[IT] Council of State Upholds Annulment of AGCOM's Rules on Short News Reports

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On 23 March 2012, the Council of State handed down its judgment in the case AGCOM v. Sky Italia. On 13 July 2011, the Lazio Regional Administrative Court (TAR Lazio) annulled AGCOM's rules on short news reports set out in decision 667/10/CONS insofar as they set at three minutes the maximum duration for such reports, but confirmed the applicability of those rules both to internal and cross-border situations (see IRIS 2012-1/31).

AGCOM and the broadcaster Sky Italia appealed the TAR Lazio ruling before the Council of State. Its judgment clarifies the territorial scope of the provisions on short news reports set out in Directive 2010/13/EU (the AVMSD) as well as on their relationship with the AVMSD's preamble, with the European Convention on Transfrontier Television (ECTT), and with Directive 2001/29/EC on copyright and related rights in the information society.

As per Recital 55 AVMSD, short news reports "should not exceed 90 seconds". Article 15(6) AVMSD, on the other hand, does not place any limit on their duration. In its appeal, AGCOM argued that the body of the AVMSD should take precedence over its preamble so that member states should be entitled to set a longer duration. The Council of State, in contrast, held that the AVMSD preamble provides an "inescapable criterion" for interpreting the AVMSD body and that it constitutes a clear expression of the European legislature's intention to lay down a "clear benchmark" for the duration of short news reports.

Turning to the territorial scope of the AVMSD provisions on short news reports, Sky Italia argued that those provisions apply exclusively to cross-border situations. The Council of State, instead, took the view that the applicability of those provisions both as to internal and cross-border situations can be inferred from their wording as well as from their aim to protect the right to information of European citizens, a need that deserves protection also in purely internal situations.

Moreover, according to the Council of State, it does not follow from the fact that the ECTT provisions on short news reports only apply to transfrontier broadcasting that also the corresponding AVMSD provisions should apply exclusively to cross-border situations. Indeed, in the Council of State's view, the AVMSD and ECTT

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rules on short news reports “complement one another.”

Furthermore, the Council of State ruled, contrary to Sky Italia’s contention, that the statement set out in Recital 56 AVMSD that provisions on short news reports should be “without prejudice to Directive 2001/29/EC” does not prevent member states from introducing additional restrictions on the exercise of copyright in order to protect the viewers’ right to be informed about events high interest.

Finally, the Council of State denied Sky Italia’s motion for a preliminary ruling from the Court of Justice as to the interpretation of Article 15(6) AVMSD, because that provision did not give rise to any real interpretative doubt. The Council of State thus upheld the findings of the TAR Lazio and dismissed the appeal.

Consiglio di Stato, sentenza n. 3498 del 23 marzo 2012, depositata il 13 giugno 2012

http://www.giustizia-amministrativa.it/DocumentiGA/Consiglio%20di%20Stato/Sezione%203/2012/20120345/Provvedimenti/201203498_11.XML

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