

UJ

v

Österreichische Zahnärztekammer

(Request for a preliminary ruling from the Oberster Gerichtshof)

Judgment of the Court (Fourth Chamber) of 11 September 2025

(Reference for a preliminary ruling – Public health – Cross-border healthcare – Directive 2011/24/EU – Article 3(d) and (e) – Provision of healthcare through telemedicine – Concept of ‘telemedicine’ – Cross-border healthcare provided through telemedicine – Complex medical treatment that includes healthcare provided in person and through telemedicine – Member State of treatment – Directive 2000/31/EC – Information society service – Directive 2005/36/EC – Professional qualifications – Freedom to provide services – Scope – Article 56 TFEU)

1. *Questions referred for a preliminary ruling – Admissibility – Limits – Questions bearing no relation to the purpose of the main action – Questions concerning the applicability of an act of EU law – Questions concerning the substance of the case*

(Art. 267 TFEU)

(see paragraph 57)

2. *Public health – Cross-border healthcare – Directive 2011/24 – Concept of cross-border healthcare provided through telemedicine – Complex medical treatment that includes healthcare provided through telemedicine – Criteria – Provision of healthcare by a provider established in a Member State other than the patient’s Member State of affiliation – Provision of such care at a distance and solely via information and communication technologies*

(European Parliament and Council Directives 2011/24, recital 10 and Arts 1(1), 3(a), (d) and (e), and 7(7), 2000/31 and 2015/1535)

(see paragraphs 63-70, 73, 74, 82-84, 90-93, operative part 1)

3. *Public health – Cross-border healthcare – Directive 2011/24 – Scope – Limitation to the reimbursement of the costs of cross-border healthcare – None – Provision of healthcare through telemedicine – Applicability of EU legislation and of the legislation of the Member State where the provider of such care is established*

(European Parliament and Council Directives 2000/31, Arts 2(e) and 3(1), and 2011/24, recital 10 and Arts 1(1), 2(e), 3(d) and 7)

(see paragraphs 95, 96, 99, 102, 103, 106, 107, operative part 2 and 3)

4. *Free movement of persons – Freedom of establishment – Freedom to provide services – Workers – Recognition of professional qualifications – Directive 2005/36 – Scope – Provider of cross-border healthcare provided through telemedicine – Not included – Provider established in a Member State requesting a provider established in another Member State to provide healthcare to a patient residing in that second Member State – Not included*

(European Parliament and Council Directives 2005/36, Art. 5, and 2011/24)

(see paragraphs 109-118, operative part 4)

## Résumé

In a judgment on a reference for a preliminary ruling from the Oberster Gerichtshof (Supreme Court, Austria), the Court of Justice gives a ruling on the interpretation of a number of acts of secondary EU law in an expanding field that is still rarely addressed in the case-law, namely telemedicine.

UJ, a dentist who is established in Austria and is authorised to provide dental care there, participates, as a partner, in activities in the field of dentistry carried out in that State by two German companies belonging to a group of undertakings that is active in dental medicine and operates worldwide. One of those companies, Urban Technology GmbH, advertises on its website dental aligners which consist of dental splints and are marketed under the brand name DrSmile. Potential customers can, via that website, request an appointment with a ‘partner dentist’ in Austria, such as UJ. During that appointment, that partner dentist, at his or her surgery, takes a medical history, provides an initial consultation, makes a 3D scan of the jaw, and carries out any pre-treatments that might be necessary for the future dental splint therapy. That partner dentist then sends the images and a recommendation regarding the dental alignment procedure to another company, DZK Deutsche Zahnklinik GmbH.

DZK Deutsche Zahnklinik has, in accordance with German law, a licence and the other authorisations necessary to operate a dental clinic in Germany. Only that company concludes treatment contracts with the patients. It obtains the dental splints from Urban Technology, which orders them from third parties; after the dental splint therapy starts, DZK Deutsche Zahnklinik subsequently provides follow-up care for the patients by means of an application. That company has a contractual relationship with the partner dentist and remunerates him or her for the services provided.

In that context, the Österreichische Zahnärztekammer (Austrian Dental Chamber) brought an action seeking an injunction against UJ before the Landesgericht Klagenfurt (Regional Court, Klagenfurt, Austria), together with an application for interim relief seeking to prohibit UJ from participating, directly or indirectly, in activities in the field of dentistry carried out in Austria by foreign companies that do not have the authorisations required under Austrian law. Following the dismissal of that application, the Austrian Dental Chamber brought an appeal before the Oberlandesgericht Graz (Higher Regional Court, Graz, Austria), which upheld the application for interim relief; subsequently, UJ brought an appeal on a point of law before the Supreme Court, which made a reference to the Court of Justice for a preliminary ruling.

### ***Findings of the Court***

In the first place, the Court rules on the concept of cross-border healthcare provided through telemedicine for the purposes of Directive 2011/24. ([1](#))

After noting that the term ‘telemedicine’ amounts to an autonomous concept of EU law, first, the Court points out that, according to a literal interpretation, the usual meaning of that term, by its very etymology, refers to medical services which are supplied at a distance, the prefix ‘tele’ conveying precisely the idea of distance. Likewise, in order for healthcare provided in the case of telemedicine to be covered by the concept of cross-border healthcare, it is necessary for that healthcare to be provided or prescribed in a Member State other than the Member State of affiliation.

Second, as regards the contextual interpretation, the Court notes that Directive 2011/24 lays down the general rule that applies, in principle, to all healthcare, and pursuant to which the Member State of treatment is that on whose territory the healthcare is actually provided. For telemedicine, that directive permits an exception pursuant to which healthcare is considered to be provided in the Member State where the healthcare provider is established. That exception, which is to be interpreted strictly, means that the Member State of treatment in respect of care other than that provided through telemedicine must be determined on the basis of the territory where that care is actually provided.

The Court observes also that, since the concept of healthcare can cover a wide range of services, a service provided in the context of telemedicine is, consequently, liable to amount to cross-border healthcare. Moreover, the provisions of Directive 2011/24 clearly state that healthcare provided or prescribed through means of telemedicine may come within the scope of ‘cross-border healthcare’, defined therein. ([2](#))

Furthermore, referring to the concept of information society services, ( [3](#) ) the Court states that cross-border health services supplied by a provider to a patient, where both are simultaneously present in the same location, even if those services involve the use of information and communication technologies (ICT), cannot be regarded as information society services and cannot therefore be covered by the concept of telemedicine for the purposes of Directive 2011/24. By contrast, health services which are actually supplied at a distance, that is to say, without the provider and the patient being simultaneously physically present in the same location, via ICT, are liable to be covered by the concept of information society service and therefore by that of ‘telemedicine’, even where they are provided in the framework of a complex medical treatment that includes healthcare provided by a provider who is physically present in the same place as the patient.

Third, as regards the teleological interpretation, the Court points out that telemedicine is a medical practice – in the present case a cross-border practice – allowing the attainment of the objectives of Directive 2011/24, that is to say, facilitating access to healthcare provided in a Member State where the provider of that care is established, which is different from the Member State of affiliation where the patients receiving the care reside. In that context, the Court observes that, by reason of the nature and specific features of that practice – relating, inter alia, to the provision of care at a distance, in other words, without the health professional and the patient being simultaneously present in the same location, and the use of ICT – the EU legislature provided for derogating rules concerning the determination of the Member State of treatment and the law applicable to a practice of that kind.

Fourth, the Court notes that the origins of the relevant provisions of Directive 2011/24, and more specifically the definition of the concept of ‘telemedicine’ in the *travaux préparatoires*, further support the conclusion that the decisive aspect of that concept lies in the fact that the health service is supplied, via ICT, to a patient by a healthcare provider established in a Member State other than the Member State of affiliation, at a distance and therefore without that patient and that provider being simultaneously physically present in the same location.

Thus, the Court concludes that, under Directive 2011/24, the concept of cross-border healthcare provided in the case of telemedicine corresponds solely to healthcare provided, exclusively via ICT, to a patient by a healthcare provider established in a Member State other than that patient’s Member State of affiliation, at a distance and therefore without that patient and that provider being simultaneously physically present in the same location.

In the second place, the Court provides clarification on the scope of Directive 2011/24.

In that regard, first, the Court states that it follows both from the very objective and structure of that directive that its scope and therefore the scope of the provision of that directive defining ‘Member State of treatment’ ( [4](#) ) are not limited to the reimbursement of the costs of cross-border healthcare. Second, it finds that cross-border healthcare that is provided via telemedicine, since it is regarded as being provided in the Member State where the healthcare provider is established, must comply with that Member State’s legislation and standards and guidelines on quality and safety, as well as with EU legislation on safety standards. Furthermore, the Court observes that, under both Directive 2011/24 and Directive 2000/31, the provision of healthcare in the case of telemedicine is governed by the legislation of the Member State where the provider is established in so far as it may be covered by the concept of ‘information society service’.

In the third and last place, the Court rules on the scope, in the context of the recognition of professional qualifications, of the principle of the freedom to provide services, referred to in Directive 2005/36. ( [5](#) )

In that regard, the Court finds that that directive applies neither to a provider of cross-border healthcare in the case of telemedicine nor to a provider, established in a Member State, that, without moving, has a provider established in another Member State provide healthcare in person to a patient residing in that second Member State.

First, Directive 2005/36 expressly states that its provisions relating to the freedom to provide services are to apply only where the service provider moves to the territory of the host Member State. Telemedicine necessarily means that the health service is provided without anyone moving. Second, the Court finds that, in the present case, there is nothing to suggest that a healthcare provider moves to the territory of a host Member State where that provider provides such care there via another provider established in that State.

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([1](#)) Article 3(d) and (e) 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 ([OJ 2011 L 88, p. 45](#)).

([2](#)) See Article 7(7) of Directive 2011/24, which provides that the Member State of affiliation may impose on an insured person seeking reimbursement of the costs of cross-border healthcare, 'including healthcare received through means of telemedicine', the same conditions as those set for care provided in that State. Thus, the expression 'including healthcare received through means of telemedicine' confirms that finding.

([3](#)) Pursuant to Article 2 of 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](#)), read in conjunction with Article 1(1)(b) of and Annex I to Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services ([OJ 2015 L 241, p. 1](#)).

([4](#)) Article 3(d) of Directive 2011/24.

([5](#)) Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications ([OJ 2005 L 255, p. 22](#)).