



Press and Information

Court of Justice of the European Union

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Judgment in Case C-339/15

Luc Vanderborght

A general and absolute prohibition of any advertising for the provision of oral and dental care services is incompatible with EU law

The objectives of the protection of public health and of the dignity of the profession of dentistry may, nevertheless, justify supervision of the form and manner of the communication tools used by dentists

Mr Vanderborght, a dentist established in Belgium, advertised his dental care services. Between 2003 and 2004, he installed a sign consisting of three printed faces, stating his name, his designation as a dentist, the address of his website and the telephone number of his practice. In addition, he created a website in order to inform patients of the various types of treatment which he provides at his practice. Finally, he also placed some advertisements in local newspapers.

Following a complaint from the Verbond der Vlaamse tandartsen, a dentists' professional association, criminal proceedings were brought against Mr Vanderborght. Belgian law prohibits in absolute terms any advertising relating the provision of oral and dental care services and establishes requirements of discretion with regard to signs of dental practices intended for the public.

In his defence, Mr Vanderborght maintains that the Belgian rules in question are contrary to EU law, in particular, the Directive on electronic commerce and the freedom to provide services laid down in the TFEU.¹ The court hearing the matter, the *Nederlandstalige rechtbank van eerste aanleg te Brussel, strafzaken* (Dutch-language Court of First Instance, Criminal Section, Brussels) decided to refer the matter to the Court of Justice.

In its judgment delivered today, the Court finds that **the Directive on electronic commerce precludes legislation** which, like the Belgian legislation, prohibits any form of electronic commercial communication aimed at promoting oral and dental care, including by means of a website created by a dentist.

The Court considers that, although the content and form of the commercial communications may legitimately be subject to professional rules, such rules cannot include a general and absolute prohibition of any type of online advertising aimed at promoting the activity of a dentist.

In addition, the freedom to provide services precludes national legislation which imposes a general and absolute prohibition of any advertising relating to the provision of oral and dental care services.

In that regard, the Court considers that a prohibition of advertising for a certain activity is liable to restrict the possibility, for the persons carrying on that activity, of making themselves known to their potential clientele and of promoting the services which they propose to offer to that clientele. Such a prohibition therefore constitutes a restriction on the freedom to provide services.

¹ Article 56 TFEU; Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000, L 178, p. 1).

The Court accepts that the objectives of the legislation in question, that is to say, the protection and dignity of the profession of dentistry, are overriding reasons in the public interest capable of justifying a restriction on the freedom to provide services. The extensive use of advertising or the selection of aggressive promotional messages, even such as to mislead patients as to the care being offered, by damaging the image of the profession of dentistry, by distorting the relationship between dentists and their patients, and by promoting the provision of inappropriate and unnecessary care, may undermine the protection of health and compromise the dignity of the profession of dentistry.

In those circumstances, the Court considers that imposing a general and absolute prohibition of any advertising exceeds what is necessary to attain the objectives pursued. Those objectives may be attained through the use of less restrictive measures supervising, closely if necessary, the form and manner which the communication tools used by dentists may legitimately have.

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.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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