



VAT NEWSLETTER

Distance Learning Protection Act: Federal Court of Justice throws the “coaching” industry into turmoil – with implications for VAT

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1 Background

It does not happen every day that a civil court ruling also arouses the interest of VAT law specialists. However, the Distance Learning Protection Act (DLPA), relevant to the Federal Court of Justice (FCJ) ruling of 12 June 2025 (III ZR 109/24), has implications for VAT in the digital context. In KMLZ VAT Newsletter 07 | 2025, we reported on the draft of an application letter by the Federal Ministry of Finance. In addition to confirming the VAT liability for many online educational offers (see also KMLZ VAT Newsletter 24 | 2024), the tax authorities intend to treat “courses and streaming services that are approved under the Distance Learning Protection Act [being] exempt from VAT as educational services.” In addition, according to Art. 2 para. 2 no. 4 of the State Treaty on Distance Learning, the State Central Office for Distance Learning (Zentralstelle für Fernunterricht / ZFU) is the competent state authority for issuing the certificate pursuant to sec. 4 no. 21 a) bb) of the German VAT Act, in the case of distance learning. The DLPA is therefore also very important for VAT purposes.

2 Facts of the case

The parties were in dispute over payment claims arising from an online coaching contract for a “9-month-business-mentoring-program on financial fitness.” The respondent referred to itself as an “academy” but did not have an approval under the DLPA. The plaintiff participated in the online coaching for seven weeks, which included instructional videos, homework, and biweekly online meetings that were recorded for later viewing. In-person events played a minor role. The plaintiff wanted to withdraw from the contract on the grounds that it was void due to the lack of approval under the DLPA and demanded a refund of the full course fee. The Higher Regional Court (HRC) of Stuttgart upheld the claim.



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3 Decision of the German Federal Court of Justice

The FCJ rejected the respondent's appeal. The contract was void pursuant to sec. 7 para. 1 of the DLPA due to a violation of the approval requirement. As a result, the provider was required to refund the full course fee (claim for restitution; sec. 812 para. 1 sent. 1 alt. 1 of the German Civil Code [BGB]). The FCJ interprets the element of "provision of knowledge and skills in return for payment" (as opposed to consulting) broadly. It is sufficient that the plaintiff is provided with knowledge for a business activity and that this knowledge should enable him to apply it. A "minimum quality" of the content is not required. The interpretation of "physical separation" is rather brief. After the HRC of Stuttgart assumed the existence of such separation in the case of online coaching, even if synchronous communication was possible as in a face-to-face event, the FCJ left this issue open: With reference to the legal opinion of the ZFU, namely that recorded synchronous teaching components should be treated as asynchronous tuition because they can be viewed at a later time and thus make synchronous participation unnecessary, the FCJ assumed a "physical separation." The FCJ did not comment on the question of whether the historical legislator intended that all forms of teaching that do not take place in physical presence should, without exception, fall under the DLPA (as held by the HRC of Stuttgart).

With regard to "learning success monitoring", the FCJ refers to its earlier case law (judgment of 15 October 2009 – III ZR 310/08). Such monitoring is already given if the participant has a contractual right to have their learning success monitored by means of follow-up questions on the material learned. In surprising clarity, the FCJ states that the DLPA, as consumer protection law, also applies if the participant is an entrepreneur within the meaning of sec. 14 of the BGB ("B2B"). The legislature sought to protect all potential participants from dubious distance learning offers. Finally, the BGH denied the provider's claim for compensation for the services rendered.

4 Consequences for the practice

The ruling's ramifications are far-reaching: in case of doubt, "provision of knowledge and skills" must be assumed, even if only one single seminar lecture is held. The same is true for "learning success monitoring" if the contract allows for follow-up questions on the material learned. The "B2B" applicability undermines the opposing view (see only HRC of Munich, judgment of 17 October 2024 – 29 U 310/21). Education providers can therefore no longer rely on the DLPA not applying to them in the case of commercial participants. Furthermore, demonstration by the provider that the participant had indeed saved expenses will be quite challenging. In the case of "physical separation," however, the following continues to apply: The requirement for approval can be avoided if purely synchronous components are increased and asynchronous components are reduced in order to achieve an exchange of information that is, at least, half equivalent to face-to-face contact. The FCJ did not confirm that online teaching always leads to "physical separation" (as held by the HRC of Stuttgart). Online educational providers, who have relied on the ZFU's legal opinion on the lack of an approval requirement, can breathe a sigh of relief for now, provided that they do not make any recordings available to participants.

Whoever wants to ensure that his course does not fall within the scope of the DLPA must modify it so that there is no or only minimal asynchronous content. It will now be interesting to see how politicians react to the decision. The modernization of the DLPA was announced in the new coalition agreement (see KMLZ VAT Newsletter 09 | 2025). The legislator can now examine whether a law, that is almost five decades old, still provides the right basis for shaping the modern digital education landscape. In any case, it does not seem appropriate that education providers must refrain from offering recordings in order to fall outside the scope of the DLPA. Nowadays, participants rightly expect such recordings as an ancillary service.