



Press and Information

Court of Justice of the European Union

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Judgment in Case C-674/20
Airbnb Ireland

Belgian regional legislation requiring providers of property intermediation services and, in particular, operators of an electronic accommodation platform to transmit to the tax authorities certain particulars of tourist accommodation transactions is not contrary to EU law

A provision of regional legislation requiring an operator to provide certain particulars concerning tourist accommodation establishments is of a fiscal nature and, on that basis, is excluded from the scope of the directive on electronic commerce

Airbnb Ireland is an Irish company which, by means of an electronic platform, inter alia, connects, for remuneration, potential guests with professional or non-professional hosts offering accommodation services.

In accordance with an obligation laid down in an order of the Brussels Capital Region (Belgium) concerning tax on tourist accommodation establishments, Airbnb Ireland has been requested to provide the regional tax authority with information on tourist transactions carried out in 2017.

However, taking the view that the transmission of that information contravenes EU law and, in particular, the principle of the freedom to provide services, Airbnb Ireland brought an action before the Constitutional Court (Belgium) for the annulment of the relevant provision of the contested order imposing that obligation to provide information.

The Constitutional Court asks the Court of Justice whether that provision, as applicable to operators of an electronic accommodation services platform, constitutes a fiscal provision which is expressly excluded from the scope of Directive 2000/31¹. In addition, the national court asks the Court of Justice whether that provision, in so far as it lays down an obligation to transmit to the tax authority particulars of tourist accommodation transactions, is capable of hindering the free movement of services.

By today's judgment, the Court observes, in the first place, that the Directive on electronic commerce was adopted on the basis of Treaty provisions which exclude from their scope fiscal rules, the adoption of those rules falling within other provisions of those Treaties.

The Court also notes that the recitals of the Directive on electronic commerce expressly state that taxation is excluded from its scope.

According to the Court, even though property intermediation services such as those provided by Airbnb Ireland are information society services under the Directive on electronic commerce, the relevant provision of the contested order as applicable to operators of an electronic platform which is intended to provide such services is indissociable as regards its content from that order which in itself constitutes tax legislation. Consequently, the relevant provision falls within the 'field of taxation' which is expressly excluded from the scope of the Directive on electronic commerce.

¹ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce") (OJ 2000 L 178, p. 1).

As regards, in the second place, the compatibility of the relevant provision of the contested order with the prohibition against restricting the freedom to provide services within the European Union, the Court holds that the obligation to provide certain information on tourist accommodation transactions concerns all providers of property intermediation services irrespective of the place of establishment of those providers and irrespective of the way in which they provide those services.

The Court infers from this that the relevant provision of the contested order is not discriminatory but merely requires the providers concerned to retain the particulars relating to tourist accommodation transactions and to transmit them to the regional tax authority, at its request, for the purposes of the accurate levying of the tax relating to the rental of the property in question.

As regards, in particular, the argument that property intermediation services such as those provided by Airbnb Ireland would be more likely to be affected by the relevant provision of the contested order, the Court observes that a greater impact is merely a reflection of a larger number of transactions made by those intermediaries and of their market share. It states that measures, the only effect of which is to create additional costs for a particular service and which affect the provision of services in the same way irrespective of the provider's Member State are not likely to hinder the free movement of services.

According to the Court, to the extent that it covers all providers of property intermediation services, irrespective of their place of establishment and the manner in which they mediate, the relevant provision of the contested order is not contrary to the freedom to provide services in the European Union.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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