



Pharmacy advertising and protection of public health

Judgment of the Court of Justice of the European Union (CJEU) of 19 June 2025, Commission v Poland, C-200/24

Background

This landmark CJEU judgment concludes that the general and absolute ban on the advertising of pharmacies and their activities, as established in Article 94a of Poland's Pharmaceutical Law, infringes EU law.

The case originated from proceedings brought by the European Commission, arguing that the Polish law breached Article 8 of Directive 2000/31/EC on electronic commerce and Articles 49 and 56 of the Treaty on the Functioning of the European Union (TFEU), which guarantee freedom of establishment and the free provision of services.

Advertising of regulated professions

In EU law, the ability of regulated professionals (such as pharmacists or lawyers) to promote their services has long been debated.

On the one hand, the CJEU has held that Article 8 of Directive 2000/31/EC aims to ensure that "all" members of a regulated profession may use information society services to promote their professional activities. At the same time, it has acknowledged that these commercial communications may be subject to compliance with applicable professional rules (e.g. professional secrecy or loyalty towards clients and colleagues).

However, according to the CJEU, the effectiveness of Article 8 would be undermined if professional rules could impose a blanket ban on all online

advertising by regulated professionals. The Court has stated that, while such professional rules can define the content and format of commercial communications referred to in Article 8(1) of that Directive, they cannot impose a general and absolute prohibition of such communications.

In light of this case law, Poland argued that its legislation did not impose a general and absolute prohibition on the promotion of the professional services of pharmacists because it did not affect "all" of them, but only those working in a pharmacy. Pharmacists working in universities, hospitals or pharmaceutical companies, were able to promote their services.

However, the CJEU rejects this argument, noting that around 70% of pharmacists in Poland work in pharmacies or retail outlets; that the Polish law banned pharmacies from advertising online sales; and that only basic information, such as location and opening hours, was allowed to be advertised. Given these facts, the Court ruled that the Polish legislation was incompatible with EU law.

Advertising and protection of public interests

With regard to the possible impact on the principles of freedom of establishment (Article 49 TFEU) and freedom to provide services (Article 56 TFEU), Poland acknowledged that its legislation could constitute a restriction, but argued that this was justified by an overriding reason of public interest - namely, the aim of reducing overconsumption of



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medicinal products and preserving the professional independence of pharmacists.

The CJEU recalled that, under settled case law, any restriction on freedom of establishment or services must be justified by an overriding reason of public interest and must be proportionate.

After reviewing Poland's arguments, the Court found these conditions were not met.

Regarding the aim of curbing overconsumption of medicinal products, the CJEU considers that Poland failed to demonstrate how allowing pharmacies to advertise would lead to overuse of medication. The CJEU also notes that Poland had not demonstrated that its law had succeeded in reducing the consumption of medicinal products. Furthermore, it considers that advertising might simply shift market share between pharmacies, without increasing overall use.

In addition, the Court emphasises that non-prescription medicinal products in Poland are also sold outside pharmacies - in shops, supermarkets, newsstands or service stations - without any equivalent advertising ban. Therefore, the CJEU concludes that prohibiting advertising by pharmacies is not an effective measure to curb overconsumption of medicinal products. On the contrary, advertising could benefit consumers by allowing them to compare prices or discover additional services offered by different pharmacies.

Regarding pharmacists' professional independence, Poland claimed the ban protected pharmacists from commercial pressure by pharmacy owners to increase sales. The Court dismisses this argument, finding that such protection could be achieved through less restrictive means - such as regulating the content of advertisements.

Conclusion

This CJEU judgment reaffirms that the protection of public health - through the promotion of the rational use of medicinal products - and the preservation of professional independence cannot be invoked in a general manner to justify disproportionate restrictions on the freedoms guaranteed by EU law.

Member States must have objective, evidence-based and sufficiently substantial reasons to justify any restriction of the freedom of establishment or to provide services. Therefore, before introducing absolute prohibitions that may compromise these freedoms - as is the case with the general ban on pharmacy advertising - a rigorous analysis must be carried out to determine whether the proposed measure effectively and proportionately contributes to the protection of public health.

Possible impact in Spain

This judgment may have an impact on regional pharmaceutical regulations in Spain, as some Autonomous Regions have similar bans on pharmacy advertising.

In light of this recent CJEU judgment, it is worth noting the Spanish Constitutional Court's Order 13/2018 of 7 February, which addressed the constitutionality of Article 30 of the former pharmacy law in Madrid. That provision prohibited pharmacy advertising. The issue raised was the right of healthcare professionals to promote their services, as recognised in Article 44 of Law 44/2003 on the regulation of healthcare professions.

Although the Spanish court found no conflict between the two laws at the time, the CJEU has now identified a clear conflict between professionals' rights to advertise their services (as guaranteed by Article 8 of Directive 2000/31/EC) and the



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Polish ban on pharmacy advertising. This could pave the way for regulatory changes in regions like Galicia, Murcia, or the Canary Islands, where similar bans exist.

It will be important to monitor how Spain's Autonomous Regions respond to this development, especially given how broad the concept of "promotion" can be. For example, in another recent CJEU judgment (27 February 2025, DocMorris, C-517/23), the CJEU ruled that a marketing campaign offering immediate rewards (like discounts or vouchers) for presenting prescriptions at an online pharmacy did not constitute medicinal product advertising. Instead, it was deemed pharmacy advertising, as its purpose was to influence consumers' choice of pharmacy.

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