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ECJ confirms German ban on certain discounts for online pharmacies

Member States may authorize advertising measures to promote the purchase of unspecified prescription-only medicinal products in the form of price reductions or payments of an exact amount. In a most recent decision, the European Court of Justice also held that Member States may prohibit advertising measures to promote the purchase of the type of medicinal product where vouchers for the subsequent purchase of non-prescription medicinal products and health and care products are offered.

Background

DocMorris, a Netherlands mail-order pharmacy, has since 2012 run various advertising campaigns for its customers in Germany promoting the purchase of prescription-only medicinal products. These took the form, in some cases, of price reductions and payments of an exact amount applied in relation to unspecified prescription-only medicinal products and, in other cases, of a reward of between €2.50 and €20 giving rise to a payment, the exact amount of which was not however known in advance. In addition, DocMorris offered, in order to promote the purchase of prescription-only medicinal products, vouchers for the subsequent purchase of other products, namely non-prescription medicinal products and health and care products.

At the request of the Professional Association of Pharmacists of the North Rhine region, the Regional Court, Cologne, adopted interim measures prohibiting DocMorris' advertising campaigns.

Decision

First, the ECJ notes that not all advertising measures for unspecified medicinal products are automatically covered by the scope of the Directive 2001/83 on the Community code relating to medicinal products for human use. In order for that directive to apply, that measure must be designed to promote the prescription, supply, sale or consumption of medicinal products. If that is not the case, then the directive does not apply.

In that regard, the Court finds that the directive does not apply to advertising measures that promote the purchase of unspecified prescription-only medicinal products by offering price reductions, payments of an exact amount or a reward the amount of which was not known in advance. These advertising measures concern, in fact, only the choice of the pharmacy and do not promote the consumption of those medicinal products. The directive does not therefore preclude such advertising measures, where they take the form of a specific sum of money or a sum of money to be calculated in a specific way, from being lawful under German law.

On the other hand, a Member State may prohibit on grounds of consumer protection, as appears to be the case in Germany, advertising measures promoting the purchase of unspecified prescription-only medicinal products that offer a reward the exact amount of which the customer does not know in advance. Indeed, such a prohibition prevents consumers from overestimating the amount of the reward.

As regards vouchers offered for the subsequent purchase of non-prescription medicines or health and care products: The directive does not preclude a prohibition in national law of such advertising measures. Given that the consumer may choose between the purchase of non-prescription medicines and the purchase of other products such as health and care products, vouchers treat non-prescription medicinal products in the same way as those other products, thereby distracting the consumer from the objective evaluation of the need to take those medicinal products.

Source:

ECJ judgment of 27 February 2025 **C-517/23** *Apothekerkammer Nordrhein*. – ECJ **press release No 23/25**.

Keywords

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