Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

8 June 2023 *

(Reference for a preliminary ruling – Article 49 TFEU – Article 107(1) TFEU – Private-hire vehicles (PHVs) – Licencing scheme involving the issue, in addition to a licence to provide urban and interurban transport services throughout the national territory, of a second operating licence in order to be able to provide urban transport services in a metropolitan area – Limitation of the number of licences for PHV services to one thirtieth of the licences for taxi services)

In Case C-50/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Superior de Justicia de Cataluña (High Court of Justice of Catalonia, Spain), by decision of 19 January 2021, received at the Court on 29 January 2021, in the proceedings

Prestige and Limousine SL

v

Área Metropolitana de Barcelona,

Asociación Nacional del Taxi (Antaxi),

Asociación Profesional Élite Taxi,

Sindicat del Taxi de Catalunya (STAC),

Tapoca VTC1 SL,

Agrupació Taxis Companys,

THE COURT (First Chamber),

composed of K. Lenaerts (Rapporteur), President of the Court, acting as President of the First Chamber, L. Bay Larsen, Vice-President of the Court, acting as Judge of the First Chamber, P.G. Xuereb, A. Kumin and I. Ziemele, Judges,

Advocate General: M. Szpunar,

Registrar: L. Carrasco Marco, Administrator,

* Language of the case: Spanish.

having regard to the written procedure and further to the hearing on 5 October 2022,

after considering the observations submitted on behalf of:

– Prestige and Limousine SL, by F. de B. Carvajal Borrero and P.S. Soto Baselga, abogados,

– Área Metropolitana de Barcelona, by M. Borrás Ribó, abogada,

– Asociación Nacional del Taxi (Antaxi), by J.M. Baño Fos, J.M. Baño León, E. Llopis Reyna and A. Pascual Morcillo, abogados,

– Asociación Profesional Élite Taxi, by J. Fontquerni Bas, procurador, and M. Vilar Cuesta, abogado,

– Tapoca VTC1 SL, by J.A. Díez Herrera and J.L. Ortega Gaspar, abogados,

– Agrupació Taxis Companys, by A. Canals Compan, abogado,

– the Spanish Government, by L. Aguilera Ruiz and S. Jiménez García, acting as Agents,

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

– the European Commission, by L. Armati, É. Gippini Fournier, P. Němečková and J. Rius Riu, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 December 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 49 and Article 107(1) TFEU.

2 The request has been made in proceedings between Prestige and Limousine SL ('P&L'), which provides private-hire vehicle services ('PHV services'), and, inter alia, the Área Metropolitana de Barcelona (Barcelona Metropolitan Area, Spain) ('the AMB'), concerning the validity of a regulation of the AMB which requires a licence to be obtained in order to operate PHV services in the Barcelona conurbation and limits the number of PHV service licences to one thirtieth of the taxi service licences granted for that conurbation.

The Spanish legal framework

The LOTT

3 Article 43(1)(g) of Ley 16/1987 de Ordenación de los Transportes Terrestres (Law 16/1987 on the Organisation of Land Transport) of 30 July 1987 (BOE No 182, 31 July 1987, p. 23451), as amended by Real Decreto-Ley 3/2018 (Royal Decree-Law 3/2018) of 20 April 2018 (BOE No 97, 21 April 2018, p. 41051) ('the LOTT'), provides:

'The granting of licences to operate a public transport activity is subject to the applicant undertaking providing proof that, in accordance with the regulations, it complies with the following conditions:

…

(g) meet any other specific conditions laid down by regulation which are necessary to provide the services in an appropriate manner, having regard to the principles of proportionality and non-discrimination in relation to the class of transport concerned.'

4 Under Article 48(1) to (3) of the LOTT:

'1. The grant of a public transport licence shall be non-discretionary and may therefore be refused only where the necessary requirements are not satisfied.

2. However, in accordance with [EU] laws and any other applicable provisions, where the supply of public hire vehicles is subject to quantitative limits within the autonomous community or at a local level, regulations may be made establishing limits on the number of new licences granted for the provision of interurban transport by the aforesaid class of vehicles and for private hire vehicles.

3. Without prejudice to the provisions of the previous paragraph, in order to maintain an appropriate balance in the supply of both forms of transport, the grant of new licences for private hire vehicles may be refused where the proportion of existing licences in the territory of the autonomous community in which the vehicles are intended to be established is more than one for every 30 licences issued for public hire vehicles.

However, those autonomous communities to which responsibility in respect of licences for private hire vehicles has been delegated by the national government may alter the rule on proportionality set out in the previous paragraph, provided that the rule they establish is less restrictive.'

5 Article 91 of the LOTT provides:

'1. Licences for public transport allow services to be provided throughout the national territory, without restriction as to the origin or destination of the service.

Exceptions to the above are licences to provide interurban passenger transport using passenger vehicles and licences to hire vehicles with drivers, which must comply with any conditions laid down by law concerning the origin, destination or route of the services.

2. Without prejudice to the fact that, in accordance with the previous paragraph, licences for the hire of vehicles with drivers allow services to be provided throughout the national territory, without any restriction as to the origin or destination of the service, the vehicles used to carry out this activity must be habitually used for the provision of services intended to meet needs linked to the territory of the autonomous community in which the licence to which they belong is located.

…'

The ROTT

6 Pursuant to Article 181(1) of Real Decreto 1211/1990 por el que se aprueba el Reglamento de la Ley de Ordenación de los Transportes Terrestres (Royal Decree 1211/1990 implementing the Law on the Organisation of Land Transport), of 28 September 1990 (BOE No 241, of 8 October 1990, p. 29406), as amended by Real Decreto-Ley 1057/2015 (Royal Decree-Law 1057/2015), of 20 November 2015 (BOE No 279, of 21 November 2015, p. 109832), and by Royal Decree-Law 3/2018 ('the ROTT'):

'The issue of licences to engage in the activity of hiring out vehicles with drivers is subject to the applicant fulfilling all the conditions laid down in Article 43(1) of the LOTT, as specified in the following paragraph.'

7 Article 182(1 to 3) of the ROTT provides:

'1. Vehicles covered by licences to engage in the activity of hiring vehicles with drivers and occupied by persons not belonging to the undertaking holding the licence may only circulate if it can be proved that they are providing a service ordered in advance.

To this end, the contract for the hire of a vehicle with driver must have been completed before the start of the service ordered and the documents attesting to this contract must be kept on board the vehicle, as determined by the Minister for Territorial Development.

Under no circumstances may vehicles covered by licences for the hire of vehicles with drivers drive on public roads in search of customers or attempt to attract customers who have not yet ordered the service by remaining parked for this purpose.

2. Licences for the hire of vehicles with drivers allow both urban and interurban services to be provided throughout the national territory, provided that the vehicle has been hired in advance in accordance with the provisions of the previous paragraph.

3. In accordance with the provisions [of Article 17(1) and Article] 18 of the LOTT, charges for the activity of hiring out vehicles with drivers are not regulated, but the undertakings concerned must make information on the prices charged available to the public.'

The PHV order

8 The Orden FOM/36/2008 por la que se desarrolla la sección segunda del capítulo IV del título V, en materia de arrendamiento de vehículos con conductor, del Reglamento de la Ley de Ordenación de los Transportes Terrestres, aprobado por Real Decreto 1211/1990, de 28 de septiembre (Order FOM/36/2008 implementing the second section of Chapter IV of Title V,

concerning the hiring of vehicles with drivers, of the Regulation of the Law on the Organisation of Land Transport, adopted by Royal Decree 1211/1990, of 28 September 1990), of 9 January 2008 (BOE No 19, of 22 January 2008, p. 4283), as amended by Order FOM/2799/2015 (Order FOM/2799/2015), of 18 December 2015 (BOE No 307, of 24 December 2015, p. 121901) ('the PHV order'), provides in Article 1, entitled 'Mandatory licensing requirement', inter alia:

'To carry out the activity of hiring out vehicles with drivers, it is necessary to obtain, for each vehicle assigned to this activity, a licence allowing the provision of this service, in accordance with Article 180 [of the ROTT]'.

9 Article 4 of the PHV order, entitled 'Purpose of licences', reads as follows:

'Licences to engage in the business of hiring vehicles with drivers allow services to be provided, both urban and interurban, throughout the national territory, provided that the vehicle has been hired beforehand in accordance with the provisions of this order.'

10 Article 5 of that order, entitled 'Conditions for the issue of licences', provides:

'The issue of licences for the hire of vehicles with drivers is subject to the applicant company proving that it meets the conditions referred to in Article 181(1) and (2) of the ROTT in accordance with the provisions of the articles of this order.'

11 Article 14 of that order, entitled 'Issue of licences', states:

'Where all the conditions set out in Article 5 are met, the competent body may refuse to issue the licences requested only in the circumstances set out in Article 181(3) of the ROTT.'

The RVTC

12 The Reglamento de ordenación de la actividad de transporte urbano discrecional de viajeros con conductor en vehículos de hasta nueve plazas que circula íntegramente en el ámbito del Área Metropolitana de Barcelona del Consejo Metropolitano del Area Metropolitana de Barcelona (Regulation for the organisation of the activity of occasional urban transport of passengers with driver by means of vehicles with a maximum of nine seats circulating exclusively in the territory of the Metropolitan Area of Barcelona, adopted by the Metropolitan Council of the Metropolitan Area of Barcelona), of 26 June 2018 (*Boletín Oficial de la Provincia de Barcelona*, of 9 July 2018, and DOGC No 7897, of 14 June 2019) ('the RVTC'), came into force on 25 July 2018.

13 Points 4, 5 and 9 of the preamble to the RVTC state:

'4. … Ley 19/2003 [del Taxi, de la Comunidad Autónoma de Cataluña (Law 19/2003 on taxis, of the Autonomous Community of Catalonia), of 4 July 2003 (BOE No 189, of 8 August 2003, p. 30708)] (LT), regulates the carriage of passengers by means of vehicles with a maximum of nine seats, including the driver's seat, carried out for hire or reward, in accordance with the method known as "taxi services". The content of this regulation in this sector takes the form of administrative intervention, based on the need to guarantee the public interest in achieving an optimum level of quality in the provision of the service, by limiting the number of licences and setting compulsory fares, so as to guarantee universality, accessibility, continuity and respect for users' rights …

5. Thus, it is an activity defined … as being of general interest carried on by private individuals, which implies that it is subject to the necessary control, policing and intervention measures, by means of sector-specific regulations.

…

…

9. Public policies on mobility and transport aim to achieve sustainable development from environmental and economic point[s] of view, and to this end restrictions are imposed on road traffic in towns and cities, particularly during periods of heavy pollution. The development of urban roads, the continuous search for new spaces for public uses other than road traffic, alternative forms of mobility on foot or by bicycle, or the priority given to public transport corridors are measures that are incompatible with the promotion of an increase, on the one hand, in the number of road vehicles assigned to urban transport by means of hire with driver and, on the other hand, of rentals for a single user and for the total capacity of the vehicle.

Public policies in the taxi sector have been based on stopping the granting of new licences in addition to those issued since 1987. In addition, actions to limit the days and hours that vehicles are in circulation and the use of clean technologies, such as electric or hybrid engines, are being promoted.'

14 Article 7 of the RVTC, entitled 'Submission to prior licencing', provides, in paragraphs 1, 2 and 4 to 6:

'1. The activity of providing a passenger transport service using vehicles with a maximum of nine seats, including the driver's seat, within the unitary urban transport management area consisting of the territory of the [AMB] is urban transport and is therefore subject to prior authorisation to carry out this activity for each vehicle used for this purpose by its holder.

2. This licence is applied for and, where appropriate, issued to the natural or legal person who is clearly the holder at all times. Licences to carry out the activity are personal and relate to a given vehicle. They must include the vehicle's registration number, chassis number and any other data deemed necessary for its identification. The licence does not constitute a licence for all vehicles owned or operated by its holder.

…

4. Within the territorial scope of this regulation, only licences granted by the AMB authorise the provision of a service, with origin and destination, without prejudice to the provisions of the [LOTT] with regard to the granting of this licence or others referred to therein.

5. The licence issued by the [AMB] is in addition to the other licences issued by other authorities on the basis of their own powers.

6. A [PHV] service which is not urban within the meaning of Article 7 [of this] regulation shall not be subject to [this] regulation or to the licencing system provided for by [this] regulation.'

15 Article 9 of that regulation, entitled 'Legal regime for licences', reads as follows:

'Licences are granted under the following legal regime:

1. Licences shall be granted subject to compliance with the conditions laid down in Ley 12/1987 [de regulación del transporte de viajeros por carretera mediante vehículos de motor, de la Comunidad Autónoma de Cataluña (Law 12/1987 regulating the carriage of passengers by road using motor vehicles, of the Autonomous Community of Catalonia), of 28 May [1987 (BOE No 151, of 25 June 1987, p. 19159)], Decreto 319/1990 [por el cual se aprueba el Reglamento de regulación del transporte de viajeros por carretera mediante vehículos de motor, del Consejo Ejecutivo de la Generalidad de Cataluña (Decree 319/1990 approving the regulation of the transport of passengers by road using motor vehicles, of the Executive Council of the Generalitat of Catalonia)], of 21 December [1990 (DOGC No 1387, of 31 December 1990)], and the present regulation by its applicant.

…

3. The licence is for a single vehicle only and may be operated by the holder or by employees working under an employment contract.

…'

16 Under the terms of Article 10 of that regulation, entitled 'Determining the number of licences':

'1. The AMB is responsible for setting, at any given time, the maximum number of licences to provide occasional urban passenger transport services using vehicles for hire with drivers. The maximum number is determined with the aim of guaranteeing sufficient availability of the service under optimum conditions for citizens, without prejudice to the guarantee of economic profitability for operators.

2. The creation of new licences, whether permanent or temporary, or the reduction of their current number, requires a decision to be taken establishing its necessity and advisability, taking into account in particular the following factors:

(a) the current level of supply;

(b) the level of current demand;

(c) commercial, industrial, tourist or other activities carried out within the territorial scope that may give rise to specific requests for occasional urban transport services using vehicles for hire with drivers.

(d) the compatibility of the introduction of new licences with the objectives of environmental sustainability as regards traffic and urban circulation.'

17 Article 11 of that regulation, entitled 'System for issuing licences', provides:

'1. Licences shall be issued in accordance with the principles and rules laid down by Law 12/1987 [regulating the carriage of passengers by road using motor vehicles], Decree 319/1990 [approving

the regulation of the carriage of passengers by road using motor vehicles] or these regulations and in accordance with the administrative procedures laid down pursuant thereto.

2. The AMB issues licences to natural or legal persons which meet the necessary conditions for obtaining them. To this end, the AMB adopts the bases for notices of commencement of procedures for the issue of new licences, which specify the award procedure, which in all cases must guarantee compliance with the principles of publicity, equal opportunities, free competition and non-discrimination. Allocations are made by drawing lots from among applications that meet the required conditions.

3. Persons interested in obtaining a licence must submit an application in which they prove that they meet the required conditions, and these persons will be entered on the list of candidates, all in accordance with the deadlines and forms determined by the notices in question.

4. The issuing procedure provides for interested parties to be heard and for organisations in the sector to put forward whatever they consider appropriate to defend their interests.

5. These regulations also apply to licences allowing urban services to be provided on a seasonal basis or for specific events.'

18 The RVTC contains a 'transitional provision', worded as follows:

'The transport licences governed by [this] regulation that were issued by the [former] Entidad Municipal Metropolitana de Barcelona (Corporación Metropolitana de Barcelona) [Barcelona Metropolitan Municipal Entity (Barcelona Metropolitan Corporation)] and by the Entidad Metropolitana del Transporte [Metropolitan Transport Entity], as well as the licences issued by the Generalitat de Cataluña [Generalitat of Catalonia] in accordance with the Orden por la que se desarrolla el Reglamento de la Ley de Ordenación de los Transportes Terrestres, aprobado por el Real Decreto 1211/1990, de 28 de septiembre (Ministerial Implementing Order on the Regulation of the Law on the Organisation of Land Transport, adopted by Royal Decree 1211/1990 of 28 September 1990) of 30 July 1998 (BOE No 192 of 12 August 1998, p. 27466), which established the first limitation in proportion to one thirtieth of the number of taxi licences, and which are active at the time of entry into force of this text remain in force, and continue to be governed by and subject to this regulation.'

19 In accordance with two 'Additional provisions' set out in the RVTC:

'First. The total number of licences is limited to those granted in accordance with the above transitional provision. It is up to the Instituto Metropolitano del Taxi [Metropolitan Taxi Council] to propose the adoption of a decision determining the maximum number of licences in addition to those provided for in the transitional provision. Under no circumstances may the number of licences in force at any given time exceed the ratio of one [PHV] licence to 30 taxi licences. The powers conferred on the Metropolitan Taxi Council in Article 5(2) [of this] regulation include the notice of commencement and the decision concerning the issue of new licences, in addition to those covered by the transitional provision …

Secondly. The powers conferred on the Metropolitan Taxi Council by Article 5(2) [of this] regulation include giving notice of commencement and deciding on the issue of new seasonal and individual event licences. These notices shall comply with the following rules:

a. the notices set the number of licences to be issued, in accordance with the criteria of this regulation, on the basis of a reasoned and sufficient justification. The number of licences per applicant, whether a natural or legal person, may be limited;

b. the notices set out the timetable for the period of validity of the licences and specify the periods or events concerning this period of validity;

c. the annual timetable for the validity of licences may be extended or reduced for reasons justified by new needs or circumstances, with any reduction not giving rise to any entitlement to compensation.'

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

20 The Tribunal Superior de Justicia de Cataluña (High Court of Justice of Catalonia, Spain), which is the referring court, notes that in 2009 the limitation of the number of PHV licences to one thirtieth of the number of taxi licences, which had been provided for in Spanish law until then, was abolished. That abolition led, until 2015, to a significant increase in the number of providers of those services in the Barcelona metropolitan area, a phenomenon which the AMB intended to curb with the adoption of the RVTC.

21 The RVTC aims to regulate the PHV service in the whole of the Barcelona conurbation, which is an urban area for the purposes of passenger transport by taxi or private-hired vehicles. In order to provide such services in that area, that regulation requires, inter alia, that undertakings already authorised to provide urban and interurban PHV services in Spain obtain an additional licence from the AMB. In addition, that regulation makes use of the possibility offered by Article 48(3) of the LOTT to limit the number of licences authorising PHV services to one thirtieth of the number of licences granted for taxi services.

22 P&L is a licensee of a PHV service and is challenging the RVTC before the referring court. P&L and 14 other undertakings which were already providing PHV services in that area at the date of adoption of the RVTC, including undertakings linked to international online platforms, consider that, in view of the limitations and restrictions imposed on them by the RVTC, the sole purpose of its adoption was to hinder their activity, and that that was done solely to protect the interests of the taxi industry. P&L and those other undertakings therefore ask the referring court to declare the RVTC null and void.

23 The Asociación Nacional del Taxi (Antaxi) ('the ANT'), the Asociación Profesional Élite Taxi, the Sindicat del Taxi de Catalunya (STAC), Tapoca VTC1 SL and the Agrupació Taxis Companys intervened in the present dispute in support of the AMB.

24 The Tribunal Superior de Justicia de Cataluña (High Court of Justice of Catalonia) notes that taxis and private-hire vehicles ('PHV') are in competition with each other in the field of urban passenger transport services. Taxi services, as a 'service of general interest', are subject to their own regulation and to a limit on the number of licences required to carry on their activity, and

their fares are subject to prior administrative licencing. Although their usual area of operation would be in urban areas, taxis would nevertheless be able to provide interurban transport services, subject to rigorous requirements.

25 According to the referring court, PHV service providers must also obtain licences to carry on that activity, which are issued in limited numbers. It states that, at the material time of the dispute in the main proceedings, PHVs were able to provide interurban and urban transport services throughout the national territory, at fares which were not subject to prior licencing, but to a system of agreed prices enabling the user to know in advance – and possibly to pay by internet – the total price of the service provided. Unlike taxis, PHVs are not able to use bus lanes, do not have stops on the public highway and are not able to pick up customers directly on the public highway if the service has not been agreed in advance.

26 The referring court notes that, in 2018, the Tribunal Supremo (Supreme Court, Spain) held that the ratio of 1 to 30 between the number of PHV service licences and the number of taxi service licences was never justified by any objective consideration. It concluded that Article 48(3) of the LOTT, which allowed the RVTC to limit the number of PHV service licences, can be classified as arbitrary and is therefore contrary to Article 49 TFEU, in that it makes it practically impossible for undertakings offering PHV services in the European Union to establish themselves in the Barcelona metropolitan area, and contrary to the prohibition in Article 107(1) TFEU on hindering trade within the European Union by the grant of State aid.

27 The Tribunal Superior de Justicia de Cataluña (High Court of Justice of Catalonia) has the same doubts as to the compatibility with those provisions of EU law of the 'dual licencing' system to which PHVs were subjected in the Barcelona metropolitan area. As Article 91 of the LOTT and Article 182(2) of the ROTT provided, at the material time of the case in the main proceedings, that licences to operate as a PHV allowed for the provision of 'urban and interurban services throughout the national territory', the addition by the AMB of a licence requirement to be able to provide urban PHV services in the Barcelona metropolitan area, subject to additional requirements, could be seen as a strategy to minimise competition from PHV services vis-à-vis taxis.

28 According to the referring court, the justifications for the RVTC put forward by the AMB were, first, that PHV services would jeopardise the economic viability of taxi services, compete unfairly with them and lead to intensive use of transport routes. Next, the 10 523 taxi service licences granted by the AMB is sufficient to meet the needs of the population and at the same time ensure the profitability of the taxi business. Finally, the AMB emphasises environmental protection.

29 However, according to that court, the economic considerations relating to the situation of taxis cannot justify the measures included in the RVTC. With regard to considerations relating to the use of communication routes, the AMB had failed to weigh up the effect of PHV services in reducing the use of private cars. Moreover, PHVs are required to have a parking space and are not able to roam in search of customers or park on the public highway while waiting for them. Similarly, environmental considerations disregard existing techniques for ensuring that the service is provided by low-emission or even non-polluting vehicles. Furthermore, the taxi fleet are described as 'clean', without any explanation as to why that does not extend to the fleet of PHVs. The main purpose of the AMB would appear to have been, through the RVTC, to preserve or protect the interests of the taxi industry.

30 In those circumstances, the Tribunal Superior de Justicia de Cataluña (High Court of Justice of Catalonia) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

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

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

The questions referred

Admissibility of the reference for a preliminary ruling

31 The AMB considers that the reference for a preliminary ruling is inadmissible on three grounds. First of all, the order for reference does not mention the applicable regional and local legislation and omits to state the fact that there is legislation on which the provisions of the RVTC are based, both as regards the AMB's competence and the justification for that regulation in terms of environmental protection. Secondly, the elements of the dispute concern only one Member State and the questions referred for a preliminary ruling concern the interpretation of national law rather than EU law. Finally, the AMB emphasises the tendentious wording of the questions referred for a preliminary ruling, which is intended to influence the Court on the substance of the case.

32 P&L points out that the first question referred for a preliminary ruling relates, in addition to the RVTC, to 'statutory and regulatory' provisions. However, the limit imposed on the grant of PHV service licences to one thirtieth of the taxi service licences results exclusively from the RVTC. Therefore, that first question goes beyond the scope of the dispute pending before the referring court and is therefore irrelevant to the solution thereof.

33 According to the ANT, the referring court is in fact asking four questions for a preliminary ruling, two of which relating to the interpretation of the provisions on freedom of establishment and the two others relating to the interpretation of provisions forming part of the State aid regime.

34 The two questions relating to freedom of establishment should be declared inadmissible, as the Court has already answered them in the sense that, since any restriction on freedom of establishment must be justified by an overriding reason in the general interest, the national court should, if it considers, as the referring court does, that there is no such reason, leave the national provision at issue unapplied or annul it. Moreover, if those questions were interpreted as meaning that the referring court is asking whether the provisions of the RVTC comply with the requirements of necessity and proportionality, they would be inadmissible, since the Court would be asked to undertake an analysis which it is not its task to carry out, but which is the task of the national court. Moreover, the Tribunal Supremo (Supreme Court) has already carried out such an analysis without having any doubts as to the compatibility of the national provisions at issue with EU law, which proves that the questions asked by the referring court are of no use in deciding the main proceedings.

35 Similarly, the two questions relating to the prohibition of State aid are inadmissible because the Court clearly answered similar questions in the judgment of 14 January 2015, *Eventech* (C-518/13, EU:C:2015:9), without the referring court having provided any explanation as to the need to qualify or clarify that case-law in this case.

36 According to settled case-law, in the context of the procedure established by Article 267 TFEU, it is for the national court alone, which is seised of the dispute and which must assume responsibility for the judicial decision to be given, to assess, in the light of the particular features of the case, both the need for a preliminary ruling in order to be able to give judgment and the relevance of the questions which it puts to the Court. Consequently, where the questions referred concern the interpretation of EU law, the Court is, in principle, obliged to give a ruling (judgment of 20 September 2022, *VD and SR*, C-339/20 and C-397/20, EU:C:2022:703, paragraph 56 and the case-law cited).

37 A national court may refuse to give a ruling on a question referred for a preliminary ruling only where it is clear that the interpretation of EU law sought has no connection with the reality or the subject matter of the main proceedings, where the problem is hypothetical or where the Court does not have the factual and legal information necessary to give a useful answer to the questions put to it (judgment of 20 September 2022, *VD and SR*, C-339/20 and C-397/20, EU:C:2022:703, paragraph 57 and the case-law cited).

38 In the latter respect, it should be noted that the need to arrive at an interpretation of EU law which is useful for the national court requires it to define the factual and regulatory framework in which the questions it asks are placed or, at the very least, to explain the factual assumptions on which those questions are based (judgment of 5 March 2019, *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraph 49 and the case-law cited).

39 It thus follows from Article 94(a) and (c) of the Rules of Procedure of the Court of Justice that the reference for a preliminary ruling must contain, inter alia, a summary statement of the subject matter of the dispute and of the relevant facts as ascertained by the referring court or, at least, a statement of the facts on which the questions are based, and a statement of the reasons which led the referring court to question the interpretation or validity of certain provisions of EU law, as well as the link which it establishes between those provisions and the national legislation applicable to the main proceedings.

40 In the present case, first, as regards the AMB's objection that the order for reference does not mention all the relevant national, regional and local legislation, it must be observed that that order for reference contains sufficient information to enable the Court to understand both the legal and factual framework of the dispute in the main proceedings and the meaning and scope of the questions referred for a preliminary ruling. It follows that that order for reference satisfies the requirements laid down by Article 94(a) of the Rules of Procedure.

41 Second, by arguing that the questions referred for a preliminary ruling relate to national laws and regulations, even though the main proceedings concern only the legality of the RVTC, P&L is in fact requesting the Court itself to identify the precise contours of the applicable national legislation, which is not within its jurisdiction.

42 In allocating jurisdiction between the EU Courts and the national courts, the Court must take account of the factual and regulatory context surrounding the questions referred for a preliminary ruling, as defined by the order for reference. Consequently, the examination of a reference for a

preliminary ruling must be carried out in the light of the interpretation of national law provided by the referring court (judgment of 20 October 2022, *Centre public d'action sociale de Liège (Withdrawal or suspension of a return decision)*, C-825/21, EU:C:2022:810, paragraph 35).

43 Therefore, since the referring court has defined the factual and regulatory framework of the questions it refers, it is not for the Court to verify their accuracy (judgment of 5 March 2019, *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraph 50).

44 Third, Article 94(c) of the Rules of Procedure requires the referring court to state the reasons which led it to question the interpretation of the provisions of EU law which are the subject of the questions referred for a preliminary ruling. Even if, as the AMB maintains, the wording of the questions submitted for a preliminary ruling is intended to influence the Court, that alone cannot render the reference for a preliminary ruling inadmissible, since such a circumstance does not correspond to any of the situations referred to in paragraph 37 of the present judgment.

45 Fourth, even if, as the ANT claims, the answers to be given to the questions referred for a preliminary ruling in this case are clearly derived from the Court's case-law, it follows from Article 99 of the Rules of Procedure that such a circumstance has the effect not of rendering the reference for a preliminary ruling inadmissible, but of empowering the Court to answer it by way of an order.

46 Fifth, since the questions referred for a preliminary ruling concern the interpretation of Article 49 and Article 107(1) TFEU, the ANT is wrong to claim that those questions merely ask the Court to make factual assessments which are not within its jurisdiction.

47 Sixth, the fact that a national supreme court has already examined, in the context of a dispute similar to that at issue in the main proceedings, the potential relevance of the provisions of EU law referred to by the referring court is not such as to render inadmissible a reference for a preliminary ruling seeking a determination by the Court of Justice of the interpretation of those provisions, in accordance with Article 267 TFEU. Such a circumstance does not correspond to any of the grounds for inadmissibility referred to in paragraph 37 of the present judgment.

48 Seventh, in so far as the AMB notes that all aspects of the dispute in the main proceedings are confined to a single Member State, it should be recalled that the national court stated that the action brought by P&L is one of a group of 15 actions for annulment of the RVTC, one of which was brought by 'international platforms' online, which seems to suggest that the main action seeks the annulment of provisions of national law which also apply to nationals of other Member States, so that the decision which the referring court will adopt following the present judgment is likely to have effect also with regard to the latter nationals (see, to that effect, judgment of 8 May 2013, *Libert and Others*, C-197/11 and C-203/11, EU:C:2013:288, paragraph 35).

49 As is clear from the Court's settled case-law, where the referring court makes a request for a preliminary ruling in proceedings for the annulment of provisions which apply not only to its own nationals but also to those of other Member States, the decision of the referring court that will be adopted following the Court's preliminary ruling will also have effects on the nationals of other Member States, which justifies the Court giving an answer to the questions put to it in relation to the provisions of the FEU Treaty on the fundamental freedoms, even though the dispute in the main proceedings is confined in all respects within a single Member State (judgment of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 32 and the case-law cited).

50 It follows from the foregoing that the reference for a preliminary ruling is admissible.

Substance

The questions relating to Article 107(1) TFEU

51 By those questions for a preliminary ruling, the referring court asks, in essence, inter alia, whether Article 107(1) TFEU must be interpreted as precluding legislation applicable to a conurbation which provides, first, that a specific licence is required in order to provide PHV services in that conurbation, in addition to the national licence required for the provision of urban and interurban PHV services, and, secondly, that the number of PHV service licences is limited to one thirtieth of the taxi service licences issued for that conurbation.

52 According to the Court's settled case-law, the classification of a measure as 'State aid' within the meaning of Article 107(1) TFEU requires that all the following conditions be met. First, it must be an intervention by the State or through State resources. Second, the intervention must be capable of affecting trade between Member States. Third, it must confer a selective advantage on the beneficiary. Fourth, it must distort or threaten to distort competition (judgment of 11 November 2021, *Autostrada Wielkopolska* v *Commission and Poland*, C-933/19 P, EU:C:2021:905, paragraph 103 and the case-law cited).

53 As regards the condition relating to the commitment of State resources, it should be noted that the concept of aid includes not only positive benefits such as subsidies, but also interventions which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which, therefore, without being subsidies in the strict sense of the term, are of the same nature and have the same effects (judgment of 14 January 2015, *Eventech*, C-518/13, EU:C:2015:9, paragraph 33 and the case-law cited).

54 Consequently, for the purposes of establishing the existence of State aid, a sufficiently direct link must be established between, first, the advantage granted to the beneficiary and, secondly, a reduction in the State budget, or even a sufficiently concrete economic risk of burdens being imposed on it (judgment of 14 January 2015, *Eventech*, C-518/13, EU:C:2015:9, paragraph 34 and the case-law cited).

55 In the present case, it is sufficient to note that there is no indication in the order for reference that the legislation at issue in the main proceedings involves the commitment of State resources.

56 In particular, first, neither the requirement of a licence issued by the AMB to operate PHV services in the Barcelona conurbation, nor the limitation of the number of licences for such services to one thirtieth of the taxi service licences issued for that conurbation, appears to imply any positive benefits, such as subsidies, for the undertakings providing taxi services, nor to mitigate the burdens that are normally placed on the budgets of those undertakings.

57 Secondly, those two measures do not appear to lead to a reduction in the State budget or to a sufficiently concrete economic risk of burdens on the State budget, which could benefit undertakings providing taxi services.

58 In those circumstances, the answer to the questions referred must be that Article 107(1) TFEU does not preclude legislation applicable to a conurbation which provides, first, that a specific licence is required in order to carry on the activity of PHV services in that conurbation, in addition to the national licence required for the provision of urban and interurban PHV services, and, secondly, that the number of licences for such services is limited to one thirtieth of the taxi service licences issued for that conurbation, provided that those measures are not such as to involve a commitment of State resources within the meaning of that provision.

The questions relating to Article 49 TFEU

59 By those questions for a preliminary ruling, the referring court also asks, in essence, whether Article 49 TFEU precludes legislation applicable to a conurbation which provides, first, that a specific licence is required to carry on the activity of PHV services in that conurbation, in addition to the national licence required for the provision of urban and interurban PHV services, and, secondly, that the number of licences for such services is limited to one thirtieth of the taxi service licences issued for that conurbation.

60 The first paragraph of Article 49 TFEU provides that, within the framework of the provisions contained in Chapter 2 of Title IV of Part Three of the FEU Treaty, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State are prohibited.

61 According to settled case-law, all measures which prohibit, impede or render less attractive the exercise of the freedom guaranteed by Article 49 TFEU must be regarded as restrictions on the freedom of establishment (judgment of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 61 and the case-law cited).

62 As the Advocate General pointed out, in essence, in points 51 to 55 of his Opinion, first, the requirement of a specific licence to provide PHV services in the Barcelona conurbation, in addition to the national licence required for the provision of urban and interurban PHV services, constitutes in itself a restriction on the exercise of the freedom guaranteed by Article 49 TFEU, since such a requirement effectively limits access to the market for any newcomer (see, to that effect, judgment of 10 March 2009, *Hartlauer*, C-169/07, EU:C:2009:141, paragraph 34; see also, by analogy, judgment of 22 January 2002, *Canal Satélite Digital*, C-390/99, EU:C:2002:34, paragraph 29).

63 Secondly, such is the case also for the limitation of the number of licences for such PHV services to one thirtieth of the number of taxi service licences issued for that conurbation, which must be classified as a restriction on the freedom of establishment, since such a limitation restricts the number of PHV service providers established in that conurbation.

64 According to settled case-law, such restrictions on freedom of establishment are permissible only if, in the first place, they are justified by an overriding reason relating to the public interest and, in the second place, they comply with the principle of proportionality, which implies that they are suitable for securing, in a consistent and systematic manner, the attainment of the objective pursued and that they do not go beyond what is necessary in order to attain that objective (judgment of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 65 and the case-law cited).

– *The existence of overriding reasons relating to the public interest*

65 It is clear from the reference for a preliminary ruling and from the observations of the AMB and the Spanish Government before the Court that, by means of the two measures at issue in the main proceedings, the RVTC aims to ensure, first of all, the quality, safety and accessibility of taxi services in the Barcelona conurbation, considered to be a 'service of general interest', in particular by maintaining an 'appropriate balance' between the number of taxi service providers and PHV service providers, next, the proper management of transport, traffic and public space within that conurbation and, lastly, the protection of the environment in that conurbation.

66 With regard more specifically to the objective of ensuring the quality, safety and accessibility of taxi services, it is clear from the file submitted to the Court, first of all, that the activity of taxi services is highly regulated, in that those services are subject, inter alia, to licensing quotas, regulated fares, an obligation to provide universal transport and accessibility for people with reduced mobility. In view of those characteristics, taxi services are considered, in particular by the AMB, to be a 'service of general interest' that deserves to be preserved, as an important element of the general organisation of urban transport in the Barcelona conurbation.

67 The AMB also points out that the economic viability of taxi services appears to be threatened by increasing competition from PHV services. In those circumstances, the preservation of a balance between those two forms of urban transport would have been seen by the political authorities, both at national and regional level, as an appropriate and proportionate way of guaranteeing the maintenance of taxi services as a service of general interest integrated into an overall urban transport model.

68 Finally, the referring court and several parties to the proceedings noted that the Tribunal Supremo (Supreme Court) had held, in a judgment of 4 June 2018, that the organisation and desired modes of urban transport are a matter for the public authorities to choose, that those authorities may, in the context of such a choice, opt to maintain taxi services which have the characteristics referred to in paragraph 66 of the present judgment and therefore constitute a 'service of general interest', that it is therefore justified to preserve a balance between that mode of urban transport and PHV services in order to guarantee the maintenance of that service of general interest and that, to this end, the fact of providing for a ratio between PHV licences and taxi licences of up to 1 to 30 appears, in the absence of any less restrictive alternative, to be an appropriate and proportionate measure.

69 In that regard, in the first place, as the Advocate General pointed out in points 75 and 76 of his Opinion, the objective of sound management of transport, traffic and public space in a conurbation, first, and the objective of protecting the environment in such a conurbation, secondly, are capable of constituting overriding reasons in the general interest (see, to that effect, judgments of 24 March 2011, *Commission* v *Spain*, C-400/08, EU:C:2011:172, paragraph 74, and of 30 January 2018, *X and Visser*, C-360/15 and C-31/16, EU:C:2018:44, paragraphs 134 and 135).

70 In the second place, it is, by contrast, settled case-law that objectives of a purely economic nature cannot constitute an overriding reason in the general interest capable of justifying a restriction on a fundamental freedom guaranteed by the Treaty (judgments of 11 March 2010, *Attanasio Group*, C-384/08, EU:C:2010:133, paragraph 55, and of 24 March 2011, *Commission* v *Spain*, C-400/08, EU:C:2011:172, paragraph 74 and the case-law cited). The Court has held, in particular, that the

objective of ensuring the profitability of a competing bus route, as a purely economic reason, cannot constitute such an overriding reason in the general interest (judgment of 22 December 2010, *Yellow Cab Verkehrsbetrieb*, C-338/09, EU:C:2010:814, paragraph 51).

71 In the present case, as the Advocate General pointed out in point 61 of his Opinion, the objective of ensuring the economic viability of taxi services must also be regarded as a purely economic reason which cannot constitute an overriding reason in the general interest within the meaning of the case-law referred to in the preceding paragraph of the present judgment.

72 It follows that that objective cannot be invoked to justify, inter alia, the preservation of a balance between the two modes of urban transport at issue in the main proceedings or a ratio between licences for PHV services and those for taxi services, which are considerations of a purely economic nature.

73 In the third place, those findings are not undermined by the fact that taxi services are qualified under Spanish law as a 'service of general interest'.

74 First, as the European Commission rightly argued at the hearing, the objective pursued by a measure restricting freedom of establishment must, as such, constitute an overriding reason in the general interest within the meaning of the case-law cited in paragraph 64 of the present judgment, without the classification of that objective in national law being able to influence the assessment to be made in that regard.

75 Secondly, nothing in the file submitted to the Court shows that the taxi service providers operating in the Barcelona conurbation are entrusted with the operation of a service of general economic interest ('a SGEI') within the meaning of Article 106(2) TFEU, or that the absence of a restriction on the freedom of establishment of PHV service providers would obstruct the performance, in law or in fact, of a particular public service task entrusted to those taxi service providers.

76 In that regard, it should be noted that, while Member States are entitled to define the scope and organisation of their SGEIs, taking into account in particular objectives specific to their national policy, and that, in that respect, Member States have a broad discretion which may be called into question by the Commission only in the event of manifest error, that discretion cannot be unlimited and must, in any event, be exercised in compliance with EU law (judgment of 3 September 2020, *Vereniging tot Behoud van Natuurmonumenten in Nederland and Others* v *Commission*, C-817/18 P, EU:C:2020:637, paragraph 95 and the case-law cited).

77 According to the Court's case-law, a service is capable of being of general economic interest where that interest has specific characteristics in relation to that of other activities in economic life (judgment of 7 November 2018, *Commission* v *Hungary*, C-171/17, EU:C:2018:881, paragraph 51 and the case-law cited).

78 Furthermore, in order to qualify as an SGEI, a service must be provided in pursuance of a particular public service mission entrusted to the provider by the Member State concerned (judgment of 7 November 2018, *Commission* v *Hungary*, C-171/17, EU:C:2018:881, paragraph 52).

79 It is therefore important that the recipient undertakings have actually been entrusted with the discharge of public service obligations and that those obligations are clearly defined in national law, which presupposes the existence of one or more acts of public authority defining with

sufficient precision at least the nature, duration and scope of the public service obligations incumbent on the undertakings entrusted with the discharge of those obligations (see, to that effect, judgment of 20 December 2017, *Comunidad Autónoma del País Vasco and Others* v *Commission*, C-66/16 P to C-69/16 P, EU:C:2017:999, paragraphs 72 and 73).

80 Furthermore, Article 106(2) TFEU provides, first, that undertakings entrusted with the operation of SGEIs are subject to the competition rules to the extent that the application of those rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them and, second, that the development of trade must not be affected to such an extent as would be contrary to the interests of the European Union. Thus, the very wording of Article 106(2) TFEU shows that derogations from the rules of the Treaty are permitted only if they are necessary for the performance of the particular task assigned to an undertaking entrusted with the management of an SGEI (judgment of 3 September 2020, *Vereniging tot Behoud van Natuurmonumenten in Nederland and Others* v *Commission*, C-817/18 P, EU:C:2020:637, paragraphs 96 and 97).

81 The fact that the activity of providing taxi services has the characteristics set out in paragraph 66 of the present judgment and is thus highly regulated does not make it possible to establish that the interest in that activity has, within the meaning of the case-law cited in paragraph 77 of the present judgment, specific characteristics in relation to that of other economic activities, or that a particular public service task has been entrusted to the providers of taxi services by means of sufficiently precise acts of public authority.

82 In the fourth place, although the characteristics set out in paragraph 66 of the present judgment show that the regulation of taxi services is intended, inter alia, to ensure the quality, safety and accessibility of those services for the benefit of users, it appears, by contrast, that the measures at issue in the main proceedings do not, in themselves, pursue those objectives.

83 Having regard to the foregoing considerations, only the objectives of sound management of transport, traffic and public space, on the one hand, and of protection of the environment, on the other hand, can be relied on in the present case as overriding reasons in the general interest to justify the measures at issue in the main proceedings.

– *The proportionality of the measures at issue in the main proceedings*

84 As regards the question whether those measures are suitable for ensuring, in a consistent and systematic manner, the attainment of the objectives referred to in paragraph 83 of the present judgment and do not go beyond what is necessary to attain them, a distinction must be drawn between the requirement of a second licence for the exercise of the activity of PHV services and the limitation of the number of PHV service licences to one thirtieth of the number of taxi service licences.

– *The proportionality of the requirement for a second licence*

85 As regards the requirement of a specific licence for the provision of PHV services in the Barcelona conurbation, it follows from settled case-law, first, that a system of prior administrative licencing cannot legitimise discretionary conduct on the part of the national authorities, such as to deprive

the provisions of EU law, in particular those relating to the fundamental freedoms at issue in the main proceedings, of their practical effect (judgment of 22 January 2002, *Canal Satélite Digital*, C-390/99, EU:C:2002:34, paragraph 35 and the case-law cited).

86 Therefore, in order for a system of prior administrative licencing to be justified even though it derogates from such fundamental freedoms, it must, in any event, be based on objective, non-discriminatory criteria which are known in advance, so as to provide a framework for the exercise of the national authorities' discretion, in order to ensure that that discretion is not exercised arbitrarily (judgment of 22 January 2002, *Canal Satélite Digital*, C-390/99, EU:C:2002:34, paragraph 35 and the case-law cited).

87 Next, a measure introduced by a Member State which, in essence, duplicates controls which have already been carried out in the context of other procedures, either in that State or in another Member State, cannot be regarded as necessary to attain the objective pursued (see, to that effect, judgment of 22 January 2002, *Canal Satélite Digital*, C-390/99, EU:C:2002:34, paragraph 36).

88 Finally, a prior licencing procedure would only be necessary if an *ex post* control were to be considered as taking place too late to guarantee its real effectiveness and to enable it to achieve the objective pursued (judgment of 22 January 2002, *Canal Satélite Digital*, C-390/99, EU:C:2002:34, paragraph 39).

89 In this case, first, the requirement of prior licencing may well be appropriate to achieve the objectives of sound management of transport, traffic and public space and of environmental protection. Moreover, given the nature of the service in question, involving the use of private cars which are often indistinguishable from other cars in that category, used privately, and moreover in a vast urban area, a post-clearance control may be considered to come too late to ensure that it is genuinely effective and to enable it to achieve the objectives sought. It follows that the requirement of such prior licencing may be regarded as necessary within the meaning of the case-law referred to in paragraph 88 of the present judgment.

90 That being so, in accordance with the case-law referred to in paragraphs 64 and 86 of the present judgment, the criteria applicable to the granting, refusal and, where appropriate, withdrawal of licences for PHV services must be such as to guarantee, in a consistent and systematic manner, the attainment of those objectives, which it is for the referring court to verify.

91 Second, since P&L argues, inter alia, before the Court that the competent administrative authority reserves the right, depending on the market situation, to cancel a licence for PHV services, it will be for the referring court to ascertain, in particular, whether the exercise of the power of assessment conferred on that authority, in compliance with those criteria, is sufficiently circumscribed, within the meaning of the case-law referred to in paragraph 86 of the present judgment, in order to ensure that that power is not exercised arbitrarily.

92 Third, since P&L maintains, moreover, that the requirement of a specific licence for the provision of PHV services in the Barcelona conurbation would duplicate the existing procedures and requirements imposed for the issue of the national licence provided for the exercise of that activity, the referring court must, in accordance with the case-law referred to in paragraph 87 of the present judgment, ensure that the procedures established for the issue of that specific licence do not duplicate controls which have already been carried out under that other procedure in the same Member State.

93 When examining the need for such a specific licencing requirement, the referring court must assess, in particular, whether the particular characteristics of the Barcelona conurbation justify the introduction of that requirement, in addition to the requirement to obtain a national licence, in order to achieve the objectives of sound management of transport, traffic and public space and the protection of the environment within it.

– *The proportionality of limiting PHV service licences to one thirtieth of taxi service licences*

94 As the Advocate General pointed out in points 80 and 81 of his Opinion, the proceedings before the Court have revealed no evidence that the measure limiting PHV licences to one thirtieth of taxi licences is capable of guaranteeing the achievement of the objectives of sound management of transport, traffic and public space and of protection of the environment.

95 In that regard, it appears from both point 9 of the preamble to the RVTC and the scheme of the RVTC, as set out, in particular, in Articles 7 and 9 to 11, that the limitation of licences for the provision of PHV services is the key element through which that regulation aims to achieve those objectives.

96 In the proceedings before the Court, the arguments put forward, in particular, by P&L, Tapoca VTC1 and the Commission, according to which

– PHV services reduce the use of private cars;

– it is inconsistent to invoke parking problems on public roads in the AMB when the RVTC requires undertakings offering PHV services to have their own parking and not to park on public roads;

– PHV services could contribute to the goal of efficient and inclusive mobility, through their level of digitalisation and flexibility in service provision, such as a technology platform accessible to blind people; and

– State regulation would encourage the use of alternative energy vehicles for PHV services;

were not refuted by either the AMB or the Spanish Government. In fact, in response to a question put by the Court at the hearing, the Spanish Government stated that it was not aware of the existence of any study of the impact of the PHV fleet on transport, traffic, public space and the environment in the Barcelona conurbation, nor of any study envisaging the effects of the regulation introduced by the RVTC on the attainment of the objectives mentioned in paragraph 94 of the present judgment.

97 Therefore, subject to an assessment to be made by the referring court, including in the light of any factors which have not been brought to the Court's attention, the limitation of PHV licences to one thirtieth of the number of taxi licences does not appear to be appropriate for ensuring the achievement of the objectives of sound management of transport, traffic and public space.

98 Furthermore, there is nothing in the file submitted to the Court to show that such a limitation of PHV service licences does not go beyond what is necessary to achieve those objectives.

99 It cannot be excluded that a possible impact of the PHV fleet on transport, traffic and public space in the Barcelona conurbation could be adequately limited by less restrictive measures, such as measures for the organisation of PHV services, limitations on those services during certain time slots or traffic restrictions in certain areas.

100 Similarly, it cannot be ruled out that the objective of environmental protection in the Barcelona conurbation can be achieved by measures that are less intrusive on the freedom of establishment, such as emission limits for vehicles in that conurbation.

101 Here again, however, it is for the referring court to ascertain whether it has been established before it that less restrictive measures would not achieve the objectives pursued.

102 In the light of all the foregoing considerations, the answer to the questions referred is that Article 49 TFEU:

– does not preclude a regulation applicable in a conurbation which provides that a specific licence is required for the provision of PHV services in that conurbation, in addition to the national licence required for the provision of urban and interurban PHV services, if that specific licence is based on objective, non-discriminatory criteria which are known in advance, exclude any arbitrariness and do not duplicate controls which have already been carried out under the national licencing procedure, but which meet the particular needs of that conurbation;

– precludes legislation applicable in a conurbation which provides for a limitation of the number of licences for PHV services to one thirtieth of the taxi service licences issued for that conurbation, where it is not established that that measure is suitable for guaranteeing, in a coherent and systematic manner, the attainment of the objectives of sound management of transport, traffic and public space in that conurbation and of the protection of its environment, or that it does not go beyond what is necessary in order to attain those objectives.

Costs

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

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

1. **Article 107(1) TFEU does not preclude legislation applicable in a conurbation which provides, first, that a specific licence is required in order to carry on the activity of hiring out private-hire vehicles in that conurbation, in addition to the national licence required for the provision of urban and interurban private-hire vehicles, and, secondly, that the number of licences for such services is limited to one thirtieth of the taxi service licences issued for that conurbation, provided that those measures are not such as to involve a commitment of State resources within the meaning of that provision.**

2. **Article 49 TFEU does not preclude legislation, applicable in a conurbation, providing that a specific licence is required in order to carry on the activity of hiring out private-hire vehicles in that conurbation, in addition to the national licence required for the provision of urban and interurban private-hire vehicles, if that specific licence is based on objective, non-discriminatory criteria which are known in advance, exclude any arbitrariness and do not duplicate controls that have already been carried out as part of the national licencing procedure, but meet the particular needs of that conurbation.**

3. **Article 49 TFEU precludes legislation applicable in a conurbation which provides for a limitation of the number of licences for private-hire vehicles to one thirtieth of the taxi service licences issued for that conurbation, where it is not established either that that measure is suitable for ensuring, in a coherent and systematic manner, the attainment of the objectives of sound management of transport, traffic and public space in that conurbation and of the protection of its environment or that it does not go beyond what is necessary in order to attain those objectives.**

[Signatures]