CJEU rules on TV advertising time limits

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In a decision of 3 February 2024 in case C-255/21 (Reti Televisive Italiane) concerning the interpretation of Article 23(2) of the Audiovisual Media Services Directive (AVMSD) and the limits it imposes on broadcasting time for advertising, the Court of Justice of the European Union (CJEU) ruled that announcements promoting radio programmes shown on television channels belonging to the same broadcasting group do not, in principle, constitute promotion of the television broadcaster's "own" programmes.

The decision followed supervisory measures taken by the Italian broadcasting authority AGCOM against Reti Televisive Italiane SpA (RTI), an Italian audiovisual media services provider and owner of television channels Canale 5, Italia 1 and Rete 4. In 2017, AGCOM sanctioned RTI for breaches of a national law limiting time devoted to television advertising. When calculating the relevant airtime, it had taken into account promotional announcements for the R101 radio station that had been broadcast on RTI's television channels. The radio station concerned and RTI both belong to the Mediaset group. RTI claimed that the announcements promoting the radio station should be categorised as self-promotion (i.e. advertising for its own programmes) and therefore excluded from the hourly broadcasting time devoted to advertising.

Article 23(1) of the AVMSD states that the proportion of television advertising spots and teleshopping spots within the periods between 6.00 and 18.00 and between 18.00 and 24.00 must not exceed 20% of the respective period. According to paragraph 2(a) of the same article, these limits do not apply to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes or with programmes and audiovisual media services from other entities belonging to the same broadcasting group.

In a request to the CJEU for a preliminary ruling, the Italian Council of State submitted several questions, which were examined together, in order to establish whether Article 23(2) of Directive 2010/13 should be interpreted as meaning that the concept of "announcements made by the broadcaster in connection with its own programmes" includes announcements made by a broadcaster promoting a radio station belonging to the same group of companies as that broadcaster. The CJEU ruled that Article 23(2) of the AVMSD must be interpreted as meaning that

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“the concept of ‘announcements made by the broadcaster in connection with its own programmes’ does not cover promotional announcements made by a broadcaster for a radio station belonging to the same group of companies as that broadcaster, except where, first, the programmes which are the subject of those promotional announcements are ‘audiovisual media services’ within the meaning of Article 1(1)(a) of that directive, which implies that they are dissociable from the principal activity of that radio station and, second, that broadcaster has ‘editorial responsibility’ for those programmes within the meaning of Article 1(1)(c) of that directive.”

The CJEU justified this interpretation by stressing that radio broadcasting services, which consisted of programmes made up of sound content without images, were different from the audiovisual programmes of a television broadcaster. They therefore did not fall under the concept of "programme" within the meaning of the AVMSD unless they were dissociable from the principal activity of the radio station and could therefore be classified as "audiovisual media services" . In order for a programme to be considered as the television broadcaster’s "own programme", the broadcaster must also have editorial responsibility for it. This meant the exercise of effective control both over the selection of the programmes and over their organisation by a natural or legal person with the power to make a final decision as to the audiovisual offer. Since the rules on maximum time for advertising broadcasts per hour pursued different objectives from those pursued by the competition rules, the criterion of editorial responsibility for the programmes concerned should be taken into account when interpreting the concept of "own programmes" rather than the fact that both broadcasters belonged to the same group of companies.

The CJEU's decision has indirect legal effect, including in areas outside the field of Italian media regulation, and may result in legislative amendments in other EU member states.

Urteil des EuGH in der Rechtssache C-255/21, ECLI:EU:C:2024:98

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