CJEU: *Instituto do Cinema e do Audiovisual IP v NOWO Communications SA*

Amélie Lacourt
European Audiovisual Observatory

On 27 October 2022, the Court of Justice of the European Union (CJEU) ruled on a case between the *Instituto do Cinema e do Audiovisual*, IP (Film and Audiovisual Media Institute – ICA), which is responsible in particular for granting financial support to cinematographic and audiovisual activities, and NOWO Communications SA, a subscription television operator.

This support is funded, *inter alia*, by the revenue from the annual subscription fee payable by subscription television service operators under Article 10(2) of Law No. 55/2012 and by the tax on the broadcasting of advertisements laid down in Article 10(1).

In August 2013, the ICA, as the body responsible for collecting the subscription fee, claimed from NOWO the sum of EUR 886 042.50. NOWO challenged this taxation before the Administrative and Financial Court of Almada, essentially claiming that the subscription fee was not in conformity with EU law. The national court upheld the action, finding that the scheme was contrary to Article 56 of the Treaty on the Functioning of the European Union (TFEU), which prohibits restrictions on the freedom to provide services within the European Union in respect of nationals of member states who are established in a member state other than that of the person for whom the services are intended. The court argued that the revenue generated by the collection of the subscription fee was intended solely to finance the promotion and dissemination of Portuguese cinematographic works, with the result that the allocation of that revenue reduced the cost of domestic production as compared to foreign production and, consequently, indirectly discriminated against the cross-border supply of those services as compared to the national supply.

The ICA then appealed against that decision, arguing that there was no cross-border element justifying the application of Article 56 TFEU since the activity of providing subscription television services was confined to Portuguese territory, that the subscription fee was not intended solely to finance the promotion and dissemination of Portuguese cinematographic works, but also benefited European works, and that even if the revenue generated by this fee were intended to finance national works, it could not be established that this fee was contrary to EU law, as there was no evidence that the operators of television services would favour the acquisition of national works to the detriment of European works by reason of the funding and support granted to national works.

© European Audiovisual Observatory (Council of Europe) 2026

Subsequently, the Supreme Administrative Court decided to refer preliminary questions to the CJEU, essentially to determine whether the subscription fee provided for in Article 10(2) restricted the provision of services within the European Union, in so far as the allocation of revenue from that fee to the production and promotion of cinematographic and audiovisual works reduced the cost of the services provided by providers established in Portugal and facilitated the use of those services to the detriment of those supplied by providers established in other member states, thus infringing Article 56 TFEU. In these circumstances, the CJEU recalled that national measures which prohibit, impede or render less attractive the exercise of the freedom to provide services are restrictions on that freedom. Such restrictions on the freedom to provide services are warranted only if they pursue a legitimate objective compatible with the TFEU and are justified by overriding reasons in the public interest; if that is the case, they must be suitable for securing the attainment of the objective pursued and must not go beyond what is necessary in order to attain it.

Finally, the CJEU found that, in the absence of details of the total amount of the revenue from the subscription fee and in view of the fact that the revenue from that fee is intended to support the production of cinematographic and audiovisual works throughout that economic sector, it could not be established that the fee had restrictive effects on the freedom to provide services. In addition, the financial support, the total amount of which was not determined, is distributed randomly between a large number of cinematographic and audiovisual productions and service providers involved at various stages of production. Any effect that the subscription fee might have on the provision of services consisting in the production of audiovisual and cinematographic works must be regarded as too uncertain and indirect to constitute a restriction within the meaning of Article 56 TFEU. The CJEU also noted that the price was not the only variable determining the acquisition of cinematographic and audiovisual works. The choice, on the part of an operator of television services, to acquire cinematographic or audiovisual works also depends on cultural factors, in particular, on the specific features prevailing in each of the member states and on the expectations of the public. The court therefore concluded that Article 56 TFEU must be interpreted as not precluding national legislation introducing a fee intended to finance the promotion and dissemination of cinematographic and audiovisual works.

Case C-411/21, Instituto do Cinema e do Audiovisual IP v NOWO Communications SA, judgment of 27 October 2022

https://curia.europa.eu/juris/document/document.jsf?docid=267608&doclang=EN

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026