



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

15 October 2015*

(Reference for a preliminary ruling — Articles 49 TFEU and 51 TFEU — Freedom of establishment — Directive 2006/123/EC — Scope — Services in the internal market — Directive 2009/40/EC — Access to vehicle roadworthiness testing activities — Exercise by a private body — Activities connected with the exercise of official authority — Prior authorisation scheme — Overriding reasons relating to the public interest — Road safety — Territorial distribution — Minimum distance between roadworthiness testing centres — Maximum market share — Justification — Whether appropriate for the purpose of achieving the objective pursued — Coherence — Proportionality)

In Case C-168/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Supremo (Supreme Court, Spain), made by decision of 20 March 2014, received at the Court on 7 April 2014, in the proceedings

Grupo Itevelesa SL,

Applus Iteuve Technology,

Certio ITV SL,

Asistencia Técnica Industrial SAE

v

OCA Inspección Técnica de Vehículos SA,

Generalidad de Cataluña,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the First Chamber, acting as President of the Second Chamber, J.L. da Cruz Vilaça, A. Arabadjiev (Rapporteur), C. Lycourgos and J.-C. Bonichot, Judges,

Advocate General: N. Wahl,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 19 March 2015,

* Language of the case: Spanish.

after considering the observations submitted on behalf of:

- Grupo Itevelesa SL, by J. Lavilla Rubira, M. Alvarez-Tólcheff, T. Puente Méndez, M. Barrantes Diaz and S. Rodiño Sorli, abogados,
- Applus Iteuve Technology, by A. Vázquez Guillén, procurador, and by J. Folguera Crespo, L. Moscoso del Prado González and A. Guerra Fernández, abogados,
- Certio ITV SL, by R. Sorribes Calle, procuradora, and by J. Just Sarobé and R. Miró Miró, abogados,
- Asistencia Técnica Industrial SAE, by M. Marsal i Ferret, M. Ortíz-Cañavate Levenfeld and I. Galobardes Mendonza, abogados,
- OCA Inspección Técnica de Vehículos SA, by J. Macias Castaño, A. Raventós Soler and M. Velasco Muñoz Cuellar, abogados,
- the Generalidad de Cataluña, by N. París Domenech, abogada,
- the Spanish Government, by M. Sampol Pucurull, acting as Agent,
- Ireland, by S. Kingston, L. Williams and A. Joyce, acting as Agents,
- the Swedish Government, by N. Otte Widgren, A. Falk, C. Meyer-Seitz, U. Persson, K. Sparrman, L. Swedenborg, F. Sjövall and E. Karlsson, acting as Agents,
- the European Commission, by H. Tserepa-Lacombe and J. Rius, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 3 June 2015,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns, in essence, the interpretation of Articles 49 TFEU and 51 TFEU, Articles 2(2)(d) and (i), 3, 9, 10 and 14 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) ('the Services Directive'), and Article 2 of Directive 2009/40/EC of the European Parliament and of the Council of 6 May 2009 on roadworthiness tests for motor vehicles and their trailers (OJ 2009 L 141, p. 12).
- 2 The request has been made in the context of proceedings between Grupo Itevelesa SL ('Itevelesa'), Applus Iteuve Technology ('Applus'), Certio ITV SL ('Certio') and Asistencia Técnica Industrial SAE ('ATI'), on the one hand, and OCA Inspección Técnica de Vehículos SA ('OCA'), on the other hand, concerning the lawfulness of national provisions relating to roadworthiness tests for motor vehicles.

Legal context

EU law

The Services Directive

3 According to recital 21 in the preamble to the Services Directive, '[t]ransport services, including urban transport, taxis and ambulances as well as port services, should be excluded from the scope of this Directive'.

4 Recital 33 in the preamble to that directive sets out, inter alia, that certification and testing services are covered by that directive.

5 Article 1(1) of the Services Directive provides that it establishes general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services, while maintaining a high quality of services.

6 In accordance with Article 2(2)(d) of that directive, the latter does not apply to 'services in the field of transport, including port services, falling within the scope of Title [VI] of the [TFEU]'.

7 Under Article 2(2)(i) of that directive, the latter does not apply to 'activities which are connected with the exercise of official authority as set out in Article [51 TFEU]'.

8 Article 3 of the Services Directive provides:

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

9 Article 9 of the Services Directive, entitled 'Authorisation schemes', provides:

'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.

...

3. This section shall not apply to those aspects of authorisation schemes which are governed directly or indirectly by other Community instruments.'

10 Article 10 of that directive, entitled 'Conditions for the granting of authorisation', lays down that authorisation schemes are to be based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner and sets out a list of those criteria.

11 Article 14 of that directive, entitled ‘Prohibited requirements’, provides:

‘Member States shall not make access to, or the exercise of, a service activity in their territory subject to compliance with any of the following:

...

(5) the case-by-case application of an economic test making the granting of authorisation subject to proof of the existence of an economic need or market demand, an assessment of the potential or current economic effects of the activity or an assessment of the appropriateness of the activity in relation to the economic planning objectives set by the competent authority; this prohibition shall not concern planning requirements which do not pursue economic aims but serve overriding reasons relating to the public interest;

...’

Directive 2009/40

12 Recital 2 in the preamble to Directive 2009/40 is worded as follows:

‘Within the framework of the common transport policy, certain road traffic within the Community should operate under the most favourable circumstances as regards both safety and competitive conditions applying to carriers in the Member States.’

13 Recital 5 in the preamble to that directive states:

‘The minimum Community standards and methods to be used for testing the items listed in this Directive should therefore be defined in separate Directives.’

14 Recital 26 in the preamble to that directive states that the objectives pursued by that directive consist in ‘harmonis[ing] the rules on roadworthiness tests, ... prevent[ing] distortion of competition as between road hauliers and ... guarantee[ing] that vehicles are properly checked and maintained ...’.

15 Under Article 1(2) of that directive, ‘[t]he categories of vehicles to be tested, the frequency of the roadworthiness tests and the items which must be tested are listed in Annexes I and II’.

16 Article 2 of Directive 2009/40 provides:

‘The roadworthiness tests provided for in this Directive shall be carried out by the Member State, or by a public body entrusted with the task by the State or by bodies or establishments designated and directly supervised by the State, including duly authorised private bodies. In particular, where establishments designated as vehicle testing centres also perform motor vehicle repairs, Member States shall make every effort to ensure the objectivity and high quality of the vehicle testing.’

Directive 2014/45/EU

17 Directive 2014/45/EU of the European Parliament and of the Council of 3 April 2014 on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/40 (OJ 2014 L 127, p. 51) provides, in recital 3 in the preamble thereto, as follows:

‘Roadworthiness testing is a part of a wider regime designed to ensure that vehicles are kept in a safe and environmentally acceptable condition during their use. ...’

18 Under recital 43 in the preamble to Directive 2014/45:

‘Roadworthiness has a direct impact on road safety and should therefore be reviewed periodically. ...’

19 Article 4(2) of that directive provides as follows:

‘Roadworthiness tests shall be carried out by the Member State of registration of the vehicle, by a public body entrusted with the task by that Member State or by bodies or establishments designated and supervised by that Member State, including authorised private bodies.’

Spanish law

20 Articles 35 to 37 of Law 12/2008 on Industrial Safety (Ley 12/2008 de seguridad industrial), adopted on 31 July 2008 by the Parliament of Catalonia (BOE No 204 of 23 August 2008, p. 14194) (‘Law 12/2008’), states as follows:

‘Article 35. Functions of operators of vehicle roadworthiness testing centres

The operators of vehicle roadworthiness testing centres have the following functions:

- (a) to carry out roadworthiness tests for vehicles and for vehicle components and accessories;
- (b) as a precautionary measure, to prevent the use of vehicles which, having been tested, are found to have safety defects which entail imminent danger.

...

Article 36. Requirements relating to operators of vehicle roadworthiness testing centres

1. In order to operate in Catalonia, operators of vehicle roadworthiness testing centres must meet the following requirements:

- (a) there must be compliance with any local plan for vehicle roadworthiness testing centres that the Government may adopt pursuant to Article 37(2);
- (b) no undertaking or group of undertakings may exceed the market share threshold laid down by regulation. Such market share threshold shall ensure that no proprietor shall provide services across all vehicle roadworthiness testing centres that account for more than half of the total number of testing lanes in Catalonia. ...
- (c) there must be compliance with such minimum permitted distances between vehicle roadworthiness testing centres belonging to the same undertaking or group of undertakings as shall be laid down by the Government pursuant to Article 37(3);

...

Article 37. Licensing of operators of vehicle roadworthiness testing centres

1. The Industrial Safety Agency of Catalonia (Agencia Catalana de Seguridad Industrial) shall be responsible for licensing operators of vehicle roadworthiness testing centres. Licences shall be in respect of each individual centre and shall be issued in accordance with procedures laid down by regulation.

2. In order to ensure that an appropriate service is provided for the number of vehicles in existence and that testing is carried out objectively and to a high standard, the Government may lay down by decree the number of vehicle roadworthiness testing centres required and the number of testing lanes that each centre should have, calculated on the basis of the total number of vehicles in existence, and may determine their location by means of a local plan. ...

3. In order to ensure effective competition between operators, the Government shall lay down by decree the minimum permitted distances between vehicle roadworthiness testing centres belonging to the same undertaking or group of undertakings. Such distances shall ensure that no one proprietor shall achieve a dominant position in an area, taking into consideration the characteristics of the different locations of the vehicle roadworthiness testing centres.

...'

21 Decree 30/2010 adopting the regulations implementing Law 12/2008 of 31 July 2008 on Industrial Safety (decreto 30/2010, por el que se aprueba el reglamento de desarrollo de la Ley 12/2008, de 31 de julio, de seguridad industrial), adopted on 2 March 2010 by the Generalidad de Cataluña (Autonomous Government of Catalonia) ('Decree 30/2010'), and Decree 45/2010 adopting the territorial plan for new vehicle roadworthiness testing centres in Catalonia for 2010-2014 (decreto 45/2010, por el que se aprueba el Plan territorial de nuevas estaciones de inspección técnica de vehículos de Cataluña para el periodo 2010-2014), adopted by that government on 30 March 2010 ('Decree 45/2010'), implement the provisions of Law 12/2008 relating to the establishment of roadworthiness testing centres.

22 Articles 73 to 75 of Decree 30/2010 provide as follows:

'Article 73

Compliance with the territorial plan and ensuring continuity

73.1 In order to ensure a proper service to the public and an inspection service that meets existing demand and is in accordance with Article 36(1)(a) of Law [12/2008], operators of vehicle roadworthiness testing centres shall comply with the requirements of the territorial plan for vehicle roadworthiness testing centres from time to time in force.

...

Article 74

Maximum market share

74.1 Further to Article 36(1)(b) of Law [12/2008], the market share of any undertaking or group of undertakings licensed to provide vehicle roadworthiness testing services in Catalonia may not exceed one half of the total. ...

74.2 Market share shall be determined by reference to the number of licensed testing lanes in permanent centres being used by any proprietor in relation to the total number of such lanes in Catalonia.

Article 75

Minimum permitted distances

75.1 In order to ensure effective competition between operators, in accordance with Article 37.3 of this decree and Article 36(1)(c) of Law [12/2008], the actual distances between vehicle roadworthiness testing centres licensed to the same undertaking or group of undertakings shall not be less than:

- (a) 4 km in the case of centres located in municipalities with more than 30 000 inhabitants, as at the date of the licence issued by the Industrial Safety Agency of Catalonia;
- (b) 20 km in the case of centres located in other parts of Catalonia;
- (c) 10 km in cases where one of the centres is located in a municipality with more than 30 000 inhabitants, at the date of the licence, and the other is located elsewhere in Catalonia.

75.2 For the purposes of this regulation, actual distance shall mean the shortest distance, using existing public highways, between one centre and another, as at the date of the licence issued by the Industrial Safety Agency of Catalonia.

75.3 In respect of the network of centres in existence as at the date of entry into force of this decree, the distances referred to in paragraph 1(a) may be reduced by up to 20%.'

23 Article 79(1)(c) of Decree 30/2010 states that the operators of the roadworthiness testing centres may order vehicles to be taken off the road in the situations set out in the applicable legislation and in accordance with the instructions and protocols adopted by the Industrial Safety Agency of Catalonia.

24 The preamble to Decree 45/2010 states as follows:

'... It is necessary to ensure that the supply of vehicle roadworthiness testing services is adequate to meet existing needs, whether in relation to the coverage of areas that are currently suffering from a shortage of provision, so that the service can be brought into closer proximity to its users, or to address the deficiency in service that exists in areas where vehicle roadworthiness testing centres are more concentrated and waiting times are longer.

It is desirable, in view of the local nature of the vehicle roadworthiness testing service, to avoid excessive concentration of the service in a particular area for reasons of profitability alone, to the detriment of other areas, which, because there are fewer vehicles, have no service, with users suffering as a result. By contrast, in areas where demand is higher due to the greater number of vehicles, the high density of centres may lead to a tendency for operators to compete by lowering their standards and to a consequent reduction in the quality of the service.'

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

25 On 5 May 2010, OCA, one of the Spanish operators carrying out vehicle roadworthiness tests, brought an administrative action before the Tribunal Superior de Justicia de Cataluña (High Court of Justice of Catalonia) seeking partial annulment of Decree 30/2010 and annulment in full of Decree 45/2010, on the ground that the regulation of operators ensuring industrial safety which subject those operators to a prior administrative authorisation scheme, and the definition of the conditions and obligations of that authorisation scheme, are contrary to the Services Directive.

- 26 Four other operators carrying out vehicle roadworthiness tests — Itevelesa, Applus, Certio and ATI - and the Autonomous Government of Catalonia submitted observations in support of the validity of the decrees at issue in the main proceedings.
- 27 By decision of 25 April 2012, the High Court of Justice of Catalonia upheld that action and annulled, first, the provisions of Decree 30/2010 which govern the scheme for the authorisation of the operators of vehicle roadworthiness test centres ('the operators') and, secondly, Decree 45/2010 in its entirety, on the ground that that scheme was contrary to Law 17/2009 on access to service activities and the exercise thereof (*Ley 17/2009 sobre el libre acceso a las actividades de servicios y su ejercicio*), of 23 November 2009, which transposes the Services Directive into Spanish law.
- 28 Itevelesa, Applus, Certio and ATI appealed to the Supreme Court against that decision. That court upheld the request of the Autonomous Government of Catalonia to be regarded as an interested party in the proceedings as defendant.
- 29 In the context of those appeals, the referring court has doubts concerning the applicability of the Services Directive to vehicle roadworthiness testing, since Article 2(2)(d) of that directive could, in its opinion, be interpreted in two different ways. According to one interpretation, the test facilities are connected with road safety and thereby constitute an element of the common transport policy. According to a second interpretation, the vehicle roadworthiness testing services, which are provided by commercial undertakings in return for remuneration paid by the user, amount to certification or testing and reviewing services which, in accordance with recital 33 in the preamble to that directive, fall within its scope of application.
- 30 Moreover, the referring court is unsure whether the operators' power to take vehicles off the road is one of the 'activities which are connected with the exercise of official authority', within the meaning of Article 2(2)(i) of the Services Directive.
- 31 That court also questions the relationship between that directive and Directive 2009/40 for the purpose of determining whether access to the roadworthiness testing activities may be subject to an authorisation scheme. In this regard, it refers to the judgment in *Commission v Portugal* (C-438/08, EU:C:2009:651), in which the Court held that Directive 2009/40 did not contain any provisions relating to access to roadworthiness testing activities.
- 32 Finally, the referring court has doubts concerning the obligation on operators, in the context of the authorisation scheme established by the national legislation, to comply with the territorial plan which, for reasons connected with the need to ensure appropriate territorial cover, the quality of the service and competition between operators, limits the number of roadworthiness testing centres on the basis of two criteria arising, first, from the requirement that there be a minimum distance between the centres of a single undertaking or group of undertakings and, secondly, from the prohibition on holding a market share in excess of 50%. In this regard, the Catalan competition authority took the view that those criteria were not justified by overriding reasons of general interest and that that territorial plan unjustifiably limited competition by restricting the market access of new operators.
- 33 It is on that basis that the Tribunal Supremo (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- (1) Does Article 2(2)(d) of the Services Directive exclude vehicle roadworthiness tests from the scope of the directive where national legislation provides that these are to be carried out by private commercial entities under the supervision of the authorities of a Member State?
- (2) If the previous question is answered in the negative (and vehicle roadworthiness tests do, in principle, fall within the scope of the Services Directive), are the grounds for exclusion referred to in Article 2(2)(i) of that directive applicable due to the fact that the private entities providing

the service are empowered, as a precautionary measure, to order that vehicles found to have safety defects such that they would represent an imminent danger if driven, should be taken off the road?

- (3) If the Services Directive applies to vehicle roadworthiness tests, does that directive, when interpreted in conjunction with Article 2 of Directive 2009/40, mean that it is permissible to make such activities subject to prior administrative authorisation in every case? Does what is said in paragraph 26 of the judgment in *Commission v Portugal* (C-438/08, EU:C:2009:651) have any bearing on the reply to this question?
- (4) Is it compatible with Articles 10 and 14 of the Services Directive or, if that directive is not applicable, Article 49 TFEU, for national legislation to make the number of licences for roadworthiness testing centres subject to a local plan which justifies the quantitative restriction on the grounds of ensuring adequate local coverage, ensuring the quality of the service and encouraging competition between operators and, to that end, includes factors relating to economic planning?

Consideration of the questions referred

The jurisdiction of the Court

- 34 Applus and ATI contest the admissibility of the request for a preliminary ruling on the ground that the dispute in the main proceedings does not have any cross-border elements and relates to a purely internal situation.
- 35 In that regard, it should be recalled that national legislation such as that at issue in the main proceedings — which, according to its wording, applies indiscriminately to Spanish nationals and to nationals of other Member States — is, generally, capable of falling within the scope of the provisions relating to the fundamental freedoms established by the TFEU only to the extent to which it applies to situations connected with trade between the Member States (see, to that effect, judgment in *Sokoll-Seebacher*, C-367/12, EU:C:2014:68, paragraph 10 and the case-law cited).
- 36 However, it is by no means inconceivable, in the present case, that undertakings established in Member States other than the Kingdom of Spain were or are interested in offering vehicle roadworthiness testing services in the latter Member State.
- 37 In those circumstances, the request for a preliminary ruling is admissible.

Substance

The first question

- 38 By its first question, the referring court seeks to establish whether the Services Directive is applicable to vehicle roadworthiness testing activities.
- 39 It should be noted at the outset that, according to Article 2(2)(d) of that directive, the latter does not apply to ‘services in the field of transport, including port services, falling within the scope of Title [VI] of the [TFEU]’.
- 40 Since the concept of ‘services in the field of transport’, within the meaning of that provision, is not expressly defined by the Services Directive, it is necessary, therefore, to define its scope.

- 41 In the first place, with regard to the wording of Article 2(2)(d) of the Services Directive, it should be noted that the terms used by that provision in all of its language versions, with the exception of that in German, namely ‘services in the field of transport’, have a wider scope than that of the expression ‘transport services’, as it is used in recital 21 in the preamble to that directive to designate ‘urban transport, taxis and ambulances as well as port services’.
- 42 It should be noted, in regard to this linguistic divergence, that, according to settled case-law, the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in that regard. The provisions of EU law must be interpreted and applied in a uniform manner, in the light of the versions established in all the languages of the European Union. Where there is a divergence between the various language versions of a provision of EU law, the provision in question must be interpreted by reference to the general scheme and the purpose of the rules of which it forms part (see judgment in *Kurcumis Metal*, C-558/11, EU:C:2012:721, paragraph 48 and the case-law cited).
- 43 As has been indicated in paragraph 41 of the present judgment, it must be held that all the language versions of Article 2(2)(d) of the Services Directive, with the exception of the German-language version, expressly use the terms ‘services in the field of transport’, which are to apply. The general scheme and purpose of that provision corroborate that conclusion.
- 44 In that regard, it is apparent from the documents preparatory to the adoption of the Services Directive that the exclusion relating to ‘services in the field of transport’ was intentionally drafted in terms designed to correspond to the wording of Article 51 EC, now Article 58 TFEU, paragraph 1 of which states that the ‘freedom to provide services in the field of transport shall be governed by the provisions of the Title relating to transport’.
- 45 The use of the terms ‘services in the field of transport’ thus demonstrates the intention of the EU legislature not to restrict the exclusion set out in Article 2(2)(d) of the Services Directive merely to means of transport in themselves.
- 46 It is therefore necessary to interpret that exclusion as covering, as the Advocate General has stated in point 28 of his Opinion, not only any physical act of moving persons or goods from one place to another by means of a vehicle, aircraft or waterborne vessel, but also any service inherently linked to such an act.
- 47 Roadworthiness tests for motor vehicles are, admittedly, ancillary to the transport service. However, such tests take place as a pre-condition, indispensable to the exercise of the main activity of transport, as is clear from the road-safety objective underlying roadworthiness tests for motor vehicles.
- 48 It should be noted, in the second place, that that interpretation is supported by the purpose of Directive 2009/40 on roadworthiness tests for motor vehicles which, even though, as was held by the Court in the judgment in *Commission v Portugal* (C-438/08, EU:C:2009:651, paragraph 26), it does not contain any provisions on the rules relating to access to the activity of roadworthiness testing, governs the contents of that activity and seeks expressly, as is stated in recital 2 in the preamble thereto, to guarantee road safety. Such a purpose also follows explicitly from recitals 3 and 43 in the preamble to Directive 2014/45, which succeeded Directive 2009/40.
- 49 In that regard, it should be noted that Directives 2009/40 and 2014/45 were adopted on the basis of Article 71 EC and Article 91 TFEU respectively, both of those provisions being included respectively in the EC Treaty and the TFEU under the Title ‘Transport’ and constituting the legal basis expressly authorising the EU legislature to lay down ‘measures to improve transport safety’. It is clear from the documents preparatory to the adoption of the Services Directive that the EU legislature intended that the services governed by the provisions adopted on the basis of Article 71 EC were to be excluded from the scope of application of that directive.

- 50 Consequently, vehicle roadworthiness tests must be understood as being ‘services in the field of transport’, within the meaning of Article 2(2)(d) of the Services Directive.
- 51 In so far as the referring court maintains that those activities are related to certification or testing activities, it must be held that the fact that the latter are, in accordance with recital 33 in the preamble to the Services Directive, covered by that directive is without prejudice to the general exclusion of services in the field of transport from the scope of application of that directive, as was stated by the Advocate General in point 32 of his Opinion.
- 52 It must therefore be held that the Services Directive is not applicable to the activity of vehicle roadworthiness testing centres, which, in so far as it concerns services in the field of transport, is also, in accordance with Article 58(1) TFEU, not subject to the provisions of the TFEU on the freedom to provide services.
- 53 In those circumstances, the national legislation at issue in the main proceedings has to be assessed in the light of the provisions of the TFEU on freedom of establishment, which are applicable directly to transport, and not on the basis of the Title of that Treaty concerning transport (see, to that effect, judgment in *Yellow Cab Verkehrsbetrieb*, C-338/09, EU:C:2010:814, paragraph 33).
- 54 In the light of the foregoing, the answer to the first question is that Article 2(2)(d) of the Services Directive must be interpreted as meaning that vehicle roadworthiness testing activities are excluded from the scope of application of that directive.

The second question

- 55 By its second question, the referring court asks the Court whether the first paragraph of Article 51 TFEU must be interpreted as meaning that the activities of vehicle roadworthiness testing centres, such as those covered by the legislation applicable in Catalonia, are connected with the exercise of official authority within the meaning of that provision, in the light of the power to take vehicles off the road which is enjoyed by the operators of those centres in cases where vehicles display, during the control, safety defects which create an imminent danger.
- 56 It should be noted at the outset that the Court has already held, with regard to the activities of vehicle inspection centres carried out by private bodies in Portugal, that the decision whether or not to certify roadworthiness lacked the decision-making independence inherent in the exercise of public authority powers and was taken in the context of State supervision (see judgment in *Commission v Portugal*, C-438/08, EU:C:2009:651, paragraph 41). Moreover, the Court has held that those bodies do not, in connection with their activities, have any power of coercion, as the right to impose penalties for failure to comply with the rules on vehicle inspection belongs to the police and judicial authorities (see judgment in *Commission v Portugal*, C-438/08, EU:C:2009:651, paragraph 44).
- 57 In the present case, it should be noted, first, that Article 2 of Directive 2009/40 expressly provides that, where Member States choose to entrust private bodies with roadworthiness testing activities, those bodies must be directly supervised by the State.
- 58 That State supervision was specifically established by the national legislation at issue, Article 79(1)(c) of Decree 30/2010 stating that the decision to take vehicles off the road may be adopted only ‘in the situations set out in the applicable legislation’ and ‘in accordance with the instructions and protocols adopted by the Industrial Safety Agency of Catalonia’.
- 59 Secondly, it should be noted, having regard to the information supplied by the referring court in response to a request for clarification put to it by the Court under Article 101 of its Rules of Procedure, that the owner of a vehicle which has been taken off the road has the right to lodge a

complaint with a technical adviser, who is an official of the administration responsible for supervision and control of roadworthiness testing centres, and that that adviser may amend the decision to take the vehicle off the road. Moreover, in the event of an objection by the owner of the vehicle to its being taken off the road, the authorities of the Autonomous Government of Catalonia competent for traffic and policing are alone entitled to adopt physically coercive measures.

- 60 The power to take vehicles off the road enjoyed by the operators of roadworthiness test centres in cases where they identify defects entailing imminent danger is thus subject to supervision by the competent authorities and is not coupled with any physically coercive powers. Consequently, that power cannot be regarded as being directly and specifically connected, in itself, with the exercise of official authority.
- 61 It follows from all of the foregoing that the first paragraph of Article 51 TFEU must be interpreted as meaning that the activities of vehicle roadworthiness testing centres, such as those covered by the legislation at issue in the main proceedings, are not connected with the exercise of official authority within the meaning of that provision, notwithstanding the fact that the operators of those centres have the power to take vehicles off the road in cases where vehicles display, during the control, safety defects entailing an imminent danger.

The third and fourth questions

- 62 By its third and fourth questions, which it is appropriate to consider together, the referring court seeks to establish whether Article 49 TFEU precludes national legislation, such as that at issue in the main proceedings, which reserves the activity of vehicle roadworthiness testing solely to operators with prior administrative authorisation, the issue of which is subject to compliance, by those operators, with a territorial plan containing conditions relating to minimum permitted distances and maximum market share.
- 63 In the first place, with regard to the obligation to obtain prior administrative authorisation in order to carry out vehicle inspection activities, the Court has already had occasion to point out that Directive 2009/40 does not contain any provision concerning the conditions governing access to that activity (see, to that effect, judgment in *Commission v Portugal*, C-438/08, EU:C:2009:651, paragraph 26).
- 64 In the absence of harmonisation in that regard, the Member States remain competent to define such conditions but are, however, required to exercise their powers in this area in a manner which respects the basic freedoms guaranteed by the TFEU (see, to that effect, judgment in *Nasiopoulos*, C-575/11, EU:C:2013:430, paragraph 20 and the case-law cited).
- 65 In the present case, it must be noted that Article 2 of Directive 2009/40 expressly confirms that the Member States are so competent by stating that the roadworthiness tests may be carried out by private bodies or establishments, designated by the State, entrusted with the task and acting under its supervision.
- 66 Consequently, although EU law does not preclude a Member State from making roadworthiness tests subject to the issue of prior authorisation, the fact none the less remains that such an authorisation scheme must, as has been stated in paragraph 64 of the present judgment, respect EU law and in particular Article 49 TFEU.
- 67 It should be noted that, according to the Court's settled case-law, Article 49 TFEU precludes restrictions on the freedom of establishment, that is to say, any national measure which is liable to hinder or render less attractive the exercise by EU nationals of the freedom of establishment guaranteed by the TFEU. The notion of restriction covers measures taken by a Member State which,

although applicable without distinction, affect access to the market for undertakings from other Member States and thereby hinder trade within the EU (see, to that effect, judgment in *SOA Nazionale Costruttori*, C-327/12, EU:C:2013:827, paragraph 45 and the case-law cited).

- 68 In the present case, the national legislation at issue in the main proceedings makes the issue of prior administrative authorisation subject to conditions under which the centres of a single undertaking or group of undertakings must comply with certain minimum distances and must not hold a market share in excess of 50%.
- 69 It must therefore be concluded that, in the light of the case-law referred to in paragraph 67 of the present judgment, such rules are liable to hinder or render less attractive the exercise by operators from other Member States of their activities on the territory of Catalonia through the medium of a permanent establishment.
- 70 Consequently, that legislation constitutes a restriction on the freedom of establishment for the purposes of Article 49 TFEU.
- 71 In those circumstances, it is necessary, in the second place, to examine whether the provisions at issue in the main proceedings can be objectively justified.
- 72 In accordance with the Court's settled case-law, restrictions on the freedom of establishment which are applicable without discrimination on grounds of nationality may be justified by overriding reasons relating to the general interest, provided that the restrictions are appropriate for securing attainment of the objective pursued and do not go beyond what is necessary for attaining that objective (see, to that effect, judgment in *Ottica New Line di Accardi Vincenzo*, C-539/11, EU:C:2013:591, paragraph 33 and the case-law cited).
- 73 In the main proceedings, it should be noted, first, that the national legislation at issue applies without distinction to all operators.
- 74 With regard, secondly, to the objectives pursued by that legislation, the Autonomous Government of Catalonia and the Spanish Government contend that that legislation, by allowing an appropriate territorial cover, by guaranteeing the quality of the service and by promoting competition, seeks, as is expressly clear from the preamble to Decree 45/2010, both to protect consumers and to ensure road safety. According to the Court's settled case-law, both consumer protection (see, to that effect, judgments in *Attanasio Group*, C-384/08, EU:C:2010:133, paragraph 50, and in *Essent and Others*, C-105/12 to C-107/12, EU:C:2013:677, paragraph 58) and the need to ensure road safety (judgment in *Commission v Portugal*, C-438/08, EU:C:2009:651, paragraph 48 and the case-law cited) constitute overriding reasons in the public interest which are capable of justifying restrictions on freedom of establishment.
- 75 Consequently, it is necessary to establish, third, whether the restrictive conditions at issue in the main proceedings, as set out in paragraph 68 of the present judgment, are appropriate for ensuring the achievement of the objectives pursued and do not go beyond what is necessary in order to attain those objectives.
- 76 It is necessary in particular to be satisfied that the way in which the national legislation at issue in the main proceedings pursues those objectives is coherent. According to the Court's case-law, the national legislation as a whole and the various relevant rules will be appropriate for ensuring attainment of the objective relied upon only if they genuinely reflect a concern to attain that objective in a consistent and systematic manner (see, to that effect, judgment in *Ottica New Line di Accardi Vincenzo*, C-539/11, EU:C:2013:591, paragraph 47 and the case-law cited).

- 77 In that regard, it is ultimately for the referring court, which alone has jurisdiction to assess the facts and interpret the national legislation, to determine whether and to what extent such legislation satisfies those conditions. The Court, however, 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 referring court to give judgment (judgment in *Sokoll-Seebacher*, C-367/12, EU:C:2014:68, paragraph 40 and the case-law cited).
- 78 In the present case, the first condition, which, as is clear from Article 75(1) of Decree 30/2010, consists in imposing compliance with minimum distances between roadworthiness testing centres, has as its objective, as is stated in the preamble to Decree 45/2010, to encourage operators to establish themselves in remote areas of the territory. However, by requiring compliance with minimum distances between centres belonging not to competing undertakings but to a single undertaking or group of undertakings, it is by no means established by the information submitted to the Court that such a condition allows, in itself, such an objective to be achieved, particularly since the Autonomous Government of Catalonia did not, during the hearing, indicate that those operators are obliged to establish themselves in those remote areas.
- 79 With regard to the second condition, prohibiting operators from holding a market share in excess of 50% on the roadworthiness testing market, it is apparent from the national legislation at issue in the main proceedings that that condition is intended to guarantee the quality of roadworthiness testing and, consequently, to ensure consumer protection.
- 80 However, in so far as such a condition is liable to affect the prior activity of the roadworthiness testing centres in Catalonia and the structure of the market, it therefore does not immediately appear to contribute to consumer protection.
- 81 In that regard, it should be noted, in relation to the objective connected with the quality of the service, that the content of roadworthiness testing is, as has been stated by the Advocate General in point 75 of his Opinion, harmonised at EU level.
- 82 Article 1(2) of Directive 2009/40, read in conjunction with Annexes I and II thereto, provides for a precise categorisation of the vehicles to be tested, the frequency of the testing and the items of testing which are obligatory, in order to ensure, as is in essence stated in recital 26 in the preamble to that directive, a high quality of roadworthiness testing within the European Union. That categorisation constitutes, according to recital 5 in the preamble to that directive, standards and methods which should be taken into account in the context of the review of proportionality.
- 83 It is consequently for the referring court to determine whether the two conditions established by the legislation at issue in the main proceedings for authorisation of the exercise of roadworthiness testing are appropriate for the purposes of guaranteeing the objectives of consumer protection and road safety in a consistent and systematic manner.
- 84 In the light of the foregoing considerations, the answer to the third and fourth questions is that Article 49 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which makes the authorisation for an undertaking or group of undertakings to open a vehicle roadworthiness testing centre subject to the condition, first, that there is a minimum distance between that centre and centres belonging to that undertaking or group of undertakings which are already authorised and, secondly, that that undertaking or group of undertakings will, if such an authorisation is granted, not hold a market share in excess of 50%, unless it is established that that condition is genuinely appropriate in order to achieve the objectives of consumer protection and road safety and does not go beyond what is necessary for that purpose, these being matters for the referring court to determine.

Costs

⁸⁵ 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 (Second 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 vehicle roadworthiness testing activities are excluded from the scope of application of that directive.**
2. **The first paragraph of Article 51 TFEU must be interpreted as meaning that the activities of vehicle roadworthiness testing centres, such as those covered by the legislation at issue in the main proceedings, are not connected with the exercise of official authority within the meaning of that provision, notwithstanding the fact that the operators of those centres have the power to take vehicles off the road in cases where vehicles display, during the control, safety defects creating an imminent danger.**
3. **Article 49 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which makes the authorisation for an undertaking or group of undertakings to open a vehicle roadworthiness testing centre subject to the condition, first, that there is a minimum distance between that centre and centres belonging to that undertaking or group of undertakings which are already authorised and, secondly, that that undertaking or group of undertakings will, if such an authorisation is granted, not hold a market share in excess of 50%, unless it is established that that condition is genuinely appropriate in order to achieve the objectives of consumer protection and road safety and does not go beyond what is necessary for that purpose, these being matters for the referring court to determine.**

[Signatures]