



## Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

4 May 2017\*

(Reference for a preliminary ruling — Article 56 TFEU — Freedom to provide services — Provision of oral and dental care — National legislation prohibiting, in absolute terms, advertising for oral and dental care services — Existence of a cross-border element — Protection of public health — Proportionality — Directive 2000/31/EC — Information society service — Advertising via an internet site — Member of a regulated profession — Professional rules — Directive 2005/29/EC — Unfair trading practices — National provisions relating to health — National provisions governing regulated professions)

In Case C-339/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the *Nederlandstalige rechtbank van eerste aanleg te Brussel, strafzaken* (Dutch-language Court of First Instance, Criminal Section, Brussels, Belgium), made by decision of 18 June 2015, received at the Court on 7 July 2015, in the criminal proceedings brought against

**Luc Vanderborght**

THE COURT (Third Chamber),

composed of L. Bay Larsen (Rapporteur), President of the Chamber, M. Vilaras, J. Malenovský, M. Safjan and D. Šváby, Judges,

Advocate General: Y. Bot,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 7 July 2016,

after considering the observations submitted on behalf of:

- Luc Vanderborght, by S. Callens, M. Verhaege and L. Boddez, advocaten,
- the *Verbond der Vlaamse Tandartsen VZW*, by N. Van Ranst and V. Vanpeteghem, advocaten,
- the Belgian Government, by C. Pochet, J. Van Holm and J.-C. Halleux, acting as Agents, and by A. Fromont et L. Van den Hole, advocaten,
- the Italian Government, by G. Palmieri, acting as Agent, and by W. Ferrante, avvocato dello Stato,
- the Polish Government, by B. Majczyna, acting as Agent,

\* Language of the case: Dutch.

— the European Commission, by D. Roussanov and F. Wilman, acting as Agents,  
after hearing the Opinion of the Advocate General at the sitting on 8 September 2016,  
gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Articles 49 and 56 TFEU, Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council, and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (‘the Unfair Commercial Practices Directive’) (OJ 2005 L 149, p. 22), 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 (‘Directive on electronic commerce’) (OJ 2000 L 178, p. 1).
- 2 The request has been made in criminal proceedings brought against Mr Luc Vanderborght, a dentist established in Belgium, for contravening national rules prohibiting all advertising for the provision of oral and dental care services.

### **Legal context**

#### *EU law*

#### *Directive 92/51/EEC*

- 3 Article 1 of Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (OJ 1992 L 209, p. 25) provides:

‘For the purpose of this Directive the following definitions shall apply:

...

- (f) regulated professional activity: a professional activity the taking up or pursuit of which, or one of its modes of pursuit in a Member State, is subject, directly or indirectly, by virtue of laws, regulations or administrative provisions, to the possession of evidence of education and training or an attestation of competence. ...

...’

**Directive 98/34/EC**

- 4 Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (OJ 1998 L 204, p. 37), as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998 (OJ 1998 L 217, p. 18) ('Directive 98/34'), defines 'service' as:

'Any Information Society service, that is to say, any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.

For the purpose of this definition:

- "at a distance" means that the service is provided without the parties being simultaneously present,
- "by electronic means" means that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means,
- "at the individual request of a recipient of services" means that the service is provided through the transmission of data on individual request.

...'

**Directive 2000/31**

- 5 Recital 18 of Directive 2000/31 states:

'Information society services span a wide range of economic activities which take place online; ... information society services are not solely restricted to services giving rise to online contracting but also, in so far as they represent an economic activity, extend to services which are not remunerated by those who receive them, such as those offering online information or commercial communications ... activities which by their very nature cannot be carried out at a distance and by electronic means, such as the statutory auditing of company accounts or medical advice requiring the physical examination of a patient are not information society services.'

- 6 Article 2 of that directive, entitled 'Definitions', provides:

'For the purpose of this Directive the following terms shall bear the following meanings:

- (a) "Information Society services": services within the meaning of Article 1(2) of Directive [98/34];

...

- (f) "commercial communication": 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. ...

...

(g) “regulated profession”: any profession within the meaning of either 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 ... or of Article 1(f) of Council Directive [92/51] ...;

...’

7 Paragraphs (1) and (2) of Article 8 of that directive, entitled ‘Regulated professions’, are worded as follows:

‘1. 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 professional rules regarding, in particular, the independence, dignity and honour of the profession, professional secrecy and fairness towards clients and other members of the profession.

2. Without prejudice to the autonomy of professional bodies and associations, Member States and the Commission shall encourage professional associations and bodies to establish codes of conduct at Community level in order to determine the types of information that can be given for the purposes of commercial communication in conformity with the rules referred to in paragraph 1.’

***Directive 2005/29***

8 Recital 9 of Directive 2005/29 states:

‘This Directive is without prejudice to individual actions brought by those who have been harmed by an unfair commercial practice. It is also without prejudice to Community and national rules ... on the health and safety aspects of products ... The Member States will thus be able to retain or introduce restrictions and prohibitions of commercial practices on grounds of the protection of the health and safety of consumers in their territory wherever the trader is based, for example in relation to alcohol, tobacco or pharmaceuticals. ...’

9 Article 2 of that directive, entitled ‘Definitions’, provides:

‘For the purposes of this Directive:

...

(c) “product” means any goods or service including immovable property, rights and obligations;

(d) “business-to-consumer commercial practices” (hereinafter also referred to as commercial practices) means any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers;

...’

10 Article 3 of the directive provides:

‘1. This Directive shall apply to unfair business-to-consumer commercial practices, as laid down in Article 5, before, during and after a commercial transaction in relation to a product.

...

3. This Directive is without prejudice to Community or national rules relating to the health and safety aspects of products.

...

8. This Directive is without prejudice to any conditions of establishment or of authorisation regimes, or to the deontological codes of conduct or other specific rules governing regulated professions in order to uphold high standards of integrity on the part of the professional, which Member States may, in conformity with Community law, impose on professionals.

...'

### ***National law***

- 11 Article 8d of the Koninklijk Besluit houdende reglement op de beoefening van de tandheelkunde (Royal Decree laying down rules for the practice of dentistry) of 1 June 1934 (*Belgisch Staatsblad*, 7 June 1934, p. 3220) provides the following:

'For the purpose of informing the public, it is permissible to affix only an inscription or a plaque of modest dimensions and appearance to the building in which a competent person practises dentistry, stating the name of the practitioner and possibly his legal designation, his sessions days and times, the name of the undertaking or health care organisation within which the practitioner carries out his professional activity; it may also state the branch of dentistry in which the practitioner specialises, such as surgical dentistry, oral prosthesis, orthodontics, dental surgery.

...'

- 12 Pursuant to Article 1 of the Wet betreffende de publiciteit inzake tandverzorging (Law on advertising in dental care matters) of 15 April 1958 (*Belgisch Staatsblad*, 5 May 1958, p. 3542):

'No person may, whether directly or indirectly, engage in advertising of any kind with a view to treating or providing treatment, whether or not by a qualified person, in Belgium or abroad, for dental or oral ailments, injuries or abnormalities, by means, inter alia, of displays or signs, inscriptions or plaques liable to be misleading as to the lawful nature of the activity advertised, leaflets, circulars, hand-outs and brochures, via the medium of the press, broadcasting or cinema ...'

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 13 At the time of the events giving rise to the criminal proceedings brought against him, Mr Vanderborght worked as a qualified dental practitioner in Opwijk (Belgium). Those proceedings were brought against him on the ground that, between March 2003 and January 2014 at least, he advertised his dental services contrary to Belgian law.
- 14 It is clear from the order for reference that Mr Vanderborght 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.
- 15 In addition, Mr Vanderborght 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.

- 16 The criminal proceedings follow a complaint from the *Verbond der Vlaamse Tandartsen VZW*, a professional association.
- 17 On 6 February 2014, the Public Prosecutor’s Office sought to have the proceedings against Mr Vanderborght transferred to the criminal court. By order of 25 March 2014, the court sitting in chambers referred the proceedings to the *Nederlandstalige rechtbank van eerste aanleg te Brussel, strafzaken* (Dutch-language Court of First Instance, Criminal Section, Brussels, Belgium).
- 18 Before the referring court, Mr Vanderborght argues that Article 1 of the Law of 15 April 1958 on advertising in relation to dental care, which prohibits, in absolute terms, any advertising relating to oral and dental care, and Article 8d of the Royal Decree of 1 June 1934 laying down rules for the practice of dentistry, which establishes certain requirements of discretion with regard to signs of dental practices, are contrary to EU law, in particular, Directives 2005/29 and 2000/31, and Articles 49 and 56 TFEU.
- 19 The referring court holds that the main proceedings have a cross-border element, relying, *inter alia*, on information that Mr Vanderborght posts advertisements on the internet which may reach patients in other Member States and that he treats patients some of whom come from other Member States.
- 20 In those circumstances, the *Nederlandstalige rechtbank van eerste aanleg te Brussel, strafzaken* (Dutch-language Court of First Instance, Criminal Section, Brussels) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘(1) Should Directive [2005/29] be interpreted as precluding a national law — such as Article 1 of the Law of 15 April 1958 on advertising in dental care matters — which prohibits, in absolute terms, any advertising, by anyone, relating to oral or dental care?
- (2) Is a prohibition on advertising in respect of oral and dental care to be regarded as a “rule relating to the health and safety aspects of products” within the meaning of Article 3(3) of Directive [2005/29]?
- (3) Should Directive [2005/29] be interpreted as precluding a national provision — such as Article 8d of the Royal Decree of 1 June 1934 laying down rules for the practice of dentistry — which describes in detail the requirements in terms of discreteness to be met by a sign, intended for the public, at a dental practice?
- (4) Should Directive [2000/31] be interpreted as precluding a national law — such as Article 1 of the Law of 1958 on advertising in dental care matters — which prohibits, in absolute terms, any advertising, by anyone, relating to oral or dental care, including a prohibition on commercial advertising by electronic means (website)?
- (5) How should the term “information society services”, as defined in Article 2(a) of Directive 2000/31 by reference to Article 1(2) of Directive [98/34], be interpreted?
- (6) Should Articles 49 TFEU and 56 TFEU be interpreted as precluding national legislation such as that at issue in the main proceedings, whereby, in order to protect public health, a complete ban is imposed on advertising in respect of dental care?’

## Consideration of the questions referred

### Questions 1 to 3

- 21 By its first three questions, which it is appropriate to examine together, the referring court asks, in essence, whether Directive 2005/29 must be interpreted to the effect that it precludes national legislation, such as that at issue in the main proceedings, which protects public health and the dignity of the profession of dentist, first, by imposing a general and absolute prohibition of any advertising relating to the provision of oral and dental care services and, secondly, by establishing certain requirements of discretion with regard to signs of dental practices.
- 22 In order to reply to the questions referred, it is necessary first of all to determine whether the advertisements which are the subject of the prohibition at issue in the main proceedings constitute commercial practices within the meaning of Article 2(d) of Directive 2005/29 and are therefore subject to the rules laid down by that directive (see, by analogy, judgment of 9 November 2010, *Mediaprint Zeitungs- und Zeitschriftenverlag*, C-540/08, EU:C:2010:660, paragraph 16).
- 23 It must be recalled that Article 2(d) of that directive gives a particularly wide definition to the concept of ‘commercial practices’ as ‘any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers’ (judgment of 9 November 2010, *Mediaprint Zeitungs- und Zeitschriftenverlag*, C-540/08, EU:C:2010:660, paragraph 17).
- 24 In addition, under Article 2(c) of that directive, the concept of a ‘product’ covers any goods or service.
- 25 It follows that the advertising of oral and dental care services such as that at issue in the main proceedings, whether through publications in advertising periodicals or on the internet, or through the use of signs, constitutes a ‘commercial practice’, for the purposes of Directive 2005/29.
- 26 However, according to Article 3(3), that directive is without prejudice to EU or national provisions relating to the health and safety aspects of products.
- 27 Moreover, it must be pointed out that, according to Article 3(8), that directive is without prejudice to the deontological codes of conduct or other specific rules governing regulated professions in order to uphold high standards of integrity on the part of the professional, which Member States may, in conformity with EU law, impose on professionals.
- 28 Thus, it follows from that provision that Directive 2005/29 does not call into question the national rules relating to the health and safety aspects of products or the specific provisions governing regulated professions.
- 29 It is apparent from the order for reference that the provisions of national legislation at issue in the main proceedings, that is to say, Article 1 of the Law of 15 April 1958 on advertising in relation to dental care and Article 8d of the Royal Decree of 1 June 1934 laying down rules for the practice of dentistry, protect, respectively, public health and the dignity of the profession of dentist, so that that legislation comes under Article 3(3) and (8) of Directive 2005/29.
- 30 In the light of all of the foregoing considerations, the answer to the first three questions is that Directive 2005/29 must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which protects public health and the dignity of the profession of dentist, first, by imposing a general and absolute prohibition of any advertising relating to the provision of oral and dental care services and, secondly, by establishing certain requirements of discretion with regard to signs of dental practices.

### *Questions 4 and 5*

- 31 By its fourth and fifth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Directive 2000/31 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which imposes a general and absolute prohibition of any advertising relating to the provision of oral and dental care services, inasmuch as it prohibits any form of electronic commercial communications, including by means of a website created by a dentist.
- 32 In that regard, it is important to note that Article 8(1) of that directive lays down the principle that Member States are to ensure that the use of commercial communications which are part of an information society service provided by a member of a regulated profession, or which constitutes such a service, is authorised.
- 33 It is clear from Article 2(g) of Directive 2000/31, read in conjunction with Article 1(f) of Directive 92/51 to which Article 2(g) refers, that a professional activity the taking up or pursuit of which is subject, by virtue of laws, regulations or administrative provisions, to the possession of evidence of education and training or an attestation of competence must, inter alia, be regarded as a ‘regulated profession’.
- 34 It is apparent from the order for reference that in Belgium the profession of dentist constitutes a regulated profession for the purposes of Article 2(g) of Directive 2000/31.
- 35 Moreover, pursuant to Article 2(a) of Directive 2000/31, read in conjunction with Article 1(2) of Directive 98/34, the concept of ‘information society services’ covers ‘any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services’.
- 36 Recital 18 of Directive 2000/31 states that the concept of ‘information society services’ spans a wide range of economic activities which take place online and that it is not solely restricted to services giving rise to online contracting but also, in so far as those services represent an economic activity, extend to services which are not remunerated by those who receive them, such as those offering online information or commercial communications.
- 37 In those circumstances, it must be considered that online advertising may constitute an information society service for the purposes of Directive 2000/31 (see, to that effect, judgment of 15 September 2016, *Mc Fadden*, C-484/14, EU:C:2016:689, paragraphs 41 and 42).
- 38 Furthermore, Article 2(f) of that directive stipulates that the concept of ‘commercial communication’ covers, inter alia, any form of communication designed to promote, directly or indirectly, the services of a person practising a regulated profession.
- 39 It follows that advertising relating to the provision of oral and dental care services by means of a website created by a member of a regulated profession constitutes a commercial communication which is part of an information society service or which constitutes such a service for the purposes of Article 8 of Directive 2000/31.
- 40 Therefore, it must be held that that provision, as the Advocate General stated in point 50 of his Opinion, means that Member States must ensure that those commercial communications are, as a rule, authorised.
- 41 In that regard, it is important to note that the contrary interpretation offered by the European Commission, that that provision covers only advertisements supplied by a member of a regulated profession where he acts as a supplier of online advertising, cannot be accepted, given that that interpretation would have the effect of excessively reducing the scope of that provision.



- 42 It should be recalled that the aim of Article 8(1) of Directive 2000/31 is to enable members of a regulated profession to use information society services in order to promote their activities.
- 43 That being the case, it is apparent from that provision that commercial communications such as those referred to in paragraph 39 above are only permitted subject to compliance with the professional rules regarding, in particular, the independence, dignity and honour of the regulated profession concerned, professional secrecy and fairness towards both clients and other members of that profession.
- 44 Nonetheless, the professional rules referred to in that provision cannot, without depriving it of practical effect and impeding the attainment of the objective pursued by the EU legislature, impose a general and absolute prohibition of any form of online advertising designed to promote the activity of a person practising a regulated profession.
- 45 That interpretation is supported by the fact that Article 8(2) of Directive 2000/31 provides that Member States and the Commission are to encourage the drawing-up of codes of conduct intended, not to prohibit that type of advertising, but rather to determine the types of information that can be given for the purposes of commercial communication in conformity with those professional rules.
- 46 It follows that, although the content and form of the commercial communications referred to in Article 8(1) of Directive 2000/31 may legitimately be subject to professional rules, such rules cannot include a general and absolute prohibition of that type of communication.
- 47 That consideration is equally valid as regards national legislation, such as that at issue in the main proceedings, which applies only to dentists.
- 48 It must be pointed out that the EU legislature has not excluded regulated professions from the principle of the permissibility of online commercial communications laid down in Article 8(1) of Directive 2000/31.
- 49 Therefore, although that provision makes it possible to take into account the particularities of health professions when the relevant professional rules are drawn up, by supervising, closely if necessary, the form and manner of the online commercial communications referred to in that provision with a view, in particular, to ensuring that the confidence which patients have in those professions is not undermined, the fact remains that those professional rules cannot legitimately impose a general and absolute prohibition of any form of online advertising designed to promote the activity of a person practising such a profession.
- 50 In view of the foregoing considerations, the answer to the fourth and fifth questions is that Directive 2000/31 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which imposes a general and absolute prohibition of any advertising relating to the provision of oral and dental care services, inasmuch as it prohibits any form of electronic commercial communications, including by means of a website created by a dentist.

### *The sixth question*

- 51 By its sixth question, the referring court asks, in essence, whether Articles 49 and 56 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which imposes a general and absolute prohibition of any advertising relating to the provision of oral and dental care services.

52 As a preliminary point, it should be noted that, in the light of the reply given to the fourth and fifth questions, the sixth question must be seen as ultimately relating to the compatibility with Articles 49 and 56 TFEU of such national legislation inasmuch as it prohibits advertising which is not carried out by means of an information society service.

### *Admissibility*

53 The Court has consistently held that the Treaty provisions guaranteeing the freedoms of movement cannot be applied to a situation which is confined in all respects within a single Member State (see to that effect, inter alia, judgments of 21 October 1999, *Jägerskiöld*, C-97/98, EU:C:1999:515, paragraph 42, and of 11 July 2002, *Carpenter*, C-60/00, EU:C:2002:434, paragraph 28).

54 It is true that the case in the main proceedings concerns criminal proceedings brought against a dentist who is a Belgian national, established in Belgium, and who practises in that Member State.

55 However, it is clear from the order for reference that a number of Mr Vanderborgh's patients come from other Member States.

56 The Court has already held that the fact that a number of the patients are EU citizens coming from other Member States could constitute a cross-border element involving the application of the Treaty provisions guaranteeing the freedoms of movement (see, to that effect, judgment of 11 June 2015, *Berlington Hungary and Others*, C-98/14, EU:C:2015:386, paragraphs 25 and 26).

57 Therefore, the sixth question must be held to be admissible.

### *Substance*

58 It should be observed that, when a national measure concerns both the freedom of establishment and the freedom to provide services, the Court will in principle examine the measure in dispute in relation to only one of those two freedoms if it appears, in the circumstances of the case, that one of them is entirely secondary in relation to the other and may be considered together with it (judgment of 26 May 2016, *NN (L) International*, C-48/15, EU:C:2016:356, paragraph 39 and the case-law cited).

59 That is so in the present case.

60 Since the cross-border element which makes the Treaty provisions guaranteeing the freedoms of movement applicable is constituted by the movement of recipients of services established in another Member State (see, to that effect, judgment of 11 June 2015, *Berlington Hungary and Others*, C-98/14, EU:C:2015:386, paragraph 26), it is appropriate to answer the sixth question with reference to Article 56 TFEU.

61 In that regard, it is clear from the Court's settled case-law that all measures which prohibit, impede or render less attractive the exercise of the freedom to provide services must be regarded as restrictions of that freedom (see, to that effect, judgments of 17 July 2008, *Corporación Dermoestética*, C-500/06, EU:C:2008:421, paragraph 32; of 22 January 2015, *Stanley International Betting and Stanleybet Malta*, C-463/13, EU:C:2015:25, paragraph 45; and of 28 January 2016, *Laezza*, C-375/14, EU:C:2016:60, paragraph 21).

62 It must also be recalled that, in particular, the concept of 'restriction' covers measures taken by a Member State which, although applicable without distinction, affect the free movement of services in other Member States (judgment of 12 September 2013, *Konstantinides*, C-475/11 EU:C:2013:542, paragraph 45 and the case-law cited).

- 63 National legislation which imposes a general and absolute prohibition of any 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 clientèle and of promoting the services which they offer to their clientèle.
- 64 Consequently, that national legislation must be regarded as a restriction on the freedom to provide services.
- 65 As regards the justification for such a restriction, national measures which are liable to restrict the exercise of fundamental freedoms guaranteed by the Treaty may be allowed only if they pursue an objective in the public interest, are appropriate for ensuring the attainment of that objective and do not go beyond what is necessary to attain the objective pursued (judgment of 12 September 2013, *Konstantinides*, C-475/11, EU:C:2013:542, paragraph 50 and the case-law cited).
- 66 In the present case, the referring court indicated that the national legislation at issue in the main proceedings aims to protect public health and the dignity of the profession of dentist.
- 67 It must be noted, in that regard, that the protection of the health is one of the objectives which may be regarded as overriding reasons in the public interest capable of justifying a restriction on the freedom to provide services (see, to that effect, judgments of 10 March 2009, *Hartlauer*, C-169/07, EU:C:2009:141, paragraph 46, and of 12 September 2013, *Konstantinides*, C-475/11, EU:C:2013:542, paragraph 51).
- 68 In addition, with regard to the importance of the relationship of trust which must prevail between a dentist and his patient, the protection of the dignity of the profession of dentist may also be regarded as being capable of constituting such an overriding reason in the public interest.
- 69 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 dentist, 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 dentist.
- 70 In that context, a general and absolute prohibition of any advertising is appropriate for attaining the objectives pursued by avoiding any use, by dentists, of advertising and promotional messages.
- 71 As regards the need for a restriction on the freedom to provide services such as that at issue in the main proceedings, account must be taken of the fact that the health and life of humans rank foremost among the assets and interests protected by the Treaty and that it is, in principle, for the Member States to determine the level of protection which they wish to afford to public health and the way in which that level is to be achieved. Since the level may vary from one Member State to another, Member States should be allowed a measure of discretion (see, to that effect, judgments of 2 December 2010, *Ker-Optika*, C-108/09, EU:C:2010:725, paragraph 58, and of 12 November 2015, *Visnapuu*, C-198/14, EU:C:2015:751, paragraph 118).
- 72 It must therefore be found that, notwithstanding that measure of discretion, the restriction resulting from the application of the national legislation at issue in the main proceedings, imposing a general and absolute prohibition of any advertising relating to the provision of oral and dental care services, exceeds what is necessary to attain the objectives pursued by that legislation, as referred to in paragraph 66 above.
- 73 All the advertising messages prohibited by that legislation are not, in themselves, likely to produce effects that are contrary to the objectives referred to in paragraph 69 above.

- 74 It must be pointed out further in that regard that, although the Court has already held in paragraph 57 of the judgment of 12 September 2013, *Konstantinides* (C-475/11, EU:C:2013:542), that national legislation prohibiting advertising for medical services the content of which is contrary to professional ethics is compatible with Article 56 TFEU, it must be observed that the legislation at issue in the main proceedings has a much broader scope.
- 75 In those circumstances, it must be held that the objectives pursued by the legislation at issue in the main proceedings could 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, without imposing on them a general and absolute prohibition of any form of advertising.
- 76 In the light of all of the foregoing considerations, the answer to the sixth question is that Article 56 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which imposes a general and absolute prohibition of any advertising relating to the provision of oral and dental care services.

### Costs

- 77 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. **Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('the Unfair Commercial Practices Directive')** must be interpreted as not precluding a national provision, such as that at issue in the main proceedings, which protects public health and the dignity of the profession of dentist, first, by imposing a general and absolute prohibition of any advertising relating to the provision of oral and dental care services and, secondly, by establishing certain requirements of discretion with regard to signs of dental practices.
2. **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')** must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which imposes a general and absolute prohibition of any advertising relating to the provision of oral and dental care services, inasmuch as it prohibits any form of electronic commercial communications, including by means of a website created by a dentist.
3. **Article 56 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which imposes a general and absolute prohibition of any advertising relating to the provision of oral and dental care services.**

[Signatures]