[AT] Austrian Administrative Court submits questions to CJEU on legal classification of newspaper's online video page

IRIS 2014-9:1/8

Peter Matzneller
Institute of European Media Law (EMR), Saarbrücken/Brussels

In a decision of 26 June 2014 (case no. 2013/03/0012), the Österreichische Verwaltungsgerichtshof (Austrian Administrative Court – VwGH) submitted questions to the Court of Justice of the European Union (CJEU) concerning the interpretation of Directive 2010/13/EU (Audiovisual Media Services Directive – AVMSD) as part of the "New Media Online" case (case C-347/14).

The national court procedure concerns the website of an Austrian daily newspaper, which contains its own video section under a subdomain. This section contains a total of more than 300 news videos that can be searched via a catalogue. Some of the videos are linked to written articles on the newspaper's general website, while others have no direct connection with written articles.

The website's operator had appealed against a decision of the Bundeskommunikationssenat (Federal Communication Board), which stated that the video section met all the criteria of an on-demand service for the purposes of Article 2(4) in connection with Article 2(3) of the Audiovisual Media Services Act (AMD-G) and, therefore, had to comply with the information obligation set out in Article 9 AMD-G. Although the VwGH considers that some of the previously mentioned criteria are being met, it doubts whether the principal purpose of the services concerned is to provide information, entertainment or educational programmes. It also questions whether the principal purpose of a video section can be classified separately to that of the newspaper's website as a whole.

According to the VwGH, the first of these questions particularly entails checking whether videos included in a video catalogue, most of which can also be downloaded in connection with news reports in an online newspaper, fall under the definition of a 'programme' as contained in Article 1(1)(b) of the AVMSD. This depends on how much importance is attached to the criterion of being 'television-like'.

Regarding the second question, the VwGH acknowledges that, in recital 28 of the AVMSD, electronic versions of newspapers are expressly excluded from the scope of the Directive. Nevertheless, it considers that the AVMSD does not clearly explain whether, when classifying a service as an audiovisual media service in

© European Audiovisual Observatory (Council of Europe) 2026

terms of its principal purpose, the full range of services provided should be considered together, or whether individual parts of the service may be examined separately. However, the objectives of the AVMSD suggest that individual parts should be classified as audiovisual media services if they meet all the relevant criteria themselves. Otherwise, a service provider would be able to remove certain services from the scope of the AVMSD by broadening its range of services.

Since there is no CJEU case law on either of these questions, the VwGH stopped the proceedings in order to ask the CJEU for a preliminary ruling.

Beschluss des VwGH vom 26. Juni 2014 (Aktenzeichen: 2013/03/0012)

https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vwgh&Dokumentnummer=JWT_2013030012_20140626X00

Decision of the Austrian Administrative Court of 26 June 2014 (case no. 2013/03/0012)

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026