OPINION OF ADVOCATE GENERAL JACOBS
delivered on 11 July 1996 *

The issues

1. In these cases the Court is asked to consider the interpretation of two provisions of the 'Television without Frontiers' Directive (Council Directive 89/552, [1] hereafter 'the Directive'). The provisions in question are Article 18(1) and Article 17(1)(b).

2. Article 18(1) provides that:

'The amount of advertising shall not exceed 15% of the daily transmission time. However, this percentage may be increased to 20% to include forms of advertisements such as direct offers to the public for the sale, purchase or rental of products or for the provision of services, provided the amount of spot advertising does not exceed 15%.'

3. The first question referred asks essentially whether the expression 'forms of advertisement such as direct offers to the public ...' is used by way of example only or by way of definition, and, in particular, whether telepromotions fall within the meaning of that expression.

4. Article 17(1)(b) provides that sponsored television programmes 'must be clearly identified as such by the name and/or logo of the sponsor at the beginning and/or the end of the programmes'.

5. The second question referred asks whether the Directive, and in particular that article, prohibits the showing of the sponsor's name and/or logo at times other than the beginning and/or end of programmes, or whether it permits repeated forms of sponsorship even during programmes.

6. The Directive is similar in content to the European Convention on Transfrontier Television of 5 May 1989 ('the Convention'). That similarity appears to be no coincidence.

* Original language: English.

1 — Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, OJ 1989 L 298, p. 23.

Work on both the Directive and the Convention proceeded simultaneously, and, taking account of that fact, the European Council, meeting at Rhodes on 2 and 3 December 1988, considered it 'important that the Community's efforts should be deployed in a manner consistent with the Council of Europe Convention' and noted that the Commission would adapt the proposal in the light of that Convention. [2] Indeed the preamble to the Directive refers expressly to the existence of the Convention. [3] Although the texts are by no means identical in all respects, Article 12(1) of the Convention is identical to Article 18(1) of the Directive, and Article 17(1) of the Convention is similar in all material respects to Article 17(1)(b) of the Directive. [4]

7. This is the first occasion upon which this Court has been required to address questions relating to the interpretation of these two provisions of the Directive. Questions relating to other provisions of the Directive arose for the first time in *Leclerc Siplec* v *TF1 Publicité and M6 Publicité*, [5] and are also currently before the Court in Case C-222/94 *Commission* v *United Kingdom*, Case C-11/95 *Commission* v *Belgium*, Joined Cases C-34/95, C-35/95 and C-36/95 *De Agostini*, Case C-14/96 *Denuit* and Case C-56/96 *VT4 Limited*.

2 — Bulletin of the EC, No 12/1988, p. 8, at p. 10.

3 — The fourth recital states 'Whereas the Council of Europe has adopted the European Convention on Transfrontier Television.'

4 — Article 17(1) of the Convention provides that 'when a programme or series of programmes is sponsored in whole or in part, it shall clearly be identified as such by appropriate credits at the beginning and/or end of the programme'.

5 — Case C 412/93 [1995] ECR I 179.

The legislative background and proceedings before the national court

8. By Decree Law No 408/92, [6] the Minister of Post and Telecommunications in Italy was empowered to modify Ministerial Decree No 439/91 [7] on sponsorship and direct offers to the public, in order to bring it into conformity with Community law. On the basis of that Decree Law the Minister adopted Ministerial Decree No 581/93 [8] in implementation of the Directive.

9. Article 12 of Ministerial Decree No 581/93 provides that, unlike direct offers to the public, 'telepromotions' cannot benefit from the additional transmission time provided for in Article 18 of the Directive.

10. Article 4 of Ministerial Decree No 581/93 allows the sponsor to be named only in the advance publicity for the programmes and just prior to commencement of the programme, and/or in the information shown after the end of the programme. [9]

6 — Official Journal of the Italian Republic No 246 of 19 October 1992. After amendment this was converted into Law No 483 of 17 December 1992. Official Journal of the Italian Republic No 297 of 18 December 1992.

7 — Official Journal of the Italian Republic No 19 of 24 January 1992.

8 — Official Journal of the Italian Republic No 8 of 12 January 1994.

9 — Article 4(1) provides that 'sponsorship of television programmes may take the form exclusively of invitations to watch and offers of programmes which immediately precede the sponsored programme, and also of thanks or the like to viewers for watching at the end of the programme'

According to the Commission, however, a derogation from that provision allows one very brief reference to the sponsor lasting no longer than five seconds during programmes provided the programme runs for at least 40 minutes. The Commission adds that the Italian legislation prohibits publicity slogans and presentation of the products or services of the sponsor, but authorizes prizes in the form of products or services of the sponsor in games or competitions provided that they are not the subject of publicity, that they are shown only at the time of the award of the prizes, and that it is not a condition of participation that the participants purchase those products or services.

11. RTI and Publitalia 80 (Case C-320/94), Associazione Nazionale Teleradio Indipendenti and Radio Torre (Case C-328/94), Rete A s. r. l. (Case C-329/94), Vallau Italiana Promomarket s. r. l. (Case C-337/94), Radio Italia Solo Musica s. r. l., Radio Montestella s. r. l., Radio Peter Flower s. r. l. and Radio Dimensione Suono s. p. a. (Case C-338/94), and GETE s. r. l. (Case C-339/94), ('the applicants') brought actions before the Tribunale Amministrativo Regionale (Regional Administrative Court), Lazio, seeking annulment of Ministerial Decree No 581/93. The alleged grounds for annulment are numerous. Not all are relevant to the questions referred. However, they include allegations that the Decree is invalid in so far as it introduces (in Articles 12 and 4(1)) provisions which are stricter than those required by Articles 17(1)(b) and 18(1) of the Directive. In relation to the implementation of Article 18 of the Directive, the applicants allege that Italian law should have assimilated telepromotions to 'direct offers to the public' for the purpose of that provision so that telepromotions could share the benefit of the additional 5% transmission time. In relation to the implementation of Article 17 of the Directive, the applicants allege that Italian law should have allowed further mention of the sponsor during programmes. The Italian State argues in its defence that the Minister was required, or at least authorized, by both the Directive and the transposition measure to introduce the provisions in question.

12. It is relevant to note also that it is alleged that the Minister exceeded the powers conferred on him by the legislature since it is contended that the transposition measure permitted only those amendments to the law previously in force which were necessary in order to bring it into conformity with Community legislation. In Case C-320/94 and Case C-339/94 it is argued that the Italian law on sponsorship is in breach of the national transposition measure which permitted only the 'necessary amendments' to be made to the law previously in force in order to implement Community law. Similarly, in Case C-320/94 and Case C-337/94 it is alleged that it was not a 'necessary amendment' to provide that telepromotions should

be subject to the same restrictions concerning concentration of advertising as govern spot advertisements.

The national court's questions

13. The following questions were referred by the Regional Administrative Court, Lazio, on 19 October 1994:

Question 1 (Cases C-320/94 and C-337/94)

'Is Directive 89/552/EEC and, in particular, Articles 1(b) and 18 thereof, to be construed as meaning that the expression "forms of advertisements such as direct offers to the public" in Article 18 is used under Community law, for the purposes of increasing the maximum amount of advertising permitted to 20% of daily transmission time,

(a) purely by way of example and is capable of covering other forms of advertising as well, apart from spot advertising, including for the purposes of this case "telepromotions" which, while not containing "offers to the public", could none the less be treated in the same way as such offers on account of some of their inherent characteristics (telepromotions themselves can be identified by the fact that, while suitable breaks clearly distinguish them from their editorial context, nevertheless there is generally an element of visual continuity and they are more time-consuming than spot advertising owing to the inclusion of entertainment and/or games), or:

(b) by way of explanation or definition (in accordance with Article 12 of the contested legislation), as meaning that the possibility of increasing the daily concentration of advertising to 20% relates only to "offers to the public" in the strict sense and not to forms of advertising such as "telepromotions" as well, precisely because they lack the qualifying characteristics of an "offer"?'

Question 2 (Cases C-320/94, C-328/94, C-329/94, C-337/94 and C-338/94)

'Is Directive 89/552/EEC, and in particular Article 17(1)(b) thereof, to be interpreted as precluding altogether any forms of sponsorship in which the sponsor's name and/or

logo may be shown during the programme at times other than the beginning and/or the end of the programme (as provided for, subject to certain derogations, by Article 4 of the contested decree), or as freely permitting repeated forms of sponsorship even during the programme itself?'

14. Written observations have been submitted by the following: Reti Televisive Italiane S. p. a. (a plaintiff in Case C-320/94, 'RTI'); Federazione Italiana Editori Giornali (Italian Federation of Newspaper Publishers, 'FIEG'), which is intervening in the national proceedings on behalf of the defendants in all six cases; Coordinamento delle Associazioni per la Difesa dell'Ambiente e dei Diritti degli Utenti e Consumatori (Grouping of associations for the protection of the environment and users' and consumers' rights, 'Codacons') and Associazione Utenti Radiotelevisivi (Radio and television users' association 'AUR'), both of which are intervening on behalf of the defendants in Cases C-320/94, C-329/94, and C-337/94; the Italian, Greek, Austrian and Portuguese Governments; and the Commission.

Admissibility

15. FIEG, Codacons and AUR argue that it is not necessary for the resolution of the litigation to decide the exact meaning of Articles 17(1)(b) and 18(1) because, even if they are not to be interpreted in the restrictive way adopted by the Italian legislation, Member States nevertheless have the right to adopt stricter rules than those required by the Directive.

16. In my view, the reference can clearly not be said to be inadmissible. It is necessary to establish whether, on the proper interpretation of the Directive, the Member States have such a right. Moreover, even if Member States are entitled to adopt stricter rules than those required by the Directive, I consider that it is still necessary for the Court to examine the exact requirements imposed by these two articles as requested by the national court. Although the Court will examine the conditions under which a case has been referred to it by a national court so as to ensure that it will not be giving a ruling on a general or hypothetical question, it has also recognized that the national court is in the best position to appreciate the necessity for a preliminary ruling on a particular point. [10] Whilst the Court will decline to answer questions referred by a national court on the grounds of irrelevance if it is manifest that the questions referred bear no relation to the subject-matter of the main action, [11] that is not so in the present case. The questions as to the exact requirements imposed by the two provisions are far from manifestly irrelevant because interpretation of both articles could be relevant to the question of the validity of the national legislation under national law. As I mentioned

10 — See for example Case C-343/90 *Lourenço Dias* [1992] ECR I-4673, paragraphs 15 to 17 of the judgment, and *Leclerc*, cited at note 5, paragraphs 10 to 12.

11 — *Lourenço Dias*, cited at note 10, paragraph 18 of the judgment, and *Leclerc*, cited at note 5, paragraph 13.

previously, it is argued that the national transposition measure permitted only the 'necessary amendments' to be made to the law previously in force in order to implement Community law: thus, if the Directive itself does not limit the reference to the sponsor to the beginning and/or end of programmes, or if it does not exclude telepromotions from the category benefiting from the additional 5% transmission time, then, even if Italy was entitled to exercise its discretion so as to legislate to that effect, it was arguably not 'necessary' for the implementation of Community law for Italy to do so, and the Italian legislation might be invalid as a matter of Italian law. The decision on that question is of course entirely a matter for the Italian courts, but it can certainly be contended that that question turns upon the interpretation of the Directive and that the question of Community law posed arises directly from the facts of the case. The reference is accordingly admissible.

Definition of terms

17. Article 1(b) of the Directive defines 'television advertising' as 'any form of announcement broadcast in return for payment or for similar consideration by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, or rights and obligations, in return for payment'. It adds that: 'Except for the purposes of Article 18, this does not include direct offers to the public for the sale, purchase or rental of products or for the provision of services in return for payment.'

18. Article 1(d) of the Directive defines 'sponsorship' as 'any contribution made by a public or private undertaking not engaged in television broadcasting activities or in the production of audio-visual works, to the financing of television programmes with a view to promoting its name, its trade mark, its image, its activities or its products'.

19. Article 17(1)(c) of the Directive provides that sponsored television programmes 'must not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services'.

20. Unfortunately, however, the Directive does not define the meaning of the terminology in issue in this case, namely 'direct offers to the public for the sale, purchase, or rental of products or for the provision of services' ('direct offers to the public'), 'spot advertising' and 'telepromotions', even though the first two terms are employed in the Directive.

21. Direct offers to the public appear to be what is otherwise known as teleshopping: i. e programmes showing products which are on direct offer in the sense that they can be directly ordered by telephone, mail or videotex and will be delivered to viewers at home. [12] Teleshopping has accordingly been described as electronic retailing. Offer and acceptance create a contractual tie and the aim is said to be direct sales rather than simple publicity. It appears that the owners of the goods or providers of the services make and present teleshopping programmes, which, in comparison to the length of spot advertisements (discussed below), are usually rather long. By virtue of Article 1(b) of the Directive (quoted at paragraph 17 above), direct offers to the public are to be considered as 'television advertising' only for the purposes of Article 18 of the Directive.

22. According to the Commission's observations, spot advertisements are short promotions in the form of films which last usually a very short time, have an important suggestive impact, and appear in intervals during or between programmes. The Commission further explains that they usually appear in groups of two or more ('isolated advertising spots' remaining 'the exception' as required by Article 10(2) of the Directive), and that they are produced by those who own the products or provide the services or their agents, rather than by the broadcasters themselves. RTI observes that the emphasis on suggestive impact in spot advertisements is to be contrasted with the way in which more time-consuming forms of publicity concentrate on convincing the viewer by means of description of the product.

23. According to the Commission's observations and those of FIEG, telepromotions are a form of publicity which appears in the context of a particular programme and during that programme; as a result they can sometimes appear to be an integral part of the programme, although they are supposed to be clearly distinct from the programme and identifiable as publicity. My understanding is that one example of this would be a programme on dogs during which the presenter promotes a certain type of dog food. The Commission and FIEG also explain that telepromotions are produced in the form of a film by the television channel or the producer of the programme and are presented directly by the presenter or actors involved in the programme. According to RTI, this form of publicity is characterized by the fact that it combines publicity with entertainment, including games reserved to the purchasers of the products in question or games which have those products as a prize. Article 12(1)(b) of the Italian Ministerial Decree No 581/93 defines telepromotions as the display of products, the oral or visual presentation of goods, services, the name, the mark or the activity of a producer of goods or of a provider of services made by the broadcaster,

12 — For a description of teleshopping see *Programme sponsorship and new forms of commercial promotion on television*, Dossier No 9 of the Council of Europe, p. 59, at paragraph 341.

in order to promote the supply in return for payment of goods or services, in the context of a programme, including a sponsored programme. Furthermore, the national court in the present case describes telepromotions in the question referred as being 'more time-consuming than spot advertising owing to the inclusion of entertainment and/or games' and as generally having 'an element of visual continuity', although 'suitable breaks clearly distinguish them from their editorial content'. Finally, with regard to the definition of telepromotions, I should perhaps add that I do not consider it necessary for the purpose of the present cases to decide whether certain forms of telepromotions might constitute sponsorship within the meaning of the Directive and, if so, whether this means that they are not in any event caught by the restrictions on 'advertising' time in Article 18(1).

Interpretation of the Directive

24. Before turning to consider the interpretation of the two particular provisions of the Directive which are in issue in the present cases, it is useful to consider the general scheme and purpose of the Directive.

25. It is clear from the preamble to and text of the Directive that its aim is merely to establish the minimum rules necessary in order to guarantee freedom of transmission in broadcasting. Recital 13, for example, provides that the Directive 'lays down the minimum rules needed to guarantee freedom of transmission in broadcasting', and Recital 27 states:

'Whereas 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.'

Accordingly, various provisions of the Directive confer on the Member States discretion to adopt stricter rules, as I shall discuss at paragraphs 39 to 46 below.

Article 18(1): meaning of 'such as direct offers to the public ...'

26. Numerous arguments, on both sides of the debate, have been advanced in relation to the question whether telepromotions should be capable of benefiting from the possibility of the additional transmission time made available by Article 18(1) of the Directive to

'forms of advertisements such as direct offers to the public ...'. Those who contend that telepromotions cannot form part of that category of advertisements (Italy, Greece, FIEG, and Codacons) have concentrated on emphasizing the differences between direct offers and telepromotions. They make, *inter alia*, the following points:

(a) Direct offers (since they amount to electronic retailing) have a contractual element, whereas telepromotions (like spot advertisements) do not.

(b) The aim of direct offers is direct sales, whereas the aim of telepromotions (like spot advertisements) is publicity.

(c) Direct offers (albeit also spot advertisements) are produced and presented independently of the broadcaster, whereas telepromotions are produced and presented by the broadcaster or his guests and are inserted into programmes.

(d) Telepromotions are a more dangerous form of advertisement than direct offers because the publicity element is less transparent, and should thus be subject to as strict a regime as spot advertisements.

27. Those who contend that telepromotions should be capable of benefiting from the additional transmission time provided for in Article 18(1) (RTI and the Commission) argue, *inter alia*, as follows:

(a) The use of the phrase 'such as' in Article 18(1) suggests that the additional 5% was not intended to cover only direct offers.

(b) Comparison with the reference to 'direct offers' in Article 1(b), which is not preceded by the phrase 'such as', suggests that that phrase was no accident and that it was intended to be significant.

(c) It would have been inappropriate to try to define all the different types of advertising which can benefit from the additional 5% transmission time because to have done so could have limited the development of new forms of advertising.

(d) Inclusion of telepromotions in the additional 5% would help smaller companies who find that form of advertising more effective.

(c) Telepromotions help finance smaller television companies.

(f) Were it not for the increase of the daily allowance for forms of advertisements other than spot advertisements, advertisements other than spot advertisements would not exist: all 15% of the permitted transmission time would be devoted to spot advertisements since they are more lucrative for the owners of the television channels.

(g) Direct offers and telepromotions, unlike spot advertisements, are not distinct from the programme itself.

(h) Both direct offers and telepromotions are more time-consuming than spot advertisements. The Commission argues that that factor alone is sufficient to justify assimilating the two. Both RTI and the Commission draw attention to the fact that Article 12(1) of the Convention contains an identical provision to that in Article 18(1) of the Directive and that the Explanatory Report to the Convention explains that the purpose of the additional 5% in the Convention was to allow time for new forms of publicity such as teleshopping which are more time-consuming than spot advertisements. [13]

13 Paragraph 168 of the Report.

28. Reference is also made to a proposed revision of Article 18 which replaced the phrase 'such as direct offers to the public ...' with the phrase 'other forms of advertising and/or teleshopping spots ...'. [14] However, that can have no bearing on the meaning of the original text: no amendment has yet been accepted by the Council and the European Parliament and, moreover, it is not clear that there is agreement as to what the original text was intended to mean.

29. In my view, the appropriate way to approach the interpretation of Article 18(1) is, first, from the text itself and, secondly, from an overall approach to the Directive as a whole. I agree with RTI and the Commission that the wording of Article 18(1), in employing the phrase 'such as', shows that the additional 5% transmission time was not intended to be limited only to direct offers. On the other hand, the fact that it was felt necessary to provide an example of what could be included in the additional 5% suggests that it was not intended to include everything other than spot advertising. That, however, is really as far as a textual interpre-

14 — However, the proposed amendment to Article 18(1) which appears in the text upon which the Council agreed in principle a common position on 11 June 1996 provides that: '1. The amount of transmission time of teleshopping spots, advertising spots and other means of advertising, with the exception of teleshopping windows in the sense of Article 18a, shall not exceed 20% of the daily transmission time. The transmission time for advertising spots shall not exceed 15% of the daily transmission time.'

tation can take us. It is thus necessary to consider next the correct approach to the Directive as a whole.

30. Since, as discussed at paragraph 25 above, the Directive is a minimum harmonization measure, I consider that any ambiguity in the Directive should be construed in favour of a broad discretion for Member States when implementing its provisions.

31. Furthermore, as discussed earlier, [15] according to the Explanatory Report to the Convention the purpose of the provision concerning the additional 5% transmission time was to make time for forms of advertisement which are generally more time-consuming, and, since the Directive appears to have been modelled in many respects so closely and deliberately upon the Convention, it seems reasonable to assume that the same purpose lay behind that same provision in the Directive. Moreover, it seems to be accepted that telepromotions are generally more time-consuming than spot advertisements. (Although the Italian Government argues that telepromotions do not need to be more time-consuming than spot advertisements, it does not appear to contest the assertion that they generally tend to be so.) That view as to the purpose behind the additional 5% transmission time is supported by the fact that, whereas Article 18(2) of the Directive (which is identical to Article 12(2) of the Convention) provides that 'the amount of spot advertising within a given one-hour period shall not exceed 20%' of the transmission time, forms of advertisements such as direct offers to the public are not subject to such an hourly limit under Article 18(2) but rather to a daily limit under Article 18(3). Article 18(3) is virtually identical to Article 12(3) of the Convention [16] and provides that forms of advertisements such as direct offers to the public 'shall not exceed one hour per day'. As the Explanatory Report to the Convention indicates [17] it was probably considered necessary to introduce the two different types of time-limit because it could be difficult for forms of advertisements which are more time-consuming than spot advertisements to comply with a rule limiting them to a time-limit within a given one-hour period.

32. I accordingly consider that Article 18(1) should be construed as permitting Member States to include telepromotions in the category of advertisements which can benefit from the additional 5% transmission time. This, however, is of course subject to the

15 — Paragraph 27(h) above.

16 — Article 12(3) of the Convention is identical to Article 18(3) of the Directive except for the omission of the opening phrase in Article 18(3) of the Directive, 'without prejudice to the provisions of paragraph 1'.

17 — At paragraph 174: 'as these forms of advertisements are generally more time-consuming than spot advertisements, they are not — unlike spot advertisements — subject to the maximum time limit within a given one-hour period provided for in paragraph 2 of this Article. Moreover, current trends in teleshopping reveal that these forms of advertisements tend to be transmitted outside prime time.'

proviso that the telepromotions in question do not infringe any other provisions of the Directive, such as the prohibition in Article 10(4) of surreptitious advertising.

33. Furthermore, Article 18 provides that Member States 'may' allow an additional 5% transmission time. Thus, as the Italian Government observes, since Article 18 does not oblige Member States to allow any extra advertising at all, it seems unlikely that it was intended that they would be precluded from allowing that additional 5%, should they choose to adopt it, to include a narrower category of advertisements than that envisaged by Article 18. This view is reinforced by Article 19 of the Directive which I shall discuss below.

Article 17(1)(b): sponsorship

34. As to the correct interpretation of Article 17(1)(b), it seems clear (as RTI, the Commission, and the Austrian, Greek, and Portuguese Governments observe) that the wording itself does not restrict reference to the sponsor to the beginning and/or end of programmes.

35. Moreover, what appears to be the clear meaning of the provision is confirmed by the fact that in the Commission's original draft of the Directive, submitted to the Council on 30 April 1986, [18] mention of the sponsor was expressly limited to the beginning and end of the programme but that that express limitation was dropped, despite an attempt by the European Parliament to have it reinstated. [19]

36. Since, however, the second question referred by the Regional Administrative Court, Lazio, asks in general terms whether the Directive should be construed as freely permitting repeated 'forms of sponsorship' even during programmes, it should be noted that, even though I consider that the Directive does entitle reference to be made to the sponsor's name or logo during programmes, that is subject to Article 17(1)(c) which prohibits at any time encouragement of 'the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services'. The Directive thus distinguishes between reference to the sponsor's name or logo and reference to specific products or services. It must be noted also that sponsored programmes must be clearly identified as such at the beginning and/or end of programmes in accordance with Article 17(1)(b) of the Directive. The mandatory character of that provision should be reflected in the national legislation.

18 — Article 12(b) (OJ 1986 C 179, p. 4), which received a favourable opinion from the Parliament on 20 January 1988 (OJ 1988 C 49, p. 53).

19 — OJ 1989 C 158, p. 138.

37. In conclusion, therefore, I consider that Article 17(1)(b) provides that the name and/or logo of the sponsor must appear at the beginning and/or end of programmes but that it does not prohibit reference to the sponsor's name and/or logo appearing during programmes.

Member States' discretion

38. It should be clear from the above discussion of the interpretation of the wording of Article 17(1)(b) and Article 18(1) that, whilst the former does not prohibit references to the sponsors' names and logos during programmes, and the latter entitles Member States to include telepromotions within the extra 5% transmission time, those articles do not oblige Member States to allow references to sponsors during programmes or to include telepromotions within the extra 5% transmission time.

39. That Member States have a discretion to adopt stricter rules than required by Article 17(1)(b) and Article 18(1) is confirmed by other provisions of the Directive which address expressly the issue of Member States' discretion. Four provisions of the Directive are relevant to that issue.

40. Article 3(1) (which appears under the heading 'General Provisions') provides (notwithstanding the error in the English text) that Member States shall remain free, as regards television broadcasters under their jurisdiction, to lay down more detailed or stricter rules in the areas covered by the Directive. [20]

41. Article 8 provides that Member States may lay down stricter rules when they consider it necessary for the purposes of language policy, and is accordingly irrelevant to the present case.

42. Article 19 provides that:

'Member States may lay down stricter rules than those in Article 18 for programming time and the procedures for television broadcasting for television broadcasters under their jurisdiction ... .'

20 — See paragraph 31 of the judgment of this Court in *Leclerc*, cited at note 5. As I pointed out in my Opinion in that case, the English text of Article 3(1) contains a mistranslation since it provides that Member States have the power to require television broadcasters under their jurisdiction to lay down more detailed or stricter rules, whereas the other language versions demonstrate that it is the Member States themselves which have the power to lay down such provisions.

43. Finally, Article 20 provides that:

'Without prejudice to Article 3, Member States may, with due regard for Community law, lay down conditions other than those laid down in Article 11(2) to (5) and in Article 18 in respect of broadcasts intended solely for the national territory which may not be received, directly or indirectly, in one or more other Member States.'

44. In its judgment in *Leclerc* the Court addressed the question whether, by virtue of Article 3(1), Member States may impose on television broadcasters under their jurisdiction stricter rules than those laid down by the provisions of the Directive concerning television advertising and sponsorship where the circumstances are not covered by Articles 19 or 20. The Court pointed out that, while Article 20 states expressly that it applies without prejudice to Article 3, there is no such statement in Article 19. However, it concluded that 'it cannot be inferred from that that Member States' freedom to impose stricter rules for televised advertising and sponsorship is limited to the circumstances set out in Article 19' [21] and that 'neither the recitals in the preamble nor the objective of the Directive requires Article 19 to be interpreted as divesting Member States of the freedom conferred on them by Article 3(1)'. [22]

45. In *Leclerc* the national provisions at issue concerned the types of product or service that could be advertised; those provisions could thus not fall within the scope of Article 19 since Article 19 refers only to 'programming time and the procedures for television broadcasting'. In the present case, however, we are concerned with the amount of daily transmission time for certain advertisements, which clearly falls within the wording of Article 19. As I reasoned in my Opinion in *Leclerc*, [23] since the Directive is a measure of minimal harmonization, I consider that it should not be construed as restricting the Member States' discretion unless the wording is clear, and the Court appears to have inclined to that view in its judgment in *Leclerc*. [24] The reference in Article 19 to 'stricter rules for programming time' should therefore be interpreted as allowing Member States to adopt stricter rules as to the definition of the type of advertisements which can benefit from the additional advertising time provided for in Article 18.

46. With regard to the rules on sponsorship, I consider that Article 3(1) can apply. Thus, even if Article 17(1)(b) does not restrict reference to the sponsor to the beginning and/or end of the programme, I consider that Member States are not prohibited by the Directive from passing legislation which does restrict reference to the sponsor in this manner.

21 Paragraph 40 of the judgment

22 Paragraph 42 of the judgment

23 At paragraph 70.

24 Paragraphs 40 to 44 of the judgment

47. I conclude, therefore, that, even if the Directive itself does not require implementation of either Article 17(1)(b) or Article 18 in the restrictive manner of the Italian legislation, it none the less does not prohibit such implementation.

48. That does not, however, mean that Italy would be entitled to prevent or hinder the reception or retransmission of broadcasts from other Member States on the grounds that they did not comply with the stricter Italian laws. As I mentioned earlier, [25] the purpose behind the Directive is to establish the 'minimum rules needed to guarantee freedom of transmission in broadcasting'. Thus whilst Member States may avail themselves of the discretion to adopt stricter provisions for broadcasters under their jurisdiction, as is made clear by Article 3(1) and Article 19, they may not require broadcasters from other Member States to comply with such provisions.

49. It should also be noted that a provision in any Community measure which allows Member States to adopt stricter rules in a particular area does not entitle Member States to adopt whatever rules they like. They must still of course ensure that the rules which they adopt comply with Community law. Thus, in the present case, Italy must be able to show that any restrictions imposed upon broadcasters beyond those required by the Directive do not constitute an unjustified restriction on Treaty freedoms, such as the freedom to provide services under Article 59 and the free movement of goods under Article 30.

50. However, no question on Article 59 or Article 30 has been referred by the national court, and there is nothing to suggest that the measures infringe those articles (as might be the case if the restrictions were disproportionate, selective, or discriminatory, or substantially impeded access to the market).

51. Finally, I should mention also Article 10 of the European Convention on Human Rights which concerns freedom of expression. Even on the assumption that, in imposing restrictions on advertising of the kind in issue in these proceedings, Member States are acting within the scope of Community law and that, in accordance with the Court's case-law, [26] regard should accordingly be had to that Convention, the case-law of the European Court of Human Rights does not suggest that such restrictions will infringe the Convention; on the contrary, it is noteworthy that the European Court of Human Rights has shown itself willing to accept considerable restrictions upon commercial advertising. [27]

25 — At paragraph 25 above.

26 — Case C-260/89 *ERT* [1991] ECR I-2925.

27 — *Cassado Coca* v *Spain*, judgment of 24 February 1994, ECHR Reports Series A No 285.

52. In conclusion, I consider that the Italian Government is entitled, albeit not required, under the Directive to prohibit references to sponsors during programmes and to provide that telepromotions cannot benefit from the additional 5% transmission time referred to in Article 18(1) of the Directive.

Conclusion

53. Accordingly, I am of the opinion that the questions put by the Regional Administrative Court, Lazio, should be answered as follows:

(1) Article 18 of Directive 89/552/EEC is to be interpreted as meaning that the expression 'forms of advertisements such as direct offers to the public' is used, for the purposes of increasing the maximum amount of advertising permitted to 20% of daily transmission time, purely by way of example and is capable of covering other forms of advertising as well, apart from spot advertising, including for the purposes of these cases telepromotions.

(2) Article 17(1)(b) of Directive 89/552/EEC is to be interpreted as permitting references to the sponsor's name and/or logo during programmes.