

Case C-353/89

Commission of the European Communities

v

Kingdom of the Netherlands

(Failure to fulfil obligations — Freedom to provide services —
Obligation to use the services of a national undertaking for the
production of radio and television programmes — Conditions imposed on
the re-transmission of advertising contained in radio or television
programmes broadcast from other Member States)

Report for the Hearing	I - 4072
Opinion of Mr Advocate General Tesauro delivered on 18 April 1991	I - 4087
Judgment of the Court, 25 July 1991	I - 4088

Summary of the Judgment

1. *Freedom to provide services — Provisions of the Treaty — Scope — Limits*
(EEC Treaty, Arts 56 and 59)
2. *Freedom to provide services — Restrictions — Justified by reasons relating to the general interest — Cultural policy — Permissibility — Conditions*
(EEC Treaty, Art. 59)
3. *Freedom to provide services — Restrictions — Obligation for national broadcasters to use the services of a national undertaking for the production of their radio and television programmes — Not permissible — Justification — Maintenance of pluralism in the audio-visual sector — Not justified*
(EEC Treaty, Art. 59)

4. *Freedom to provide services — Restrictions — Conditions affecting the structure of foreign broadcasting organizations operating in the audio-visual sector — Justification based on reasons relating to the general interest — None*
(EEC Treaty, Art. 59) ic
5. *Freedom to provide services — Restrictions — Limitation of the re-transmission of advertising contained in radio or television programmes broadcast from other Member States — Justified on grounds relating to the general interest — Conditions*
(EEC Treaty, Art. 59)
6. *Freedom to provide services — Restrictions — Limitation of the re-transmission of advertising contained in radio or television programmes broadcast from other Member States*
(EEC Treaty, Art. 59)

1. The abolition of restrictions on freedom to provide services within the Community referred to in the first paragraph of Article 59 of the Treaty entails, in the first place, the abolition of any discrimination against a person providing services on account of his nationality or the fact that he is established in a Member State other than that in which the service is to be provided.

National rules which are not applicable to services without discrimination as regards their origin are compatible with Community law only if they can be brought within an express derogation, such as that contained in Article 56 of the Treaty, which may not be invoked in order to pursue objectives of an economic nature.

In the absence of harmonization of the rules applicable to services, or even a system of equivalence, restrictions on the freedom to provide services may arise in the second place as a result of the application of national provisions which affect any person established in the

national territory to persons providing services established in the territory of another Member State who already have to satisfy the requirements of that State's legislation. Such restrictions come within the scope of Article 59 if the application of the national legislation to foreign persons providing services is not justified by overriding reasons relating to the general interest or if the requirements embodied in that legislation are already satisfied by the rules imposed on those persons in the Member State in which they are established.

Lastly, the application of national provisions to providers of services established in other Member States must be such as to guarantee the achievement of the intended aim and not go beyond that which is necessary in order to achieve it. Therefore it must not be possible to achieve the same result by less restrictive rules.

2. A cultural policy with the aim of safeguarding the freedom of expression of the various (in particular, social, cultural, religious and philosophical) components

of a Member State may constitute an overriding requirement relating to the general interest which justifies a restriction on freedom to provide services.

audio-visual sector cannot be regarded as being objectively necessarily in order to safeguard the general interest in maintaining a national radio and television system which secures pluralism.

3. By obliging bodies which have obtained air time on the national broadcasting network to spend with a particular national undertaking all of the amounts made available to them for the production of radio programmes and a percentage determined by decree for the production of television programmes, a Member State fails to fulfil its obligations under Article 59 of the Treaty.

Even if such a restriction forms part of a cultural policy intended to safeguard the freedom of expression of the various social, cultural, religious and philosophical components of society by ensuring the survival of an undertaking which provides them with technical resources, it goes beyond the objective pursued, since pluralism in the audio-visual sector of a Member State cannot be affected in any way by allowing the national bodies operating in that sector to make use of providers of services established in other Member States.

5. Restrictions on the broadcasting of advertisements may be imposed for an aim relating to the general interest, namely protection of consumers from excessive advertising or, in the context of a cultural policy, maintaining a certain level of programme quality. However, if such restrictions affect only advertising intended specifically for the public in the Member State in question, they are not justified by overriding reasons relating to the general interest, since they are designed to restrict the competition to which a national body with a monopoly over the broadcasting of such advertising may be exposed from foreign operators.
6. By prohibiting operators of cable networks established in its territory from transmitting radio or television programmes containing advertising intended specifically for the public in the Member State in question which is broadcast by broadcasting bodies established in the territory of another Member State if certain conditions relating to the structure of such bodies or to advertising contained in their programmes which is intended for the public in the Member State in question are not fulfilled, a Member State fails to fulfil its obligations under Article 59 of the Treaty.

4. Conditions affecting the structure of foreign organizations operating in the