Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

17 October 2013 *

(Directive 2005/29/EC — Unfair commercial practices — Scope ratione personae — Misleading omissions in advertorials — Legislation of a Member State prohibiting any publication for remuneration not identified by the term 'advertisement' ('Anzeige') — Complete harmonisation — Stricter measures — Freedom of the press)

In Case C-391/12,

REQUEST for a preliminary under Article 267 TFEU from the Bundesgerichtshof (Germany), made by decision of 19 July 2012, received at the Court on 22 August 2012, in the proceedings

RLvS Verlagsgesellschaft mbH

v

Stuttgarter Wochenblatt GmbH,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, C.G. Fernlund, A. Ó Caoimh, C. Toader (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: M. Wathelet,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 12 June 2013,

after considering the observations submitted on behalf of:

— RLvS Verlagsgesellschaft mbH, by A. Sasdi, Rechtsanwalt,

— Stuttgarter Wochenblatt GmbH, by F.-W. Engel and A. Rinkler, Rechtsanwälte,

— the German Government, by T. Henze and J. Kemper, acting as Agents,

— the Czech Government, by M. Smolek, J. Vláčil and S. Šindelková, acting as Agents,

— the Polish Government, by B. Majczyna and M. Szpunar, acting as Agents,

— the European Commission, by M. Owsiany-Hornung, V. Kreuschitz and M. van Beek, acting as Agents,

* Language of the case: German.

after hearing the Opinion of the Advocate General at the sitting on 11 July 2013,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 7 of 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 ('the Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22), and also point 11 of Annex I thereto.

2 The request has been made in proceedings between RLvS Verlagsgesellschaft mbH ('RLvS') and Stuttgarter Wochenblatt GmbH ('Stuttgarter Wochenblatt') concerning the possibility of prohibiting RLvS from publishing or causing to be published for remuneration in a newspaper publication not identified by the term 'advertisement' ('Anzeige').

Legal context

European Union law

Directive 2005/29

3 Recitals 6 to 8 in the preamble to Directive 2005/29 are worded as follows:

'(6) This Directive … approximates the laws of the Member States on unfair commercial practices, including unfair advertising, which directly harm consumers' economic interests and thereby indirectly harm the economic interests of legitimate competitors. In line with the principle of proportionality, this Directive protects consumers from the consequences of such unfair commercial practices where they are material but recognises that in some cases the impact on consumers may be negligible. It neither covers nor affects the national laws on unfair commercial practices which harm only competitors' economic interests or which relate to a transaction between traders; taking full account of the principle of subsidiarity, Member States will continue to be able to regulate such practices, in conformity with Community law, if they choose to do so. …

(7) This Directive addresses commercial practices directly related to influencing consumers' transactional decisions in relation to products. …

(8) This Directive directly protects consumer economic interests from unfair business-to-consumer commercial practices. Thereby, it also indirectly protects legitimate businesses from their competitors who do not play by the rules in this directive and thus guarantees fair competition in fields coordinated by it. It is understood that there are other commercial practices which, although not harming consumers, may hurt competitors and business customers. The Commission should carefully examine the need for Community action in the field of unfair competition beyond the remit of this Directive and, if necessary, make a legislative proposal to cover these other aspects of unfair competition.'

4 Under Article 2(b) of Directive 2005/29, 'trader' is understood to mean 'any natural or legal person who, in commercial practices covered by this directive, is acting for purposes relating to his trade, business, craft or profession and anyone acting in the name of or on behalf of a trader'. Under Article 2(d), 'business-to-consumer commercial practices' is understood to mean 'any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers'.

5 Under Article 3(1) of Directive 2005/29, that directive is to 'apply to unfair business-to-consumer commercial practices, as laid down in Article 5, before, during and after a commercial transaction in relation to a product'.

6 Under Article 3(5) of that directive, however, '[f]or a period of six years from 12 June 2007, Member States shall be able to continue to apply national provisions within the field approximated by this Directive which are more restrictive or prescriptive than this Directive and which implement Directives containing minimum harmonisation clauses. These measures must be essential to ensure that consumers are adequately protected against unfair commercial practices and must be proportionate to the attainment of this objective. The review referred to in Article 18 may, if considered appropriate, include a proposal to prolong this derogation for a further limited period.'

7 Moreover, under Article 3(8) of the same directive, it 'is without prejudice to any conditions of establishment or of authorisation regimes, or to the deontological codes of conduct or other specific rules governing regulated professions in order to uphold high standards of integrity on the part of the professional, which Member States may, in conformity with Community law, impose on professionals'.

8 Article 4 of Directive 2005/29 provides:

'Member States shall neither restrict the freedom to provide services nor restrict the free movement of goods for reasons falling within the field approximated by this Directive.'

9 Article 5 of the directive, which is entitled 'Prohibition of unfair commercial practices', provides as follows:

'1. Unfair commercial practices shall be prohibited.

2. A commercial practice shall be unfair if:

(a) it is contrary to the requirements of professional diligence,

and

(b) it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers.

...

5. Annex I contains the list of those commercial practices which shall in all circumstances be regarded as unfair. The same single list shall apply in all Member States and may only be modified by revision of this Directive.'

10 Article 7 of the same directive, entitled ‘Misleading omissions’, provides in paragraphs 1 and 2:

‘1. A commercial practice shall be regarded as misleading if, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

2. It shall also be regarded as a misleading omission when, taking account of the matters described in paragraph 1, a trader hides or provides in an unclear, unintelligible, ambiguous or untimely manner such material information as referred to in that paragraph or fails to identify the commercial intent of the commercial practice if not already apparent from the context, and where, in either case, this causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.’

11 Point 11 of Annex I to Directive 2005/29, entitled ‘Commercial practices which are in all circumstances considered unfair’, states that ‘Misleading commercial practices’ include ‘[u]sing editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial). This is without prejudice to 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 L 298, 17.10.1989, p. 23)].’

Directive 2010/13/EU

12 Recital 82 in the preamble to 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) states that ‘[a]part from the practices that are covered by this Directive, Directive 2005/29/EC … applies to unfair commercial practices, such as misleading and aggressive practices occurring in audiovisual media services’.

13 Article 10(1)(c) of Directive 2010/13/EC 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 a appropriate way for programmes at the beginning, during and/or the end of the programmes.’

14 Directive 2010/13 repealed Directive 89/552, as amended by Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 (OJ 2007 L 322, p. 27). Article 3f of Directive 89/552, as amended by Directive 2007/65, read as follows:

‘1. Audiovisual media services or programmes that are sponsored shall meet the following requirements:

(a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;

(b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;

(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 the end of the programmes.

2. Audiovisual media services or programmes shall not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.

3. The sponsorship of audiovisual media services or programmes by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of the undertaking, but shall not promote specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the media service provider falls.

4. News and current affairs programmes shall not be sponsored. Member States may choose to prohibit the showing of a sponsorship logo during children's programmes, documentaries and religious programmes.'

German law

15 Paragraph 10 of the Law governing the Press of the *Land* of Baden-Württemberg (Landespressegesetz Baden-Württemberg) of 14 January 1964 ('the *Land* Press Law'), entitled 'Identification of publications for remuneration', provides:

'Any publisher of a periodical or manager responsible (within the meaning of the fourth sentence of Paragraph 8(2)) who has received or requested or been promised remuneration for a publication shall identify that publication clearly with the word "advertisement", unless it is already apparent from its arrangement and layout that it is an advertisement.'

16 The *Land* Press Law is intended to guarantee freedom of the press which, according to Paragraph 1 thereof, is one of the fundaments of a liberal democracy. Paragraph 3 of that law states that the press fulfils a public service mission in providing and disseminating information, adopting positions, playing a critical role or in otherwise contributing to the development of opinions on matters of public interest.

17 The Federal Law on unfair competition (Gesetz gegen den unlauteren Wettbewerb) implements Directive 2005/29 in Germany. Paragraph 3 of that law, entitled 'Prohibition of unfair commercial practices', provides:

'(1) Unfair commercial practices shall be unlawful if they are likely to have a perceptible adverse effect on the interests of competitors, consumers or other market participants.

(2) Commercial practices in relation to consumers shall in any case be unlawful if they are not in keeping with the due care to be expected of the trader and are likely to have a perceptible adverse effect on the consumer's ability to take an informed decision and thereby to cause him to take a transactional decision which he would not otherwise have taken. In that connection regard must be had to the average consumer or, if the commercial practice is directed at a particular group of consumers, an average member of that group. …

(3) The commercial practices directed at consumers which are listed in the annex to the present Law shall always be regarded as unlawful.'

18 Pursuant to Paragraph 4(3) and (11) of the Federal Law on unfair competition, '[u]nfairness shall have occurred in particular where a person … conceals the advertising nature of commercial practices [or] … infringes a statutory provision that is also intended to regulate market behaviour in the interest of market participants'.

19 Under the title 'Cessation and prohibition', Paragraph 8 of the Federal Law on unfair competition provides:

'(1) Any commercial practice which is unlawful under Paragraph 3 or Paragraph 7 may give rise to an order to cease and desist and, in the event of recurrence, an order to refrain or a prohibition order. An application for a prohibition order may be made as from the time there is a risk of such unlawful practice within the meaning of Paragraph 3 or Paragraph 7 occurring.

(2) Where the unlawful practice is committed by an employee or person in charge in an undertaking, the prohibition order and the order to cease and desist may also be directed against the owner of the undertaking.

(3) Applications for the orders referred to in subparagraph (1) may be lodged:

1. by any competitor;

...'

20 Point 11 of the Annex to the Federal Law on unfair competition states that 'use, financed by a trader, of editorial content in order to promote a product, without the link being clear from the content or visual or auditorial presentation (advertorial) thereof' is to be deemed to be unlawful for the purposes of Paragraph 3(3) of that law.

Facts and the question referred for a preliminary ruling

21 Stuttgarter Wochenblatt publishes a weekly newspaper of the same name, whilst RLvS, established in Stuttgart (Germany), publishes the 'GOOD NEWS' advertiser. In the June 2009 edition of the advertiser, RLvS published two articles for which it had received remuneration from sponsors.

22 The first of those two articles, a three-quarter page item printed in the 'GOOD NEWS Prominent' section, carries the heading 'VfB VIP-Geflüster' (VfB VIP Gossip). Accompanied by photos, the article is a report on prominent guests who attended the final game of the season played by the German Bundesliga team, VfB Stuttgart. Between the headline, which also contains a short introduction, and the body of the article, which comprises 19 photographs, there is an indication that the article was financed by third parties. That indication takes the form of a graphically highlighted representation of the company name 'Scharr' preceded by the words 'sponsored by'. Under that article at the bottom of the page there is a quarter-page advertisement, separated from the article by a dividing line and identified by the word 'advertisement' ('Anzeige'), which contains a report on the start of the renovation work on the Mercedes-Benz Arena and an advertisement for the product 'Scharr Bio Heizöl' ('Scharr Bio Heating Oil'), which is sold by the sponsor of the editorial article.

23 The second article, printed on another page of the advertiser, in the 'GOOD NEWS Wunderschön' section, forms part of a series entitled 'Wohin Stuttgarter Verreisen' (Where the people of Stuttgart like to go) and carries the sub-heading: 'Heute: Leipzig' (Today: Leipzig). This is an article covering seven-eighths of a page and consisting of an editorial snapshot of the city of Leipzig. The headline is

also accompanied by the wording 'sponsored by', followed by the name of the undertaking which financed it, Germanwings, in graphically highlighted form. There is also an advertisement for Germanwings printed in the bottom right-hand corner of the page, which is again identified by the word 'advertisement' and separated from the editorial feature by a dividing line. The advertisement features a competition in which participants can win two flights to Leipzig, among other prizes, if they give the correct answer to a question relating to the frequency of flights between Stuttgart and Leipzig.

24 Stuttgarter Wochenblatt considers that the two publications infringe Paragraph 10 of the *Land* Press Law as they are not clearly identified as being advertisements. They submit that, since they were sponsored, they are publications for remuneration within the meaning of that provision.

25 In the action at first instance brought before it by Stuttgarter Wochenblatt, the Landgericht Stuttgart (Regional Court, Stuttgart) upheld the action and ordered RLvS not to publish or cause to be published for remuneration in the *GOOD NEWS* advertiser any publication not identified by the term 'advertisement' ('Anzeige'), in the manner of the two articles in question in the June 2009 issue and the nature of which as advertisements is not generally apparent from their arrangement and layout. RLvS appealed against that judgment before the Oberlandesgericht Stuttgart (Higher Regional Court, Stuttgart), but was unsuccessful.

26 In its appeal on a point of law ('Revision') before the Bundesgerichtshof (Federal Court of Justice) (Germany), RLvS maintains its form of order seeking dismissal of Stuttgarter Wochenblatt's application, arguing that Paragraph 10 of the *Land* Press Law infringes European Union law and is therefore not applicable.

27 The Bundesgerichtshof is uncertain as to whether the full and complete application of Paragraph 10 of the *Land* Press Law, in the context of Paragraph 4(11) of the Federal Law on unfair competition, complies with EU law, in particular in the light of the complete harmonisation by Directive 2005/29 of the rules concerning unfair business-to-consumer commercial practices. Given that, in the main proceedings, both lower courts granted Stuttgarter Wochenblatt's application on the basis of Paragraphs 4(11) of the Federal Law on unfair competition and Paragraph 10 of the *Land* Press Law, the Bundesgerichtshof wishes to leave open the question whether the publications at issue may also infringe Paragraph 3(3) of the Federal Law on unfair competition, read in conjunction with point 11 of the annex relating to that paragraph, and Paragraph 4(3) of that law, provisions which correspond in essence to Article 5(5) of Directive 2005/29, read in conjunction with point 11 of Annex I thereto, and Article 7(2) of that directive.

28 The Bundesgerichtshof states that Paragraph 10 of the *Land* Press Law, the provisions of which are reproduced in virtually identical form in almost all the press and media laws of the German *Länder*, regulates the behaviour of market participants for the purposes of Paragraph 4(11) of the Federal Law on unfair competition. Paragraph 10 pursues two objectives. On the one hand, it seeks to prevent newspaper readers from being misled as a result of the fact that consumers are often less critically disposed towards advertising which is disguised as editorial content than towards commercial advertising which is recognisable as such. On the other hand, the requirement that advertising be separated from editorial content is intended to maintain the objectivity and neutrality of the press, by countering the risk of undue external influence being exerted on the press, including in non-business contexts. That separation requirement laid down in the press and media legislation performs an essential function in safeguarding the objectivity and neutrality of the press and the broadcasting media, something which could not be achieved by a prohibition on editorial advertising laid down in unfair trading legislation alone.

29 In those circumstances the Bundesgerichtshof decided to stay the proceedings before it and to refer the following questions to the Court for a preliminary ruling:

'Do Article 7(2) and point 11 of Annex I, in conjunction with Articles 4 and 3(5), of [Directive 2005/29] preclude the application of a national provision (in this case, Paragraph 10 of [the *Land* Press Law] which is intended not only to protect consumers against misleading practices but also to protect the independence of the press and which, in contrast to Article 7(2) and point 11 of Annex I to the Directive, prohibits any publication for remuneration, irrespective of the purpose thereby pursued, if that publication is not identified by the use of the term 'advertisement', unless it is already evident from the arrangement and layout of the publication that it is an advertisement?'

The question referred for a preliminary ruling

30 By its question, the referring court asks, in essence, whether, in circumstances such as those of the main proceedings, Directive 2005/29 must be interpreted as precluding the application of a national provision under which those publishers are required to include a specific identification, in this case by the use the term 'advertisement' ('Anzeige'), 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.

31 It should be noted, as a preliminary point, that the referring court's questions do not concern the application of national measures for implementing Directive 2005/29, as contained inter alia in Paragraph 3 of the Federal Law on unfair competition and the annex thereto, but rather the application of a provision which is, in essence, analogous in the various German Länder, regulating press activities, in this case Paragraph 10 of the *Land* Press Law. The information from the referring court indicates that Paragraph 10 is a statutory provision intended to regulate market behaviour in the interest of market participants for the purposes of Paragraph 4(11) of the Federal Law on unfair competition. That law protects the interests of both consumers and competitors of undertakings engaging in unfair commercial practices and those of 'other market participants', and any competitor may make an application for compliance with that provision pursuant to Paragraph 8(3) of that law.

32 The dispute in the main proceedings does not concern the two advertising inserts which were identified by the term 'advertising' ('Anzeige'). Rather, the dispute relates only to RLvS's failure to include the term 'advertising' in the two articles in the GOOD NEWS advertiser about a football match and the city of Leipzig respectively, which omission is a violation of Paragraph 10 of the *Land* Press Law. Therefore, the question referred for a preliminary ruling concerns only the issue whether, in such circumstances, Directive 2005/29 precludes, in respect of those two articles, the application of such a requirement under national law on the newspaper publisher.

33 On that point, it is true that since Directive 2005/29 effects a complete harmonisation of the rules on unfair business-to-consumer commercial practices, two points must be noted: (i) only the 31 commercial practices listed in Annex I to that directive are to be deemed unfair 'in all circumstances' on the territory of the Member States; and (ii) the possibility the Member States have for maintaining or establishing in their territory measures which have as their aim or effect the classification of commercial practices as unfair on grounds relating to maintenance of the pluralism of the press does not appear amongst the derogations from the scope of the directive as set out in recitals 6 and 9 and in Article 3 thereof (see, to that effect, Case C-540/08 *Mediaprint Zeitungs- und Zeitschriftenverlag* [2010] ECR I-10909, paragraphs 26, 27 and 34).

34 However, such considerations are relevant in circumstances such as those of the main proceedings only if the practices in question, namely the publication of editorial content by a newspaper publisher, do in fact come within the scope of Directive 2005/29.

35 In that connection, even when a national provision does pursue consumer protection objectives, on which it is for the referring court to make a finding, in order to ascertain whether such a provision comes within the scope of Directive 2005/29 it is also necessary that the conduct covered by that national provision is a commercial practice within the meaning of Article 2(d) of that directive (see, to that effect, Case C-304/08 *Plus Warenhandelsgesellschaft* [2010] ECR I-217, paragraph 35; *Mediaprint Zeitungs- und Zeitschriftenverlag*, paragraph 16; and order in Case C-288/10 *Wamo* [2011] ECR I-5835, paragraphs 28 and 29).

36 This is so where the practices in question form part of an operator's commercial strategy and are directly connected with the promotion and sale of its products or services, in which case they do indeed constitute commercial practices within the meaning of Article 2(d) of Directive 2005/29 and, consequently, fall within its scope (see Joined Cases C-261/07 and C-299/07 *VTB-VAB and Galatea* [2009] ECR I-2949, paragraph 50, and *Plus Warenhandelsgesellschaft*, paragraph 37).

37 Although Directive 2005/29 gives a particularly broad definition of 'commercial practices' (see *Mediaprint Zeitungs- und Zeitschriftenverlag*, paragraph 17, and order in *Wamo*, paragraph 30), the fact remains that the practices covered by it must be commercial in nature, that is to say, they must originate from traders, and they must be directly connected with the promotion, sale or supply of their products to consumers.

38 It is true that, given the definition of 'trader' in Article 2(b) of Directive 2005/29, that directive may apply in a situation where an operator's commercial practices are put to use by another undertaking, acting in the name or on behalf of that operator, with the result that the provisions of that directive could, in certain situations, be relied on as against both that operator and the undertaking, if they satisfy the definition of 'trader'.

39 In circumstances such as those at issue in the main proceedings, however, it is common ground that the publications in question, namely two articles with informative and descriptive editorial content, are not such as to promote the newspaper publisher's product, in this case a free newspaper, but rather the products and services of undertakings which are not parties to the main proceedings.

40 Even though such publications are thus liable to be classified as commercial practices, there are two considerations which must be borne in mind. Firstly, even if a direct connection could be established with respect to such a piece of commercial communication, that connection would be with the products and services of those undertakings, in this case, in the main proceedings, Scharr and Germanwings. Secondly, it is common ground that RLvS did not act in the name of or on behalf of those undertakings within the meaning of Article 2(b) of Directive 2005/29. In such a scenario, and given its *ratione personae* scope, Directive 2005/29 is indeed intended to protect consumers of products and services of those same undertakings and their legitimate competitors.

41 However, since the fact that the newspaper publisher proceeds with such publications which are liable to promote – possibly indirectly – the products and services of a third party is not liable to alter significantly the economic behaviour of the consumer in his decision to purchase or take possession of the (free) newspaper in question (on this aspect see *Mediaprint Zeitungs- und Zeitschriftenverlag*, paragraphs 44 and 45), such a publishing practice is not in itself liable to be classified as a 'commercial practice' within the meaning of Article 2(d) of Directive 2005/29.

42 In such circumstances, that directive is not intended to protect a competitor of the newspaper publisher in question on the ground that the latter proceeded with publications which are liable to promote the products or services of advertisers sponsoring those publications, without the identification as 'advertising', contrary to the requirement laid down in Paragraph 10 of the *Land* Press Law.

43 That delimitation on the scope of Directive 2005/29 is corroborated, first, by point 11 of Annex I to that directive. Under point 11 and without prejudice to Directive 89/552, unfair commercial practice covers in all circumstances the use of editorial content in the media to promote a product where a trader has paid for the editorial content, without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial).

44 Although the possibility cannot be ruled out that a newspaper publisher may itself employ, in its products or in other media, a commercial practice which may be classified as unfair in relation to the consumer concerned, in this case the reader, for example, by offering the chance of winning a prize in games, puzzles or competitions, thereby encouraging the consumer to purchase the product concerned, namely a newspaper (see, in that regard, in the context of Article 30 EC, now Article 36 TFEU, Case C-368/95 *Familiapress* [1997] ECR I-3689, paragraph 28), it must be remembered that point 11 of Annex I to Directive 2005/29 is not intended as such to require newspaper publishers to prevent possible unfair commercial practices by advertisers for which a direct connection could thereby be potentially established with the promotion, sale or supply to consumers of the products or services of those advertisers.

45 Secondly, if it were accepted that Directive 2005/29 is intended to be relied on by an undertaking operating in the media sector as against one of its competitors publishing editorial content which has been sponsored by undertaking wishing or hoping thereby to promote their products, whilst failing to indicate clearly that they have financed those publications, such an application of that directive would be in audiovisual conflict with the obligations imposed on suppliers of audiovisual media services by Directive 2010/13, Article 10(1)(c) of which covers precisely sponsorship of audiovisual programmes.

46 It is, moreover, clear from recital 82 in the preamble to the latter directive, in particular the German ('Abgesehen von den Praktiken, die unter die vorliegende Richtlinie fallen'), English ('Apart from the practices that are covered by this Directive'), French ('Outre les pratiques couvertes par la présente directive'), Italian ('In aggiunta alle pratiche oggetto della presente direttiva') and Romanian ('Pe lângă practicile aflate sub incidența prezentei directive') versions thereof, that Directive 2010/13 covers different practices than those covered by Directive 2005/29. Such an interpretation would also be contrary to Article 3f of Directive 89/552, as amended by Directive 2007/65.

47 Consequently, in a situation such as that at issue in the main proceedings, even if, according to the findings made by the referring court, which are disputed by the German Government, the application of Paragraph 10 of the *Land* Press Law to the disputed publications, in the context of Paragraph 4(11) of the Federal Law on unfair competition, pursues both the objective of guaranteeing the independence of the press and that of protecting consumers against misleading practices, that cannot have the effect of extending the application of Directive 2005/29 to practices or persons from whom those practices originate who do not come within its scope.

48 Lastly, in circumstances such as those at issue in the main proceedings, although Directive 2005/29, in particular point 11 of Annex I thereto, does require advertising undertakings to indicate clearly that they have financed editorial content in the media where that content is intended to promote a product or service originating from those traders, the obligation for newspaper publishers under Paragraph 10 of the *Land* Press Law in fact corresponds in essence to the obligations which the European Union legislature has imposed through Directives 89/552 and 2010/13 in the audiovisual field on media providers when their audiovisual services or programmes are sponsored by third-party undertakings.

49 Since the European Union legislature has not yet adopted this kind of secondary legislation for the written press, 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.

50 In the light of the foregoing, the answer to the question referred is that, in circumstances such as those of the main proceedings, Directive 2005/29 may not be relied on as against newspaper publishers, with the result that, in those circumstances, that directive must be interpreted as not precluding the application of a national provision under which those 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.

Costs

51 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:

In circumstances such as those of the main proceedings, 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 ('the Unfair Commercial Practices Directive') may not be relied on as against newspaper publishers, with the result that, in those circumstances, that directive must be interpreted as not precluding the application of a national provision under which those 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.

[Signatures]