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ECJ on pharmaceutical retailing

Selling through Amazon is illegal

The Court of Justice of the European Union (ECJ) has ruled, at the request of the German Federal Court of Justice (BGH), on the interpretation of the European General Data Protection Regulation (GDPR) in the context of breaches of the rules on the protection of personal data. According to the ruling, the current practice of a German pharmacy operator of selling pharmacy-only medicines via the online platform Amazon is illegal, even if this does not require a doctor's prescription.

The BGH was faced with a legal dispute between two pharmacists, one of whom sold pharmacy-only medicines via Amazon. Customers had to provide personal information when placing their order. The other pharmacist sought a ruling to the effect that online sales would have to be discontinued if it could not be guaranteed that customers would be able to consent to data processing in advance, based on German legislation on unfair commercial practices.

The courts of first and second instance had ruled in favour of the competitor, as the lack of customer consent led to the processing of health data, which is prohibited by the GDPR. The BGH referred the question to the ECJ for a preliminary ruling on whether the data entered by customers when purchasing non-prescription medicines online constituted health data within the meaning of the GDPR. The BGH also

questioned whether the German legislation was at all in line with the GDPR, which basically stipulates that national supervisory authorities are responsible for monitoring and enforcing the regulation, leaving it up to data subjects to assert their rights.

Health data

In its ruling, the ECJ said that the data entered by customers when ordering pharmacy-only medicines online is health data under the GDPR. Whether the sale of medicines requires a doctor's prescription is irrelevant here. The relevant conclusion about the state of health of an identified or identifiable natural person is nevertheless possible, for example by establishing links between the person and their medication. It is also irrelevant in this respect that in the case of non-prescription med-

icines it is never absolutely certain that they are intended for the purchaser—even a probability of this is sufficient. A distinction at this point would therefore be contrary to ensuring a high level of protection, which is an objective of the GDPR. Therefore, the seller must provide customers with clear, complete and easily understandable information about the exact characteristics and purposes of the data processing and obtain their express consent. Furthermore, according to the ECJ, legal action based on unfair commercial practices is compatible with the GDPR and possible in addition to the exercise of rights by supervisory authorities and data subjects. This would prevent many infringements of the GDPR and strengthen the rights and protection of data subjects.

Sources: ECJ judgement of 4 October 2024, Case C-21/23



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