Provisional text

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 18 September 2025 (1)

Joined Cases C-188/24 and C-190/24

WebGroup Czech Republic, a.s.,
NKL Associates s. r. o.
v
Ministre de la Culture,
Premier ministre (C-188/24),
intervening parties:
Osez le féminisme!,
Le mouvement du Nid,
Les effronté-E-S
and
Coyote System
v
Ministre de l'Intérieur et des Outre-mer,
Premier ministre (C-190/24)

(Request for a preliminary ruling from the Conseil d'État (Council of State, France))

(Reference for a preliminary ruling – Electronic commerce – Directive 2000/31/EC – Information society services – Coordinated field – Criminal legislation which generally prohibits the provision of pornographic content to minors – Prohibition on circulation of information provided by users)

I. Introduction

1. By the present requests for a preliminary ruling, the referring court asks the Court about ways in which a Member State of destination of an information society service may apply national measures falling within the legal order of that Member State to a provider of that service established in another Member State.

II. Legal framework

A. European Union law

1. *Directive 2000/31/EC*

2. Article 1 of Directive 2000/31/EC, (2) entitled 'Objective and scope', provides, in paragraph 2 and 5:

‘2. This Directive approximates, to the extent necessary for the achievement of the objective set out in paragraph 1, certain national provisions on information society services relating to the internal market, the establishment of service providers, commercial communications, electronic contracts, the liability of intermediaries, codes of conduct, out-of-court dispute settlements, court actions and cooperation between Member States.

…

5. This Directive shall not apply to:

(a) the field of taxation;

(b) questions relating to information society services covered by Directives 95/46/EC [(3)] and 97/66/EC [(4)];

(c) questions relating to agreements or practices governed by cartel law;

(d) the following activities of information society services:

– the activities of notaries or equivalent professions to the extent that they involve a direct and specific connection with the exercise of public authority,

– the representation of a client and defence of his interests before the courts,

– gambling activities which involve wagering a stake with monetary value in games of chance, including lotteries and betting transactions.’

3. Article 2(h) of that directive, entitled ‘Definitions’, provides that, for the purpose of the directive, the following meaning applies:

‘“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.

(i) The coordinated field concerns requirements with which the service provider has to comply in respect of:

– the taking up of the activity of an information society service, such as requirements concerning qualifications, authorisation or notification,

– the pursuit of the activity of an information society service, such as requirements concerning the behaviour of the service provider, requirements regarding the quality or content of the service including those applicable to advertising and contracts, or requirements concerning the liability of the service provider.

(ii) The coordinated field does not cover requirements such as:

– requirements applicable to goods as such,

– requirements applicable to the delivery of goods,

– requirements applicable to services not provided by electronic means.’

4. Article 3 of the directive, entitled ‘Internal market’, provides:

‘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.

3. Paragraphs 1 and 2 shall not apply to the fields referred to in the Annex.

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,

…

(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.

…'

5. Articles 12 to 14 of that directive, which form part of Section 4, entitled 'Liability of intermediary service providers', in Chapter II, entitled 'Principles', concern an information society service provider which pursues a 'mere conduit' activity, 'caching' or a hosting activity respectively. Those provisions also govern the conditions under which such service providers are exempted from liability for information originating from users of their services.

6. In particular, Article 14 of Directive 2000/31, entitled 'Hosting', provides:

'1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, Member States shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service, on condition that:

(a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or

(b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

2. Paragraph 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider.

3. This Article shall not affect the possibility for a court or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement, nor does it affect the possibility for Member States of establishing procedures governing the removal or disabling of access to information.'

7. Article 15 of that directive, entitled 'No general obligation to monitor', provides:

'1. Member States shall not impose a general obligation on providers, when providing the services covered by Articles 12, 13 and 14, to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.

2. Member States may establish obligations for information society service providers promptly to inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service or obligations to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements.'

2. ***Directive 2010/13/EU***

8. Article 28b of Directive 2010/13/EU (5) provides:

'1. Without prejudice to Articles 12 to 15 of [Directive 2000/31], Member States shall ensure that video-sharing platform providers under their jurisdiction take appropriate measures to protect:

(a) minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development in accordance with Article 6a(1);

…

3. For the purposes of paragraphs 1 and 2, the appropriate measures shall be determined in light of the nature of the content in question, the harm it may cause, the characteristics of the category of persons to be protected as well as the rights and legitimate interests at stake, including those of the video-sharing platform providers and the users having created or uploaded the content as well as the general public interest.

Member States shall ensure that all video-sharing platform providers under their jurisdiction apply such measures. Those measures shall be practicable and proportionate, taking into account the size of the video-sharing platform service and the nature of the service that is provided. Those measures shall not lead to any ex-ante control measures or upload-filtering of content which do not comply with Article 15 of [Directive 2000/31]. For the purposes of the protection of minors, provided for in point (a) of paragraph 1 of this Article, the most harmful content shall be subject to the strictest access control measures.

Those measures shall consist of, as appropriate:

(a) including and applying in the terms and conditions of the video-sharing platform services the requirements referred to in paragraph 1;

…

(f) establishing and operating age verification systems for users of video-sharing platforms with respect to content which may impair the physical, mental or moral development of minors;

…

(h) providing for parental control systems that are under the control of the end-user with respect to content which may impair the physical, mental or moral development of minors;

(i) establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the video-sharing platform provider in relation to the implementation of the

measures referred to in points (d) to (h);

…

4. For the purposes of the implementation of the measures referred to in paragraphs 1 and 3 of this Article, Member States shall encourage the use of co-regulation as provided for in Article 4a(1).

5. Member States shall establish the necessary mechanisms to assess the appropriateness of the measures referred to in paragraph 3 taken by video-sharing platform providers. Member States shall entrust the assessment of those measures to the national regulatory authorities or bodies.

6. Member States may impose on video-sharing platform providers measures that are more detailed or stricter than the measures referred to in paragraph 3 of this Article. When adopting such measures, Member States shall comply with the requirements set out by applicable Union law, such as those set out in Articles 12 to 15 of [Directive 2000/31] or Article 25 of Directive 2011/93/EU [(6)].

…'

B. **French law**

1. ***Case C-188/24***

9. Article 227-24 of the code pénal (Criminal Code) provides:

'The manufacture, transportation, circulation by any means whatsoever and on any medium whatsoever of a message which is violent, incites terrorism or is pornographic, including pornographic images involving one or more animals, or is likely seriously to undermine human dignity or to incite minors to engage in games placing them in physical danger or the trafficking of such a message shall be punishable by three years' imprisonment and a fine of EUR 75 000 where that message is likely to be seen or perceived by a minor.

Where the offences provided for in this article are committed through the press, the broadcast media or online public communication, the specific provisions of the laws regulating those matters shall be applicable in respect of the determination of the persons liable.

The offences provided for in this article shall be constituted, including where access by a minor to the messages mentioned in the first paragraph is the result of that minor simply declaring that he or she is at least 18 years of age.'

10. Article 23 of Law No 2020-936 of 30 July 2020 on the protection of victims of intimate partner violence (7) ('the Law of 30 July 2020') provides: (8)

'Where he or she finds that a person whose activity is to publish an online public communication service permits minors to access pornographic content in breach of Article 227-24 of the Criminal Code, the President of the Autorité de régulation de la communication audiovisuelle et numérique (Authority for the regulation of audiovisual and digital communication, France, ARCOM) shall issue that person … with a formal notice ordering him or her to take any measure likely to prevent minors from accessing the offending content. …

Upon the expiry [of a period of 15 days], in the event of failure to comply with the order … and if the content remains accessible to minors, the President of [ARCOM] may bring the matter to the President of the tribunal judiciaire de Paris (Court of Paris, France), seeking an order [that access to that service and its referencing by a search engine or a directory be terminated]'.

11. The conditions governing the application of Article 23 of that Law were set out in décret n°2021-1306, du 7 octobre 2021, relatif aux modalités de mise en œuvre des mesures visant à protéger les mineurs contre l'accès à des sites diffusant un contenu pornographique (9) (Decree No 2021-1306 of 7 October 2021 on the detailed rules for implementing measures to protect minors from accessing websites containing pornographic content; 'the Decree of 7 October 2021'). Under Article 3 of that Decree, 'in order to assess … whether the person whose activity is to publish an online public

communication service permits minors to access pornographic content …, the President of the conseil supérieur de l'audiovisuel (Higher Audiovisual Council) shall take into account the level of reliability of the technical process put in place by that person to ensure that users wishing to access the service are adults'.

2. ***Case C-190/24***

12. Article L. 130-11 of the code de la route ('Highway Code') provides:

'I. – Where a roadside check is conducted on a road, whether open to public traffic or not, which involves the interception of vehicles and is intended either to perform the operations provided for in Articles L. 234-9 or L. 235-2 of the present Code or Articles 78-2-2 or 78-2-4 of the code de procédure pénale (Code of Criminal Procedure) or to verify that drivers or passengers are not wanted by the judicial authorities for crimes or offences punishable by at least three years' imprisonment or are not included in the file mentioned in Article 230-19 of that Code on account of the threat they present to public policy or public security or because they are the subject of a decision to place them on an involuntary basis in a psychiatric institution or have escaped from such an institution, the administrative authority may prohibit any operator of an electronic driving assistance or geolocation-based navigation service from circulating through that service any message or indication published by users of that service where such circulation is likely to permit other users to evade the check.

The prohibition on circulation mentioned in the first paragraph of the present point I shall consist, for any operator of an electronic driving assistance or geolocation-based navigation service, in hiding, for all roads or sections of roads indicated to it by the competent authority, all messages and indications which it would usually have circulated to users in a normal mode of operation of the service. The duration of such prohibition may not exceed two hours if the roadside check relates to an operation provided for in Articles L. 234-9 or L. 235-2 of the present Code or 12 hours if it relates to another operation mentioned in the first paragraph of the present point I. The roads or sections of roads concerned may extend no further than a radius of 10 kilometres around the roadside checkpoint where it is located outside a built-up area and two kilometres around the roadside checkpoint where it is located within a built-up area.

…'

13. Article L. 130-12 of that Code provides that an infringement of the prohibition on circulation under Article L. 130-11 thereof is punishable by two years' imprisonment and a fine of EUR 30 000.

14. Décret No 2021-468, du 19 avril 2021, portant application de l'article L. 130-11 du code de la route (10) (Decree No 2021-468 of 19 April 2021 implementing Article L. 130-11 of the Highway Code; 'the Decree of 19 April 2021') lays down detailed rules for the implementation of that article. Article 1 of that decree inserted Article R. 130-12 of that Code, which provides, inter alia, that 'the decision prohibiting circulation shall specify the roads or sections of roads concerned and define the date and start and end times of that prohibition' and that 'information relating to the prohibition on circulation, excluding any information relating to the reasons for the roadside check concerned, shall be communicated to operators of electronic driving assistance or information-system-based navigation services …'

III. **The disputes in the main proceedings and the questions referred for a preliminary ruling**

A. **Case C-188/24**

15. The applicants in the main proceedings, Webgroup Czech Republic and NKL Associates s.r.o., whose registered office is in Prague (Czech Republic), operate pornographic websites. The President of ARCOM issued them with a formal notice pursuant to Article 227-24 of the Criminal Code and Article 22 of the Law of 30 July 2020. (11)

16. Article 227-24 of the Criminal Code prohibits any person from circulating a pornographic message that is likely to be seen by a minor. With regard to Article 22 of the Law of 30 July 2020, it provided that that offence was constituted 'including where access by a minor to the messages [in

question] is the result of that minor simply declaring that he or she is at least 18 years of age'. Furthermore, Article 23 of that Law – the conditions governing the application of which were set out in the Decree of 7 October 2021 – conferred on the President of ARCOM the power to issue a formal notice to any person who does not comply with that prohibition.

17. The applicants in the main proceedings challenged those formal notices before the tribunal judiciaire de Paris (Court of Paris) (12) and, at the same time, brought an action before the Conseil d'État (Council of State), as the court of first and last instance, seeking the annulment of the provisions of the Decree of 7 October 2021. In support of their action, they claimed inter alia an infringement of EU law. The same complaint is raised, as an objection, against the provisions of the Law of 30 July 2020. The two applications were joined for the purposes of the decision by that court.

18. In their applications, the applicants in the main proceedings claim in particular that the objectives of Directive 2000/31 were disregarded in so far as the provisions of the Decree of 7 October 2021 impose measures of a general and abstract nature aimed at a category of given information society services described in general terms and applying to any provider of that category of services.

19. In view of the subject matter and the nature of the dispute, a number of associations were granted leave to intervene in the main proceedings, including 'Les effronté-E-S', which contends that the pleas in law raised by the applicants in the main proceedings are unfounded.

20. In those circumstances, the Conseil d'État (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) In the first place, must provisions falling within the scope of criminal law, in particular general and abstract provisions which refer to certain conduct as constituting a criminal offence liable to prosecution, be regarded as falling with the scope of the "coordinated field" of [Directive 2000/31] where they are capable of applying both to the conduct of an information society service provider and to that of any other natural or legal person? Or must it be considered, since the sole purpose of the directive is to harmonise certain legal aspects of such services without harmonising the field of criminal law as such and since it lays down only requirements applicable to services, that such criminal provisions cannot be regarded as requirements applicable to the taking up and pursuit of the activity of the information society services falling within the "coordinated field" of that directive? In particular, do the criminal provisions intended to ensure the protection of minors fall within the scope of that "coordinated field"?

(2) Must the requirement that publishers of online communication services are to put in place measures to prevent minors from accessing pornographic content which they broadcast be regarded as falling with the scope of the "coordinated field" of Directive 2000/31, which harmonises only certain legal aspects of the services concerned, whereas, if that obligation concerns the pursuit of the activity of an information society service, in so far as it relates to the behaviour of the service provider and the quality or the content of the service, it does not concern, however, the establishment of service providers, commercial communications, electronic contracts, the rules on the liability of intermediaries, codes of conduct, out-of-court dispute settlements, court actions or cooperation between Member States and, therefore, does not relate to any of the subjects governed by the harmonising provisions of Chapter II of that directive?

(3) If the answer to the preceding questions is in the affirmative, how should the requirements of Directive 2000/31 be reconciled with those arising from the protection of human rights and fundamental freedoms in the European Union, in particular the protection of human dignity and the best interests of the child, guaranteed by Articles 1 and 24 of the Charter of Fundamental Rights of the European Union ["the Charter"] and by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms [(13)], where the mere adoption of individual measures taken in respect of a given service does not appear to be such as to ensure effective protection of those rights? Is there a general principle of EU law that allows Member States to take, in particular in case of an emergency, measures – including when they are general and abstract with regard to a category of service providers – that are required to protect minors against violations of their dignity and integrity, by way of derogation, where necessary, in respect of providers governed by Directive 2000/31, from the principle of regulation of those providers by their State of origin laid down in that directive?'

B. **Case C-190/24**

21. Coyote System, which is established in France, provides a service which is classified in French law as an ‘electronic driving assistance or geolocation-based navigation service’, as provided for in Article L. 130-11 of the Highway Code.

22. That provision permits the competent administrative authority to prohibit operators of services of that kind, for a limited period and within a limited geographical area, from circulating messages from their users likely to reveal the location of alcohol and drug testing, as well as certain police operations, for example against persons wanted for serious crimes or offences or because they have escaped from a psychiatric institution (‘the prohibition on circulation at issue’). The Decree of 19 April 2021 laid down uniform conditions for the exercise of that power.

23. Coyote System brought an action before the Conseil d’État (Council of State) seeking the annulment of that decree. In support of that action, it claimed, in particular, failure to take account of the objectives of Directive 2000/31 and infringement of Article 15 of that directive. The same complaint is also raised, as an objection, against Article L. 130-11 of the Highway Code.

24. In those circumstances, the Conseil d’État (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must the prohibition, imposed on operators of an electronic driving assistance or geolocation-based navigation service, on circulating messages and indications published by users of that service and likely to allow other users to evade certain roadside checks be regarded as falling within the “coordinated field” as provided for by [Directive 2000/31], whereas, although it concerns the pursuit of the activity of an information society service, in that it relates to the behaviour of the service provider, the quality or content of the service, it does not concern the establishment of the service provider, commercial communications, electronic contracts, the liability of intermediaries, codes of conduct, out-of-court dispute settlements, court actions or cooperation between Member States, and does not therefore relate to any of the matters governed by the harmonising provisions set out in Chapter II of that directive?

(2) Must a prohibition on broadcasting, which aims in particular to prevent persons wanted for crimes or offences, or who present a threat to public order or security, from being able to evade road checks, fall within the scope of the requirements relating to the pursuit of the activity of an information society service that a Member State cannot impose on a provider of information society services established in another Member State, whereas recital 26 of [Directive 2000/31] states that the directive cannot preclude Member States from applying their national rules on criminal law and criminal proceedings with a view to taking all investigative and other measures necessary for the detection and prosecution of criminal offences?

(3) Must Article 15 of Directive 2000/31, which prohibits the imposition on service providers of a general obligation to monitor – not including the obligations applicable to a specific case – be interpreted as meaning that it precludes the application of a provision which merely states that the operators of an electronic driving assistance or geolocation-based navigation service must not circulate, in specific cases and within the framework of that service, certain categories of messages and indications, without the operator having to be aware of content thereof?’

IV. **Procedure before the Court**

25. Cases C-190/24 and C-188/24 were joined for the purposes of the written and oral part of the procedure and the judgment. A joint hearing was held on 24 March 2025, during which Webgroup and NKL Associates, Coyote System, Les effronté-E-S, the French, Czech and Norwegian Governments and the Commission presented oral argument.

V. **Analysis**

26. The questions referred for a preliminary ruling in the present cases relate to provisions of Directive 2000/31 and, first and foremost, the mechanism established by Article 3 thereof and the central notion behind that mechanism, namely the ‘coordinated field’ within the meaning of Article 2(h) of that directive.

27. Before I begin examining the questions referred for a preliminary ruling, I will make a few preliminary remarks about that mechanism (section A). I will build on those remarks by addressing the cross-border dimension of the main proceedings which, as I will demonstrate, is relevant given the subject matter of the questions referred in these cases (section B). I will then clarify the purport of those questions, before explaining the structure of my analysis (section C). Lastly, I will go on to examine those questions (sections D and E).

A. The mechanism established in Article 3 of Directive 2000/31

28. In the first place, I note that Article 3 of Directive 2000/31 relates only to information society service providers and that the referring court assumes that the services falling within the scope of the national provisions at issue – the validity of which is being challenged – constitute such services.

29. In the second place, I would observe that the mechanism established in Article 3 of Directive 2000/31 – the central notion of which is the 'coordinated field' – plays a role only in cross-border situations where an information society service provider established in one Member State is likely to be confronted with a measure adopted by another Member State. (14)

30. Article 3 of Directive 2000/31 provides, in paragraph 1, that each Member State must 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. Furthermore, paragraph 2 of that article 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. Exceptionally, under Article 3(4) of that directive, a Member State may take measures to derogate from the principle of freedom to provide information society services in respect of a given information society service subject to a number of cumulative conditions laid down in Article 3(4)(a) (substantive conditions) and in Article 3(4)(b) (procedural conditions) of that directive.

31. Although the wording 'for reasons falling within the coordinated field' in Article 3(2) of Directive 2000/31 might give rise to doubts as to interpretation, that directive is based, according to case-law, on the application of the principles of home Member State control and mutual recognition. Thus, 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. (15)

B. The cross-border dimension of the cases at issue in the main proceedings

32. The present cases concern inter alia the interpretation of Article 2(h) of Directive 2000/31, which defines the notion of 'coordinated field'. In that respect, as I have already observed, (16) the mechanism established in Article 3 of that directive – the central notion of which is the 'coordinated field' – plays a role only in cross-border situations.

33. In the present case, the applicant in the main proceedings in Case C-190/24, Coyote System, is established in France and the reference for a preliminary ruling comes from a French court. At the outset, it is therefore reasonable to ask if the answers to be given to the questions concerning the coordinated field are relevant for the purposes of the main proceedings in question.

34. It should be noted in that regard that Coyote System did not bring an action before the Conseil d'État (Council of State) in the context of an administrative procedure relating to it directly, but an autonomous action for annulment on grounds of misuse of powers, like the applicants in the main proceedings in Case C-188/24. Furthermore, it was confirmed at the hearing that in those proceedings the Conseil d'État (Council of State) carries out an *in abstracto* review of the lawfulness of the contested provisions. Consequently, the specific characteristics of Coyote System do not seem to restrict either the complaints that it is able to raise in its action before the Conseil d'État (Council of State) or the jurisdiction of that court. It follows that the questions referred for a preliminary ruling in Case C-190/24 are relevant for the purposes of the main proceedings in question and that they should be answered.

C. Preliminary remarks on the questions referred for a preliminary ruling

1. ***The national measures at issue***

35. The questions referred for a preliminary ruling in the present cases concern national measures which the French Republic also intends to impose on information society service providers established in other Member States.

36. In Case C-188/24, the measures at issue relate to the obligation imposed on publishers of online communication services to put in place technical measures to prevent minors from accessing pornographic content which they broadcast (‘the obligation at issue’).

37. In that regard, the national provisions, the lawfulness of which is being challenged in the main proceedings, confer on a competent authority the power to issue a publisher of an online communication service with a formal notice ordering it to take any measure that will prevent minors from accessing pornographic content. (17) However, the obligation mentioned in the questions referred for a preliminary ruling does not arise from any such formal notice, but from general and abstract provisions which makes it a criminal offence to grant a minor access to pornographic content on the basis of a simple age declaration. (18)

38. The referring court states that the applicants in the main proceedings submit that the contested provisions do not merely lay down a procedure enabling an administrative authority to order a service provider to terminate an infringement, but that they also have the effect, having regard to the substance of the criminal offence at issue, as clarified by the addition to Article 227-24 of the Criminal Code of the provisions deriving from Article 22 of the Law of 30 July 2020, of requiring service providers established in other Member States to put in place technical measures to block access by minors to the content which they broadcast. (19)

39. In Case C-190/24, the national measures at issue relate to a prohibition, imposed on operators of an electronic driving assistance or navigation service, on circulating messages and indications published by users of that service, as they would usually do in a normal mode of operation of the service.

2. ***The questions referred for a preliminary ruling and the structure of the analysis***

40. The questions referred for a preliminary ruling in the two cases partly overlap and concern common issues.

41. The first question in Case C-188/24 and the second question in Case C-190/24 seek to ascertain whether the national measures at issue fall within the scope of the coordinated field within the meaning of Article 2(h) of Directive 2000/31, despite the fact that those measures do not relate to any of the matters governed by the harmonising provisions set out in Chapters II and III of that directive.

42. Furthermore, the second question in Case C-188/24 and the first question in Case C-190/24 seek to determine whether the national measures at issue are excluded from the coordinated field on the ground that they are, respectively, a corollary of general and abstract provisions of criminal law and a measure necessary in order to ensure the effectiveness of roadside checks.

43. By contrast, the third questions in those cases raise separate issues. The third question in Case C-188/24 concerns how the requirements of Directive 2000/31 should be reconciled with those arising from the protection of fundamental freedoms in the European Union. The third question in Case C-190/24 concerns the interpretation of Article 15 of that directive and seeks to determine whether the prohibition on imposing a general obligation to monitor under that provision precludes the application of the prohibition on circulation at issue.

44. In view of the differences between Cases C-188/24 and C-190/24 and in order to facilitate the reading of this Opinion, I will examine each case and the questions raised therein separately.

D. **Case C-188/24**

45. My analysis of the legal problems raised in Case C-188/24 calls for the order of the questions asked by the referring court to be modified.

46. I will therefore begin by examining the issue of the link between the extent of the coordinated field and the harmonisation achieved in EU law by Directive 2000/31, also ascertaining whether the obligation at issue constitutes a requirement which, a priori, falls within the scope of the coordinated field (second question). I will then consider the link between that field and the field of criminal law (first question). Lastly, I will examine whether the obligation at issue, assuming that the directive precludes it being imposed on service providers established in other Member States, may still be applied to them by way of fundamental rights (third question).

1. *Second question*

(a) *The scope of the question*

47. The second question seeks to ascertain, in essence, whether the coordinated field, as defined in Article 2(h) of Directive 2000/31, covers the obligation on publishers of online communication services to put in place technical measures to prevent minors from accessing pornographic content which they broadcast, despite the fact that that obligation does not relate to any of the subjects governed by the harmonising provisions of Chapters II and III of that directive.

48. I would observe as a preliminary point that, although that question refers to Chapter II of Directive 2000/31, the subjects mentioned by it are regulated not only by that chapter, but also by Chapter III. The establishment of service providers (Article 4), commercial communications (Articles 6 to 8), electronic contracts (Articles 9 to 11), the rules on the liability of intermediaries (Articles 12 to 15), codes of conduct (Article 16), out-of-court dispute settlements (Article 17), court actions (Article 18) and cooperation between Member States (Article 19) are regulated by Chapters II and III of that directive, which comprise Articles 4 to 15 and Articles 16 to 20 respectively.

49. In examining that question, it is necessary, in a first step, to clarify whether the coordinated field includes the subjects governed by the harmonising provisions of Chapters II and III of Directive 2000/31 and, if so, to determine in a second step, *in concreto*, whether the national measure at issue falls within the scope of the coordinated field.

50. The referring court proceeds from the premiss that that national measure does not concern aspects harmonised by Chapters II and III of Directive 2000/31. It must be stated that this is beyond doubt.

51. Furthermore, the wording of that question suggests that that court also proceeds from the premiss that, subject to the answer to be given to the question whether the coordinated field is limited to the subjects covered by Chapters II and III of Directive 2000/31, the national measure at issue falls within the scope of the coordinated field as a requirement concerning the pursuit of the activity of an information society service. I consider that to be the case. However, for the sake of completeness and because several parties challenge that premiss, I will ascertain whether that measure constitutes such a requirement.

(b) *The extent of the coordinated field and the harmonisation achieved by Directive 2000/31*

52. The French Government asserts in its written observations that Directive 2000/31 establishes a link between the coordinated field and the field harmonised by the directive. It submits that the general provisions in the introductory part of an act of secondary legislation are, as a rule, intended to clarify the content of the substantive part of that act. Those general provisions should therefore be read together with the rest of the text of the secondary legislation. It follows that only national provisions adopted to transpose Chapters II and III of that directive into domestic law have to be ‘coordinated’ in accordance with Article 3 thereof.

53. There is nothing in Directive 2000/31 to suggest that the extent of the coordinated field is limited to the subjects governed by the harmonising provisions of Chapters II and III thereof.

54. First, Directive 2000/31, on the contrary, has as its objective, according to Article 1(1) thereof, to contribute to the proper functioning of the internal market by ensuring the free movement of information society services between the Member States. Furthermore, according to Article 1(2)

thereof, that directive approximates, to the extent necessary for the achievement of that objective, certain national provisions on information society services relating to, aside from the questions governed by Chapters II and III of that directive, the internal market.

55. It should be noted in that regard that the logic behind the mechanism for the internal market in information society services established in Article 3 of Directive 2000/31 is different from the logic behind the provisions of Chapters II and III of that directive. Indeed, the purpose of that mechanism is for information society services to be, in principle, subject to the law of the Member State in which the service provider is established, (20) whereas those provisions seek to harmonise certain specific aspects of electronic commerce.

56. Even more importantly, the mechanism established in Article 3 of Directive 2000/31 is of interest primarily in the absence of harmonising provisions, where a Member State wishes to impose on a service provider established in another Member State national provisions which do not correspond to provisions adopted by that other Member State.

57. As I have already clarified, (21) that mechanism is 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 Directive 2000/31, information society services are regulated solely in the Member State on whose territory the providers of those services are established. (22)

58. 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. A Member State of origin may impose obligations on information society service providers in order to ensure the attainment of those objectives. 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. (23)

59. Therefore, in order to ensure the effectiveness of the mechanism established in Article 3 of Directive 2000/31 and to allow it to be fully implemented in accordance with its objective, (24) the extent of the coordinated field cannot be limited to the subjects governed by the harmonising provisions of Chapters II and III of that directive. (25)

60. In the second place, Article 2(h) of Directive 2000/31 emphasises the fact that the coordinated field covers requirements laid down in Member States' legal systems applicable to information society service providers or information society services. That wording is broad enough also to cover purely national provisions which do not originate from EU law. In addition, it contrasts with the wording used in Article 7 of that directive, which makes reference, with regard to commercial communications, to requirements established by EU law. (26)

61. In the third place, recital 21 of Directive 2000/31 states that 'the scope of the coordinated field is without prejudice to future Community harmonisation relating to information society services and to future legislation adopted at national level in accordance with Community law'. That clarification indicates that, at this stage, the coordinated field also covers requirements laid down at national level which do not originate from harmonised EU law.

62. In the fourth place, Article 3(3) of Directive 2000/31 provides that the mechanism established in that article does not apply in the cases listed in the Annex thereto, which are covered by other acts of EU legislation or the law of obligations of the Member States. If the coordinated field was limited to the subjects governed by Chapters II and III of that directive, it would not be necessary to exclude from the scope of that mechanism cases governed by acts of EU legislation other than that directive or cases covered by the law of obligations, as such cases are not subject to the harmonisation achieved by Chapters II and III and do not therefore fall within the scope of the coordinated field.

63. Lastly, in the fifth place and as is rightly observed by Coyote System, that interpretation is supported by the Court's case-law. In determining whether national legislation falls within the coordinated field within the meaning of Directive 2000/31, the Court simply establishes that it is

covered by the definition of the coordinated field in Article 2(h) of that directive. By contrast, it does not establish whether the measures at issue fall within the scope of one of the subjects governed by Chapters II and III of that directive. (27)

64. It must therefore be held that the coordinated field, as defined in Article 2(h) of Directive 2000/31, also covers requirements which concern the pursuit of the activity of an information society service where those requirements do not relate to the subjects governed by the harmonising provisions of Chapters II and III thereof.

65. It must now be examined *in concreto* whether the national measure at issue falls within the scope of the coordinated field within the meaning of Directive 2000/31. I wish to point out that this examination disregards the question whether that measure is excluded from the coordinated field on the ground that it falls within the scope of criminal law: that problem is the subject of the first question in this case, which I will examine in a later section of this Opinion.

66. In those circumstances, some clarifications have to be made regarding the notion of 'coordinated field' within the meaning of Directive 2000/31.

(c) ***Requirements falling within the scope of the coordinated field***

67. Article 2(h) of Directive 2000/31 defines 'coordinated field' as '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'.

68. Furthermore, Article 2(h)(i) of that directive provides that the coordinated field concerns requirements with which the service provider has to comply in respect of the taking up of the activity of an information society service and the pursuit thereof. Under that provision, pursuit-related requirements concern, inter alia, the behaviour of the service provider and the quality or content of its service.

69. Moreover, it follows from the Court's case-law that the requirements falling within the coordinated field are intended to indicate how the activity of an information society service is to be carried out in order to be able lawfully to exercise the activity. (28) Whatever the nature of the liability which may be incurred for failure to comply with such obligations (civil, administrative, criminal, etc.), the subject matter of those obligations is of crucial importance. Indeed, a requirement within the meaning of Directive 2000/31 must still concern the taking up of the activity of an information society service or the pursuit of that activity.

70. Article 2(h)(ii) of Directive 2000/31 provides that the coordinated field does not cover requirements such as those applicable to goods as such, to the delivery of goods and to services not provided by electronic means. It is true that that provision uses an open wording ('such as'). However, the EU legislature's intention regarding those limitations of the extent of the coordinated field is clear from recital 21 of that directive. As is stated in that recital, (29) the coordinated field covers only requirements relating to online activities.

71. It is in the light of those considerations that it must be determined whether an obligation such as that provided for by the national measure at issue constitutes a requirement concerning the pursuit of the activity of an information society service.

(d) ***The obligation to put in place the technical measures at issue***

72. In order to ascertain whether the obligation on publishers of online communication services to put in place technical measures falls within the scope of the coordinated field, it must be determined whether that obligation concerns the taking up of the activity of an information society service or the pursuit of that activity.

73. The Court has already had occasion to consider the question whether national legislation imposing on pharmacies which sell medicinal products online the obligation to include a health questionnaire in the ordering process fell within the coordinated field within the meaning of Directive

2000/31. That legislation made validation of the first order for medicinal products placed by a patient on a pharmacy's website subject to prior completion of an online health questionnaire. (30)

74. In its judgment, the Court referred to Article 2(h)(i) of Directive 2000/31, which provides that the 'coordinated field' covers requirements related to the pursuit of the activity of an information society service, such as requirements concerning inter alia the content of the service, including those applicable to contracts, and answered that question in the affirmative. (31)

75. The Court held that the measure at issue in the main proceedings governed the conditions under which a contract for the online sale of medicinal products not subject to medical prescription could be concluded and the manner in which the pharmacist's sales and advice activity had to be carried out online. (32) I would infer that a national measure which imposes on an information society service provider an obligation to establish the specific arrangements for access to or use of its service constitutes a requirement concerning the content of that service, as such a measure determines the way in which the provider's activity must be pursued in the online environment vis-à-vis users of its service.

76. In the light of those clarifications provided by case-law, the national measure at issue must be considered to govern the content of the service available to users, since it obliges the service provider to put in place technical measures with which all users are confronted. That measure therefore determines the way in which the service provider must pursue its activity.

77. Furthermore, a competent administrative authority may issue a formal notice to a service provider which has not put in place the appropriate technical measures and failure to comply with that order may lead to removal of access to the websites in question and their dereferencing. A service provider must therefore comply with the obligation to put in place measures to block access by minors in order to be able lawfully to pursue the activity of online communication services.

78. In the light of the foregoing considerations and those set out in point 64 of this Opinion, the answer to the second question is that the coordinated field, as defined in Article 2(h) of Directive 2000/31, covers the obligation on publishers of online communication services to put in place technical measures to prevent minors from accessing pornographic content, despite the fact that that obligation does not relate to any of the subjects governed by the harmonising provisions of Chapters II and III of that directive.

2. *First question*

(a) *The scope of the first question*

79. By its first question, the referring court seeks to ascertain, in essence, whether the obligation to put in place technical measures to prevent minors from accessing pornographic content is excluded from the coordinated field within the meaning of Article 2(h) of Directive 2000/31 on the ground that that obligation is a corollary of general and abstract provisions of criminal law which refer to certain conduct as constituting a criminal offence liable to prosecution and apply without distinction to any natural or legal person.

80. It is necessary to examine several key aspects in order to establish whether the obligation at issue is excluded from the coordinated field: first, the general and abstract nature of the national provisions which apply without distinction to any natural or legal person, second, the provisions of Directive 2000/31 which delineate that field and, third, the legal basis of that directive. I will build on the comments concerning those aspects by making observations on Article 3(4) of the directive.

(b) *The general and abstract nature of the national provisions*

81. The referring court draws the Court's attention to the fact that the obligation at issue arises from provisions of a general and abstract nature which may apply both to the conduct of an information society service provider and to that of any other natural or legal person.

82. In that regard, Article 2(h) of Directive 2000/31 defines the 'coordinated field' as requirements applicable to information society service providers or such services, regardless of whether they are of a

general nature or specifically designed for them. Therefore, as far as its classification as a requirement is concerned, it is of little importance that the scope *ratione personae* of a national provision is not limited to information society service providers. That being said, I would point out that a requirement laid down in national legislation falls within the scope of the coordinated field only in so far as it applies to information society service providers.

83. For the sake of completeness, I would note that the fact that the dissemination of pornographic images likely to be seen by a minor was prohibited before the advent of online services does not mean that the obligation at issue is excluded from the coordinated field. Subject to certain exceptions laid down in Directive 2000/31, any national measure which concerns the taking up or pursuit of the activity of an information society service falls within the scope of the coordinated field. In that respect, the Court has already clarified that the EU legislature did not make provision for a derogation authorising Member States to maintain measures predating that directive and which could restrict the freedom to provide information society services without complying with the conditions laid down for that purpose by that directive. (33) Such measures do therefore fall within the scope of the coordinated field.

84. The fact that the obligation at issue arises from provisions which apply 'to any natural or legal person' is not therefore such as to exclude it from the coordinated field. I will now turn to examining the aspects which delineate the coordinated field.

(c) ***Delineation of the coordinated field***

85. The coordinated field is delineated by a number of aspects of Directive 2000/31.

86. I note that the extent of the coordinated field is determined by the scope of Directive 2000/31 itself (Article 1(5)) and is defined positively, on the one hand, by the definition of the notion of 'coordinated field' (Article 2(h)(i)) and negatively, on the other, by the exclusions expressly laid down in that directive (Article 2(h)(ii)). Lastly, the scope of the mechanism established in Article 3 of the directive is delimited by paragraph 3 of that article and the Annex to which it refers.

87. I will now examine those different aspects with a view to establishing whether provisions of criminal law are excluded from the coordinated field.

88. In the first place, Directive 2000/31 makes clear, in Article 1(5), that it does not apply to the field of taxation or to certain questions and specific activities. The EU legislature did not therefore intend to make that field and those questions subject to that directive or to the mechanism established in Article 3. (34) That provision does not, however, mention criminal law among the fields and questions excluded from the scope of the directive.

89. In the second place, Article 2(h)(ii) of Directive 2000/31 provides that the coordinated field does not cover requirements such as those applicable to goods as such, to the delivery of goods and to services not provided by electronic means. Although that provision employs an open wording ('such as'), it is clear from recital 21 thereof that the EU legislature intended to exclude from the coordinated field requirements not relating to online activities. (35) Consequently, requirements relating to the online element of the activity of an information society service provider are not, on the basis of Article 2(h)(ii) of that directive, excluded from the coordinated field solely because they originate from the field of criminal law.

90. Lastly, in the third place, criminal law is not mentioned in the list of cases to which the mechanism established in Article 3 of Directive 2000/31 does not apply in accordance with paragraph 3 of that article. (36) It should also be stated that that paragraph, in so far as it provides for a derogation from the general rule laid down in that article, must be interpreted strictly. (37)

91. Consequently, there is nothing in the provisions of Directive 2000/31 delineating the coordinated field to indicate that measures falling within the scope of the criminal law of a Member State are excluded from that field.

(d) ***The legal basis of Directive 2000/31 and criminal law***

92. In its written observations, the French Government asserts that Directive 2000/31 was adopted on the basis of, inter alia, Article 95 EC (the wording of which was reproduced in Article 114 TFEU (38)), which does not concern the criminal law of the Member States, and at a time when the EU legislature did not yet have the competence to adopt a directive on the subject of criminal law or affecting the criminal law of the Member States. However, the application of Article 3 of that directive to rules of criminal law would, according to the French Government, amount to designating as the applicable law and as the competent authorities for prosecuting criminal offences those of a single Member State, which would constitute harmonisation of criminal law, which is contrary to recital 8 of the directive.

93. The French Government further submits that an excessively broad definition of the coordinated field within the meaning of Directive 2000/31, covering criminal law, would breach the territorial principle in criminal law. Such a definition would result, first, in a harmonisation of competences in criminal law and criminal procedure which would be unfounded in the present state of development of EU law and, second, in a dangerous decorrelation in the regime for combatting offences and crimes, depending on whether or not they are committed online.

94. In that regard, it is true that recital 8 of Directive 2000/31 states that 'the objective of [that] 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'.

95. However, that statement cannot be understood to mean that, in order to avoid the harmonisation of the field of criminal law as such, requirements applicable to information society services or their providers which originate from criminal law should be excluded from the coordinated field.

96. According to its Article 1(2), Directive 2000/31 approximates certain national provisions on information society services relating, inter alia, to the internal market. That clarification relates to Article 3 of that directive. In essence, that article harmonises the way in which Member States envisage the applicability of national provisions which are such as to restrict the freedom to provide information society services.

97. In doing so, Directive 2000/31 does not call into question the Member States' competence in criminal law or criminal procedure. Nor does it require the adoption of specific national rules in that respect. Nevertheless, a distinction must be drawn between the question whether there is a competence at national level and the question whether that competence is exercised in accordance with EU law.

98. In that respect, Directive 2000/31 was adopted on the basis of Article 47(2) EC and Articles 55 EC and 95 EC, the terms of which have been reproduced, in essence, in Article 53(1) TFEU, Article 62 TFEU and Article 114 TFEU respectively. That directive has as its objective, as set out in Article 1(1) thereof, to contribute to the proper functioning of the internal market by ensuring the free movement of information society services between the Member States. (39) To that end, it prescribes, in Article 3 thereof, compliance with the requirements in force falling within the coordinated field in the Member State of the service provider. (40) If the EU legislature had considered that, in order to achieve that objective, it was necessary to include national provisions from the field of criminal law within the coordinated field, it could have had recourse to Article 114 TFEU to do so.

99. Under Article 114(1) TFEU, the Parliament and the Council are to adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market. The EU legislature may have recourse to that provision in particular where disparities exist between national rules which are such as to obstruct the fundamental freedoms or to create distortions of competition and thus have a direct effect on the functioning of the internal market. (41) Provided that the conditions for recourse to Article 114 TFEU as a legal basis are fulfilled, the EU legislature cannot be prevented from relying on that legal basis on the ground that the safeguarding of general interests referred to in paragraph 3 of that article, which include safety, is a decisive factor in the choices to be made. (42)

100. In addition, if any national measure falling within the field of criminal law was considered to be excluded from the coordinated field, a Member State could easily circumvent the mechanism established in Article 3 of Directive 2000/31. It could simply regulate the pursuit of the activity of an

information society service by adopting provisions which are criminal in tone. Taking such an approach in interpreting the notion of 'coordinated field' could jeopardise the objective and the effectiveness of that mechanism.

101. I am sympathetic, furthermore, to the French Government's argument that the implementation of the mechanism established in Article 3 of Directive 2000/31 with a view to achieving the objective of freedom to provide information society services is likely to affect the territorial applicability of national rules originating from criminal law. That being so, and as I have just stated, such a legal effect does fall within the scope of the competences of the EU legislature. Moreover, the mechanisms of the internal market, in particular those based on the country-of-origin principle, are, by definition, likely to affect the territorial scope of national rules.

102. In that regard, as is acknowledged by the French Government itself, criminal law cannot be excluded absolutely from the coordinated field. The French Government takes the view that the approach taken in Article 1(5) of Directive 2006/123/EC (43) could be transposed, by way of analogy, to Directive 2000/31. A provision of criminal law would thus fall within the scope of the coordinated field, as defined in Article 2(h) of the latter directive, where it specifically regulates access to or exercise of such an activity in circumvention of the rules laid down in that directive. (44)

103. It should be recalled in that regard that Directive 2006/123 was adopted on the basis of Article 47(2) EC and Article 55 EC, which correspond to Article 53(1) TFEU and Article 62 TFEU respectively. Those provisions are also mentioned among those which form the legal basis of Directive 2000/31.

104. Therefore, if Directive 2006/123 – which itself states that it does not affect rules of criminal law (45) or prejudice criminal law (46) – is likely to affect the territorial application of provisions of criminal law, the same must hold for Directive 2000/31, which frames national rules of criminal law more liberally. The latter directive does not include a provision similar to Article 1(5) of Directive 2006/123. As far as references to criminal law are concerned, the only point in common between those directives is that their recitals state that the directives do not harmonise that field of law. (47)

105. In any event, the two directives seek to achieve the same result, since a Member State cannot restrict the freedom to provide services within the internal market, as implemented on the basis of the methods provided for by either directive, by having recourse to provisions of its national criminal law.

106. In conclusion, the fact that Directive 2000/31 was adopted on the basis of articles of the EC Treaty which correspond to Article 53(1) TFEU, Article 62 TFEU and Article 114 TFEU does not mean that provisions falling within the field of criminal law are excluded from the coordinated field within the meaning of Article 2(h) thereof.

(e) ***Implementation of criminal law as a derogation from the freedom to provide information society services***

107. According to the logic of the mechanism established in Article 3 of Directive 2000/31, a Member State other than the one in which the information society service provider is established cannot, in principle, impose on that provider requirements which fall within the scope of the coordinated field. Under Article 3(4) of that directive, such a Member State may nevertheless take measures to derogate from the principle of freedom to provide information society services set out in Article 3(2) of the directive in respect of a given information society service, provided that they comply with a number of cumulative conditions. (48)

108. In accordance with Article 3(4)(a) of Directive 2000/31, the restrictive measure concerned must be necessary to guarantee, inter alia, 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. Measures necessary to guarantee such objectives of general interest are likely to fall within the scope of criminal law. It could therefore be argued that, if provisions originating from criminal law were excluded from the coordinated field, it would not be necessary to permit a Member

State to derogate from Article 3(2) of Directive 2000/31 for the purposes of those objectives of general interest.

109. Accordingly, Directive 2000/31 provides, in Article 3(4)(b), that a Member State may derogate from Article 3(2) on the condition that it has not only asked the Member State on whose territory the service provider at issue is established to take measures, but also notified the Commission and that Member State of its intention to take the restrictive measures concerned. Under the first provision, a Member State wishing to take such derogations would, however, be subject to those obligations 'without prejudice to court proceedings, including preliminary proceedings and acts carried out in the framework of a criminal investigation'. Although that phrase may raise doubts as to interpretation, it is clear that it reflects the wish of the EU legislature to frame the implementation of provisions originating from criminal law in the context of the mechanism established in Article 3 of Directive 2000/31.

110. In that context, moreover, the phrase in Article 3(4)(b) of Directive 2000/31 is clarified by recital 26 thereof, which states that Member States, in conformity with the conditions established in that directive, may apply their national rules on criminal law and criminal proceedings with a view to taking all investigative and other measures necessary for the detection and prosecution of criminal offences, 'without there being a need to notify such measures to the Commission'. It follows that, although it obstructs the freedom to provide an information society service, the application of such national rules does not have to be notified pursuant to Article 3(4)(b) of that directive. Like any other measure falling within the coordinated field, those national rules must nevertheless comply with the substantive conditions laid down in Article 3(4)(a) thereof. Consequently, national provisions of criminal law and criminal procedure are not, as such, excluded from the coordinated field.

(f) ***Conclusion***

111. For all the reasons that I have just set out, it must be held that the obligation at issue cannot be excluded from the coordinated field solely on the ground that it is a corollary of provisions of criminal law.

112. I therefore propose that the first question be answered to the effect that the obligation to put in place technical measures to prevent minors from accessing pornographic content cannot be excluded from the coordinated field within the meaning of Article 2(h) of Directive 2000/31 solely on the ground that that obligation is a corollary of general and abstract provisions of criminal law which refer to certain conduct as constituting a criminal offence liable to prosecution and which apply without distinction to any natural or legal person.

3. ***Third question***

(a) ***The scope of the third question***

113. By its third question, the referring court seeks to ascertain, in essence, whether, in view of the fact that the adoption of individual measures in respect of a given service does not ensure effective protection of the fundamental rights guaranteed by Articles 1 and 24 of the Charter and by Article 8 ECHR, it is possible to derogate from the mechanism established in Article 3 of Directive 2000/31 in order to impose an obligation arising from general and abstract provisions on a category of service providers.

114. The referring court proceeds from the assumption that, in the light of the conditions laid down in Article 3(4) of Directive 2000/31, the adoption of individual measures is not capable of ensuring that protection. It follows, in the view of that court, that the possibility of taking a measure fulfilling those conditions against a publisher of online public communication services does not comply with the requirements necessitated by the protection of fundamental rights.

115. In those circumstances, the referring court wishes to know whether, assuming that Directive 2000/31 precludes an obligation arising from general and abstract provisions such as the one at issue, a Member State of destination of services may still impose that obligation on service providers established in other Member States by way of fundamental rights.

116. That question arises only if three conditions are fulfilled: first, the obligation at issue falls within the scope of the coordinated field within the meaning of Article 2(h) of Directive 2000/31; second, the application of that obligation restricts, within the meaning of Article 3(2) of that directive, the freedom to provide information society services; and, third, that obligation does not fulfil the conditions laid down in Article 3(4) of the directive.

117. In that regard, and as is clear from my analysis of the first two questions, the obligation at issue constitutes a requirement which falls within the scope of the coordinated field within the meaning of Article 2(h) of Directive 2000/31. (49)

118. On the other hand, the referring court is well aware that the obligation at issue does not fulfil the conditions laid down in Article 3(4) of Directive 2000/31. That obligation arises from general and abstract provisions which, as that court states, apply without distinction to any natural or legal person. In that respect, the Court has already made clear that national measures which are general and abstract in scope cannot be classified as measures 'taken against a given information society service' within the meaning of Article 3(4) of that directive, (50) by which a Member State of destination of services may restrict the freedom to provide such a service.

119. Therefore, before examining the third question, it must first be determined whether the obligation at issue restricts the freedom to provide information society services.

(b) ***Restriction of the freedom to provide services***

120. In my view, the EU legislature has made clear that the application of an obligation such as that at issue to a service provider restricts the freedom to provide information society services and that, subject to the derogations provided for in Article 3(4) of Directive 2000/31, that obligation cannot be imposed by a Member State other than the one in which that service provider is established.

121. Under Article 6a(1) of Directive 2010/13, Member States must take appropriate measures to ensure that *audiovisual media services* provided by providers under their jurisdiction which may impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see them, while such measures may include age verification tools.

122. It is also clear from Article 28a(1) of Directive 2010/13 read together with Article 3(1) of Directive 2000/31 that a *video-sharing platform* provider is under the jurisdiction of the Member State on whose territory it is established. Furthermore, Article 28b(1) of Directive 2010/13 provides that that Member State must ensure that the provider takes appropriate measures to protect minors from user-generated videos which may impair their physical, mental or moral development. Under Article 28b(3) thereof, those measures consist of, inter alia, as appropriate, establishing and operating age verification systems for users of video-sharing platforms with respect to those videos.

123. Moreover, Article 15 of Regulation (EU) 2024/1083 (51) has established a mechanism to allow any relevant national regulatory authority or body to request its counterpart in the Member State where the service provider is established to take necessary and proportionate actions to ensure the enforcement of obligations on video-sharing platform providers under Article 28b(1) to (3) of Directive 2010/13. It is clear from Article 15(1) of that regulation ('without prejudice to Article 3 of Directive 2000/31/EC'), read in the light of recital 45 thereof, that, where the use of such a mechanism does not lead to an amicable solution, the freedom to provide information society services from another Member State can be restricted only where the conditions set out in Article 3 of Directive 2000/31 have been fulfilled and the procedure set out therein has been followed.

124. Regardless of whether Regulation 2024/1083 is applicable *ratione temporis* (52) or whether the online communication services mentioned in the reference for a preliminary ruling in Case C-190/24 also include services which do not constitute video-sharing platforms within the meaning of that regulation, Article 15 thereof confirms that the EU legislature intended to draw attention to the principle deriving from Article 3 of Directive 2000/31 that measures necessary in order to ensure the protection of minors, such as those referred to in Article 28b(1) to (3) of Directive 2010/13, must be adopted and applied by the Member State where the information society service provider concerned is established,

with the result that such measures adopted by another Member State affect the competence of the first Member State and restrict the freedom to provide information society services.

125. An obligation to put in place technical measures to prevent minors from accessing pornographic content such as that at issue must therefore be considered to restrict, as a matter of principle, the freedom to provide information society services.

126. I would note that this applies not only for such an obligation arising from general and abstract provisions of criminal law, but also for a formal notice which a competent authority may issue to a publisher of an online communication service.

127. In order to satisfy the obligation laid down in Article 28b(2) of Directive 2010/13, online platform operators must not only restrict access to pornographic content, but also put in place a solution which effectively protects minors against pornographic content, the effect of which is to change the way in which they pursue the activity of an information society service.

128. Similarly, although Article 23 of the Law of 30 July 2020 might suggest that a formal notice may be issued to a service provider on account of (specific) pornographic content, Article 3 of the Decree of 7 October 2021 indicates that that measure is directed at the technical process put in place to ensure that users wishing to access the service are adults.

129. For all those reasons, the obligation to put in place technical measures to prevent minors from accessing pornographic content must be considered to restrict, as a matter of principle, the freedom to provide information society services. In order to impose such an obligation on a service provider established in another Member State, a Member State must satisfy the conditions laid down in Article 3(4) of Directive 2000/31.

130. I will now turn to examining the problem at the heart of the third question, namely how the requirements provided for by Directive 2000/31 should be reconciled with those relating to the protection of fundamental rights.

(c) *The application of fundamental rights in order to derogate from Article 3(1) and (2) of Directive 2000/31*

131. As the Commission has observed, the third question suggests that, because of its intrinsic limits, Directive 2000/31 does not comply with the requirements relating to the protection of the fundamental rights guaranteed by Articles 1 and 24 of the Charter and by Article 8 ECHR.

132. However, as is stated in recital 10 of Directive 2000/31, the mechanism established by that directive, in Article 3 thereof, in order to guarantee an area which is without internal frontiers as far as electronic commerce is concerned, ensures a high level of protection of objectives of general interest, in particular the protection of minors.

133. In that regard, as I have stated, (53) that mechanism is based on the application, inter alia, of the principle of home Member State control. Under that principle, 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. (54) Those objectives include the protection of public policy, which encompasses, in the light of the wording of that provision and of recital 10 of that directive, the protection of minors. The supervision carried out by the Member State of origin must therefore ensure effective protection of that objective in the interest not only of the Member State of origin and its citizens, but also of other Member States and their citizens. (55)

134. In addition, Directive 2000/31 is also based on the principle of mutual recognition under which each Member State, as the Member State of destination of information society services, must ensure that it does not restrict the freedom to provide such services. A Member State of destination must therefore consider that the Member State in which the service provider is established guarantees the objective of general interest of protection of minors at an appropriate level. Where that protection is

deficient, the only possibility available to the first Member State to remedy that situation is to take measures in accordance with the requirements laid down in Article 3(4) of that directive.

135. In that respect, Directive 2010/13 complies with the requirements applicable to the protection of minors. In particular, under Article 28b thereof, a Member State must ensure that video-sharing platform providers established in its territory takes appropriate measures to protect minors. Those measures may consist in the operation of an age verification system. (56) Where the Member State of origin does not guarantee the required level of protection of minors, the Member State of destination may take the measures provided for in Article 3(4) of that directive.

136. The objective of general interest of protection of minors pursued by the national measure at issue is safeguarded, first, in the context of the application of the principle of home Member State control, under the provisions laid down to that effect by Directive 2013/10 and, second, by the derogation mechanism to which other Member States may have recourse in specific cases subject to the conditions laid down in Article 3(4) of Directive 2000/31.

137. The EU legislature has thus ensured that the requirements of the internal market and the requirements of the protection of fundamental rights are reconciled. To take the view that the relevant mechanisms provided for by Directives 2000/31 and 2010/13 do not comply with the requirements laid down in Articles 1 and 24 of the Charter would effectively call into question the validity of those two directives.

138. Even more importantly, those mechanisms reflect the consensus reached by the Member States regarding their responsibilities in protecting minors against harmful content in an area which is without internal frontiers as far as electronic commerce is concerned. To call those mechanisms into question would undermine their effectiveness and erode mutual trust between Member States.

139. Furthermore, although the Court has recognised that a Member State was able to rely on a fundamental right in order to seek its protection where it was not permitted to do so by any provision of secondary legislation, that solution applied where the act of EU law did not include an exceptional mechanism giving that Member State the option to guarantee the fundamental right in question. (57) Directive 2000/31, on the other hand, established such a mechanism in Article 3(4), with the result that that line of case-law cannot be applied to the present case.

140. Consequently, the answer to the third question is that the fact that the adoption of individual measures in respect of a given service does not ensure the protection of the fundamental rights guaranteed by Articles 1 and 24 of the Charter and by Article 8 ECHR does not permit a derogation from the mechanism established in Article 3 of Directive 2000/31 in order to apply an obligation arising from general and abstract provisions to a category of service providers.

E. **Case C-190/24**

1. ***First question***

141. The first question seeks to ascertain whether the coordinated field, as defined in Article 2(h) of Directive 2000/31, covers a prohibition, imposed on operators of an electronic driving assistance or geolocation-based navigation service, on circulating messages and indications published by users of that service and likely to allow other users to evade roadside checks, despite the fact that that prohibition does not relate to any of the matters governed by the harmonising provisions set out in Chapters II and III of that directive.

142. It should be recalled, as is clear from what I have said regarding the second question in Case C-188/24, that the coordinated field, as defined in Article 2(h) of Directive 2000/31, also covers requirements which concern the pursuit of the activity of an information society service where those requirements do not relate to the matters governed by the harmonising provisions set out in Chapters II and III of that directive. (58)

143. Consequently, in order to answer this question, it must still be ascertained whether the prohibition on circulation at issue constitutes a requirement falling within the coordinated field.

144. I note in that regard that the prohibition on circulation at issue affects the pursuit of the activity of an information society service. In order to comply with such a prohibition, the service provider is obliged to limit or suspend the normal operation of its service and therefore to perform the activity in question in a specific manner. In the present case, the fact that the prohibition on circulation at issue obliges the provider to limit the operation of its service only in specific cases and in relation to a given roadside check does not alter the essence of the obligation deriving from that prohibition. That fact may prove to be relevant, however, in the context of the examination to determine whether the prohibition restricts the freedom to provide services within the meaning of Article 3(2) of Directive 2000/31 or whether it complies with the conditions laid down in Article 3(4) thereof.

145. It should also be noted that the prohibition on circulation at issue is subject to a penalty; (59) compliance with it is therefore a condition for the lawful pursuit of the activity of an information society service.

146. In those circumstances, the first question should be answered to the effect that the coordinated field, as defined in Article 2(h) of Directive 2000/31, covers a prohibition, imposed on operators of an electronic driving assistance or geolocation-based navigation service, on circulating messages and indications published by users of that service and likely to allow other users to evade roadside checks, despite the fact that that prohibition does not relate to any of the matters governed by the harmonising provisions set out in Chapters II and III of that directive.

2. *Second question*

(a) *The scope of the question referred and reformulation*

147. The second question, as formulated by the referring court, asks in essence whether the prohibition on circulation at issue is excluded from the coordinated field within the meaning of Article 2(h) of Directive 2000/31 on the ground that it is necessary in order to ensure the effectiveness of roadside checks conducted for the purpose of questioning persons wanted for crimes or offences or who present a threat to public policy or public security.

148. In that respect, that wording suggests that the question seeks to determine whether the prohibition on circulation at issue falls within the scope of the coordinated field within the meaning of Article 2(h) of Directive 2000/31.

149. On the other hand, that question refers to recital 26 of Directive 2000/31 (‘whereas recital 26 … states that’), according to which ‘Member States … may apply their national rules on criminal law and criminal proceedings with a view to taking all investigative and other measures necessary for the detection and prosecution of criminal offences …’. That reference, which is preceded by the word ‘whereas’, shows that the referring court is seeking to ascertain whether the prohibition on circulation at issue is excluded from the coordinated field within the meaning of Article 2(h) of that directive on the ground that it is necessary in order to ensure the effectiveness of roadside checks conducted for the purpose of questioning persons wanted for crimes or offences or who present a threat to public policy or public security.

150. I note that Coyote System maintains that, if the prohibition on circulation at issue falls within the coordinated field, it cannot constitute a measure falling within that field by which a Member State of destination of information society services may derogate from the principle laid down in Article 3(2) of Directive 2000/31 and restrict the freedom to provide those services.

151. Coyote System submits in that respect that, contrary to the requirement laid down in Article 3(4) of Directive 2000/31, the national measure imposing the prohibition on circulation at issue does not relate to a given information society service. Instead, in its view, that prohibition constitutes, in the words of the judgment in *Google Ireland and Others* (60) cited in the order for reference, a ‘general and abstract measure 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’. (61)

152. With that in mind, by its second question, the referring court is therefore asking the Court to consider whether Article 3 of Directive 2000/31 precludes the prohibition on circulation which the

French Republic, as the Member State of destination of information society services, intends to impose on service providers established in other Member States.

153. In that context, moreover, in its written observations the French Government proposed a different perspective for analysing the lawfulness of the prohibition on circulation at issue. It asserts, in essence, that that prohibition does not restrict the freedom to provide services and is not therefore subject to the conditions laid down in Article 3(4) of Directive 2000/31. In support of its argument, the French Government relies on Article 14(3) of that directive, which applies to orders issued to providers of hosting services.

154. That reasoning is likely to have a bearing on whether the prohibition on circulation at issue complies with Directive 2000/31. I will therefore also examine that analytical approach in order to provide the referring court with any guidance as to the interpretation of EU law which may assist it in adjudicating on the conformity of the national provisions at issue with that directive.

155. To that end, I propose that the second question be reformulated such that the referring court is considered to be seeking to ascertain whether Article 3 of Directive 2000/31 precludes a prohibition on circulating messages and indications published by users of a driving assistance or geolocation-based navigation service which a Member State of destination of those services intends to impose on operators of services established in other Member States.

(b) ***Structure of the analysis***

156. In its written observations, the French Government states that the examination of the lawfulness of the prohibition on circulation at issue in the light of Directive 2000/31 should begin by analysing the issue of orders for the purposes of Article 14(3) thereof, which are not subject to the requirements laid down in Article 3 thereof on the ground that they do not restrict the freedom to provide information society services.

157. In the context of Directive 2000/31, the question whether a national measure restricts the freedom to provide services is relevant only if that measure constitutes a requirement falling within the coordinated field within the meaning of Article 2(h) thereof. Article 3(2) of that directive provides that Member States may not, for reasons falling within that field, restrict the freedom to provide information society services from another Member State. (62) A national measure which entails such a restriction but does not fall within the coordinated field is therefore irrelevant from the point of view of Article 3 of that directive.

158. In view of this, in the first place, I will examine whether, in the light of the objectives pursued by it, the prohibition on circulation at issue is excluded from the coordinated field (section c); in the second place, I will consider the French Government's argument that the prohibition does not restrict the freedom to provide services (section d) and, in the third place, I will briefly examine Coyote System's argument that the prohibition cannot fulfil the conditions laid down in Article 3(4) of Directive 2000/31 (section e)

(c) ***Protection of public policy and public security***

159. The question arises whether the prohibition on circulation at issue is excluded from the coordinated field on the ground that it is necessary in order to ensure the effectiveness of roadside checks conducted for the purpose of questioning persons wanted for crimes or offences or who present a threat to public policy or public security.

160. In that respect, in the first place and as I have already stated, (63) a national measure cannot be excluded from the coordinated field solely on the ground that it is the corollary of provisions of criminal law. There is therefore a fortiori no reason why a measure which is necessary in order to contribute to the implementation of criminal law or the protection of objectives of general interest, such as public policy or public security, should be considered to be excluded from that field.

161. In the second place, neither the nature of an objective of general interest which a Member State seeks to protect through a national measure nor the fact that such a measure is necessary in order to

achieve that objective is crucial in classifying it as a 'requirement falling within the coordinated field'. In order to establish that a national measure constitutes such a requirement, it is necessary to examine its subject matter and to determine whether it concerns the taking up or the pursuit of the information society activity. (64)

162. In the third place, in the context of Directive 2000/31, objectives of general interest play a particular role distinct from that played by the subject matter of the measure concerned. In essence, a Member State may rely on the objectives of general interest set out in Article 3(4)(a)(i) of that directive in order to derogate, by means of a measure falling within the coordinated field, from the principle of freedom to provide information society services. The protection of public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, and the protection of public security, are among those objectives of general interest.

163. In the fourth place, the passage in recital 26 of Directive 2000/31 highlighted by the referring court states that Member States may apply their national rules on criminal law and criminal proceedings with a view to taking all investigative and other measures necessary for the detection and prosecution of criminal offences. It should be noted that that recital also makes clear that Member States may avail themselves of that possibility in conformity with the conditions established in that directive. As I stated in point 110 of this Opinion, Directive 2000/31 lays down the conditions under which a Member State of destination may apply the measures necessary to prevent, investigate, detect and prosecute criminal offences. Like any other measure falling within the coordinated field by which a Member State of destination seeks to restrict the freedom to provide services, the measures mentioned in recital 26 of Directive 2000/31 must at least comply with the substantive conditions laid down in Article 3(4)(a) of that directive. I infer from this that measures necessary to detect and prosecute criminal offences are not excluded from the coordinated field.

164. Consequently, a measure which concerns the pursuit of an information society activity cannot be excluded from the coordinated field solely on the ground that it satisfies the objectives of general interest of protection of public policy and public security.

165. It must therefore be held, by way of an interim conclusion, that the prohibition on circulation at issue cannot be excluded from the coordinated field within the meaning of Article 2(h) of Directive 2000/31 on the ground that it is necessary in order to ensure the effectiveness of roadside checks conducted for the purpose of questioning persons wanted for crimes or offences or who present a threat to public policy or public security.

(d) ***Orders which do not restrict the freedom to provide information society services***

(1) *Explanation of the problem*

166. It is clear from the foregoing analysis that the prohibition on circulation at issue does fall within the coordinated field.

167. In addition, Directive 2000/31 does not preclude, a priori, a prohibition on circulation which a Member State of destination of information society services intends to impose on operators of such services established in other Member States, provided it fulfils the conditions laid down in Article 3(4)(a) and (b) of that directive. Where those conditions are met, a Member State of destination of information society services may restrict the freedom to provide those services by applying measures falling within the coordinated field.

168. The French Government asserts that the prohibition on circulation at issue does not restrict the freedom to provide services, with the result that it is not subject to the conditions laid down in Article 3(4) of Directive 2000/31.

169. More specifically, according to the French Government, that prohibition falls within the scope of Article 14(3) of Directive 2000/31 and, as such, does not restrict the freedom to provide information society services from another Member State within the meaning of Article 3(2) thereof. It can be imposed on a service provider regardless of the Member State in which it is established and a Member

State of destination of information society services wishing to issue such an order is not required under any circumstances to follow the derogation procedure under Article 3(4) of that directive.

(2) *Assessment*

170. Article 14(3) of Directive 2000/31 provides, inter alia, that that article does not affect the possibility for a court or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement.

171. It should be noted as a preliminary point that the order for the purposes of Article 14(3) of Directive 2000/31 may be issued both by the Member State in which the service provider is established and by the Member State of destination of the service concerned. (65)

172. In that regard, although Article 3(1) of Directive 2000/31 makes any information society service provider subject to supervision by the Member State in which it is established, paragraph 4 of that article provides that another Member State may take measures in respect of that service provider in accordance with the relevant conditions laid down in the latter provision. It should be noted that those conditions do not relate to the competence of that other Member State, but to the measure which it wishes to impose on the service provider concerned.

173. Furthermore, Directive 2000/31 does not, as such, regulate the division of competences and decision-making powers of the courts and other authorities of the Member States. That directive provides inter alia, in Article 1(4), that it does not deal with the jurisdiction of courts, which is regulated in particular by Regulation (EU) No 1215/2012. (66) The territorial competence of administrative authorities is governed by provisions of public law and that directive does not include any such provisions.

174. Having outlined that framework, it is necessary to examine the French Government's argument that the prohibition on circulation at issue, as an order for the purposes of Article 14(3) of Directive 2000/31, is not subject to the conditions laid down in Article 3(4) thereof.

175. Under Article 14(3) of Directive 2000/31, that article does not affect the possibility to issue judicial or administrative orders to terminate or prevent an infringement. That article simply lays down, in paragraph 1, the conditions under which a provider of a hosting service may be exempted from liability for the information stored at the request of users. It is therefore doubtful at the outset that the effect of Article 14(3) of that directive could be to exclude the application of its Article 3.

176. I nevertheless consider that the reason why an order which could fall within the scope of Article 14(3) of Directive 2000/31 cannot be subject to the conditions laid down in Article 3 thereof is not to be found in the former provision, but in the latter. Under Article 3(2), a Member State other than the one in which the service provider is established may not, by measures falling within the coordinated field, restrict the freedom to provide information society services. I consider that, subject to certain conditions, an order relating to an individual infringement cannot restrict the freedom to provide such services.

177. In that regard and in the first place, Article 18 of Directive 2000/31 provides that Member States must ensure that court actions available under national law concerning information society services' activities allow for the adoption of measures designed to terminate any alleged infringement and to prevent any further impairment of the interests involved. If any Member State must provide for the possibility to adopt such measures, an order designed to terminate or prevent an individual infringement which is issued to a service provider by a Member State other than the one in which it is established has a limited capacity to restrict the freedom to provide information society services. Although that provision refers only to court actions, the question whether an order restricts the freedom to provide services from the point of view of its recipient does not depend on the nature of the issuing authority, but on the substance and material content of the order in question.

178. In the second place, as the French Government rightly observes, that interpretation is also supported by the judgment in *Glawischnig-Piesczek*. (67) In that judgment, the Court did not call into the question the conformity with Directive 2000/31 of an injunction issued by an Austrian court to a

hosting services provider established in Ireland which related to content identical or equivalent to the content of information declared to be illegal. (68) The Court thus did not emphasise the judicial nature of the injunction in question, but its purpose.

179. In the third place, the EU legislature confirmed that interpretation in Regulation (EU) 2022/2065. (69) Recital 38 thereof states inter alia that orders to act relating to specific illegal content do not in principle restrict the freedom to provide intermediary services, with the result that Article 3 of Directive 2000/31 does not apply to them. (70)

180. For all those reasons, I consider that an order to act relating to specific illegal content and designed to terminate or prevent an individual infringement is not subject to the conditions laid down in Article 3 of Directive 2000/31, provided that it does not restrict the freedom to provide information society services. This finding must be construed strictly so as not to undermine the mechanism established in that article. Such an order must be designed to remedy an individual infringement, without otherwise affecting the pursuit of the activity of an information society service. For example, the recipient of an order to act cannot be compelled to change the way in which it organises its activity as such.

181. The question arises how such orders to act which do not restrict the freedom to provide services within the meaning of Article 3(2) of Directive 2000/31 are related to those referred to in Article 14(3) thereof.

182. It should be noted in that regard that those two provisions fulfil different functions. (71) In addition, Article 14(3) of Directive 2000/31 expressly refers to Member States' legal systems and seems to allow them discretion in issuing orders. I will not therefore go as far as to assert that any order that can be issued to a service provider pursuant to that provision does not restrict the freedom to provide information society services. I do consider, however, that all those measures have the same purpose, namely to terminate an individual infringement or to prevent such an infringement by targeting specific illegal content.

183. Accordingly, the question now arises whether the national measure at issue restricts the freedom to provide services.

(3) *The prohibition on circulation at issue*

184. It should be recalled that, according to my analysis, an order to act against specific illegal content and designed to terminate or prevent an individual infringement cannot have the effect of restricting the freedom to provide information society services. (72)

185. In the present case, neither the information concerning roadside checks communicated by users of an electronic driving assistance or geolocation-based navigation service nor the communication of that information by those users is illegal as such. However, the circulation of that information by an operator of such a service in breach of a prohibition issued by the competent authority is illegal and that illegality seems to arise when the order is notified to the operator in question. (73) Thus, the prohibition on circulation at issue, first, does not target specific illegal content and, second, is not designed to terminate or prevent an individual infringement, but may lead to such an infringement by its recipient if it fails to comply.

186. That prohibition does not therefore have the characteristics of an order to act against specific illegal content which is designed to terminate or prevent an individual infringement and which does not restrict the freedom to provide information society services.

(e) ***Adoption of measures relating to a given service***

187. Under Article 3(4) of Directive 2000/31, a measure by which a Member State of destination of services may derogate from Article 3(2) of that directive must relate to 'a given information society service'. In the judgment in *Google Ireland and Others*, (74) the Court clarified 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'.

188. In that regard, although the prohibition on circulation at issue has effects on an operator of a driving assistance or geolocation-based navigation service from its notification to the operator in question, a competent administrative authority appears to issue a single prohibition on circulation for the roadside check which it wishes to remove from all those services.

189. Indeed, Article R. 130-12 of the Highway Code requires that information relating to prohibitions on circulation is communicated to operators through an information system. It follows from that provision that such communication constitutes the making available of the prohibition decision.

190. In addition, Article L. 130-11 of the Highway Code states twice that, by a prohibition on circulation, a competent administrative authority prohibits any operator of an electronic driving assistance or geolocation-based navigation service from circulating messages and indications concerning a roadside check. Furthermore, Coyote System claimed at the hearing that the competent authority cannot target only certain operators.

191. I would observe in that respect that, although the prohibition on circulation at issue seems to apply to any provider of a driving assistance or geolocation-based navigation service, (75) the judgment in *Google Ireland and Others* concerned measures which not only applied without distinction to a category of given information society services described in general terms, but which also were general and abstract in nature. The prohibition on circulation at issue does not apply to hypothetical and recurring situations, but to a given roadside check. It is not therefore comparable to general and abstract legislation such as that at issue in that judgment.

192. In that context, moreover, the Court held in the judgment in *Google Ireland and Others* (76) that general and abstract measures cannot constitute derogations for the purposes of Article 3(4) of Directive 2000/31, in particular because to authorise a Member State of destination to adopt such measures would encroach on the regulatory powers of the Member State of origin and would have the effect of subjecting providers to the legislation of both the home Member State and the Member State or Member States of destination. The adoption of a measure which applies to a given case does not, however, seem to have that effect in so far as it relates, rather, to the competences and decision-making powers of the courts and other authorities of the Member States.

193. Furthermore, it is true that, as the Court held in the judgment in *Google Ireland and Others*, (77) Article 3(4)(b) of Directive 2000/31 requires a Member State of destination to ask the Member State of origin to take measures in respect of information society services and, to that effect, presupposes that the Member State to which such a request is made can be identified before the adoption of a measure on the basis of Article 3(4) thereof such that the Member State of destination may fulfil that obligation. It is, however, clear from Article 3(4)(b) of the directive, read in the light of recital 26 thereof, that measures necessary to detect and prosecute criminal offences are not subject to that obligation. In addition, under Article 3(5) of that directive, a Member State of destination may, in the case of urgency, derogate from the procedural conditions stipulated in Article 3(4)(b) of the directive and notify, *ex post*, a measure to the Commission and to the Member State of origin of a service provider. This confirms the interpretation to the effect that certain measures are also capable of playing the role of a derogation where it is not possible, prior to their adoption, to fulfil the procedural conditions stipulated in Article 3(4)(b) of Directive 2000/31, provided that those measures fulfil the conditions laid down in Article 3(4)(a) of that directive.

194. In the present case, subject to verification by the referring court, it seems that the prohibition on circulation at issue may be classified as a measure ‘taken against a given information society service’ within the meaning of Article 3(4) of Directive 2000/31.

(f) ***Conclusion***

195. It is evident from my analysis, first, that the prohibition on circulation at issue is not excluded from the coordinated field in the light of the objectives pursued by it; (78) second, that that prohibition restricts the freedom to provide information society services (79) and, third, that, subject to verification by the referring court, that prohibition can play the role of a measure by which a Member State may restrict the freedom to provide services, provided that it fulfils the conditions laid down in Article 3(4) of Directive 2000/31. (80)

196. For all of the reasons I have stated above, the second question should be answered to the effect that Article 3 of Directive 2000/31 does not preclude a prohibition on circulating messages and indications published by users of a driving assistance or geolocation-based navigation service which a Member State of destination of those services also intends to impose on operators of such services established in other Member States, provided that that prohibition fulfils the conditions laid down in Article 3(4) or, if applicable, Article 3(5) of that directive.

3. *Third question*

(a) *Preliminary remarks*

197. The third question concerns the interpretation of Article 15 of Directive 2000/31 and seeks to determine whether the prohibition on imposing a general obligation to monitor, as laid down in that provision, precludes the application of the prohibition on circulation at issue.

198. In that regard, the foregoing considerations all concern the functioning of the mechanism for the internal market in information society services established in Article 3 of that directive.

199. Nevertheless, aside from the issue of the conditions under which Member States may issue orders to information society service providers in cross-border situations, Directive 2000/31 includes provisions capable of affecting the scope of the orders. Those provisions include Articles 14 and 15.

200. The provisions in question apply in particular where a Member State wishes to issue an order to certain service providers established in other Member States. In that case, the examination of the conformity of the power to issue that order with Directive 2000/31 comprises two stages: the examination of Article 3(2) and (4) of that directive and then the examination of Articles 14 and 15 thereof.

201. It should be noted that Article 15 of Directive 2000/31, as is clear from its wording, is relevant only if the information society service provider falls within the scope of Articles 12 to 14 thereof.

202. In so far as the referring court also asks the Court to interpret Article 15 of Directive 2000/31 and that article applies to the provision of the services covered, inter alia, by Article 14 thereof, it could be considered that that court proceeds from the premiss that the services falling within the scope of the national provisions at issue before it constitute hosting services. Since that premiss was discussed at the hearing, I will nevertheless make a few remarks about it.

(b) *An electronic driving assistance or geolocation-based navigation service*

(1) *Preliminary remarks*

203. The national provisions at issue relate to operators of electronic driving assistance or geolocation-based navigation services.

204. Although the request for a preliminary ruling does not specify the elements comprising such a service, its mode of operation can be inferred from the wording of those national provisions. In addition, the parties have submitted some observations relating to practical aspects of the operation of those services. In that regard, a further difficulty arises from the fact that those observations do not, at least to some extent, seem to concern the definition of the notion of ‘electronic driving assistance or geolocation-based navigation service’ as used in French law, but the service provided by Coyote System and similar services.

205. I will nevertheless have regard to all those observations in order to determine the starting point for the following analysis. It is established that Coyote System is the operator of an electronic driving assistance or geolocation-based navigation service for the purposes of French law. Consequently, an analysis taking into account the characteristics of that company’s service will concern at least part of the scope of the provisions at issue before the referring court.

206. In any event, it will be for the referring court to interpret national law and to determine the scope of the national provisions at issue. It will also have to ascertain, in the light of the clarifications provided by the Court, whether an operator of that service falls within the scope of Article 14(1) of Directive 2000/31.

(2) *The starting point for my analysis*

207. One of the essential functions of an electronic driving assistance and geolocation-based navigation service seems to be to provide drivers with information on traffic conditions and reports on other traffic events occurring on their chosen route or in the area where they are located at a given time. Those events include roadside checks conducted by public authorities.

208. Article L. 130-11 of the Highway Code presupposes that such a service is fuelled, at least partly, by messages and indications published by certain users, which are circulated by the operator of the service to all the users.

209. In practice, as Coyote System explained in its written observations and at the hearing, the user of an electronic driving assistance or geolocation-based navigation service can press an icon corresponding to one of the predetermined categories of traffic events in order to report an event and its location and accompany that report with a personal message or photograph.

210. That report is distributed immediately and automatically to all users, who can then, if they consider it to be erroneous, notify that error by pressing an icon provided for that purpose. If multiple users notify an error, the report in question is removed.

211. Coyote System has also clarified, as regards the displaying of reported events, that the operation of its service is based on an algorithm which manages those reports in order, inter alia, to combine those which overlap and to remove those whose reliability has been sufficiently disputed by the user community. By contrast, as regards reports published by users, operators do not monitor their content and circulate them as they stand to users.

212. Furthermore, although the mechanism on which the operation of any other electronic driving assistance or geolocation-based navigation service is based differs a priori from that used by Coyote System, the operation of all such services seems to rely on the processing of a significant quantity of information provided by users, which makes it necessary to have recourse to an automated mechanism.

213. That being said, it must be examined, in a first step, whether a driving assistance or geolocation-based navigation service consists in ‘storage of information provided by a recipient of the service’ within the meaning of Article 14(1) of Directive 2000/31 (section 3) and determined, in a second step, whether an operator of such a service is an ‘intermediary service provider’ within the meaning intended by the legislature in the context of section 4 of Chapter II of that directive (section 4).

(3) *The notion of hosting service*

214. Article 14(1) of Directive 2000/31 concerns the provision of hosting services, that is, information society services which consist of the storage of information provided by a user of the service at his or her request.

215. Such a service may also include the circulation of that information to the public at the request of a user. According to settled case-law, the operator of an online social networking platform which stores information provided by the users of that platform (81) and the operator of a video-sharing platform (82) are, at least in principle, hosting service providers for the purposes of Article 14 of Directive 2000/31. The Court has also held that a referencing service constitutes a hosting service in so far as its provider transmits information from the recipient of that service over a communications network accessible to internet users and stores, that is to say, holds in memory on its server, certain data selected by the advertiser. (83) The EU legislature adopted a broad definition of hosting service in Regulation 2022/2065. (84)

216. The question which arises is therefore whether electronic driving assistance or geolocation-based navigation services constitute services the purpose of which corresponds to the above description.

217. In that respect, unlike information provided to online social networking platforms and video-sharing platforms, information on traffic conditions is provided to an electronic service operator not in order to be stored and circulated as it stands, but to feed into the reservoir of information available to that operator, which is subject to algorithmic processing. That processing makes it possible to generate a single image showing traffic conditions in a given area as accurately as possible. The operator then transmits the result of those operations to users in order to provide them with real-time information on traffic conditions in the area in which they are located.

218. Consequently, with the exception of the initial report of an event, information provided by a user is not circulated to all users through the service concerned in the form in which it was provided by him or her. That service creates a new 'information layer' based on the information provided by users and it is the grant of access to that layer that is the main purpose of that service.

219. To return to the initial report of an event, it is true that this seems to be circulated immediately and automatically to all users of the service concerned.

220. In the context of a hosting service in accordance with Article 14 of Directive 2000/31, storage and circulation operations are performed at the request of a user, which presupposes that the user initiates those processes and retains a degree of control over those operations.

221. It should be emphasised in that regard that the operation of the Coyote System service is based on an algorithm which removes reports whose reliability has been sufficiently disputed by the user community. The result of the operations performed by that algorithm therefore replaces the decision by the user who provided an initial report for the purpose of circulating it. While it is true that the removal of disputed reports may be provided for in the general conditions of use of the service, that does not alter the fact that the storage and circulation operations initiated at the request of a user are interrupted by the result of the algorithmic processing of all the information received by the operator.

222. Lastly, the same processing appears to be applied to reports accompanied by a personal message or photograph mentioned by Coyote System. These are circulated immediately and automatically and other users can confirm or dispute their veracity. All such communications are subject to algorithmic processing and only the result of those operations will be transmitted to users through the service. (85)

223. It follows that an electronic driving assistance or geolocation-based navigation service does not consist in the storage and circulation directly through that service of information provided by users as it stands, but in the creation, based on that information, of a new information layer which provides users with a single image showing, in real time and as accurately as possible, traffic conditions in the area in which they are located.

224. In that respect, Article 14 of Directive 2000/31 provides, in paragraph 2, that paragraph 1 does not apply when the recipient of the service is acting under the authority or the control of the provider. Paragraph 1 should also not apply when the provider communicates to users a conglomeration of information which has been provided to it, but which, once aggregated, is no longer identifiable in that conglomeration. A driving assistance or geolocation-based navigation service does not therefore fall within the scope of Article 14(1) of that directive.

225. I will nevertheless continue my analysis in case the Court does not concur with my proposal and considers that a driving assistance or geolocation-based navigation service could constitute a hosting service for the purposes of Article 14 of Directive 2000/31. In essence, in order for the storage by an information society service provider to come within the scope of that provision, it is necessary that the conduct of that service provider should be limited to that of an 'intermediary service provider' within the meaning intended by the legislature in the context of Section 4 of that directive. (86)

(4) *Status as a hosting provider*

226. It is clear from Article 14(1) of Directive 2000/31, read in the light of recital 42 thereof, that, for the information society service provider to fall within the scope of that provision, its activity must be of a mere technical, automatic and passive nature, which implies that that provider has neither knowledge of nor control over the information which is transmitted or stored.

227. In the examination to establish whether a service provider's activity is of such a nature, that provider's degree of involvement in determining how the information provided is presented and in the 'curation' of content plays an important role.

228. The Court held in the judgment in *L'Oréal and Others,* which concerned the operator of a marketplace, (87) that the mere fact that an operator stores offers for sale on its server, sets the terms of its service, is remunerated for that service and provides general information to its customers cannot have the effect of denying it the exemptions from liability provided for by Directive 2000/31. Where, by contrast, the operator has provided assistance which entails, in particular, optimising the presentation of the offers for sale in question or promoting those offers, it must be considered not to have taken a neutral position between the customer-seller concerned and potential buyers, but to have played an active role of such a kind as to give it knowledge of, or control over, the data relating to those offers for sale.

229. Thus, first of all, the fact that a service provider determines the structure of the general presentation of information stored at the request of users does not mean that it knows or controls the content of that information. Consequently, the fact that an operator of a driving assistance or geolocation-based navigation service predetermines categories of traffic events which users can choose to report does not imply that that operator plays an active role of such a kind as to give it knowledge of, or control over, the data relating to that report. The decision to link a report to a specific category is taken by the user of the service and the choice made by him or her may not accurately reflect current traffic conditions.

230. Second, the initial report of a traffic event is circulated immediately and automatically to all users. At that stage, the operator of the service does not verify the veracity of that report and its circulation does not require any action on its part.

231. However, a targeted analysis of initial reports gives an incomplete picture of the service at issue, as information provided by users is not circulated as it stands, but is subject to algorithmic processing in order to provide a single image showing traffic conditions in a given area. (88)

232. The following question therefore arises: does the operator of an electronic driving assistance or geolocation-based navigation service play an active role of such a kind as to give it knowledge of, or control over, the content of messages where it has implemented an algorithm for the automated management of interacting reports, such that the presentation of all those reports as part of its service relies on the operation of that algorithm? Regardless of the content of the messages and indications communicated individually by any user of that service, the final result of all those communications, which can be accessed by all users, is determined by means of an algorithm which consolidates or removes reports.

233. Coyote System submits that the operator of an electronic driving assistance or geolocation-based navigation service does not control reports published by users of that service; those reports are circulated immediately and automatically to all users of the service, without any action being taken by the operator. Any changes to reports which have been logged, including their removal, are the result of action taken by other users. Consequently, in the words of that company, users of the service 'generate, classify, modify and remove reports from start to finish'.

234. In that regard, Advocate General Poiares Maduro took the view, in his Opinion in *Google France and Google*, (89) that a Google search engine operator remains neutral as regards the information it hosts, as the result of searches made by its users are a product of automatic algorithms that apply objective criteria in order to generate sites likely to be of interest to the internet user. According to the Advocate General, the presentation of those sites and the order in which they are ranked depends on their relevance to the keywords entered, and not on Google's interest in or relationship with any particular site. In the judgment in *Google France and Google,* (90) the Court did not expressly have

recourse to that criterion and focused on the merely technical, automatic and passive nature of the activity of the operator concerned. It held in particular that concordance between the keyword selected and the search term entered by an internet user is not sufficient of itself to justify the view that Google has knowledge of, or control over, the data entered into its system by advertisers and stored in memory on its server.

235. More recently, in his Opinion in *YouTube and Cyando*, (91) Advocate General Saugmandsgaard Øe stated that an algorithm introduced to perform certain functions of a video-sharing platform, namely search, indexing and recommendation functions, carried out merely technical and automatic processing of information stored by the operator of that platform, with the result that the operator did not control the content of the information stored, but the conditions for displaying the search results.

236. Furthermore, in the judgment in *YouTube and Cyando*, (92) the Court found, with regard to one of the conditions to which Article 14(1) of Directive 2000/31 makes exemption from liability for an intermediary service provider subject, that the fact that the operator of an online content-sharing platform automatically indexes content uploaded to that platform, that that platform has a search function and that it recommends videos on the basis of users' profiles or preferences is not a sufficient ground for the conclusion that that condition is not fulfilled. As I observed in my Opinion in *Russmedia Digital and Inform Media Press*, (93) nor is that circumstance a fortiori capable of depriving that operator of the possibility of relying on the exemption from liability provided for in that legal provision. The question as to whether the conditions for exemption from liability laid down in Article 14(1)(a) and (b) of Directive 2000/31 have been met arises only if the service provider concerned can be described as a 'hosting provider assuming a neutral role' in relation to the information that it stores and can, a priori, rely on that exemption.

237. I infer from this that the service provider does not lose its status as a hosting provider solely because it uses an algorithm which performs automated indexation of content provided by users and recommends to them content which may be of interest, without removing or hiding other content.

238. However, algorithmic processing of information provided by users may consist not in the curation of content, but in the creation of a new corpus of information in which the information provided by users is no longer identifiable. That is the case in particular where the service in question is designed, as in this case, to provide as accurate an image as possible of a portion of reality. In that case, the operator of that service may play a role which gives it, at least, control over the information provided by users. If the operator determines, through the programming of its algorithm, the level of relevance of all information provided by its users based on criteria which, in its view, allow an accurate representation of traffic conditions, it must be considered to exercise such control. In doing so, the operator determines the quantity and 'quality' of the information necessary in order to confirm or remove information from the system. In addition, those criteria may relate not only to the simple quantity of convergent or divergent information concerning a given traffic event, but also, inter alia, to the evaluation of the reliability of a user and the information provided by him or her.

239. Consequently, although the algorithm used by the operator of an electronic driving assistance or geolocation-based navigation service targets information transmitted by all its users, its programming is the responsibility of that operator and allows it to exercise control over the information transmitted or stored. The operator cannot therefore rely on Article 14(1) of Directive 2000/31.

240. In the light of my conclusion based on an analysis of Article 14 of Directive 2000/31 and the fact that Article 15 of that directive applies only to the provision of the services covered, inter alia, by the former provision, the latter provision cannot be considered to be relevant in examining the conformity of the prohibition on circulation at issue with that directive. For the sake of completeness, I will nevertheless examine the third question in case the Court does not concur with my analysis regarding Article 14 of that directive.

(c) ***Article 15 of Directive 2000/31***

241. By its third question, the referring court is seeking to ascertain whether Article 15 of Directive 2000/31 precludes the imposition on operators of an electronic driving assistance or geolocation-based navigation service of the obligation not to circulate, in specific cases and within the framework of that

service, certain categories of messages and indications, without the operator having to be aware of the content thereof.

242. In order to answer that question, it must be determined whether a prohibition on circulation communicated to an operator imposes on it obligations that are limited to a specific case. Although Article 15(1) of Directive 2000/31 prohibits Member States from imposing on hosting providers a general obligation to monitor the information which they transmit or store or a general obligation actively to seek facts or circumstances indicating illegal activity, recital 47 of that directive states that such a prohibition does not concern monitoring obligations 'in a specific case'.

243. In that regard, the Court has held on a number of occasions that measures that consist in requiring a service provider to introduce, exclusively at its own expense, a screening system which entails general and permanent monitoring in order to prevent any future infringement of intellectual property rights were incompatible with Article 15(1) of Directive 2000/31. (94) It follows that an obligation to monitor any future infringement of a certain category of rights is not limited to a specific case within the meaning intended by the EU legislature in recital 47 of that directive.

244. However, as I observed in my Opinion in *Glawischnig-Piesczek*, (95) the Court held in the judgment in *L'Oréal and Others* (96) that a hosting provider may be ordered to take measures which contribute, inter alia, to preventing further infringements of the same nature by the same recipient. I inferred that, in order not to result in the imposition of a general obligation, a monitoring obligation must satisfy additional requirements, namely it must concern infringements of the same nature by the same recipient of the same rights. (97) An obligation to monitor in relation to a specific case must therefore be limited, in particular, with regard to information which an operator must identify and then remove or to which it must make access impossible.

245. In that same vein, the Court ruled in the judgment in *Glawischnig-Piesczek* (98) that an injunction issued to an information society service provider ordering it to remove specific elements of content which it stores as a hosting provider, containing messages which are identical or similar to those which a national court had found to be defamatory against a user, concerns a specific case. The Court emphasised the fact that that injunction did not require the hosting provider to carry out an independent assessment of the content stored. (99) It held that that hosting provider could simply verify, by means of automated search tools, whether content contained the elements specified in the injunction, without having to examine itself, in the event that that condition was not fulfilled, whether that content was defamatory.

246. Furthermore, in my Opinion in *Mc Fadden*, (100) which concerned a provider of access to a communication network within the meaning of Article 12 of Directive 2000/31, I noted, drawing inspiration from the *travaux préparatoires* for that directive, that for an obligation to be able to be considered to apply in a specific case, it must also be limited, inter alia, in terms of the duration of the monitoring. The requirement relating to the limitation *ratione temporis* of an obligation to monitor reflects several judgments (101) and the Court appeared to confirm that reading in its judgment in *YouTube and Cyando*, (102) stating that Article 15 of that directive precludes the imposition of general and permanent monitoring on a hosting service provider.

247. I would observe that all the elements delineating an obligation to monitor are interdependent. In order to answer the question whether an order complies with the prohibition laid down in Article 15 of Directive 2000/31, there must therefore be an overall assessment of those elements.

248. In the light of those considerations, it must be determined whether, in order to comply with the prohibition on circulation at issue, an operator must conduct sufficiently targeted monitoring such that it is limited to a specific case.

249. I note in that regard that, under French law, a prohibition decision is issued for each check which the competent authority wishes to remove from electronic driving assistance or geolocation-based navigation services. In addition, the obligation imposed on an operator through a prohibition on circulation is limited *ratione temporis*. Under Article L. 130-11 of the Highway Code, the maximum duration of a prohibition is determined by the nature of the roadside check in question and cannot in any event exceed 12 hours. Similarly, under that provision, the area covered by the prohibition varies

depending on whether or not it is a built-up area, with the result that the obligation on an operator is also limited *ratione loci*.

250. Thus, in order to comply with a prohibition on circulation, an operator is required not to transmit information concerning a clearly defined roadside check. It does not have to carry out an independent assessment of all the information stored but, in order to identify the information covered by that prohibition, it is required to apply the criteria specified in the prohibition decision, which limit the extent of the prohibition *ratione materiae*, *ratione temporis* and *ratione loci*.

251. It follows from the foregoing that, subject to verification by the national court as appropriate, the prohibition on circulation at issue does not entail obligations going beyond those relating to a specific case.

252. That consideration is not called into question by Coyote System's claims that, contrary to the findings of the national court, a prohibition on circulation compels operators *de facto* to be aware of messages transmitted by users, to determine whether their content falls within the scope of the exception laid down in point II of Article L. 130-11 of the Highway Code (103) and to select those messages which can be circulated to the wider community.

253. That company disputes the assessments made by the referring court but does not explain why screening cannot be carried out automatically without the operator first analysing the content of messages, along the lines of the approach mentioned in the judgment in *Glawischnig-Piesczek*. (104) Furthermore, as I have noted, (105) Article 15 of Directive 2000/31 does not preclude any detection or screening obligation. On the other hand, that provision prohibits any form of general monitoring, without calling into question such an obligation concerning a specific case.

254. In the light of all those circumstances, the third question should be answered to the effect that Article 15 of Directive 2000/31 does not preclude the imposition on operators of an electronic driving assistance or geolocation-based navigation service of the obligation not to circulate, within the framework of that service, certain categories of messages and indications provided that, in order to identify the messages or indications covered by that prohibition, those operators are not required to carry out an independent assessment of all the information stored but must, on the other hand, apply the criteria specified in the prohibition decision, which limit the extent of the prohibition *ratione materiae*, *ratione temporis* and *ratione loci*.

255. Without prejudice to the foregoing additional remarks concerning the interpretation of Article 15 of Directive 2000/31, I maintain the position which I put forward in point 240 of this Opinion that that provision is not relevant in examining the conformity of the prohibition on circulation at issue with that directive.

VI. **Conclusion**

256. In the light of all the foregoing considerations, I propose that the Court of Justice answer the questions referred for a preliminary ruling by the Conseil d'État (Council of State, France) as follows:

in Case C-188/24:

(1) the coordinated field, as defined in Article 2(h) 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, covers the obligation on publishers of online communication services to put in place technical measures to prevent minors from accessing pornographic content, despite the fact that that obligation does not relate to any of the subjects governed by the harmonising provisions of Chapters II and III of that directive;

(2) the obligation to put in place technical measures to prevent minors from accessing pornographic content cannot be excluded from the coordinated field within the meaning of Article 2(h) of that directive solely on the ground that that obligation is a corollary of general and abstract provisions of criminal law which refer to certain conduct as constituting a criminal offence liable to prosecution and which apply without distinction to any natural or legal person;

(3) the fact that the adoption of individual measures in respect of a given service is not such as to ensure the protection of the fundamental rights guaranteed by Articles 1 and 24 of the Charter and by Article 8 ECHR does not permit a derogation from the mechanism established in Article 3 of that directive in order to apply an obligation arising from general and abstract provisions to a category of service providers;

in Case C-190/24:

(1) the coordinated field, as defined in Article 2(h) of Directive 2000/31, covers a prohibition, imposed on operators of an electronic driving assistance or geolocation-based navigation service, on circulating messages and indications published by users of that service and likely to allow other users to evade roadside checks, despite the fact that that prohibition does not relate to any of the matters governed by the harmonising provisions set out in Chapters II and III of that directive;

(2) Article 3 of Directive 2000/31 does not preclude a prohibition on circulating messages and indications published by users of a driving assistance or geolocation-based navigation service which a Member State of destination of those services also intends to impose on operators of such services established in other Member States, provided that prohibition fulfils the conditions laid down in Article 3(4) or, if applicable, Article 3(5) of that directive.

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1 Original language: French.

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2 Directive 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).

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3 Directive of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).

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4 Directive of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector (OJ 1997 L 24, p. 1).

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5 Directive 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).

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6 Directive of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ 2011 L 335, p. 1).

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7 JORF No 0187 of 31 July 2020.

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8 The wording of that provision is reproduced only in part in the request for a preliminary ruling.

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9 JORF No 0235 of 8 October 2021.

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10 JORF No 0093 of 20 April 2021.

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11 That information is taken from the opinion of the rapporteur public of the Conseil d'État (Council of State, France) in the main proceedings, which is available on that court's website: https://www.conseil-etat.fr/fr/arianeweb/CRP/conclusion/2024-03-06/453763?download_pdf.

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12 According to the Commission's written observations, that court stayed the proceedings pending the outcome of the proceedings before the referring court.

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13 Signed in Rome on 4 November 1950 ('ECHR').

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14 See, to that effect, judgments of 3 December 2020, *Star Taxi App* (C-62/19, EU:C:2020:980, paragraph 72), and of 27 April 2023, *Viagogo* (C-70/22, EU:C:2023:350, paragraphs 25 to 28).

15 See, to that effect, judgments of 9 November 2023, *Google Ireland and Others* (C-376/22, 'the judgment in *Google Ireland and Others*', EU:C:2023:835, paragraph 42), and of 30 May 2024, *Airbnb Ireland and Amazon Services Europe* (C-662/22 and C-667/22, EU:C:2024:432, paragraph 55).

16 See point 29 et seq. of this Opinion.

17 The power of a competent authority to issue such a formal notice was laid down in Article 23 of the Law of 30 July 2020. It should be noted that that article was replaced in 2024 by the new Articles 10-1 and 10-2 of loi No 2004-575 du 21 juin 2004 pour la confiance dans l'économie numérique (Law No 2004-575 of 21 June 2004 to promote confidence in the digital economy (JORF No 0143 of 22 June 2004)) and that the latter provision now provides for the implementation of the derogatory procedures laid down in Article 3(4)(a) and (b) or Article 3(5) of Directive 2000/31.

18 The questions referred for a preliminary ruling do not relate to individual measures which are adopted on the basis of general and abstract provisions and fulfil the conditions laid down in Article 3(4) and (5) of Directive 2000/31, but to general and abstract provisions in the strict sense, which are applied directly to information society service providers.

19 In that regard, the Commission asserted at the hearing that the conformity of Article 22 of the Law of 30 July 2020 with Directive 2000/31 is not being challenged in the main proceedings. According to the Commission, aside from the Decree of 7 October 2021, only Article 23 of that Law is being examined by the referring court from the point of view of its conformity with EU law. That remark might suggest that the Court's analysis should not focus on an obligation that is the corollary of general and abstract provisions of criminal law, but on the formal notice that the competent authority may impose on a publisher of an online communication service. However, it is evident from the third question in that case in particular that it is that obligation which the referring court has in view.

20 See, to that effect, judgment of 25 October 2011, *eDate Advertising and Others* (C-509/09 and C-161/10, EU:C:2011:685, paragraph 57).

21 See point 31 of this Opinion.

22 See, to that effect, judgment in *Google Ireland and Others* (paragraph 42), and judgment of 30 May 2024, *Airbnb Ireland and Amazon Services Europe* (C-662/22 and C-667/22, EU:C:2024:432, paragraph 55).

23 See, to that effect, judgment in *Google Ireland and Others* (paragraphs 43 and 44), and judgment of 30 May 2024, *Airbnb Ireland and Amazon Services Europe* (C-662/22 and C-667/22, EU:C:2024:432, paragraphs 56 and 57).

24 See recital 22 of Directive 2000/31: '… effectively guarantee freedom to provide services and legal certainty for suppliers and recipients of services.'

25 See, to that effect, judgment of 25 October 2011, *eDate Advertising and Others* (C-509/09 and C-161/10, EU:C:2011:685, paragraph 57). See also Crabit, E., 'La directive sur la commerce électronique: le projet "Méditerranée"', Revue du droit de l'Union européenne, No 4, 2000, p. 767.

26 Article 7(1) of Directive 2000/31 provides that 'in addition to other requirements established by Community law, Member States which permit unsolicited commercial communication by electronic mail shall ensure that such commercial communication by a service provider established in their territory shall be identifiable clearly and unambiguously as such as soon as it is received by the recipient.'

27 See judgments of 19 December 2019, *Airbnb Ireland* (C-390/18, EU:C:2019:1112, paragraph 82); of 1 October 2020, *A (Advertising and sale of medicinal products online)* (C-649/18, EU:C:2020:764, paragraphs 87 and 88); and of 30 May 2024, *Airbnb Ireland and Amazon Services Europe* (C-662/22 and C-667/22, EU:C:2024:432, paragraph 64).

28 See judgment of 30 May 2024, *Airbnb Ireland and Amazon Services Europe* (C-662/22 and C-667/22, EU:C:2024:432, paragraph 62). See also my Opinion in *Airbnb Ireland and Others* (C-662/22 to C-667/22, EU:C:2024:18, points 155 and 158).

29 Recital 21 of Directive 2000/31 states that ‘the scope of the coordinated field is without prejudice to future Community harmonisation relating to information society services and to future legislation adopted at national level in accordance with Community law; the coordinated field covers only requirements relating to online activities such as online information, online advertising, online shopping, online contracting and does not concern Member States’ legal requirements relating to goods such as safety standards, labelling obligations, or liability for goods, or Member States’ requirements relating to the delivery or the transport of goods, including the distribution of medicinal products; the coordinated field does not cover the exercise of rights of pre-emption by public authorities concerning certain goods such as works of art’.

30 See, to that effect, judgment of 1 October 2020, *A (Advertising and sale of medicinal products online)* (C-649/18, EU:C:2020:764, paragraph 86).

31 See, to that effect, judgment of 1 October 2020, *A (Advertising and sale of medicinal products online)* (C-649/18, EU:C:2020:764, paragraph 87).

32 See, to that effect judgment of 1 October 2020, *A (Advertising and sale of medicinal products online)* (C-649/18, EU:C:2020:764, paragraph 88).

33 See, to that effect, judgment of 19 December 2019, *Airbnb Ireland* (C-390/18, EU:C:2019:1112, paragraph 87).

34 Of course, it could theoretically be argued that the extent of the coordinated field is wider than the scope of Directive 2000/31, as limited by Article 1(5) thereof. Such an interpretation was, however, rejected by the Court in the judgment of 2 December 2010, *Ker-Optika* (C-108/09, EU:C:2010:725, paragraphs 27 and 28), and also dismissed implicitly in its judgment of 27 April 2022, *Airbnb Ireland* (C-674/20, EU:C:2022:303, paragraphs 35 and 49). If that directive does not apply to a field, the mechanism established in Article 3 thereof cannot affect the applicability of rules falling within that field in cross-border situations.

35 See point 70 of this Opinion.

36 See point 62 of this Opinion.

37 See, to that effect, judgment of 21 March 2024, *LEA* (C-10/22, EU:C:2024:254, paragraph 67).

38 Judgment of 27 April 2022, *Airbnb Ireland* (C-674/20, EU:C:2022:303, paragraph 27).

39 See judgment of 30 May 2024, *Airbnb Ireland and Amazon Services Europe* (C-662/22 and C-667/22, EU:C:2024:432, paragraph 46).

40 See point 55 of this Opinion.

41 See judgment of 10 February 2009, *Ireland* v *Parliament and Council* (C-301/06, EU:C:2009:68, paragraph 63).

42 See judgment of 3 December 2019, *Czech Republic* v *Parliament and Council* (C-482/17, EU:C:2019:1035, paragraph 36).

43 Directive of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36).

44 The French Government derives that argument from Article 1(5) of Directive 2006/123, which reads: ‘This Directive does not affect Member States’ rules of criminal law. However, Member States may not restrict the freedom to provide services by applying criminal law provisions which specifically regulate or affect access to or exercise of a service activity in circumvention of the rules laid down in this Directive’.

45 See Article 1(5) of Directive 2006/123.

46 See recital 12 of Directive 2006/123.

47 See recital 8 of Directive 2000/31 and recital 12 of Directive 2006/123, which clarifies that that directive ‘does not harmonise or prejudice criminal law. However, Member States should not be able to restrict the freedom to provide services by applying criminal law provisions which specifically affect the access to or the exercise of a service activity in circumvention of the rules laid down in this Directive’.

48 See point 30 of this Opinion.

49 See point 112 of this Opinion.

50 See judgment of 30 May 2024, *Airbnb Ireland and Amazon Services Europe* (C-662/22 and C-667/22, EU:C:2024:432, paragraph 71).

51 Regulation of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act) (OJ L, 2024/1083).

52 Article 29 of Regulation 2024/108 provides that Article 15 applies from 8 May 2025.

53 See point 31 of this Opinion.

54 See judgment in *Google Ireland and Others* (paragraph 43), and judgment of 30 May 2024, *Airbnb Ireland and Amazon Services Europe* (C-662/22 and C-667/22, EU:C:2024:432, paragraph 56).

55 Recital 22 of Directive 2000/31 states that ‘information society services should be supervised at the source of the activity, in order to ensure an effective protection of public interest objectives … not only for the citizens of [the Member State on whose territory a service provider is established], but for all [EU] citizens’. See my Opinion in *Airbnb Ireland and Others* (C-662/22 to C-667/22, EU:C:2024:18, point 147).

56 See point 122 of this Opinion.

57 See, to that effect, judgment of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 80 to 83 and 88).

58 See point 64 of this Opinion.

59 See point 13 of this Opinion.

60 Paragraph 60.

61 In the light of the Opinion which he delivered in the main proceedings, that also appears to be the position taken by the rapporteur public of the Conseil d’État (Council of State), according to whom ‘Case [C-190/24] concerns requirements relating to the pursuit of their activity by service providers which fall within a category of information society services. The rules at issue are general and abstract and they do not concern “a given service”’.

62 See point 30 of this Opinion.

63 See point 111 of this Opinion.

64 See point 69 of this Opinion.

65 See also my Opinion in *Google Ireland and Others* (C-376/22, EU:C:2023:467, points 47 and 50), in which I mentioned the possibility of adopting an interpretation to that effect. Article 14(3) of Directive 2000/31 does not reserve that competence in any way.

66 Regulation of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1).

67 Judgment of 3 October 2019 (C-18/18, EU:C:2019:821).

68 I must point out that the lessons to be drawn from that judgment cannot be decisive as the referring court in the case which gave rise to that judgment had not requested an interpretation of Article 3 of Directive 2000/31. The Court also reformulated the questions referred and examined that directive in its entirety. Moreover, the Court could have taken the view that it was not for it to interpret that provision or that the conditions laid down in Article 3(4) of the directive were fulfilled.

69 Regulation of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ 2022 L 277, p. 1).

70 Recital 38 of Regulation 2022/2065 states that 'orders to act against illegal content and to provide information are subject to the rules safeguarding the competence of the Member State in which the service provider addressed is established and the rules laying down possible derogations from that competence in certain cases, set out in Article 3 of [Directive 2000/31], only if the conditions of that Article are met. Given that the orders in question relate to specific items of illegal content and information, respectively, where they are addressed to providers of intermediary services established in another Member State they do not in principle restrict those providers' freedom to provide their services across borders. Therefore, the rules set out in Article 3 of [that directive] … do not apply in respect of those orders'.

71 See, to that effect, in the context of the relationship between Article 3 of Directive 2000/31 and Regulation 2022/2065, Husovec, M., Principles of the Digital Services Act, Cambridge University Press, 2017, p. 153, and Wilman, F., in Wilman, F., Kaleda, S.L., Loewenthal, P.J., The EU Digital Services Act. A Commentary, Oxford University Press, Oxford, 2024, p. 56.

72 See point 180 of this Opinion.

73 The French Government seems to suggest in its written observations that information concerning a given roadside check is 'declared illegal' before the order not to circulate it is issued. However, a reading of Articles L. 130-11 and R. 130-11 of the Highway Code suggests that an administrative authority may prohibit the circulation of information concerning a specific roadside check and that the act of circulation becomes illegal only when the order is notified to the operator in question. In any event, that question is a matter of interpretation of national law for which the referring court alone has jurisdiction.

74 Paragraph 60.

75 However, it should be noted, first, that the prohibition on circulation at issue has effects on the operators to which it has been communicated and, second, that the request for a preliminary ruling does not indicate how the list of operators to which a prohibition is communicated is drawn up.

76 Paragraph 49.

77 Paragraph 35.

78 See point 165 of this Opinion.

79 See point 186 of this Opinion.

80 See point 194 of this Opinion.

81 See judgments of 16 February 2012, *SABAM* (C-360/10, EU:C:2012:85, paragraph 27), and of 3 October 2019, *Glawischnig-Piesczek* (C-18/18, EU:C:2019:821, paragraph 22).

82 See, to that effect, judgments of 22 June 2021, *YouTube and Cyando* (C-682/18 and C-683/18, EU:C:2021:503, paragraph 104), and of 26 April 2022, *Poland* v *Parliament and Council* (C-401/19, EU:C:2022:297, paragraph 28).

83 Judgment of 23 March 2010, *Google France and Google* (C-236/08 to C-238/08, EU:C:2010:159, paragraph 111).

84 In rectifying that definition, which is unfit for the challenges of the present day, the EU legislature distinguished, within that broad category of hosting services, the subcategory formed by services provided by online platforms consisting not only in storage of information provided by users, but also its circulation to the public. Under Regulation 2022/2065, providers of such platforms are, at least in principle, subject to specific additional obligations. See also recital 13 of that regulation.

85 In that regard, it cannot be ruled out that a component of that service consisting in the transmission of messages between users constitutes a hosting service. However, the question of that communication function is not raised in the case at issue.

86 See, to that effect, judgment of 23 March 2010, *Google France and Google* (C-236/08 to C-238/08, EU:C:2010:159, paragraph 112).

87 See judgment of 12 July 2011 (C-324/09, EU:C:2011:474, paragraphs 115 and 116).

88 See point 223 of this Opinion.

89 C-236/08 to C-238/08, EU:C:2009:569, point 144.

90 Judgment of 23 March 2010 (C-236/08 to C-238/08, EU:C:2010:159, paragraphs 114 and 117).

91 See Opinion of Advocate General Saugmandsgaard Øe in Joined Cases *YouTube and Cyando* (C-682/18 and C-683/18, EU:C:2020:586, points 160 and 162).

92 See judgment of 22 June 2021 (C-682/18 and C-683/18, EU:C:2021:503, paragraph 114).

93 C-492/23, EU:C:2025:68, point 53.

94 See, to that effect, judgment of 22 June 2021, *YouTube and Cyando* (C-682/18 and C-683/18, EU:C:2021:503, paragraph 135 and the case-law cited).

95 C-18/18, EU:C:2019:458, point 42.

96 Judgment of 12 July 2011 (C-324/09, EU:C:2011:474, paragraph 144).

97 See my Opinion in *Glawischnig-Piesczek* (C-18/18, EU:C:2019:458, point 45).

98 Judgment of 3 October 2019 (C-18/18, EU:C:2019:821).

99 See judgment of 3 October 2019, *Glawischnig-Piesczek* (C-18/18, EU:C:2019:821, paragraphs 45, 46 and 53).

100 C-484/14, EU:C:2016:170, point 132.

101 See also my Opinion in *Glawischnig-Piesczek* (C-18/18, EU:C:2019:458, point 49).

102 See, to that effect, judgment of 22 June 2021, *YouTube and Cyando* (C-682/18 and C-683/18, EU:C:2021:503, paragraph 135).

103 Under point II of Article L. 130-11, ‘the prohibition mentioned in point I of this article shall not apply to the events or conditions provided for in Article 3 of Commission Delegated Regulation (EU) No 886/2013 of 15 May 2013 supplementing Directive 2010/40/EU of the European Parliament and of the Council with regard to data and procedures for the provision, where possible, of road safety-related minimum universal traffic information free of charge to users [OJ 2013 L 247, p. 6]’. That provision includes a list of 12 weather or road conditions (such as an animal, a person, an obstacle or debris on the road) likely to affect road safety in the strict sense.

104 Judgment of 3 October 2019, *Glawischnig-Piesczek* (C-18/18, EU:C:2019:821, paragraph 46).

105 See point 245 of this Opinion.