



New ruling from CJEU clarifies scope of advertising of medicinal products



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The Court of Justice of the European Union (“CJEU”) has in a ruling of 22nd of December 2022 found that a Latvian ban on advertising of medicinal products based on prices, special sales, such as special clearance sales, or bundled sales is compatible with EU Law. In its ruling the CJEU furthermore urges Member States to establish such bans in their national regulation.

The case regards a Latvian company operating a pharmaceutical business in Latvia. In 2016 the Latvian Health Inspectorate banned the company from disseminating an advertisement for a special sale on medicinal products. The ban was established on the basis of a national provision banning advertising of medicinal products on the basis of price, special sales or bundled sales. The Latvian restriction did not have a direct antecedent in EU-regulation and essentially restricted similar Latvian companies from freely advertising their medicinal products. Therefore, the Latvian company challenged the national prohibition’s legality in the light of Directive 2001/83 on medicinal products for human use.

The CJEU found that the concept of “*advertising of medicinal products*” in the Directive covers any form of “*door-to-door information, canvassing activity or inducement designed to promote the prescription, supply, sale or consumption*” of medicinal products. The ruling also emphasizes that this definition also covers where the given information does not refer to a specific medicinal product. The ruling therefore confirms a very broad definition of “advertising”, which not only includes specific but also unspecified medicinal products.

In Denmark advertising of medicinal products is regulated in The Danish Medicines Act (“the Act”). The Act strictly regulates how a non-prescription medicinal product can be advertised. It is already stipulated in the Act that medicinal products may not be advertised in such a way that it entices additional consumption for consumers. However, as the CJEU in its ruling explicitly emphasized that Member States are obliged to insert such a ban, it is likely that a clarification of the current regulation is needed.

As a result of the ruling the Member States have now received further clarification regarding pharmaceutical advertising. However, the interpretation of the judgement also paves way for questions regarding when an activity can be defined as either a promotional or non-promotional activity. This combined with the judgement’s broadening of the definition of the term “advertising”, could create difficulties for Medicinal companies when contemplating advertising possibilities.

Want to know more?

If you want to know more about the Danish regulation on medicinal advertisement, do not hesitate to contact us on Ulrik.bangsbo@dk.dlapiper.com or Bergthor.Bergsson@dk.dlapiper.com

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