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Provisional text

JUDGMENT OF THE COURT (Second Chamber)

9 November 2023 (*)

(Reference for a preliminary ruling – Directive 2000/31/EC – Information society services – Article 3(1) – Principle of control in the home Member State – Article 3(4) – Derogation from the principle of free movement of information society services – Concept of 'measures taken against a given information society service' – Article 3(5) – Possibility of a posteriori notification of measures restricting the free movement of information society services in urgent cases – Failure to provide notification – Enforceability of those measures – Legislation of a Member State imposing on providers of communication platforms, whether established on its territory or not, a set of obligations relating to the monitoring and notification of allegedly unlawful content – Directive 2010/13/EU – Audiovisual media services – Video-sharing platform service)

In Case C-376/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgerichtshof (Supreme Administrative Court, Austria), made by decision of 24 May 2022, received at the Court on 10 June 2022, in the proceedings

Google Ireland Limited,

Meta Platforms Ireland Limited,

Tik Tok Technology Limited

v

Kommunikationsbehörde Austria (KommAustria),

intervening party:

Bundesministerin für Frauen, Familie, Integration und Medien im Bundeskanzleramt,

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, F. Biltgen, N. Wahl (Rapporteur), J. Passer and M.L. Arastey Sahún, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Google Ireland Limited and Tik Tok Technology Limited, by L. Feiler, Rechtsanwalt,

– Meta Platforms Ireland Limited, by S. Denk, Rechtsanwalt,

– the Austrian Government, by A. Posch and G. Kunnert, acting as Agents,

– Ireland, by M. Browne, A. Joyce and M. Tierney, acting as Agents, and by D. Fennelly, Barrister-at-Law,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by G. Braun, S.L. Kalėda and P.-J. Loewenthal, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 June 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation, first, of Article 3(4) and (5) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ 2000 L 178, p. 1) and, secondly, of Article 28a(1) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ 2010 L 95, p. 1), as amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 (OJ 2018 L 303, p. 69) (‘Directive 2010/13’).

2 The request has been made in proceedings between Google Ireland Limited, Meta Platforms Ireland Limited and Tik Tok Technology Limited, companies established in Ireland, and the Kommunikationsbehörde Austria (KommAustria) (the Austrian communications regulatory authority) concerning decisions by the latter declaring that those companies are subject to the Bundesgesetz über Maßnahmen zum Schutz der Nutzer auf Kommunikationsplattformen (Kommunikationsplattformen-Gesetz) (Federal Law on measures for the protection of users of communications platforms) (BGBl. I, 151/2020, ‘the KoPl-G’).

Legal context

European Union law

Directive 2000/31

3 Recitals 5, 6, 8, 22 and 24 of Directive 2000/31 state as follows:

‘(5) The development of information society services within the Community is hampered by a number of legal obstacles to the proper functioning of the internal market which make less attractive the exercise of the freedom of establishment and the freedom to provide services; these obstacles arise from divergences in legislation and from the legal uncertainty as to which national rules apply to such services; in the absence of coordination and adjustment of legislation in the relevant areas, obstacles might be justified in the light of the case-law of the Court of Justice of the European Communities; legal uncertainty exists with regard to the extent to which Member States may control services originating from another Member State.

(6) In the light of Community objectives, of Articles 43 and 49 of the Treaty and of secondary Community law, these obstacles should be eliminated by coordinating certain national laws and by clarifying certain legal concepts at Community level to the extent necessary for the proper functioning of the internal market; by dealing only with certain specific matters which give rise to problems for the internal market, this Directive is fully consistent with the need to respect the principle of subsidiarity as set out in Article 5 of the Treaty.

…

(8) The objective of this Directive is to create a legal framework to ensure the free movement of information society services between Member States and not to harmonise the field of criminal law as such.

…

(22) Information society services should be supervised at the source of the activity, in order to ensure an effective protection of public interest objectives; to that end, it is necessary to ensure that the competent authority provides such protection not only for the citizens of its own country but for all Community citizens; in order to improve mutual trust between Member States, it is essential to state clearly this responsibility on the part of the Member State where the services originate; moreover, in order to effectively guarantee freedom to provide services and legal certainty for suppliers and recipients of services, such information society services should in principle be subject to the law of the Member State in which the service provider is established.

…

(24) In the context of this Directive, notwithstanding the rule on the control at source of information society services, it is legitimate under the conditions established in this Directive for Member States to take measures to restrict the free movement of information society services.’

4 Article 1(1) of that directive provides:

‘This Directive seeks to contribute to the proper functioning of the internal market by ensuring the free movement of information society services between the Member States.’

5 Article 2 of that directive provides:

‘For the purpose of this Directive, the following terms shall bear the following meanings:

(a) “information society services”: services within the meaning of Article 1(2) of Directive 98/34/EC [of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1998 L 204, p. 37)] as amended by Directive 98/48/EC [of the European Parliament and of the Council of 20 July 1998 (OJ 1998 L 217, p. 18)];

…

(h) “coordinated field”: requirements laid down in Member States’ legal systems applicable to information society service providers or information society services, regardless of whether they are of a general nature or specifically designed for them.

…’

6 Article 3 of that directive, entitled ‘Internal market’, is worded as follows:

‘1. Each Member State shall ensure that the information society services provided by a service provider established on its territory comply with the national provisions applicable in the Member State in question which fall within the coordinated field.

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

…

4. Member States may take measures to derogate from paragraph 2 in respect of a given information society service if the following conditions are fulfilled:

(a) the measures shall be:

(i) necessary for one of the following reasons:

– public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons,

– the protection of public health,

– public security, including the safeguarding of national security and defence,

– the protection of consumers, including investors;

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

(iii) proportionate to those objectives;

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

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

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

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

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

Directive 2010/13

7 Article 1 of Directive 2010/13 states:

'1. For the purposes of this Directive, the following definitions shall apply:

…

(aa) "video-sharing platform service" means a service as defined by Articles 56 and 57 [TFEU], where the principal purpose of the service or of a dissociable section thereof or an essential functionality of the service is devoted to providing programmes, user-generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, by means of electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC [of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33)] and the organisation of which is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing;

…'

8 Article 28a(1) and (5) of that directive provides:

'1. For the purposes of this Directive, a video-sharing platform provider established on the territory of a Member State within the meaning of Article 3(1) of Directive [2000/31] shall be under the jurisdiction of that Member State.

…

5. For the purposes of this Directive, Article 3 and Articles 12 to 15 of Directive [2000/31] shall apply to video-sharing platform providers deemed to be established in a Member State in accordance with paragraph 2 of this Article.'

Directive (EU) 2015/1535

9 Article 1(1)(e) to (g) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ 2015 L 241, p. 1), sets out the following definitions:

‘(e) “rule on services” means a requirement of a general nature relating to the taking-up and pursuit of service activities within the meaning of point (b), in particular provisions concerning the service provider, the services and the recipient of services, excluding any rules which are not specifically aimed at the services defined in that point.

…

(f) “technical regulation” means technical specifications and other requirements or rules on services, including the relevant administrative provisions, the observance of which is compulsory, de jure or de facto, in the case of marketing, provision of a service, establishment of a service operator or use in a Member State or a major part thereof, as well as laws, regulations or administrative provisions of Member States, except those provided for in Article 7, prohibiting the manufacture, importation, marketing or use of a product or prohibiting the provision or use of a service, or establishment as a service provider.

…

(g) “draft technical regulation” means the text of a technical specification or other requirement or of a rule on services, including administrative provisions, formulated with the aim of enacting it or of ultimately having it enacted as a technical regulation, the text being at a stage of preparation at which substantial amendments can still be made.’

10 The first subparagraph of Article 5(1) of that directive provides:

‘Subject to Article 7, Member States shall immediately communicate to the Commission any draft technical regulation, except where it merely transposes the full text of an international or European standard, in which case information regarding the relevant standard shall suffice; they shall also let the Commission have a statement of the grounds which make the enactment of such a technical regulation necessary, where those grounds have not already been made clear in the draft.’

Austrian law

11 Paragraph 1 of the KoPl-G provides:

‘1. This Law serves to promote the responsible and transparent handling and prompt processing of notifications by users relating to the following content on communication platforms.

2. Domestic and foreign service providers which provide communication platforms (Paragraph 2(4)) for economic gain shall fall within the scope of this Law, unless:

(1) the number of registered users with a right of access to the communication platform in Austria was less than an average of 100 000 persons in the preceding calendar year, and

(2) the turnover from the operation of the communication platform in Austria in the preceding calendar year was less than EUR 500 000.

…

4. Service providers of video-sharing platforms (Paragraph 2(12)) are exempt from the obligations laid down in this Law in respect of programmes (Paragraph 2(9)) and videos created by users (Paragraph 2(7)) provided on those platforms.

5. Upon application by a service provider, the supervisory authority shall make a declaration on whether that service provider falls within the scope of this Law.

…'

12 Paragraph 2 of the KoPl-G provides:

'For the purpose of this Law, the following terms shall bear the following meanings:

…

(2) "information society service": a service normally provided for remuneration, at a distance, by electronic means and at the individual request of the recipient of services …, in particular on-line trading of products and services, on-line information provision, on-line advertising, electronic search engines and data retrieval facilities, as well as services enabling information to be transmitted over an electronic network, access to such a network or the storage of information concerning a user …;

(3) "service provider": the natural or legal person who provides a communication platform;

(4) "communication platform": an information society service, the main purpose or an essential function of which is to enable the exchange of information or of representations that have intellectual content, in the form of words, writing, sound or images, between users and a large group of other users by means of mass distribution;

…

(6) "user": any person using a communication platform, whether or not they are registered on that platform;

(7) "user-generated video": a set of moving images with or without sound constituting an individual item, irrespective of its length, that is created by a user and uploaded to a video-sharing platform by that user or any other user;

…

(9) "programme": a single self-contained item of audiovisual media service consisting, irrespective of its length, of a set of moving images with or without sound, as part of a schedule or catalogue established by a media service provider; that concept includes feature films, music videos, sports events, sitcoms, documentaries, news programmes, arts and culture programmes, children's programmes and original drama;

…

(12) “video-sharing platform service”: a service as defined by Articles 56 and 57 [TFEU], where the principal purpose of the service or of a dissociable section thereof or an essential functionality of the service is devoted to providing programmes (point 9), user-generated videos (point 7), or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, by means of electronic communications networks within the meaning of point 1 of Article 2 of [Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ 2018 L 321, p. 36)] and the organisation of which is determined by the video-sharing platform provider (including by automatic means or algorithms, in particular by displaying, tagging and sequencing).’

13 Paragraph 3 of the KoPl-G is worded as follows:

‘1. Service providers shall establish an effective and transparent procedure for handling and processing notifications relating to allegedly illegal content available on the communication platform.

…

4. In addition, service providers shall ensure that an effective and transparent procedure for reviewing their decisions to block or remove notified content is in place (subparagraph 3(1)). …

…’

14 According to Paragraph 4(1) of the KoPl-G:

‘Service providers shall be obliged to draw up an annual, or, in the case of communication platforms with over one million registered users, a six-monthly, report on the handling of notifications relating to allegedly illegal content. Service providers shall submit their report to the supervisory authority no later than one month after the end of the period covered by that report and shall simultaneously make the report permanently and easily accessible on their own website.’

15 Paragraph 5 of the KoPl-G provides:

‘1. Service providers shall appoint a person who fulfils the requirements of Paragraph 9(4) of the Verwaltungsstrafgesetz 1991 – VStG (Law on administrative penalties 1991, BGBl., 52/1991). That person shall:

(1) ensure compliance with the provisions of this Law,

(2) have authority to issue orders so as to make it possible to ensure compliance with the provisions of this Law,

(3) have the necessary German language knowledge to be able to cooperate with administrative and judicial authorities,

(4) have the resources required to carry out his or her tasks.

…

4. The service provider shall appoint a natural or legal person as its representative responsible for the service of administrative and judicial documents. Subparagraph 1(3), the first sentence of subparagraph 2 and subparagraph 3 shall apply.

5. The regulatory authority shall be informed without delay of the identity of the trustee in charge and the trustee responsible for notifications.'

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

16 The appellants in the main proceedings, Google Ireland, Meta Platforms Ireland and Tik Tok Technology are companies established in Ireland which provide, inter alia in Austria, communication platform services.

17 Following the entry into force of the KoPl-G in 2021, they asked KommAustria to declare, under Paragraph 1(5) of that law, that they did not fall within its scope.

18 By three decisions dated 26 March, 31 March and 22 April 2021, that authority declared that the appellants in the main proceedings fell within the scope of the KoPl-G on the ground that they each provided a 'communication platform' service within the meaning of Paragraph 2(4) of that law.

19 The appellants in the main proceedings brought actions against those decisions before the Bundesverwaltungsgericht (Federal Administrative Court, Austria), which dismissed those actions as unfounded.

20 In support of the appeals on a point of law brought by the appellants in the main proceedings against those dismissal decisions before the Verwaltungsgerichtshof (Supreme Administrative Court, Austria), the referring court, the appellants in the main proceedings submit that, since Ireland and the European Commission were not informed of the adoption of the KoPl-G under Article 3(4)(b) and Article 3(5) of Directive 2000/31, that law cannot be relied on against them. Moreover, the obligations introduced by that law would be disproportionate and incompatible with the free movement of services and with the 'country of origin principle' provided for by Directive 2000/31 and, as regards video-sharing platform services, by Directive 2010/13.

21 In that regard, first, that court states that the appeals on a point of law raise the question whether the KoPl-G or the obligations which it imposes on service providers constitute measures taken in respect of a 'given information society service' within the meaning of Article 3(4) of Directive 2000/31. The referring court has doubts in that respect in so far as the provisions of the KoPl-G are general and abstract and impose general obligations on providers of information society services which are applicable in the absence of any individual and specific act.

22 Secondly, assuming that the conditions laid down in Article 3(4)(a) of Directive 2000/31 are satisfied, that court asks how Article 3(5) of that directive is to be interpreted in order to determine whether the KoPl-G may be relied on against the appellants in the main proceedings even though notice of it has not been given.

23 Thirdly, still assuming that the obligations imposed by the KoPl-G on providers of communication platform services are to be classified as measures taken in respect of a 'given information society service' within the meaning of Article 3(4) of Directive 2000/31, the same court wonders whether those obligations, subject to fulfilment of the conditions laid down in Article 3(4)(a) of that directive, apply, in principle, to the services provided by the appellants in the

main proceedings as providers of communication platform services. If so, it would then be necessary to determine, as regards providers of video-sharing platform services within the meaning of Article 1(aa) of Directive 2010/13, whether the principle of control in the home Member State, which also applies in the context of that directive by virtue of Article 28a(1) thereof, which makes reference to Article 3 of Directive 2000/31, precludes the obligations imposed by the KoPl-G on service providers established on the territory of another Member State from applying to the content of those platforms where it does not consist of programmes or videos created by users.

24 In those circumstances the Verwaltungsgerichtshof (Supreme Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Article 3(4)(a)(ii) of Directive [2000/31] be interpreted as meaning that a measure taken against a “given information society service” can also be understood as a legislative measure relating to a general category of [given] information society services (such as communications platforms), or does the existence of a measure within the meaning of that provision require that a decision be taken in relation to a specific individual case (for example, concerning a communications platform identified by name)?

(2) Must Article 3(5) of Directive 2000/31 be interpreted as meaning that failure to notify the measure taken to the Commission and the Member State in which the platform is established, which, under that provision, must be notified “in the shortest possible time” (*ex post facto*) in the case of urgency, means that – following the expiry of a sufficient period for the (*ex post facto*) notification – that measure must not be applied to a given service?

(3) Does Article 28a(1) of [Directive 2010/13] preclude the application of a measure as provided for in Article 3(4) of Directive 2000/31 where it does not relate to broadcasts and user-generated videos made available on a video-sharing platform?’

Consideration of the questions referred

The first question

25 By its first question the referring court asks, in essence, whether Article 3(4) of Directive 2000/31 must be interpreted as meaning that general and abstract measures aimed at a category of given information society services described in general terms and applying without distinction to any provider of that category of services fall within the concept of measures taken against a ‘given information society service’ within the meaning of that provision.

26 In that regard, it should be borne in mind that, for the purposes of interpreting a provision of EU law the terms of which do not expressly refer to national law, it is necessary, in accordance with the settled case-law of the Court, to consider not only its wording but also its context and the objectives pursued by the rules of which it is part (judgment of 15 September 2022, *Fédération des entreprises de la beauté*, C-4/21, EU:C:2022:681, paragraph 47 and the case-law cited).

27 In the first place, as regards the wording of Article 3(4) of Directive 2000/31, it should be noted that that provision refers to a ‘given information society service’. The use of the singular and the adjective ‘given’ tends to indicate that the service referred to must be understood as an individualised service provided by one or more service providers and that, consequently, Member States cannot adopt, under Article 3(4), general and abstract measures aimed at a category of given

information society services described in general terms and applying without distinction to any provider of that category of services.

28 The fact that the concept of ‘measures’ may include a wide range of measures adopted by the Member States does not call that assessment into question.

29 By using such a broad and general term, the EU legislature has left to the discretion of the Member States the nature and form of the measures which they may adopt under Article 3(4) of Directive 2000/31. However, the use of that term in no way prejudges the substance or material content of those measures.

30 In the second place, the context of that article and, in particular, the procedural requirements laid down in Article 3(4)(b) of Directive 2000/31 corroborate such an interpretation.

31 In that regard, it should be recalled that, under Article 3(4) of that directive, Member States may, in respect of a given information society service falling within the coordinated field, take measures that derogate from the principle of the freedom to provide information society services, subject to two cumulative conditions (judgment of 19 December 2019, *Airbnb Ireland,* C-390/18, EU:C:2019:1112, paragraph 83).

32 Under Article 3(4)(a) of Directive 2000/31, the restrictive measure concerned must be necessary in the interests of public policy, the protection of public health, public security or the protection of consumers; it must be taken against an information society service which actually undermines those objectives or constitutes a serious and grave risk to those objectives and, finally, it must be proportionate to those objectives.

33 Moreover, Article 3(4)(b) of Directive 2000/31 provides that, before taking the measures in question and without prejudice to court proceedings, including preliminary proceedings and acts carried out in the framework of a criminal investigation, the Member State concerned must not only have asked the Member State on whose territory the provider of the service in question is established to take measures and the latter did not take them or they were inadequate, but must also have notified the Commission and that Member State of its intention to take the restrictive measures concerned.

34 The condition set out in the previous paragraph tends to confirm that Member States may not restrict the freedom to provide information society services from other Member States by adopting measures of a general and abstract nature relating to a category, described in general terms, of given information society services.

35 By requiring Member States in which an information society service is provided which intend, as Member States of destination of that service, to adopt measures on the basis of Article 3(4) of Directive 2000/31, to ask the Member State of origin of that service, that is to say the Member State on whose territory the provider of the same service is established, to take measures, that provision presupposes that the providers and, consequently, the Member States concerned can be identified.

36 If Member States were authorised to restrict the free movement of information society services by means of measures of a general and abstract nature applying without distinction to any provider of a category of those services, such identification would be, if not impossible, at least excessively difficult, so that Member States would not be able to comply with such a procedural requirement.

37 Furthermore, as the Advocate General observed in point 68 of his Opinion, if Article 3(4) of Directive 2000/31 were to be understood as including measures of a general and abstract nature which apply without distinction to any provider of a category of information society services, then the prior notification provided for in the second indent of Article 3(4)(b) of that directive would be likely to duplicate that required by Directive 2015/1535.

38 In essence, that directive requires Member States to notify the Commission of any draft technical regulation whose rules on services include requirements of a general nature relating to the taking up and pursuit of information society service activities.

39 In the third place, interpreting the concept of measures taken against a 'given information society service', within the meaning of Article 3(4) of Directive 2000/31, as meaning that Member States may adopt measures of a general and abstract nature applying without distinction to any provider of a category of information society services would call into question the principle of control in the Member State of origin on which that directive is based and the objective of the proper functioning of the internal market pursued by that directive.

40 In that regard, it should be recalled that Article 3 of Directive 2000/31 is a central provision in the scheme and system put in place by that directive, in so far as it enshrines that principle, which is also referred to in recital 22 of that directive, which states that 'information society services should be supervised at the source of the activity'.

41 Under Article 3(1) of Directive 2000/31, each Member State is to ensure that the information society services provided by a service provider established on its territory comply with the national provisions applicable in the Member State in question which fall within the coordinated field. Article 3(2) of that directive states that Member States may not, for reasons falling within the coordinated field, restrict the freedom to provide information society services from another Member State.

42 Directive 2000/31 is thus based on the application of the principles of home Member State control and mutual recognition, so that, within the coordinated field defined in Article 2(h) of that directive, information society services are regulated solely in the Member State on whose territory the providers of those services are established (see, to that effect, judgment of 25 October 2011, *eDate Advertising and Others*, C-509/09 and C-161/10, EU:C:2011:685, paragraphs 56 to 59).

43 Consequently, it is the responsibility of each Member State as the Member State where information society services originate to regulate those services and, on that basis, to protect the general interest objectives referred to in Article 3(4)(a)(i) of Directive 2000/31.

44 Moreover, in accordance with the principle of mutual recognition, it is for each Member State, as the Member State of destination of information society services, not to restrict the free movement of those services by requiring compliance with additional obligations, falling within the coordinated field, which it has adopted.

45 That being so, as is apparent from recital 24 of Directive 2000/31, the EU legislature considered it legitimate, notwithstanding the 'rule on the control at source of information society services', another expression of the principle of control in the Member State of origin referred to in Article 3(1) of that directive, for Member States to be able, under the conditions laid down in that directive, to take measures to restrict the free movement of information society services.

46 Article 3(4) of Directive 2000/31 thus allows, under certain conditions, a Member State in which an information society service is provided to derogate from the principle of free movement of information society services.

47 However, interpreting that provision as authorising Member States to adopt measures of a general and abstract nature applying without distinction to any provider of a category of information society services would call into question the principle of control in the Member State of origin set out in Article 3(1) of Directive 2000/31.

48 The principle of control in the Member State of origin results in a division of regulatory powers between the Member State of origin of an information society service provider and the Member State in which the service concerned is provided, that is to say the Member State of destination.

49 To authorise the second Member State to adopt, under Article 3(4) of Directive 2000/31, measures of a general and abstract nature applying without distinction to any provider of a category of such services, whether established in the latter Member State or not, would encroach on the regulatory powers of the first Member State and would have the effect of subjecting such providers to the legislation of both the home Member State and the Member State or Member States of destination.

50 However, it is clear from recital 22 of Directive 2000/31 that, as has been pointed out in paragraph 40 of this judgment, in the system established by that directive, the EU legislature provided for the supervision of information society services to be carried out at the source of the activity, that is to say, by the Member State in which the service provider is established, with the threefold objective of ensuring effective protection of public interest objectives, improving mutual trust between Member States and effectively guaranteeing freedom to provide services and legal certainty for suppliers and their recipients.

51 Consequently, by calling into question the principle of control in the Member State of origin laid down in Article 3(1) of Directive 2000/31, the interpretation of Article 3(4) set out in paragraph 47 of this judgment would undermine the system and objectives of that directive.

52 As the Commission has pointed out, the possibility of derogating from the principle of free movement of information society services, provided for in Article 3(4) of that directive, was not designed to allow Member States to adopt general and abstract measures aimed at regulating a category of information society service providers as a whole, even though such measures would combat content which seriously undermines the objectives set out in Article 3(4)(a)(i) of that directive.

53 Furthermore, to allow the Member State of destination to adopt general and abstract measures aimed at regulating the provision of information society services by providers not established on its territory would undermine mutual trust between Member States and would be in conflict with the principle of mutual recognition on which Directive 2000/31 is based, as has been recalled in paragraph 42 of this judgment.

54 In addition, still taking a purposive interpretation of Article 3(4) of Directive 2000/31 and of the concept of measures taken against a ‘given information society service’, it follows from Articles 1(1) and 3(2) of that directive, read in the light of recital 8 thereof, that the objective of that directive is to contribute to the proper functioning of the internal market by ensuring the free movement of information society services between Member States.

55 With that in mind, as is clear from recitals 5 and 6 of the same directive, the directive seeks to eliminate legal obstacles to the proper functioning of the internal market, namely obstacles arising from divergences in legislation and from the legal uncertainty as to which national rules apply to such services.

56 However, to allow Member States to adopt, under Article 3(4) of Directive 2000/31, measures of a general and abstract nature aimed at a category of given information society services described in general terms and applying without distinction to any provider of that category of services would ultimately amount to subjecting the service providers concerned to different laws and, consequently, reintroducing the legal obstacles to freedom to provide services which that directive seeks to eliminate.

57 Lastly, it should be recalled that the objective of Directive 2000/31 of ensuring the freedom to provide information society services between Member States is pursued by way of a mechanism for monitoring measures capable of undermining it, which makes it possible for both the Commission and the Member State on whose territory the service provider in question is established to ensure that those measures are necessary in furtherance of overriding reasons in the general interest (judgment of 19 December 2019, *Airbnb Ireland*, C-390/18, EU:C:2019:1112, paragraph 91).

58 However, holding that measures of a general and abstract nature which are aimed at a category of given information society services described in general terms do not fall within the concept of measures taken against a ‘given information society service’, within the meaning of Article 3(4) of Directive 2000/31, does not have the effect of exempting such measures from that monitoring mechanism.

59 On the contrary, the consequence of such an interpretation is that Member States are not, as a matter of principle, authorised to adopt such measures, so that verification that those measures are necessary to satisfy overriding reasons in the general interest is not even required.

60 In the light of all the foregoing considerations, the answer to the first question is that Article 3(4) of Directive 2000/31 must be interpreted as meaning that general and abstract measures aimed at a category of given information society services described in general terms and applying without distinction to any provider of that category of services do not fall within the concept of measures taken against a ‘given information society service’ within the meaning of that provision.

The second and third questions

61 It is apparent from the order for reference, as summarised in paragraphs 22 and 23 of this judgment, that the referring court asks the second and third questions only if the Court considers that it must answer the first question in the affirmative.

62 However, as has been concluded in paragraph 60 of this judgment, the answer to the first question is in the negative.

63 It follows that, in view of the answer given to the first question, it is not necessary to answer the second and third questions.

Costs

64 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 (Second Chamber) hereby rules:

Article 3(4) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market,

must be interpreted as meaning that general and abstract measures aimed at a category of given information society services described in general terms and applying without distinction to any provider of that category of services do not fall within the concept of measures taken against a 'given information society service' within the meaning of that provision.

[Signatures]

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* Language of the case: German.