



Press and Information

Court of Justice of the European Union

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Judgment in Joined Cases C-159/12 to 161/12  
Venturini and Others v ASL Varese and Others

## **The prohibition, provided for by Italian law, on the sale in para-pharmacies of prescription-only medicinal products is compatible with EU law**

*That prohibition is justified by the objective of ensuring that the supply to the public is reliable and of good quality*

In Italy, the provision of pharmaceutical services can be engaged in only by municipal pharmacies or by private pharmacies operating under government licence. The establishment of pharmacies in Italy is subject to planning rules under which the opening of a new pharmacy is subject to prior authorisation and the pharmacies which are set up there are subject to quotas and are evenly distributed in Italy, in accordance with the 'grid'. The aim of the rules is, first, to avoid the risk that pharmacies become concentrated only in commercially more attractive areas and to ensure that each pharmacy has a market share and, second, to meet the requirements for medicinal products in the whole of Italy.

Since 2006 it has been possible to open para-pharmacies that are entitled to sell medicinal products for which a prescription is not required, which can be publicly advertised and the cost of which is borne by the client.

Ms Venturini, Ms Gramegna and Ms Muzzio, three qualified pharmacists, registered with the Milan Order of Pharmacists, sought authorisation to sell, in their respective para-pharmacies, prescription-only medicinal products the cost of which is wholly borne by the customer. The local health authorities (ASLs) and the Ministry of Health rejected their requests on the ground that the national legislation authorised the sale of such medicinal products only in pharmacies.

They then brought proceedings before the Tribunale amministrativo regionale per la Regione Lombardia (Regional Administrative Court, Lombardy) claiming that that refusal was contrary to EU law. That court has asked the Court of Justice whether the FEU Treaty precludes legislation which does not allow a pharmacist, who is qualified and registered with the professional body but does not own a pharmacy in the 'grid', to sell, in the para-pharmacy owned by that pharmacist, prescription-only medicinal products the cost of which is borne not by the national health service but wholly by the purchaser.

In today's judgment, the Court recalls, first, that the geographical distribution of pharmacies and the monopoly for dispensing medicinal products remains a matter for the Member States<sup>1</sup>. The Court next makes clear that it is apparent from the national legal background that a pharmacist who wishes to become established in Italy as the owner of a para-pharmacy will be excluded from the economic benefits accruing from the market for prescription-only medicinal products which are wholly paid for by the purchaser, their sale being reserved to pharmacies.

That legislation constitutes a restriction on freedom of establishment, since it is liable to hinder or render less attractive the establishment on Italian territory of a pharmacist who is a national of another Member State and has the intention of operating a para-pharmacy there.

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<sup>1</sup> 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).

Nevertheless, it may be justified by overriding reasons in the public interest.

The Italian legislation pursues the objective, which falls within a more general objective of protecting public health, of ensuring that the supply to the public of medicinal products is reliable and of good quality.

In that connection, the Court recalls that planning rules may be indispensable for filling in possible gaps in access to public health services and for avoiding the duplication of structures, so as to ensure the provision of public health care which is adapted to the needs of the population, covers the entire territory, and takes account of geographically isolated or otherwise disadvantaged regions<sup>2</sup>.

If the sale of some prescription-only medicinal products were to be allowed in para-pharmacies, that would amount to those medicinal products being sold without being subject to the requirements of territorial planning, with the risk of causing a concentration of para-pharmacies in areas deemed to be the most profitable and bringing about, in those areas, a reduction in the number of customers and a loss of income for pharmacies.

That situation might then bring about a lower quality of service provided by pharmacies to the public and also result in the definitive closure of some of them: a shortage of pharmacies in some parts of Italy could cause the supply of medicinal products to be unreliable and not of good quality.

The Court states, furthermore, that it is for each Member State to determine the level of protection which it wishes to afford to public health and the way in which that level is to be achieved.

The Italian system, as it does not allow the sale in para-pharmacies of prescription-only medicinal products the cost of which is borne not by the national health service but wholly by the purchaser, reduces the risk of a shortage of pharmacies in a manner which is proportionate to the objective of ensuring that the supply of medicinal products to the public is reliable and of good quality.

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**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.

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*The [full text](#) of the judgment is published on the CURIA website on the day of delivery.*

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<sup>2</sup> Joined Cases [C-570/07](#) and [C-571/07](#) *Blanco Pérez and Chao Gómez* (see also Press Release [No 49/10](#)).