

Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use

[<sup>F1</sup>TITLE VIIIa

**INFORMATION AND ADVERTISING**

*Article 88a*

Within three years of the entry into force of Directive 2004/726/EC, the Commission shall, following consultations with patients' and consumers' organisations, doctors' and pharmacists' organisations, Member States and other interested parties, present to the European Parliament and the Council a report on current practice with regard to information provision — particularly on the Internet — and its risks and benefits for patients.

Following analysis of the above data, the Commission shall, if appropriate, put forward proposals setting out an information strategy to ensure good-quality, objective, reliable and non-promotional information on medicinal products and other treatments and shall address the question of the information source's liability.]

*Article 89*

1 Without prejudice to Article 88, all advertising to the general public of a medicinal product shall:

- a be set out in such a way that it is clear that the message is an advertisement and that the product is clearly identified as a medicinal product;
- b include the following minimum information:
  - the name of the medicinal product, as well as the common name if the medicinal product contains only one active substance,
  - the information necessary for correct use of the medicinal product,
  - an express, legible invitation to read carefully the instructions on the package leaflet or on the outer packaging, as the case may be.

[<sup>F2</sup> Member States may decide that the advertising of a medicinal product to the general public may, notwithstanding paragraph 1, include only the name of the medicinal product or its international non-proprietary name, where this exists, or the trademark if it is intended solely as a reminder.]

**Textual Amendments**

- F2** Substituted by [Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use.](#)

*Article 90*

The advertising of a medicinal product to the general public shall not contain any material which:

- (a) gives the impression that a medical consultation or surgical operation is unnecessary, in particular by offering a diagnosis or by suggesting treatment by mail;

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- (b) suggests that the effects of taking the medicine are guaranteed, are unaccompanied by adverse reactions or are better than, or equivalent to, those of another treatment or medicinal product;
- (c) suggests that the health of the subject can be enhanced by taking the medicine;
- (d) suggests that the health of the subject could be affected by not taking the medicine; this prohibition shall not apply to the vaccination campaigns referred to in Article 88(4);
- (e) is directed exclusively or principally at children;
- (f) refers to a recommendation by scientists, health professionals or persons who are neither of the foregoing but who, because of their celebrity, could encourage the consumption of medicinal products;
- (g) suggests that the medicinal product is a foodstuff, cosmetic or other consumer product;
- (h) suggests that the safety or efficacy of the medicinal product is due to the fact that it is natural;
- (i) could, by a description or detailed representation of a case history, lead to erroneous self-diagnosis;
- (j) refers, in improper, alarming or misleading terms, to claims of recovery;
- (k) uses, in improper, alarming or misleading terms, pictorial representations of changes in the human body caused by disease or injury, or of the action of a medicinal product on the human body or parts thereof<sup>[F2.]</sup>
- (l) <sup>[F3]</sup> . . . . .]

#### Textual Amendments

- F2** Substituted by Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use.
- F3** Deleted by Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use.

#### Article 91

1 Any advertising of a medicinal product to persons qualified to prescribe or supply such products shall include:

- essential information compatible with the summary of product characteristics;
- the supply classification of the medicinal product.

Member States may also require such advertising to include the selling price or indicative price of the various presentations and the conditions for reimbursement by social security bodies.

<sup>[F2]</sup> Member States may decide that the advertising of a medicinal product to persons qualified to prescribe or supply such products may, notwithstanding paragraph 1, include only the name of the medicinal product, or its international non-proprietary name, where this exists, or the trademark, if it is intended solely as a reminder.]

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#### Textual Amendments

- F2** Substituted by [Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use.](#)

#### Article 92

1 Any documentation relating to a medicinal product which is transmitted as part of the promotion of that product to persons qualified to prescribe or supply it shall include, as a minimum, the particulars listed in Article 91(1) and shall state the date on which it was drawn up or last revised.

2 All the information contained in the documentation referred to in paragraph 1 shall be accurate, up-to-date, verifiable and sufficiently complete to enable the recipient to form his or her own opinion of the therapeutic value of the medicinal product concerned.

3 Quotations as well as tables and other illustrative matter taken from medical journals or other scientific works for use in the documentation referred to in paragraph 1 shall be faithfully reproduced and the precise sources indicated.

#### Article 93

1 Medical sales representatives shall be given adequate training by the firm which employs them and shall have sufficient scientific knowledge to be able to provide information which is precise and as complete as possible about the medicinal products which they promote.

2 During each visit, medical sales representatives shall give the persons visited, or have available for them, summaries of the product characteristics of each medicinal product they present together, if the legislation of the Member State so permits, with details of the price and conditions for reimbursement referred to in Article 91(1).

3 Medical sales representatives shall transmit to the scientific service referred to in Article 98(1) any information about the use of the medicinal products they advertise, with particular reference to any adverse reactions reported to them by the persons they visit.

#### Article 94

1 Where medicinal products are being promoted to persons qualified to prescribe or supply them, no gifts, pecuniary advantages or benefits in kind may be supplied, offered or promised to such persons unless they are inexpensive and relevant to the practice of medicine or pharmacy.

[<sup>F22</sup> Hospitality at sales promotion events shall always be strictly limited to their main purpose and must not be extended to persons other than health-care professionals.]

3 Persons qualified to prescribe or supply medicinal products shall not solicit or accept any inducement prohibited under paragraph 1 or contrary to paragraph 2.

4 Existing measures or trade practices in Member States relating to prices, margins and discounts shall not be affected by paragraphs 1, 2 and 3.

#### Textual Amendments

- F2** Substituted by [Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use.](#)

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### [<sup>F2</sup>Article 95

The provisions of Article 94(1) shall not prevent hospitality being offered, directly or indirectly, at events for purely professional and scientific purposes; such hospitality shall always be strictly limited to the main scientific objective of the event; it must not be extended to persons other than health-care professionals.]

#### Textual Amendments

**F2** Substituted by [Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use.](#)

### Article 96

1 Free samples shall be provided on an exceptional basis only to persons qualified to prescribe them and on the following conditions:

- a the number of samples for each medicinal product each year on prescription shall be limited;
- b any supply of samples shall be in response to a written request, signed and dated, from the prescribing agent;
- c those supplying samples shall maintain an adequate system of control and accountability;
- [<sup>F2</sup>d each sample shall be no larger than the smallest presentation on the market;]
- e each sample shall be marked ‘free medical sample — not for sale’ or shall show some other wording having the same meaning;
- f each sample shall be accompanied by a copy of the summary of product characteristics;
- g no samples of medicinal products containing psychotropic or narcotic substances within the meaning of international conventions, such as the United Nations Conventions of 1961 and 1971, may be supplied.

2 Member States may also place further restrictions on the distribution of samples of certain medicinal products.

#### Textual Amendments

**F2** Substituted by [Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use.](#)

### Article 97

1 Member States shall ensure that there are adequate and effective methods to monitor the advertising of medicinal products. Such methods, which may be based on a system of prior vetting, shall in any event include legal provisions under which persons or organizations regarded under national law as having a legitimate interest in prohibiting any advertisement inconsistent with this Title, may take legal action against such advertisement, or bring such advertisement before an administrative authority competent either to decide on complaints or to initiate appropriate legal proceedings.

2 Under the legal provisions referred to in paragraph 1, Member States shall confer upon the courts or administrative authorities powers enabling them, in cases where they deem such measures to be necessary, taking into account all the interests involved, and in particular the public interest:

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- to order the cessation of, or to institute appropriate legal proceedings for an order for the cessation of, misleading advertising, or
- if misleading advertising has not yet been published but publication is imminent, to order the prohibition of, or to institute appropriate legal proceedings for an order for the prohibition of, such publication,

even without proof of actual loss or damage or of intention or negligence on the part of the advertiser.

3 Member States shall make provision for the measures referred to in the second subparagraph to be taken under an accelerated procedure, either with interim effect or with definitive effect.

It shall be for each Member State to decide which of the two options set out in the first subparagraph to select.

4 Member States may confer upon the courts or administrative authorities powers enabling them, with a view to eliminating the continuing effects of misleading advertising the cessation of which has been ordered by a final decision:

- to require publication of that decision in full or in part and in such form as they deem adequate,
- to require in addition the publication of a corrective statement.

5 Paragraphs 1 to 4 shall not exclude the voluntary control of advertising of medicinal products by self-regulatory bodies and recourse to such bodies, if proceedings before such bodies are possible in addition to the judicial or administrative proceedings referred to in paragraph 1.

#### *Article 98*

1 The marketing authorization holder shall establish, within his undertaking, a scientific service in charge of information about the medicinal products which he places on the market.

2 The marketing authorization holder shall:

- keep available for, or communicate to, the authorities or bodies responsible for monitoring advertising of medicinal products, a sample of all advertisements emanating from his undertaking together with a statement indicating the persons to whom it is addressed, the method of dissemination and the date of first dissemination,
- ensure that advertising of medicinal products by his undertaking conforms to the requirements of this Title,
- verify that medical sales representatives employed by his undertaking have been adequately trained and fulfill the obligations imposed upon them by Article 93(2) and (3),
- supply the authorities or bodies responsible for monitoring advertising of medicinal products with the information and assistance they require to carry out their responsibilities,
- ensure that the decisions taken by the authorities or bodies responsible for monitoring advertising of medicinal products are immediately and fully complied with.

[<sup>F13</sup> The Member States shall not prohibit the co-promotion of a medicinal product by the holder of the marketing authorisation and one or more companies nominated by him.]

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### Article 99

Member States shall take the appropriate measures to ensure that the provisions of this Title are applied and shall determine in particular what penalties shall be imposed should the provisions adopted in the execution of Title be infringed.

### <sup>F2</sup>Article 100

Advertising of the homeopathic medicinal products referred to in Article 14(1) shall be subject to the provisions of this Title with the exception of Article 87(1).

However, only the information specified in Article 69(1) may be used in the advertising of such medicinal products.]

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#### Textual Amendments

- F2** Substituted by [Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use.](#)

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#### Textual Amendments

- F1** Inserted by [Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use.](#)