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Judgement of the European Court of Justice in Case C-530/20 | EUROAPTIEKA

Ban on advertising medicinal products compatible with Union law

The Latvian law banning the advertising of medicinal products on the basis of price, special sales or bundled sales of medicinal products and other products is compatible with EU law. Such advertising content promotes the irrational use of medicinal products and must be prohibited by Member States.

Directive 2001/83/EC harmonises the law on the advertising of medicinal products, by making it subject to conditions, restrictions and prohibitions in order to safeguard public health. SIA “EUROAPTIEKA” is a Latvian limited liability company operating a pharmaceutical business in Latvia. In 2016, the Latvian Health Inspectorate banned it from disseminating an advertisement for a special sale of medicinal products, on the basis of a national provision banning advertising of medicinal products on the basis of price, special sales or bundled sales of medicinal products and other products.

The case

In 2020, “EUROAPTIEKA” brought an action for annulment before the Latvian Constitutional Court challenging the legality of that national provision in the light of Directive 2001/83. That

court asks the Court of Justice about the interpretation to be given to the concept of “advertising of medicinal products”, within the meaning of that directive, and, in particular, whether that concept also covers the advertising of unspecified medicinal products, that is to say advertising of medicinal products in general or a set of non-identified medicinal products. It also asks the Court of Justice whether the prohibition, laid down by the national provision in question, on advertising on the basis of price, special offers or bundled sales of medicinal products and other products is compatible with that directive.

ECJ: Sale or consumption of unspecified medicinal products

By its judgement, the Court of Justice, sitting as the Grand Chamber, finds, first of all, that the concept of “advertising of



medicinal products” covers any form of door-to-door information, canvassing activity or inducement designed to promote the prescription, supply, sale or consumption of unspecified medicinal products. That concept is very broadly defined, in Directive 2001/83, as including “any form” of door-to-door information, canvassing activity or inducement, including, in particular, “the advertising of medicinal products to the general public”. Furthermore, if the advertising of unspecified medicinal products were excluded from the scope of application of Directive 2001/83, the prohibitions, conditions and restrictions that it lays down in respect of advertising owing to the risks that result from excessive or ill-considered use of medicinal products would be largely deprived of their effectiveness and the essential aim of safeguarding public health pursued by that directive would be greatly compromised. In this case, the Court considers that the dissemination of information that encourages the purchase of medicines by justifying the need for such a purchase on the basis of the price, by announcing a special sale, or by offering a sale that is bundled together with the sale of other medicinal products or other products, such as that prohibited by the national provision challenged before the referring court, has a promotional purpose. According to the Court of Justice, that dissemination of information consequently falls within the concept of “advertising of medicinal products”, even where that information does not refer to a specific medicinal product, but to unspecified medicinal products. As regards, next, the compatibility of that national provision with Directive 2001/83, the Court of Justice observes that the advertising of medicaments that are neither subject to medical prescription nor reimbursed, which are more specifically concerned by that national provision, is in principle permitted by that directive. Member States are nevertheless obliged to prohibit the inclusion, in advertising to the

public of medicinal products which are neither subject to medical prescription nor reimbursed, of material which is of such a nature as to promote the irrational use of such medicinal products.

Advertisement treats medicinal products in the same way as other consumer goods

The Court emphasises, in that regard, that the advertising of medicinal products that are neither subject to medical prescription nor reimbursed may exercise a particularly strong influence on the evaluation and choice made by final consumers, both as regards the quality of the medicinal product and the amount to purchase. In addition, advertising on the basis of price and advertising of special sales or for bundled sales of medicinal products and other products is likely to lead final consumers to purchase and consume those medicinal products on the basis of an economic criterion without carrying out an objective evaluation based on the therapeutic properties of those products and on specific medical needs. Such advertising content furthermore treats medicinal products in the same way as other consumer goods, which are in general the subject of discount and price reductions.

According to the Court, advertising on the basis of price and advertising of special sales or bundled sales of medicinal products and other products encourages the irrational and excessive use of medicinal products that are neither subject to medical prescription nor reimbursed. Consequently, the national provision at issue before the referring court, which bans the dissemination of those types of advertising content is compatible with Directive 2001/83.

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.

Source: ECJ press release