

## **Financial incentive for drug prescription might be non-compliant with the EU law**

In February 2009, a preliminary ruling has been referred to the Court of Justice of the EU by the High Court of Justice of England and Wales on questions relating to incentive schemes that are nationally implemented to induce doctors and other health professionals to prescribe in a certain way (EU case C-62/09).

The question referred to the Court of Justice of the EU is:

*“Does Article 94(1) of Directive 2001/83/EC preclude a public body forming part of a national public health service, in order to seek to reduce its overall expenditure on medicines, from **implementing a scheme which offers financial incentives to medical practices (which may in turn provide a financial benefit to the prescribing doctor) to prescribe a specific named medicine supported by the incentive scheme** that is either:*

*(a) a different prescription medicine to the medicine previously prescribed by the doctor to the patient; or*

*(b) a different prescription medicine to that which otherwise might have been prescribed to the patient but for the incentive scheme,*

*where such a different prescription medicine is from the same therapeutic class of medicines used for treatment of the patient's particular condition”.*

Article 94(1) of Directive 2001/83/EC provides:

*“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”.*

Although the referral stems from a UK national Court, written and/or oral comments have been submitted by the Czech, Estonian, French, Netherlands and Spanish Governments.

The Opinion of the Advocate General of the Court of Justice of the EU has been issued on 11 February 2010.

The view of the Advocate General is that **Directive 2001/83/EC applies to national public authorities**, and that said **incentive schemes are contrary to Directive 2001/83/EC**.

The Advocate General also expressed the view that it is not against medical ethics for a doctor to pay attention to the price of a medicinal product when choosing which medicines to prescribe, but that medical ethics, however, require that a doctor's discretion in the context of prescribing decisions is not constrained by any inappropriate self-regarding financial motives. The Opinion emphasizes the importance of the independence of doctors in their exercise of drug prescription.

Hence, the Advocate General's opinion is that an incentive scheme, which rewards doctors for prescribing specific named medicinal products, is not compliant with the EU law.

Although the referral does not directly deal with the specific case of generic drugs, it should nonetheless be noted that, if the Advocate General's Opinion were followed by the Court of

Justice of the EU, it might have a huge impact on the national politics on generic drug prescription that are implemented on the EU territory.  
The Judgement of the Court of Justice of the EU is expected by the end of 2010.