RCO]) [19] ('Decision No 666/2008'). Article 2 of Annex A to Decision No 666/2008 sets out the categories of entities required to be registered in the RCO.

20. On 17 June 2021, AGCOM adopted Decision No 200/2021. By that decision, AGCOM amended Annex A to Decision No 666/2008, by including in the list of categories of entities required to be registered in the RCO providers of online services, as defined by Regulation 2019/1150, which, even if they are not established or resident in national territory, provide or

16 Ordinary Supplement to GURI No 322 of 30 December 2020.

17 Ordinary Supplement to GURI No 169 of 25 August 1997.

18 This part of the legal framework is relevant to Joined Cases C-662/22 and C-667/22, Joined Cases C-664/22 and C-666/22 and, in so far as it concerns Law No 178/2020, Cases C-663/22 and C-665/22.

19 GURI No 25 of 31 January 2009.

offer to provide such services to business users established or resident in Italy. AGCOM also amended Annex B to Decision No 666/2008, by extending to providers of online services the obligation, when submitting their application for registration in the RCO, to file reports on their corporate structure and on the activity carried out, as well as the obligation to file subsequent annual reports.

21. Decision No 666/2008 provides that registration in the RCO is to be subject to procedural and notification requirements. Accordingly, providers of online services must, inter alia, gather and then communicate to AGCOM certain information on their corporate structure, notify AGCOM, within strict time limits (30 days), of any change of control and ownership, or even any transfer of 10% or more of their shares (or 2% in the case of listed companies), [20] provide AGCOM with annual notifications and keep it informed at all times of any change in the information communicated. [21] Moreover, the referring court states that, in its view, companies registered in the RCO are prohibited 'from receiving, directly or through other entities which they control or to which they are connected … revenue in excess of 20% of the total revenues generated in the integrated communications system'. [22]

22. Online service providers that fail to comply with those obligations are subject to penalties which the referring court describes as 'significant'. Although the referring court does not provide detailed information in that regard, it should be noted that, in such a case, the penalties imposed are those provided for in Article 1(29) to (32) of Law No 249/1997. [23] Those penalties include fines and, in some cases, the suspension of the service provider's activities in Italy or even criminal penalties. AGCOM may also order the automatic entry of a service provider in the RCO.

23. In the second place, with regard to the obligation to pay an annual contribution to AGCOM, Article 1(517) of Law No 178/2020, 'for the purpose of covering the total amount of the administrative costs incurred in the exercise of the functions of regulation, supervision, dispute resolution and punishment conferred by law on [AGCOM] in the matters referred to in paragraph 515', provides for the addition of the following paragraph to Article 1 of legge n. 266 – Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge finanziaria 2006) (Law No 266 of 23 December 2005 on the provisions for drawing up the annual and multiannual budget of the State (Financial Law 2006) [24] ('Law No 266/2005'): '66a. In the first year of application, 2021, the amount of the contribution to be paid by providers of online services referred to in Article 1(6)(a)(5) of Law No 249/1997 shall be set at 0.15% of the revenues generated in national territory, even if those revenues are recorded in the balance sheets of companies having their registered offices abroad, based on the value of production shown in the balance sheet for the preceding financial year or, for entities not required to draw up such a balance sheet, on the value of equivalent items in other accounting records showing the total value of production. For subsequent years, [AGCOM] may vary the amount and manner of payment of the contribution in accordance with Article 1(65), up to a limit of 0.2% of revenues assessed in accordance with the preceding sentence.'

20 See Articles 8 and 9 of Annex A to Decision No 666/2008.

21 See Annex B and Articles 10 and 11 of Annex A to Decision No 666/2008.

22 On the relevance of that prohibition to this Opinion, see footnote 27.

23 See Annex A to Decision No 666/2008 and, more specifically, Article 8(5) and Article 9(7) thereof.

24 Ordinary Supplement to GURI No 211 of 29 December 2005.

2. Decision of the President of AGCOM No 14/2021

24. Decision No 14/2021 [25] specified the amount and manner of payment, by providers of online services, of the contribution provided for in Article 1(66a) of Law No 266/2005.

3. Decision No 397/2013 and the amendments made to it by Decision No 161/2021

25. On 25 June 2013, AGCOM adopted delibera n. 397/13/CONS, Informativa economica di sistema (Decision No 397/13/CONS, Economic System Information) ('Decision No 397/2013'). Article 2(1) of that decision sets out the categories of persons who are required to send to AGCOM a document entitled 'Informativa economica di sistema' (Economic System Information) ('the ESI').

26. By Decision No 161/2021, [26] AGCOM extended to providers of online services the obligation to submit the ESI to it when they operate on Italian territory, invoking the need to 'gather relevant information every year and to take measures to ensure adequate and effective enforcement of [Regulation 2019/1150]' and the 'exercise of the functions assigned to [AGCOM] by [Law No 178/2020]'.

27. According to that decision, the ESI is an 'annual report which communications operators must submit and which concerns personal and economic data relating to the activity carried out by the entities concerned, with a view to gathering the information necessary to fulfil specific legal obligations, which include valuation of the integrated communications system (SIC) and verification of the concentration thresholds within it, analyses of the market and of possible dominant positions or positions which are in any event detrimental to pluralism, the annual report and surveys, and to enabling the statistical database of communications operators to be updated'.

28. In practice, that decision imposes an obligation on providers of online services to communicate relevant and precise information related to their economic situation. For example, entities providing intermediation services on an online sales site must indicate the total revenues from the site, subscription fees and fixed costs (registration, membership, subscription, etc.) in the context of use of the online sales platform by users established in Italy to offer goods and services to consumers, and the fixed and variable commissions charged on sales (or the net share of sales) made via the platform.

29. Failure to submit the ESI or the communication of inaccurate data entails the imposition of the penalties provided for in Article 1(29) and (30) of Law No 249/1997.

[25] This part of the legal framework is relevant to Joined Cases C-662/22 and C-667/22.

[26] This part of the legal framework is relevant to Cases C-663/22 and C-665/22.

III. The facts giving rise to the disputes in the main proceedings and the questions referred for a preliminary ruling

A. Joined Cases C-662/22 and C-667/22

30. Airbnb Ireland UC ('Airbnb'), whose registered office is in Ireland, operates the eponymous online property intermediation portal, which facilitates the connection of lessors who have accommodation with persons seeking accommodation, by collecting from the customer the payment relating to the provision of the accommodation before the start of the rental and by transferring that payment to the lessor after the rental has begun, if there has been no challenge on the part of the lessee.

31. Amazon Services Europe Sàrl ('Amazon'), whose registered office is in Luxembourg, operates an online platform seeking to connect third-party sellers and consumers so as to allow them to engage in transactions for the sale of goods.

32. The changes to the national legal framework resulting from Law No 178/2020 and Decisions No 200/2021 and No 14/2021 have had the effect of making Airbnb and Amazon, in their capacity as providers of online intermediation services, subject to the obligation to be entered in the RCO and, consequently, to communicate certain information to AGCOM and to pay a financial contribution to it.

33. Airbnb and Amazon each brought an action before the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy) seeking, inter alia, the annulment of Decisions No 200/2021 and No 14/2021. Those companies claim that Law No 178/2020 and those decisions are contrary to Regulation 2019/1150 and Directives 2000/31, 2006/123 and 2015/1535.

34. In that regard, in the first place, the referring court points out that, on the one hand, Article 15 of Regulation 2019/1150 confers on Member States the task of ensuring its 'adequate' and 'effective' enforcement. Moreover, Member States are to lay down the rules setting out the measures applicable to infringements of that regulation and are to ensure that they are implemented. Those measures must be effective, proportionate and dissuasive. On the other hand, Article 16 of that regulation adds that the Commission is to closely monitor the impact of that regulation and gather relevant information to monitor changes in the relationships between online intermediation services and their business users and between online search engines and corporate website users, including by carrying out relevant studies.

35. Although, according to the national legislature, the obligation to be entered in the RCO constitutes an implementation of Regulation 2019/1150, the referring court observes that that obligation is intended to provide information to AGCOM, primarily, on the ownership structure and administrative organisation of the entities which are subject to it, without providing the slightest indication as regards compliance with the obligations laid down by Regulation 2019/1150 or as regards the transparency and fairness of relationships with business users. Accordingly, the national legislature introduces a form of monitoring which is completely different from and contrary to that laid down for the purpose of implementing that regulation and which is unsuited to the objective pursued, since that monitoring relates not to proper compliance by providers of online services with the obligations laid down by that regulation for the purpose of ensuring the transparency and fairness of contractual relationships with business users, but to subjective information on those service providers.

36. In the second place, on the one hand, the referring court considers that the provisions relating to registration in the RCO specifically introduce a general requirement for the provision of information society services and that those provisions should therefore have been communicated to the Commission, in accordance with the obligations laid down by Directive 2015/1535. On the other hand, since, in the referring court's view, the national measures at issue appear capable of restricting the free movement of the services of a provider of information society services established in another Member State, that court does not exclude the possibility that those measures should have been notified to the Commission, in accordance with the obligation laid down in the second indent of Article 3(4)(b) of Directive 2000/31.

37. In the third place, the referring court refers to the principle of the freedom to provide services provided for in Article 56 TFEU, as defined by Directives 2000/31 and 2006/123, and considers that the obligation to be entered in the RCO may constitute an unjustified restriction on the freedom to provide information society services.

38. More specifically, the referring court notes that, in the light of the approach taken by Directive 2000/31 for information society services, the obligation to be entered in the RCO provided for by Law No 178/2020 and Decision No 200/2021 and the imposition of a financial contribution seem capable of constituting a restriction on the freedom to provide information society services in so far as they are imposed by a Member State other than that in which the service provider is established.

39. Moreover, the referring court states, again in the context of the principle of the freedom to provide services, that Directive 2006/123 provides, in essence, that Member States may not restrict the freedom to provide services of a service provider established in another Member State. Referring to the judgment in *Schnitzer*,[27] it notes that the imposition on such a service provider of obligations to be entered in the RCO and to pay a financial contribution is liable to infringe that principle, in so far as those obligations give rise to financial and administrative costs which could distort the functioning of the internal market and delay, complicate or make more onerous the provision of services in the host Member State.

40. It was in those circumstances that the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio), by orders of 10 October 2022, received at the Registry of the Court of Justice on 19 and 21 October 2022 respectively, decided to stay the proceedings and to refer the following questions to the Court 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 services] 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?

[27] Judgment of 11 December 2003 (C-215/01, EU:C:2003:662).

(2) Does [Directive 2015/1535] oblige Member States to notify the Commission of measures that require [providers of online services] 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 the 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 European country, 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 European country, 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 services] 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 the directive allow a private individual to object to measures not notified to the Commission being applied to him or her?'

B. Joined Cases C-664/22 and C-666/22

41. Google Ireland Limited ('Google'), whose registered office is in Ireland, provides online advertising services and operates the Google search engine throughout the European Economic Area (EEA).

42. By decision of 25 June 2019, AGCOM automatically entered Google in the RCO on the ground that that undertaking was an operator engaged in the activity of advertising management on the internet and that, although its registered office was abroad, it received revenues in Italy.

43. As a result of that registration, by decision of 9 November 2020, AGCOM required Google to pay a financial contribution towards its operating costs for the year 2020.

44. Google challenged those AGCOM decisions before the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio).

45. Following amendments to the national legal framework resulting from Law No 178/2020 and Decision No 200/2021, adopted by the Italian legislature and AGCOM, inter alia with a view to ensuring compliance with Regulation 2019/1150, Google amended the form of order it was seeking so as to also seek annulment of that decision in so far as it extended the obligation to be entered in the RCO to providers of online services.

46. Eg Vacation Rentals Ireland Limited ('EGVR'), whose registered office is in Ireland, manages and operates an online platform and various tools and functions available through that platform which enable the owners and managers of properties to publish advertisements relating to properties and travellers to select those properties and to interact with those owners and managers with a view to renting them.

47. The changes to the national legal framework referred to in point 45 of this Opinion have had the effect of making EGVR subject to the obligation to be entered in the RCO and to communicate, as a result, certain information to AGCOM and to pay it a financial contribution. EGVR brought an action before the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio) seeking the annulment of Decision No 200/2021.

48. Before the referring court, Google and EGVR argued that Law No 178/2020 and Decision No 200/2021, in so far as they impose on Google and EGVR the obligations at issue, are contrary to the principle of the freedom to provide services, to Regulation 2019/1150 and to several directives.

49. In that regard, the referring court states, in the first place, relying on Directives 2000/31 and 2006/123, for the same reasons as those set out in points 37 to 39 of this Opinion, that the free movement of services which those directives are intended to guarantee is liable to be called into question by the obligations at issue in the main proceedings.

50. In the second place, being of the view that the provisions relating to registration in the RCO introduce a general requirement for the provision of information society services and appear capable of restricting the free movement of the services of a provider of information society services established in another Member State, for the same reasons as those set out in point 36 of this Opinion, the referring court enquires as to whether the notification obligations laid down by Directives 2000/31 and 2015/1535 apply to the measures at issue in the cases in the main proceedings.

51. In the third place, putting forward the same line of argument as that set out in point 35 of this Opinion, the referring court observes that Regulation 2019/1150 introduces a set of rules to ensure a fair, predictable, sustainable and trusted environment for online commercial transactions within the internal market. It recalls that that regulation provides, in Article 15 thereof, that each Member State is to ensure the adequate and effective enforcement of that regulation and to lay down the measures applicable to infringements thereof, measures which must be effective, proportionate and dissuasive. It notes that, according to the national legislature, the obligations imposed on the applicants in the main proceedings are justified by AGCOM's mission, which is to ascertain and gather from operators in the market sector under its supervision the accounting and non-accounting data deemed relevant to the performance of its institutional functions. For the referring court, the question arises whether that purpose justifies registration in the RCO and the obligations and prohibitions arising therefrom, and whether the obligations and prohibitions imposed on the applicants in the main proceedings are consistent with the principle of proportionality.

52. It was in those circumstances that the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio), by orders of 10 October 2022, received at the Court Registry on 21 October 2022, decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Does EU law preclude the application of national provisions, such as Article 1(515), (516) and (517) of [Law No 178/2020]), which impose additional administrative and financial obligations on operators established in another European country but operating in Italy, such as the obligation to be entered in a special register and to pay a financial contribution? Specifically, do such national provisions infringe Article 3 of [Directive 2000/31] under which a provider of information society services … is subject exclusively to the legislation … of the Member State in which the service provider is established?

(2) Does EU law preclude the application of national provisions, such as Article 1(515), (516) and (517) of [Law No 178/2020], which impose additional administrative and financial obligations on operators established in another European country? Specifically, does the principle of freedom to provide services enshrined in Article 56 [TFEU], as well as similar principles that can be inferred from [Directives 2006/123 and 2000/31], preclude a national measure that places, on intermediaries operating in Italy but not established there, additional obligations to those envisaged in the country of origin for the pursuit of the same activity?

(3) Does EU law, and in particular [Directive 2015/1535] require the Italian State to notify the Commission of the introduction of the obligation to be entered in the RCO, imposed on [providers of online services]? Specifically, must the second indent of Article 3(4)(b) of Directive 2000/31 be interpreted as meaning that a private individual, established in a Member State other than Italy, may object to measures adopted by the Italian legislature (under Article 1(515), (516)[and] (517) of [Law No 178/2020]) that are liable to restrict the free movement of an information society service, when those measures were not notified in accordance with that provision?

(4) Does [Regulation 2019/1150] and in particular Article 15 thereof, as well as the principle of proportionality, preclude legislation of a Member State or a measure adopted by an independent national authority requiring providers of online intermediation services operating in a Member State to be entered in the RCO, which gives rise to a series of formal and procedural obligations, obligations to pay contributions and restrictions on earning profits in excess of a certain amount?'

C. Case C-663/22

53. Expedia Inc. is a company whose registered office is in Seattle (United States of America), which manages IT platforms allowing the provision of online accommodation and travel reservation services.

54. By Decision No 161/2021, AGCOM extended to providers of online intermediation services – a category to which Expedia unquestionably belongs according to the request for a preliminary ruling – the obligation to submit the ESI to AGCOM when they operate on Italian territory.

55. That decision was expressly adopted in the exercise of the function conferred on AGCOM by Article 1(6)(c)(14a) of Law No 249/1997, which is to ensure the adequate and effective enforcement of Regulation 2019/1150, in particular by the gathering of relevant information on an annual basis.

56. Expedia brought an action before the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio) seeking the annulment of Decision No 161/2021. That company argues that Regulation 2019/1150 does not provide for its implementation by Decision No 161/2021. In so far as that regulation introduces a harmonisation measure based on the principle of proportionality, it does not allow the imposition of stricter procedural requirements on operators, whether or not they are established within the European Union.

57. The referring court expresses doubts as to the compatibility with Regulation 2019/1150 of the obligation to submit the ESI provided for by the national legislation.

58. Referring to Articles 15 and 16 of Regulation 2019/1150, the referring court observes that the ESI, which was extended to providers of online services specifically for the purpose of gathering relevant information each year and taking measures to ensure the adequate and effective enforcement of that regulation, requires the communication of information relating primarily to the revenue of those service providers. However, that information contains no indication either as to whether the obligations laid down in that regulation have been complied with or as to the transparency and fairness of the relationships between the service providers and business users. The domestic legal system thus seems to introduce a form of monitoring which is completely different from and contrary to that laid down for the purpose of implementing that regulation and which is unsuited to the objective pursued, in so far as that monitoring relates not to proper compliance by those service providers with the obligations laid down by Regulation 2019/1150 for the purpose of ensuring the transparency and fairness of contractual relationships with business users, but to their economic situation.

59. It was in those circumstances that the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio), by order of 10 October 2022, received at the Court Registry on 19 October 2022, decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Does [Regulation 2019/1150] and in particular Article 15 thereof, as well as the principle of proportionality, preclude legislation of a Member State or a measure adopted by an independent national authority – such as those indicated in the grounds of the order for reference – requiring foreign providers of online intermediation services to submit a report containing information that is irrelevant as regards the aims of that regulation?

(2) In any event, can the information requested through the submission of the ESI be considered relevant and instrumental for the adequate and effective implementation of Regulation 2019/1150?’

D. Case C-665/22

60. Amazon operates an online platform seeking to connect third-party sellers and consumers so as to allow them to engage in transactions for the sale of goods.

61. The changes to the national legal framework resulting from Law No 178/2020 and Decision No 161/2021, adopted by the Italian legislature and AGCOM respectively, inter alia with a view to ensuring compliance with Regulation 2019/1150, have had the effect of making Amazon, as a provider of online intermediation services, subject to the obligation to submit the ESI to AGCOM.

62. Amazon brought an action before the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio) seeking, inter alia, annulment of Decision No 161/2021. Before the referring court, Amazon argued that Decision No 161/2021, in so far as it imposes an obligation on Amazon to submit the ESI to AGCOM, is contrary to the principle of the freedom to provide services, to Regulation 2019/1150 and to several directives.

63. The applicants in Cases C-663/22 and C-665/22 seek the annulment of Decision No 161/2021. It should be noted that, unlike the applicant in the first case, the applicant in the second case is established in a Member State and argues that that decision is contrary not only to Regulation 2019/1150, but also to the principle of the freedom to provide services and to several directives.

64. In that regard, in the first place, as regards Regulation 2019/1150 and its interpretation, the referring court expresses doubts similar to those which it raises in Case C-663/22. [28]

65. In the second place, as regards the principle of the freedom to provide information society services, the referring court considers that the obligation to submit the ESI to AGCOM laid down by Decision No 161/2021 may constitute, in the light of Directive 2000/31, a restriction that contravenes that principle. The referring court adds that it appears that the conditions set out in Article 3(4) of that directive, which allow the Member State to introduce restrictions, including in the light of the principle of proportionality, have not been fulfilled. Accordingly, in its view, even on the assumption that the submission of the ESI to AGCOM was provided for in the context of the implementation of Regulation 2019/1150 and, therefore, for the purpose of indirectly protecting consumers, the request for information relating to revenue is wholly disproportionate to the objective pursued, in so far as that information does not relate to the implementation of that regulation or to compliance with the obligations laid down therein.

66. Moreover, as regards that principle, the referring court argues that, irrespective of the applicability of Directive 2000/31, Directive 2006/123, which is more general, provides, in Article 16(1) thereof, that Member States are to respect the right of providers to provide services in a Member State other than that in which they are established and may not make access to or exercise of a service activity in their territory subject to compliance with any requirements which do not respect the principles set out in that provision.

67. In the third place, the referring court considers, on the one hand, that, having regard to the Member States' obligations under Directive 2015/1535, the provisions relating to the submission of the ESI introduce a general requirement for the provision of information society services and should therefore have been notified to the Commission. It argues that the main purpose of Decision No 161/2021 is to regulate information society services and, in particular, online intermediation services and online search engines. On the other hand, that court points out that the second indent of Article 3(4)(b) of Directive 2000/31 provides that any intention to take measures constituting restrictions on the freedom to provide information society services must be notified to the Commission and to the Member State in which the undertaking is established.

[28] See point 58 of this Opinion.

68. It was in those circumstances that the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio), by order of 10 October 2022, received at the Court Registry on 21 October 2022, decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Does [Regulation 2019/1150] preclude a national provision that, for the specific purpose of ensuring the adequate and effective implementation of that regulation, including by gathering relevant information, requires [providers of online services] to regularly communicate relevant information about their revenue?

(2) On the basis of Regulation 2019/1150, can the information required in the context of the [ESI], mainly relating to revenue earned, be considered relevant and instrumental for the objective pursued by that regulation?

(3) Does [Directive 2015/1535] require Member States to notify the Commission of measures requiring [providers of online services] to submit a report containing relevant information about their revenue, non-compliance with which gives rise to a fine? If so, does the directive allow a private individual to object to measures not notified to the Commission being applied to him or her?

(4) Does Article 3 of [Directive 2000/31] preclude the adoption by national authorities of provisions that, in order to implement Regulation 2019/1150, lay down additional administrative and financial obligations for operators, established in another European country but operating in Italy, such as the communication of a report containing relevant information about their revenue, non-compliance with which gives rise to a fine?

(5) Does the principle of freedom to provide services enshrined in Article 56 TFEU and Article 16 of [Directive 2006/123] and Directive 2000/31 preclude the adoption by national authorities of provisions that, in order to implement Regulation 2019/1150, lay down additional administrative and financial obligations for operators established in another European country, such as the submission of a report containing relevant information about their revenue, non-compliance with which gives rise to a fine?

(6) 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 submit a report containing relevant information about their revenue, non-compliance with which gives rise to a fine? If so, does the directive allow a private individual to object to measures not notified to the Commission being applied to him or her?'

IV. Procedures before the Court

69. Written observations were lodged in all the cases by the applicants in the main proceedings and by the Italian, Czech and Irish Governments and the Commission. No hearing was held in those cases.

70. By decisions of the President of the Court of 7 December 2022, Cases C-662/22 and C-667/22, on the one hand, and Cases C-664/22 and C-666/22, on the other hand, were joined for the purposes of the written and oral part of the procedure and the judgment. No such decision was taken in Cases C-663/22 and C-665/22.

71. In accordance with the Court's request, and in the light of the similarities between those cases, it seemed appropriate to deliver a single Opinion with regard to them.

V. Analysis

72. The present cases arise from applications, brought by the applicants in the main proceedings, for annulment of national measures imposing certain obligations on them. In essence, the obligations at issue in Joined Cases C-662/22 and C-667/22 and in Joined Cases C-664/22 and C-666/22 concern registration in the RCO, which involves the communication of relevant information on the structure of the service providers concerned [29] and the payment of an annual contribution to AGCOM, while the obligations at issue in Cases C-663/22 and C-665/22 concern the submission of the ESI. Those obligations are imposed by national legislation which, at least in part, is relevant to all those cases. [30]

73. Moreover, most of the questions referred to the Court in the present cases may be reduced, in essence, to three interdependent questions.

74. The first question is whether Regulation 2019/1150 precludes national measures by which the legislature of a Member State imposes, in order to implement that regulation, certain obligations on providers of online services (heading B).

75. The second question is whether, in the light of the principle of the free movement of services set out in Article 56 TFEU and Directives 2000/31 and 2006/123, the obligations at issue in all those cases may be imposed on a provider of online services established in a Member State other than that which imposed those obligations (heading C).

76. The third question is whether national measures introducing the obligations at issue should have been notified to the Commission, in accordance with the obligations set out in Directives 2000/31 and 2015/1535 (heading D).

77. I would point out that the request for a preliminary ruling in Case C-663/22 concerns only the first of those three questions. In fact, the applicant in the main proceedings in that case is not established in a Member State and I am inclined to think that this is why the questions referred by the referring court solely concern Regulation 2019/1150. The mechanisms in Article 56 TFEU

[29] The referring court notes, as is apparent from its fourth questions in Joined Cases C-664/22 and C-666/22, that companies entered in the RCO are prohibited from generating profits in excess of a certain amount (see point 21 of this Opinion). The Italian Government disputes that finding. The Commission notes that that prohibition was relied on by EGVR in the main proceedings. Like the Italian Government, EGVR states that the national legal framework no longer provides for such a prohibition. In any event, in so far as, first, the referring court does not state why it considers that prohibition to be incompatible with EU law and does not draw the Court's attention to it in Joined Cases C-662/22 and C-667/22 and, secondly, it is not necessary to take that prohibition into account for the purpose of giving the referring court a useful answer to the questions referred, I shall focus on the fact that registration in the RCO involves the communication of relevant information on the structure of the providers in question.

[30] In that regard, I would point out that the reference made by the referring court, in the questions referred in Joined Cases C-664/22 and C-666/22, to Article 1(516) of Law No 178/2020 seems to me to be entirely irrelevant. That provision, the wording of which is not even reproduced in the orders for reference, does not appear to have any connection with the questions raised by the referring court. It provides that 'the preceding provisions shall be without prejudice to Article 27(1a) of the Consumer Code'. That article of that code concerns competence to act against unfair commercial practices.

and in Directives 2000/31 and 2006/123 relating to the free movement of services are not applicable to service providers established in a country outside the European Union.[31] Nor does the referring court raise any question concerning Directive 2015/1535.

78. Before analysing those three questions, it is necessary to address the admissibility of the questions referred in Cases C-663/22 and C-665/22 (heading A).

A. Admissibility

1. Case C-663/22

79. The Italian Government calls into question the admissibility of the questions referred in Case C-663/22. According to that government, the two questions referred are contradictory in that the referring court, on the one hand, states, without explaining the reasons, that the obligation to submit the ESI to AGCOM is unrelated to the implementation of Regulation 2019/1150 and, on the other hand, asks the Court to examine the relevance and usefulness of the information to be provided in the ESI in the light of the objective of that regulation, which involves making factual assessments that fall within the jurisdiction not of the Court but of the referring court.

80. In that regard, in the first place, I understand the position of the Italian Government to be that the contradiction that it identifies arises from the fact that the referring court, on the one hand, states that the information contained in an ESI is 'irrelevant as regards the aims of Regulation 2019/1150' (first question referred) and, on the other hand, seeks to ascertain whether that information may be relevant and useful to the 'adequate and effective' enforcement of that regulation (second question referred), which the Court is to determine on the basis of its own factual assessments.

81. Admittedly, the second question referred could be read as meaning that the referring court thereby seeks to determine whether, irrespective of the answer to be given to the first question, Decision No 161/2021 falls within the scope of AGCOM's competences. In the grounds of the request for a preliminary ruling, the referring court points out that Law No 178/2020 confers on AGCOM exclusively the function of *ensuring adequate and effective enforcement of Regulation 2019/1150*. However, the same terminology is used in Article 15(1) of that regulation, referred to in the first question, according to which each Member State *is to ensure adequate and effective enforcement of that regulation*. Even assuming that the contradiction at issue exists, it may be argued that it arises from the doubts of the referring court as to the correct interpretation of that regulation.

82. In those circumstances, I propose to analyse the two questions referred together from the only relevant perspective in EU law, namely that of Regulation 2019/1150, by examining whether that regulation precludes measures such as those resulting from Law No 178/2020. In that case, the contradiction identified by the Italian Government does not arise and, in any event, cannot lead to the inadmissibility of the questions referred.

[31] See, to that effect, as regards Directive 2000/31 and Article 56 TFEU, judgment of 27 April 2023, *Viagogo* (C-70/22, EU:C:2023:350, paragraphs 25 to 31 and 33). As regards Directive 2006/123, see Article 2(1) thereof, read in the light of recital 36, third sentence, thereof, according to which 'the concept of a provider should not cover the case of branches in a Member State of companies from third countries because, under Article [56 TFEU], the freedom of establishment and free movement of services may benefit only companies constituted in accordance with the laws of a Member State and having their registered office, central administration or principal place of business within the [European Union]'.

83. In the second place, as regards the Italian Government's view that the wording of the questions referred invites the Court to make factual assessments, it should be noted that, while the Court cannot interpret the rules of domestic law of a Member State, it can provide the referring court with the necessary clarification as to the provisions of EU law which may preclude those rules.

2. Case C-665/22

84. The Italian Government argues that the second question referred in Case C-665/22 is inadmissible on the ground that the referring court is thereby inviting the Court to rule on the usefulness of the obligations at issue for the correct application of Regulation 2019/1150. According to the Italian Government, that interpretative exercise, because it involves findings of fact, falls within the jurisdiction of the national court, which entirely fails to explain why the request for information should be regarded as irrelevant and not useful.

85. In that regard, it is true that the Court cannot interpret the rules of domestic law of a Member State. However, as I pointed out in point 83 of this Opinion, it can provide the referring court with the necessary clarification as to the provisions of EU law which may preclude those rules.

86. It follows that the questions referred in Case C-663/22 and the second question referred in Case C-665/22 are admissible.

B. Regulation 2019/1150

87. Several of the questions referred by the referring court in the present cases concern Regulation 2019/1150. [32]

88. Although they are not worded in the same way and do not cover the same national measures, the questions concerned relate to whether, in essence, Regulation 2019/1150 precludes national measures adopted in order to implement that regulation.

89. More specifically, the obligations at issue in Joined Cases C-662/22 and C-667/22 and Joined Cases C-664/22 and C-666/22, that is to say, those relating to registration in the RCO and the payment of an annual contribution to AGCOM, were extended to providers of online services on the ground of implementation of Regulation 2019/1150, 'in order to promote fairness and transparency for business users of online intermediation services'. [33] Similarly, the obligation at issue in Cases C-663/22 and C-665/22, that is to say, the obligation to submit the ESI to AGCOM (to the Italian authorities), was imposed on providers of online services in order to implement Regulation 2019/1150. [34]

[32] That is to say, the first questions referred in Joined Cases C-662/22 and C-667/22, the fourth questions referred in Joined Cases C-664/22 and C-666/22, the two questions referred in Case C-663/22, and the first and second questions referred in Case C-665/22.

[33] See the wording of the first, third and fourth questions referred in Joined Cases C-662/22 and C-667/22.

[34] See the wording of the first, fourth and fifth questions referred in Case C-665/22. In the same vein, Decision No 161/2021, at issue in Cases C-663/22 and C-665/22, by which the obligation to submit the ESI was extended to providers of online services, was adopted 'in order to gather relevant information every year and to take measures to ensure adequate and effective enforcement of [Regulation 2019/1150]' and the 'exercise of the functions assigned to [AGCOM] by [Law No 178/2020]'. See point 55 of this Opinion.

90. It is true that, in view of the other questions referred to the Court in the present cases, it is appropriate to consider, above all, whether provisions intended to implement Regulation 2019/1150 prevail over the mechanisms adopted by Directives 2000/31 and 2006/123 as regards the free movement of services and over those adopted by that first directive and Directive 2015/1535 as regards the notification obligations laid down by the latter directives. Those three directives are likely to preclude a Member State from imposing its own rules on service providers established in another Member State. Therefore, if, on the one hand, the national measures at issue in the main proceedings fall within the scope of one of those directives and that directive precludes a Member State from imposing those measures on a service provider established in a Member State and, on the other hand, those directives do not lay down an exception for Regulation 2019/1150 and the national measures implementing it, it is irrelevant whether or not the obligations at issue in the main proceedings arise from measures implementing that regulation.

91. However, Directives 2000/31 and 2006/123 do not appear to be applicable in Case C-663/22, [35] with the result that the referring court, in ruling in the main proceedings in that case, must apply only Regulation 2019/1150. That regulation applies also to providers of online intermediation services established in a non-Member country, provided that their business users are established in the European Union and offer their goods or services to consumers located in the European Union. [36]

92. In those circumstances, first, as regards the cases other than Case C-663/22, the question is primarily whether the instruments of EU law relating to the free movement of services, such as, in particular, Directive 2000/31, or those relating to the notification obligation, such as, in particular, Directive 2015/1535, prevent a Member State from imposing obligations such as those at issue in the main proceedings on a service provider established in another Member State. Secondly, if they do, it is necessary to consider whether those directives treat measures implementing Regulation 2019/1150 differently. If the latter question is to be answered in the negative, there is no need to determine whether the obligations at issue in all of those cases arise from measures implementing that regulation. I shall analyse those questions in the parts of this Opinion, which are concerned, respectively, with the free movement of services (heading C) and with the notification obligations (heading D).

93. In relation to Case C-663/22, the question is whether Regulation 2019/1150 and, in particular, Articles 15 and 16 thereof must be interpreted as justifying the adoption of national legislation which imposes an obligation on providers of online services periodically to submit a report containing information on their economic situation and which provides for the imposition of penalties in the event of a failure to comply. The first part of the present Opinion (heading B) concerns that question.

1. The implementation of a regulation

94. It should be recalled that a regulation is to be binding in its entirety and is to be directly applicable in all Member States, so that its provisions do not, as a general rule, require the adoption of any implementing measures by the Member States. Nonetheless, some of its

35 See point 77 of this Opinion.

36 See Article 1(2) and recital 9 of Regulation 2019/1150.

provisions may necessitate, for their implementation, the adoption of such measures.[37] A Member State may therefore adopt national implementing regulations in respect of a regulation even though that regulation does not expressly authorise it to do so.[38]

95. It is by referring to the relevant provisions of the regulation concerned, interpreted in the light of its objectives, that it may be determined whether they prohibit, require or allow Member States to adopt certain implementing measures and, particularly in the latter case, whether the measure concerned comes within the scope of the discretion that each Member State is recognised as having.[39]

96. By means of implementing measures, Member States may not obstruct the direct applicability of a regulation, conceal its nature as an act of EU law or exceed the parameters laid down in it.[40] Where the implementation of a regulation is a matter for the national authorities, recourse to rules of national law is possible only in so far as it is necessary for the correct application of that regulation and in so far as it does not jeopardise either the scope or the effectiveness thereof.[41]

97. When implementing a regulation, the Member States are required to ensure compliance with the general principles of EU law,[42] such as, for example, the principle of proportionality. That principle, which applies to, inter alia, the legislative and regulatory authorities of the Member States when they apply EU law, requires that measures implemented by means of a provision must be appropriate for attaining the objective pursued by the EU legislation in question and must not go beyond what is necessary to achieve it.

98. It is in the light of those observations that it is necessary, first, to examine the objective of Regulation 2019/1150 and to identify the relevant provisions thereof for the purpose of its implementation by the Member States and, on that basis, secondly, to provide the referring court with more precise information enabling it to ascertain whether the measures by which the national legislature imposed the obligations at issue actually constitute measures implementing that regulation and are appropriate and necessary for attaining the objective pursued.

2. Regulation 2019/1150 and its objective

99. The objective of Regulation 2019/1150 is to contribute to the proper functioning of the internal market by establishing a fair, predictable, sustainable and trusted environment for online economic activity within the internal market.[43] To that end, that regulation lays down rules governing the relationship between, on the one hand, providers of online services and, on the other hand, business users of those services and corporate website users in relation to online search engines, to ensure that those services are provided in a transparent and fair manner and such business users can thus have confidence in those services.[44]

37 See judgment of 15 June 2021, *Facebook Ireland and Others* (C-645/19, EU:C:2021:483, paragraphs 109 and 110).

38 See judgment of 12 April 2018, *Commission* v *Denmark* (C-541/16, EU:C:2018:251, paragraphs 31 to 33).

39 See judgment of 22 January 2020, *Ursa Major Services* (C-814/18, EU:C:2020:27, paragraph 35).

40 See, to that effect, judgment of 25 November 2021, *Finanzamt Österreich (Family benefits for development aid worker)* (C-372/20, EU:C:2021:962, paragraph 48).

41 See judgment of 14 October 1999, *Adidas* (C-223/98, EU:C:1999:500, paragraph 25 and the case-law cited).

42 See judgment of 12 April 2018, *Commission* v *Denmark* (C-541/16, EU:C:2018:251, paragraphs 49 and 50). See also, to that effect, order of 16 January 2014, *Dél-Zempléni Nektár Leader Nonprofit* (C-24/13, EU:C:2014:40, paragraph 17 and the case-law cited).

43 See recital 6 of Regulation 2019/1150.

44 See Article 1(1) and recitals 7 and 51 of Regulation 2019/1150.

100. More specifically, Regulation 2019/1150 establishes targeted obligations concerning the content of terms and conditions and their amendment (Article 3), restriction, suspension and termination of a service (Article 4), transparency of rankings (Article 5), ancillary goods and services (Article 6), differentiated treatment (Article 7), specific unfair contractual terms (Article 8), access to data (Article 9) and complaints and mediation (Articles 11 to 14).

101. Most of those obligations concern the providers of intermediation services. Online search engine providers are covered only by the provisions of Regulation 2019/1150 relating to ranking (Article 5), differentiated treatment (Article 7) and judicial proceedings relating to actions for failure to comply with requirements laid down by that regulation (Article 14).

102. In that regard, according to the information contained in the requests for a preliminary ruling, only the applicant in the main proceedings in Case C-664/22, namely Google, appears to fall within the category of providers of online search engines. That said, the referring court does not appear to attach any particular importance to the distinction made by Regulation 2019/1150 between providers of online intermediation services and providers of online search engines. This may be explained by the fact that the national legislation at issue appears to impose identical, or at least similar, obligations on those two categories of service providers. More importantly, in the context of the present cases, the legal issues raised by the interactions between that national legislation and EU law are in any event identical.

103. As regards the provisions of Regulation 2019/1150 relevant to its implementation by Member States, the referring court rightly draws the Court's attention to Articles 15 and 16 thereof.

104. First, under Article 16 of Regulation 2019/1150, entitled 'Monitoring' ('Contrôle' in French, 'Überwachung' in German, 'Monitoraggio' in Italian and 'Monitorowanie' in Polish), read in conjunction with Article 18 thereof, roles are allocated between the Commission and the Member States so far as concerns monitoring the impact of that regulation and its review.

105. As regards the Commission, it is responsible for the tasks of monitoring and review. That institution, in close cooperation with Member States, closely monitors the impact of Regulation 2019/1150 on relationships between online intermediation services and their business users and between online search engines and corporate website users.[45] Moreover, the Commission should also periodically review that regulation and closely monitor its impact on the online platform economy.[46]

106. More specifically, the Commission gathers relevant information to monitor changes in those relationships.[47] It may seek to gather such information as well as that necessary to carry out a review of Regulation 2019/1150 from providers of online services.[48]

107. As regards the Member States, their role is to 'assist the Commission [in its monitoring tasks] by providing, upon request, any relevant information gathered including about specific cases'.[49] The role of the Member States thus defined echoes in the second sentence of recital 47 of Regulation 2019/1150, which states that 'Member States should, upon request, provide any

45 See the first sentence of Article 16 of Regulation 2019/1150.

46 See Article 18(1) of Regulation 2019/1150.

47 See the second sentence of Article 16 of Regulation 2019/1150.

48 See the fourth sentence of Article 16 of Regulation 2019/1150.

49 See the third sentence of Article 16 of Regulation 2019/1150.

relevant information they have in this context to the Commission'. Similar wording is used in Article 18(3) of that regulation, according to which Member States are to provide any relevant information 'they have' that the Commission may require for the purposes of its review task.

108. Secondly, Article 15 of Regulation 2019/1150, entitled 'Enforcement' ('Contrôle de l'application' in French, 'Durchsetzung' in German, 'Applicazione' in Italian and 'Egzekwowanie' in Polish), read in the light of recital 46 thereof,[50] provides, in paragraph 1 thereof, that the Member States are required to ensure adequate and effective enforcement of that regulation and, in paragraph 2 thereof, that the Member States are to lay down the rules setting out the (effective, proportionate and dissuasive) measures applicable to infringements of that regulation and to ensure that they are implemented. Accordingly, the mission of monitoring and reviewing Regulation 2019/1150 is primarily entrusted to the Commission, and the task of ensuring adequate and effective enforcement of that regulation is entrusted to Member States.

109. In carrying out that task, Member States, first, have 'the option to entrust existing authorities, including courts, with the enforcement of [Regulation 2019/1150]' and, secondly, are not obliged to provide for '*ex officio* enforcement or to impose fines'.[51]

110. Notwithstanding the rights of business users and corporate website users to start any action before competent national courts, in accordance with the rules of the law of the Member State, which aims to stop any non-compliance with the relevant requirements laid down in Regulation 2019/1150,[52] for the purpose of ensuring the effective application of that regulation, organisations, associations representing business users and corporate website users, and potentially certain public bodies set up in Member States,[53] should be able to bring actions before national courts, in accordance with national law, to stop or prohibit infringements of the rules of that regulation.[54] Each Member State must collect information relating to those bodies and communicate it to the Commission.[55]

111. To strengthen the effectiveness of the mechanisms introduced, Member States may entrust relevant public bodies or authorities with setting up registries of unlawful acts which have been subject to injunction orders before national courts.[56]

112. It follows that Regulation 2019/1150 does not categorically anticipate the mechanism by which its implementation is to be ensured by Member States, which may opt for the private enforcement mechanism (private enforcement)[57] and supplement it with one based on action by the public authorities (public enforcement).

50 Recital 46 of Regulation 2019/1150 states that 'Member States should be required to ensure adequate and effective enforcement of this Regulation. Different enforcement systems already exist in Member States, and they should not be obliged to set up new national enforcement bodies. Member States should have the option to entrust existing authorities, including courts, with the enforcement of this Regulation. This Regulation should not oblige Member States to provide for *ex officio* enforcement or to impose fines'.

51 See the third and fourth sentences of recital 46 of Regulation 2019/1150.

52 See Article 14(9) of Regulation 2019/1150.

53 See Article 14(5) of Regulation 2019/1150.

54 See Article 14(1) of Regulation 2019/1150, read in the light of recital 45 thereof.

55 See the first and second sentences of recital 45 of Regulation 2019/1150.

56 Article 14(2) of Regulation 2019/1150 provides that 'the Commission shall encourage Member States to exchange best practices and information with other Member States, based on registries of unlawful acts which have been subject to injunction orders before national courts, where such registries are set up by relevant public bodies or authorities'.

57 See, to that effect, Franck, J.U., 'Individual Private Rights of Action under the Platform-to-Business Regulation', *European Business Law Review*, 2023, Vol. 34, No 4, p. 528.

3. Information gathering and implementation of Regulation 2019/1150

113. In order to implement an act of EU law, such as Regulation 2019/1150, a Member State may gather only information which relates to the obligations imposed on it by that regulation and the objectives thereof. As is clear from points 96 and 97 of this Opinion, the implementing measures for a regulation, which it is for the national authorities of a Member State to implement, must be appropriate (suitable) and necessary (not going beyond what is necessary) for attaining the objective pursued by the EU legislation.

114. Articles 16 and 18 of Regulation 2019/1150 state that Member States may 'have' certain information relevant to monitoring the impact of that regulation and its review. However, a Member State may not gather arbitrarily selected information on the ground that it may subsequently be requested by the Commission in the exercise of its tasks of monitoring and review. Gathering information on such a pretext would allow a Member State to circumvent the requirements referred to in the preceding point. Moreover, that regulation does not impose an active obligation on Member States to gather the information which the Commission may need to carry out its tasks. Such information is provided only 'upon request' by that institution. Furthermore, the Commission may seek to gather information from providers of online intermediation services.

115. By contrast, a Member State may have at its disposal certain information gathered in the context of its obligation to implement Regulation 2019/1150.

116. If, in order to fulfil its obligation under Article 15 of Regulation 2019/1150, a Member State has also opted for a mechanism of public enforcement of that regulation, it must be in a position to provide the authority responsible for that task with information enabling it to prevent or penalise infringements of the obligations imposed on providers of online services by that regulation or, at the very least, to identify such infringements and, where appropriate, register them.

117. As an extension to that reasoning, in so far as each Member State is required to establish a (private or also public) mechanism for the adequate and effective implementation of Regulation 2019/1150 and, where appropriate, to amend or adapt the existing mechanism in the light of changes in the situation on the market, each Member State should be able to gather the information necessary for those purposes from economic operators active on its territory.

118. By way of illustration, in the two cases referred to in points 116 and 117 of this Opinion, such information may concern the conditions under which economic operators provide their services (relevant for identifying and, where appropriate, taking legal action in relation to infringements of Regulation 2019/1150 and assessing the scale of the risk associated with such infringements) as well as the size of the market and the number of economic operators active on it (in particular, for the purpose of determining the resources necessary to implement the mechanism for applying that regulation). Moreover, the systematic gathering of such information would make it possible to follow certain trends and, on the one hand, to decide how to amend mechanisms under national law in order to ensure the effectiveness of Regulation 2019/1150 and, on the other hand, to support the Commission in its tasks of monitoring and review.

4. Assessment

119. In the present case, the information which providers of online services must provide in the ESI relates, in essence, to their economic situation.

120. In that regard, in Case C-663/22, the Italian Government argues, first, that the information contained in the ESI is 'unquestionably useful for the tasks of active [and] preventive monitoring of possible distortions of competition, which cannot be carried out without complete and targeted knowledge of all the entities carrying on the activity'. Secondly, the Italian Government states that that information serves to obtain an overall view of the value of the Italian market, to determine the weight of each operator on that market and to understand its economic dynamics, as well as to verify the accuracy and completeness of the information provided. [58]

121. In that regard, in the first place, as I stated in point 118 of this Opinion, a Member State may have an interest in determining the size of the market for online services. However, the value of the market and the importance of the operators on that market are not easy data to use in order to obtain information relevant in attaining the objective of Regulation 2019/1150, that is to say, to establish a fair, predictable, sustainable and trusted environment for online economic activity within the internal market. In any event, the detection of possible 'distortions of competition', to which the Italian Government refers, does not appear to form part of the objective of that regulation. Indeed, that regulation is without prejudice to EU law applicable in the area of competition. [59]

122. In the second place, the information required from providers of online services under Regulation 2019/1150 is more relevant to users, in particular so far as concerns the conditions of the service provided. However, those service providers are under no obligation to inform users of their economic situation, with the result that, from the point of view of that regulation, the question of the accuracy of such information does not arise.

123. In the third place, I must admit that I find it hard to see the link between the economic situation of a provider of online services and the manner in which its services are provided to business users. If such a link exists, it can be only indirect. On the one hand, the Italian Government itself argues that the purpose of Regulation 2019/1150 is to ascertain and assess the fairness of the contractual terms and conditions established by platforms for business users within the European Union. On the other hand, it is not clear how information relevant to the adequate and effective implementation of that regulation can be inferred from information on the economic situation of a provider of online services.

124. Accordingly, without it being necessary to rule on the principle of proportionality, I consider that Regulation 2019/1150 cannot be interpreted as justifying the adoption of the national measures at issue in Case C-663/22. Those national measures do not constitute measures implementing that regulation. As is apparent from the questions referred in that case, the objective of those measures is unrelated to the objective of that regulation, with the result that they cannot be regarded as coming within the parameters within which a Member State may adopt measures to implement that regulation.

58 For the sake of completeness, a similar line of argument is repeated with regard to the requirement for providers of online services to be entered in a register, which involves the communication of relevant information about their organisation, referred to in other cases covered by this Opinion.

59 See Article 1(5) of Regulation 2019/1150.

125. I therefore propose that the answer to the questions referred in Case C-663/22, reformulated in point 93 of this Opinion, should be that Regulation 2019/1150 and, in particular, Articles 15 and 16 thereof must be interpreted as not justifying the adoption of national legislation which imposes an obligation on providers of online services periodically to submit a report containing information on their economic situation and which provides for the imposition of penalties in the event of a failure to comply with that obligation. In so far as such legislation does not fall within its scope, that regulation does not preclude that legislation.

5. Additional observations

126. The answer I have just proposed does not mean that Regulation 2019/1150 precludes the national measures concerned. However, it will be for the referring court to draw the appropriate conclusions from the fact that, on the one hand, Law No 178/2020 entrusted AGCOM with the task of 'ensuring adequate and effective enforcement [of that] regulation, inter alia by … gathering relevant information' and that, on the other hand, as is apparent from the preamble to Decision No 161/2021, it was on that basis that AGCOM extended to providers of online services the obligation to submit the ESI to it.

127. However, if, in the light of the clarifications to be provided by the Court in the judgment to be given, the referring court were to conclude that there is a link between the objective of Regulation 2019/1150 and the national measures at issue, it would be for the referring court to determine whether those measures are appropriate and necessary.

128. Personally, I do not think that this is the case. In the light of the considerations set out in points 121 to 123 of this Opinion, there are doubts as to whether the information which providers of online services must provide concerning their financial situation is appropriate for attaining the objective of that regulation. In any event, there is other information the gathering of which is less onerous for market operators and which would make it possible to attain that objective.

C. The freedom to provide services under Article 56 TFEU and Directives 2000/31 and 2006/123

129. Several of the questions referred concern whether the obligations at issue in the main proceedings conflict with the principle of the freedom to provide services. Those questions relate to Article 56 TFEU [60] and Directives 2000/31 and 2006/123. [61]

130. The obligations at issue in the main proceedings are, first, registration in the RCO, which involves the communication of relevant information on the organisation of the service provider and the payment of a financial contribution, a failure to comply with which results in the imposition of penalties, and, secondly, the submission of the ESI, non-compliance with those obligations giving rise to the imposition of a fine.

[60] Article 56 TFEU is referred to in the fourth questions referred in Joined Cases C-662/22 and C-667/22, in the second questions referred in Joined Cases C-664/22 and C-666/22 and in the fifth question referred in Case C-665/22.

[61] It is certainly true that the fourth questions referred in Joined Cases C-662/22 and C-667/22 refer only to Article 56 TFEU and to Article 16 of Directive 2006/123, without mentioning Directive 2000/31. However, some of the questions referred in those cases relate to the latter directive.

131. However, from the standpoint of the mechanisms provided for by EU law to ensure the free movement of services, those obligations must be analysed independently. [62] In the present case, the analysis must focus on the obligations to be entered in the RCO, to communicate information on the structure of the provider of online services, to communicate information on its economic situation in the form of the ESI and to pay a financial contribution.

132. The question which arises at the outset is whether the national measures at issue must be assessed in the light of Directive 2000/31, in the light of Directive 2006/123 or in the light of both. In order to answer that question, it is first necessary to ascertain whether the national measures at issue fall within the respective scopes of those directives.

1. Directive 2000/31

(a) Introductory remarks on the questions referred for a preliminary ruling on the freedom to provide services

133. The concept of 'information society services' is a central concept of Directive 2000/31, although it is not defined therein. That directive actually refers to the definition given in Directive 2015/1535.

134. In that regard, according to the information provided by the referring court, the classification of the services provided by the applicants in the main proceedings as 'information society services' is obvious [63] or, at the very least, appears to be undisputed in the cases relating to Directive 2000/31. [64] Since the referring court provides no detailed information enabling that classification to be verified and it seems justified in the light of the general descriptions of the services provided by that court, [65] I start from the premiss that the services provided by the applicants in the main proceedings fall within the concept of 'information society services'.

135. Another central concept of Directive 2000/31 is that of the 'coordinated field'. This covers requirements of a general nature relating to the taking up of the activity of an information society service and to the pursuit of that activity, as well as requirements specifically designed for information society service providers or for such services. [66]

136. A provider of such services is subject to the requirements falling within the coordinated field laid down by the Member State in which it is established (the Member State of origin). [67] Another Member State in which that service provider operates (the Member State of destination) may not, as a rule, restrict the freedom to provide such services 'for reasons falling within the coordinated field'. [68] The mechanism established in Article 3 of Directive 2000/31 therefore introduces the

62 This approach is consistent with that adopted by the Court in the context of Article 56 TFEU (see judgment of 22 December 2022, *Airbnb Ireland and Airbnb Payments UK*, C-83/21, EU:C:2022:1018, paragraph 41) and Article 3 of Directive 2000/31 (see judgment of 1 October 2020, *A (Advertising and sale of medicinal products online)*, C-649/18, EU:C:2020:764, paragraph 46).

63 According to the information provided by the referring court, this is the situation in Cases C-665/22 and C-666/22.

64 According to the information provided by the referring court, this is the situation in Joined Cases C-662/22 and C-667/22 and in Case C-664/22.

65 See, as regards providers of online intermediation services, by way of illustration, judgment of 27 April 2022, *Airbnb Ireland* (C-674/20, EU:C:2022:303, paragraph 31), and, as regards services provided by commercial operators of internet search engines, judgment of 12 September 2019, *VG Media* (C-299/17, EU:C:2019:716, paragraph 30).

66 See Article 2(h) of Directive 2000/31.

67 See Article 3(1) of Directive 2000/31.

68 See Article 3(2) of Directive 2000/31.

principle of the Member State of origin and the mutual recognition between Member States of the conditions for access to the activity of information society services (and for the exercise of that activity). [69]

137. By way of exception, a Member State of destination may derogate from Article 3(2) of Directive 2000/31 by measures which are taken 'in respect of a given information society service' and which fulfil the conditions set out in Article 3(4)(a) and (b) of that directive.

138. In those circumstances, it must be considered that, by its questions on the freedom to provide services in Joined Cases C-662/22 and C-667/22, Joined Cases C-664/22 and C-666/22 and Case C-665/22, the referring court seeks to ascertain whether Article 3(2) and (4) of Directive 2000/31 must be interpreted as precluding national measures of a general and abstract nature by which a Member State imposes on a provider of an information society service established in another Member State (a) an obligation to be entered in a register, (b) an obligation to submit relevant information concerning its organisation, (c) an obligation to submit relevant information concerning its economic situation and (d) an obligation to pay a financial contribution, with a failure to comply with those obligations resulting in the imposition of penalties. If so, and in the light of the clarification relating to Regulation 2019/1150 in point 92 of this Opinion, the referring court seeks to ascertain whether the fact that those national measures were adopted in order to implement Regulation 2019/1150 may affect the result of the application of the mechanism laid down in Article 3 of that directive.

139. In order to answer those questions, in the first place, it is necessary to establish (i) whether the obligations at issue in the main proceedings impose requirements falling within the coordinated field, within the meaning of Directive 2000/31, (ii) whether the imposition of those obligations derogates from the freedom to provide information society services and (iii) whether the measures taken to impose those obligations fulfil the conditions set out in Article 3(4)(a) and (b) of that directive. In the second place, it is necessary to consider the impact of Regulation 2019/1150 on the outcome of the analysis relating to Directive 2000/31.

(b) Requirements falling within the coordinated field

(1) Overview of the issue

140. The referring court considers that the obligations at issue in the main proceedings constitute requirements falling within the coordinated field within the meaning of Directive 2000/31.

141. By contrast, the Italian Government maintains that the obligations to be entered in the RCO and to submit the ESI amount to a mere obligation to provide information. Those obligations do not prevent a provider of online services from lawfully carrying on its activity. The Italian Government points out that the applicants in the main proceedings in Cases C-662/22 and C-665/22 continue to carry on their activities even though they are not registered in the RCO.

142. In that regard, it is common ground that failure to comply with the obligations at issue gives rise to significant penalties. Moreover, it appears that AGCOM may order the suspension of the activities of a provider of online services and may automatically register a provider in the RCO. [70]

[69] See my Opinion in *LEA* (C-10/22, EU:C:2023:437, point 49).

[70] This is what AGCOM did in Case C-664/22. See point 42 of this Opinion.

It is for the referring court to verify the accuracy of those statements. However, it is for the Court to provide the referring court with clarification enabling it to determine whether those obligations fall within the coordinated field.

(2) General comments on the scope of the coordinated field

143. The concept of 'coordinated field', defined in Article 2(h) of Directive 2000/31, covers the requirements which a provider of online services must fulfil concerning 'the taking up of the activity of an information society service' or 'the pursuit of [such an] activity' ('access requirements' and 'exercise requirements' respectively).

144. From the point of view of the mechanism established in Article 3 of Directive 2000/31, the distinction between access requirements and exercise requirements has no practical implications. However, I consider it appropriate to address that dichotomy in order to provide the referring court with clarification as to the scope of the coordinated field.

145. In that regard, in the first place, it must not be overlooked that access and exercise requirements are imposed virtually without exception by the Member State of origin.

146. According to the logic of the mechanism established in Article 3 of Directive 2000/31, fulfilling the requirements falling within the coordinated field established by the Member State of origin allows a service provider to operate both on the market of that Member State and on the market of any other Member State. The Member State of origin 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.[71] That supervision, carried out at the source, must ensure effective protection of public interest objectives, not only for users in the Member State of origin, but also for all users in the European Union.[72]

147. Accordingly, each Member State has a particular responsibility as regards determining the requirements falling within the coordinated field. Those requirements must be designed in such a way as to take into account the interests at stake not only in the Member State of origin, but also in any other Member State. If not, the Member State of origin could trigger the reaction from a Member State of destination provided for in Article 3(4) of Directive 2000/31. The scope of the coordinated field must therefore be sufficient to guarantee at source the legality and effective control of information society activities not only in the interest of the Member State of origin, but also in the interest of every Member State.[73]

148. In the second place, Article 2(h)(i) of Directive 2000/31 clarifies that access requirements include, in particular, 'requirements concerning qualifications, authorisation or notification', while exercise requirements include, in particular, '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

71 See Article 3(1) of Directive 2000/31.

72 See recital 22 of Directive 2000/31.

73 See also, to that effect, Crabit, E., 'La directive sur le commerce électronique: le projet "Méditerranée"', *Revue du droit de l'Union européenne*, 2000, No 4, p. 767.

provider'. However, the coordinated field thus defined 'covers only requirements relating to online activities',[74] to the exclusion of requirements applicable to goods as such, to their delivery and to services not provided by electronic means.[75]

149. It follows that only the 'online component' is relevant from the point of view of the coordinated field. It is therefore impossible to disregard the non-territorial nature of the activity on which the requirements covered by the coordinated field are imposed.

150. Online services hardly lend themselves to the concept of territoriality: a service provider established in one Member State may operate on a lasting and continuous basis in the territory of another Member State without being established there or even entering it.

151. As I have had occasion to observe in another context,[76] as in many other fields, the internet has significantly altered the categories established in the 'real' world. While the Treaty associates, first, the lasting exercise of an activity in a Member State with a permanent establishment in that Member State and, secondly, the temporary exercise of an activity with the absence of such an establishment, the internet nonetheless allows the lasting exercise of an activity in a Member State without having a permanent establishment there.

152. To follow the logic of the freedom of establishment in such a case would lead to the absurd result that a provider which is not established in the Member State of destination of its service would nevertheless be considered to be established there and would have to comply with the legislation of that Member State not only as regards its activity in the strict sense, but also as regards the establishment and operation of its undertaking. This becomes even more absurd if regard is had to the fact that activities carried out online are often aimed at several or even all Member States.

153. By bringing together the relevant provisions under the heading 'Internal market',[77] Directive 2000/31 does not openly take a position on the distinction between freedom of establishment and freedom to provide services. However, in view of the principle of control at source, and for the reasons set out in points 149 to 152 of this Opinion, the mechanism established in Article 3 of Directive 2000/31 cannot be regarded as being based on the rationale that a provider of an information society service must meet the conditions for operating on the market established by each Member State in which it is active. On the contrary, in so far as that mechanism seeks to prevent such a situation, the coordinated field must also cover the conditions which determine the lawfulness of the activity carried out on a market.

154. In the third place, the scope of the coordinated field must encompass the conditions which determine the lawfulness of the activity of an information society service. The 'non-territorial' nature of such an activity often makes it possible, in one way or another, de facto to target customers in a Member State without falling foul of the limitations resulting from the concept of 'territory'. The fact that a service provider may, without fulfilling one of those requirements, pursue its activity in the territory of a Member State cannot exclude that requirement from the coordinated field.

74 See the second sentence of recital 21 of Directive 2000/31.

75 See Article 2(h)(ii) of Directive 2000/31.

76 See my Opinion in *LEA* (C-10/22, EU:C:2023:437, points 61, 63 and 64).

77 Title of Article 3 of Directive 2000/31. That ambiguity is apparent in the legal basis of that directive, which concerns both the freedom of establishment and the freedom to provide services, as well as in recitals 1, 5 and 6 of that directive.

155. In those circumstances, although the coordinated field covers both access requirements and exercise requirements and Directive 2000/31 does not attach any legal consequences to that dichotomy, it is nevertheless possible to draw a distinction between them. On the one hand, exercise requirements, 'such as requirements concerning the behaviour of the service provider, requirements regarding the quality or content of the service [or] requirements concerning the liability of the service provider',[78] are intended to indicate how the activity of an information society service is to be carried out on a lawful basis vis-à-vis the public, consumers and other economic operators. Those requirements therefore constitute the detailed rules for carrying out such an activity from a horizontal perspective. On the other hand, access requirements refer to the conditions which the service provider must fulfil, principally vis-à-vis a Member State and its authorities, in order to be able to commence and pursue the activity of an information society service, on a lawful basis, in the Member State of origin and, by extension, on the market of any other Member State.

156. It is in the light of those observations that it is necessary to determine whether the obligations at issue in the main proceedings fall within the coordinated field.

(3) Assessment

157. In the first place, the obligation to be entered in the RCO, the infringement of which gives rise to significant penalties and which the Member State of destination may impose automatically, is a requirement falling within the coordinated field.

158. Contrary to what the Italian Government maintains, the fact that, without complying with the obligation to be entered in the RCO, a provider may de facto commence and continue the activity of an information society service does not mean that that requirement does not relate to the taking up of that activity for the purposes of Article 2(h) of Directive 2000/31. Moreover, as regards entry in a register, it is not sufficient, as a rule, to be registered when the activity commences: registration must be maintained during that activity in order for it to be lawful.

159. In the second place, as regards the obligation to provide information on the structure and economic situation of the undertaking, the Italian Government states that such information is useful, or indeed necessary, for AGCOM to be able to carry out its task of regulation, supervision, dispute resolution and punishment. In that regard, in accordance with the principle of control at source of the activity of an information society service, such a task is performed, in the interests of every Member State, by the Member State of origin. The obligation to communicate information allowing the exercise of such control must therefore fall within the coordinated field.

160. In the third place, as regards the financial contribution, according to the Italian Government, that contribution is intended to cover the total amount of the administrative costs incurred in Italy in the exercise of the functions of regulation, supervision, dispute resolution and punishment conferred on AGCOM. That amount is determined on the basis of the revenues generated in that Member State.

161. The obligation to pay such a contribution is also a requirement which falls within the coordinated field. It is a condition for the lawfulness of a service provider's lasting access to the market of a Member State. Moreover, in accordance with the principle of the control at source of

[78] See the second indent of Article 2(h)(i) of Directive 2000/31.

the activity of an information society service, that contribution should be demanded by the body which, in accordance with that principle, must exercise control over the service provider in the interests of the Member State in which it is established and of any other Member State.

162. In view of the interpretation of Directive 2000/31 which I propose, the obligations at issue in the main proceedings constitute requirements falling within the coordinated field within the meaning of that directive.

(c) Restrictions on the free movement of services

163. The question also arises whether the imposition of the obligations at issue in the main proceedings on a provider of an information society service established in another Member State constitutes a restriction on the free movement of such services and therefore derogates from Article 3(2) of Directive 2000/31. In order to answer that question, it is necessary to determine the circumstances in which a measure taken by a Member State of destination restricts the freedom to provide information society services. In the present case, the question also arises whether the case-law relating to Article 56 TFEU is intended to apply in the context of the mechanism established in that directive.

(1) The non-applicability of the line of case-law relating to Article 56 TFEU

164. In their observations, the parties refer to a line of case-law relating to Article 56 TFEU according to which 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, does not constitute a restriction within the meaning of that article.[79]

165. However, I consider that that case-law is not applicable in the context of the mechanism provided for in Article 3 of Directive 2000/31.

166. On the one hand, exercise requirements falling within the coordinated field are not likely to fall within the scope of that case-law in so far as they have, unquestionably, 'the purpose of … regulat[ing] the conditions concerning the provision of services by the undertakings concerned'.

167. On the other hand, and more importantly, as regards any requirement falling within the coordinated field, including access requirements, it must not be overlooked that, by means of a directive, the EU legislature may specify the detailed rules for the exercise of a fundamental freedom of the internal market and establish conditions which are even more favourable to the proper functioning of that market than those laid down by primary law.

168. This is true of the mechanism established in Article 3 of Directive 2000/31, which is based on the idea of control at source and introduces the principle of the Member State of origin as well as the mutual recognition between Member States of the conditions for access to and for exercise of

[79] See, recently, judgment of 27 October 2022, *Instituto do Cinema e do Audiovisual* (C-411/21, EU:C:2022:836, paragraph 29), which concerns a fee intended to finance the promotion and dissemination of cinematographic and audiovisual works. See also, as regards the obligations relating to the field of taxation excluded from the scope of Directive 2000/31, judgments of 27 April 2022, *Airbnb Ireland* (C-674/20, EU:C:2022:303, paragraph 42), and of 22 December 2022, *Airbnb Ireland and Airbnb Payments UK* (C-83/21, EU:C:2022:1018, paragraph 45).

an activity.[80] The imposition of requirements which go beyond those in force in the Member State of origin runs counter to that principle. That interpretation is reflected in the case-law of the Court relating to that mechanism.

(2) Restrictions on the freedom to provide information society services in the light of the case-law

169. In the judgment in *eDate Advertising and Others*,[81] the Court clarified that the free movement of information society services between the Member States is ensured on the basis of the mechanism established in Article 3 of Directive 2000/31 by making such services subject to the legal system of the Member State in which their providers are established. Those service providers may not therefore be made subject to stricter requirements than those provided for by the substantive law in force in their respective Member States of origin.[82]

170. In the case which gave rise to the judgment in *Airbnb Ireland*,[83] the referring court started from the premiss that the national measures at issue, which laid down an obligation to hold a professional licence, were restrictive of the freedom to provide information society services. That premiss was expressly confirmed by the Court.[84] Accordingly, the Court stated that, where a requirement to hold a professional licence applies, inter alia to service providers established in Member States other than the Member State of destination, that requirement thereby makes the provision of services in that Member State of destination more difficult.[85] I am of the view that, by that statement, the Court intended to indicate, in the wake of the judgment in *eDate Advertising and Others*,[86] that that requirement makes the provision of services in the Member State of destination more difficult than it is in the Member State of origin under the national provisions falling within the coordinated field applicable in that Member State.

171. In the judgment in *A (Advertising and sale of medicinal products online)*,[87] the Court held, with regard to four requirements introduced by the Member State of destination, that, in essence, a prohibition which is such as to restrict the possibility for a provider of information society services to make itself known to potential customers in the Member State of destination or to attract those customers and to promote the online sales service relating to its products must be regarded as a restriction on the freedom to provide information society services.

172. Although the wording used by the Court differs from that used in the judgments in *eDate Advertising and Others*[88] and *Airbnb Ireland*,[89] the Court relied, in the judgment in *A (Advertising and sale of medicinal products online)*,[90] on the same logic as that underlying those judgments. It was not disputed that the service provider concerned was carrying on its activity in accordance with the requirements falling within the coordinated field applicable in the Member

80 See point 136 of this Opinion.

81 Judgment of 25 October 2011 (C-509/09 and C-161/10, EU:C:2011:685, paragraph 66). See also judgment of 15 March 2012, *G* (C-292/10, EU:C:2012:142, paragraph 70).

82 See, to that effect, judgment of 25 October 2011, *eDate Advertising and Others* (C-509/09 and C-161/10, EU:C:2011:685, paragraphs 66 and 67).

83 Judgment of 19 December 2019 (C-390/18, EU:C:2019:1112, paragraph 71).

84 Judgment of 19 December 2019, *Airbnb Ireland* (C-390/18, EU:C:2019:1112, paragraph 81).

85 Judgment of 19 December 2019, *Airbnb Ireland* (C-390/18, EU:C:2019:1112, paragraph 82).

86 See, to that effect, judgment of 25 October 2011 (C-509/09 and C-161/10, EU:C:2011:685, paragraph 66).

87 Judgment of 1 October 2020 (C-649/18, EU:C:2020:764, paragraphs 61 and 62).

88 Judgment of 25 October 2011 (C-509/09 and C-161/10, EU:C:2011:685).

89 Judgment of 19 December 2019 (C-390/18, EU:C:2019:1112, paragraph 71).

90 Judgment of 1 October 2020 (C-649/18, EU:C:2020:764).

State of origin.[91] Accordingly, a requirement imposing more restrictive conditions on the behaviour of the service provider necessarily infringed Article 3(2) of Directive 2000/31. Moreover, in order to establish whether the national measures at issue were a restriction on the freedom to provide information society services, within the meaning of Article 3(2) and (4) of that directive, the Court did not refer to its case-law relating to Article 56 TFEU.[92]

173. I infer from those three judgments that making the activity of an information society service in the territory of a Member State subject to requirements falling within the coordinated field which go beyond those in force in the Member State of origin restricts the free movement of that service and, accordingly, can derive only from a measure taken pursuant to Article 3(4) of Directive 2000/31.

174. Moreover, the conclusion that the line of case-law relating to Article 56 TFEU, referred to in point 164 of this Opinion, cannot be applied in the context of the mechanism established in Article 3 of Directive 2000/31 appears to be supported by the case-law relating to that provision of primary law, in the context of which the Court took into account the fact that a given requirement was already verified in the Member State of origin.

(3) Case-law on the freedom to provide services

175. Accordingly, first of all, the Commission claimed, in proceedings for a declaration of a failure to fulfil obligations,[93] that an obligation to be entered in a register and the severe penalties provided for in the event of infringement of that obligation made registration in that register an essential precondition for carrying out activities in the territory of the Member State which had laid down that obligation. After drawing attention to the fact that the obligation in question is also applicable to a provider of services established in another Member State which, under the legislation of the latter Member State, already satisfies formal requirements equivalent to those under that obligation, the Court concluded that that obligation did not comply with Article 56 TFEU.[94]

176. Next, the Court has already held, in a reference for a preliminary ruling concerning Article 56 TFEU and a directive essentially providing for a system of mutual recognition of professional experience acquired in the country of origin, that the authorisation procedure set up by the host Member State must neither delay nor complicate exercise of the right of persons established in another Member State to provide their services on the territory of the first State if examination of the conditions governing access to the activities concerned has been carried out and it has been established that those conditions are satisfied. Once those conditions are satisfied, any entry required on the trades register of the host Member State cannot be other than automatic, and that requirement cannot constitute a condition precedent for the provision of services, result in administrative expenses for the person providing them or give rise to an obligation to pay subscriptions to the chamber of trades.[95]

91 See paragraph 7 of the request for a preliminary ruling in that case, according to which ‘it is not disputed that [the] company [concerned] is lawfully authorised to sell medicinal products to the public in the Netherlands, where it is duly established’.

92 See also, to that effect, my Opinion in *Google Ireland and Others* (C-376/22, EU:C:2023:467, point 55).

93 See judgment of 9 March 2000, *Commission* v *Italy* (C-358/98, EU:C:2000:114, paragraph 11).

94 See judgment of 9 March 2000, *Commission* v *Italy* (C-358/98, EU:C:2000:114, paragraphs 13 and 14).

95 See judgment of 11 December 2003, *Schnitzer* (C-215/01, EU:C:2003:662, paragraphs 36 and 37).

177. Finally, the Court held that legislation of a Member State which requires an establishment operating in its territory to provide 'suspicious' transaction reports and 'requested' information directly to an authority of the host Member State constitutes a restriction on the freedom to provide services, in so far as it gives rise to difficulties and additional costs for activities carried out under the rules governing the freedom to provide services and is liable to be additional to the controls already conducted in the Member State where the institution at issue is situated, thus dissuading the latter from carrying out such activities. [96]

178. In conclusion, in view of the considerations set out in point 173 of this Opinion, the imposition of the obligations at issue in the main proceedings on a provider of an information society service established in another Member State constitutes a restriction on the free movement of such services and is therefore possible only pursuant to Article 3(4) of Directive 2000/31.

(d) The substantive conditions laid down in Article 3(4) of Directive 2000/31

179. Measures that derogate from the principle of the freedom to provide information society services must meet both the substantive and formal conditions laid down in Directive 2000/31. Those conditions are cumulative. [97]

180. In so far as the formal conditions relate to the notification obligation, I shall analyse them, together with the notification obligation laid down by Directive 2015/1535, in the last part of my Opinion and I shall focus here solely on the substantive conditions. However, before analysing them, I would like to make a comment on the nature of the derogation measures.

(1) The nature of the derogation measures

181. In a different context, I have already favoured the interpretation that general and abstract provisions cannot be classified as 'measures' within the meaning of Article 3(4)(a) of Directive 2000/31. I therefore refer to the analysis set out in the relevant Opinions, [98] in which I considered, in essence, that the measures referred to in that provision must be sufficiently targeted. The main points of that analysis were followed by the Court in the judgment in *Google Ireland and Others*, [99] according to which that provision 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.

182. In the present case, the measures by which the national legislature imposes the obligations at issue in the main proceedings are aimed at all providers of online services, without even targeting a specific sector or the Member State from which those services originate. Consequently, those measures do not fall within the scope of Article 3(4) of Directive 2000/31 and the national legislature cannot, by means of those measures, derogate from the principle set out in Article 3(2) of that directive.

96 See judgment of 25 April 2013, *Jyske Bank Gibraltar* (C-212/11, EU:C:2013:270, paragraph 59).

97 See, to that effect, judgment of 19 December 2019, *Airbnb Ireland* (C-390/18, EU:C:2019:1112, paragraphs 83 and 99).

98 See my Opinions in *Airbnb Ireland* (C-390/18, EU:C:2019:336, points 134 and 135); in *LEA* (C-10/22, EU:C:2023:437, point 51); and in *Google Ireland and Others* (C-376/22, EU:C:2023:467, point 54).

99 Judgment of 9 November 2023 (C-376/22, EU:C:2023:835, paragraph 60).

183. In those circumstances, it is not necessary to consider whether the national measures at issue satisfy the substantive conditions laid down in Article 3(4)(a) of Directive 2000/31. Nevertheless, I shall continue my analysis for the sake of completeness and in order to respond fully to the concerns of the referring court and the arguments of the parties.

184. It should be recalled that, under Article 3(4)(a) of Directive 2000/31, the restrictive measure concerned must be necessary in the interests of public policy, the protection of public health, public security or the protection of consumers; it must be taken against an information society service which actually undermines those objectives or constitutes a serious and grave risk to those objectives and must be proportionate to those objectives. I shall examine those conditions in that order.

(2) The aim of the national measures at issue

185. According to the referring court, the national measures at issue were adopted in order to implement Regulation 2019/1150. The Italian Government shares that view and adds that the obligations deriving from those measures are aimed at identifying and managing distortions of competition. [100]

186. It should be recalled that the objective of Regulation 2019/1150 is to contribute to the proper functioning of the internal market by establishing a fair, predictable, sustainable and trusted environment for online economic activity within that market. Even assuming that the national measures at issue are intended to secure that objective, I find it difficult to identify reasons supporting the view that they pursue one of the objectives referred to in Article 3(4)(a)(i) of Directive 2000/31.

187. It is easy to exclude objectives relating to public policy, the protection of public health and public security. By contrast, it may be asked whether those national measures pursue the related objective of consumer protection.

188. However, the protection of consumers does not include the protection of businesses, and Regulation 2019/1150 lays down rules relating only to relationships between providers of online services and business users.

189. It is true that, for the purposes of determining its scope, Regulation 2019/1150 takes into account the location of the consumers targeted by the activities of business users. [101] Moreover, recital 3 of that regulation recognises the existence of a 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.

190. However, as that recital states, that link is only indirect. More importantly, Regulation 2019/1150 confirms that 'direct impacts of the development of the online platform economy on consumers are, however, addressed by other Union law, especially the consumer acquis'. [102]

191. In those circumstances, the obligations at issue in the main proceedings do not appear to pursue any of the objectives referred to in Article 3(4)(a)(i) of Directive 2000/31.

100 See point 120 of this Opinion.

101 See Article 1(2) and recital 9 of Regulation 2019/1150.

102 See recital 3 of Regulation 2019/1150.

(3) Measure taken against a service which actually undermines one of the objectives referred to in Article 3(4)(a)(i) of Directive 2000/31 or which constitutes a risk to those objectives

192. Neither the referring court nor the Italian Government provides any information as regards the substantive condition laid down in Article 3(4)(a)(ii) of Directive 2000/31.

193. The Court therefore has no information enabling it effectively to clarify the normative content of that provision. In any event, in the absence of evidence that a service in question actually undermines or constitutes a risk to one of the objectives referred to in Article 3(4)(a)(i) of Directive 2000/31, a Member State of destination may not derogate from the principle of the freedom to provide information society services.

(4) Proportionality

194. As is apparent from my analysis, the national measures at issue do not satisfy the requirements of Article 3(4)(a)(i) and (ii) of Directive 2000/31. It is therefore not necessary to consider the proportionality of those measures. However, for the sake of completeness, I shall briefly analyse the condition of proportionality laid down in Article 3(4)(a)(iii) of that directive.

195. Under that provision, a derogation measure must be proportionate to one of the objectives referred to in Article 3(4)(a)(i) of Directive 2000/31. Moreover, such a measure must also be, as required by that provision, 'necessary' for attaining the objective concerned.

196. It is with that in mind that the Court clarified that, as regards those two conditions, account must be taken of the case-law relating to Articles 34 and 56 TFEU, for the purposes of assessing whether the national legislation at issue complies with EU law, in so far as those conditions largely overlap with the requirements that must be fulfilled by any obstacle to the fundamental freedoms guaranteed in those articles of the FEU Treaty. [103]

197. The principle of proportionality requires that measures adopted by Member States do not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued.

198. In that regard, it is apparent from Regulation 2019/1150 that the link between the objective of that regulation and the protection of consumers is only indirect and that 'direct impacts of the development of the online platform economy on consumers are … addressed by other Union law'. [104] Accordingly, the EU legislature itself considers that the provisions of that regulation are not appropriate for attaining the objective of consumer protection. The same must apply to measures implementing that regulation.

[103] See judgment of 1 October 2020, *A (Advertising and sale of medicinal products online)* (C-649/18, EU:C:2020:764, paragraph 64).

[104] See point 190 of this Opinion.

(e) Preliminary conclusion

199. To conclude my analysis of Directive 2000/31, the national measures at issue in the main proceedings do not constitute derogation measures for the purposes of Article 3(4)(a) of Directive 2000/31 [105] and, in any event, do not satisfy the substantive conditions laid down in that provision. Those national measures cannot therefore be applied to providers of information society services established in Member States other than that which adopted those measures.

200. However, it remains necessary to ascertain whether or not that result is called into question by Directive 2006/123 or, on the assumption that the obligations at issue derive from the measures implementing Regulation 2019/1150, by that regulation.

2. Directive 2006/123

201. The referring court refers to Directive 2006/123 in several of the questions referred. [106]

202. As is apparent from the requests for a preliminary ruling, all those questions concern Article 16 of that directive. According to that provision, Member States are to respect the right of providers to provide services in a Member State other than that in which they are established. That directive also lays down the conditions under which a Member State may derogate from the freedom to provide services. Those conditions differ from those laid down in Article 3(2) and (4) of Directive 2000/31.

203. It is apparent from my analysis that the latter provision precludes the obligations at issue in the main proceedings from being imposed on a service provider established in another Member State. The question therefore arises whether Directive 2006/123 is capable of affecting the result of the application of the mechanism established in Article 3 of Directive 2000/31.

204. In that regard, Article 3(1) of Directive 2006/123 provides that the provisions of acts governing specific aspects of access to or exercise of a service activity in specific sectors prevail over those of that directive in the event of conflict. The mechanism established in Article 3 of Directive 2000/31 concerns only information society services and their free movement within the European Union. That provision therefore concerns both access to a service activity in a specific sector and the exercise of such an activity. It therefore constitutes a *lex specialis* in relation to Article 16 of Directive 2006/123 and prevails over the latter article. [107]

205. For the sake of completeness, it is true that it might be asked, as do the parties, whether there is in the present case a ‘conflict’ within the meaning of Article 3(1) of Directive 2006/123. However, in any event, that directive cannot call into question the result of the application of the mechanism established in Article 3 of Directive 2000/31 or lead to the imposition of the obligations deriving from the national measures at issue on a provider established in another Member State.

105 See points 181 and 182 of this Opinion.

106 Directive 2006/123 is referred to in the fourth questions referred in Joined Cases C-662/22 and C-667/22, the second questions referred in Joined Cases C-664/22 and C-666/22 and the fifth question referred in Case C-665/22.

107 See, to that effect, judgment of 19 December 2019, *Airbnb Ireland* (C-390/18, EU:C:2019:1112, paragraphs 40 to 42). See also my Opinion in *Star Taxi App* (C-62/19, EU:C:2020:692, point 90).

206. Where there is a 'conflict', Article 16 of Directive 2006/123 should give precedence to Article 3 of Directive 2000/31. In the absence of a 'conflict', even assuming that those two provisions are likely to apply concurrently, the former cannot obscure the fact that the national measures at issue do not satisfy the substantive conditions set out in the latter.

207. It is therefore not necessary to answer the questions referred relating to Directive 2006/123.

3. Article 56 TFEU

208. As I have stated in point 129 of this Opinion, the questions referred relating to the freedom to provide services relate both to Directives 2000/31 and 2006/123 and to Article 56 TFEU.

209. The interpretation of those directives will, however, be sufficient to resolve the disputes in the main proceedings in the light of EU law. A national measure adopted in an area which has been the subject of exhaustive harmonisation in EU law must be assessed in the light of that harmonising measure and not of primary law. [108] In so far as those directives specify the principles governing the functioning of the internal market established by primary law, there is no need to consider the latter. It is therefore not necessary to answer the questions relating to Article 56 TFEU in order to give judgment in the main proceedings.

4. The impact of Regulation 2019/1150

210. There remains the question whether, in the context of the mechanism established in Article 3 of Directive 2000/31, measures implementing Regulation 2019/1150 should be treated differently. Analysis of that question is of twofold interest.

211. On the one hand, as I have already stated in the first part of this Opinion, the national measures at issue in Case C-663/22 and, by extension, in Case C-665/22 do not constitute measures implementing Regulation 2019/1150. [109] However, in the event that the Court does not share my views in Case C-665/22, which concerns a provider established in a Member State, the referring court should determine whether or not the inapplicability of those measures to such a service provider is called into question by the fact that they constitute measures implementing that regulation.

212. On the other hand, the answer to that question may prove useful to the referring court in other cases covered by this Opinion, in so far as they concern the obligation to be entered in the RCO and to pay a financial contribution.

213. In that regard, on the one hand, Article 1(3) of Directive 2000/31 provides that it complements EU law applicable to information society services without prejudice to the level of protection for, in particular, public health and consumer interests, as established by EU acts and national legislation implementing them 'in so far as this does not restrict the freedom to provide information society services'. Moreover, it follows from Article 1(5) of Regulation 2019/1150 that that regulation is to be without prejudice to the EU law applicable, in particular, in the area of electronic commerce.

[108] See, as regards Directive 2000/31, judgment of 1 October 2020, *A (Advertising and sale of medicinal products online)* (C-649/18, EU:C:2020:764, paragraph 34), and, as regards Directive 2006/123, judgment of 16 June 2015, *Rina Services and Others* (C-593/13, EU:C:2015:399, paragraph 23 et seq.).

[109] See point 125 of this Opinion.

214. It is clear that Directive 2000/31 is applicable in that area. A measure implementing Regulation 2019/1150 does not therefore take precedence over the mechanism established in Article 3 of that directive. Consequently, the fact that national measures have been adopted in order to implement that regulation cannot affect their inapplicability resulting from that mechanism.

5. Conclusion

215. In the light of the foregoing, the questions referred for a preliminary ruling in Joined Cases C-662/22 and C-667/22, Joined Cases C-664/22 and C-666/22 and Case C-665/22, as reformulated in point 138 of this Opinion, should be answered to the effect that Article 3(2) and (4) of Directive 2000/31 must be interpreted as precluding national measures of a general and abstract nature by which a Member State imposes on a provider of an information society service established in another Member State (a) an obligation to be entered in a register, (b) an obligation to submit relevant information about its organisation, (c) an obligation to submit relevant information about its economic situation and (d) an obligation to pay a financial contribution, with a failure to comply with those obligations resulting in the imposition of penalties. The fact that those national measures were adopted in order to implement Regulation 2019/1150 cannot affect their inapplicability to such a provider.

D. The obligations of prior notification of national measures under Directives 2000/31 and 2015/1535

1. Preliminary remarks on the relevance of the questions referred

216. Several of the questions referred in the present cases relating to providers established in their respective Member States of origin concern the obligations of prior notification laid down in Directives 2000/31 and 2015/1535. [110]

217. From a pragmatic point of view, an analysis of those questions would be redundant if the Court shares my view as to the interpretation of Directive 2000/31.

218. The national measures at issue appear to impose requirements falling within the coordinated field, within the meaning of Directive 2000/31, and restrict the freedom to provide information society services. From the point of view of that directive, they cannot therefore be applied to service providers established in Member States other than that which adopted those measures.

219. Moreover, the national measures at issue in the main proceedings are not capable of falling within Article 3(4) of Directive 2000/31, on the ground that those measures are of a general and abstract nature. [111] In any event, that consideration has no bearing on the finding made in point 217 of this Opinion. A Member State cannot circumvent the mechanism provided for in Article 3 of that directive and impose requirements falling within the coordinated field by means of a general and abstract measure.

[110] Those obligations are indeed referred to in the second and fifth questions referred in Joined Cases C-662/22 and C-667/22, the third questions referred in Joined Cases C-664/22 and C-666/22, and the third and sixth questions referred in Case C-665/22.

[111] See points 181 and 182 of this Opinion.

220. However, for the sake of completeness, and in the event that the Court does not agree with my analysis of Directive 2000/31, I shall consider below the notification obligations set out in that directive and in Directive 2015/1535.

2. Overview of the issue

221. If a Member State fails to fulfil its notification obligations under Directives 2000/31 and 2015/1535, the measures concerned are unenforceable against individuals. [112]

222. It is true that failure to comply with the notification obligation under Directive 2000/31 renders the national measure unenforceable against providers established in Member States other than the Member State of origin, whereas failure to comply with the notification obligation under Directive 2015/1535 renders the measure unenforceable against providers established in any Member State. Nevertheless, all the cases in which the referring court has asked a question relating to the notification obligation (except Case C-663/22) concern service providers established in Member States other than Italy.

223. There is nothing to indicate that the obligations at issue in the main proceedings were notified under Directive 2000/31 or under Directive 2015/1535.

224. However, the Italian Government argues, in essence, in the first place, that the national measures at issue do not constitute technical regulations which must be notified under Directive 2015/1535. I would add that, in the context of the present cases, that argument raises a new question relating to the delimitation of the respective scopes of the notification obligations under Directives 2000/31 and 2015/1535.

225. In the second place, the Italian Government submits that the national measures at issue are not subject to the notification obligation on the ground that they constitute measures implementing Regulation 2019/1150.

226. It is therefore appropriate to analyse those two arguments, which concern, respectively, the scope of the notification obligation provided for in both Directive 2000/31 and Directive 2015/1535 and the possible effects of Regulation 2019/1150 on the existence of that obligation.

3. The notification obligation under Directive 2000/31

227. Pursuant to the second indent of Article 3(4)(b) of Directive 2000/31, 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 concerned must notify the Commission and the Member State on whose territory the service provider in question is established of its intention to adopt the restrictive measures concerned.

[112] See, as regards Directives 2000/31 and 2015/1535, respectively, judgments of 19 December 2019, *Airbnb Ireland* (C-390/18, EU:C:2019:1112, paragraph 100), and of 3 December 2020, *Star Taxi App* (C-62/19, EU:C:2020:980, paragraph 57).

228. The scope of the notification obligation laid down in Article 3(4)(b) of Directive 2000/31 is determined, on the one hand, by the scope of that directive and by its central concept, namely that of the 'coordinated field' and, on the other hand, by the nature of the measures by which a Member State may derogate from the principle of the freedom to provide information society services.

229. The coordinated field, within the meaning of Directive 2000/31, covers requirements which are general in nature and requirements which are specifically designed for information society service providers or for such services (Article 2(h)). A Member State of destination may not, subject to the derogations provided for in Article 3(4) of that directive, restrict the free movement of such services for reasons falling within the coordinated field (Article 3(2)). The notification obligation laid down in Article 3(4)(b) of that directive therefore covers only measures in the coordinated field which restrict the freedom to provide information society services.

230. Moreover, the scope of the notification obligation is determined by the nature of the measures by which a Member State may derogate from the principle of the freedom to provide information society services from a Member State. It follows from this Opinion 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 cannot be classified as 'measures' within the meaning of Article 3(4) of Directive 2000/31.[113] Consequently, as is apparent from the judgment in *Google Ireland and Others*,[114] such national measures are not subject to the notification obligation provided for in the second indent of Article 3(4)(b) of that directive. The national measures at issue are of such a general and abstract nature that they appear to apply without distinction to any provider of certain categories of services.

231. Consequently, first, the Italian Republic was not under an obligation to notify the national measures at issue of a general and abstract nature under Article 3(4)(b) of Directive 2000/31. Secondly, and more importantly, those measures can in no way be applied to providers of information society services established in Member States other than the one which adopted them.[115] Even supposing that those national measures were measures implementing Regulation 2019/1150, that fact cannot affect their inapplicability.[116]

232. My analysis could end here. However, in view of the fact that the referring court, by the questions which it raises, refers also to Directive 2015/1535, I shall further examine the question whether the national measures at issue should have been notified under that directive. I would point out that the answer to that question does not affect the conclusion as to the unenforceability of those national measures against providers of information society services established in Member States other than the one which adopted them.

4. The notification obligation under Directive 2015/1535

233. The notification obligation is set out in Article 5(1) of Directive 2015/1535, which provides, in essence, that a Member State must communicate immediately to the Commission any draft technical regulation.

113 See points 181 and 182 of this Opinion.

114 Judgment of 9 November 2023 (C-376/22, EU:C:2023:835, paragraph 37).

115 See point 219 of this Opinion.

116 See point 214 of this Opinion.

234. The concept of 'technical regulation' therefore lies at the heart of Directive 2015/1535 and determines the scope of the notification obligation imposed by that directive. That concept is defined in Article 1(1)(f) of that directive. According to that definition, in order for national legislation affecting an information society service to be classified as a 'technical regulation', it must not only be classified as a 'rule on services', defined in Article 1(1)(e) of that directive, but must also be compulsory, *de jure* or de facto, in the case, inter alia, of the provision of the service in question or its use in a Member State or a major part of that State. [117]

235. A rule on services is, according to Article 1(1)(e) of Directive 2015/1535, a requirement of a general nature relating to the taking-up and pursuit of information society service activities, 'in particular provisions concerning the service provider, the services and the recipient of services, excluding any rules which are not specifically aimed at [such] services'. [118]

236. In that regard, the national measures at issue in the cases in the main proceedings expressly cover online intermediation services and online search engines. Such services are, par excellence, information society services. [119]

237. It is true that the national measures at issue merely extend pre-existing obligations to those two categories of providers. However, it is not necessary to consider whether, prior to the amendments introduced by those measures, those obligations were imposed on providers of information society services. The definition of the concept of 'rule on services' does not require a national measure to be aimed exclusively at information society services. It is sufficient for the measure in question to be aimed at such a service in an explicit and targeted manner, even in some of its individual provisions. [120] As I stated in point 236 of this Opinion, that is the case here.

238. The national measures at issue therefore constitute 'rules on services' within the meaning of Directive 2015/1535. Moreover, it is common ground that they are compulsory in nature and must therefore be regarded as 'technical regulations'. They should therefore have been notified under that directive. If they were not, a private individual may rely on the unenforceability of those rules against him or her.

239. Finally, it remains to be determined whether the national measures at issue could nevertheless be enforced against a private individual if they are measures implementing Regulation 2019/1150.

240. Admittedly, Article 7(1)(a) of Directive 2015/1535 provides that the notification obligation is not to apply to those 'laws, regulations and administrative provisions of the Member States or voluntary agreements by means of which Member States … comply with binding Union acts which result in the adoption of … rules on services'.

117 See judgment of 3 December 2020, *Star Taxi App* (C-62/19, EU:C:2020:980, paragraph 61).

118 The second subparagraph of Article 1(1)(e) of Directive 2015/1535 provides two further clarifications in that regard. Thus, on the one hand, a rule is to be considered to be specifically aimed at information society services where, having regard to its statement of reasons and its operative part, the specific aim and object of all or some of its individual provisions is to regulate such services in an explicit and targeted manner. On the other hand, a rule is not to be considered to be specifically aimed at information society services if it affects such services only in an implicit or incidental manner.

119 See point 134 of this Opinion.

120 In that regard, the Court held, in the judgment of 20 December 2017, *Falbert and Others* (C-255/16, EU:C:2017:983, paragraphs 35 and 36), delivered under the directive which preceded Directive 2015/1535, namely Directive 98/34, that a national rule whose aim and object are to extend an existing rule in order to cover information society services must be classified as a 'rule on services' within the meaning of that directive.

241. The exception provided for in Article 7(1)(a) of Directive 2015/1535 covers national provisions which may be regarded as having been adopted for the purpose of conforming to a binding act of EU law.[121] However, where an act of EU law leaves the Member States considerable room for manoeuvre, national implementing measures cannot be regarded as national provisions conforming to such a binding act.[122]

242. The only provision of Regulation 2019/1150 containing more specific guidance on the discretion available to the Member States is Article 15. According to that article, each Member State must ensure adequate and effective enforcement of that regulation and lay down rules establishing (effective, proportionate and dissuasive) measures applicable to infringements thereof and ensure that they are implemented. However, no provision of that regulation gives any indication as to the discretion available to Member States when gathering information relevant to the implementation of that regulation.

243. It must therefore be concluded that the national measures at issue do not fall within the exception laid down in Article 7(1)(a) of Directive 2015/1535. They should therefore have been notified under that directive. If they were not, a private individual may rely on the unenforceability of those rules against him or her.

VI. Conclusion

244. In the light of all the foregoing considerations, I propose that the Court answer the questions referred by the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy) as follows:

(1) In Case C-663/22:

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 and, in particular, Articles 15 and 16 thereof

must be interpreted as meaning that they do not justify the adoption of national legislation which imposes an obligation on providers of online intermediation services and online search engines periodically to submit a report containing information on their economic situation and which provides for the imposition of penalties in the event of a failure to comply with that obligation.

In so far as such legislation does not fall within its scope, that regulation does not preclude that legislation.

(2) In Joined Cases C-662/22 and C-667/22, Joined Cases C-664/22 and C-666/22 and Case C-665/22:

Article 3(2) and (4) 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')

[121] See, to that effect, with regard to the first indent of Article 10(1) of Directive 98/34, which provided for a similar exception, judgment of 8 September 2005, *Commission* v *Portugal* (C-500/03, EU:C:2005:515, paragraph 33).

[122] See, to that effect, judgment of 26 September 2000, *Unilever* (C-443/98, EU:C:2000:496, paragraph 29).

must be interpreted as meaning that it precludes national measures of a general and abstract nature by which a Member State imposes on the provider of an information society service established in another Member State (a) an obligation to be entered in a register, (b) an obligation to submit relevant information about its organisation, (c) an obligation to submit relevant information about its economic situation and (d) an obligation to pay a financial contribution, and provides for the imposition of penalties in the event of a failure to comply with those obligations.

The fact that those national measures were adopted in order to implement Regulation 2019/1150 cannot affect their inapplicability to such a provider.