



PRESS RELEASE No 86/23

Luxembourg, 25 May 2023

Judgment of the Court in Case C-290/21 | AKM (Supply of satellite packages in Austria)

Cross-border satellite retransmission of programmes: the broadcasting Member State principle also applies to the satellite package provider

Consequently, where it is required to obtain the authorisation of the holders of the copyright and related rights concerned for the act of communication to the public in which it participates, the satellite package provider must seek that authorisation only in the Member State in which the programme-carrying signals are introduced into the chain of communication leading to the satellite

The applicant in the main proceedings, Staatlich genehmigte Gesellschaft der Autoren, Komponisten und Musikverleger Reg. Gen. mbH (AKM) is an Austrian copyright collecting society. It holds a licence to exploit musical works, entitling it to exercise broadcasting rights in Austria on a fiduciary basis. The company Canal+ Luxembourg Sàrl ('Canal+') is a television operator established in Luxembourg, which offers by satellite, in Austria, packages of encrypted programmes ('satellite packages') of various broadcasting organisations located in other Member States, both in high definition and in standard definition.

The introduction of each of the programme-carrying satellite signals into the chain of communication (uplinking) is carried out for the most part by those broadcasting organisations themselves, sometimes by Canal+, in those other Member States. A stream is broadcast containing the entire programme in high-definition quality and additional information, such as audio data and subtitle data. After being 're-sent' by the satellite, that stream is received by satellite-receiving equipment within the coverage area. That stream is then split up and the user may access each of the programmes on a terminal by means of a decoder. The satellite packages supplied by Canal+ contain pay-TV and free-to-air programmes. Unlike pay-TV programmes, the latter are not encrypted and may always be received in standard quality by everyone in Austria.

Since it was of the view that Canal+ infringed the rights which it manages, AKM brought an action before the Austrian courts seeking, in essence, an injunction prohibiting the broadcasting by Canal+ of satellite signals in Austria and payment of compensation, claiming that, in the Member States in which the act of broadcasting or communication to the public by satellite took place, no authorisation had been obtained for such exploitation and that it had not authorised that broadcasting in Austria.

The Oberster Gerichtshof (Supreme Court, Austria), before which an appeal on a point of law (*Revision*) had been brought against a judgment of the Oberlandesgericht Wien (Higher Regional Court, Vienna, Austria), which had held, inter alia, that the satellite packages at issue reached a new public, that is to say, a public different from that targeted by free-to-air transmissions by broadcasting operators, decided to refer a question to the Court of Justice for a preliminary ruling on the interpretation of Directive 93/83¹ and, in particular, of Article 1(2)(b) thereof. Under that provision, communication to the public by satellite occurs solely in the Member State where, under the control

¹ Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ 1993 L 248, p. 15).

and responsibility of the broadcasting organisation, the programme-carrying signals are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth.

Findings of the Court

The Court ruled that, **where a satellite package provider is required to obtain, for the act of communication to the public by satellite in which it participates, the authorisation of the holders of the copyright and related rights concerned, that authorisation must be obtained**, such as that granted to the broadcasting organisation concerned, **only in the Member State in which the programme-carrying signals are introduced into the chain of communication leading to the satellite.**

The Court recalls, first of all, that, in order for the rule laid down in Article 1(2)(b) of Directive 93/83 to apply, there must be a 'communication to the public by satellite', within the meaning of Article 1(2)(a) and (c), those provisions laying down cumulative conditions to that effect. Thus, a transmission constitutes a single 'communication to the public by satellite' if (i) it is triggered by an 'act of introducing' of programme-carrying signals carried out 'under the control and responsibility of the broadcasting organisation', (ii) those signals are introduced 'into an uninterrupted chain of communication leading to the satellite and down towards the earth', (iii) those signals are 'intended for reception by the public', and (iv) in the case that those signals are encrypted, their decoding device is 'provided to the public by the broadcasting organisation or with its consent'.

Next, both the indirect and direct transmission of television programmes that fulfil all of those cumulative conditions, must each be regarded as constituting a single communication to the public by satellite and thus as indivisible. In contrast, the indivisibility of such a communication does not however signify that the intervention of the satellite package provider in that communication can occur without the authorisation of the right holders concerned.

Lastly, such authorisation must be obtained, in particular by a person who triggers that communication or who intervenes when it is carried out, so that, by means of that communication, he or she makes the protected works accessible to a new public, that is to say, a public which was not taken into account by the authors of the protected works within the framework of an authorisation given to another person. A communication to the public by satellite, such as that at issue in the main proceedings, is triggered by the broadcasting organisation under whose control and responsibility the programme-carrying signals are introduced into the chain of communication leading to the satellite. Furthermore, it is common ground that, as a general rule, that organisation thereby renders the protected works accessible to a new public. Consequently, that organisation is required to obtain the authorisation provided for in Article 2 of Directive 93/8.

The Court also notes that, **in so far as such a communication to the public by satellite is deemed to take place only in the Member State in which the programme-carrying signals are introduced into the chain of communication leading to the satellite, the broadcasting organisation is required to obtain that authorisation only in that Member State.** However, it states that, in order to determine the appropriate remuneration of the copyright holders for such communication of their works, all aspects of the broadcast concerned must be taken into account, such as its actual audience and its potential audience. It infers from this that, **where part of that actual or potential audience is located in Member States other than that in which the programme-carrying signals are introduced into the chain of communication leading to the satellite, it is, where appropriate, for the various collecting societies concerned to find adequate solutions in order to ensure equitable remuneration of those right holders.**

That said, the Court recalls that **it cannot be ruled out that other operators may intervene in the course of a communication to the public by satellite, with the result that they render the protected works or subject matter accessible to a public wider than that targeted by the broadcasting organisation concerned. In such a situation, the intervention of those operators is not covered by the authorisation granted to that organisation. That may in particular be the case where an operator expands the circle of persons having**

access to that communication and thereby renders the protected works or subject matter accessible to a new public.

Moreover, the Court finds that it follows from recitals 5, 14 and 15 of **Directive 93/83** that Article 1(2)(b) **seeks to ensure that any ‘communication to the public by satellite’ is subject exclusively to the legislation on copyright and related rights in force in the Member State in which the programme-carrying signals are introduced into the chain of communication leading to the satellite. Accordingly, it would be contrary to that objective if a satellite package provider were also required to obtain authorisation from the holders of the copyright and related rights concerned in other Member States.**

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.

Unofficial document for media use, not binding on the Court of Justice.

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

Press contact: Jacques René Zammit ☎ (+352) 4303 3355

Stay Connected!

