



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

17 February 2016*

(Reference for a preliminary ruling — Directive 2010/13/EU — Article 19(1) — Separation of television advertising and programmes — Split screen — Article 23(1) and (2) — Limit of 20% per clock hour on the broadcasting time for television advertising spots — Sponsorship announcements — Other references to a sponsor — ‘Black seconds’)

In Case C-314/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Korkein hallinto-oikeus (Supreme Administrative Court, Finland), made by decision of 27 June 2014, received at the Court on 1 July 2014, in the proceedings

Sanoma Media Finland Oy–Nelonen Media

v

Viestintävirasto,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Third Chamber, acting as President of the Fourth Chamber, J. Malenovský (Rapporteur), M. Safjan, A. Prechal and K. Jürimäe, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Finnish Government, by J. Heliskoski, acting as Agent,
- the Greek Government, by N. Dafniou and L. Kotroni, acting as Agents,
- the Austrian Government, by C. Pesendorfer, acting as Agent,
- the Polish Government, by B. Majczyna, acting as Agent,
- the European Commission, by I. Koskinen and A. Marcoulli, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 October 2015,

* Language of the case: Finnish.

gives the following

Judgment

- 1 This request for a preliminary ruling relates to the interpretation of Articles 19(1) and 23(1) and (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) (OJ 2010 L 95, p. 1, and corrigendum at OJ 2010 L 263, p. 15; ‘the Audiovisual Media Services Directive’).
- 2 The request has been made in proceedings between Sanoma Media Finland Oy–Nelonen Media (‘Sanoma’) and the Viestintävirasto (Telecommunications Regulatory Authority; ‘the Regulatory Authority’) concerning the legality of a decision by which the Regulatory Authority found that Sanoma had infringed Finnish law relating to television advertising and ordered it to remedy the situation.

Legal context

EU law

- 3 The Audiovisual Media Services Directive codified and repealed Directive 89/552/EEC of the European Parliament and of the Council of 3 October 1989 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 1989 L 298, p. 23).
- 4 Recitals 79, 81, 83, 85 and 87 of the Audiovisual Media Services Directive state:

‘(79) ... Nevertheless, all audiovisual commercial communication should respect not only the identification rules but also a basic tier of qualitative rules in order to meet clear public policy objectives.

...

(81) Commercial and technological developments give users increased choice and responsibility in their use of audiovisual media services. In order to remain proportionate with the goals of general interest, regulation should allow a certain degree of flexibility with regard to television broadcasting. The principle of separation should be limited to television advertising and teleshopping, and product placement should be allowed under certain circumstances, unless a Member State decides otherwise. However, where product placement is surreptitious, it should be prohibited. The principle of separation should not prevent the use of new advertising techniques.

...

(83) In order to ensure that the interests of consumers as television viewers are fully and properly protected, it is essential for television advertising to be subject to a certain number of minimum rules and standards and that the Member States must maintain the right to set more detailed or stricter rules and in certain circumstances to lay down different conditions for television broadcasters under their jurisdiction.

...

(85) Given the increased possibilities for viewers to avoid advertising through the use of new technologies such as digital personal video recorders and increased choice of channels, detailed regulation with regard to the insertion of spot advertising with the aim of protecting viewers is not justified. While the hourly amount of admissible advertising should not be increased, this Directive should give flexibility to broadcasters with regard to its insertion where this does not unduly impair the integrity of programmes.

...

(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.’

5 The definitions in Article 1(1) of the Audiovisual Media Services Directive include the following:

‘(a) “audiovisual media service” means:

(i) a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union 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 by electronic communications networks ... Such an audiovisual media service is either a television broadcast as defined in point (e) of this paragraph or an on-demand audiovisual media service as defined in point (g) of this paragraph;

(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;

...

(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;

...

(k) “sponsorship” means any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or in the production of audiovisual works, to the financing of audiovisual media services or programmes with a view to promoting their name, trade mark, image, activities or products;

...'

6 Article 4(1) of the Audiovisual Media Services Directive provides:

'Member States shall remain free to require media service providers under their jurisdiction to comply with more detailed or stricter rules in the fields coordinated by this Directive provided that such rules are in compliance with Union law.'

7 Article 10(1) of the Audiovisual Media Services Directive states:

'Audiovisual media services or programmes that are sponsored shall meet the following requirements:

...

(c) viewers shall be clearly informed of the existence of a sponsorship agreement. Sponsored programmes shall be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or at the end of the programmes.'

8 Article 19(1) of the Audiovisual Media Services Directive provides:

'Television advertising and teleshopping shall be readily recognisable and distinguishable from editorial content. Without prejudice to the use of new advertising techniques, television advertising and teleshopping shall be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means.'

9 Article 23 of the Audiovisual Media Services Directive 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.'

10 Article 26 of the Audiovisual Media Services Directive states:

'Without prejudice to Article 4, Member States may, with due regard for Union law, lay down conditions other than those laid down in Article 20(2) and Article 23 in respect of television broadcasts intended solely for the national territory which cannot be received directly or indirectly by the public in one or more other Member States.'

Finnish law

11 Directive 89/552 was transposed into Finnish law by Law 744/1998 on television and radio broadcasting (televisio- ja radiotoiminnasta annettu laki; 'Law 744/1998').

12 Under Paragraph 2(16) of Law 744/1998, 'commercial communication' means, inter alia, advertising and sponsorship. Sponsorship and advertising are themselves defined in Paragraph 2(13) and (14) respectively. In particular, under Paragraph 2(14), 'advertising' means information, a statement or other communication broadcast by television or radio, generally in return for payment or other consideration, which is not sponsorship or product placement and which is intended to promote the sale of the advertiser's products or the repute of an advertiser engaging in an economic activity.

- 13 Under Paragraph 22(1) of Law 744/1998, which implements the article of Directive 89/552 corresponding to Article 19(1) of the Audiovisual Media Services Directive, television advertising and teleshopping broadcasts must be distinguished from audiovisual programmes by an acoustic or optical signal or by screen splitting.
- 14 Under Paragraph 26(2) of Law 744/1998, which implements the article of Directive 89/552 corresponding to Article 10(1)(c) of the Audiovisual Media Services Directive, the sponsor's name or logo must appear clearly at the beginning or the end of sponsored audiovisual and radio programmes.
- 15 Under Paragraph 29(1) of Law 744/1998, which implements the article of Directive 89/552 corresponding to Article 23 of the Audiovisual Media Services Directive, the share of advertising and teleshopping must not exceed 12 minutes per clock hour. In accordance with Paragraph 29(2), that provision does not apply, *inter alia*, to sponsorship announcements.
- 16 It is apparent from Paragraph 35(1) of Law 744/1998 in conjunction with Paragraph 36(1) that, if the Regulatory Authority finds that a company engaging in television or radio broadcasting is infringing the provisions laid down by that law, it has the power in particular to require the company in question to remedy the situation.

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

- 17 Sanoma is a supplier of audiovisual media services established in Finland. Its services include the broadcasting of television programmes within the framework of which it broadcasts advertising and sponsored programmes.
- 18 In order to separate the advertising breaks which it inserts between two television programmes, Sanoma uses the 'screen-splitting' or 'split-screen' technique, which consists in dividing the screen into two parts after a programme's closing credits begin, scrolling in parallel those credits in one column and a list presenting its upcoming programmes in the other. Also, each of the advertising spots broadcast in those breaks is followed and preceded by black images lasting between 0.4 and one second, called 'black seconds'.
- 19 In addition, when a programme broadcast by Sanoma is sponsored, this may result in its placing signs referring to the natural or legal person sponsoring the programme not only in the sponsored programme itself, but also (i) in announcements relating to that programme's forthcoming broadcast and (ii) in other programmes.
- 20 By decision of 9 March 2012, the Regulatory Authority found that those various practices of Sanoma infringed certain provisions of Law 744/1998 and ordered it to remedy the situation.
- 21 In that context, it concluded, first, that Sanoma was not complying with the requirement laid down in Paragraph 22(1) of Law 744/1998 that advertising and programmes be separated. It took the view that use of the technique consisting in scrolling the list presenting the upcoming programmes on a split screen, in parallel with the closing credits of the programme being broadcast at the time, did not separate adequately that programme and the advertising break inserted between it and the next programme.
- 22 Secondly, the Regulatory Authority concluded that Sanoma was broadcasting 12 minutes and 7 seconds of advertising per clock hour and was consequently failing to comply with the hourly maximum duration of 12 minutes, imposed in Paragraph 29(1) of Law 744/1998. In reaching that conclusion, it took the view that the presence of signs referring to a programme's sponsor other than in that programme itself had to be classified as involving advertising time. It also found that the 'black seconds' inserted by Sanoma between an advertising break and the programme preceding it were to be

regarded as forming part of that programme, but that those separating each of the spots forming the advertising break and those inserted between that break and the following programme were to be counted as advertising time.

- 23 Thirdly and finally, the Regulatory Authority ordered Sanoma to alter the technique used to separate the television programmes which it transmits from the advertising breaks inserted between those programmes. Furthermore, it required Sanoma to take into account, when calculating the time which it gives over to the broadcasting of television advertising, first, sponsorship signs present other than in the programmes covered by the sponsorship in question and, secondly, the ‘black seconds’ inserted between each of the advertising spots broadcast in the course of an advertising break and those between that break and the following programme.
- 24 Sanoma brought an action for annulment of that decision of the Regulatory Authority before the Helsingin hallinto-oikeus (Administrative Court, Helsinki), which dismissed it by decision of 9 April 2013. That court held, first of all, that the use of a split screen between two different television programmes (the programme which is ending and the following one) did not satisfy the requirement laid down in Paragraph 22(1) of Law 744/1998 that advertising and programmes be separated. It then held that the presence of signs referring to a sponsor other than in the programme sponsored would result in the maximum hourly duration of the broadcasting of advertising, laid down in Paragraph 29(1) of Law 744/1998, being circumvented if it were not taken into account when calculating the length of advertising broadcast by suppliers of audiovisual media services. It held, finally, that it was not contrary to Law 744/1998 to regard the ‘black seconds’ following an advertising break as advertising time.
- 25 Sanoma brought an appeal against that decision before the Korkein hallinto-oikeus (Supreme Administrative Court), which raises the issue of the interpretation to be placed on Articles 19(1) and 23(1) and (2) of the Audiovisual Media Services Directive in a situation such as that at issue in the main proceedings, in order to be able to determine itself the meaning and scope to be accorded to the provisions of Law 774/1998 which, according to the Regulatory Authority and the Helsingin hallinto-oikeus (Administrative Court, Helsinki), have been infringed by Sanoma.
- 26 In those circumstances, the Korkein hallinto-oikeus (Supreme Administrative Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
1. In circumstances such as those at issue in the main proceedings, is Article 19(1) of [the Audiovisual Media Services Directive] to be interpreted as precluding an interpretation of national legal provisions to the effect that screen splitting is not regarded as a break-bumper that keeps the audiovisual programme distinct from television advertising, where one part of the screen is reserved for the programme’s closing credits and the other part to a list presenting the upcoming programmes on a broadcaster’s channel and no acoustic or optical signal expressly announcing the start of an advertising break is broadcast either on the split screen or thereafter?
 2. Taking into account the fact that [the Audiovisual Media Services Directive] is in the nature of a minimum standard, in circumstances such as those at issue in the main proceedings is Article 23(2) of that directive to be interpreted as meaning that it is not compatible with that provision to classify sponsor idents broadcast in the context of programmes other than the sponsored programmes as “advertising spots” within the meaning of Article 23(1) of the directive which must be included in the maximum permissible advertising time?
 3. Taking into account the fact that [the Audiovisual Media Services Directive] is in the nature of a minimum standard, in circumstances such as those at issue in the main proceedings is the term “advertising spots” in Article 23(1) of that directive in conjunction with the description of the maximum permissible advertising time (“the proportion ... within a given clock hour shall not

exceed 20%”) to be interpreted as meaning that it is not compatible with that provision to count the “black seconds” between individual advertising spots and at the end of an advertising break as advertising time?’

Consideration of the questions referred

Question 1

- 27 First of all, it should be noted that it is apparent from the order for reference (i) that under the national legislation at issue in the main proceedings it does not have to be required, in addition to the split screen, that a particular acoustic and/or optical signal be used in order to separate the programme which is ending from the advertising break that follows it and (ii) that the referring court takes the view that additional requirements should be allowed in this regard only if they are imposed in Article 19(1) of the Audiovisual Media Services Directive.
- 28 That being so, the referring court must be considered to be asking, in essence, by its first question whether Article 19(1) of the Audiovisual Media Services Directive must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which a split screen that shows the closing credits of a television programme in one column and a list presenting the supplier’s upcoming programmes in the other, in order to separate the programme which is ending from the television advertising break that follows it, would not necessarily have to be combined with, or followed by, an acoustic or optical signal.
- 29 The first sentence of Article 19(1) of the Audiovisual Media Services Directive provides that television advertising and teleshopping are to be readily recognisable and distinguishable from editorial content. The second sentence of Article 19(1) states that, without prejudice to the use of new advertising techniques, television advertising and teleshopping are to be kept quite distinct from programmes by optical and/or acoustic and/or spatial means.
- 30 The first sentence of that provision consequently contains two fundamental requirements, namely, first, that television advertising and teleshopping must be readily recognisable and, second, that they must be distinguishable from editorial content, and thus from television programmes.
- 31 Those requirements should be interpreted having regard to the objective set out in recital 83 of the Audiovisual Media Services Directive.
- 32 That recital states in particular that, in order to ensure that the interests of consumers as television viewers are fully and properly protected, it is essential for television advertising to be subject to a certain number of minimum rules and standards.
- 33 Nonetheless, Article 4(1) of the Audiovisual Media Services Directive expressly grants the Member States the power to set rules stricter or more detailed than those laid down by the directive, while requiring those rules to be in compliance with EU law.
- 34 Read in the light of recital 83 of the Audiovisual Media Services Directive, the first sentence of Article 19(1) of the directive must be understood as expressing the legislature’s intention to ensure that the interests of consumers as television viewers are fully and properly protected (see, to this effect, judgments in *Österreichischer Rundfunk*, C-195/06, EU:C:2007:613, paragraphs 26 and 27, and *Commission v Spain*, C-281/09, EU:C:2011:767, paragraph 46).

- 35 The second sentence of Article 19(1) of the Audiovisual Media Services Directive defines the scope of the rule laid down in the first sentence, by setting out the various means whose use the Member States may provide for in order to ensure that that rule is complied with.
- 36 As is clear in particular from the use twice of the words ‘and/or’, the second sentence of Article 19(1) gives the Member States the option of choosing some of those means and rejecting others.
- 37 It follows that, whilst television advertising and teleshopping must be kept quite distinct from television programmes, by using the various means set out in the second sentence of Article 19(1) of the Audiovisual Media Services Directive, such means nonetheless cannot be regarded as being required, under that provision, to be applied concurrently. If just one of them, whether optical, acoustic or spatial, is capable of ensuring that the requirements stemming from the first sentence of Article 19(1) of the directive are fully complied with, it is open to Member States not to require the combined use of those means.
- 38 In this instance, it is apparent from the order for reference that the technique at issue in the main proceedings consists in separating a programme which is ending from the television advertising break that follows it by means of a split screen, essentially making that separation spatially.
- 39 Provided that the use of that means satisfies in itself the two requirements flowing from the rule laid down in the first sentence of Article 19(1) of the Audiovisual Media Services Directive, it is not necessary for that means to be combined with, or followed by, other means of separation, in particular acoustic or optical means. It is for the referring court to establish whether that is the case.
- 40 It follows that the answer to the first question is that Article 19(1) of the Audiovisual Media Services Directive must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, under which a split screen that shows the closing credits of a television programme in one column and a list presenting the supplier’s upcoming programmes in the other, in order to separate the programme which is ending from the television advertising break that follows it, does not necessarily have to be combined with, or followed by, an acoustic or optical signal, provided that such a means of separation meets, in itself, the requirements set out in the first sentence of Article 19(1), a matter which is for the referring court to establish.

Question 2

- 41 By its second question, the referring court asks, in essence, whether Article 23(2) of the Audiovisual Media Services Directive must be interpreted as precluding sponsorship signs shown in programmes other than the sponsored programme, such as those at issue in the main proceedings, from being included in the maximum time for the broadcasting of advertising per clock hour, set in Article 23(1) of that directive.
- 42 Article 23(1) of the Audiovisual Media Services Directive provides that the proportion of television advertising spots and teleshopping spots within a given clock hour is not to exceed 20%.
- 43 However, Article 23(2) states that Article 23(1) is not to apply, inter alia, to sponsorship announcements.
- 44 As the wording of Article 23(2) of the Audiovisual Media Services Directive does not specify the meaning and scope of the term ‘sponsorship announcements’, that term should be interpreted taking account of its context and of the objective pursued by the directive.

- 45 In that regard, first of all it should be noted that, according to Article 1(1)(h) and (k) of the Audiovisual Media Services Directive, sponsorship is one of the forms of audiovisual commercial communication and the means by which natural or legal persons other than a supplier of audiovisual media services or producer of audiovisual works contribute to the financing of audiovisual media services or programmes with a view to promoting their name, trade mark, image, activities or products.
- 46 Next, Article 10(1) of the Audiovisual Media Services Directive, which sets out the conditions that any sponsorship must meet, states in particular, in point (c), that viewers are to be clearly informed of the existence of a sponsorship agreement and that sponsored programmes are to be clearly identified as such by means of symbols of the sponsor, references to its products or services or other distinctive signs.
- 47 It may be deduced from those provisions taken together that, since a sponsor's involvement consists exclusively in contributing to the financing of a service or programme, the symbols, references or other distinctive signs relating to sponsorship must be strictly linked to the service or programme financed or partly financed by that sponsor.
- 48 For that reason, so far as concerns sponsored programmes, and as the concluding words of Article 10(1)(c) of the Audiovisual Media Services Directive expressly provide, those symbols, references or other distinctive signs relating to the sponsor must be placed at the beginning, at the end or during the sponsored programme and, therefore, not outside it.
- 49 Compliance with this obligation is necessary in particular in the interest of consumers as television viewers. First, the obligation is intended to enable the latter to understand clearly that a programme is the subject of a sponsorship agreement, as opposed to a non-sponsored programme, and to identify clearly its sponsor. Secondly, the obligation prevents circumvention of the maximum time for the broadcasting of television advertising spots per clock hour, set in Article 23(1) of the Audiovisual Media Services Directive.
- 50 Thus, when sponsorship references or signs do not satisfy the condition requiring them to be placed at the beginning, at the end or during the sponsored programme, those references or signs cannot be covered by Article 23(2) of the Audiovisual Media Services Directive, as that provision relates only to sponsorship announcements placed within the framework of the sponsored programme.
- 51 Consequently, in the situation referred to in the preceding paragraph of the present judgment, Article 23(1) of the Audiovisual Media Services Directive remains applicable in respect of those signs or references.
- 52 It follows from the foregoing considerations that the answer to the second question is that Article 23(2) of the Audiovisual Media Services Directive must be interpreted as meaning that sponsorship signs shown in programmes other than the sponsored programme, such as those at issue in the main proceedings, must be included in the maximum time for the broadcasting of advertising per clock hour, set in Article 23(1) of that directive.

Question 3

- 53 By its third question, the referring court asks, in essence, whether, taking into account the fact that the Audiovisual Media Services Directive is in the nature of a minimum standard, Article 23(1) thereof must be interpreted as precluding 'black seconds' which are inserted between the various spots of a television advertising break or between that break and the television programme which follows it from being included in the maximum time for the broadcasting of television advertising per clock hour which that article sets at 20%.

- 54 As provided in Article 23(1) of the Audiovisual Media Services Directive, the proportion of television advertising spots and teleshopping spots within a given clock hour cannot exceed 20%.
- 55 It is clear from the wording of that provision that it simply sets a maximum time, and therefore a ceiling, for the broadcasting of television advertising spots and teleshopping spots within a given clock hour, while, as has been mentioned in paragraph 33 of the present judgment, the Member States have the power to adopt a stricter rule and, consequently, to set a maximum time for the broadcasting of such spots below that ceiling.
- 56 However, it is apparent from the order for reference that, as has been noted in paragraph 15 of the present judgment, the main proceedings involve national legislation which provides that the share of advertising and teleshopping must not exceed a ceiling corresponding precisely to the ceiling set in Article 23(1) of the Audiovisual Media Services Directive, and which therefore did not make use of the power referred to in paragraph 33 of the present judgment.
- 57 The wording of Article 23(1) of the Audiovisual Media Services Directive does not in itself enable it to be determined whether that provision must be interpreted as requiring, in a situation such as that at issue in the main proceedings, ‘black seconds’, such as those at issue in the main proceedings, to be included in the 20% limit which it lays down.
- 58 Therefore, the status of such ‘black seconds’ is to be determined in the light of the objective pursued by Article 23(1) of the Audiovisual Media Services Directive.
- 59 Since Article 23(1) of the Audiovisual Media Services Directive seeks to place a ceiling on the time for the broadcasting of television advertising spots and teleshopping spots per clock hour, that provision implicitly but necessarily discloses the intention of the EU legislature to ensure proper achievement of the fundamental objective of the directive, consisting in protecting consumers as television viewers from excessive broadcasting of television advertising (see, to this effect, judgment in *Sky Italia*, C-234/12, EU:C:2013:496, paragraph 17).
- 60 Therefore, that provision must be interpreted as not permitting the Member States to reduce, in favour of advertising, the minimum air time that must be devoted to the broadcasting of programmes or of other editorial content below 80% within a given clock hour, a limit which that article confirms by implication.
- 61 Where a Member State, as is the case here, has not placed a ceiling on the time for broadcasting television advertising at a stricter level than that set in Article 23(1) of the Audiovisual Media Services Directive, regard would not be had to the intention of the EU legislature if ‘black seconds’, such as those at issue in the main proceedings, which separate either the various spots forming a television advertising break or the last of those spots and the programme which follows the break, were not regarded as television advertising broadcasting time for the purposes of that provision. That would have the effect of reducing the clock time reserved for the broadcasting of programmes and other editorial content by a period corresponding to that of the ‘black seconds’ and to below the limit which that provision guarantees by implication.
- 62 It follows that the answer to the third question is that Article 23(1) of the Audiovisual Media Services Directive must be interpreted, where a Member State has not made use of the power to lay down a stricter rule than that established by that article, as not only not precluding ‘black seconds’ which are inserted between the various spots of a television advertising break or between that break and the television programme which follows it from being included in the maximum time for the broadcasting of television advertising per clock hour which that article sets at 20%, but also as requiring their inclusion.

Costs

⁶³ Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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:

1. **Article 19(1) 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 not precluding national legislation, such as that at issue in the main proceedings, under which a split screen that shows the closing credits of a television programme in one column and a list presenting the supplier's upcoming programmes in the other, in order to separate the programme which is ending from the television advertising break that follows it, does not necessarily have to be combined with, or followed by, an acoustic or optical signal, provided that such a means of separation meets, in itself, the requirements set out in the first sentence of Article 19(1), a matter which is for the referring court to establish.**
2. **Article 23(2) of Directive 2010/13 must be interpreted as meaning that sponsorship signs shown in programmes other than the sponsored programme, such as those at issue in the main proceedings, must be included in the maximum time for the broadcasting of advertising per clock hour, set in Article 23(1) of that directive.**
3. **Article 23(1) of Directive 2010/13 must be interpreted, where a Member State has not made use of the power to lay down a stricter rule than that established by that article, as not only not precluding 'black seconds' which are inserted between the various spots of a television advertising break or between that break and the television programme which follows it from being included in the maximum time for the broadcasting of television advertising per clock hour which that article sets at 20%, but also as requiring their inclusion.**

[Signatures]