[IT] Lazio Regional Administrative Court implements the Court of Justice judgment in the Vivendi case

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On 16 December 2020, the Lazio Regional Administrative Court (*TAR Lazio - Roma*) delivered Judgment No. 13958, which followed up on the landmark decision of the Court of Justice of the European Union dated 3 September 2020 in Case C-719/18.

The case originated from the disputed legal status of Vivendi, a French company holding at the same time a 23.9% stake in Telecom Italia (the leading Italian telecommunications company) and 28.8% of the share capital, as well as 29.94% of the voting rights in shareholders' meetings of Mediaset (the leading Italian private broadcaster). Through Resolution No. 178/17/CONS of 18 April 2017, the Italian Communications Authority (AGCOM) found that Vivendi had violated the relevant threshold in the context of the acquisition of some shares in Mediaset.

Specifically, Article 43, paragraph 11 of the AVMS Code (*Testo Unico dei Servizi di Media Audiovisivi e Radiofonici*, also known as TUSMAR) prevents companies collecting revenues in the electronic communications sector (including those secured through controlled or affiliated companies) greater than 40% of the overall amount generated in that sector from earning, in the context of the so-called integrated communications system (*Sistema Integrato delle Comunicazioni*, SIC), revenues exceeding 10% of the total revenues generated in Italy within the SIC (including those secured through controlled or affiliated companies). Moreover, in the view of AGCOM, the relevant Telecom Italia revenues exceeded 40% of the revenues generated in the electronic communications sector, while the share of Mediaset was larger than 10% of the integrated communications system.

As a consequence of the AGCOM stance, Vivendi had to choose between its stake in Mediaset and the capital share in Telecom. It then challenged the resolution before the Lazio Regional Administrative Court, which decided to stay the proceedings and make a preliminary reference to the Court of Justice on the compatibility of the aforesaid provision and EU law.

By way of the judgment rendered in Case C-719/18 (*Vivendi SA v. Autorità per le Garanzie nelle Comunicazioni*), the Court of Justice ruled that the relevant provisions of Italian law governing the protection of media pluralism, namely

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Article 43, paragraph 11 of the AVMS Code, disproportionately interfered with the freedom of establishment enshrined in Article 49 of the Treaty of the European Union.

The judgment of the Lazio Regional Administrative Court has thus brought to an end this saga by implementing the decision of the Court of Justice in the national legal system. In the view of the administrative court, no alternative interpretation of the national provisions at stake which is likewise compatible with EU law is possible, in accordance with the judgment of the Court of Justice; therefore, national courts have to disapply Article 43, paragraph 11 of the AVMS Code. As a result of this, the Italian administrative court has invalidated AGCOM Resolution No. 178/17/CONS, based on the ascertained incompatibility of the legal grounds of the same with EU law.

TAR Lazio, sez. III, sentenza 16 dicembre 2020, n. 13958

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TAR Lazio, section III, Judgment No. 13958 of 16 December 2020

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