

Case C-716/20**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

31 December 2020

Referring court:

Supremo Tribunal de Justiça (Portugal)

Date of the decision to refer:

10 November 2020

Applicant and appellant:

RTL Television GmbH

Defendants and respondents:

Grupo Pestana S.G.P.S., S. A.

SALVOR – Sociedade de Investimento Hoteleiro, S. A.

Subject matter of the main proceedings

The appeal in cassation brought by the applicant RTL Television GmbH against the judgment of the Tribunal da Relação de Lisboa (Court of Appeal, Lisbon) in proceedings in which the defendants are Grupo Pestana S.G.P.S., S. A., and Salvor, Sociedade de Investimento Hoteleiro, S. A., concerns whether the concept of ‘cable retransmission’, as provided for in Article 1(3) of Council Directive 93/83/EEC of 27 September 1993, covers distribution to the public in the case where the person performing the distribution is not a broadcasting organisation, and whether the simultaneous distribution of the satellite broadcasts of a television channel, through television sets installed in hotel rooms, and by means of coaxial cable, constitutes a retransmission of those broadcasts.

Subject matter and legal basis of the request for a preliminary ruling

Interpretation of EU law, in particular Article 1(3) of Council Directive 93/83/EEC of 27 September 1993; Article 267(b) TFEU.

Questions referred for a preliminary ruling

1. Must the concept of ‘cable retransmission’, as provided for in Article 1(3) of Council Directive 93/83/EEC of 27 September 1993, be interpreted as meaning that it covers, in addition to the simultaneous transmission by one broadcasting organisation of a broadcast by another broadcasting organisation, the distribution to the public, on a simultaneous basis and entirely by cable, of a primary broadcast of television or radio programmes intended for reception by the public (whether or not the person performing that distribution to the public is a broadcasting organisation)?
2. Does the simultaneous distribution of the satellite broadcasts of a television channel, through television sets installed in hotel rooms, and by means of coaxial cable, constitute a retransmission of such broadcasts within the meaning of the concept provided for in Article 1(3) of Council Directive 93/83/EEC of 27 September 1993?

Provisions of EU law relied on

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: Article 1(3).

Provisions of national law relied on

Código do Direito de Autor e dos Direitos Conexos (Code of Copyright and Rights related to Copyright, ‘the CDADC’), Legislative Decree No 63/85 of 14 March 1985, *Diário da República* No 61/1985, series I, of 14 March 1985, as amended; Articles 176(9) and (10) and 187(1)(a) and (e).

Legislative Decree No 333/97 of 27 November 1997, *Diário da República* No 275/1997, series I-A of 27 November 1997 (bringing domestic law into line with Council Directive 93/83/EEC of 27 September 1993), Articles 3 and 8.

Brief presentation of the facts and the main proceedings

- 1 The applicant, RTL GmbH (‘RTL’), which has its registered office in Cologne, Germany, is an organisation that makes audio and visual broadcasts for reception by the general public.
- 2 The applicant is one of the companies forming part of a conglomerate of television content broadcasters that operate jointly under the trade name ‘Media Group RTL Germany’ or ‘Mediengruppe RTL Deutschland’; among the members of ‘Media Group RTL Germany’ or ‘Mediengruppe RTL Deutschland’ are several companies specifically identified in the documents in the main proceedings.

- 3 All those entities, including the applicant, are directly or indirectly owned by RTL Group S.A., Luxembourg; that company heads up one of the leading entertainment business groups in Europe, whose members include radio and television channels in several European countries.
- 4 The applicant transmits audio and visual broadcasts by several 'free-to-air' television channels, that is to say the reception and use of whose broadcasts for private purposes are not subject to the payment of a licence fee, including the 'RTL Television' channel ('the RTL channel').
- 5 The RTL channel is a 'generalist channel'; its programming brings a wide range of television formats (films, series, shows, documentaries, sporting events, news and magazine programmes) to its viewers and, among German-language television channels, it is one of the best known and most watched by the German-speaking population in the European Union.
- 6 From a technical point of view, the RTL channel is received in Germany, Austria and Switzerland via all existing television reception options: satellite, cable, IP, OTT/Internet and terrestrial television ('primary transmission').
- 7 As RTL is a free-to-air channel, no fee is charged for reception in private homes and its signal is not encrypted for most reception options.
- 8 Although the RTL channel's programming is aimed at the public resident in Germany, Austria and Switzerland, and those countries are the source of all its advertising funding, the extension of its satellite signal (ASTRA 19.2° East satellite) means that, technically, it can be picked up in other European countries, in particular Portugal, by using an ordinary satellite dish positioned at the ASTRA 19.2° East satellite.
- 9 As regards the reception and use of that signal by cable television operators or by hotels, the applicant, in its capacity as a broadcasting organisation, considers that it is entitled to authorise, under the conditions it deems appropriate, or to prohibit the retransmission and communication to the public of its broadcasts, it being the applicant's usual practice to conclude licensing agreements for that purpose.
- 10 The applicant has already concluded a number of licensing agreements for that purpose with both cable television operators and hotels situated in the European Union, such agreements being, in conjunction with advertising, its source of revenue; the 'Pestana Berlin Tiergarten' hotel — located in Berlin and operated by a company belonging to the defendant Grupo Pestana, the undertaking Pestana Berlin S.A.R.L., having its registered office in Luxembourg — pays the German collecting society GEMA a fee for, inter alia, making available the channels belonging to Media Group RTL, in particular the RTL channel, to its customers.
- 11 The applicant has already concluded a number of licensing agreements, for the retransmission and communication to the public of its broadcasts, with cable television operators trading in Portugal, as well as with certain hotels situated

there; the price it charges Portuguese hotels for concluding such contracts is, in the case of the RTL channel, EUR 0.20 per room per month, plus applicable taxes. That price is independent of the hotel's occupancy rate.

- 12 The defendant, Grupo Pestana S.G.P.S., S. A. ('Grupo Pestana'), is a company which engages in the management of shareholdings in the capital of other companies as an indirect form of carrying on economic activities.
- 13 The defendant Grupo Pestana has majority shareholdings in companies which are themselves the owners or operators of the hotels identified in detail in the documents in the main proceedings, and is one of the largest groups of businesses in the tourism sector in Portugal, operating tourist accommodation facilities comprising approximately 9 450 rooms in total. That business group owns 45 hotels (in Portugal and other countries), nine Vacation Club complexes and four property/tourism complexes, and holds the concession for managing the network of 33 Pousadas de Portugal (a chain of formerly State-run hotels in Portugal).
- 14 The defendant Salvor, Sociedade de Investimento Hoteleiro, S. A. ('Salvor') — in which the defendant Grupo Pestana holds a direct shareholding of at least 98.8% — is a Portuguese company which engages in the business and promotion of the hotel industry by constructing or financing the construction of hotels or through direct or indirect interests in the operation of hotels and similar establishments.
- 15 The defendant Salvor operates the hotel complexes situated in Portugal which are identified in detail in the documents in the main proceedings.
- 16 The applicant RTL brought an action against the defendants GRUPO PESTANA and SALVOR, seeking principally:
 - (i) a declaration that the reception and making available of broadcasts by the RTL channel in the rooms of the D. João II and Alvor Praia hotels, as well as in the rooms of the other hotels directly or indirectly operated by Salvor, constitutes an act of communication to the public for the purposes of the provisions of Article 187(1)(e) of the CDADC, or, in the alternative, that it constitutes a retransmission of those broadcasts for the purposes of the provisions of Article 187(1)(a) of the CDADC;
 - (ii) a declaration that the making available of broadcasts as referred to in the preceding paragraph requires prior authorisation from RTL, in its capacity as broadcasting organisation and holder of rights related to copyright in its broadcasts, in particular the right to authorise the communication to the public of those broadcasts and the right to retransmit them, as well as [the right to] the payment of remuneration for them;
 - (iii) a declaration that, in so far as the applicant has not granted the authorisation referred to in the preceding paragraph, the making available of the RTL channel in the rooms of the hotels operated by Salvor is illegal;

(iv) an injunction prohibiting Salvor from providing access to the RTL channel in the rooms of the hotels which it operates without first seeking and obtaining RTL's authorisation to retransmit its broadcasts and/or communicate them to the public;

(v) an order requiring Salvor to pay, by way of compensation for retransmitting broadcasts by the RTL channel and/or communicating them to the public, an amount of EUR 0.2 per room per month for the period from when Salvor first made that channel available in its hotel rooms to the date on which it ceases to make RTL's broadcasts unlawfully available, plus statutory interest from the date on which the judgment given on this action becomes final until such time as that amount is paid in full;

(vi) an order requiring the defendant Grupo Pestana jointly and severally to make the payment referred to in the head of claim set out in the preceding paragraph (iv);

(vii) an order requiring Grupo Pestana, as the dominant company, to take the appropriate measures within the group, in particular in the form of binding instructions in accordance with the provisions of the Código das Sociedades Comerciais (Commercial Companies Code), to ensure that the companies in its ownership do not make the RTL channel available in the hotels which it operates without first obtaining authorisation from the applicant by paying the relevant fee;

(viii).an order requiring Grupo Pestana to pay, by way of compensation for retransmitting broadcasts by the RTL channel and/or communicating them to the public, an amount of EUR 0.2 per room per month for the period from when the hotels operated by the other companies in its ownership (ie other than Salvor) first made that channel available in their respective hotel rooms until the date on which the illegal making available of broadcasts by the RTL channel is brought to an end, plus statutory interest from the date on which the judgment given on this action becomes final until such time as that amount is paid in full;

(ix) an order requiring Salvor to pay a periodic penalty, to be divided equally between RTL and the State, in the amount of EUR 5 000 for each day, subsequent to the date on which the judgment given on the present action becomes final, on which Salvor fails to comply with the requirement referred to in paragraph (iv); and

(x) an order requiring Grupo Pestana jointly and severally to make the payment referred to in the head of claim set out in the preceding paragraph, on the ground that, since 2014, the Pestana Alvor and D. João II hotels, operated by the defendants, have been transmitting in their hotel rooms broadcasts by the RTL channel, owned by the applicant, without authorisation and without paying any consideration, which, in the applicant's view, constitutes an act of communication to the public for the purposes of the provisions of Article 187(1)(e) of the

CDADC, or, in the alternative, constitutes a retransmission of those broadcasts for the purposes of the same provision.

- 17 The judgment given at first instance upheld the action in part and declared that the reception and making available of broadcasts by the RTL channel, owned by the applicant RTL, in the rooms of the D. João II and Alvor Praia hotels, as well as in the rooms of the other hotels directly or indirectly operated by the defendants Grupo Pestana and Salvor, constitute an act of communication to the public under the provisions of Article 187(1)(e) of the CDADC (albeit not involving the ‘payment of an entrance fee’), and dismissed the other claims raised against the defendants.
- 18 In support of its conclusion, the first-instance court held, in short, that the defendants’ conduct constituted an ‘act of communication to the public’, despite the fact that no specific consideration had been paid by way of remuneration for viewing the RTL channel. It also held that the distribution of that channel did not constitute a ‘retransmission of broadcasts’, since neither the defendants nor the hotels identified in the application are broadcasting organisations.
- 19 Accordingly, that court concluded that the distribution of the RTL channel by the defendants was not illegal under the provisions of Article 187(1)(a) and (e) of the CDADC and, consequently, it dismissed the claim for declaratory relief raised by the applicant, as well as the claims for compensation, both on the basis of the rules of civil liability and in accordance with the principle of unjust enrichment.
- 20 Since it did not concur with that decision, the applicant appealed to the Lisbon Court of Appeal, which gave judgment confirming the judgment under appeal.
- 21 In support of its decision, the Lisbon Court of Appeal, for the purposes of the present proceedings, held, in short, that the distribution of the RTL channel’s broadcasts, by coaxial cable, through the numerous television sets installed in the rooms of the hotels operated by the defendants did not constitute a ‘retransmission of broadcasts’, in the light of the definition contained in Article 176(10) of the CDADC.
- 22 Dissatisfied with that decision, the applicant brought an appeal in cassation before the Supremo Tribunal de Justiça (Supreme Court, Portugal) which was declared admissible.

Main arguments of the parties to the main proceedings

- 23 The applicant and appellant submits that, from early 2014 at the latest, certain hotel facilities operated by the respondent Salvor had begun to make the option to view one of the television channels transmitted by satellite by the applicant (the RTL channel) available to their customers, picking up the relevant signal via a satellite dish and transmitting it to the television sets installed in their respective rooms by means of a network of coaxial cables.

- 24 Relying on the provisions of the CDADC and Legislative Decree No 333/97, concerning satellite broadcasting and cable retransmission, and on the exclusivity rights which, in its view, that legislation confers on ‘broadcasting organisations’ in connection with the use of their broadcasts for commercial purposes — in particular the right to prohibit/authorise acts of communicating those broadcasts to the public in places to which access is gained by payment of an entrance fee, and the right to prohibit/authorise acts involving the retransmission of those broadcasts, be this by radio or cable, whether or not the person performing those acts is itself a broadcasting organisation — the appellant made an application, at first instance, to the Tribunal da Propriedade Intelectual (Intellectual Property Court) for a declaration that the fact that the respondent Salvor makes broadcasts by the RTL channel available in the rooms of the hotels which it operates infringes those two rights simultaneously, or, at least, the second of them (the right to authorise or prohibit the retransmission of those broadcasts).
- 25 The Intellectual Property Court held that the distribution of the RTL channel by the respondent Salvor in its hotel rooms does not infringe the retransmission right provided for in Article 187(1)(a) of the CDADC, given that the retransmission right envisaged in that legal provision covers the retransmission of broadcasts only in the case where the persons performing the retransmission are broadcasting organisations (that is to say, where the retransmission satisfies verbatim the definition of the concept of ‘retransmission’ contained in Article 176(10) of the CDADC), and, since the respondent Salvor is a hotel undertaking, it cannot be classified as a broadcasting organisation.
- 26 The Lisbon Court of Appeal, in the judgment under appeal in cassation, dismissed the appeal and confirmed the judgment given at first instance by the Intellectual Property Court, in particular as regards the absence of anything capable of being characterised in law as the retransmission right which the legislation in force confers on broadcasting organisations.
- 27 The fundamental legal question which is raised in cassation and which will determine whether or not the heads of claim raised by the current appellant are upheld, is whether the distribution of broadcasts by the RTL channel, owned by the current appellant, by coaxial cable, to the respective rooms of the Alvor Praia and Dom João II hotels (operated by the respondents) constitutes a retransmission of those broadcasts which is subject, in the light of the legislation in force, to authorisation from the broadcasting organisation.
- 28 The right of broadcasting organisations to authorise and prohibit the retransmission of their broadcasts — enshrined in Article 187(1)(a) of the CDADC in conjunction with Articles 3 and 8 of Legislative Decree No 333/97— covers not only the simultaneous transmission of broadcasts in the case where the person retransmitting them is a broadcasting organisation other than the organisation from which they originate, but also the distribution to the public, on a simultaneous basis and entirely by cable, of a primary broadcast of television or

radio programmes intended for reception by the public, whether or not the person performing that distribution to the public is a broadcasting organisation.

- 29 After all, Legislative Decree No 333/97 extended the range of rights conferred on broadcasting organisations by the CDADC.
- 30 Article 3(c) of that legislative decree defines the concept of cable retransmission as ‘the retransmission to the public, on a simultaneous basis and entirely by cable, of a primary broadcast of television or radio programmes intended for reception by the public’.
- 31 Moreover, Article 8 of that Legislative Decree provides that ‘broadcasting organisations shall be subject, so far as concerns [...] cable retransmission, to the provisions [of Article] 187 of the Code of Copyright and Rights related to Copyright’.
- 32 Article 187 of the CDADC defines the scope of the *ius prohibendi* available to broadcasting organisations in connection with acts involving the exploitation of their primary broadcasts. Accordingly, Articles 3 and 8 of Legislative Decree No 333/97 conferred on broadcasting organisations the right to authorise third parties to retransmit their broadcasts by cable or to prohibit them from doing so.
- 33 The lower court, however, denied that broadcasting organisations are entitled to authorise third parties to distribute to the public, on a simultaneous basis and entirely by cable, a primary broadcast of television or radio programmes intended for reception by the public, or to prohibit them from doing so.
- 34 According to the approach taken in the judgment under appeal, broadcasting organisations do not have the right to prohibit (or authorise) the cable retransmission of their broadcasts under Article 3 of Legislative Decree No 333/97, but only the right to prohibit (or authorise) the simultaneous transmission of such broadcasts in cases where the retransmitter is itself a broadcasting organisation [under the provisions of Article 187(1)(a) of the CDADC].
- 35 According to the appellant, the interpretation adopted by the courts at first and second instance precludes any understanding, under the law in force, of the usefulness of the concept of ‘cable retransmission’ introduced by Article 3 of Legislative Decree No 333/97 or of the reference to Article 187 of the CDADC contained in Article 8 of that Legislative Decree.
- 36 Again according to the appellant, the Lisbon Court of Appeal adopts an interpretation which departs from the law in force, without giving any reason for so doing and without explaining the meaning which it attributes to the legal rules relied on by the appellant.
- 37 After all, Article 187(1) of the CDADC defines the scope of the *ius prohibendi* enjoyed by broadcasting organisations in Portugal. That provision is nonetheless

supplemented by Legislative Decree No 333/97 of 27 November 1997, which governs satellite broadcasting and the cable retransmission of primary broadcasts, conferring on broadcasting organisations certain rights as against third parties that retransmit their primary broadcasts, by satellite or cable.

- 38 Article 2 of Legislative Decree No 333/97 extends the rights (*ius prohibendi*) which the copyright holder enjoys as against third parties that perform acts of broadcasting or retransmission (as provided for in Articles 149 to 156 of the CDADC), and includes among such acts (not authorised by the author) satellite broadcasting and cable retransmission, as defined in that text.
- 39 And thus, just as Article 2 extends the rights of copyright holders so as also to include the right to prohibit the retransmission of their works by cable, as defined in Article 3, Article 8, analogously, extends the *ius prohibendi* of broadcasting organisations so also to include the right to prohibit unauthorised third parties from retransmitting their primary broadcasts by cable.
- 40 In refusing to regard the established facts as falling within the scope of retransmission as defined in Article 3 of Legislative Decree 333/97, which governs satellite broadcasting and the cable retransmission of primary broadcasts, the Lisbon Court of Appeal relied, according to the appellant, on two views.
- 41 The first view starts from the premiss that Law 50 of 24 August 2004 amended the wording of Article 176 of the CDADC, while retaining the concept of retransmission, thus supporting the inference that, if the purpose of Legislative Decree No 333/97 had been to modify the scope of the *ius prohibendi* enjoyed by broadcasting organisations, that modification would have been given expression in the CDADC by Law 50 of 24 August 2004, which was not the case.
- 42 According to the appellant, that interpretation disregards entirely the objective of Law 50 of 24 August 2004. The purpose of that text was not to harmonise the rules governing the rights related to copyright enjoyed by broadcasting organisations in Portugal, but only to bring domestic law into line with Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation (at EU level) of certain aspects of copyright and related rights in the information society (known as the 'InfoSoc Directive').
- 43 Law 50 of 24 August 2004 did not seek to reform the CDADC, and it was not in any way intended to consolidate the legislation on copyright and related rights that was in force at that time. That Law served only to bring domestic law into line with the InfoSoc Directive. Consequently, the reason that Law did not modify the concept of 'retransmission' as defined in Article 176 of the CDADC was simply that the directive that fell to be transposed did not call for such a modification. The applicant fails to see how that fact might influence the interpretation of Legislative Decree No 333/97.

- 44 The second view formed by the Lisbon Court of Appeal is, according to the appellant, based on the judgment of the Court of Justice of the European Union of 16 February 2017 in Case C-641/15.
- 45 That judgment states that ‘it should be borne in mind that, in the judgment of 7 December 2006, *SGAE* (C-306/05, EU:C:2006:764, paragraphs 47 and 54), the Court held that the distribution of a signal by means of TV sets by a hotel to customers staying in its rooms, whatever technique is used to transmit the signal, constitutes a communication to the public within the meaning of Article 3(1) of Directive 2001/29, and that the private nature of hotel rooms by such a hotel does not preclude the communication of a work by those means from constituting a communication to the public within the meaning of Article 3(1) of Directive 2001/39’ (paragraph 17).
- 46 According to the appellant, the Lisbon Court of Appeal infers from that passage that the distribution of television channels in hotel rooms constitutes a communication to the public and not a retransmission, regardless of whether that distribution is effected by coaxial cable.
- 47 In the appellant’s view, the error on the part of the Lisbon Court of Appeal appears to lie in the idea that those two concepts (communication to the public and cable retransmission) are mutually exclusive — that is to say, as if the fact that a hotel performs an act of communication to the public ruled out the possibility of its performing an act of cable retransmission.
- 48 According to the appellant, neither of the two views formed by the Lisbon Court of Appeal adequately substantiates the interpretation at variance with the provisions of Legislative Decree 333/97.
- 49 The appellant considers that the Lisbon Court of Appeal erred in its response to the matter of law under examination and that, in so far as it committed serious errors in interpreting Article 187 of the CDADC, in conjunction with the provisions of Articles 3 and 8 of Legislative Decree No 333/97, it gave a decision which must be set aside by the referring court, which will have to replace it with a decision to the opposite effect.
- 50 The appellant requests that a reference be made to the Court of Justice of the European Union for a preliminary ruling on the matter in issue.
- 51 The respondents, in their responses, contend that the judgment under appeal should be upheld.

Brief presentation of the grounds of the request for a preliminary ruling

- 52 As has already been explained, the fundamental issue that falls to be resolved in cassation is whether the distribution by coaxial cable of the broadcasts of the appellant’s RTL channel, in the rooms of the Alvor Praia and Dom João II hotels

(operated by the respondents) respectively, constitutes a retransmission of those broadcasts that is subject, in accordance with the provisions of Article 187(1)(a) of the CDADC, to authorisation from the broadcasting organisation from which they originated (in this case, the appellant).

- 53 It should be recalled that the courts of first and second instance took the view that there was no ‘retransmission’ for the purposes of the provisions of Article 176(9) and (10) of the CDADC and Article 3(g) of the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on 26 October 1961, respectively, given that the defendants are not broadcasting organisations.
- 54 The appellant argued that the right conferred on broadcasting organisations to authorise and prohibit the retransmission of their broadcasts — as provided for in Article 187(1)(a) of the CDADC in conjunction with Articles 3 and 8 of Legislative Decree No 333/97 — covers not only the simultaneous transmission of broadcasts in the case where the person transmitting them is a broadcasting organisation other than the organisation from which they originate, but also the distribution to the public, on a simultaneous basis and entirely by cable, of a primary broadcast of television or radio programmes intended for reception by the public (whether or not the person performing that distribution to the public is a broadcasting organisation).
- 55 The answer to that question calls for a precise determination of the scope of protection afforded by the rule laid down in Article 187(1)(a) of the CDADC, in conjunction with the rule laid down in Article 176(9) and (10) of the CDADC, and by the provisions of Legislative Decree No 333/97, the text bringing domestic law into line with 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.
- 56 The Portuguese law applicable to this case is contained in the CDADC, in particular Articles 176(9) and (10) and 187(1)(a) thereof, which are worded as follows:

Article 176

‘9 – “Broadcasting organisation” means any organisation which makes audio or visual broadcasts, where broadcast means the transmission of sounds or images, or the representation thereof, separately or cumulatively, whether by wire or wireless means, in particular by radio waves, optical fibres, cable or satellite, intended for reception by the public.

10 – Retransmission means the simultaneous transmission by a broadcasting organisation of a broadcast by another broadcasting organisation’.

Article 187

‘1– Broadcasting organisations shall have the right to authorise or prohibit:

(a) The retransmission of their broadcasts by radio waves’.

57 Also of relevance to the judgment to be given in this case is the set of rules contained in Legislative Decree No 333/97, in particular Article 3(c) thereof, which defines the meaning of ‘cable retransmission’ (see paragraph 30 above).

58 Article 8 of that Legislative Decree expressly regards, inter alia, Article 187 of the CDADC as being applicable to cable retransmission.

59 Now, in the light of the legislative framework in force, there is some uncertainty as to the compatibility of the interpretation of the applicable provisions of the CDADC and Legislative Decree No 333/97 with Council Directive 93/83; that uncertainty concerns, in essence, whether, notwithstanding the wording of Article 187(1)(a) of the CDADC, the list of rights conferred on broadcasting organisations must be regarded as having been extended, regard being had in particular to the provisions of Legislative Decree No 337/97 and its original source, Directive 93/83/EEC (the Satellite and Cable Directive).

60 In the light of the form of order sought in the appellant’s appeal, the outcome of that appeal, whether it is upheld or dismissed, will depend on the answers that are given to the questions which the Court of Justice of the European Union is asked to examine.

61 Apart from the judgment of first-instance court and the judgment of the Lisbon Court of Appeal given in the present proceedings, the referring is not aware of any Portuguese case-law which — directly — addresses the specific questions raised here, nor any case-law of the Court of Justice of the European Union which provides — unequivocal — answers to them.

62 Since the Supreme Court is the national court of last instance, it hereby decides, in accordance with Article 267 of the Treaty on the Functioning of the European Union, to refer the questions reproduced above to the Court of Justice of the European Union.