European Commission: Spain Receives Final Warning on Advertising Restrictions

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On 6 May 2008, the Commission sent Spain a reasoned opinion for failing to comply with European advertising rules. The move constitutes the second and final stage in the infringement procedure initiated in July 2007, before the case is referred to the European Court of Justice.

According to Article 18(1) of the Audiovisual Media Services Directive (former article 18(2) of the old Television without Frontiers Directive), "the proportion of television advertising spots and teleshopping spots within a given clock hour shall not exceed 20%", i.e. 12 minutes per hour. The Commission takes the term "advertising spot" to include all forms of advertising familiar to the audiovisual landscape. As Commissioner Vivian Reding explains, "All advertising and teleshopping spots – including "telepromotions" spots, "advertorials" or however else they are described – must be taken as counting towards the 12 minutes per clock hour. To interpret the rule in any other way is to fail to show viewers and citizens the respect they deserve." The rule is intended to guarantee quality television across the EU, through the prevention of excessive interruptions that spoil the citizens' viewing experience.

Spain, however, follows a divergent interpretation: micro-slots, telepromotions, advertorials etc. are considered to fall outside the Directive's 12 minute limit and are instead subject to a separate Spanish law, which imposes a different limit of 17 minutes per hour. The discrepancy was revealed through a monitoring process that took part in two stages, initially in May and June 2005 and, thereupon, on the basis of a sample of one week per month, from July 2005 to July 2006.

Spain was sent a warning by the Commission on 11 July 2007. The Spanish authorities replied on 31 October 2007, but declined to bring their interpretation of the Directive in line with that of the Commission.

"Television without frontiers: the European Commission takes the next step in proceedings against Spain for not complying with television advertising restrictions", Press Release of the European Commission, Brussels, 6 May 2008

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