



## Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

1 October 2015\*

(Reference for a preliminary ruling — Directive 2006/123/EC — Services in the internal market — Leisure boating — Window prostitution businesses — Article 2(2)(d) — Scope — Not included — Services in the field of transport — Freedom of establishment — Authorisation scheme — Article 10(2)(c) — Conditions for granting the authorisation — Proportionality — Language requirement — Article 11(1)(b) — Duration of the authorisation — Restriction of the number of authorisations available — Overriding reason relating to the public interest)

In Joined Cases C-340/14 and C-341/14,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Raad van State (Netherlands), made by decisions of 9 July 2014, received at the Court on 14 July 2014, in the proceedings

**R.L. Trijber**, trading as Amstelboats (C-340/14)

v

**College van burgemeester en wethouders van Amsterdam**,

and

**J. Harmsen** (C-341/14)

v

**Burgemeester van Amsterdam**,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, A. Ó Caoimh (Rapporteur), C. Toader, E. Jarašiūnas and C.G. Fernlund, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

— R.L. Trijber, trading as Amstelboats, by E. Steyger, advocaat,

— J. Harmsen, by D. op de Hoek, advocaat,

\* Language of the case: Dutch.

— the Netherlands Government, by M. Bulterman, M. Gijzen and J. Langer, acting as Agents,  
— the European Commission, by E. Montaguti, H. Tserepa-Lacombe and F. Wilman, acting as Agents,  
after hearing the Opinion of the Advocate General at the sitting on 16 July 2015,  
gives the following

### **Judgment**

- 1 These requests for a preliminary ruling concern the interpretation of Article 2(2)(d), 10(2)(c), and 11(1)(b) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36).
- 2 The requests were made in proceedings between Mr Trijber and the College van burgemeester en wethouders van Amsterdam (Netherlands) (the Mayor and municipal council of Amsterdam, ‘the council’), and between Mr Harmsen and the Burgemeester van Amsterdam (the Mayor of Amsterdam, ‘the Mayor’), concerning the refusal to grant them operating authorisations.

### **Legal context**

#### *EU law*

- 3 According to recital 2 in the preamble to Directive 2006/123:

‘A competitive market in services is essential in order to promote economic growth and create jobs in the European Union ... A free market which compels the Member States to eliminate restrictions on cross-border provision of services while at the same time increasing transparency and information for consumers would give consumers wider choice and better services at lower prices.’

- 4 Recital 5 in the preamble to that directive states:

‘It is therefore necessary to remove barriers to the freedom of establishment for providers in Member States and barriers to the free movement of services as between Member States and to guarantee recipients and providers the legal certainty necessary for the exercise in practice of those two fundamental freedoms of the Treaty. Since the barriers in the internal market for services affect operators who wish to become established in other Member States as well as those who provide a service in another Member State without being established there, it is necessary to enable providers to develop their service activities within the internal market either by becoming established in a Member State or by making use of the free movement of services. Providers should be able to choose between those two freedoms, depending on their strategy for growth in each Member State.’

- 5 Recital 7 in the preamble to the directive states:

‘This Directive establishes a general legal framework which benefits a wide variety of services while taking into account the distinctive features of each type of activity or profession and its system of regulation ... This Directive also takes into account other general interest objectives, including the protection of the environment, public security and public health as well as the need to comply with labour law.’

6 According to recital 21 in the preamble to the directive:

‘Transport services, including urban transport, taxis and ambulances as well as port services, should be excluded from the scope of this Directive.’

7 Recital 33 in the preamble to the directive states:

‘The services covered by this Directive concern a wide variety of ever-changing activities ... Consumer services are also covered, such as those in the field of tourism, including tour guides; leisure services, sports centres and amusement parks ... Those activities may involve services requiring the proximity of provider and recipient, services requiring travel by the recipient or the provider and services which may be provided at a distance, including via the Internet.’

8 Article 2 of the directive, entitled ‘Scope’, provides:

‘1. This Directive shall apply to services supplied by providers established in a Member State.

2. This Directive shall not apply to the following activities:

...

(d) services in the field of transport ... falling within the scope of Title V [of Part Three] of the [EC] Treaty [now Title VI of Part Three of the FEU Treaty].

...’

9 Article 4 of the directive, entitled ‘Definitions’, provides:

‘For the purposes of this Directive, the following definitions shall apply:

1) “service” means any self-employed economic activity, normally provided for remuneration, as referred to in Article [57 TFEU];

...

8) “overriding reasons relating to the public interest” means reasons recognised as such in the case law of the Court of Justice, including the following grounds: public policy; public security; public safety; public health; preserving the financial equilibrium of the social security system; the protection of consumers, recipients of services and workers; fairness of trade transactions; combating fraud; the protection of the environment and the urban environment; the health of animals; intellectual property; the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives;

...’

10 Chapter III of the directive, entitled ‘Freedom of establishment for providers’, includes, in Section I, entitled ‘Authorisations’, Articles 9 to 11.

11 Article 9 of the directive, entitled ‘Authorisation schemes’, provides that:

‘1. Member States shall not make access to a service activity or the exercise thereof subject to an authorisation scheme unless the following conditions are satisfied:

(a) the authorisation scheme does not discriminate against the provider in question;

- (b) the need for an authorisation scheme is justified by an overriding reason relating to the public interest;
- (c) the objective pursued cannot be attained by means of a less restrictive measure, in particular because an a posteriori inspection would take place too late to be genuinely effective.

...'

12 Article 10 of the directive, entitled 'Conditions for the granting of authorisation', states that:

'1. Authorisation schemes shall be based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner.

2. The criteria referred to in paragraph 1 shall be:

- (a) non-discriminatory;
- (b) justified by an overriding reason relating to the public interest;
- (c) proportionate to that public interest objective;
- (d) clear and unambiguous;
- (e) objective;
- (f) made public in advance;
- (g) transparent and accessible.'

13 Article 11 of the directive, entitled 'Duration of authorisation', states that:

'1. An authorisation granted to a provider shall not be for a limited period, except where:

...

- (b) the number of available authorisations is limited by an overriding reason relating to the public interest;

...'

*Netherlands law*

The legislation applicable to services

14 Under Article 33(1)(b) and (c) of the *Dienstenwet* (Law on Services), which partly transposes Directive 2006/123 into Netherlands law, a competent body is not to limit the period of validity of an authorisation, which it is entitled to grant for an unlimited period, except where the number of available authorisations is limited by an overriding reason relating to the public interest or a limited authorisation period can be justified by an overriding reason relating to the public interest.

### The legislation applicable to inland waterways

- 15 Article 2.4.5(1) of the Verordening op het binnenwater (Regulation on Inland Waterways) 2010, adopted by the Raad van de gemeente Amsterdam (city council of the municipality of Amsterdam), provides that it is forbidden to transport goods or passengers by means of a commercial vessel without an authorisation from the council, or contrary to such an authorisation. Under Article 2.4.5(5) of that regulation, having regard to the interests referred to in Article 2.3.1(2) relevant to limitations on the number of passenger vessels, the council may refuse the authorisation. Under Article 2.3.1(2) of that regulation, mooring authorisation may be denied in the interests of general welfare, planning, safety, the environment and smooth and safe passage.
- 16 Article 2.1(1) of the Regeling passagiersvervoer te water Amsterdam (Regulation on passenger transport by water in Amsterdam), in the version in force at the material time, provided that authorisations for that type of transport were granted by means of allocation rounds. Under Article 2.1(3) of that regulation, applications submitted at a time when there were no allocation rounds in force were to be rejected on the basis of a policy relating to the volume of authorisations. Under Article 2.1(4) of the regulation, the council was entitled, by way of derogation from Article 2.1(1), to grant such an authorisation outside of an allocation round for a specific initiative making use of a boat powered by an environmentally-friendly engine or for an innovative transport concept.

### The legislation applicable to prostitution

- 17 Article 3.27(1) of the Algemene plaatselijke verordening 2008 van Amsterdam (2008 General Local Regulation of Amsterdam), prohibits the operation of a prostitution business without authorisation by the Mayor. Under Article 3.30(2)(b), the Mayor may refuse authorisation if, in his opinion, it is not sufficiently likely that the operator or the manager will comply with the obligations referred to in Article 3.32 of that regulation.
- 18 Article 3.32(1) provides that the operator and the manager of a prostitution business must ensure that, in the course of that business, no offences within the meaning of Article 273f of the Wetboek van Strafrecht (Criminal Code), which makes human trafficking an offence, take place in respect of prostitutes; that only prostitutes who are in possession of a valid residence permit or for whom the operator has an authorisation within the terms of Article 3 of the Wet arbeid vreemdelingen (Law on the employment of foreign nationals) are employed; and that the customers cannot become the victims of criminal offences such as robbery, theft, fraud or similar offences. Moreover, under Article 3.32(3), the operator of a window prostitution business must ensure inter alia that the prostitutes working in his prostitution business do not constitute a serious nuisance to the neighbourhood and do not disturb public order.

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

#### *Case C-340/14*

- 19 By an application to the council, Mr Trijber sought an operating authorisation for the transport of passengers by water, with a view to organising tours of Amsterdam by water on request and in exchange for payment, inter alia for corporate outings or festive occasions, using an open sloop powered by an electrical motor and suitable for transporting up to 34 persons.

- 20 By decision of 22 November 2011, the council refused the operating authorisation on the basis of its policy relating to authorisation volumes in accordance with Article 2.1 of the regulation on passenger transport by water in Amsterdam, on the grounds that Mr Trijber had made the application outside an issuing round, that his boat did not constitute a special initiative, and that his transport concept was not innovative.
- 21 By decision of 27 April 2012, the council rejected the complaint lodged by Mr Trijber.
- 22 By judgment of 7 December 2012, the Rechtbank Amsterdam (District Court, Amsterdam) dismissed the action brought by Mr Trijber against that decision.
- 23 Mr Trijber appealed against that judgment to the Raad van State (Council of State), arguing that the council's policy with respect to the volume of authorisations was not consistent with Directive 2006/123.
- 24 According to the Raad van State, the transport activity envisaged by Mr Trijber falls within the scope of that directive. The purpose of that activity is not to transport passengers solely with the aim of conveying them from point a to point b, but to take passengers on tours of the canals of Amsterdam or to create the opportunity of coming together on his boat while navigating, with food and drink being provided by him on request. Such services should be regarded as consumer services falling within the scope of that directive. However, neither the provisions of that directive nor the *travaux préparatoires* provide a definitive answer in that respect.
- 25 That court is uncertain, however, whether Mr Trijber may rely directly on Directive 2006/123 in a situation such as that at issue in the main proceedings, since the provisions of the Treaty relating to the freedom of establishment and to the free movement of services are not applicable to situations which are purely internal. In that regard, the question arises, specifically, whether the application of the provisions of Chapter III of that directive relating to freedom of establishment requires a cross-border element to be present and, if so, what the relevant criterion is for determining whether a situation falls within the scope of that directive or is of a purely internal nature.
- 26 In so far as Mr Trijber could rely on the provisions of Chapter III of Directive 2006/123, the Raad van State is of the opinion that the authorisation scheme at issue, inasmuch as it pursues objectives of protection of the environment and safety, is justified by an overriding reason relating to the public interest. Since that objective cannot be achieved by a less onerous measure, that authorisation scheme is, accordingly, consistent with Article 9(1)(b) and (c) of that directive.
- 27 However, the Raad van State is of the opinion that that scheme, even though it appears to be contrary to Article 10(1) and 10(2)(d) and (g) of Directive 2006/123, since the council, in practice, finds it necessary to use in an arbitrary manner its discretion to grant authorisations outside of the allocation rounds, could also infringe Article 11(1)(b) of that directive. Because of the combination of the limited number of authorisations and the indefinite period for which those authorisations are granted, access to the market is no longer guaranteed for all service providers. The question therefore arises to what extent the competent authorities are free in such a case, given the objective pursued by Directive 2006/123, to determine the duration of the authorisation under consideration.
- 28 In those circumstances, the Raad van State decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- (1) Is the transport of passengers by open sloop on the internal waterways of Amsterdam, with the main purpose of providing, for payment, tours and rentals for festive occasions, as in the case in the present proceedings, a service to which the provisions of Directive 2006/123 ... apply, regard being had to the exception in Article 2(2)(d) of [that directive] in respect of services in the field of transport?

(2) If the answer to Question 1 is in the affirmative:

Does Chapter III of Directive 2006/123 ... apply to purely internal situations, or is the assessment of the question as to whether that chapter applies subject to the case-law of the Court of Justice concerning the Treaty provisions on freedom of establishment and the free movement of services in purely internal situations?

(3) If the answer to Question 2 is that the case-law of the Court of Justice concerning the Treaty provisions on freedom of establishment and the free movement of services in a purely internal situation applies to the assessment of the question as to whether Chapter III of Directive 2006/123 ... is applicable:

(a) Should the national courts apply the provisions laid down in Chapter III of Directive 2006/123 ... in a situation such as that in the present case, in which the service provider has not established himself on a cross-border basis and does not offer services on a cross-border basis, but nevertheless relies on those provisions?

(b) Is it relevant to the answer to that question that the services are expected to be provided mainly to residents of the Netherlands?

(c) In order to answer that question, must it be determined whether undertakings established in other Member States have shown or will show genuine interest in providing the same or comparable services?

(4) Does it follow from Article 11(1)(b) of Directive 2006/123 ... that, if the number of authorisations is limited by an overriding reason relating to the public interest, the duration of the validity of the authorisations must also be limited, regard being had also to the objective pursued by [that directive] of securing free access to the market for services, or is this a matter which lies within the discretion of the competent authority of the Member State?

#### *Case C-341/14*

<sup>29</sup> By an application to the Mayor, Mr Harmsen, who operates a window prostitution business in Amsterdam, sought further authorisations for the operation of two further window prostitution businesses in that city.

<sup>30</sup> By decision of 28 July 2011, the Mayor refused to grant those authorisations, on the basis of events described in nine reports on the findings of supervisory officials of the City of Amsterdam and in two records of findings compiled by the police relating to the operation of the existing window prostitution business.

<sup>31</sup> It is apparent from those reports and records that, contrary to what was stated in the operating plan which he had submitted together with his application for authorisation and which was approved by the Mayor, Mr Harmsen rented rooms out in shifts to prostitutes of Hungarian and Bulgarian origin who, during the preliminary interview procedure, could not communicate in a language which Mr Harmsen could understand. The existing window prostitution business was not managed in such a way as to prevent abuse. For that reason, it was not possible to rely on the guarantees given by Mr Harmsen that the two further window prostitution businesses envisaged would be operated such that no offences would take place in respect of the prostitutes working there. It was therefore not sufficiently likely that Mr Harmsen would comply with Article 3.32(1)(a) of the 2008 General Local Regulation of Amsterdam.

<sup>32</sup> By decision of 23 December 2011, the Mayor rejected the complaint lodged by Mr Harmsen.

- 33 By judgment of 11 July 2012, the Rechtbank Amsterdam dismissed the action brought by Mr Harmsen against that decision.
- 34 The Raad van State, after having set out the same considerations as those stated in paragraph 25 of the present judgment in the context of Case C-340/14 relating to the application of Directive 2006/123 to purely internal situations, states that, although Mr Harmsen may rely on the provisions of Chapter III of Directive 2006/123, the authorisation scheme at issue, inasmuch as it is not discriminatory and was established with a view to ensuring public order in order to prevent criminal offences such as forced prostitution and human trafficking, is justified by an overriding reason relating to the public interest. Since that objective cannot be achieved by a less onerous measure, that authorisation scheme is therefore consistent with Article 9(1)(a) to (c) of that directive.
- 35 On the other hand, that court is uncertain whether the undertaking given by Mr Harmsen in the operating plan which he submitted and which was approved by the Mayor, and subsequently referred to in a general local regulation, which consisted in renting out rooms only to prostitutes who were able to make themselves intelligible to the operator in a language which he understands, is ‘proportionate’, within the meaning of Article 10(2)(c) of that directive, to the overriding reason relating to the public interest pursued.
- 36 In that regard, the Raad van State points out that, according to the Mayor, that requirement gives the operator the opportunity directly and reliably to form his own opinion on the prostitute’s background and motivations, without the presence of third parties who might influence her statements. According to Mr Harmsen, however, that requirement is excessively onerous, since the operator can make use of the services of an interpreter or online translation sites. Moreover, less onerous measures are possible, since language is not the only means of picking up signs of forced prostitution or human trafficking. Indeed, camera surveillance is in place at the existing prostitution business. Mr Harmsen ensures, moreover, that he is present *in situ* in order to pick up signals and if necessary to alert the police.
- 37 In those circumstances, the Raad van State decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘(1) Does Chapter III of Directive 2006/123 ... apply to purely internal situations, or is the assessment of the question as to whether that chapter applies subject to the case-law of the Court of Justice concerning the Treaty provisions on freedom of establishment and the free movement of services in purely internal situations?
- (2) If the answer to Question 1 is that the case-law of the Court of Justice concerning the Treaty provisions on freedom of establishment and the free movement of services in a purely internal situation applies to the assessment of the question as to whether Chapter III of Directive 2006/123 ... is applicable:
- (a) Should the national courts apply the provisions laid down in Chapter III of Directive 2006/123 ... in a situation such as that in the present case, in which the service provider has not established himself on a cross-border basis and does not offer services on a cross-border basis, but nevertheless relies on those provisions?
- (b) Is it relevant to the answer to that question that the operator provides services primarily to self-employed prostitutes from Member States other than the Netherlands?
- (c) In order to answer that question, must it be determined whether undertakings established in other Member States have shown or will show genuine interest in establishing a window prostitution business in Amsterdam?



(3) To the extent to which the operator is entitled to rely on the provisions of Chapter III of Directive 2006/123 ..., does Article 10(2)(c) of that directive preclude a measure such as that at issue here, whereby an operator of window prostitution businesses is allowed to rent out rooms in shifts only to prostitutes who are able to make themselves understood by the operator in a language which he understands?

38 By decision of the President of the Court of 16 September 2014, Cases C-340/14 and C-341/14 were joined for the purposes of the written and oral procedure and of the judgment.

### **Consideration of the questions referred**

39 By its questions, the referring court seeks guidance on the applicability of Directive 2006/123 to purely internal situations (second question in Case C-340/14 and first question in Case C-341/14) and the relevant criteria for determining whether such a situation exists (third question in Case C-340/14 and second question in Case C-341/14), on the concept of ‘services in the field of transport’ within the meaning of Article 2(2)(d) of that directive (first question in Case C-340/14), on the interpretation of Article 11(1)(b) of that directive concerning the duration of authorisations (fourth question in Case C-340/14) and on the interpretation of Article 10(2)(c) of that directive concerning the conditions for the granting of authorisations (third question in Case C-341/14).

#### *The applicability of Directive 2006/123 to purely internal situations and the relevant criteria for determining whether such a situation exists*

40 By its second and third questions in Case C-340/14 and its first and second questions in Case C-341/14, the referring court asks, in essence, whether Directive 2006/123 must be interpreted as meaning that the provisions set out in Chapter III relating to freedom of establishment are applicable to purely internal situations and what the relevant criteria are for determining whether such a situation exists.

41 In that regard, it should be noted that in Case C-340/14, while it is true that, according to the wording of the third question, the service provided by Mr Trijber which is the subject of the application for authorisation at issue in the main proceedings is in essence intended for residents of the Netherlands, the fact remains that the referring court itself notes, in the order for reference, that that service may also be enjoyed by nationals of other Member States and that the scheme at issue could impede access to the market for all service providers, including those from other Member States who wish to establish themselves in the Netherlands in order to provide such a service. Moreover, with respect to Case C-341/14, that court clearly states that the recipients of the services provided by Mr Harmsen which are the subject of the applications for authorisation at issue in the main proceedings are nationals of Member States other than the Kingdom of the Netherlands.

42 It follows that since the situations which are the subject of the questions referred for a preliminary ruling are not purely internal, there is no need to examine the second and third questions in Case C-340/14 and the first and second questions in Case C-341/14.

#### *The concept of ‘services in the field of transport’ within the meaning of Article 2(2) of Directive 2006/123*

43 By its first question in Case C-340/14, the referring court asks, in essence, whether Article 2(2)(d) of Directive 2006/123 must be interpreted as meaning that an activity, such as that which is the subject of the application for authorisation in the main proceedings, which consists in providing, for payment, a service of carrying passengers on a boat for a waterway tour of a city for event-related purposes, constitutes a service in the ‘field of transport’ within the meaning of that provision which is excluded from the scope of that directive.

- 44 Directive 2006/123, as is clear from Article 1 of the directive in conjunction with recitals 2 and 5 in its preamble, lays down general provisions intended to remove restrictions on the freedom of establishment for service providers in Member States and on the free movement of services between the Member States, in order to contribute to the completion of a free and competitive internal market (see judgment in *Femarbel*, C-57/12, EU:C:2013:517, paragraph 31).
- 45 Directive 2006/123 thus applies, pursuant to Articles 2(1) and 4, to any self-employed economic activity normally provided for remuneration by a provider established in a Member State, regardless of whether the provider is established in a stable and continuous manner in the Member State in which the services are provided, with the exception of the activities expressly excluded, which include ‘services in the field of transport, including port services, falling within the scope of [Title VI of Part Three of the FEU Treaty]’, referred to in Article 2(2)(d).
- 46 In order to understand the scope of the exclusion laid down in Article 2(2)(d) of Directive 2006/123, the concept of ‘services in the field of transport’ must be interpreted by reference not only to the wording of that provision, but also to its purpose and general structure, in the context of the scheme laid down by that directive (see, by analogy, judgment in *Femarbel*, C-57/12, EU:C:2013:517, paragraph 34).
- 47 As regards, first, the wording of Article 2(2)(d), it should be noted that the concept of ‘services in the field of transport’ adopted by the EU legislature as part of Directive 2006/123 corresponds to services falling within the scope of Title VI of Part Three of the FEU Treaty, which contains Articles 90 to 100 of that Treaty relating to the common transport policy, which are excluded, under Article 58(1) TFEU, from the provisions of that Treaty relating to the free movement of services.
- 48 Although the provisions of Title VI do not provide a definition of the concept of ‘transport’, it follows from Article 100(1) TFEU that transport by ‘inland waterway’ falls under that title. Thus several maritime transport services have been the subject of specific common rules adopted by the EU legislature under Article 100(2) TFEU, in particular those covered by Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ 1992 L 364, p. 7).
- 49 With respect, next, to the purpose and scheme of Article 2(2)(d) of Directive 2006/123, it should be noted that, as is stated in recital 21 in the preamble to that directive, the exclusion of services in the field of transport is intended to cover inter alia urban transport services.
- 50 However, it does not follow from that exclusion that any service consisting in the provision of transport by waterway must automatically be classified as ‘transport’ or ‘urban transport’ within the meaning of that directive.
- 51 A service of that type could include, besides transport, one or more other elements that fall within a commercial sphere that the EU legislature has included in the scope of Directive 2006/123. In those circumstances, it is necessary to consider what the main purpose of the service at issue is.
- 52 Finally, with respect to the scheme set out in Directive 2006/123, it must be recalled that, as is clear from recital 7 in its preamble, that directive establishes a general legal framework which benefits a wide variety of services while taking into account the distinctive features of each type of activity and its system of regulation, as well as other general interest objectives, including consumer protection. It follows that the EU legislature expressly sought to ensure respect for the balance between, on the one hand, the objective of eliminating obstacles to freedom of establishment of service providers and the free movement of services, and, on the other, the need to safeguard the specific characteristics of certain sensitive activities, in particular those linked to consumer protection (see, to that effect, judgment in *Femarbel*, C-57/12, EU:C:2013:517, paragraph 39).

- 53 In that regard, it should be noted that it is apparent from recital 33 in the preamble to Directive 2006/123 that consumer services falling within the scope of that directive include, inter alia, services in the field of tourism, including tour guides.
- 54 It is in the light of those clarifications that the national court must verify whether the activity which is the subject of the application for authorisation in the main proceedings falls within the concept of ‘services in the field of transport’, within the meaning of Article 2(2)(d) of Directive 2006/123, and whether, consequently, that activity is excluded from the scope of the directive (see, by analogy, judgment in *Femarbel*, C-57/12, EU:C:2013:517, paragraph 40).
- 55 However, the Court of Justice, which is called on to provide answers of use to the referring court, may provide guidance based on the documents relating to the main proceedings and on the written and oral observations which have been submitted to it, in order to enable the national court to give judgment (see, inter alia, judgment in *Sokoll-Seebacher*, C-367/12, EU:C:2014:68, paragraph 40).
- 56 In the present case, it is apparent from the information provided in the order for reference, which was not challenged in the written observations submitted to the Court, that, even if, prima facie, the service at issue in the main proceedings constitutes transport by ‘inland waterway’ within the meaning of Article 100(1) TFEU, it is intended to provide the recipients of that service with the pleasant context of a celebration rather than point-to-point transport in the city of Amsterdam.
- 57 In that regard, it is not disputed that that service does not fall within any of the specific common rules adopted by the EU legislature under Article 100(2) TFEU.
- 58 It follows, although it is for the referring court to verify, that the main purpose of that activity does not appear to be to provide a transport service within the meaning of Article 2(2)(d) of Directive 2006/123 and that, therefore, as the other exclusions provided for under Article 2(2) do not apply, that activity falls within the scope of that directive.
- 59 Consequently, the answer to the first question in Case C-340/14 is that Article 2(2)(d) of Directive 2006/123 must be interpreted as meaning that, subject to the checks to be carried out by the referring court, an activity, such as that which is the subject of the application for authorisation in the main proceedings, which consists in providing, for payment, a service of carrying passengers on a boat for a waterway tour of a city for event-related purposes, does not constitute a service in the ‘field of transport’ within the meaning of that provision which is excluded from the scope of that directive.

*The interpretation of Article 11(1)(b) of Directive 2006/123 concerning the duration of the authorisations*

- 60 By its fourth question in Case C-340/14, the referring court is asking, in essence, whether Article 11(1)(b) of Directive 2006/123 must be interpreted as precluding the grant by the competent national authorities of authorisations for an unlimited period for the exercise of an activity such as that at issue in the main proceedings, where the number of authorisations granted for that purpose by those authorities is limited for overriding reasons relating to the public interest.
- 61 In that regard, it should be noted that according to the express wording of Article 11(1) of Directive 2006/123, authorisations granted to service providers must not be for a limited period, except in those cases exhaustively listed in Article 11(1), which include the case in which the number of available authorisations is limited by an overriding reason relating to the public interest.
- 62 It follows that, where the number of available authorisations is limited by such an overriding reason relating to the public interest, those authorisations must, in contrast, be for a limited period.

- 63 As noted by the Advocate General in point 68 of his Opinion, no discretion may be conceded, in that regard, to the competent national authorities, without undermining the objective pursued by Article 11 of Directive 2006/123 of securing service providers' access to the market in question.
- 64 In the present case, the actual wording of the question shows that the referring court has already found that the requirement imposed by the national legislation at issue in the main proceedings — which is that the number of authorisations granted for the exercise of the activity in question is limited — pursues objectives which come under overriding reasons relating to the public interest within the meaning of Article 4(8) of Directive 2006/123, namely the protection of the environment and public safety.
- 65 It follows that, in the circumstances of the case in the main proceedings, authorisations granted by the competent authorities may not be for an unlimited period.
- 66 Consequently, the answer to the fourth question in Case C-340/14 is that Article 11(1)(b) of Directive 2006/123 must be interpreted as precluding the grant by the competent national authorities of authorisations for an unlimited period for the exercise of an activity such as that at issue in the main proceedings, where the number of authorisations granted for that purpose by those authorities is limited for overriding reasons relating to the public interest.

*The interpretation of Article 10(2)(c) of Directive 2006/123 concerning the conditions for the granting of authorisations*

- 67 By its third question in Case C-341/14, the referring court asks, in essence, whether Article 10(2)(c) of Directive 2006/123 must be interpreted as precluding a measure, such as that at issue in the main proceedings, under which the grant of authorisation for the exercise of an activity consisting in the operation of window prostitution businesses by renting rooms out in shifts is subject to the condition that the service provider is able to communicate in a language which is understood by the recipients of those services, in this case prostitutes.
- 68 In that regard, it should at the outset be noted that the referring court has already stated in its decision that that condition pursues an objective which is covered by the concept of 'overriding reasons relating to the public interest' within the meaning of Article 4(8) of Directive 2006/123, namely public order, specifically, in this case, preventing criminal offences being committed against prostitutes, in particular human trafficking, forced prostitution and child prostitution, and that, consequently, that condition is justified by an 'overriding reason relating to the public interest' within the meaning of Article 10(2)(b) of that directive.
- 69 In those circumstances, in order to answer the question raised, it must be examined, as submitted by the Netherlands Government and the European Commission, whether such a condition is proportionate to the 'public interest objective' pursued within the meaning of Article 10(2)(c) of Directive 2006/123.
- 70 In that regard, it should be recalled that, according to settled case-law, a national measure restricting the freedom to provide services which pursues a legitimate objective in the public interest may be allowed only if it is appropriate to ensuring the attainment of that objective and does not go beyond what is necessary to attain the objective pursued (see, to that effect, inter alia, judgment in *Las*, C-202/11, EU:C:2013:239, paragraph 23 and the case-law cited).
- 71 It is ultimately for the national court, which has sole jurisdiction to assess the facts of the dispute in the main proceedings, to determine whether a measure satisfies those requirements. However, pursuant to the case-law cited in paragraph 55 of the present judgment, the Court, which is called on

to provide answers of use to the referring court, may provide guidance based on the documents relating to the main proceedings and on the written and oral observations which have been submitted to it, in order to enable that court to give judgment.

- 72 In the present case, as regards, first, the suitability of the measure at issue in the main proceedings for achieving the objective pursued, it should be noted that it is apparent from the evidence provided to the Court that the purpose of the language requirement at issue is, in essence, to strengthen the monitoring of criminal activities related to prostitution by the delegation of part of that monitoring to the operators of prostitution businesses, by giving them the means to identify preventively evidence of the existence of such criminal activities.
- 73 Such a measure appears to be appropriate for achieving the objective pursued, since, by allowing prostitutes to give the operator of prostitution businesses directly and in person any evidence making it possible to establish the existence of an offence related to prostitution, it is likely to facilitate the performance by the competent national authorities of the necessary checks to ensure compliance with the provisions of national criminal law (see, by analogy, judgment in *Commission v Germany*, C-490/04, EU:C:2007:430, paragraph 71).
- 74 As regards, secondly, the question of whether the measure at issue goes beyond what is necessary to achieve the objective pursued, it should, first, be noted that that measure merely requires the use of any language that can be understood by the parties concerned, which is less intrusive on the freedom to provide services than a measure which imposes the exclusive use of an official language of the Member State concerned or another specific language (see, by analogy, judgment in *Las*, C-202/11, EU:C:2013:239, paragraph 32).
- 75 Next, it does not appear that the measure at issue in the main proceedings requires a high degree of linguistic knowledge, merely that the parties can understand each other.
- 76 Finally, there do not appear to be any less restrictive measures capable of securing the legitimate objective of general interest pursued. In particular, as submitted by the Netherlands Government, the intervention of a third party, as suggested by Mr Harmsen, could, given the particularities of the type of activities at issue, be the source of harmful interference in the relationship between the operator and the prostitutes, which it is for the referring court to determine. As for camera checks, they do not necessarily allow for the preventive identification of criminal offences.
- 77 Consequently, the answer to the third question in Case C-341/14 is that Article 10(2)(c) of Directive 2006/123 must be interpreted as not precluding a measure, such as that at issue in the main proceedings, under which the grant of authorisation for the exercise of an activity, such as that at issue in the present case, consisting in the operation of window prostitution businesses by renting rooms out in shifts is subject to the condition that the service provider is able to communicate in a language which is understood by the recipients of those services, in this case prostitutes, where that condition is such as to ensure that the legitimate objective of general interest pursued — namely the prevention of criminal offences related to prostitution — is secured, and does not go beyond what is necessary to achieve that objective, which is for the referring court to determine.

### **Costs**

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

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

1. **Article 2(2)(d) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, must be interpreted as meaning that, subject to the checks to be carried out by the referring court, an activity, such as that which is the subject of the application for authorisation in the main proceedings, which consists in providing, for payment, a service of carrying passengers on a boat for a waterway tour of a city for event-related purposes, does not constitute a service in the ‘field of transport’ within the meaning of that provision which is excluded from the scope of that directive.**
2. **Article 11(1)(b) of Directive 2006/123 must be interpreted as precluding the grant by the competent national authorities of authorisations for an unlimited period for the exercise of an activity such as that at issue in the main proceedings, where the number of authorisations granted for that purpose by those authorities is limited for overriding reasons relating to the public interest.**
3. **Article 10(2)(c) of Directive 2006/123 must be interpreted as not precluding a measure, such as that at issue in the main proceedings, under which the grant of authorisation for the exercise of an activity, such as that at issue in Case C-341/14, consisting in the operation of window prostitution businesses by renting rooms out in shifts is subject to the condition that the service provider is able to communicate with the recipients of those services, in this case prostitutes, where that condition is such as to ensure that the legitimate objective of general interest pursued — namely the prevention of criminal offences related to prostitution — is secured, and does not go beyond what is necessary to achieve that objective, which is for the referring court to determine.**

[Signatures]