Court of Justice of the European Union: Playmédia case: CJEU replies to Conseil d'Etat's questions on must-carry obligations

IRIS 2019-2:1/3

Amélie Blocman
Légipresse

On 13 December 2018, the Court of Justice of the European Union (CJEU) delivered its replies to the questions referred for a preliminary ruling presented by the Conseil d'Etat with regard to a dispute between France Télévisions and the national audiovisual regulatory authority (Conseil Supérieur de l'Audiovisuel - CSA). On 27 May 2015, the CSA served official notice on the public-sector television group, requiring it to comply in future with the provisions of Article 34(2) of Act No. 86-1067 of 30 September 1986 on freedom of communication by ceasing to oppose Playmédia's carriage of France Télévisions' programmes via live streaming on its Internet site. Playmédia makes it possible to view television programmes via live streaming on an Internet site and receives most of its funding from advertisements shown before and during viewing. Claiming the capacity of a distributor of services within the meaning of Article 2(1) of the Freedom of Communication Act, Playmédia felt entitled to take advantage of the provisions of Article 34(2) of the Act, which gives distributors the right to broadcast France Télévisions' programmes. France Télévisions also makes its programmes available to the public via live streaming on an Internet site of its own.

France Télévisions called for the cancellation of the CSA's official notice, holding that Playmédia was not able to benefit from the obligation provided for in Article 34(2) of the Act. In support of this, France Télévisions pointed out that the conditions provided for in Article 31(1) of the Universal Service Directive were not met since, more specifically, it was not possible to state that "a significant number of end-users [of such networks] used [it] as their principal means to receive [radio and] television broadcasts". In the circumstances, the Conseil d'État decided to stay deliberation and referred a number of questions to the CJEU for a preliminary ruling.

Firstly, the Conseil d'Etat asked if Article 31(1) of the Universal Service Directive should be interpreted as meaning that an undertaking offering the viewing of television programmes via live streaming on the Internet should, by that sole fact, be considered an "undertaking providing electronic communications networks used for the distribution of radio or television broadcasts to the public". According to the Directive's provisions, the Member States may, under certain conditions,

© European Audiovisual Observatory (Council of Europe) 2026

impose must-carry obligations on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or television broadcasts to the public. However, the CJEU found that the activity of offering the viewing of television programmes via live streaming on an Internet site did not constitute the provision of an electronic communications network; what it offered was access to the content of audiovisual services supplied on electronic communication networks. The Court therefore found that Playmédia, which merely used an Internet site to offer access to content supplied on the Internet, was not covered by Article 31(1) of the Universal Service Directive.

The Conseil d'Etat then asked the CJEU if the provisions of the Universal Service Directive should be interpreted as, in a situation such as in the case at hand, preventing a Member State from imposing a must-carry obligation on undertakings which, without supplying electronic communications networks, offered the viewing of television programmes via live streaming on the Internet. As the Court noted, must-carry obligations had been imposed by domestic legislation in the case at issue on undertakings not covered by Article 31(1) of the Universal Service Directive. Since it was true that the scope of the must-carry obligation referred to in Articles 2(1) and 34(2) of the Freedom of Communication Act was not the same as that provided for in Article 31(1) of the Universal Service Directive, it was for the jurisdiction which had referred the matter to establish whether must-carry obligations had indeed been imposed on undertakings such as Playmédia. At any event, the Court found that, in such a situation, the provisions of the Universal Service Directive did not prevent a member State from imposing a must-carry obligation on undertakings which, without providing electronic communications networks, offered the viewing of television programmes via live streaming on the Internet.

The Conseil d'Etat now has full information at its disposal enabling it to deliberate on the dispute between the CSA and the online viewing service.

Judgment of the Court of Justice of the European Union (Fourth Chamber), Case C-298/17, 13 December 2018 - France Télévisions S.A. v. CSA and Ministry of Culture

http://curia.europa.eu/juris/document/document.jsf;jsessionid=F77C7CEEEF7AB3A33B1DC46798F7BC13?text=&docid=208967&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=11875277

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026