

THE BAN ON VETERINARY SURGEONS' ADVERTISING IN POLAND AND EUROPEAN UNION LAW: AN ANALYSIS OF THE COMPLIANCE OF NATIONAL REGULATIONS WITH EU LAW

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ABSTRACT

The purpose of this article is to analyse the compliance of Polish regulations prohibiting veterinary surgeons from advertising with EU law, particularly Directive 2006/123/EC on services in the internal market and Directive 2000/31/EC on certain aspects of electronic commerce. Particular attention is given to the impact of this compliance (or lack thereof) on disciplinary proceedings against members of the profession. The analysis indicates that Polish regulations, including Article 29 of the Act on Veterinary Facilities and Resolution No. 116/2008/IV of the National Veterinary Council, violate the EU principle of the free movement of services, specifically the right of veterinary surgeons to use commercial communications. This non-compliance necessitates the application of the principle of the primacy of EU law, meaning that disciplinary courts should consider EU regulations as 'more lenient laws' within the meaning of Article 4 § 1 of the Penal Code. The findings highlight the need to align Polish regulations with EU standards, ensuring that veterinary surgeons can use permissible forms of promotion in a manner consistent with professional ethics and the protection of the public interest.

Keywords: veterinary surgeons' advertising, commercial communication, regulated professions, European Union law, disciplinary proceedings

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INTRODUCTION

The advertising by veterinary surgeons is regulated under Article 29 of the Act of 18 December 2003 on Animal Healthcare Facilities¹ (hereinafter referred to as ‘the AHA Act’) and Resolution No. 116/2008/IV of the National Veterinary Council of 12 December 2008 on detailed rules for the public dissemination of information concerning the scope and types of veterinary services provided, opening hours, and the address of an animal healthcare facility² (hereinafter referred to as ‘the Resolution No. 116/2008/IV’). These provisions prohibit advertising, while allowing the publication of information concerning the services offered, opening hours, and the facility’s address, provided that such information does not have the characteristics of advertising. At the same time, the National Veterinary Council has been authorised to establish detailed rules for the dissemination of such information. Previous research has identified discrepancies between the Polish prohibition on veterinary surgeons’ advertising (Article 29 AHA Act and Resolution No. 116/2008/IV) and EU legal regulations, in particular Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 2006, p. 36) and 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 (e-Commerce Directive) (OJ L 178, 2000, p. 1, as amended) (hereinafter referred to as ‘the Directive 2006/123/EC’ and ‘the Directive 2000/31/EC’, respectively).³

Under the European Union legal framework, the profession of veterinary surgeon, as a regulated profession, should have the right to use commercial communications. The concept of commercial communication, as defined in EU directives, is broad and encompasses both indirect promotion, such as public relations advertising, and direct promotion, such as personal selling.⁴ By imposing a ban on advertising in this

¹ Consolidated text: Journal of Laws of 2019, item 24.

² Resolution No. 116/2008/IV of the National Veterinary Council of 12 December 2008 on the detailed rules for the public dissemination of information on the scope and types of veterinary services provided, opening hours, and the address of an animal healthcare facility; https://vetpol.org.pl/wp-content/images/uchwaly/uchwaly_IV_kadencja/Uchwa%C5%82a_Nr_116_w_spr_szczeg%C3%B3lnych_zasad_podawania_do_publicznej_wiadomo%C5%9Bci_inf.o_zakresie_i_rodzajach%C5%9Bwiadczonej_us%C5%82ug_weter_godz_otwarcia_i_adresie_ZLZ.pdf (accessed: 29 January 2025).

³ P.F. Piesiewicz, ‘Prohibition of Advertising by Veterinary Surgeons in Light of EU Legal Regulations’, *Studia Iuridica*, 2025, Vol. 106.

⁴ CJEU judgment of 5 April 2011, *Société Fiduciaire Nationale d’Expertise Comptable v Ministre du Budget, des Comptes Publics et de la Fonction Publique*, Case C-119/09, EU:C:2011:208; CJEU judgment of 4 May 2017, *Criminal proceedings against Luc Vanderborght*, Case C-339/15, EU:C:2017:335; P.F. Piesiewicz, *Prawne i etyczne aspekty reklamy adwokackiej*, Warszawa, 2021, pp. 251–255; European Commission, Green Paper on Online Gambling in the Internal Market, COM(2011) 128 final, p. 3; [http://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com\(2011\)0128/com_com\(2011\)0128_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com(2011)0128/com_com(2011)0128_en.pdf) (accessed: 14 November 2024); Commercial Communications in the Internal Market. Green Paper from the Commission, COM(96) 192 final, 8 April 1996; https://europa.eu/documents/comm/green_papers/pdf/com96_192_1_en.pdf (accessed: 14 November 2024); Press release; https://europa.eu/rapid/press-release_IP-96-396_en.html (accessed: 14 November 2024), where it is indicated that the concept of ‘commercial communications’

profession, the current Polish regulations are incompatible with EU requirements, which mandate the removal of all total prohibitions on commercial communications and ensure their compliance with the professional rules governing the regulated profession, including professional ethics. This indicates the need to align Polish law with European standards, ensuring that the regulations both comply with contemporary EU requirements and respect the unique nature and ethical principles of professions of public trust. The research problem addressed in this analysis concerns the extent to which Polish regulations prohibiting veterinary surgeons from advertising comply with EU law, in particular Directive 2006/123/EC and Directive 2000/31/EC. The aim of the study is to assess the degree of this compliance and to analyse its impact on the application of Polish and EU law in disciplinary proceedings. The issue of how the lack of compliance between EU and national law affects disciplinary proceedings concerning regulated professions has not been extensively discussed in the literature to date.⁵ This research problem

includes 'advertising, direct marketing, sponsorship, sales promotion and public relations'; D. Lubasz, 'Informacja handlowa', in: Lubasz D., *Handel elektroniczny. Bariery prawne*, Warszawa, 2013; D. Lubasz, W. Chomiczewski, 'Komentarz do art. 2 ustawy o świadczeniu usług drogą elektroniczną', in: Lubasz D., Namysłowska M. (eds), *Świadczenie usług drogą elektroniczną oraz dostęp warunkowy. Komentarz do ustaw*, Warszawa, 2011; X. Konarski, *Komentarz do ustawy o świadczeniu usług drogą elektroniczną*, Warszawa, 2004, pp. 54–55; M. Świerczyński, 'Komentarz do art. 2', in: *Ustawa o świadczeniu usług drogą elektroniczną. Komentarz*, LEX, 2009; P. Litwiński, 'Zasady postępowania się informacją handlową', in: Podrecki P. (ed.), *Prawo Internetu*, 2nd ed., Warszawa, 2007; A. Frań-Adamek, 'Komentarz do art. 2', in: Frań-Adamek A., *Świadczenie usług drogą elektroniczną. Komentarz*, LEX, 2012.

⁵ J. Nowak-Kubiak, *Ustawa o działalności leczniczej. Komentarz do art. 14*, Warszawa, 2012, Legalis; F. Grzegorzczak, in: Dulińska M., Głab T., Potoczny M., Rytlewski T., Walasek-Walczak U., Grzegorzczak F. (eds), *Ustawa o działalności leczniczej. Komentarz*, Warszawa, 2013, Article 14; <https://sip.lex.pl/#/commentary/587537960/335400/grzegorzczak-filip-red-ustawa-o-dzialalnosc-leczniczej-komentarz?pit=2023-04-06&cm=URELATIONS> (accessed: 20 November 2024); T. Rek, in: Dercz M., Rek T., *Ustawa o działalności leczniczej. Komentarz*, 3rd ed., Warszawa, 2019, Article 14; <https://sip.lex.pl/#/commentary/587319041/586293/dercz-maciej-rek-tomasz-ustawa-o-dzialalnosc-leczniczej-komentarz-wyd-iii?pit=2023-04-06&cm=URELATIONS> (accessed: 20 November 2024); M. Paszkowska, 'Prawne ograniczenia reklamy świadczeniodawców rynku usług medycznych', *prawo.pl*, 26 June 2016; <https://sip.lex.pl/#/publication/469861290> (accessed: 20 November 2024); M. Barańska, 'Kontrowersje wokół wizerunku lekarza w reklamie – podejście normatywne', *Marketing i Rynek*, 2019, No. 4, pp. 42–43; S. Ostrowska, 'Kształtowanie wizerunku podmiotu działalności leczniczej', *Studia Ekonomiczne*, 2014, Vol. 185, pp. 142–150; I. Ozimek, J. Szlachciuk, A. Bobola, 'Reklama wybranych dóbr i usług w świetle regulacji prawnych i kodeksu etyki reklamy', *Studia Ekonomiczne*, 2017, Vol. 330, pp. 162–172; P. Piesiewicz, 'Zmiany w zakresie regulacji podawania do publicznej wiadomości informacji o zakresie i rodzajach udzielanych świadczeń zdrowotnych', in: Gardocka T., Maksymiuk T., Skrzypczak J. (eds), *Zdrowie: problem medyczny, prawny, polityczny*, Warszawa–Poznań, 2012, pp. 297–305; E. Zielińska, 'Ogłaszanie i reklamowanie się lekarzy', *Prawo i Medycyna*, 2000, No. 6–7, pp. 105–123; C.P. Kłak, 'Reklama w ustawie o działalności leczniczej', *Prawo i Medycyna*, 2017, Vol. 19, No. 3, pp. 8–22; C.P. Kłak, 'Informacja o zakresie i rodzajach udzielanych świadczeń zdrowotnych a reklama w świetle ustawy o działalności leczniczej', in: Namysłowska-Gabrysiaak B., Syroka-Marczewska K., Walczak-Żochowska A. (eds), *Prawo wobec problemów społecznych. Księga Jubileuszowa Profesora Eleonory Zielińskiej*, Warszawa, 2016; M. El-Hagin, 'Dyrektywa 2005/29/WE o nieuczciwych praktykach handlowych w świetle najnowszego orzecznictwa Trybunału Sprawiedliwości Unii Europejskiej – część I', *Studia Prawnicze*, 2021, Vol. 223, No. 1, pp. 123–169; P.F. Piesiewicz, 'Problematyka zakazu reklamowania się podmiotów leczniczych oraz lekarzy w świetle Kodeksu Etyki Lekarskiej, prawa krajowego oraz prawa unijnego', *Zeszyty Naukowe Uniwersytetu Jagiellońskiego*.

has led to the hypothesis that, in cases of conflict between national regulations and EU law, disciplinary courts should apply the provisions of Directive 2000/31/EC and Directive 2006/123/EC. Furthermore, if such a conflict is established, these directives should be regarded in disciplinary proceedings against veterinary surgeons as more lenient laws (*lex mitior*) within the meaning of Article 4 § 1 of the Polish Penal Code, meaning that they may directly influence the outcome of such proceedings. Given this research hypothesis, it was necessary to address a range of key questions. First and foremost, a key questions concerns how the removal of all total prohibitions on the use of commercial communications by veterinary surgeons should be interpreted in light of EU law. Another significant question is whether national regulations, such as Article 29 of the AHA Act and Resolution No. 116/2008/IV, are incompatible with Article 8 of Directive 2000/31/EC and Article 24 of Directive 2006/123/EC, and, if so, to what extent. Additionally, it is essential to analyse whether, in cases where EU law mandates the removal of such prohibitions, EU law takes precedence over national law.

THE REMOVAL OF ALL TOTAL PROHIBITIONS ON THE USE OF COMMERCIAL COMMUNICATIONS BY VETERINARY SURGEONS

Article 8 of Directive 2000/31/EC imposes an obligation on Member States to ensure that representatives of regulated professions, including veterinary surgeons, may use commercial communications. Similarly, Article 24(1) of Directive 2006/123/EC requires Member States to remove all total prohibitions on commercial communications by representatives of such professions. The essence of both provisions is similar – they aim to enable regulated professionals to use commercial communications, i.e. to promote goods, services, or their professional image, either directly or indirectly. However, the terms ‘use’ in Article 8 of Directive 2000/31/EC and ‘removal of all total prohibitions’ in Article 24(1) of Directive 2006/123/EC emphasise different aspects. The term ‘use’ refers to the right of regulated professionals to actively engage in commercial communication to promote their services. In contrast, ‘removal of all total prohibitions’ highlights the necessity of eliminating barriers that restrict access to such information, thereby granting professionals the right to use it freely. In practice, both provisions serve the same purpose: ensuring that representatives of regulated professions can use commercial communications within the framework of information society services. To comply with these obligations, Member States must repeal any national laws that impose a total prohibition on the use of commercial communications by such professionals, including veterinary surgeons. Instead, they must introduce legislation explicitly allowing such communications while imposing only proportionate and justified restrictions aligned with the specific nature of

Prace z Prawa Własności Intelektualnej, 2019, No. 3, pp. 122–144; P.F. Piesiewicz, *Prawne i etyczne aspekty reklamy adwokackiej*, Warszawa, 2021; P.F. Piesiewicz, W. Płowiec, ‘Reklama lekarzy po zmianach Kodeksu etyki lekarskiej z 2024 roku z perspektywy prawa Unii Europejskiej’, *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 2024, Vol. 86, No. 3, pp. 35–55; <https://doi.org/10.14746/rpeis.2024.86.3.03> (accessed: 20 November 2024).

the veterinary profession.⁶ According to the Court of Justice of the European Union (CJEU), both the objective of Article 24 of Directive 2006/123/EC and its broader legal context indicate that the EU legislator intended not only to remove all total prohibitions on commercial communications by regulated professions in any form but also to eliminate restrictions on specific forms of commercial communication, as defined in Article 4(12) of Directive 2006/123/EC, in particular advertising, direct marketing, and sponsorship.⁷ In light of recital 100 of Directive 2006/123/EC, total prohibitions that contravene Article 24(1) of the Directive include professional rules that impose a blanket restriction on the dissemination of information about a service provider or their activities through one or more communication channels.⁸ The CJEU has also interpreted Article 8 of Directive 2000/31/EC in a similar manner, ruling that this Directive precludes national provisions that impose a general and total prohibition on all advertising, to the extent that such rules prohibit any form of commercial communication conveyed electronically, including via websites.⁹ Restrictions on the use of commercial communications by regulated professionals may only concern the content of such communications (see recital 100 of Directive 2006/123/EC) and must be introduced in accordance with the principles of proportionality, justification, and non-discrimination, as outlined in Article 24(2) of Directive 2006/123/EC. Additionally, such restrictions should follow the procedures set out in Chapter 6a of the Act of 22 December 2015 on the Principles of Recognition of Professional Qualifications Acquired in the Member States of the European Union,¹⁰ titled 'Ensuring the Proportionality, Justification, and Non-Discriminatory Nature of Regulatory Provisions and Requirements for the Provision of Cross-Border Services'.¹¹

NON-COMPLIANCE OF ARTICLE 29 OF THE AHA ACT AND RESOLUTION NO. 116/2008/IV WITH ARTICLE 8 OF DIRECTIVE 2000/31/EC AND ARTICLE 24 OF DIRECTIVE 2006/123/EC

Under Article 29(1) of the AHA Act, 'An animal healthcare facility may publicly provide information regarding the scope and types of veterinary services offered, its opening hours, and its address. The form and content of such information must

⁶ The adoption of the provisions must comply with the procedure outlined in Chapter 6a of the Recognition of Qualifications Act, titled 'Ensuring the Proportionality, Justification, and Non-Discriminatory Nature of Regulatory Provisions and Requirements for the Provision of Cross-Border Services'.

⁷ *Société Fiduciaire*, Case C-119/09, op. cit.

⁸ *Ibidem*.

⁹ *Vanderborght*, Case C-339/15, op. cit.

¹⁰ Consolidated text: Journal of Laws of 2023, item 334.

¹¹ It is worth noting that Poland officially joined the European Union in 2004, at a time when Directive 2000/31/EC was already in force. Meanwhile, Directive 2006/123/EC was required to be transposed by 28 December 2009 (Article 44). This means that with regard to the national prohibition on the use of commercial communications (advertising) online, such restrictions have not been in force since Poland's accession to the EU, while in all other respects, they ceased to apply as of 28 December 2009.

not have the characteristics of advertising.’ In turn, Article 29(2) states that ‘The National Veterinary Council shall determine, by way of resolution, the detailed rules for the public dissemination of the information referred to in paragraph 1, taking into account the scope of veterinary services provided by animal healthcare facilities.’ The detailed rules governing the public dissemination of information, as mentioned in Article 29(1) of the AHA Act, are set out in Resolution No. 116/2008/IV. This resolution specifies the format and content of information regarding the scope and types of veterinary services provided, opening hours, and the facility’s address. It defines such information as ‘public information’ and precisely outlines what data may be included. At the same time, § 3 of the resolution stipulates that ‘Public information may not: (1) have the characteristics of advertising; (2) contain pricing information.’

An analysis of Article 29 of the AHA Act and Resolution No. 116/2008/IV suggests that certain forms of promotion are permissible. Firstly, this follows from the fact that the statutory authority granted to the National Veterinary Council pertains exclusively to the public dissemination of information on the scope and types of veterinary services provided, the opening hours, and the facility’s address. This means that only publicly disseminated information must not have the characteristics of promotional (advertising) content. Secondly, the wording of Article 29 of the AHA Act and Resolution No. 116/2008/IV indicates that these provisions do not impose a general ban on all promotional activities but only restrict those that are public and constitute advertising as defined in these regulations. Other forms of promotion, such as direct contact or informational activities not addressed to a broad audience, are not subject to these restrictions. Promotional communication in the form of solicitation (direct client acquisition) may therefore be considered compatible with Article 29 of the AHA Act and Resolution No. 116/2008/IV.

A key question remains: does the limited ability of veterinary surgeons to promote their services comply with Article 8 of Directive 2000/31/EC and Article 24 of Directive 2006/123/EC? The answer to this question is negative. This issue must be interpreted in light of recital 100 of Directive 2006/123/EC, which states:

‘It is necessary to put an end to total prohibitions on commercial communications by the regulated professions, not by removing bans on the content of a commercial communication, but rather by removing those bans which, in a general way and for a given profession, forbid one or more forms of commercial communication, such as a ban on all advertising in one or more given media. As regards the content and methods of commercial communications, it is necessary to encourage professionals to draw up, in accordance with Community law, codes of conduct at Community level.’

As a result, the provisions of the directives, interpreted in accordance with recital 100 of Directive 2006/123/EC, require the removal of all total prohibitions on the use of commercial communications by veterinary surgeons. This means that national regulations must not impose restrictions that prevent professionals from using specific forms of commercial communication, such as advertising in certain media. However, this recital does not prohibit restrictions on the content of commercial communications, particularly where such restrictions are justified by public interest protection (as set out in Article 8 of Directive 2000/31/EC and Article 24(2) of

Directive 2006/123/EC). For the same reasons, Article 7 of the Code of Ethics for Veterinary Surgeons,¹² which states that 'a veterinary surgeon does not use and does not allow their name and professional title to be used to advertise goods and services', is also incompatible with EU law insofar as it prohibits veterinary surgeons from using their name and professional title to promote their services. This provision effectively prevents direct client solicitation (acquisition). The CJEU has ruled, with reference to recital 100 of Directive 2006/123/EC, that Member States may not impose professional rules that prohibit the dissemination of information about a service provider or their activities through one or more communication channels. Total bans – such as a total exclusion of advertising in online media, print media, or television – are inconsistent with the principle of the free movement of services. The CJEU's position regarding prohibitions on commercial communication is clear: national provisions introducing total prohibitions on commercial communications are incompatible with EU law. The CJEU has emphasised that the purpose of these directives is to ensure that members of regulated professions (such as veterinary surgeons) have the right to use various forms of commercial communication. This means that national regulations prohibiting advertising or other promotional activities conflict with EU law.¹³

THE PRINCIPLE OF THE PRIMACY OF EU LAW AND THE REMOVAL OF ALL TOTAL PROHIBITIONS ON COMMERCIAL COMMUNICATIONS

The principle of the primacy of European Union law, also referred to as the 'supremacy' of EU law, is based on the concept that, in the event of a conflict between EU law and the national legal system of a Member State, EU law prevails. If this were not the case, Member States could introduce national laws overriding primary or secondary EU legislation, rendering the implementation of EU policies unworkable.¹⁴ According to the case law of the Court of Justice of the European Union, the primacy of EU law applies to all national legal acts. In situations where EU law takes precedence over national law, national provisions are not automatically repealed or invalidated. Instead, competent authorities and national courts must refrain from applying such provisions for as long as the superior EU legal norms remain in force.¹⁵ It can therefore be concluded that disciplinary courts

¹² Resolution No. 3/2008/VII of the Extraordinary VII National Congress of Veterinary Surgeons of 26 January 2008 on the Adoption of the Code of Ethics for Veterinary Surgeons, including the Annex – Code of Ethics for Veterinary Surgeons; <https://vetpol.org.pl/wp-content/uploads/2023/09/Kodeks-etyki-lekarza-weterynarii.pdf> (accessed: 29 January 2025).

¹³ *Société Fiduciaire*, Case C-119/09, op. cit.

¹⁴ J. Lindeboom, 'Why EU Law Claims Supremacy', *Oxford Journal of Legal Studies*, 2018, Vol. 38, No. 2, pp. 328–356; <https://doi.org/10.1093/ojls/gqy008>; P. Eleftheriadis, 'The Primacy of EU Law: Interpretive, Not Structural', *European Papers*, 2023, Vol. 8, No. 3, pp. 1255–1291; <https://doi.org/10.15166/2499-8249/717>.

¹⁵ CJEU judgment of 15 July 1964, *Flaminio Costa v ENEL*, Case 6/64, EU:C:1964:66; CJEU judgment of 17 December 1970, *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratss-*

of the veterinary profession, as entities applying EU law, qualify as national courts under EU law, given their statutory basis, permanence, jurisdictional authority, and application of legal provisions.¹⁶ When analysing Article 8 of Directive 2000/31/EC and Article 24 of Directive 2006/123/EC in light of the principle of the primacy of EU law, it follows that due to the conflict between national provisions, namely Article 29 of the AHA Act and Resolution No. 116/2008/IV, and the relevant EU legal provisions, EU law takes precedence. As a result, disciplinary courts must disregard conflicting national provisions and apply EU law directly in matters concerning the commercial communication rights of veterinary surgeons.

THE SCOPE OF THE TERM 'ACT' WITHIN THE MEANING OF ARTICLE 4 § 1 OF THE PENAL CODE AND SECONDARY LEGISLATION OF THE EUROPEAN UNION

Pursuant to Article 62(2) of the Act on Veterinary Surgeons, in matters not regulated by this Act, the provisions of Chapters I–III and Article 53 of the Penal Code shall apply accordingly to proceedings concerning professional liability. Chapter I of the Penal Code, titled 'General Principles of Criminal Liability', includes Article 4, which regulates the intertemporal application of criminal law. According to Article 4 § 1 of the Penal Code: 'If at the time of adjudication the law in force is other than that in force at the time of the commission of the offence, the new law shall be applied. However, the former law should be applied if it is more lenient to the perpetrator.' Therefore, it is necessary to analyse whether the term 'act' in Article 4 § 1 of the Penal Code encompasses secondary legislation of the European Union, including directives and regulations. This issue is closely related to the principle of the primacy of EU law.

Legal acts of the European Union are enumerated in Article 288 of the Treaty on the Functioning of the European Union (TFEU). These include regulations, directives, decisions, recommendations, and opinions. The institutions of the Union may adopt these legal acts only when empowered to do so by the provisions of the Treaties. The principle of conferral, delineating the limits of the Union's competences, is explicitly stated in Article 5(1) of the Treaty on European Union (TEU). Although

telle für Getreide und Futtermittel, Case 11/70, EU:C:1970:114; CJEU judgment of 9 March 1978, *Amministrazione delle Finanze dello Stato v Simmenthal SpA*, Case 106/77, EU:C:1978:49; CJEU judgment of 22 October 1998, *Ministero delle Finanze v INCOGE '90 SRL and others*, Case C-10/97, EU:C:1998:498; CJEU judgment of 19 June 1990, *The Queen v Secretary of State for Transport, ex parte Factortame Ltd and others*, Case C-213/89, EU:C:1990:257; CJEU judgment of 13 November 1990, *Marleasing SA v La Comercial Internacional de Alimentacion SA*, Case C-106/89, EU:C:1990:395; CJEU judgment of 19 November 2019, *A.K. v National Council of the Judiciary and C.P. and D.O. v Supreme Court*, Case C-585/18, EU:C:2019:982.

¹⁶ The issue of whether a disciplinary court of a self-governing body of a public trust profession qualifies as a national court within the meaning of EU law was resolved in the CJEU judgment of 13 January 2022, *Proceedings initiated by the Minister of Justice*, Case C-55/20, EU:C:2022:6. In this case, which concerned the disciplinary court of the Polish Bar, the CJEU expressly held that it meets the criteria of a national court within the meaning of EU law.

it has traditionally been assumed that criminal law matters were not directly regulated under the first pillar of the EU, this assertion – while partially accurate – does not exclude the possibility of the EU indirectly influencing the criminal legislation of Member States. Such influence may occur through changes in legal regulations that initially governed certain social relations but later became relevant to criminal law. For example, amendments in economic law introduced by the EU may have repercussions in criminal law. Member States are frequently required to harmonise their legal systems in accordance with EU directives, which may lead to modifications in national criminal legislation. Additionally, Member States may be obliged to apply secondary EU law directly, particularly in the form of regulations. It is important to emphasise that Article 4 § 1 of the Penal Code does not exclusively refer to criminal statutes, which necessitates a broad interpretation of the term 'act'.¹⁷ According to the prevailing case law on Article 4 § 1 of the Penal Code, the term 'act' should be interpreted broadly. The jurisprudence correctly highlights that this provision refers to the entire legal framework that, from a material law perspective, determines the criminal liability of an offender.¹⁸ As a result, legal scholarship does not question the view that EU regulations and directives may influence the scope of criminal liability and must be assessed within the framework of Article 4 § 1 of the Penal Code.¹⁹ This results, *inter alia*, from the obligation of Member States to 'not obstruct the direct effectiveness required with regard to regulations and other rules of Community law'. Furthermore, CJEU case law indicates that it is prohibited to use any legal techniques that would obscure the EU nature of a particular legal rule.²⁰ As a result, secondary EU law (regulations and directives) may be considered an 'act' within the meaning of Article 4 § 1 of the Penal Code. This interpretation is supported by both legal scholarship and case law. Additionally, this reasoning is grounded in the principle of the primacy of EU law.

Comparing these EU legal provisions with Article 29(1) and (2) AHA Act, in conjunction with § 3 of Resolution No. 116/2008/IV, which establishes a total prohibition on commercial communications, it must be concluded that EU directives may, in certain cases, be more lenient for the accused within the meaning of Article 4 § 1 of the Penal Code. This is because Article 8 of Directive 2000/31/EC and Article 24 of Directive 2006/123/EC explicitly require the removal of all total prohibitions on

¹⁷ S. Żółtek, in: Królikowski M., Zawłocki R. (eds), *Kodeks karny. Część ogólna. Komentarz*, 5th ed., Warszawa, 2021, Legalis.

¹⁸ Judgment of the Supreme Court of Poland of 1 July 2004, Case II KO 1/04, LEX No. 121666; judgment of the Supreme Court of Poland of 4 July 2001, Case V KKN 346/99, LEX No. 51679; judgment of the Supreme Court of Poland of 12 May 2021, Case II KK 47/21, LEX No. 3289295.

¹⁹ S. Żółtek, in: Królikowski M., Zawłocki R. (eds), *Kodeks karny...*, op. cit.; T. Sroka, in: Barczak-Oplustil A., Sroka T. (eds), *Odpowiedzialność publicznoprawna. System Prawa Medycznego*, Vol. 6, Warszawa, 2023, Legalis; J. Lachowski, in: Konarska-Wrzošek V. (ed.), *Kodeks karny. Komentarz*, 4th ed., Warszawa, 2023, LEX.

²⁰ CJEU judgment of 10 October 1973, *Fratelli Variola S.p.A.*, Case C-34/73, EU:C:1973:101; see also CJEU judgment of 21 December 2011, *Danske Svinproducenter*, Case C-316/10, EU:C:2011:863 and CJEU judgment of 14 October 2004, *Commission v Netherlands*, Case C-113/02, EU:C:2004:616; A. Nowak-Far, 'Podstawowe zasady stosowania prawa unijnego przez administrację publiczną', in: Jagielski J., Wierzbowski M. (eds), *Prawo administracyjne*, Warszawa, 2022, LEX.

commercial communications by veterinary surgeons. In practice, this means that a disciplinary court ruling on a case against a veterinary surgeon should, in accordance with Article 4 § 1 of the Penal Code, apply Article 8 of Directive 2000/31/EC and Article 24 of Directive 2006/123/EC as the more lenient acts. Consequently, a disciplinary court, applying Article 4 § 1 of the Penal Code and relying on the principle of the primacy of EU law, should disregard national provisions that contradict EU directives and base its ruling on EU law. This would lead to the acquittal of a veterinary surgeon charged with violating the advertising ban.

PROCEDURAL REQUIREMENTS FOR ADOPTING REGULATORY PROVISIONS ON COMMERCIAL COMMUNICATIONS

Member States may introduce certain restrictions on the use of commercial communications by regulated professions. However, the rules governing the use of commercial communications must comply with requirements concerning independence, dignity, professional integrity, and professional secrecy, while also being tailored to the specific nature of each profession, in accordance with EU law. At the same time, rules on professional conduct in relation to commercial communications must be non-discriminatory, justified by an overriding reason relating to the public interest, and proportionate, as stipulated in Article 24(2) of Directive 2006/123/EC. Consequently, their adoption must be preceded by the procedure set out in Chapter 6a of the Recognition of Qualifications Act, titled 'Ensuring the Proportionality, Justification, and Non-Discriminatory Nature of Regulatory Provisions and Requirements for the Provision of Cross-Border Services'. The principle of proportionality, derived from Article 5(4) of the Treaty on European Union (TEU), requires that measures taken by EU institutions and Member States must be appropriate for achieving the intended objective and must not exceed what is necessary to achieve it. In practice, this means that restrictions on individual rights must be appropriate to the objective pursued and must not be more restrictive than necessary (Article 50b of the Recognition of Qualifications Act).²¹ Restrictions on the freedoms of the internal market, including the use of commercial communications, may be justified if they serve to protect important public interests, such as public health, consumer protection, public order, or the protection of the environment or animals, among others.²² To ensure compliance with the principle

²¹ See also CJEU judgment of 30 November 1995, *Reinhard Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano*, Case C-55/94, EU:C:1995:411; CJEU judgment of 13 April 2000, *Proceedings initiated by Kjell Karlsson and others*, Case C-292/97, EU:C:2000:202.

²² CJEU judgment, Case C-55/94, op. cit.; CJEU judgment of 30 January 2018, *College van Burgemeester en Wethouders van de Gemeente Amersfoort v X BV and Visser Vastgoed Beleggingen BV v Raad van de Gemeente Appingedam*, Case C-360/15, EU:C:2018:44; CJEU judgment of 12 December 2013, *Ragn-Sells AS v Sillamäe Linnavalitsus*, Case C-292/12, EU:C:2013:820; CJEU judgment of 13 April 2000, *Proceedings initiated by Kjell Karlsson and others*, Case C-292/97, EU:C:2000:202; CJEU judgment of 27 February 2018, *Associação Sindical dos Juizes Portugueses v Tribunal de Contas*, Case C-64/16, EU:C:2018:117; CJEU judgment of 29 May 2018, *Liga van Moskeeën en Islamitische*

of non-discrimination, restrictions introduced by national regulations must not discriminate against veterinary surgeons from other EU Member States (Article 50d of the Recognition of Qualifications Act).²³ For regulatory provisions concerning commercial communications by veterinary surgeons to be considered compliant with the principles of proportionality, justification, and non-discrimination, as set out in Article 24(2) of Directive 2006/123/EC, they must meet two key requirements under Article 50f(1) and (2) of the Recognition of Qualifications Act: (1) A detailed justification for compliance with these principles must be provided in the explanatory memorandum of the draft legal act (or in an annex to the regulatory impact assessment), allowing for verification of this compliance, supported by qualitative data and, where possible, quantitative data; (2) mandatory consultations must be conducted on the draft legal act containing these provisions. Without fulfilling the procedural requirements set out in Chapter 6a of the Recognition of Qualifications Act, provisions on commercial communications (advertising) cannot be considered compliant with the principles of proportionality, justification, and non-discrimination. It is worth noting that both the Bar Association and the National Chamber of Legal Advisers, after completing the required procedure, have recently adopted new regulations allowing advertising for legal professions.²⁴ The veterinary profession itself has also acknowledged the need for legislative amendments.²⁵

SUMMARY

Both Article 29 of the AHA Act and Resolution No. 116/2008/IV violate the EU principle of the free movement of services and the right of regulated professions to use commercial communications. These provisions restrict the promotion of veterinary services, allowing only the public dissemination of strictly limited information, such as the facility's address, opening hours, and the scope of services provided. As demonstrated above, the source of this inconsistency lies in Article 8 of Directive 2000/31/EC and Article 24 of Directive 2006/123/EC, which explicitly

Organisaties Provincie Antwerpen VZW and others v Vlaams Gewest, Case C-426/16, EU:C:2018:335; CJEU judgment of 29 July 2024, *Asociación para la Conservación y Estudio del Lobo Ibérico (ASCEL) v Administración de la Comunidad de Castilla y León*, Case C-436/22, EU:C:2024:655.

²³ See CJEU judgment of 19 January 2010, *Küçükdeveci v Swedex GmbH & Co KG*, Case C-555/07, EU:C:2010:21.

²⁴ The Supreme Bar Council (NRA) has removed all total prohibitions on commercial communications by advocates, cf. <https://www.adwokatura.pl/z-zycia-nra/nra-zniosla-calkowitezakazy-korzystania-z-informacji-handlowych-przez-adwokatow/> (accessed: 29 January 2025); *Zmiany w Kodeksie Etyki Adwokackiej w zakresie reklamy – pełna dokumentacja*; <https://www.adwokatura.pl/z-zycia-nra/zmiany-w-kodeksie-etyki-adwokackiej-w-zakresie-reklamy-pelna-dokumentacja/> (accessed: 29 January 2025).

²⁵ W. Hildebrand, 'Materiały na XXI Okręgowy Zjazd Sprawozdawczy Lekarzy Wet. DIL-Wet. Sprawozdanie Prezesa z działalności Rady DIL-Wet. VII kadencji za rok 2018', *Biuletyn DIL-Wet.*, 2019, Vol. 29, No. 1 (113), p. 7; https://mail.dilwet.pl/images/Biuletyn_2019_1kw_kolor.pdf (accessed: 16 February 2026); A. Zalesińska, 'Interpretacje zapisów Kodeksu Etyki Lekarza Weterynarii (tezy)', *Biuletyn DIL-Wet.*, 2019, 29, No. 1 (113), p. 58; https://mail.dilwet.pl/images/Biuletyn_2019_1kw_kolor.pdf (accessed: 16 February 2026).

require Member States to ensure that representatives of regulated professions can use commercial communications. EU law not only recognises advertising as an integral part of service activities but also mandates the elimination of all total prohibitions on its use. In contrast, Polish regulations completely prohibit veterinary surgeons from advertising, thereby violating these provisions and creating a situation in which national restrictions conflict with the overriding provisions of EU law. This inconsistency has far-reaching consequences, particularly in disciplinary proceedings. In light of the principle of the primacy of EU law, Polish provisions prohibiting veterinary surgeons from advertising should not be applied if they contradict EU regulations. In practice, this means that disciplinary courts should take into account the provisions of Directives 2006/123/EC and 2000/31/EC as the more lenient acts within the meaning of Article 4 § 1 of the Penal Code, which may lead to the acquittal of veterinary surgeons accused of violating the advertising ban. According to the interpretation of the CJEU, advertising bans cannot encompass all forms of commercial communication, especially when such restrictions are disproportionate and do not serve overriding public interests, such as health protection or professional ethics. Ultimately, this analysis has shown that Polish regulations currently in force do not meet EU legal standards and require adjustment in order to comply with EU law. The total prohibition on veterinary advertising under Polish law should be replaced with regulations allowing advertising in a manner consistent with professional ethical principles.

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