



## **The German prohibition on the publication of sponsored articles not identified by the term ‘advertisement’ (‘Anzeige’) is not, in principle, contrary to EU law**

*Since the EU legislature has not yet adopted legislative provisions on this point for the written press, the Member States retain the power to legislate in this area*

In Germany, almost all regional (Land) laws governing the press and media require publishers to include the term ‘advertisement’ (‘Anzeige’) for any publication for remuneration in their periodicals, unless it is already evident from the arrangement and layout of the publication that it is an advertisement.

In a dispute involving two German newspapers, the Stuttgarter Wochenblatt and the GOOD NEWS advertiser<sup>1</sup>, the Bundesgerichtshof (Federal Court of Justice, Germany) has asked whether that prohibition is compatible with the Unfair Commercial Practices Directive<sup>2</sup>. The Stuttgarter Wochenblatt wishes to see GOOD NEWS<sup>3</sup> prohibited from publishing sponsored articles not identified by the term ‘advertisement’ (‘Anzeige’). The Stuttgarter Wochenblatt objects to the publication in the June 2009 issue of GOOD NEWS of two sponsored articles. The first, entitled ‘VfB VIP-Geflüster’ (VfB VIP Gossip), about prominent guests who attended the final game of the season played by the German Bundesliga team, VfB Stuttgart, was sponsored by the firm Scharr. The second, entitled ‘Heute: Leipzig’ (Today: Leipzig), formed part of a series entitled ‘Wohin Stuttgarter Verreisen’ (Where the people of Stuttgart like to go) and consisted of an editorial snapshot of the city of Leipzig. It was sponsored by Germanwings. Both articles were accompanied by the wording ‘sponsored by’ but were not identified by the term ‘Anzeige’, as required under the regional press legislation.

By today’s judgment, the Court of Justice holds that in such circumstances **the Unfair Commercial Practices Directive is not intended to protect a competitor of a newspaper publisher who has published sponsored articles which are liable to promote the products or services of the sponsor without the identification as ‘advertising’**. Accordingly, that directive does not preclude the application of a national provision under which publishers are required to identify specifically, in this case through the use of the term ‘advertisement’ (‘Anzeige’), any publication in their periodicals for which they receive remuneration, unless it is already evident from the arrangement and layout of the publication that it is an advertisement.

It is true that the Unfair Commercial Practices Directive does require advertising undertakings to indicate clearly that they have financed editorial content in the media where that content is intended to promote their products or services. If that is not clearly indicated, the sponsor is engaging in an unfair – and therefore prohibited – commercial practice.

As a rule, however, that prohibition does not apply to the publisher who publishes the sponsored article. It is only when the publisher has acted in the name of and/or on behalf of the sponsor –

<sup>1</sup> Published by RLvS.

<sup>2</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council.

<sup>3</sup> More specifically, its publisher RLvS.

which is not the case here – that the publisher would also be covered by that obligation provided for by the Directive. That does not mean that the prohibition on unfair commercial practices may not be applied to a newspaper publisher who promotes his own products, that is to say, the newspaper, for example, by offering the chance of winning a prize in games, puzzles or competitions.

Although the EU legislature has, in another directive<sup>4</sup>, laid down obligations for audiovisual media providers when their services or programmes are sponsored by third-party undertakings, it has not yet adopted this kind of legislation for the written press. Accordingly, the Member States retain the power to impose obligations on newspaper publishers to indicate when editorial content has been sponsored, whilst complying however with the provisions of the Treaty, in particular those relating to the freedom to provide services and freedom of establishment

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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*The [full text](#) of the judgment is published on the CURIA website on the day of delivery.*

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*Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106*

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<sup>4</sup> 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.