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Judgment of the Court in Case C-606/21 | Doctipharma

### **Distance selling of medicinal products without a prescription: the Court clarifies the conditions under which a Member State may prohibit a service connecting pharmacists and customers for the online sale of medicinal products**

Until 2016 <sup>1</sup>, Doctipharma operated a website on which it was possible to purchase pharmaceutical products and medicinal products not subject to prescription from pharmacy websites. In practical terms, the Doctipharma website made products available via a pre-registered catalogue. Customers selected the medicinal products and their order was then sent to the pharmacies whose websites were hosted by Doctipharma. Payment of the purchase price was made via a single payment system common to all pharmacies, using a dedicated account.

The Union des groupements de pharmaciens d'officine (Union of Pharmacy Groups, 'UDGPO') challenged the legality of that website: in its view, the service provided by Doctipharma via its website involved the latter in the e-commerce of medicinal products and was therefore contrary to national legislation prohibiting the sale of medicinal products by persons not qualified as pharmacists.

The Court of Appeal, Paris (France) asks the Court of Justice, first, whether Doctipharma's activity is an information society service and, secondly, whether EU law allows Member States to prohibit the provision of such a service, which consists in connecting, by means of a website, pharmacists and customers for the sale, via the websites of pharmacies that have subscribed to the service, of medicinal products not subject to prescription.

In that regard, the Court states that the service of connecting dispensing pharmacists and potential patients for the sale of medicinal products falls within the concept of an 'information society service' within the meaning of EU law <sup>2</sup>.

In its judgment, the Court holds as follows:

- where the service provider who is not a pharmacist is **considered to be selling medicinal products not subject to prescription itself**, the Member State in whose territory it is established **may prohibit the provision of that service**.
- By contrast, where the service provider concerned **merely connects sellers and customers by means of a service that is specific to and distinct from the sale**, Member States **may not prohibit** that service on the grounds that the company concerned is involved in e-commerce for the sale of medicinal products without having the status of pharmacist.

While the Member States alone are competent to define the persons authorised or entitled to sell medicinal products not subject to medical prescription to the general public at a distance by means of information society services, they **must also ensure that medicinal products are offered for sale to the general public at a distance** by means of information society services and cannot therefore prohibit such a service for medicinal products not subject to prescription.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106.

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<sup>1</sup> In a judgment handed down on 31 May 2016, Doctipharma was ordered to cease e-commerce in medicinal products on its website.

<sup>2</sup> [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 defines the concept of 'information society service' as 'any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services'.