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PROHIBITION OF ADVERTISING BY VETERINARY SURGEONS IN LIGHT OF EU LEGAL REGULATIONS

Abstract

This article analyses the compliance of Polish regulations prohibiting veterinary surgeons from advertising with European Union law, particularly Directive 2006/123/EC on services in the internal market and Directive 2000/31/EC on electronic commerce. In the Polish legal system, advertising of veterinary services is prohibited under the Veterinary Clinics Act and resolutions of the National Veterinary Council. This prohibition raises concerns in light of EU provisions, which require the abolition of total bans on advertising for regulated professions.

The article highlights that veterinary surgeons, as representatives of a regulated profession under EU directives, should be allowed to use commercial communications. It also attempts to define the concept of ‘commercial communication’ within Polish and EU law. The author posits that current Polish regulations violate Article 8 of Directive 2000/31/EC and Article 24 of Directive 2006/123/EC, which mandate the removal of advertising bans for regulated professions. The analysis provides arguments supporting this hypothesis, underscoring the need for the reform of national legislation.

KEYWORDS

veterinary advertising, commercial communication, regulated profession, professional ethics

SŁOWA KLUCZOWE

reklama weterynaryjna, informacja handlowa, zawód regulowany, etyka zawodowa

I. INTRODUCTION

The issue of advertising by veterinary surgeons within the Polish legal framework lies at the intersection of professional ethics and positive law. This topic appears to be quite controversial within the professional community of veterinary surgeons. Under the current national regulations, advertising by veterinary surgeons is prohibited. This prohibition is understandable, as the regulation of veterinary surgeons' advertising is intended to reconcile the protection of consumer rights with the necessity of ensuring dignity and public trust in the veterinary profession. The ban on advertising veterinary services, as enshrined in the Polish legal order, exemplifies a regulation aimed at limiting the commercialisation of veterinary practice, thereby safeguarding both animal welfare and the public interest.

The Professional Ethics Committee of the District Veterinary Chamber (DIL-Wet) has dealt with cases involving unauthorised forms of advertising by veterinary clinics, with discussions and admonitions in most instances leading to the cessation of irregularities.¹ Additionally, the veterinary community highlights the challenges in distinguishing between information and advertising. Questions arise, such as: Is an SMS reminder about a vaccination considered advertising? Does publishing a video of a performed procedure on social media result in disciplinary liability? Can a veterinary surgeon appear in advertisements unrelated to their profession? What are the boundaries of permissible content on social media and websites? Could disseminating information about scientific activities be regarded as advertising?²

Given these considerations, there is a growing need for regulatory reform that would allow advertising within specific boundaries, enabling client information while maintaining adherence to the principles of professional ethics.

Consequently, a question arises: How can the ethical requirements and principles associated with the practice of a profession of public trust be balanced with

¹ Wojciech Hildebrand, 'Materiały na XXI Okręgowy Zjazd Sprawozdawczy Lekarzy Weterynarii Dolnośląskiej Izby Lekarsko-Weterynaryjnej Sprawozdanie Prezesa z działalności Rady DIL-WET VII kadencji za rok 2018' (2019) 29 Biuletyn DIL-Wet 7.

² Anna Zalesińska, 'Interpretacje zapisów Kodeksu Etyki Lekarza Weterynarii (tezy)' (2019) 29 Biuletyn DIL-Wet 58.

national regulations on advertising? On the other hand, it should be noted that the issues related to advertising are also subject to EU law, particularly Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market³ (hereinafter referred to as Directive 2006/123/EC), 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)⁴ (hereinafter referred to as Directive 2000/31/EC).

In light of the above, the primary research problem is the compliance of national law with EU regulations. The aim of the study is to determine whether Polish regulations governing advertising in the veterinary profession align with EU legal standards. It should be emphasised that this issue, in the context of EU law, has not yet been subject to detailed analysis in relation to the advertising of veterinary surgeons. Moreover, the existing literature on advertising in professions of public trust has primarily focused on the legal or dental professions,⁵

³ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market [2006] OJ L376/36 <<https://eur-lex.europa.eu/eli/dir/2006/123/oj>> accessed 5 December 2024.

⁴ 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') [2000] OJ L178/1 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32000L0031>> accessed 5 December 2024.

⁵ Joanna Nowak-Kubiak, *Ustawa o działalności leczniczej. Komentarz do art. 14* (Legalis 2012); Filip Grzegorzczak, 'Komentarz do art. 14' in Magdalena Dulińska, Tomasz Głąb, Maciej Potoczny, Tomasz Rytlewski, Urszula Walasek-Walczak, and Filip Grzegorzczak (eds), *Ustawa o działalności leczniczej. Komentarz* (Lex 2013) <<https://sip.lex.pl/#/commentary/587537960/335400/grzegorzczak-filip-red-ustawa-o-dzialalnosci-leczniczej-komentarz?pit=2023-04-06&cm=URLATIONS>> accessed 20 November 2024; Tomasz Rek, 'Komentarz do art. 14' in Maciej Dercz and Tomasz Rek, *Ustawa o działalności leczniczej. Komentarz* (3rd edn, Lex 2019) accessed 20 November 2024; Małgorzata Paszkowska, 'Prawne ograniczenia reklamy świadczeniodawców rynku usług medycznych' ABC <<https://sip.lex.pl/#/publication/469861290>> accessed 20 November 2024; Małgorzata Barańska, 'Kontrowersje wokół wizerunku lekarza w reklamie - podejście normatywne' (2019) 4 Marketing i Rynek 42, 43; Sabina Ostrowska, 'Kształtowanie wizerunku podmiotu działalności leczniczej' (2014) 185 Studia Ekonomiczne 142, 150; Irena Ozimek, Julita Szlachciuk, and Agnieszka Bobola, 'Reklama wybranych dóbr i usług w świetle regulacji prawnych i kodeksu etyki reklamy' (2017) 330 Studia Ekonomiczne 162, 172; Piotr Piesiewicz, 'Zmiany w zakresie regulacji podawania do publicznej wiadomości informacji o zakresie i rodzajach udzielanych świadczeń zdrowotnych' in Teresa Gardocka, Tomasz Maksymiuk, and Jarosław Skrzypczak (eds), *Zdrowie: problem medyczny, prawny, polityczny* (Lex 2012) 297, 305; Eleonora Zielińska, 'Ogłoszanie i reklamowanie się lekarzy' (2000) 6-7 Prawo i Medycyna 105, 123; Czesław Kłak, 'Reklama w ustawie o działalności leczniczej' (2017) 3 Prawo i Medycyna 8, 22; Czesław Kłak, 'Informacja o zakresie i rodzajach udzielanych świadczeń zdrowotnych a reklama w świetle ustawy o działalności leczniczej' in Beata Namysłowska-Gabrysiak, Katarzyna Syroka-Marczewska, and Anna Walczak-Żochowska (eds), *Prawo wobec problemów społecznych. Księga Jubileuszowa Profesor Eleonory Zielińskiej* (Lex 2016).sip.lex.pl/#/commentary/587319041/586293/dercz-maciej-rek-

with only a small portion addressing this issue in the context of EU law.⁶

It has been hypothesised that the veterinary profession, as a regulated profession within the meaning of Directives 2006/123/EC and 2000/31/EC, should have the ability to use commercial communications. This, however, conflicts with the current national regulations prohibiting advertising. These prohibitions, arising from Article 29(1) and (2) of the Act of 18 December 2003 on Veterinary Clinics⁷ (hereinafter: the Veterinary Clinics Act) and §3 of Resolution No 116/2008/IV of the National Veterinary Council of 12 December 2008 on detailed rules for publicising information on the scope and types of veterinary services, opening hours, and the address of veterinary clinics⁸ (hereinafter: Resolution 116/2008/

tomasz-ustawa-o-dzialalnosci-leczniczej-komentarz-wyd-iii?pit=2023-04-06&cm=URELATIONS accessed 20 November 2024; Małgorzata Paszkowska, 'Prawne ograniczenia reklamy świadczeniodawców rynku usług medycznych' ABC <<https://sip.lex.pl/#/publication/469861290> accessed 20 November 2024; Małgorzata Barańska, 'Kontrowersje wokół wizerunku lekarza w reklamie - podejście normatywne' (2019) 4 Marketing i Rynek 42, 43; Sabina Ostrowska, 'Kształtowanie wizerunku podmiotu działalności leczniczej' (2014) 185 Studia Ekonomiczne 142, 150; Irena Ozimek, Julita Szlachciuk, and Agnieszka Bobola, 'Reklama wybranych dóbr i usług w świetle regulacji prawnych i kodeksu etyki reklamy' (2017) 330 Studia Ekonomiczne 162, 172; Piotr Piesiewicz, 'Zmiany w zakresie regulacji podawania do publicznej wiadomości informacji o zakresie i rodzajach udzielanych świadczeń zdrowotnych' in Teresa Gardocka, Tomasz Maksymiuk, and Jarosław Skrzypczak (eds), *Zdrowie: problem medyczny, prawny, polityczny* (Lex 2012) 297, 305; Eleonora Zielińska, 'Ogłaszanie i reklamowanie się lekarzy' (2000) 6–7 Prawo i Medycyna 105, 123; Czesław Kłak, 'Reklama w ustawie o działalności leczniczej' (2017) 3 Prawo i Medycyna 8, 22; Czesław Kłak, 'Informacja o zakresie i rodzajach udzielanych świadczeń zdrowotnych a reklama w świetle ustawy o działalności leczniczej' in Beata Namysłowska-Gabrysiak, Katarzyna Syroka-Marczewska, and Anna Walczak-Zochowska (eds), *Prawo wobec problemów społecznych. Księga Jubileuszowa Profesor Eleonory Zielińskiej* (Lex 2016).

⁶ Magdalena El-Hagin, 'Dyrektywa 2005/29/WE o nieuczciwych praktykach handlowych w świetle najnowszego orzecznictwa Trybunału Sprawiedliwości Unii Europejskiej – część I' (2021) 1(223) Studia Prawnicze 123–169; Piotr F. Piesiewicz, 'Problematyka zakazu reklamowania się podmiotów leczniczych oraz lekarzy w świetle Kodeksu Etyki Lekarskiej, prawa krajowego oraz prawa unijnego' (2019) 3 Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace Prawnicze, Wydawnictwa i Inne 122–144; Piotr F. Piesiewicz, *Prawne i etyczne aspekty reklamy adwokackiej* (Warszawa 2021); Piotr F. Piesiewicz and Wojciech Płowiec, 'Reklama lekarzy po zmianach Kodeksu etyki lekarskiej z 2024 roku z perspektywy prawa Unii Europejskiej' (2024) 86(3) *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 35–55 <<https://doi.org/10.14746/rpeis.2024.86.3.03>> accessed 20 November 2024.

⁷ Polish Journal of Laws 2019, item 24.

⁸ Resolution No 116/2008/IV of the National Veterinary Council of 12 December 2008 on detailed rules for public disclosure of information on the scope and types of veterinary services provided, opening hours, and the address of veterinary establishments <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%9Bwiadczonych_us%C5%82ug_weter._godz._otwarcia_i_adresie_ZLZ.pdf> accessed 5 December 2024.

IV), are inconsistent with Article 8 of Directive 2000/31/EC and Article 24 of Directive 2006/123/EC. These provisions unduly restrict the ability of veterinary surgeons to use commercial communications.

In light of the proposed research hypothesis, it was necessary to address several questions. First and foremost, it was essential to determine who is responsible for the publication of promotional materials under national law. It was also necessary to define the material scope of application of Directive 2000/31/EC and Directive 2006/123/EC, and to assess whether Article 8 of Directive 2000/31/EC and Article 24 of Directive 2006/123/EC apply to the veterinary profession – ie, whether this profession can be considered regulated within the meaning of these provisions. A key aspect also involved understanding the concept of ‘commercial communication’, as defined in Article 8 of Directive 2000/31/EC and Article 24 of Directive 2006/123/EC. This text is the first of two articles that the author intends to dedicate to the issue of advertising in the veterinary profession. The present article focuses on analysing the compliance of national law with EU law, while the second will address the consequences of such non-compliance for the disciplinary bodies of the veterinary professional self-government.

II. ENTITIES RESPONSIBLE FOR ADVERTISING UNDER NATIONAL LAW

Pursuant to Article 4 of the Veterinary Clinics Act, a veterinary surgeon is required to practise their profession with particular diligence, in accordance with the principles of veterinary ethics and deontology. Furthermore, Article 45 of the same Act stipulates that members of the veterinary self-governing body are subject to professional liability before veterinary disciplinary courts for actions that violate the principles of veterinary ethics and deontology or the regulations governing the practice of the veterinary profession.

According to Article 5(1) of the Veterinary Clinics Act, ‘a veterinary clinic may be established and operated by natural persons, legal entities, or organisational units without legal personality’. The legal status of the director of a veterinary clinic is addressed in Article 5(2), which provides that ‘the director of a veterinary clinic, hereinafter referred to as the “director”, may only be a veterinary surgeon who is authorised to practise in the territory of the Republic of Poland’. These provisions distinguish the role of managing a veterinary clinic from that of operating it.

Managing a veterinary clinic is a role exclusively reserved for veterinary surgeons licensed to practise in Poland (Article 5(2) of the Veterinary Clinics Act).

The director is responsible for the substantive management of the facility and overseeing the provision of veterinary services. According to a view expressed in the case law of the Supreme Court:

The director of a veterinary clinic – a veterinary surgeon – must be familiar with the relevant regulations, including sector-specific rules such as resolutions of the National or Regional Veterinary Chamber, not only those pertaining to substantive activities but also those related to organisational aspects, including the premises in which the entity operates.⁹

Consequently, under the Veterinary Clinics Act, the director of a veterinary clinic, as a veterinary surgeon, is obliged to adhere to the principles of the Veterinary Surgeon's Code of Ethics. Performing this role does not exempt them from these obligations; rather, it imposes additional duties, particularly in ensuring compliance with ethical principles.

According to Resolution No 116/2008/IV, which defines the form and content of information on the scope and type of veterinary services provided (§1), 'the director of a veterinary clinic is responsible for implementing the provisions of this resolution' (§7). Furthermore, pursuant to §6 of Resolution No 116/2008/IV, 'a veterinary surgeon practising in a veterinary clinic is responsible for the content of press, radio, and television publications involving their participation'. It should be emphasised that merely identifying the entity responsible for public dissemination of what is referred to in §1 of Resolution No 116/2008/IV as 'public information' is not inconsistent with Directive 2006/123/EC or Directive 2000/31/EC, as these legal acts do not address this issue. The EU legislator leaves the determination of the responsible entity within the discretion of national lawmakers.

The formal possibility of bringing charges under §7 of Resolution No 116/2008/IV does not imply that, under applicable EU law, there is a substantive legal basis to attribute guilt to an accused veterinary surgeon for committing a disciplinary offence involving the use of veterinary advertising, particularly in cases where national regulations are inconsistent with EU law.

III. MATERIAL SCOPE OF DIRECTIVE 2000/31/EC AND DIRECTIVE 2006/123/EC

Directive 2000/31/EC, commonly referred to as the E-Commerce Directive, focuses on the legal aspects of information society services, particularly electronic commerce within the internal market. Its objective is to eliminate legal

⁹ Judgment of the Polish Supreme Court of 19 June 2015, case No SDI 15/15, LEX No 1745839.

barriers hindering the efficient functioning of the internal market in the field of information society services (recitals 1 and 32). It addresses regulations related to electronic commerce, online services, and the liability of internet service providers. This includes issues such as the use of commercial communications (advertising) online by regulated professions (recital 21).

According to Article 1, the Directive does not apply to certain areas, such as taxation, data protection, matters relating to contracts or practices governed by competition law, client representation and defence before courts, the activities of notaries, or gambling. However, activities related to the veterinary profession are not excluded from the scope of the Directive insofar as they pertain to the practice of a regulated profession.

Directive 2006/123/EC, by contrast, has a broader scope, encompassing all types of services, whereas Directive 2000/31/EC is limited to information society services. The objective of Directive 2006/123/EC is to create a single market for services (recital 1), while the aim of Directive 2000/31/EC is to regulate the legal aspects of electronic commerce.

Directive 2006/123/EC applies to a wide range of services across various evolving types of activities, including advertising (recitals 21 and 100). Article 2(2) of the Directive specifies activities to which it does not apply, and veterinary activities are not included in this list. While Article 2(2)(f) excludes ‘healthcare services, whether or not they are provided within healthcare facilities, and regardless of how they are organised and financed at national level or whether they are public or private’, recital 22 clarifies that this exclusion applies solely to medical and pharmaceutical services provided by healthcare professionals with the aim of assessing, maintaining, or restoring a patient’s health. The concept of a ‘patient’ refers exclusively to human beings, as defined in Article 3(h) of Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients’ rights in cross-border healthcare, which states that ‘patient’ means any natural person who seeks to receive or receives healthcare in a Member State. Consequently, it can be concluded that Directive 2006/123/EC does not exclude the veterinary profession from its scope, particularly given that Regulation 2016/429 (Animal Health Law)¹⁰ and other EU legal acts do not use the term ‘patient’ in the context of animal health protection. In summary, both directives – Directive 2006/123/EC and Directive 2000/31/EC – can be applied to the veterinary profession. However, this analysis will focus exclusively on the potential application of these directives in the context of veterinary surgeons’ use of commercial communications.

¹⁰ Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health (‘Animal Health Law’) <<https://eur-lex.europa.eu/eli/reg/2016/429/oj>> accessed 5 December 2024.

IV. THE VETERINARY PROFESSION AS A REGULATED PROFESSION UNDER EU LAW

Pursuant to Article 8 of Directive 2000/31/EC, ‘Member States shall ensure that the use of commercial communications which are part of, or constitute, an information society service provided by a member of a regulated profession is permitted, subject to compliance with the rules of the profession, in particular those relating to the independence, dignity and honour of the profession, professional secrecy, and fairness towards clients and other members of the profession’. Similarly, Article 24(1) of Directive 2006/123/EC provides that ‘Member States shall remove all total prohibitions on commercial communications by the regulated professions’.

Directive 2006/123/EC defines a regulated profession as a professional activity or set of professional activities as defined in Article 3(1)(a) of Directive 2005/36/EC. According to Article 3(1)(a) of Directive 2005/36/EC, a regulated profession is ‘a professional activity or a set of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions, to the possession of specific professional qualifications; in particular, the use of a professional title restricted by legislative, regulatory or administrative provisions to holders of a given professional qualification shall constitute a mode of pursuit of such an activity’. A regulated profession is, therefore, one whose exercise is conditional upon meeting qualification requirements and conditions specified in separate regulations.

Directive 2000/31/EC also defines a regulated profession as any profession within the meaning of Article 1(d) of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years’ duration,¹¹ or within the meaning of Article 1(f) of Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training, supplementing Directive 89/48/EEC. It is important to note that these acts were repealed by Directive 2005/36/EC.

In relation to the veterinary profession, as with other sectoral professions, EU regulations have been fully incorporated into Directive 2005/36/EC.¹²

¹¹ Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years’ duration [1989] OJ L19/16 <<https://eur-lex.europa.eu/eli/dir/1989/48/oj>> accessed 5 December 2024.

¹² Teresa Malinowska, ‘Zawód lekarza weterynarii – zawód wolny, regulowany czy zaufania publicznego?’ (2019) 94(11) *Życie Weterynaryjne* 732–739.

At the national level, the veterinary profession is regulated, among other legal acts, by the Act of 21 December 1990 on the Veterinary Profession and Veterinary Chambers. Moreover, this profession is included in the EU Regulated Professions Database as recognised under Directive 2005/36/EC.¹³ Consequently, it can be unequivocally stated that the provisions of Directive 2006/123/EC, as well as those of Directive 2000/31/EC concerning regulated professions, apply to the practice of veterinary surgeons.¹⁴

In summary, the veterinary profession qualifies as a regulated profession under Directives 2006/123/EC and 2000/31/EC. Therefore, Article 8 of Directive 2000/31/EC and Article 24 of Directive 2006/123/EC are applicable to this profession. The profession is also recognised under Directive 2005/36/EC, while at the national level, it is governed by legal acts such as the Act of 21 December 1990 on the Veterinary Profession and Veterinary Chambers.

V. THE CONCEPT OF ‘COMMERCIAL COMMUNICATION’

Directives 2006/123/EC and 2000/31/EC define the term ‘commercial communication’ in similar ways. According to Article 4(12) of Directive 2006/123/EC, a ‘commercial communication’ means:

Any form of communication designed to promote, directly or indirectly, the goods, services or image of an undertaking, organisation or person engaged in commercial, industrial or craft activity or practising a regulated profession’. Similarly, under Article 2(f) of Directive 2000/31/EC, a ‘commercial communication’ is defined as: ‘Any form of communication designed to promote, directly or indirectly, the goods, services or image of a company, organisation or person pursuing a commercial, industrial or craft activity or exercising a regulated profession.

The difference in wording between the Polish translations of the definitions in Directives 2006/123/EC and 2000/31/EC arises from the use of the phrases ‘*mającą na celu promowanie*’ (having the purpose of promoting) in Directive 2006/123/EC and ‘*przeznaczoną do promowania*’ (intended to promote) in Article 2(f) of Directive 2000/31/EC. This variation is a result of translation, not an

¹³ Regulated Professions Database <<https://ec.europa.eu/growth/tools-databases/regprof/home>> accessed 5 December 2024.

¹⁴ Joanna Helios and Wioletta Jedlecka, ‘Lekarz weterynarii jako zawód zaufania publicznego’ (2022) 97(10) *Życie Weterynaryjne* 645–648; Andrzej Krasnowolski, ‘Zawody zaufania publicznego, zawody regulowane oraz wolne zawody. Geneza, funkcjonowanie i aktualne problemy’ (Thematic study OT-625, Chancellery of the Senate, November 2013) <https://www.senat.gov.pl/gfx/senat/pl/senatopracowania/56/plik/ot-625_.pdf> accessed 20 November 2024.

intended divergence in the substance of the definitions. The English and French versions of both directives use identical phrases: ‘communication designed to promote’ (English) and ‘*communication destinée à promouvoir*’ (French).¹⁵ Additionally, the translation of ‘commercial communication’ as ‘*informacja handlowa*’ in Polish may create interpretative challenges for veterinary surgeons. The term ‘*informacja handlowa*’ could be misconstrued as referring to a neutral message focused on conveying factual information. However, in EU law, the terms ‘commercial communication’ (English) and ‘*communication commerciale*’ (French), as well as the concepts of ‘promotion’ or ‘marketing communication’ in marketing theory, pertain to activities primarily aimed at promotion – that is, influencing the decisions of the recipient.¹⁶ This interpretation aligns with the definitions of commercial communication cited above, which explicitly indicate that the purpose of such communication is to promote goods, services, or the image of the entity, whether directly or indirectly. The misinterpretation of ‘*informacja handlowa*’ as a neutral or factual concept might lead veterinary surgeons to underestimate the legal implications of their communications. It is critical to understand that, under EU law, any communication aiming to influence recipient decisions – whether in advertising or broader promotional activities – falls within the scope of ‘commercial communication’.

The European Commission confirms the broad scope of the concept of ‘commercial communication’ in its documents, noting that it includes activities such as advertising, direct marketing, sponsorship, sales promotion, and public relations. The terms ‘commercial communication’ and ‘marketing communication’ are equivalent, with advertising being one of the forms of commercial communication under Directives 2006/123/EC and 2000/31/EC.¹⁷ In Polish legal literature, it has also been proposed that the term ‘commercial communication’ should encompass both direct and indirect promotion, including direct and indirect advertising, public and private advertising, direct marketing, sales promotion, sponsorship, public

¹⁵ Piotr F Piesiewicz, *Prawne i etyczne aspekty reklamy adwokackiej* (Warszawa 2021) 251–252.

¹⁶ Piotr F Piesiewicz, *Prawne i etyczne aspekty reklamy adwokackiej* (Warszawa 2021) 251–252; ‘L’encyclopédie illustrée du marketing’ <<https://www.definitions-marketing.com/definition/communication-commerciale/>> accessed 20 November 2024.

¹⁷ Green Paper on On-line Gambling in the Internal Market SEC(2011) 321 final, p 3, <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM%3A2011%3A0128%3AFIN%3Aen%3APDF>> accessed 14 November 2024; Commercial Communications in the Internal Market. Green Paper from the Commission, COM (96) 192 final, April 8, 1996, <https://europa.eu/documents/comm/green_papers/pdf/com96_192_1_en.pdf> accessed 14 November 2024; Press Release details, <https://europa.eu/rapid/press-release_IP-96-396_en.html>, indicating that the term Commercial Communications includes ‘advertising, direct marketing, sponsorship, sales promotion and public relations’.

relations, and offers to conclude a contract. This approach is fully justified.¹⁸ This view is supported by the case law of the Court of Justice of the European Union (CJEU). In its judgment of 5 April 2011 (C-119/09), regarding the interpretation of Article 24(1) of Directive 2006/123/EC, the Court explicitly stated that the concept of commercial communication, as defined in Article 4(12) of Directive 2006/123/EC on services in the internal market, covers not only classic advertising but also other forms of advertising and information aimed at attracting new clients, including other types of commercial communication such as advertising, direct marketing, or sponsorship.¹⁹ In another judgment concerning the interpretation of Article 8 of Directive 2000/31/EC, the CJEU clarified that the definition of commercial communication in Article 2(f) of the Directive specifies that this concept covers any form of communication designed to promote, directly or indirectly, the services of a person exercising a regulated profession.²⁰

Considering the above, it should be concluded that the concept of ‘commercial communication’, as defined in Directives 2006/123/EC and 2000/31/EC, encompasses all forms of promotion or marketing communication as understood in marketing theory. This concept includes, both in the context of marketing theory and as per the definition in the directives, indirect (impersonal) promotion, such as advertising, public relations, and sales promotion, as well as direct (personal) promotion, such as personal selling and solicitation.

¹⁸ Dominik Lubasz, ‘3.2. Informacja handlowa’ in *Handel elektroniczny. Bariery prawne* (Warszawa 2013) <<https://sip.lex.pl/#/monograph/369285092/65?tocHit=1> accessed 14 November 2024; Dominik Lubasz and Witold Chomiczewski, ‘Komentarz do ustawy o świadczeniu usług drogą elektroniczną’ in *Świadczenie usług drogą elektroniczną oraz dostęp warunkowy. Komentarz do ustaw*, Monika Namysłowska (ed) (Warszawa 2011) art 2 <<https://sip.lex.pl/#/commentary/587537008/334448?tocHit=1> accessed 14 November 2024; Xawery Konarski, *Komentarz do ustawy o świadczeniu usług drogą elektroniczną* (Warszawa 2004) 54–55; Marek Świerczyński, ‘Komentarz do art. 2’ in *Ustawa o świadczeniu usług drogą elektroniczną. Komentarz*, Jacek Gołaczyński (ed) (Oficyna 2009) <<https://sip.lex.pl/#/commentary/587247059> accessed 5 December 2024; Paweł Litwiński, ‘5.10. Zasady posługiwania się informacją handlową’ in *Prawo Internetu*, Paweł Podrecki (ed) (Warszawa 2007) <<https://sip.lex.pl/#/monograph/369312509/85?tocHit=1&cm=SREST> accessed 5 December 2024; Aneta Frań-Adamek, ‘Komentarz do art. 2’ in *Świadczenie usług drogą elektroniczną. Komentarz* (LEX/el. 2002) <<https://sip.lex.pl/#/commentary/587275374/72814?tocHit=1> accessed 5 December 2024; Piotr F. Piesiewicz, *Prawne i etyczne aspekty reklamy adwokackiej* (Warszawa 2021) 253–255.

¹⁹ Case C-119/09 *Société Fiduciaire Nationale d’Expertise Comptable v Ministre du Budget, des Comptes Publics et de la Fonction Publique* [2011] ECR I-2551, ECLI:EU:C:2011:208 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62009CJ0119&qid=1733402155821>> accessed 5 December 2024.

²⁰ Case C-339/15 *Criminal proceedings against Luc Vanderborght* [2017] ECLI:EU:C:2017:335 <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A62015CJ0339>> accessed 5 December 2024.

VI. ABOLITION 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, are permitted to use commercial communications. Similarly, Article 24(1) of Directive 2006/123/EC requires Member States to abolish all total prohibitions on commercial communications provided by representatives of such professions. The essence of both provisions is similar: they aim to enable representatives of regulated professions to use commercial communications, meaning the direct or indirect promotion of goods, services, or their professional image. However, the terms 'use' in Article 8 and 'abolish all total prohibitions' in Article 24 highlight different aspects of this obligation. The term 'use' in Article 8 refers to the right of regulated professionals to actively engage in using commercial communications to promote their services. In contrast, the phrase 'abolish all total prohibitions' in Article 24 emphasises the need to remove barriers that would restrict access to such communications, thereby ensuring the right to freely utilise them. In practice, both provisions pursue the same objective: to guarantee representatives of regulated professions the ability to use commercial communications as part of providing information to society. To achieve this, Member States must abolish all national regulations that impose total bans on the use of commercial communications by these professional groups, including veterinary surgeons. They must also introduce provisions explicitly allowing the use of commercial communications.

In light of Articles 8 and 24 of the analysed directives, it can be argued that national regulations on veterinary surgeons' advertising fail to meet the standards established by EU law, as they impose a prohibition on the use of commercial communications by veterinary surgeons. EU law clearly states that such prohibitions must be abolished, and national regulations should enable representatives of regulated professions, including veterinary surgeons, to use commercial communications in a manner consistent with professional ethics as well as the principles of proportionality and transparency.

To align national legislation with EU law requirements, the legislature should undertake the following legislative actions: 1) repeal the total ban on veterinary surgeons' advertising contained in the current national regulations; 2) establish detailed legal frameworks that allow veterinary surgeons to use commercial communications, with potential restrictions tailored to the specific nature of the veterinary profession. The adoption of such regulations must comply with the procedure outlined in Chapter 6a of the Act of 22 December 2015 on the Rules for

the Recognition of Professional Qualifications Acquired in the Member States of the European Union.²¹

VII. SUMMARY

In summary, the objective of this study was to examine the compliance of Polish regulations prohibiting veterinary surgeons from advertising with EU law, particularly Directives 2006/123/EC and 2000/31/EC. To achieve this objective, an analysis was conducted of national regulations, including the Veterinary Clinics Act and resolutions of the National Veterinary Council, in relation to EU provisions and the case law of the Court of Justice of the European Union. Key to this analysis was understanding the concepts of ‘regulated profession’ and ‘commercial communication’, which play a significant role in the context of the study. The article hypothesised that veterinary surgeons, as members of a regulated profession under EU directives, should have the ability to use commercial communications, which is at odds with the current Polish laws prohibiting advertising.

The analysis confirmed this hypothesis, demonstrating that Polish regulations restricting veterinary surgeons from advertising violate Article 8 of Directive 2000/31/EC and Article 24 of Directive 2006/123/EC, both of which require the abolition of total prohibitions on commercial communications in regulated professions. It was concluded that existing national regulations require reform to allow veterinary surgeons to use commercial communications in a manner consistent with the principles of professional ethics and deontology. A clear answer was provided to the research question, highlighting the inconsistency of Polish regulations with EU law and the need to align them with European standards. National solutions should consider both the needs of regulated professions and the ethical standards required in these fields. The conclusions presented not only underscore the necessity of legislative changes but also offer practical guidance for further research into the regulation of professions of public trust in the context of EU norms on commercial communications.

²¹ Act of 22 December 2015 on the principles of recognition of professional qualifications acquired in the Member States of the European Union (consolidated text: Journal of Laws [2023] item 334).

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