Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

30 January 2024*

(Reference for a preliminary ruling – Directive 2010/13/EU – Audiovisual media services – Article 23(1) and (2) – Limits on the hourly broadcasting time for television advertising – Exceptions – Concept of 'announcements made by the broadcaster in connection with its own programmes' – Announcements made by such an organisation in order to promote broadcasts of a radio station belonging to the same broadcasting group as that broadcaster)

In Case C-255/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Council of State, Italy), made by decision of 25 March 2021, received at the Court on 21 April 2021, in the proceedings

Reti Televisive Italiane SpA (RTI)

v

Autorità per le Garanzie nelle Comunicazioni (AGCOM),

interested parties:

Elemedia SpA,

Radio Dimensione Suono SpA,

RTL 102,500 Hit Radio Srl,

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Chamber, N. Piçarra (Rapporteur), M. Safjan, N. Jääskinen and M. Gavalec, Judges,

Advocate General: J. Kokott,

Registrar: C. Di Bella, Administrator,

having regard to the written procedure and further to the hearing on 14 September 2022,

* Language of the case: Italian.

after considering the observations submitted on behalf of:

– Reti Televisive Italiane SpA (RTI), by F. Lepri, M. Molino and G. Rossi, avvocati,

– Elemedia SpA, Radio Dimensione Suono SpA and RTL 102,500 Hit Radio Srl, by F. Di Ciommo, avvocato,

– the Italian Government, by G. Palmieri, acting as Agent, and by R. Guizzi, avvocato dello Stato,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by G. Braun and L. Malferrari, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 13 July 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 23(1) and (2)(a) of 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 (Audiovisual Media Services Directive) (OJ 2010 L 95, p. 1, and corrigendum OJ 2010 L 263, p. 15) and of recital 43 of Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 (OJ 2018 L 303, p. 69), which amended the first directive but is not applicable *ratione temporis* to the main proceedings.

2 The request has been made in proceedings between Reti Televisive Italiane SpA (RTI) and the Autorità per le garanzie nelle comunicazioni (the Broadcasting Authority, Italy) (AGCOM) concerning the legality of three decisions of that authority imposing penalties on RTI for infringement, by the television channels Canale 5, Italia 1 and Rete 4, of the Italian legislation on the limits imposed on the hourly broadcasting time for television advertising.

Legal context

European Union law

Directive 2010/13

3 Recitals 23, 25, 87, 96 and 97 of Directive 2010/13 state:

‘(23) For the purposes of this Directive, the term “audiovisual” should refer to moving images with or without sound, thus including silent films but not covering audio transmission or radio services. …

…

(25) The concept of editorial responsibility is essential for defining the role of the media service provider and therefore for the definition of audiovisual media services. Member States may further specify aspects of the definition of editorial responsibility, notably the concept of "effective control", when adopting measures to implement this Directive. …

…

(87) A limit of 20% of television advertising spots and teleshopping spots per clock hour, also applying during "prime time", should be laid down. The concept of a television advertising spot should be understood as television advertising in the sense of point (i) of Article 1(1) having a duration of not more than 12 minutes.

…

(96) It is necessary to make clear that self-promotional activities are a particular form of advertising in which the broadcaster promotes its own products, services, programmes or channels. In particular, trailers consisting of extracts from programmes should be treated as programmes.

(97) Daily transmission time allotted to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from these, or to public service announcements and charity appeals broadcast free of charge, should not be included in the maximum amounts of daily or hourly transmission time that may be allotted to advertising and teleshopping.'

4 Article 1(1) of that directive lays down the following definitions:

'…

(a) "audiovisual media service" means:
   (i) a service as defined by Articles 56 and 57 [TFEU] which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes, in order to inform, entertain or educate, to the general public …;
   (ii) audiovisual commercial communication;

(b) "programme" means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider and the form and content of which are comparable to the form and content of television broadcasting. Examples of programmes include feature-length films, sports events, situation comedies, documentaries, children's programmes and original drama;

(c) "editorial responsibility" means the exercise of effective control both over the selection of the programmes and over their organisation either in a chronological schedule, in the case of television broadcasts, or in a catalogue, in the case of on-demand audiovisual media services. Editorial responsibility does not necessarily imply any legal liability under national law for the content or the services provided;

(d) “media service provider” means the natural or legal person who has editorial responsibility for the choice of the audiovisual content of the audiovisual media service and determines the manner in which it is organised;

(e) “television broadcasting” or “television broadcast” (i.e. a linear audiovisual media service) means an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule;

(f) “broadcaster” means a media service provider of television broadcasts;

…

(h) “audiovisual commercial communication” means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement;

(i) “television advertising” means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment;

…’

5 Article 23 of Directive 2010/13 provides:

‘1. The proportion of television advertising spots and teleshopping spots within a given clock hour shall not exceed 20%.

2. Paragraph 1 shall not apply to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes, sponsorship announcements and product placements.’

Directive 2018/1808

6 Recital 43 of Directive 2018/1808 states:

‘Transmission time allotted to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes, or to public service announcements and charity appeals broadcast free of charge, with the exception of the costs incurred for the transmission of such appeals, should not be included in the maximum amounts of transmission time that may be allotted to television advertising and teleshopping. In addition, many broadcasters are part of larger broadcasting groups and make announcements not only in connection with their own programmes and ancillary products directly derived from those programmes, but also in relation to programmes and audiovisual media services from

other entities belonging to the same broadcasting group. Transmission time allotted to such announcements should also not be included in the maximum amounts of transmission time that may be allotted to television advertising and teleshopping.'

7 Under Article 1(21) of that directive, Article 23 of Directive 2010/13 is replaced by the following:

'1. The proportion of television advertising spots and teleshopping spots within the period between 6.00 and 18.00 shall not exceed 20% of that period. The proportion of television advertising spots and teleshopping spots within the period between 18.00 and 24.00 shall not exceed 20% of that period.

2. Paragraph 1 shall not apply to:

(a) announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes or with programmes and audiovisual media services from other entities belonging to the same broadcasting group;

(b) sponsorship announcements;

(c) product placements;

(d) neutral frames between editorial content and television advertising or teleshopping spots, and between individual spots'.

Italian law

8 Article 38(2) and (6) of decreto legislativo n. 177 – Testo unico dei servizi di media audiovisual visivi e radiofonici (Legislative Decree No 177 consolidating the provisions on audiovisual and radio media services) of 31 July 2005 (Ordinary Supplement No 150 to GURI No 208 of 7 September 2005), in the version applicable to the dispute in the main proceedings ('Legislative Decree No 177/2005'), provides:

'2. The transmission of television advertising spots by free-to-air broadcasters, including analogue broadcasters, at national level, other than the holder of the general public broadcasting service concession, may not exceed 15% of daily programming time and 18% of a given clock hour; any advertising in excess thereof, by a maximum of 2% in any hour, must be offset by a reduction in the preceding or following hour. …

…

6. The provisions in paragraphs 2 to 5 shall not apply to announcements made by broadcasters, including analogue broadcasters, in connection with their own programmes and ancillary products directly derived from those programmes, or to sponsorship announcements or to product placements.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

9 RTI is a company incorporated under Italian law that provides national audiovisual media services through its television channels Canale 5, Italia 1 and Rete 4. It owns 80% of the shares in Monradio Srl, which operates the radio station R101, whilst another company belonging, like RTI, to Mediaset, owns the remaining 20%.

10 By three decisions of 19 December 2017, notified on 8 January 2018, relating respectively to Canale 5, Italia 1 and Rete 4, AGCOM sanctioned RTI for breaches of Article 38(2) of Legislative Decree No 177/2005. In order to calculate the hourly broadcasting time spent on television advertising subject to the limits laid down in that provision, AGCOM took into account the promotional announcements for the R101 radio station broadcast on the television channels Canale 5, Italia 1 and Rete 4.

11 RTI brought three actions before the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy) against those decisions. It claimed that the promotional announcements of the R101 radio station should be regarded as announcements made in relation to RTI's 'own programmes' within the meaning of Article 38(6) of Legislative Decree No 177/2005 and, accordingly, excluded from the calculation of the hourly television advertising time.

12 By judgments of 16 April 2019, the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio) dismissed those actions on the ground that announcements promoting the programmes of a radio broadcaster could not constitute announcements made by a television broadcaster in connection with its 'own programmes', including where, as in the present case, the two broadcasters concerned belong to the same corporate group.

13 RTI brought appeals against those judgments before the Consiglio di Stato (Council of State, Italy), which is the referring court, claiming that, since RTI belongs to the same group of companies as the R101 radio station, the economic unit formed by the media group must be taken into account, irrespective of the plurality of legal persons, to calculate the hourly limits of advertising space and, therefore, in order to apply Article 38(6) of Legislative Decree No 177/2005.

14 RTI adds that that interpretation is supported by the amendment made to Article 23(2)(a) of Directive 2010/13 by Directive 2018/1808. Since that amendment acknowledges cross-media self-promotion practices, which are now widespread, it should be taken into account in order to interpret the law previously in force, even though Directive 2018/1808, which entered into force on 18 December 2018, does not apply *ratione temporis*.

15 The referring court states that, while noting that the dispute in the main proceedings concerns the lawfulness of the promotion by a parent company television broadcaster of the programmes of its subsidiary radio broadcaster and not to the exercise of control within the group thus formed, the facts giving rise to that dispute all predate the amendment to Directive 2010/13 by Directive 2018/1808.

16 That court considers, moreover, that the interpretation supported by RTI of the provisions of national law and, above all, of those of EU law, is not the only possible interpretation. In its view, the contrary interpretation, adopted both by AGCOM and by the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio), 'does not seem manifestly unreasonable', since it is based on the wording of Legislative Decree No 177/2005, which

reproduces the provisions applicable *ratione temporis* of Directive 2010/13, and does not disregard the anti-competitive aspect which could result from RTI's interpretation of radio broadcasters which are not integrated into television broadcasters or audiovisual media.

17 In those circumstances, the Consiglio di Stato (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) For the purposes of the Community rules prohibiting excessive advertising, and given the general relevance under [EU] law of the concept of the group or single economic entity, which may be gleaned from numerous sources of anti-trust law (and, in so far as is relevant here, from recital 43 of Directive [2018/1808] and from the new wording of Article 23 of Directive [2010/13]), and notwithstanding the differences which exist under Italian domestic law between the licences [provided for by] Article 5(1)(b) of Legislative Decree No 177/[2005] for television broadcasters and radio broadcasters, is it consistent with Community law to interpret national law on broadcasting in the sense that Article 1(1)(a) of Legislative Decree No 177/[2005], implies that the process of convergence of the various forms of communication (electronic communications, publishing, including electronic publishing, and the Internet, in all its applications) is all the more applicable among suppliers of television and radio media, especially when they are already integrated into a connected group of undertakings, and applies generally, with the resulting consequences for the interpretation of Article 38(6) of the abovementioned [legislative decree], such that the 'broadcaster' may also be the group, as a single economic entity, or on the contrary, in accordance with the abovementioned Community principles and given the independence of the matter of the prohibition on excessive advertising from general anti-trust law, is it not permissible to ascribe relevance, prior to 2018, to the group or to the abovementioned process of convergence and so-called cross-mediality, such that, for the purposes of calculating the limits on advertising broadcasting time, regard is to be had solely to the individual broadcaster, even if it is part of a group (for the reason that such relevance is mentioned only in the consolidated wording of Article 23 of Directive [2010/13] resulting from Directive [2018/1808]?

(2) In the light of the abovementioned principles of EU law concerning groups and undertakings as a single economic unity, for the purposes of the prohibition on excessive advertising and the supervening versions of Article 23 [of Directive 2010/13/EU], and notwithstanding the abovementioned differences between licences, may it be inferred from the anti-competitive rules of the [integrated communications system] referred to in Article 43 of [Legislative Decree No 177/2005], that the concept of a group 'media service provider' (or, to use the appellant's words, a 'group publishing undertaking') is relevant for the purposes of the exemption of intra-group cross-medial promotional announcements from the limits on advertising broadcasting time mentioned in Article 38(6) of [Legislative Decree No 177/2005], or on the contrary, must such relevance be excluded, prior to 2018, given the independence of television anti-trust law from the rules governing the limits on advertising broadcasting time?

(3) Does the new wording of Article 23(2)(a) of Directive 2010/13/EU recognise a pre-existing principle of antitrust law according to which the group is generally relevant, or is it innovative, and so, if it is the former, does the new wording describe a legal reality already inherent in EU law – such as will apply even to the case under consideration, which pre-dates the new wording, and such as to affect the interpretations adopted by the [national regulatory authority] and require it in any event to acknowledge the concept of group "media

service provider" – or if it is the latter, does the new wording preclude recognition of the relevance of the corporate group in cases arising prior to the introduction of that wording, for the reason that, being innovative in scope, it is inapplicable *ratione temporis* to situations arising prior to its introduction?

(4) In any event, and leaving aside the licensing scheme established by Article 5 of Legislative Decree No 177/2005 and the novelty of [the version of] Article 23 [of Directive 2010/13/EU] introduced in 2018, or in the event that, according to the answer to question 3 the new provision is innovative, rather than recognitive, are the integrating relationships between television and radio – considered generally under antitrust law – because of the general and transversal applicability of the concepts of economic entity and of group, the key to interpreting the limits on advertising broadcasting time, which thus apply with implicit regard to the group undertaking (or, more precisely, to the relationships of control which exist between the undertakings of the group) and to the functional unity of such undertakings, with the result that the intragroup promotion of television and radio programmes […], or on the contrary, are such integrating relationships irrelevant in the matter of the limits on advertising broadcasting time, such that it must be held that the 'own' programmes referred to in (the original version of) Article 23 [of Directive 2010/13/EU] are [the broadcaster's own] in the sense that they belong solely to the broadcaster which promotes them, rather than to the corporate group as a whole, for the reason that that provision is self-standing and does not permit of a systemic interpretation such that it might apply to the group considered as a single economic entity?

(5) Lastly, even if it cannot be interpreted as a rule to be construed against the background of antitrust law, is Article 23 [of Directive 2010/13/EU], in its original version, to be understood in any case as an incentivising provision which describes the peculiar characteristic of promotion, which is exclusively informative and is not intended to persuade anyone to purchase goods or services other than the programmes promoted and, as such, is it to be understood as falling outside the scope of the rules on excessive advertising, and therefore applicable, within the limits of undertakings belonging to the same group, at least in the case of integrated cross-medial promotion, or is it to be understood as a derogation from, and an exception to, the calculation of [the limits on] advertising broadcasting and, as such, as a rule to be interpreted strictly?'

Consideration of the questions referred

18 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 23(2) of Directive 2010/13 must be interpreted as meaning that the concept of 'announcements made by the broadcaster in connection with its own programmes' covers promotional announcements made by that broadcaster for a radio station belonging to the same group of companies as that broadcaster.

19 Under Article 23(1) of Directive 2010/13, the proportion of television advertising spots and teleshopping spots within a given clock hour shall not exceed 20%. Under paragraph 2 of that article, paragraph 1 does not apply, inter alia, to 'announcements made by the broadcaster in connection with its own programmes'. Those messages are therefore not subject to the limit laid down in Article 23(1).

20 In order to determine whether the promotional announcements of a radio station broadcast by a television broadcaster, which is the majority shareholder of that radio station, fall within the scope of Article 23(2) of Directive 2010/13, it is necessary to examine, first, whether a distinction must be made between, on the one hand, advertising intended to encourage the purchase of a product or service and, on the other hand, neutral announcements, with the sole purpose of providing information about programmes which, for that reason, are not covered by the concept of 'television advertising' within the meaning of that article and, therefore, are excluded from the scope of the provisions of that directive relating to television advertising and teleshopping.

21 The concept of 'television advertising spots', which Article 23(1) of Directive 2010/13 includes in the percentage of hourly broadcast time concerned, is defined, as stated in recital 87 of that directive, by reference to the concept of 'television advertising' within the meaning of Article 1(1)(i) of that directive. According to the latter provision, television advertising means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services in return for payment.

22 In that regard, recital 96 of Directive 2010/13 states that self-promotional activities are a particular form of advertising in which the broadcaster promotes its own products, services, programmes or channels. Self-promotion is therefore governed by the provisions of that directive on television advertising and teleshopping.

23 Under Article 1(1)(h) of the same directive, television advertising is one of the forms of 'audiovisual commercial communication', understood as 'images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity' and 'accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes'.

24 It follows from those provisions, read together, that, although Directive 2010/13 defines television advertising by reference to the promotional purpose of the televised image or announcement in question, the informative nature of the image or announcement concerned is not taken into account.

25 It follows that televised announcements, including those which are neutral and purely informative, which concern the programmes or broadcasts of a broadcaster constitute 'television advertising' within the meaning of Article 1(1)(i) of Directive 2010/13, since their objective is to induce viewers to watch the programmes concerned and, therefore, to promote the supply of services for consideration.

26 Accordingly, those announcements are subject to the hourly broadcasting time limits imposed for television advertising in Article 23(1) of that directive, unless they can be classified as 'announcements made by the broadcaster in connection with its own programmes' within the meaning of paragraph 2 of that article.

27 Secondly, for the purposes of such a classification, it is necessary to examine whether the programmes of a radio station which are the subject of announcements made by a television broadcaster constitute 'programmes' within the meaning of Article 23(2) of Directive 2010/13.

28 Under Article 1(1)(b) of that directive, the concept of 'programme' means 'a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider and the form and content of which are comparable to the form and content of television broadcasting'.

29 The concept of 'television broadcasting' or 'television broadcast' is defined in Article 1(1)(e) of that directive as meaning 'an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule', whereas the concept of 'audiovisual media service' means, in accordance with Article 1(1)(a)(i), a 'service … the principal purpose of which is the provision of programmes'.

30 It follows from the terms 'moving images with or without sound', 'television', 'audiovisual' and 'viewing' used in those definitions, read in the light, in particular, of recital 23 of Directive 2010/13, that that directive excludes from its scope radio broadcasting services, which normally consist of broadcasts or programmes made up of sound content and therefore without images, including where such broadcasts or programmes are accompanied by indissociable ancillary audiovisual elements (see, by analogy, judgment of 21 October 2015, *New Media Online*, C-347/14, EU:C:2015:709, paragraphs 34 and 37).

31 An interpretation such as that advocated by RTI, whereby television announcements relating to a radio station's broadcasts or programmes generally fall within Article 23(2) of Directive 2010/13, would amount to extending the scope of that directive beyond what is permitted by the wording of its provisions, as the Advocate General observed in paragraph 52 of her Opinion. Moreover, such an interpretation could lead to distortions of competition to the detriment of radio media services which are not part of the same broadcasting group.

32 Thirdly, assuming that the announcements made are programmes within the meaning of Article 23(2) of Directive 2010/13, it is necessary to examine whether, as RTI maintains, when the television broadcaster making those announcements and the radio station belong to the same group of companies and form an undertaking as an economic unit, those announcements may be classified as 'announcements made by the broadcaster in connection with its own programmes' within the meaning of Article 23(2) of Directive 2010/13.

33 Under Article 1(1)(f) of Directive 2010/13, the 'broadcaster' is 'a media service provider of television broadcasts'. The concept of 'media service provider' is defined in Article 1(1)(d) of that directive as meaning 'the natural or legal person who has editorial responsibility for the choice of the audiovisual content of the audiovisual media service and determines the manner in which it is organised'.

34 In addition, Article 1(1)(a)(i) of that directive provides that an 'audiovisual media service' is 'a service … which is under the editorial responsibility of a media service provider.' Recital 25 of that directive states that the definition of editorial responsibility is essential for defining the role of the media service provider and therefore for the definition of audiovisual media services.

35 As the Advocate General points out in paragraphs 66 and 67 of her Opinion, it follows from those provisions that, in order to understand the expression 'own programmes', referred to in Article 23(2) of Directive 2010/13, it is necessary to take into consideration not, as in competition law or in public procurement law, the legal and organisational interconnections between the undertakings which justify a reciprocal attribution of actions and capacities within the business unit, but rather the editorial responsibility for the programmes in question.

36 Such an approach is borne out by the objective pursued by Article 23, which is to protect viewers, as consumers, from excessive advertising. The rules on the advertising limits laid down by Directive 2010/13 are intended to reconcile the financial interests of television broadcasters and advertisers, on the one hand, and the interests of television viewers, on the other (see, to that effect, judgment of 18 July 2013, *Sky Italia*, C-234/12, EU:C:2013:496, paragraphs 17 and 18).

37 It follows that the rules on maximum time for advertising broadcasts per clock hour laid down by that directive form part of a specific legal framework and concern a separate logic and objectives from those pursued by the competition rules or by those applicable to public contracts.

38 The applicable criteria to determine the natural or legal persons who have editorial responsibility for a programme is apparent from Article 1(1)(c) of Directive 2010/13. That provision defines the concept of 'editorial responsibility' as 'the exercise of effective control both over the selection of the programmes and over their organisation either in a chronological schedule, in the case of television broadcasts, or in a catalogue, in the case of on-demand audiovisual media services.' It is necessary to ascertain, in particular, whether the person concerned has the power to make a final decision as to the actual audiovisual offer, which presupposes that he or she has at his or her disposal sufficient material and human resources to be able to assume such responsibility (see, to that effect, judgment of 4 July 2019, *Baltic Media Alliance*, C-622/17, EU:C:2019:566, paragraphs 40 and 43).

39 It follows that, in order for the programmes of a radio station belonging to the same group of companies as the broadcaster concerned to be treated as that broadcaster's 'own' programmes, within the meaning of Article 23(2) of Directive 2010/13, that broadcaster must assume editorial responsibility for the programmes in question, within the meaning of Article 1(1)(c) of that directive. That responsibility cannot therefore be based solely on the economic, organisational and legal interconnections between a broadcaster and a radio broadcaster within the same group of companies.

40 In the light of all the reasoning above, the answer to the questions referred is that Article 23(2) of Directive 2010/13 must be interpreted as meaning that the concept of 'announcements made by the broadcaster in connection with its own programmes' does not cover promotional announcements made by a broadcaster for a radio station belonging to the same group of companies as that broadcaster, except where, first, the programmes which are the subject of those promotional announcements are 'audiovisual media services' within the meaning of Article 1(1)(a) of that directive, which implies that they are dissociable from the principal activity of that radio station and, second, that broadcaster has 'editorial responsibility for those programmes within the meaning of Article 1(1)(c) of that directive.

Costs

41 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 (Third Chamber) hereby rules:

Article 23(2) of 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 (Audiovisual Media Services Directive)

must be interpreted as meaning that the concept of 'announcements made by the broadcaster in connection with its own programmes' does not cover promotional announcements made by a broadcaster for a radio station belonging to the same group of companies as that broadcaster, except where, first, the programmes which are the subject of those promotional announcements are 'audiovisual media services' within the meaning of Article 1(1)(a) of that directive, which implies that they are dissociable from the principal activity of that radio station and, second, that broadcaster has 'editorial responsibility for those programmes within the meaning of Article 1(1)(c) of that directive.

[Signatures]