



The Italian rule on television advertising, which lays down lower hourly limits for advertising for pay-TV broadcasters than for free-to-air TV broadcasters, is, in principle, compatible with European Union law

The principle of proportionality must however be observed

The Audiovisual Media Services Directive¹ makes television advertising subject to minimum rules and standards, in order to ensure that the interests of consumers as television viewers are protected. In that regard, it sets a limit of 20% of advertising and teleshopping spots per hour, but leaves the Member States the option of setting more detailed or stricter rules for media service providers under their jurisdiction.

The Italian legislation provides that the transmission of advertisements by the holder of the general public broadcasting service concession may not exceed 4% of weekly programming time and 12% of each hour. The transmission of advertising spots by other free-to-air TV broadcasters may not exceed 15% of daily programming time and 18% of each hour, whilst for pay-TV broadcasters, it could not exceed, for 2011, 14% of each hour (in those two cases, any advertising in excess thereof – which, in any event, cannot exceed 2% in any given hour – must be offset by a reduction in the preceding or following hour).

On 5 March 2011, between 21.00 and 22.00, the pay-TV station Sky Sport 1, edited by Sky Italia, broadcast 24 television advertising spots, for a total duration of 10 minutes and 4 seconds, which is an hourly percentage of 16.78%, thereby exceeding the hourly television advertising limit of 14% imposed on pay-TV broadcasters.

Consequently, the Italian Broadcasting Authority (AGCOM) imposed a fine on Sky Italia of EUR 10 329.

Sky Italia requested the Tribunale Amministrativo Regionale per il Lazio (Administrative Court of the Lazio region, Italy) to annul AGCOM's decision, which in its view is contrary to European Union law.

That court asks the Court of Justice whether the Audiovisual Media Services Directive, the principle of equal treatment and the fundamental freedoms guaranteed by the TFEU permit a national rule which lays down lower hourly television advertising limits for pay-TV broadcasters than those laid down for free-to-air TV broadcasters.

In today's judgment, the Court notes, first of all, that **the directive** does not completely harmonise the areas to which it applies, but **lays down minimum requirements**.²

¹ 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 (OJ 2010 L 95, p. 1).

² Joined Cases [C-244/10](#) and [C-245/10](#) *Mesopotamia Broadcast and Roj TV* [2011] ECR I-8777; see also [Press release 99/11](#), on the interpretation of Directive 89/552/EEC known as the 'Television without Frontiers Directive', which was subsequently amended and codified by the Audiovisual Media Services Directive.

Consequently, Member States have the option to lay down more detailed or stricter rules and, in certain cases, different conditions, provided they comply with European Union law. Accordingly, where the directive provides that the proportion of television advertising and teleshopping spots are not to exceed 20%, it does not preclude the Member States from imposing different limits within that threshold. The national rules must, nevertheless, observe the principle of equal treatment.

The Court then points out that **the principles and objectives of the rules on television advertising limits are intended to establish a balanced protection**, on the one hand, **of the financial interests of television broadcasters and advertisers and**, on the other hand, **of the interests of writers and producers, in addition to consumers** as television viewers.

That balance varies according to whether or not television broadcasters transmit their programmes for payment.

The financial interests of pay-TV broadcasters, which obtain revenue from subscriptions taken out by viewers, are different from those of free-to-air TV broadcasters which do not benefit from such a direct source of financing and must finance themselves, inter alia, by generating income from television advertising. Such a difference is, in principle, capable of placing pay-TV broadcasters in a situation which is objectively different.

The situation of viewers is equally different, depending on whether they are subscribers to pay TV (in which case they pay to enjoy television programmes) or they use free-to-air television.

It follows that, in seeking a balanced protection of the financial interests of broadcasters and of viewers, **the national legislature may set different hourly broadcasting limits for advertising on pay-TV and on free-to-air TV.**

Finally, the Court points out that the Italian legislation could amount to a restriction on the freedom to provide services.

In that regard, the Court states that **the protection of consumers against abuses of advertising nevertheless constitutes an overriding reason relating to the general interest which may justify restrictions on the freedom to provide services**, provided that those restrictions are **such as to ensure achievement of the aim pursued and do not go beyond what is necessary for that purpose**. It is for the referring court to assess whether those conditions are satisfied.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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