Court of Justice EU, 17 february 2016, Sanoma v Viestintävirasto

ADVERTISING LAW

A split screen that shows the closing credits of a television programme in one column and a list presenting the supplier's upcoming programmes in the other, in order to separate the programme which is ending from the television advertising allowed when it meets the requirements set out in Article 19(1) Audiovisual Media Services Directive

- **Article 19(1) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, under which a split screen that shows the closing credits of a television programme in one column and a list presenting the supplier's upcoming programmes in the other, in order to separate the programme which is ending from the television advertising break that follows it, does not necessarily have to be combined with, or followed by, an acoustic or optical signal, provided that such a means of separation meets, in itself, the requirements set out in the first sentence of Article 19(1), a matter which is for the referring court to establish.**

Sponsorship signs shown in programmes other than the sponsored programme must be included in the maximum time for the broadcasting of advertising per clock hour, set in Article 23(1) of the directive.

- **Article 23(2) of Directive 2010/13 must be interpreted as meaning that sponsorship signs shown in programmes other than the sponsored programme, such as those at issue in the main proceedings, must be included in the maximum time for the broadcasting of advertising per clock hour, set in Article 23(1) of that directive.**

When a Member State has not made use of the power to lay down a stricter rule than established by Article 23(1) of the Audiovisual Media Services Directive, 'black seconds' have to be included in the maximum time for the broadcasting of television advertising per clock hour

- **Article 23(1) of Directive 2010/13 must be interpreted, where a Member State has not made use of the power to lay down a stricter rule than that established by that article, as not only not precluding 'black seconds' which are inserted between the various spots of a television advertising break or between that break and the television programme which follows it from being included in the maximum time for the broadcasting of television advertising per clock hour which that article sets at 20%, but also as requiring their inclusion.**

Source: **curia.europa.eu**

Court of Justice EU, 17 february 2016

(L. Bay Larsen, J. Malenovský (rapporteur), M. Safjan, A Prechal, K. Jürimäe)

JUDGMENT OF THE COURT (Fourth Chamber)

17 February 2016 (*)

(Reference for a preliminary ruling - Directive 2010/13/EU - Article 19(1) - Separation of television advertising and programmes - Split screen - Article 23(1) and (2) - Limit of 20% per clock hour on the broadcasting time for television advertising spots - Sponsorship announcements - Other references to a sponsor - 'Black seconds')

In Case C‑314/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Korkein hallinto-oikeus (Supreme Administrative Court, Finland), made by decision of 27 June 2014, received at the Court on 1 July 2014, in the proceedings

Sanoma Media Finland Oy–Nelonen Media

v

Viestintävirasto,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Third Chamber, acting as President of the Fourth Chamber, J. Malenovský (Rapporteur), M. Safjan, A. Prechal and K. Jürimäe, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Finnish Government, by J. Heliskoski, acting as Agent,

– the Greek Government, by N. Dafniou and L. Kotroni, acting as Agents,

– the Austrian Government, by C. Pesendorfer, acting as Agent,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by I. Koskinen and A. Marcoulli, acting as Agents,

after hearing the **Opinion of the Advocate General** at the sitting on 6 October 2015,

gives the following

Judgment

1 This request for a preliminary ruling relates to the interpretation of Articles 19(1) and 23(1) and (2) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ 2010 L 95, p. 1, and

corrigendum at OJ 2010 L 263, p. 15; 'the Audiovisual Media Services Directive').

2 The request has been made in proceedings between Sanoma Media Finland Oy–Nelonen Media ('Sanoma') and the Viestintävirasto (Telecommunications Regulatory Authority; 'the Regulatory Authority') concerning the legality of a decision by which the Regulatory Authority found that Sanoma had infringed Finnish law relating to television advertising and ordered it to remedy the situation.

Legal context

EU law

3 The Audiovisual Media Services Directive codified and repealed Directive 89/552/EEC of the European Parliament and of the Council of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ 1989 L 298, p. 23).

4 Recitals 79, 81, 83, 85 and 87 of the Audiovisual Media Services Directive state:

'(79) ... Nevertheless, all audiovisual commercial communication should respect not only the identification rules but also a basic tier of qualitative rules in order to meet clear public policy objectives.

...

(81) Commercial and technological developments give users increased choice and responsibility in their use of audiovisual media services. In order to remain proportionate with the goals of general interest, regulation should allow a certain degree of flexibility with regard to television broadcasting. The principle of separation should be limited to television advertising and teleshopping, and product placement should be allowed under certain circumstances, unless a Member State decides otherwise. However, where product placement is surreptitious, it should be prohibited. The principle of separation should not prevent the use of new advertising techniques.

...

(83) In order to ensure that the interests of consumers as television viewers are fully and properly protected, it is essential for television advertising to be subject to a certain number of minimum rules and standards and that the Member States must maintain the right to set more detailed or stricter rules and in certain circumstances to lay down different conditions for television broadcasters under their jurisdiction.

...

(85) Given the increased possibilities for viewers to avoid advertising through the use of new technologies such as digital personal video recorders and increased choice of channels, detailed regulation with regard to the insertion of spot advertising with the aim of protecting viewers is not justified. While the hourly amount of admissible advertising should not be increased, this Directive should give flexibility to broadcasters with regard to its insertion where this does not unduly impair the integrity of programmes.

...

(87) A limit of 20% of television advertising spots and teleshopping spots per clock hour, also applying during "prime time", should be laid down. The concept of a television advertising spot should be understood as television advertising in the sense of point (i) of Article 1(1) having a duration of not more than 12 minutes.'

5 The definitions in Article 1(1) of the Audiovisual Media Services Directive include the following:

'(a) "audiovisual media service" means:

(i) a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes, in order to inform, entertain or educate, to the general public by electronic communications networks ... Such an audiovisual media service is either a television broadcast as defined in point (e) of this paragraph or an on-demand audiovisual media service as defined in point (g) of this paragraph;

(ii) audiovisual commercial communication;

(b) "programme" means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider and the form and content of which are comparable to the form and content of television broadcasting. Examples of programmes include feature-length films, sports events, situation comedies, documentaries, children's programmes and original drama;

...

(h) "audiovisual commercial communication" means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement;

(i) "television advertising" means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment;

...

(k) "sponsorship" means any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or in the production of audiovisual works, to the financing of audiovisual media services or programmes with a view to promoting their name, trade mark, image, activities or products;

...'

6 Article 4(1) of the Audiovisual Media Services Directive provides:

'Member States shall remain free to require media service providers under their jurisdiction to comply with more detailed or stricter rules in the fields coordinated by this Directive provided that such rules are in compliance with Union law.'

7 Article 10(1) of the Audiovisual Media Services Directive states:

'Audiovisual media services or programmes that are sponsored shall meet the following requirements:

...

(c) viewers shall be clearly informed of the existence of a sponsorship agreement. Sponsored programmes shall be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or at the end of the programmes.'

8 Article 19(1) of the Audiovisual Media Services Directive provides:

'Television advertising and teleshopping shall be readily recognisable and distinguishable from editorial content. Without prejudice to the use of new advertising techniques, television advertising and teleshopping shall be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means.'

9 Article 23 of the Audiovisual Media Services Directive provides:

'1. The proportion of television advertising spots and teleshopping spots within a given clock hour shall not exceed 20%.

2. Paragraph 1 shall not apply to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes, sponsorship announcements and product placements.'

10 Article 26 of the Audiovisual Media Services Directive states:

'Without prejudice to Article 4, Member States may, with due regard for Union law, lay down conditions other than those laid down in Article 20(2) and Article 23 in respect of television broadcasts intended solely for the national territory which cannot be received directly or indirectly by the public in one or more other Member States.'

Finnish law

11 Directive 89/552 was transposed into Finnish law by Law 744/1998 on television and radio broadcasting (televisio- ja radiotoiminnasta annettu laki; 'Law 744/1998').

12 Under Paragraph 2(16) of Law 744/1998, 'commercial communication' means, inter alia, advertising and sponsorship. Sponsorship and advertising are themselves defined in Paragraph 2(13) and (14) respectively. In particular, under Paragraph 2(14), *'advertising'* means information, a statement or other communication broadcast by television or radio, generally in return for payment or other consideration, which is not sponsorship or product placement and which is intended to promote the sale of the advertiser's products or the repute of an advertiser engaging in an economic activity.

13 Under Paragraph 22(1) of Law 744/1998, which implements the article of Directive 89/552 corresponding to Article 19(1) of the Audiovisual Media Services Directive, television advertising and teleshopping broadcasts must be distinguished from audiovisual programmes by an acoustic or optical signal or by screen splitting.

14 Under Paragraph 26(2) of Law 744/1998, which implements the article of Directive 89/552 corresponding to Article 10(1)(c) of the Audiovisual Media Services Directive, the sponsor's name or logo must appear clearly at the beginning or the end of sponsored audiovisual and radio programmes.

15 Under Paragraph 29(1) of Law 744/1998, which implements the article of Directive 89/552 corresponding to Article 23 of the Audiovisual Media Services Directive, the share of advertising and teleshopping must not exceed 12 minutes per clock hour. In accordance with Paragraph 29(2), that provision does not apply, inter alia, to sponsorship announcements.

16 It is apparent from Paragraph 35(1) of Law 744/1998 in conjunction with Paragraph 36(1) that, if the Regulatory Authority finds that a company engaging in television or radio broadcasting is infringing the provisions laid down by that law, it has the power in particular to require the company in question to remedy the situation.

The dispute in the main proceedings and the questions referred for a preliminary ruling

17 Sanoma is a supplier of audiovisual media services established in Finland. Its services include the broadcasting of television programmes within the framework of which it broadcasts advertising and sponsored programmes.

18 In order to separate the advertising breaks which it inserts between two television programmes, Sanoma uses the 'screen-splitting' or 'split-screen' technique, which consists in dividing the screen into two parts after a programme's closing credits begin, scrolling in parallel those credits in one column and a list presenting its upcoming programmes in the other. Also, each of the advertising spots broadcast in those breaks is followed and preceded by black images lasting between 0.4 and one second, called 'black seconds'.

19 In addition, when a programme broadcast by Sanoma is sponsored, this may result in its placing signs referring to the natural or legal person sponsoring the programme not only in the sponsored programme itself, but also (i) in announcements relating to that programme's forthcoming broadcast and (ii) in other programmes.

20 By decision of 9 March 2012, the Regulatory Authority found that those various practices of Sanoma infringed certain provisions of Law 744/1998 and ordered it to remedy the situation.

21 In that context, it concluded, first, that Sanoma was not complying with the requirement laid down in Paragraph 22(1) of Law 744/1998 that advertising and

programmes be separated. It took the view that use of the technique consisting in scrolling the list presenting the upcoming programmes on a split screen, in parallel with the closing credits of the programme being broadcast at the time, did not separate adequately that programme and the advertising break inserted between it and the next programme.

22 Secondly, the Regulatory Authority concluded that Sanoma was broadcasting 12 minutes and 7 seconds of advertising per clock hour and was consequently failing to comply with the hourly maximum duration of 12 minutes, imposed in Paragraph 29(1) of Law 744/1998. In reaching that conclusion, it took the view that the presence of signs referring to a programme's sponsor other than in that programme itself had to be classified as involving advertising time. It also found that the 'black seconds' inserted by Sanoma between an advertising break and the programme preceding it were to be regarded as forming part of that programme, but that those separating each of the spots forming the advertising break and those inserted between that break and the following programme were to be counted as advertising time.

23 Thirdly and finally, the Regulatory Authority ordered Sanoma to alter the technique used to separate the television programmes which it transmits from the advertising breaks inserted between those programmes. Furthermore, it required Sanoma to take into account, when calculating the time which it gives over to the broadcasting of television advertising, first, sponsorship signs present other than in the programmes covered by the sponsorship in question and, secondly, the 'black seconds' inserted between each of the advertising spots broadcast in the course of an advertising break and those between that break and the following programme.

24 Sanoma brought an action for annulment of that decision of the Regulatory Authority before the Helsingin hallinto-oikeus (Administrative Court, Helsinki), which dismissed it by decision of 9 April 2013. That court held, first of all, that the use of a split screen between two different television programmes (the programme which is ending and the following one) did not satisfy the requirement laid down in Paragraph 22(1) of Law 744/1998 that advertising and programmes be separated. It then held that the presence of signs referring to a sponsor other than in the programme sponsored would result in the maximum hourly duration of the broadcasting of advertising, laid down in Paragraph 29(1) of Law 744/1998, being circumvented if it were not taken into account when calculating the length of advertising broadcast by suppliers of audiovisual media services. It held, finally, that it was not contrary to Law 744/1998 to regard the 'black seconds' following an advertising break as advertising time.

25 Sanoma brought an appeal against that decision before the Korkein hallinto-oikeus (Supreme Administrative Court), which raises the issue of the interpretation to be placed on Articles 19(1) and 23(1) and (2) of the Audiovisual Media Services Directive in a situation such as that at issue in the main proceedings, in order to be able to determine itself the meaning and scope to be accorded to the provisions of Law 774/1998 which, according to the Regulatory Authority and the Helsingin hallinto-oikeus (Administrative Court, Helsinki), have been infringed by Sanoma.

26 In those circumstances, the Korkein hallinto-oikeus (Supreme Administrative Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. In circumstances such as those at issue in the main proceedings, is Article 19(1) of [the Audiovisual Media Services Directive] to be interpreted as precluding an interpretation of national legal provisions to the effect that screen splitting is not regarded as a break-bumper that keeps the audiovisual programme distinct from television advertising, where one part of the screen is reserved for the programme's closing credits and the other part to a list presenting the upcoming programmes on a broadcaster's channel and no acoustic or optical signal expressly announcing the start of an advertising break is broadcast either on the split screen or thereafter?

2. Taking into account the fact that [the Audiovisual Media Services Directive] is in the nature of a minimum standard, in circumstances such as those at issue in the main proceedings is Article 23(2) of that directive to be interpreted as meaning that it is not compatible with that provision to classify sponsor idents broadcast in the context of programmes other than the sponsored programmes as "advertising spots" within the meaning of Article 23(1) of the directive which must be included in the maximum permissible advertising time?

3. Taking into account the fact that [the Audiovisual Media Services Directive] is in the nature of a minimum standard, in circumstances such as those at issue in the main proceedings is the term "advertising spots" in Article 23(1) of that directive in conjunction with the description of the maximum permissible advertising time ("the proportion ... within a given clock hour shall not exceed 20%") to be interpreted as meaning that it is not compatible with that provision to count the "black seconds" between individual advertising spots and at the end of an advertising break as advertising time?'

Consideration of the questions referred

Question 1

27 First of all, it should be noted that it is apparent from the order for reference (i) that under the national legislation at issue in the main proceedings it does not have to be required, in addition to the split screen, that a particular acoustic and/or optical signal be used in order to separate the programme which is ending from the advertising break that follows it and (ii) that the referring court takes the view that additional requirements should be allowed in this regard only if they are imposed in Article 19(1) of the Audiovisual Media Services Directive.

28 That being so, the referring court must be considered to be asking, in essence, by its first question

whether Article 19(1) of the Audiovisual Media Services Directive must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which a split screen that shows the closing credits of a television programme in one column and a list presenting the supplier's upcoming programmes in the other, in order to separate the programme which is ending from the television advertising break that follows it, would not necessarily have to be combined with, or followed by, an acoustic or optical signal.

29 The first sentence of Article 19(1) of the Audiovisual Media Services Directive provides that television advertising and teleshopping are to be readily recognisable and distinguishable from editorial content. The second sentence of Article 19(1) states that, without prejudice to the use of new advertising techniques, television advertising and teleshopping are to be kept quite distinct from programmes by optical and/or acoustic and/or spatial means.

30 The first sentence of that provision consequently contains two fundamental requirements, namely, first, that television advertising and teleshopping must be readily recognisable and, second, that they must be distinguishable from editorial content, and thus from television programmes.

31 Those requirements should be interpreted having regard to the objective set out in recital 83 of the Audiovisual Media Services Directive.

32 That recital states in particular that, in order to ensure that the interests of consumers as television viewers are fully and properly protected, it is essential for television advertising to be subject to a certain number of minimum rules and standards.

33 Nonetheless, Article 4(1) of the Audiovisual Media Services Directive expressly grants the Member States the power to set rules stricter or more detailed than those laid down by the directive, while requiring those rules to be in compliance with EU law.

34 Read in the light of recital 83 of the Audiovisual Media Services Directive, the first sentence of Article 19(1) of the directive must be understood as expressing the legislature's intention to ensure that the interests of consumers as television viewers are fully and properly protected (see, to this effect, judgments in **Österreichischer Rundfunk, C‑195/06, EU:C:2007:613**, paragraphs 26 and 27, and **Commission v Spain, C‑281/09, EU:C:2011:767, paragraph 46**).

35 The second sentence of Article 19(1) of the Audiovisual Media Services Directive defines the scope of the rule laid down in the first sentence, by setting out the various means whose use the Member States may provide for in order to ensure that that rule is complied with.

36 As is clear in particular from the use twice of the words 'and/or', the second sentence of Article 19(1) gives the Member States the option of choosing some of those means and rejecting others.

37 It follows that, whilst television advertising and teleshopping must be kept quite distinct from television programmes, by using the various means set out in the second sentence of Article 19(1) of the Audiovisual Media Services Directive, such means nonetheless cannot be regarded as being required, under that provision, to be applied concurrently. If just one of them, whether optical, acoustic or spatial, is capable of ensuring that the requirements stemming from the first sentence of Article 19(1) of the directive are fully complied with, it is open to Member States not to require the combined use of those means.

38 In this instance, it is apparent from the order for reference that the technique at issue in the main proceedings consists in separating a programme which is ending from the television advertising break that follows it by means of a split screen, essentially making that separation spatially.

39 Provided that the use of that means satisfies in itself the two requirements flowing from the rule laid down in the first sentence of Article 19(1) of the Audiovisual Media Services Directive, it is not necessary for that means to be combined with, or followed by, other means of separation, in particular acoustic or optical means. It is for the referring court to establish whether that is the case.

40 It follows that the answer to the first question is that Article 19(1) of the Audiovisual Media Services Directive must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, under which a split screen that shows the closing credits of a television programme in one column and a list presenting the supplier's upcoming programmes in the other, in order to separate the programme which is ending from the television advertising break that follows it, does not necessarily have to be combined with, or followed by, an acoustic or optical signal, provided that such a means of separation meets, in itself, the requirements set out in the first sentence of Article 19(1), a matter which is for the referring court to establish.

Question 2

41 By its second question, the referring court asks, in essence, whether Article 23(2) of the Audiovisual Media Services Directive must be interpreted as precluding sponsorship signs shown in programmes other than the sponsored programme, such as those at issue in the main proceedings, from being included in the maximum time for the broadcasting of advertising per clock hour, set in Article 23(1) of that directive.

42 Article 23(1) of the Audiovisual Media Services Directive provides that the proportion of television advertising spots and teleshopping spots within a given clock hour is not to exceed 20%

43 However, Article 23(2) states that Article 23(1) is not to apply, inter alia, to sponsorship announcements.

44 As the wording of Article 23(2) of the Audiovisual Media Services Directive does not specify the meaning and scope of the term 'sponsorship announcements', that term should be interpreted taking account of its context and of the objective pursued by the directive.

45 In that regard, first of all it should be noted that, according to Article 1(1)(h) and (k) of the Audiovisual

Media Services Directive, sponsorship is one of the forms of audiovisual commercial communication and the means by which natural or legal persons other than a supplier of audiovisual media services or producer of audiovisual works contribute to the financing of audiovisual media services or programmes with a view to promoting their name, trade mark, image, activities or products.

46 Next, Article 10(1) of the Audiovisual Media Services Directive, which sets out the conditions that any sponsorship must meet, states in particular, in point (c), that viewers are to be clearly informed of the existence of a sponsorship agreement and that sponsored programmes are to be clearly identified as such by means of symbols of the sponsor, references to its products or services or other distinctive signs.

47 It may be deduced from those provisions taken together that, since a sponsor's involvement consists exclusively in contributing to the financing of a service or programme, the symbols, references or other distinctive signs relating to sponsorship must be strictly linked to the service or programme financed or partly financed by that sponsor.

48 For that reason, so far as concerns sponsored programmes, and as the concluding words of Article 10(1)(c) of the Audiovisual Media Services Directive expressly provide, those symbols, references or other distinctive signs relating to the sponsor must be placed at the beginning, at the end or during the sponsored programme and, therefore, not outside it.

49 Compliance with this obligation is necessary in particular in the interest of consumers as television viewers. First, the obligation is intended to enable the latter to understand clearly that a programme is the subject of a sponsorship agreement, as opposed to a non-sponsored programme, and to identify clearly its sponsor. Secondly, the obligation prevents circumvention of the maximum time for the broadcasting of television advertising spots per clock hour, set in Article 23(1) of the Audiovisual Media Services Directive.

50 Thus, when sponsorship references or signs do not satisfy the condition requiring them to be placed at the beginning, at the end or during the sponsored programme, those references or signs cannot be covered by Article 23(2) of the Audiovisual Media Services Directive, as that provision relates only to sponsorship announcements placed within the framework of the sponsored programme.

51 Consequently, in the situation referred to in the preceding paragraph of the present judgment, Article 23(1) of the Audiovisual Media Services Directive remains applicable in respect of those signs or references.

52 It follows from the foregoing considerations that the answer to the second question is that Article 23(2) of the Audiovisual Media Services Directive must be interpreted as meaning that sponsorship signs shown in programmes other than the sponsored programme, such as those at issue in the main proceedings, must be included in the maximum time for the broadcasting of advertising per clock hour, set in Article 23(1) of that directive.

Question 3

53 By its third question, the referring court asks, in essence, whether, taking into account the fact that the Audiovisual Media Services Directive is in the nature of a minimum standard, Article 23(1) thereof must be interpreted as precluding 'black seconds' which are inserted between the various spots of a television advertising break or between that break and the television programme which follows it from being included in the maximum time for the broadcasting of television advertising per clock hour which that article sets at 20%.

54 As provided in Article 23(1) of the Audiovisual Media Services Directive, the proportion of television advertising spots and teleshopping spots within a given clock hour cannot exceed 20%.

55 It is clear from the wording of that provision that it simply sets a maximum time, and therefore a ceiling, for the broadcasting of television advertising spots and teleshopping spots within a given clock hour, while, as has been mentioned in paragraph 33 of the present judgment, the Member States have the power to adopt a stricter rule and, consequently, to set a maximum time for the broadcasting of such spots below that ceiling.

56 However, it is apparent from the order for reference that, as has been noted in paragraph 15 of the present judgment, the main proceedings involve national legislation which provides that the share of advertising and teleshopping must not exceed a ceiling corresponding precisely to the ceiling set in Article 23(1) of the Audiovisual Media Services Directive, and which therefore did not make use of the power referred to in paragraph 33 of the present judgment.

57 The wording of Article 23(1) of the Audiovisual Media Services Directive does not in itself enable it to be determined whether that provision must be interpreted as requiring, in a situation such as that at issue in the main proceedings, 'black seconds', such as those at issue in the main proceedings, to be included in the 20% limit which it lays down.

58 Therefore, the status of such 'black seconds' is to be determined in the light of the objective pursued by Article 23(1) of the Audiovisual Media Services Directive.

59 Since Article 23(1) of the Audiovisual Media Services Directive seeks to place a ceiling on the time for the broadcasting of television advertising spots and teleshopping spots per clock hour, that provision implicitly but necessarily discloses the intention of the EU legislature to ensure proper achievement of the fundamental objective of the directive, consisting in protecting consumers as television viewers from excessive broadcasting of television advertising (see, to this effect, **judgment in Sky Italia, C‑234/12, EU:C:2013:496, paragraph 17**).

60 Therefore, that provision must be interpreted as not permitting the Member States to reduce, in favour of advertising, the minimum air time that must be devoted to the broadcasting of programmes or of other editorial

content below 80% within a given clock hour, a limit which that article confirms by implication.

61 Where a Member State, as is the case here, has not placed a ceiling on the time for broadcasting television advertising at a stricter level than that set in Article 23(1) of the Audiovisual Media Services Directive, regard would not be had to the intention of the EU legislature if 'black seconds', such as those at issue in the main proceedings, which separate either the various spots forming a television advertising break or the last of those spots and the programme which follows the break, were not regarded as television advertising broadcasting time for the purposes of that provision. That would have the effect of reducing the clock time reserved for the broadcasting of programmes and other editorial content by a period corresponding to that of the 'black seconds' and to below the limit which that provision guarantees by implication.

62 It follows that the answer to the third question is that Article 23(1) of the Audiovisual Media Services Directive must be interpreted, where a Member State has not made use of the power to lay down a stricter rule than that established by that article, as not only not precluding 'black seconds' which are inserted between the various spots of a television advertising break or between that break and the television programme which follows it from being included in the maximum time for the broadcasting of television advertising per clock hour which that article sets at 20%, but also as requiring their inclusion.

Costs

63 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

1. Article 19(1) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, under which a split screen that shows the closing credits of a television programme in one column and a list presenting the supplier's upcoming programmes in the other, in order to separate the programme which is ending from the television advertising break that follows it, does not necessarily have to be combined with, or followed by, an acoustic or optical signal, provided that such a means of separation meets, in itself, the requirements set out in the first sentence of Article 19(1), a matter which is for the referring court to establish.

2. Article 23(2) of Directive 2010/13 must be interpreted as meaning that sponsorship signs shown in programmes other than the sponsored programme, such as those at issue in the main proceedings, must be included in the maximum time for the broadcasting of advertising per clock hour, set in Article 23(1) of that directive.

3. Article 23(1) of Directive 2010/13 must be interpreted, where a Member State has not made use of the power to lay down a stricter rule than that established by that article, as not only not precluding 'black seconds' which are inserted between the various spots of a television advertising break or between that break and the television programme which follows it from being included in the maximum time for the broadcasting of television advertising per clock hour which that article sets at 20%, but also as requiring their inclusion.

OPINION OF ADVOCATE GENERAL SZPUNAR

delivered on 6 October 2015 (1)

Case C‑314/14

Sanoma Media Finland Oy–Nelonen Media

v

Viestintävirasto

(Request for a preliminary ruling from the Korkein hallinto-oikeus (Finland))

(Television-broadcasting - Television advertising - Directive 2010/13/EU - Articles 10(1)(c), 19(1) and 23 - Keeping advertising distinct from other parts of the programme - Split-screen technique - Limitation of the duration of advertising breaks - Information on programme sponsorship - 'Black seconds' separating advertising spots)

Introduction

1. The Korkein hallinto-oikeus (Supreme Administrative Court, Finland) has referred three detailed questions concerning the interpretation of provisions governing television advertising and the sponsorship of television programmes by undertakings.

2. The provisions forming the subject-matter of the reference for a preliminary ruling have been in force in EU law for a long time (although their wording has evolved in that period), but the previous case-law of the Court does not answer the legal questions asked by the referring court in this case. At the same time, it would appear that the practice of the national administrative authorities and courts in the individual Member States differs in the application of those provisions. The Court will therefore have an opportunity to interpret them and thereby harmonise that practice.

Legal framework

EU law

3. The questions referred by the Korkein hallinto-oikeus (Supreme Administrative Court) for a preliminary ruling concern the interpretation of several provisions of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive). (2)

4. As provided in Article 10(1)(c) of Directive 2010/13: *'Audiovisual media services or programmes that are sponsored shall meet the following requirements:*
…
(c) viewers shall be clearly informed of the existence of a sponsorship agreement. Sponsored programmes shall be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or at the end of the programmes.'
5. Article 19(1) of that directive provides:
'Television advertising and teleshopping shall be readily recognisable and distinguishable from editorial content. Without prejudice to the use of new advertising techniques, television advertising and teleshopping shall be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means.'
6. Finally, Article 23 of that directive provides:
'1. The proportion of television advertising spots and teleshopping spots within a given clock hour shall not exceed 20%.
2. Paragraph 1 shall not apply to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes, sponsorship announcements and product placements.'

Finnish law

7. Directive 2010/13 was transposed into Finnish law by Law No 744/1998 on television and radio broadcasting (Laki televisio- ja radiotoiminnasta 744/1998; 'Law No 744/1998'). Articles 10(1)(c), 19(1) and 23(1) of the directive are transposed by Paragraphs 26(2), 22(1) and 29(1) of Law No 744/1998 respectively.

Facts, procedure and questions referred

8. Sanoma Media Finland Oy–Nelonen Media, a company incorporated under Finnish law ('Sanoma'), is a television broadcaster under the jurisdiction of the Republic of Finland for the purposes of Article 2 of Directive 2010/13.
9. On 9 March 2012 the Viestintävirasto (the Finnish regulator of the audiovisual market) issued in relation to Sanoma a decision ordering it to cease the infringements of Law No 744/1998 which that regulator had found. The regulator's reservations concerned the proportion of advertising and the way in which Sanoma kept advertising distinct from other parts of the programme.
10. First, Sanoma used a split-screen technique whereby the 'main' programme (specifically the closing credits) was broadcast on one part of the screen and the announcement of the upcoming programmes on the other. The Finnish regulator considered that the mere splitting of the screen into a part broadcasting the main programme and a part announcing upcoming programmes is not sufficient in the light of the provisions of Law No 744/1998 that transpose Article 19(1) of Directive 2010/13.
11. Secondly, the Finnish regulator considered that the logo of the programme sponsor broadcast at a time other than that of the sponsored programme does in fact constitute advertising and therefore the time for which it is broadcast must be counted as advertising time. The regulator consequently found that Sanoma had exceeded the maximum permissible advertising time set in Paragraph 29(1) of Law No 744/1998 (Article 23(1) of Directive 2010/13).
12. Thirdly, the Finnish regulator considered that Sanoma had exceeded the abovementioned permissible advertising time since the short gaps ('black seconds') which separate individual advertising spots should be included in that maximum permitted time.
13. Sanoma brought an action against the decision of the Finnish regulator before the Helsingin hallinto-oikeus (Administrative Court, Helsinki). That court dismissed the action and upheld the regulator's decision. Sanoma lodged an appeal on a point of law against that judgment with the referring court.
14. In those circumstances, the Korkein hallinto-oikeus (Supreme Administrative Court) decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:
'(1) In circumstances such as those at issue in the main proceedings, is Article 19(1) of Directive 2010/13/EU to be interpreted as precluding an interpretation of national legal provisions to the effect that screen splitting is not regarded as a break-bumper that keeps the audiovisual programme distinct from television advertising, where one part of the screen is reserved for the programme's closing credits and the other part to a list presenting the upcoming programmes on a broadcaster's channel and no acoustic or optical signal expressly announcing the start of an advertising break is broadcast either on the split screen or thereafter?
(2) Taking into account the fact that Directive 2010/13 is in the nature of a minimum standard, in circumstances such as those at issue in the main proceedings is Article 23(2) of that directive to be interpreted as meaning that it is not compatible with that provision to classify sponsor idents broadcast in the context of programmes other than the sponsored programmes as "advertising spots" within the meaning of Article 23(1) of the Directive which must be included in the maximum permissible advertising time?
(3) Taking into account the fact that Directive 2010/13 is in the nature of a minimum standard, in circumstances such as those at issue in the main proceedings, is the term "advertising spots" in Article 23(1) of that directive in conjunction with the description of the maximum permissible advertising time ("the proportion ... within a given clock hour shall not exceed 20%") to be interpreted as meaning that it is not compatible with that provision to count the "black seconds" between individual advertising spots and at the end of an advertising break as advertising time?'
15. Written observations were submitted by the Finnish, Greek, Austrian and Polish Governments and

the European Commission. The Court decided pursuant to Article 76(2) of the Rules of Procedure not to hold a hearing.

Analysis

16. The questions referred should be examined separately in the order in which they were put.

First question

17. By its first question, the referring court essentially seeks to ascertain whether Article 19(1) of Directive 2010/13 is to be interpreted as meaning that the mere splitting of the screen into parts, one of which is given over to advertising, constitutes sufficient distinction between that advertising and the editorial content or whether the part of the screen given over to advertising should also be identified separately.

18. In the context of the present case it should be noted that, according to the definition contained in Article 1(1)(i) of Directive 2010/13, communications broadcast by a television broadcaster for self-promotional purposes, including promotion of its own programmes, constitutes a particular kind of television advertising. That interpretation is confirmed by recital 96 of the directive. The announcement of upcoming programmes must be regarded as their promotion since it is designed to encourage the viewer to continue watching a particular channel.

19. Although Article 23(2) of the directive admittedly excludes communications of that kind from the maximum permissible advertising time, they are nevertheless subject in principle to the directive's other provisions on television advertising, including the obligation, contained in Article 19(1), to keep them quite distinct from the editorial content. In addition, recital 96 of Directive 2010/13 states that trailers consisting of extracts from programmes should be treated as programmes. Conversely, programme announcements not containing such extracts, which, for example, only show the programme's title, must also be kept quite distinct from the editorial content, and also from other forms of advertising.

20. Returning to the interpretation of Article 19(1) of Directive 2010/13, it should be noted first of all that that provision also expressly permits spatial means of keeping advertising distinct from editorial content (screen splitting), in addition to optical and acoustic signals. However, at the same time the first sentence of that provision requires that television advertising be readily recognisable and distinguishable from editorial content.

21. The screen-splitting technique nevertheless can be - and very often is - used to broadcast not only advertising but also other content, for example the most important news on a 'ticker' at the bottom of the screen, competitions for television viewers, self-promotion of broadcasters and so forth. Therefore, the mere fact that the screen is split does not necessarily mean that advertising will be broadcast on one of its parts.

22. Therefore, whilst the first sentence of Article 19(1) of Directive 2010/13 requires that advertising be readily recognisable and distinguishable from editorial content, it is not sufficient, in my view, for the advertising to be broadcast on part of a split screen. That part must still be identified appropriately so that the television viewer is in no doubt that the communication broadcast on it is of an advertising nature. That identification may take the form of an acoustic or optical signal similar to that which separates full-screen advertising, or of a special sign shown permanently on the part of the screen given over to advertising. It must also indicate clearly the type of commercial message concerned, that is to say, advertising, telesales, self-promotion and so forth. The mere splitting of the screen, with no additional identification, does not ensure that the objective set out in the first sentence of Article 19(1) of Directive 2010/13 is attained.

23. In this context, reference should also be made to Article 20(1) of Directive 2010/13, under which advertising broadcast during a programme is not to prejudice the programme's integrity. Therefore, signals identifying advertising that is broadcast on part of a split screen must be of such a kind as to satisfy that requirement.

24. In the light of the foregoing, I propose that the answer that the Court should give to the first question referred for a preliminary ruling is that Article 19(1) of Directive 2010/13 is to be interpreted as meaning that the mere splitting of the screen into parts, one of which is given over to advertising, does not constitute sufficient distinction of that advertising from the editorial content. The part of the screen given over to advertising must, in addition, be identified by means of an optical or acoustic signal at the beginning or end of the advertising sequence or by means of a sign shown permanently the screen is split. That signal or sign must clearly indicate the nature of the communication being broadcast.

Second question

25. By its second question, the referring court essentially seeks to ascertain whether Article 23 of Directive 2010/13, in conjunction with Article 10(1)(c) thereof, is to be interpreted as meaning that information relating to a sponsored programme broadcast outside that programme constitutes television advertising.

26. The provisions of Directive 2010/13 which define sponsorship of television programmes (3) are not worded in the most precise of terms. First, under Article 1(1)(k) of that directive sponsorship consists in the contribution made by persons other than programme producers and persons engaged in providing audiovisual media services ('sponsors') to the financing of the programmes or services with a view to promoting the sponsors' name, trade mark, image, activities or products. Secondly, Article 1(1)(h) of the directive regards sponsorship as a form of 'audiovisual commercial communication'.

27. Those provisions must be construed as meaning that sponsorship in the strict sense consists in the contribution made by the sponsor to the financing of a television programme, whereas information about that fact which accompanies the broadcast of the sponsored

programme is an audiovisual commercial communication. On the one hand, that information serves to attain the objective of sponsorship, which is to promote the sponsor, and, on the other, it is required under Article 10(1)(c) of Directive 2010/13 to inform the viewer that the programme is sponsored. Thus, sponsorship for any purpose other than promoting the sponsor, for example to affect programme content (which Article 10(1)(a) of the directive expressly prohibits), and also secret sponsorship, (4) are not permitted.

28. As is clear from the foregoing, and as the Polish Government rightly noted in its observations in this case, the information that the programme is sponsored serves two purposes. First, it is information for the viewer and prevents secret sponsorship of programmes for purposes other than promotion of the sponsor. Secondly, it specifically serves such promotion by featuring and publicising a name, trade mark or other message associated with the sponsor.

29. In that second function the information relating to sponsorship is therefore similar to television advertising. Undertakings sponsor television programmes in order to publicise their name or trade mark or to improve their public image. Therefore, this is intended indirectly to increase sales of the goods or services which they offer and thus serves the same purposes as advertising.

30. It is therefore difficult to concur with the Commission's contention, contained in its observations in this case, that the sole purpose of sponsorship announcements is to inform television viewers of the existence of a sponsorship agreement. Nor do I share the view expressed in the Austrian Government's observations that there is a fundamental difference between sponsorship announcements, which serve solely to identify the sponsor, and television advertising, which serves to promote sales of goods and services. The judgment in Österreichischer Rundfunk, (5) which the Austrian Government cited in support of that argument in its observations, did not concern the difference between sponsorship and advertising, but whether a game with prizes for television viewers and announcements of that game that are broadcast on television should be regarded as television advertising.

31. In actual fact it is only the form, and not the objective or substance of the communication, which distinguishes information relating to sponsorship of a programme from advertising. Moreover, that difference in terms of form does not always arise since advertising may also be simply a presentation of a name or trade mark or a product or service of an undertaking, with no additional content. Directive 2010/13 does not introduce any restrictions on the form of television advertising. Such advertising is thus similar to information relating to programme sponsorship (a sponsorship announcement according to the terminology of Article 23(2) of Directive 2010/13).

32. Therefore, although Article 23(2) of Directive 2010/13 requires sponsorship announcements not to be included in advertising broadcasting time, it does so only on account of their informational function. That function is fulfilled by the obligation under Article 10(1)(c) of the directive to place such announcements at the beginning, at the end or during the sponsored programme. Information on the sponsor which is broadcast at another time does not perform an informational, but rather a purely promotional, function.

33. In other words, sponsorship announcements within the meaning of Article 23(2) of Directive 2010/13 are those which serve to fulfil the obligation arising from Article 10(1)(c). The latter provision concerns not so much information relating to sponsored programmes as those programmes themselves. It is the sponsored programme which must be identified since such identification ensures that the television viewer is informed to a necessary and sufficient degree. (6) Therefore, the exemption contained in Article 23(2) of the directive covers only sponsorship announcements as referred to in Article 10(1)(c) and thus those broadcast at the beginning, at the end or during a sponsored programme. Consequently, it does not cover information relating to the sponsorship of programmes that is broadcast on other occasions, even information associated with sponsored programmes such as, for example, the announcements thereof.

34. It is true that - as the Commission noted in its observations in this case - the Court has ruled, in relation to Article 17(1)(b) of Directive 89/552/EC (7) (the precursor of Article 10(1)(c) of Directive 2010/13), that that provision does not restrict the possibility of broadcasting sponsorship information solely to the beginning or end of the programme. (8) However, that case related to the possibility of broadcasting sponsorship information during the sponsored programme. That judgment has now been somewhat 'overtaken' by the legislature since Article 10(1)(c) of Directive 2010/13 expressly provides for such a possibility. None the less, in my view that judgment cannot be interpreted as meaning that any information relating to a programme's sponsorship broadcast at any time whatsoever constitutes a sponsorship announcement within the meaning of Article 23(2) of the directive and is excluded from the maximum permissible advertising time set in Article 23(1).

35. On account of its promotional function such a communication must, on the contrary, be regarded as television advertising and be subject to all the rules which Directive 2010/13 lays down in relation to such advertising, including the broadcasting time (Article 23(1)) and the keeping of advertising distinct from the other elements of the programme (Article 19(1)). Any other interpretation would make it possible to abuse the exemption laid down in Article 23(2) of the directive since it would be enough to broadcast sufficiently often, for example, an announcement of a sponsored programme containing the relevant information about the sponsor to circumvent easily the maximum permissible advertising time set in Article 23(1) of the directive.

36. In the light of the foregoing, I propose that the answer that the Court should give to the second question referred for a preliminary ruling is that Article 10(1)(c) and Article 23(2) of Directive 2010/13 are to be interpreted as meaning that information relating to sponsorship broadcast at any time other than at the beginning, during or at the end of the sponsored programme constitutes television advertising and is not covered by the exemption from the maximum permissible advertising time set in Article 23(1) of that directive.

Third question

37. By its third question, the referring court essentially seeks to ascertain whether Article 23(1) of Directive 2010/13 is to be interpreted as meaning that the maximum permissible advertising time which it lays down relates to the actual duration of the advertising spots or the overall period intended for the broadcasting of advertising (other than communications referred to in Article 23(2)), that is to say, taking account of the gaps between the individual advertising spots.

38. The issue of the method for calculating time for the purposes of applying the provisions on television advertising has already formed the subject-matter of judgments of the Court. In its judgment in ARD (9) the Court considered whether rules laying down the frequency with which programmes may be interrupted by advertisements, contained in Article 11(3) of Directive 89/552 (the equivalent of which is now Article 20(2) of Directive 2010/13), relate to the 'net' duration of the programme, the actual length of the editorial content, or the 'gross' duration, that is to say, taking account of the duration of the advertising breaks.

39. After first ruling that a literal interpretation does not provide an unequivocal answer to the question, the Court held that the objective of Directive 89/552, which is to guarantee freedom of transmission in cross-border broadcasting, requires an interpretation of that provision which allows the greatest number of interruptions for advertising during programmes, that is to say, the principle of the 'gross' duration of the programme. (10) If that reasoning were applied to the present case, it would be necessary to place on Article 23(1) of Directive 2010/13 the most literal interpretation, that the maximum permissible advertising time which it sets relates only to the duration of the advertising spots themselves and does not cover, for example, 'black seconds'.

40. However, in its more recent case-law the Court has also pointed to other objectives which the individual provisions of Directive 89/552 were intended to pursue. In particular, in its judgment in Commission v Spain (11) the Court recalled, with direct reference to its judgment in ARD, that the provisions of that directive must be interpreted in such a way as to allow the freedom to advertise to be reconciled with the protection of television viewers from excessive advertising. (12)

41. Ensuring that consumers, as television viewers, are fully and properly protected is also mentioned as one of the objectives of Directive 2010/13, in recital 83. The Court also emphasised the importance of that protection - already on the basis of Directive 2010/13 - in its judgment in Sky Italia. (13) Consequently, I consider that Article 23(1) of Directive 2010/13 should be interpreted having regard to the objective of protecting television viewers from excessive advertising and in a manner which allows a balance to be struck between the financial interests of television broadcasters and advertisers, on the one hand, and television viewers, on the other. (14)

42. Therefore, although Article 23(1) of Directive 2010/13 introduces a maximum permissible time for broadcasting 'advertising spots', that provision should not be interpreted literally as meaning that that maximum relates only to the duration of those spots. In my view, the legislature used the term 'advertising spots' in that provision in order to distinguish between that kind of advertising and other forms of audiovisual commercial communications, in particular self-promotion, sponsorship announcements and product placement, which are exempt from the maximum permissible broadcasting time by virtue of Article 23(2) of the directive.

43. Nor is it by chance that the legislature set maximum permissible advertising time as a proportion of overall broadcasting time (20% of each clock hour). Broadcasting time is thus broken down into time for advertising (and telesales) - no more than 20% - and time for editorial content and any commercial communications not covered by the limit - at least 80%.

44. However, it is clear that part of the broadcasting time comprises, in addition to the basic communication (that is to say, the advertising spots during the period for advertising and programmes during the period for editorial content), elements which are necessary from a technical point of view, such as announcements, programme credits and gaps between them. The 'black seconds' separating individual advertising spots also constitute such elements. Although they do not fall within the duration of those spots in the strict sense, they nevertheless do form part of the advertising broadcasting time, as the Finnish and Polish Governments also correctly point out in their observations in this case, since they are necessary to separate one advertising spot from another. For that reason 'black seconds' must be included in the maximum permissible advertising time set in Article 23(1) of Directive 2010/13.

45. The same is true of optical or acoustic signals separating advertising communications from editorial content. They do not constitute advertising spots but their broadcast is required under the second sentence of Article 19(1) of Directive 2010/13. Therefore, the time for broadcasting those signals is, in the broad sense, advertising time and must also be included in the maximum permissible time set in Article 23(1) of Directive 2010/13.

46. Where the advertising is separated by spatial means, that maximum covers the entire period during which part of the screen is given over to advertising. The maximum permissible advertising time obviously

remains unchanged and amounts to 20% of each clock hour, even if the advertising is broadcast on only part of the screen.

47. In the light of the foregoing, I propose that the answer that the Court should give to the third question referred for a preliminary ruling is that Article 23(1) of Directive 2010/13 is to be interpreted as meaning that the maximum permissible broadcasting time set in that provision includes the time from the beginning of the optical or acoustic signal marking the beginning of the advertising break to the end of the optical or acoustic signal marking the end of that break. Where the advertising is separated from the other parts of the programme by spatial means, that maximum covers the entire period during which part of the screen is given over to advertising.

Final observation: minimum harmonisation and transparency of national rules

48. Under Article 4(1) of Directive 2010/13, the Member States remain free to lay down more detailed or stricter rules in respect of audiovisual media services providers, including television broadcasters, under their jurisdiction. The Court has confirmed that freedom in its case-law, pointing out that the harmonisation of the Member States' provisions pursuant to Directive 2010/13 is minimum harmonisation. (15) Consequently, if the Court were not to concur with my proposed answers to the questions referred in this case and were to place a more liberal interpretation on the provisions of Directive 2010/13 referred to, the question would arise as to whether those provisions preclude the Member States from laying down rules such as those applied by the Finnish regulator in the circumstances of the main proceedings.

49. In principle I consider that the answer to the question should be in the negative. The requirement that advertising communications kept distinct from the other parts of the programme by spatial means must be clearly identified, the limit on the time and place at which information on programme sponsorship is broadcast and the calculation of the maximum permissible advertising time taking account of 'black seconds' fall within the notion of more detailed or stricter rules and are covered by the freedom of the Member States laid down in Article 4(1) of the directive.

50. Whilst fully respecting the autonomy of the Member States' legal orders, I consider, however, that such more detailed or stricter rules must be formulated clearly. Provisions of national law couched in terms identical or similar to those of the provisions of Directive 2010/13, without any express departure from them, must be interpreted uniformly throughout the European Union and, where applicable, in accordance with the interpretation which the Court's case-law requires them to be given. In that situation, persons operating on the audiovisual services market have the right to expect that provisions with a wording similar to that of the provisions of the directive will be interpreted in a uniform and constant manner. Therefore, to apply Article 4(1) of the directive only by means of national administrative and judicial practice would undermine the legal certainty of those persons and also the basic objective of the directive, which is to harmonise the provisions of the Member States.

Conclusion

51. In the light of the foregoing considerations, I propose that the Court should give the following answers to the questions referred by the Korkein hallinto-oikeus (Supreme Administrative Court):

(1) Article 19(1) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) is to be interpreted as meaning that the mere splitting of the screen into parts, one of which is given over to advertising, does not constitute sufficient distinction of that advertising from the editorial content. The part of the screen given over to advertising must, in addition, be identified by means of an optical or acoustic signal at the beginning or end of the advertising sequence or by means of a sign shown permanently when the screen is split. That signal or sign must clearly indicate the nature of the communication being broadcast.

(2) Article 10(1)(c) and Article 23(2) of Directive 2010/13 are to be interpreted as meaning that information relating to sponsorship broadcast at any time other than at the beginning, during or at the end of the sponsored programme constitutes television advertising and is not covered by the exemption from the maximum permissible advertising time set in Article 23(1) of that directive.

(3) Article 23(1) of Directive 2010/13 is to be interpreted as meaning that the maximum permissible broadcasting time set in that provision includes the time from the beginning of the optical or acoustic signal marking the beginning of the advertising break to the end of the optical or acoustic signal marking the end of that break. Where the advertising is separated from the other parts of the programme by spatial means, that maximum covers the entire period during which part of the screen is given over to advertising.

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1 – Original language: Polish.

2 – OJ 2010 L 95, p. 1.

3 – Under Directive 2010/13, sponsorship may also concern audiovisual media services other than television broadcasting, but for reasons of clarity I will restrict myself in this Opinion to the issue of television programme sponsorship because that is what the questions referred concern. As regards the distinction between television broadcasting and other forms of audiovisual media services, I refer to my Opinion in New Media Online, C‑347/14, EU:C:2015:434.

4 – Article 10 of Directive 2010/13 also contains other restrictions on sponsorship, which, however, are not relevant to the present case.

5 – C‑195/06, EU:C:2007:613.

6 – It should be recalled that under the introductory words of Article 10(1) of Directive 2010/13 '…

programmes that are sponsored shall meet the following requirements' (emphasis added).

7 – Council Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting (OJ 1989 L 298, p. 23). Directive 2010/13 constitutes the codification of Directive 89/552.

8 – Judgment in RTI and Others, C‑320/94, C‑328/94, C‑329/94 and C‑337/94 to C‑339/94, EU:C:1996:486, paragraph 43.

9 – C‑6/98, EU:C:1999:532.

10 – Judgment in ARD, C‑6/98, EU:C:1999:532, paragraphs 28 to 32.

11 – C‑281/09, EU:C:2011:767.

12 – Judgment in Commission v Spain, C‑281/09, EU:C:2011:767, paragraphs 48 and 49. See also Opinion of Advocate General Bot in Commission v Spain, C‑281/09, EU:C:2011:216, point 75.

13 – C‑234/12, EU:C:2013:496, paragraph 17.

14 – See, to this effect, judgment in Sky Italia, C‑234/12, EU:C:2013:496, paragraph 18.

15 – See, in particular, judgments in Leclerc-Siplec, C‑412/93, EU:C:1995:26, paragraphs 29 and 44, and Sky Italia, C‑234/12, EU:C:2013:496, paragraph 12.