7 January 2015: Taxis/Chauffeur driven cars (CDC)

Published on January 26, 2015

The Autorité de la concurrence has published the opinion it provided to the Government on the decree, adopted last December 30, regulating the activity of CDC and taxis.

> Version française

In brief

The Autorité de la concurrence has published its opinion that it submitted to the Government on 9 December concerning the draft decree taken pursuant to the law dated 1 October 2014 regulating the activity of taxis and chauffeur driven cars (CDC). Adopted on 30 December 2014, the decree[1] has taken into consideration a certain number of recommendations issued by the Autorité.

The Autorité had delivered an overall favourable opinion on the draft submitted to it, but makes several recommendations for all CDC professionals to be treated equally. It had also expressed reserves on the obligation imposed on CDC – introduced by the law dated 1 October 2014 – to return to their base (CDC head office) after each trip.

The context

Following the suspension in interim relief by the Conseil d'État of the decree instituting a time period of 15 minutes between the booking and picking up the client in a CDC[2] , deputé Thomas Thévenoud was tasked with a mediation mission. His proposals were resumed in the law dated 1 October 2014. The Autorité was consulted by the Ministry of the economy, industry and digital media on the application draft decree.

The obligation to "return to the base"

The law provides that after each trip, a chauffeur driven car (CDC) must return to the base ("place where the operator is based" of the CDC or "in a place, off the street, where parking is authorized", which excludes authorized parking on the street).

The draft decree transmitted to the Autorité specified derogations to this obligatory return to the base. Nonetheless, the Autorité first called into question the obligation itself, which appears to accept the failure of the efficient application of the existing measures to discourage illegal cruising for hail (*maraudage*), and which, under the pretext of competitive regulation, aims once again to settle a police problem[3] .

This point is particularly worrying since the legitimate discouragement of illegal hailing, which is part of the taxis' monopoly, should not result in the distortion of competition on the pre-booking market, which is open to competition. Yet, this provision aims to impede CDC activity. The Autorité also considers that other control measures would be more efficient in order to discourage illegal hailing (see paragraphs 65 et seq. of the opinion).

Several provisions of the decree are not suitable for traditional CDC

Several provisions of the draft decree gave rise to discrepancies in the treatment of CDC.

The CDC include two major categories. The first is comprised of traditional CDC operators (formerly known as *voitures de grande remise*) whose principals include luxury hotels, trade fair or festival organizers and embassies. CDC operators make vehicles available to principals to transport their clients or VIPs. The second category of CDC works with smartphone applications and targets the same clientele as those of the taxis on the pre-booking market.

- Exceptions to the return to base

The return to base was accompanied by two exceptions in the draft decree submitted for opinion to the Autorité. If CDC chauffeurs could provide proof of a

pre-booking or a contract with the end client, they were not obliged to return to the base or to park off the street after dropping off a client.

Nonetheless, according to the facts, the first exception – i.e. providing proof of a pre-booking – could only apply to chauffeurs of CDC who were in contact with the clients via an application, insofar as the traditional CDC (formerly *grande remise*) do not operate according to the same model of a sequence of pre-bookings, but make available to their principals, for a given period, vehicles for their clients.

The second exception – to have a contract with the end client – was also unsuitable for traditional CDC businesses which the law wanted to target. The traditional CDC, which sign contracts with the principals, separate from the passenger per se, do not know the destination, the civil status of the passenger or that of the fellow passengers. By making this information obligatory and by not indicating that the "end client" could be the principal, when the latter pays, the draft decree defined "the contract with the end client" as a pre-booking, also burdened by several conditions, and thereby constraining the scope of the law which provides two exceptions to the return to base.

The Autorité recommended that the draft decree be modified so that the exception to the return to base could take into consideration the specific nature of chauffeur driven car businesses: - by referring to the contract with the principal, who is the payer; - by withdrawing the condition relating to proof of civil status of the passenger(s) as well as proof of the destination. > The decree specifies that the end client may be a legal entity, thereby enabling the contract with the principal to be covered. The obligation to provide proof of the destination shall be withdrawn

- The bank guarantee

The draft decree reinforced the registration conditions for CDC operators in the national CDC register, in particular by requiring a bank guarantee for a minimum

amount of 1500 euros per vehicle, which only applied to CDC. Even though proof of financial means is regular practice in the context of procurement contracts and for the collective transportation vehicles for individuals, the transposition of such a requirement for the CDC seemed neither necessary, nor justified by the objective of professionalization of the sector, insofar as the draft decree does not mention the events under which the guarantee could be called upon.

Furthermore, as this responsibility is incumbent on the operator, it is the traditional CDC which would have borne the costs of this provision given that they are the only parties to employ their chauffeurs and to own their vehicles. Therefore, the provision introduced a dual and unjustified discrepancy in treatment, between taxis, which are not subject to this provision, and between the CDC according to their economic model (direct operation versus the use of intermediaries).

The Autorité recommended withdrawing the requirement for bank guarantees and considering that the legislator's intention concerning the professionalization of the CDC sector had been met by other legislative and regulatory provisions (insurance and professional training). > Unlike the draft transmitted to the Autorité, the decree does not mention that the CDC must provide a bank guarantee to prove their financial means. The amount of the financial means nonetheless remains fixed at 1500 euros. The decree makes reference to an order to set the conditions for providing proof of financial means.

- **The increase of administrative burdens**

The decree increased the administrative burdens by ordering that any change relating to the information provided at the time of the registration on the CDC register (in particular financial means, registration card and business card) should be sent to the Ministry of Transport within 15 days. Yet, this administrative burden which, in practice, would have been borne solely by the companies which directly operate vehicles, also introduced a discrepancy in the treatment of CDC according to their economic model. Given that their activity is seasonal (festivals, trade fairs, etc.), the CDC companies often require vehicles and additional drivers

over a short period.

Therefore, the Autorité recommended that this provision be modified, so that the obligation to provide information to the administrator applies every quarter, which would appear to be sufficient. > The decree follows the recommendation by instituting a quarterly period.

> For further details on this matter, consult the full text of opinion 14-A-17 dated 9 December 2014 concerning a draft decree relating to individual public transport available

[1] Consult the decree no. 2014-1725 dated 30 December 2014.
[2] The Autorité de la concurrence had issued an unfavorable opinion on this draft decree instituting a time period of 15 minutes between the booking and picking up the client. See press release and opinion dated 16 December 2013. On December 17, the Conseil d'État definitively revoked the decree (see the press release).
[3] See opinion dated 16 December 2013.

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