



Press and Information

Court of Justice of the European Union

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Judgment in Case C-148/15

Deutsche Parkinson Vereinigung eV v Zentrale zur Bekämpfung unlauteren Wettbewerbs eV

Fixed prices set in Germany for prescription-only medicinal products are contrary to EU law

The 'Deutsche Parkinson Vereinigung' is a German self-help organisation which seeks to improve the lives of patients suffering from Parkinson's disease and those of their families. In conjunction with the Dutch mail-order pharmacy DocMorris, it agreed on a bonus system from which its members could benefit when purchasing from DocMorris prescription-only medicinal products for treating Parkinson's disease available only from pharmacies. The sale by mail order of prescription-only medicinal products is no longer prohibited in Germany.

A German association for protection against unfair competition (Zentrale zur Bekämpfung unlauteren Wettbewerbs) takes the view that that bonus system infringes German legislation providing for a fixed-price system for the supply by pharmacies of prescription-only medicinal products.¹ Following a request from that association, the Landgericht Düsseldorf (Regional Court, Düsseldorf, Germany) ordered Deutsche Parkinson Vereinigung not to promote its bonus system among its members.² Deutsche Parkinson Vereinigung appealed to the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf), which, in turn, has referred the matter to the Court of Justice in order to ascertain whether a fixed-price system for the sale by pharmacies of prescription-only medicinal products for human use is compatible with the free movement of goods.

In today's judgment, the Court replies that the legislation at issue constitutes an unjustified restriction of the free movement of goods.

The imposition of fixed sales prices has a greater impact on pharmacies established in other Member States, a fact which could impede access to the German market for products from other Member States more than it impedes access for domestic products. The Court notes in this regard that (i), for foreign pharmacies, sale by mail order constitutes a more important – if not the only – means of accessing the German market directly and (ii), for mail-order pharmacies, price competition is liable to constitute a more significant factor of competition than for traditional pharmacies, the latter being better placed to offer patients individually-tailored advice provided by dispensary staff and to ensure the supply of medicinal products in cases of emergency.

Although a restriction of the free movement of goods may, in principle, be justified on grounds of protection of the health and life of humans, the legislation at issue has not been shown to be an appropriate means by which to attain those objectives.

It has, in particular, not been demonstrated how setting fixed prices makes it possible to ensure a better geographical distribution of traditional pharmacies in Germany. On the contrary, certain factors tend to suggest that increased price competition between pharmacies would be conducive to a uniform supply of medicinal products in so far as it would encourage the establishment of pharmacies in regions where the scarcity of dispensaries allows for the charging of higher prices.

¹ The manufacturer must establish a price for its medicinal product, to which wholesaler additions and pharmacy additions are then added.

² More precisely, it ordered Deutsche Parkinson Vereinigung not to recommend that bonus system by means similar to those used in July 2009, namely by letters sent to its members.

Furthermore, no evidence has been adduced before the Court that is capable of establishing that, in the absence of the system in question, mail-order pharmacies would be able to compete in terms of price in such a way that essential services, such as emergency care, could no longer be ensured in Germany due to a consequential fall in the number of dispensing pharmacies. Other competition factors, such as offering patients individually-tailored advice provided by dispensary staff, could potentially allow traditional pharmacies to remain competitive.

It might also be the case that, faced with price competition from mail-order pharmacies, traditional pharmacies will even be encouraged to increase the development of certain activities in the general interest, such as the production of prescription-only medicinal products.

Moreover, price competition could be capable of benefiting patients in so far as it would, where relevant, allow for prescription-only medicinal products to be offered in Germany at more attractive prices than those currently imposed.

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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