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Judgment of the Court in Case C-797/23 | Meta Platforms Ireland (Fair compensation)

Member States may make provision for publishers of press publications to be entitled to fair remuneration when they grant online service providers authorisation to use those publications

The Court of Justice heard this matter brought before it in connexion with Meta's action against a decision of the Italian Communications Regulatory Authority (AGCOM). According to Meta, the Italian legislation establishing a system intended to ensure fair remuneration for the online use of press publications infringes the EU framework concerning publishers' rights in the Digital Single Market.

The Court finds that a right to fair compensation for publishers is consistent with EU law, provided that that remuneration constitutes consideration for authorising their publications to be used online. Publishers must also be able to refuse such authorisation or to grant it free of charge. In addition, no payment may be required from suppliers when they do not use those publications.

The obligations imposed on suppliers to enter into negotiations with publishers, without limiting the visibility of content in search results during that time, and to provide the data necessary to calculate the compensation, while they restrict the freedom to conduct a business, appear to be justified, in so far as they contribute to the EU law objectives of achieving a well-functioning and fair marketplace for copyright and allowing publishers to recoup their investments.

According to the Court, such obligations, which strengthen the protection afforded to publishers, make it possible to strike a fair balance between the freedom to conduct a business, on the one hand, and the right to intellectual property and the right to freedom and pluralism of the media, on the other.

Developments in digital technologies have drastically reshaped the media industry, in particular that of the written press, facing changes in user habits, the rise of online press review services and competition from new digital channels. Those transformations led to a sharp drop in publishers' revenues, jeopardising their business model and undermining their crucial role in democratic societies. With a view to addressing those issues, a number of legislative measures have been initiated, including the **Directive on copyright in the Digital Single Market**.¹ That directive introduces a specific related right in favour of press publishers for online uses of their publications by information society service providers, allowing them, inter alia, **to authorise or prohibit such uses**.²

The Italian legislature transposed that directive by providing for a **right to fair compensation** in favour of publishers for the online use of their publications and establishing a system intended to ensure that compensation. Thus, the Italian legislation requires service providers to negotiate that remuneration with publishers, without limiting the visibility of content in search results during the negotiations, and to provide the data necessary to calculate the remuneration. It further entrusts AGCOM with the task of setting the criteria, determining the remuneration in the event of disagreement, and ensuring compliance with the obligation to provide information incumbent on service providers, including through penalties.

In 2023, AGCOM, on the basis of that national legislation, defined the criteria for determining fair remuneration for the

online use of press publications by information society service providers.

One of those providers, Meta Platforms Ireland,³ brought an action before the Lazio Regional Administrative Court (Italy) seeking annulment of that decision. Meta challenges the compatibility of that decision and that Italian legislation with EU law, in particular with the directive and the freedom to conduct a business guaranteed by the Charter of Fundamental Rights of the European Union.

The national court therefore referred the matter to the Court of Justice to verify the compatibility of the national legal framework with EU law.

The Court notes that **the directive aims to confer on publishers exclusive rights to reproduce their press publications, and make them available to the public**, whilst leaving Member States a margin of discretion to guarantee their implementation.

In that context, **the right of publishers of press publications to fair remuneration is permissible, provided that such remuneration constitutes consideration for the authorisation granted to providers** to reproduce those publications or to make them available to the public, **and that those publishers may refuse to grant such authorisation or may grant it free of charge**. Furthermore, **no payment may be required from providers when they do not use such publications**. It is for the national court to verify whether the Italian legislation satisfies those conditions.

The **obligations** imposed on providers to enter into **negotiations** with publishers, **without limiting the visibility** of content during that period, and to **provide the data necessary for calculating the remuneration are also permissible**, given that they are capable of **ensuring the fairness** of those negotiations and that they thus contribute to the objective of protecting publishers. Indeed, only providers possess the information enabling the economic value of online use of press publications to be assessed, such as the revenues generated by or expected from such use. Accordingly, publishers find themselves in a weaker negotiating position than those providers as regards the determination of fair remuneration. Furthermore, the obligation to refrain from limiting the visibility of publications during negotiations serves to prevent pressure being exerted on publishers or the economic value of the use of their press publications being concealed.

Similarly, the **powers granted to AGCOM** by the Italian legislation **are permissible**, in so far as they seek to **ensure the effective implementation of the rights conferred on publishers**.

Finally, the Court finds that it is true that **those obligations, together with AGCOM's power to impose penalties, constitute a limitation on the providers' freedom to conduct a business**.⁴

It holds, however, that, subject to verification by the national court, **that limitation appears to be justified and proportionate in relation to the objectives of EU law** of achieving a well-functioning and fair market place for copyright, and allowing publishers to recoup the investments required by the production of their publications. The Court notes, in particular, that the imposition of such obligations on providers serves to strike a **fair balance** between the **freedom to conduct a business**, on the one hand, and the **right to intellectual property** as well as the **right to freedom and pluralism of the media**, on the other.

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 and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ [Directive \(EU\) 2019/790](#) of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC.

² Article 15 of Directive 2019/790.

³ Best known for being the operator of the online social network Facebook.

⁴ Article 16 of the Charter of Fundamental Rights.