



## Reports of Cases

ORDER OF THE COURT (Fourth Chamber)

8 September 2016\*

(Reference for a preliminary ruling — Article 53(2) and Article 94 of the Rules of Procedure of the Court of Justice — Lack of sufficient information concerning the factual and legal context of the dispute in the main proceedings and the reasons justifying the need for a reply to the question referred — Manifest inadmissibility)

In Case C-322/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court for Lazio, Italy), made by decision of 22 April 2015, received at the Court on 29 June 2015, in the proceedings

**Google Ireland Limited,**

**Google Italy Srl**

v

**Autorità per le Garanzie nelle Comunicazioni,**

intervening parties:

**Filandolarete Srl,**

**Associazione Confindustria Radio Televisioni,**

**Federazione Italiana Editori Giornali (FIEG),**

THE COURT (Fourth Chamber),

composed of T. von Danwitz (Rapporteur), President of the Chamber, C. Lycourgos, E. Juhász, C. Vajda and K. Jürimäe, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

— Google Ireland Limited and Google Italy Srl, by M. Siragusa, S. Valentino and F. Marini Balestra, avvocati,

\* Language of the case: Italian.

- the Associazione Confindustria Radio Televisioni, by C. San Mauro and G. Rossi, avvocati,
- the Federazione Italiana Editori Giornali (FIEG), by M. Anecchino and C. Palmieri, avvocati,
- the Italian Government, by G. Palmieri, acting as Agent, assisted by S. Varone, avvocato dello Stato,
- the European Commission, by V. Di Bucci and E. Montaguti, acting as Agents,

having decided, after hearing the Advocate General, to give a decision by reasoned order, in accordance with Article 53(2) of the Rules of Procedure of the Court of Justice,

makes the following

### **Order**

- 1 This request for a preliminary ruling concerns the interpretation of Article 56 TFEU.
- 2 The request has been made in proceedings between Google Ireland Limited and Google Italy Srl, on the one hand, and the Autorità per le Garanzie nelle Comunicazioni (Communications Safeguards Authority, 'AGCOM'), on the other hand, concerning a decision by the latter to extend to advertising concessionaires which negotiate advertising space on the internet and to companies having their headquarters outside Italy the obligation to disclose Economic System Information ('ESI').

### **Legal context**

#### *EU law*

- 3 Under Article 94 of the Rules of Procedure of the Court of Justice, entitled 'Content of the request for a preliminary ruling':

'In addition to the text of the questions referred to the Court for a preliminary ruling, the request for a preliminary ruling shall contain:

- (a) a summary of the subject matter of the dispute and the relevant findings of fact as determined by the referring court or tribunal, or, at least, an account of the facts on which the questions are based;
- (b) the tenor of any national provisions applicable in the case and, where appropriate, the relevant national case-law;
- (c) a statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation or validity of certain provisions of European Union law, and the relationship between those provisions and the national legislation applicable to the main proceedings.'

#### *Italian law*

- 4 Decreto-legge n. 63, recante Disposizioni urgenti in materia di riordino dei contributi alle imprese editrici, nonché di vendita della stampa quotidiana e periodica e di pubblicità istituzionale (Decree-Law No 63 laying down urgent provisions relating to the reorganisation of the contributions to publishing industries, as well as sales of newspapers and magazines and institutional advertising) of 18 May 2012 ('Decree-Law No 63/2012') amended Article 1(6)(a)(5) of legge n. 249, Istituzione

dell’Autorita per le garanzie nelle comunicazioni e norme sui sistemi delle telecomunicazioni e radiotelevisivo (Law No 249 establishing the Communications Regulatory Authority and laying down rules relating to the telecommunications and radiotelevision systems), of 31 July 1997, making compulsory the entry in the Register of Communications Operators of concessionaires of advertising transmitted by means of broadcasting or disseminated in daily newspapers or periodicals, on the internet and on other fixed or mobile digital platforms (‘ROC’).

- 5 Decree-Law No 63/2012 also amended Article 43(10) of the decreto legislativo n. 177 — Testo Unico dei Servizi di Media Audiovisivi e Radiofonici (Legislative Decree No 177 — Consolidated legislation on broadcasting and audiovisual media services), bringing within the scope of the overall revenue of the Integrated Communications System also revenue deriving from advertising on line and on various platforms, whether or not direct, including resources obtained by search engines and social and sharing platforms.

### **The dispute in the main proceedings and the question referred**

- 6 It is apparent from the order for reference that AGCOM considered it necessary, having regard to the legislative amendments mentioned above, to extend to advertising concessionaires active on the internet and to companies having their headquarters outside Italy the obligation to disclose ESI. Consequently, on 25 June 2013, AGCOM adopted Decision No 397/13/CONS which designates, inter alia, among the economic operators subject to the ESI reporting obligation, advertising concessionaires operating on the internet and other fixed or mobile digital platforms (Article 2(1)(e)) and persons whose revenues are generated within the national territory even if recorded in the financial statements of companies located outside Italy (Article 3(5)).
- 7 On the same day, by Decision No 398/13/CONS, AGCOM made certain amendments to the ROC. Accordingly, nationwide press agencies, providers of broadcasting and audiovisual services as well as providers of associated interactive services or conditional access services are now required to register on the ROC, in order to align that category of activities with that covered by Decision No 397/13/CONS.
- 8 AGCOM is of the view that the two information-gathering systems, namely the ESI and the ROC, are closely linked to each other and that both address the need to disclose to AGCOM comprehensive information on the operators in the communications sector in order for AGCOM to be able to perform its functions.
- 9 As they took the view that Decision No 397/13/CONS is unlawful inasmuch as it extends the ESI disclosure obligation to advertising firms operating on the internet and having their headquarters outside Italy, Google Ireland and Google Italy brought an action before the referring court in which they sought partial annulment of that decision. The applicants also ask the referring court to recognise their right not to be included among the persons subject to the obligation to disclose ESI.
- 10 The referring court expresses doubts as to whether that decision and certain related provisions of national legislation are compliant with the freedom to provide services under Article 56 TFEU.
- 11 In those circumstances, the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court for Lazio, Italy) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Does Article 56 TFEU preclude application of Decision No 397/13/CONS of AGCOM and of the related provisions of national law, as interpreted along the lines proposed by that authority, which require the submission of complex [ESI] (which must be drawn up in accordance with Italian accounting standards) on the economic activities carried out in relation to Italian consumers,

motivated by objectives of protecting competition but necessarily connected to the various and more limited institutional functions of that authority of safeguarding pluralism within the sector concerned, to operators which nonetheless do not come within the scope of the national legislation governing that sector [the Consolidated legislation on broadcasting and audiovisual media services], and in particular, in the case under review here, to a national operator carrying out only services for its fellow subsidiary governed by Irish law and also, as regards the latter, to an operator not having its headquarters and not carrying on any business using employees within national territory; alternatively, does this constitute a measure restricting freedom to provide services within the European Union in breach of Article 56 TFEU?

### **Admissibility of the request for a preliminary ruling**

- 12 Under Article 53(2) of the Rules of Procedure, where it is clear that the Court has no jurisdiction to hear and determine a case or where a request or an application is manifestly inadmissible, the Court may, after hearing the Advocate General, at any time decide to give a decision by reasoned order without taking further steps in the proceedings.
- 13 It is appropriate to apply that provision in the present case.
- 14 In accordance with settled case-law of the Court, the procedure provided for by Article 267 TFEU is an instrument for cooperation between the Court and national courts by means of which the Court provides national courts with the criteria for the interpretation of European Union law which they need in order to decide the disputes before them (see, inter alia, judgment of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 83).
- 15 The requirements concerning the content of a request for a preliminary ruling are expressly set out in Article 94 of the Rules of Procedure, of which the national court should, in the context of the cooperation instituted by Article 267 TFEU, be aware and which it is bound to observe scrupulously (see orders of 3 July 2014, *Talasca*, C-19/14, EU:C:2014:2049, paragraph 21, and of 12 May 2016, *Security Service and Others*, C-692/15 to C-694/15, EU:C:2016:344, paragraph 18; and judgment of 5 July 2016, *Ognyanov*, C-614/14, EU:C:2016:514, paragraph 19).
- 16 Furthermore, the Court has already stated that it follows from point 22 of its Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (OJ 2012 C 338, p. 1) that a request for a preliminary ruling must be ‘sufficiently complete and must contain all the relevant information to give the Court and the interested persons entitled to submit observations a clear understanding of the factual and legal context of the main proceedings’ (order of 3 September 2015, *Vivium*, C-250/15, not published, EU:C:2015:569, paragraph 12 and the case-law cited).
- 17 In that regard, it should be pointed out that the information provided in requests for a preliminary ruling serves not only to enable the Court to provide useful answers to the questions submitted by the referring court, but also to ensure that the governments of the Member States and other interested parties have the opportunity to submit observations, in accordance with Article 23 of the Statute of the Court of Justice of the European Union. It is for the Court to ensure that that opportunity is safeguarded, given that, under that provision, only the requests for a preliminary ruling are notified to the interested parties, accompanied by a translation in the official language of each Member State, but excluding any case file that may have been sent to the Court by the national court (see, inter alia, judgments of 11 June 2015, *Base Company and Mobistar*, C-1/14, EU:C:2015:378, paragraph 48, and of 5 July 2016, *Ognyanov*, C-614/14, EU:C:2016:514, paragraph 20).
- 18 Thus, given that it is the request for a preliminary ruling that serves as the basis for the proceedings before the Court, it is essential that the national court should set out, in that request, the factual and legal background to the dispute in the main proceedings and provide at the very least some

explanation of the reasons for the choice of the provisions of EU law of which it requests an interpretation and of the link that it establishes between those provisions and the national legislation applicable to the dispute before it (see, inter alia, order of 14 November 2013, *Mlamali*, C-257/13, not published, EU:C:2013:763, paragraph 21, and judgment of 10 March 2016, *Safe Interenvíos*, C-235/14, EU:C:2016:154, paragraph 115).

- 19 The Commission, relying on, inter alia, case-law according to which a question submitted for a preliminary ruling must be rejected as inadmissible in the case where a national court does not provide the Court with the factual or legal material necessary to enable it to give a useful answer (see, inter alia, judgment of 5 March 2015, *Copydan Båndkopi*, C-463/12, EU:C:2015:144, paragraph 93), calls into question the admissibility of the present request for a preliminary ruling.
- 20 The Commission states in its written observations that, although the request for a preliminary ruling amply sets out the arguments of the parties, it does not describe in sufficient detail the nature of the obligations imposed on economic operators by Decision No 397/13/CONS, or the general scheme of national provisions protecting competition and pluralism, the effectiveness of which allegedly depends on compliance with the obligation to disclose ESI.
- 21 The Commission emphasises in particular that examination of the relevant national legislation alone makes it possible to understand the scope, logic and coherence of the measures to protect competition and pluralism which underpin the collection of the information at issue in the case in the main proceedings.
- 22 In that regard, it should be borne in mind that, in order to enable the Court to provide a useful answer to the referring court, a request for a preliminary ruling must contain, besides the text of the questions referred for a preliminary ruling, the information which is set out in Article 94(a) to (c) of the Rules of Procedure.
- 23 As regards, more specifically, the requirements covered in Article 94(b) and (c) of the Rules of Procedure relating, first, to the reference to the tenor of any national provisions applicable in the case and, where appropriate, the relevant national case-law and, second, to a statement of the reasons which prompted the referring court to inquire about the interpretation or validity of certain provisions of EU law, and to the indication of the relationship between those provisions and the national legislation applicable to the main proceedings, it should be noted that the information provided for that purpose in the present request for a preliminary ruling does not satisfy those requirements.
- 24 Admittedly, in view of the spirit of judicial cooperation which governs relations between national courts and the Court of Justice in the context of preliminary-ruling proceedings, the fact that the referring court did not make certain initial findings does not necessarily mean, however, that the request for a preliminary ruling is inadmissible if, in spite of those deficiencies, the Court, in the light of the information contained in the case file, considers that it is in a position to provide a useful answer to the referring court (see, to that effect, judgment of 28 January 2016, *CASTA and Others*, C-50/14, EU:C:2016:56, paragraph 48 and the case-law cited). However, that is not the case here.
- 25 Although the request for a preliminary ruling mentions, in general terms, the regulatory framework at issue in the main proceedings, it does not indicate the provisions specifically applicable to the dispute at issue in the main proceedings. In particular, the request for a preliminary ruling is limited, in essence, to stating that Decision No 397/13/CONS was adopted by AGCOM following legislative amendments, set out in paragraphs 4 and 5 of the present order, for the purposes of extending to advertising concessionaires which negotiate advertising space on the internet and to companies having their headquarters outside Italy the obligation to disclose ESI.



- 26 In that regard, it must be noted that the request for a preliminary ruling contains no indication as to the obligation of one of the applicants in the main proceedings, Google Italy, to disclose ESI. In the view of the referring court, that applicant, which does not operate in the audiovisual or publishing sector, merely provides services to other members of the Google group and does not receive any internet advertising revenue.
- 27 Furthermore, the national law provisions, such as they have been set out in the request for a preliminary ruling, concern solely the extension of the ESI disclosure obligation to economic operators which negotiate advertising space on the internet and have their headquarters in another Member State. Thus, neither the scope nor the content of the obligation which had its scope extended, namely the information which those economic operators are required, by virtue of ESI, to provide to AGCOM, are explained in that request. In particular, the request does not in any way indicate the consequences resulting from the form which AGCOM has drawn up for the economic operators concerned and which lists the information which those economic operators are required to provide.
- 28 As for the detailed rules on the obligation to disclose ESI, the referring court confines itself in essence to indicating that this concerns a 'complex' statement which covers 'services for Italian consumers' and which 'must necessarily be drafted in accordance with Italian accounting rules.'
- 29 However, it is essential that the request for a preliminary ruling should indicate the tenor of the national provisions applicable in the case and, where appropriate, the relevant national case-law, in order to allow those referred to in Article 23 of the Statute of the Court of Justice of the European Union and the Court itself to assess whether that obligation is compliant with EU law, having regard in particular to its nature, content and scope.
- 30 In the present case, the subject matter of which relates to a possible restriction of a fundamental freedom, the referring court, in the absence of specific information as to the tenor of the national provisions which may be applicable in the case, has not put the Court in a position to be able to assess the existence and extent of such a restriction and, if appropriate, usefully to examine its justification, including, in particular, the examination of the proportionality of that restriction.
- 31 In particular, in the absence of details concerning the extent of the obligations the scope of which was extended by Decision No 397/13/CONS to advertising concessionaires which negotiate advertising space on the internet and have their headquarters in a Member State other than the Italian Republic, the Court is not in a position to examine any such possible justification, and, accordingly, to provide a useful answer to the referring court. In particular, while it is true that the protection of competition and pluralism constitute compelling reasons of general interest capable of justifying restrictions of the freedom to provide services, only a sufficiently detailed description of how that objective is pursued by that decision would allow the Court to determine whether and to what extent it is suitable and necessary for the purpose of attaining the public-interest objective pursued.
- 32 In the light of the foregoing considerations, it must be held, pursuant to Article 53(2) of the Rules of Procedure, that the present request for a preliminary ruling is manifestly inadmissible.

### **Costs**

- 33 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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:

**The request for a preliminary ruling brought by the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court for Lazio, Italy), by decision of 22 April 2015, is manifestly inadmissible.**

[Signatures]