

# Newsletter

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## **THE EUROPEAN COURT OF JUSTICE: UBER IS A TRANSPORT SERVICE**

The European Court of Justice's sentence dated 20<sup>th</sup> December 2017 relative to the case n°C-434/15 (the “**Decision**”) is destined to represent an important turning point for the legal framework of the online platforms marketplace, based on a model that is not limited to the sole trading between supply and demand for the use of a particular service, but goes so far as to provide the same service directly through the management of work and goods.

The Decision examines the “peer to peer” transport service offered by the UBER POP app in which non-professional drivers, who use their own vehicle, offer private transport services to customers within the city.

### **The case and reasons for the Decision**

The present case concerns the examination of a request for a preliminary ruling brought in the context of a dispute between a professional association of taxi drivers in the city of Barcelona and Uber System Spain SL regarding the supply of paid services, via an electronic platform, by the latter, for the urban transport service operated by non-professional drivers (the “Services”). More specifically, the EU Judges have been called upon to rule on the legal framework of information company Services with the consequent recognition of the benefit of the free provision guaranteed by art. 56 TFEU and by Directives 2006/123 and 2000/31.

On the one hand, the Court has confirmed that, in principle, an intermediary service which allows the transmission, via an APP, of information relating to the sole booking of an urban passenger transport service, can be qualified as “information society services”; on the other hand, the Judges have stated that when such service does not limit itself to connect supply and demand in the transport sector, but rather pushes to organize the general operation in favor of the customers who need to get around the city, then in this case, it must be qualified as a “service in the transport sector” and therefore subject to the rules, applicable to public transport services, established at a national level.

The Court came to this conclusion after careful analysis of the elements that characterize the Services offered by UBER POP, such as the selection of non-professional drivers, the decisive influence on the conditions of the drivers' performance and setting of the maximum tariff of single journeys. In light of these considerations, UBER POP activities “must be considered as an integral part of an overall service, where the main element is a transport service, so therefore does not qualify as “information society services” [...] but rather “service of the transport sector”.

### **The possible scenarios and the Italian situation**

The analysis that has led the EU Courts to consider the Services as a transport service and not merely intermediation, echoes the reasons adopted by the Italian jurisdiction for the identification and qualification of freight forwarder-carrier (art. 1741 of the Civil Code) in place of the mere freight forwarder (art. 1737 of the Civil

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Code).

It is therefore recognized, in principle, that it is also applicable to sharing companies operating in transport in general, whereby the person who uses their own vehicle or that of others to carry out transportation, in whole or in part, becomes the owner of the rights and duties of that carrier.

The Decision produces *erga omnes* effects as it obliges Member States to interpret the regulatory provisions subject to the analysis in the terms indicated therein. Nevertheless it should not have, at least for the time being, significant repercussions on the services of UBER in Italy, given that the service in question, UBER POP, was declared illegal by the Court of Turin because it was considered an illegal public transport service due to the incompatibility with the provisions provided in framework law n° 21/1992.

It should however be noted that the Decision also offers interesting points, under a labour point of view, for the purpose of qualifying the relationships of the collaborators of the technological application. In fact, in reaching its conclusion, that the service offered by UBER POP is a service in the transport sector and not a mere intermediary, the Court notes that UBER POP organizes the general operation of the Service through the selection of drivers, the provision of an application necessary for the performance of the Service and the exercise of a “decisive influence over the conditions under which that service is provided by those drivers”. The factors of this “decisive influence” consist in the fact that the application determines at least the maximum fare by means of the eponymous application, that the company receives that amount from the client before paying part of it to the driver of the vehicle, and that it exercises a certain control over the quality of the vehicles, the drivers and their conduct, which can, in some circumstances, result in their exclusion. These criteria, although indirectly, could have a broader scope than the case examined by the Court because they appear to contrast with a conventional qualification of the drivers, in the presence of the aforementioned factors, as mere users of a technological intermediation application between supply and demand, thus providing further arguments to the cases already subject to examination by the labor Courts in Italy and abroad concerning the re-classification of the drivers as workers.

It will be interesting to see the consequences deriving from the application of the general principles following this Decision, since it not only affects the transport sector but can also explain its effects on those companies that offer a particular service through a technological application.

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The Shipping, Aviation and Transportation Department and the Labour and Industrial Relations Department of Legance are available to provide any clarifications, also in respect of any specific situation which may be of interest to you.

For further information:

**LUCA GENINATTI SATÈ**

*Senior Counsel*

Tel. +39 02.89.63.071

[lgeninatti@legance.it](mailto:lgeninatti@legance.it)

**MARCO COTTONE**

*Senior Associate*

Tel. +39 02.89.63.071

[mcottone@legance.it](mailto:mcottone@legance.it)

**PAOLA DEGL’INNOCENTI**

*Counsel*

Tel. +39 02.89.63.071

[pdeglinnocenti@legance.it](mailto:pdeglinnocenti@legance.it)

or Your direct contact at Legance.

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**MILAN** Via Dante, 7 - 20123 - T +39 02 89 63 071    **ROME** Via di San Nicola da Tolentino, 67 - 00187 - T +39 06 93 18 271  
**LONDON** 10 - 15 Queen Street - EC4N 1TX Aldermay House - T +44 (0)20 7074 2211  
**NEW YORK** 780 Third Avenue - NY 10017 - T +1 (212) 203 2255

**Legance**  
AVVOCATI ASSOCIATI

[info@legance.it](mailto:info@legance.it) - [www.legance.it](http://www.legance.it)

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