Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

29 February 2024*

(Reference for a preliminary ruling – Medicinal products for human use – Directive 2001/83/EC – Article 85c – Scope – Distance selling to the general public of medicinal products – Medicinal products for human use not subject to compulsory medical prescription – Persons authorised or entitled to engage in distance selling to the general public of medicinal products – Power of the Member States to impose conditions, justified by the protection of public health, on the retailing, on their territory, of medicinal products sold online – Information society services – Directive 98/34/EC – Directive (EU) 2015/1535 – Service connecting pharmacists and customers for the online sale of medicinal products)

In Case C-606/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the cour d'appel de Paris (Court of Appeal, Paris, France), made by decision of 17 September 2021, received at the Court on 30 September 2021, in the proceedings

Doctipharma SAS

v

Union des Groupements de pharmaciens d'officine (UDGPO),

Pictime Coreyre,

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, F. Biltgen, N. Wahl (Rapporteur), J. Passer and M.L. Arastey Sahún, Judges,

Advocate General: M. Szpunar,

Registrar: K. Hötzel, Administrator,

having regard to the written procedure and further to the hearing on 19 April 2023,

after considering the observations submitted on behalf of:

– Doctipharma SAS, by V. Eppendahl, L. Lesur, M. Rivasi and A. Robert, avocats, and M. Meulenbelt, advocaat,

* Language of the case: French.

– the Union des Groupements de pharmaciens d'officine (UDGPO), by S. Beaugendre and M. Boccon-Gibod, avocats,

– the French Government, by G. Bain, V. Depenne, A.-L. Desjonquères, M. Guiresse and N. Vincent, acting as Agents,

– the Czech Government, by T. Machovičová, M. Smolek and J. Vláčil, acting as Agents,

– the Italian Government, by G. Palmieri, acting as Agent, and by M. Russo, avvocato dello stato,

– the European Commission, by A. Sipos and F. Thiran, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 13 July 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation, first, of 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 and of rules on Information Society services (OJ 1998 L 204, p. 37), as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998 (OJ 1998 L 217, p. 18) ('Directive 98/34'), and, secondly, Article 85c of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67), as amended by Directive 2011/62/EU of the European Parliament and of the Council of 8 June 2011 (OJ 2011 L 174, p. 74) ('Directive 2001/83').

2 The request has been made in proceedings between Doctipharma SAS and the Union des Groupements de pharmaciens d'officine (Union of Pharmacy Groups; 'the UDGPO') concerning the legality of the online sale of medicinal products not subject to compulsory medical prescription via a platform designed and managed by Doctipharma.

The legal framework

European Union law

Directive 98/34

3 Article 1 of Directive 98/34 provides:

'For the purposes of this Directive, the following meanings shall apply:

…

2. “service”, any Information Society service, that is to say, any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.

For the purposes of this definition:

– “at a distance” means that the service is provided without the parties being simultaneously present,

– “by electronic means” means that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means,

– “at the individual request of a recipient of services” means that the service is provided through the transmission of data on individual request.

…’

Directive 2001/83

4 Article 85c of Directive 2001/83 states:

‘1. Without prejudice to national legislation prohibiting the offer for sale at a distance of prescription medicinal products to the public by means of information society services, Member States shall ensure that medicinal products are offered for sale at a distance to the public by means of information society services as defined in Directive [98/34] under the following conditions:

(a) the natural or legal person offering the medicinal products is authorised or entitled to supply medicinal products to the public, also at a distance, in accordance with national legislation of the Member State in which that person is established;

(b) the person referred to in point (a) has notified the Member State in which that person is established of at least the following information:
   (i) name or corporate name and permanent address of the place of activity from where those medicinal products are supplied;
   (ii) the starting date of the activity of offering medicinal products for sale at a distance to the public by means of information society services;
   (iii) the address of the website used for that purpose and all relevant information necessary to identify that website;
   (iv) if applicable, the classification in accordance with Title VI of the medicinal products offered for sale at a distance to the public by means of information society services.

   Where appropriate, that information shall be updated;

(c) the medicinal products comply with the national legislation of the Member State of destination in accordance with Article 6(1);

(d) without prejudice to the information requirements set out in Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) ([(OJ 2000 L 178, p. 1)]), the website offering the medicinal products contains at least:
   (i) the contact details of the competent authority or the authority notified pursuant to point (b);
   (ii) a hyperlink to the website referred to in paragraph 4 of the Member State of establishment;
   (iii) the common logo referred to in paragraph 3 clearly displayed on every page of the website that relates to the offer for sale at a distance to the public of medicinal products. The common logo shall contain a hyperlink to the entry of the person in the list referred to in point (c) of paragraph 4.

2. Member States may impose conditions, justified on grounds of public health protection, for the retail supply on their territory of medicinal products for sale at a distance to the public by means of information society services.

…

6. Without prejudice to Directive [2000/31] and the requirements set out in this Title, Member States shall take the necessary measures to ensure that other persons than those referred to in paragraph 1 that offer medicinal products for sale at a distance to the public by means of information society services and that operate on their territory are subject to effective, proportionate and dissuasive penalties.'

Directive 2011/62

5 Recitals 21 to 24 of Directive 2011/62 are worded as follows:

'(21) The illegal sale of medicinal products to the public via the Internet is an important threat to public health as falsified medicinal products may reach the public in this way. It is necessary to address this threat. In doing so, account should be taken of the fact that specific conditions for retail supply of medicinal products to the public have not been harmonised at [European] Union level and, therefore, Member States may impose conditions for supplying medicinal products to the public within the limits of the Treaty on the Functioning of the European Union (TFEU).

(22) When examining the compatibility with Union law of the conditions for the retail supply of medicinal products, the Court of Justice of the European Union ('the Court of Justice') has recognised the very particular nature of medicinal products, whose therapeutic effects distinguish them substantially from other goods. The Court of Justice has also held that health and life of humans rank foremost among the assets and interests protected by the TFEU and that it is for Member States to determine the level of protection which they wish to afford to public health and the way in which that level has to be achieved. Since that level may vary from one Member State to another, Member States must be allowed discretion [judgment of 19 May 2009, *Apothekerkammer des Saarlandes and Others* (C-171/07 and C-172/07, EU:C:2009:316, paragraphs 19 and 31),] as regards the conditions for the supply on their territory of medicinal products to the public.

(23) In particular, in the light of the risks to public health and given the power accorded to Member States to determine the level of protection of public health, the case-law of the Court of Justice has recognised that Member States may, in principle, restrict the retail sale of medicinal products to pharmacists alone [judgment of 19 May 2009, *Apothekerkammer des Saarlandes and Others* (C-171/07 and C-172/07, EU:C:2009:316, paragraphs 34 and 35)].

(24) Therefore, and in the light of the case-law of the Court of Justice, Member States should be able to impose conditions justified by the protection of public health upon the retail supply of medicinal products offered for sale at a distance by means of information society services. Such conditions should not unduly restrict the functioning of the internal market.'

Directive (EU) 2015/1535

6 Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ 2015 L 241, p. 1) provides:

'For the purposes of this Directive, the following definitions apply:

…

(b) "service" means any Information Society service, that is to say, any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.

For the purposes of this definition:
(i) "at a distance" means that the service is provided without the parties being simultaneously present;
(ii) "by electronic means" means that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;
(iii) "at the individual request of a recipient of services" means that the service is provided through the transmission of data on individual request.

An indicative list of services not covered by this definition is set out in Annex I;

…'

7 Article 10 of that directive provides:

'Directive 98/34/EC, as amended by the acts listed in Part A of Annex III to this Directive, is repealed, without prejudice to the obligations of the Member States relating to the time limits for the transposition into national law of the Directives set out in Part B of Annex III to the repealed Directive and in Part B of Annex III to this Directive.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex IV.'

8 According to Article 11 of Directive 2015/1535, it entered into force on 7 October 2015, the twentieth day following that of its publication in the *Official Journal of the European Union*.

French law

9 Under the second paragraph of Article L. 5125-25 of the code de la santé publique (Public Health Code), in the version applicable to the facts in the main proceedings ('the Public Health Code'):

'Pharmacists are prohibited from receiving orders for medicinal products and other products or items referred to in Article L. 4211-1 through the usual intermediary of brokers and from engaging in the delivery and home distribution of the aforementioned medicinal products, products or items ordered from them in that way.'

10 Article L. 5125-26 of that code states:

'The sale to the public of any medicinal products, products and items referred to in Article L. 4211-1 through brokerage firms, joint buying organisations or establishments owned or managed by persons who do not hold one of the degrees, certificates or other qualifications referred to in Article L. 4221-1 shall be prohibited.'

11 Article L. 5125-33 of that code states:

'E-commerce in medicinal products means the economic activity whereby a pharmacist offers or carries out the retail sale and dispensing of medicinal products for human use to the public at a distance and by electronic means and, to that end, provides online health information.

The e-commerce activity is carried out from a pharmacy's website.

The creation and operation of such a site is reserved exclusively for the following pharmacists:

1° Pharmacist holding a dispensary;

2° Pharmacist managing a mutualist or miners' relief pharmacy, exclusively for their members.

The pharmacist holding a dispensary or manager of a mutualist or miners' relief pharmacy is responsible for the content of the website that he or she publishes and for the conditions under which the activity of e-commerce in medicinal products is carried out.

Assistant pharmacists who have been delegated by one of the pharmacists referred to in the sixth paragraph may participate in the operation of the pharmacy's website.

Pharmacists replacing dispensary owners or dispensary managers following the death of the owner may use the dispensary website previously created by the owner of the dispensary.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

12 Doctipharma designed the www.doctipharma.fr website, hosted by Pictime Coreyre, where internet users could buy pharmaceutical and medicinal products not subject to compulsory medical prescription from pharmacy websites.

13 Taking the view that the service provided by Doctipharma through its website involved the latter participating in the e-commerce of medicinal products even though it did not have the status of pharmacist, the UDGPO, an association of pharmacy groups, brought proceedings against Doctipharma and Pictime Coreyre before the tribunal de commerce de Nanterre (Commercial Court, Nanterre, France), seeking a declaration that the website was unlawful and an order, subject to a fine, that it cease trading.

14 In a judgment dated 31 May 2016, the tribunal de commerce de Nanterre (Commercial Court, Nanterre) upheld the UDGPO's claims. It ruled that the www.doctipharma.fr website was unlawful for the sale of medicinal products and, in essence, ordered Doctipharma to cease e-commerce in medicinal products on that website.

15 Doctipharma appealed to the cour d'appel de Versailles (Court of Appeal, Versailles, France), which overturned the first-instance judgment in a ruling dated 12 December 2017 on the ground, inter alia, that the www.doctipharma.fr website was a technical platform that did not directly market medicinal products.

16 By a judgment of 19 June 2019, the Cour de cassation (Court of Cassation, France) set aside that judgment on the grounds of infringement of the second paragraph of Articles L. 5125-25 and L. 5125-26 of the Public Health Code, and referred the case back to the cour d'appel de Paris (Court of Appeal, Paris, France), the referring court. The Cour de cassation (Court of Cassation) deduced from Doctipharma's activity, which consists in particular of connecting dispensing pharmacists with potential patients for the sale of medicinal products, that that company acted as an intermediary and thus participated in e-commerce for the sale of medicinal products without having the status of pharmacist, in breach of those provisions.

17 Before the referring court, Doctipharma submits that its activity is limited to the technical maintenance of a shared solution intended for dispensing pharmacists to enable them to publish and operate their website. In that respect, first, it relies in particular on Article 85c of Directive 2001/83. Secondly, it submits that the solution reached in the judgment of 20 December 2017, *Asociación Profesional Elite Taxi* (C-434/15, EU:C:2017:981), which concerned the activity of non-professional Uber drivers, is not transposable to the dispute in the main proceedings.

18 In that regard, the referring court notes that, unlike Uber's non-professional drivers, dispensing pharmacists are professionals in the sale of medicinal products, of which distance selling by electronic means is merely an extension, and that it does not appear that Doctipharma intervenes in the setting of the price of medicinal products sold by that means, so that it doubts whether the Court's interpretation in the judgment of 20 December 2017, *Asociación Profesional Elite Taxi* (C-434/15, EU:C:2017:981), can be transposed to the present case.

19 Finally, it points out that the characteristics of the service offered by Doctipharma and the interpretation of Article 85c of Directive 2001/83 have been the subject of opposing approaches by the French courts which have heard the dispute in the main proceedings.

20 In those circumstances the cour d'appel de Paris (Court of Appeal, Paris) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Doctipharma's activity, … which is conducted on and from its website www.doctipharma.fr, to be regarded as an "information society service" within the meaning of Directive [98/34]?

(2) If so, does Doctipharma's activity, … which is conducted on and from its website www.doctipharma.fr, fall within the scope of Article 85c of … Directive [2001/83]?

(3) Is Article 85c of … Directive [2001/83] to be interpreted as meaning that the prohibition, based on an interpretation of Articles L. 5125-25 and L. 5125-26 of the Public Health Code, of Doctipharma's activity, … which is conducted on and from its website www.doctipharma.fr, constitutes a restriction justified by public health protection?

(4) If not, is Article 85c of … Directive [2001/83], to be interpreted as meaning that it allows Doctipharma's activity, … which is conducted on and from its website www.doctipharma.fr?

(5) In that situation, is the prohibition of Doctipharma's activity, based on the interpretation by the Cour de cassation (Court of Cassation) of Articles L. 5125-25 and L. 5125-26 of the Public Health Code, justified by public health protection within the meaning of Article 85c of … Directive [2001/83]?

(6) If not, is Article 85c of … Directive [2001/83] to be interpreted as allowing the activity of an "information society service" offered by Doctipharma?'

The questions referred for a preliminary ruling

The first question

21 By its first question, the referring court asks whether Doctipharma's activity, which is conducted on and from its website www.doctipharma.fr, is to be classified as an 'information society service' within the meaning of Directive 98/34.

22 First, it should be pointed out that, as is clear from Articles 10 and 11 of Directive 2015/1535, Directive 98/34 was repealed with effect from 7 October 2015. Doctipharma states in its observations that the services at issue in the main proceedings were provided until 2016 and it is apparent from the reference for a preliminary ruling that, by judgment of 31 May 2016, Doctipharma was ordered to cease e-commerce in medicinal products on its website. Thus, the provisions of Directive 2015/1535 are also capable of applying *ratione temporis* to the facts in the main proceedings.

23 However, it is important to note that Article 1(2) of Directive 98/34 and Article 1(1)(b) of Directive 2015/1535, which define the concept of 'information society service', are worded identically.

24 Secondly, it is apparent from the documents before the Court that the service offered by Doctipharma is provided on a website and consists in connecting pharmacists and customers for the sale, via the websites of pharmacies which have subscribed to that service, of non-prescription medicinal products.

25 Consequently, by its first question, the referring court asks, in essence, whether Article 1(2) of Directive 98/34 and Article 1(1)(b) of Directive 2015/1535 must be interpreted as meaning that a service provided on a website consisting in connecting pharmacists and customers for the sale, via

the websites of pharmacies which have subscribed to that service, of medicinal products not subject to medical prescription falls within the concept of an 'information society service' within the meaning of those provisions.

26 In that regard, Article 1(2) of Directive 98/34 and Article 1(1)(b) of Directive 2015/1535 define the concept of 'information society service' as meaning 'any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services'.

27 In the present case, with regard to the first condition set out in those provisions, it should be borne in mind that, according to settled case-law, remuneration for a service supplied by a service provider in the course of an economic activity does not necessarily have to be paid by the persons who are the beneficiaries (see, to that effect, judgments of 15 September 2016, *Mc Fadden*, C-484/14, EU:C:2016:689, paragraph 41, and of 4 May 2017, *Vanderborght*, C-339/15, EU:C:2017:335, paragraph 36).

28 Thus, for the purposes of classifying a service such as that at issue in the main proceedings as falling within the concept of an 'information society service' within the meaning of Article 1(2) of Directive 98/34 and Article 1(1)(b) of Directive 2015/1535, it is irrelevant whether that service is provided free of charge to the person purchasing the non-prescription medicinal product, if it gives rise to the conclusion between the provider of that service and each pharmacist using that service of a contract for the provision of services involving payment.

29 Similarly, it is irrelevant in that regard that, as Doctipharma indicated, it was, under the general terms and conditions of sale, remunerated by the pharmacists who subscribed to its platform on the basis of a fixed fee or, as the French Government indicated, the fact that the service provided by Doctipharma was subject to a monthly subscription paid to Doctipharma by client pharmacists and a retrocession of a percentage of the amount of sales, deducted by the platform.

30 It follows that, subject to the verifications to be carried out by the referring court, the service at issue in the main proceedings must, in any event, be regarded as having been provided for remuneration.

31 As regards the second and third conditions laid down in Article 1(2) of Directive 98/34 and Article 1(1)(b) of Directive 2015/1535, the service provided by Doctipharma is, in view of its characteristics, likely to be regarded as being provided at a distance and by electronic means within the meaning of those provisions since the relationship between the customer and the pharmacist is established via a website, without the simultaneous presence, first, of the provider of the service and, secondly, of the customer or the pharmacist, which is a matter for the referring court to ascertain.

32 As regards the fourth condition laid down in Article 1(2) of Directive 98/34 and Article 1(1)(b) of Directive 2015/1535, it is apparent from the documents before the Court and, in particular, from the description of the service provided by Doctipharma that that service is provided, first, at the individual request of pharmacists, the latter being required to subscribe to Doctipharma's website in order to be able to benefit from that service, and, secondly, at the individual request of customers, who must create a customer account in order to be able to access the websites of the pharmacists of their choice with a view to purchasing, on order, medicinal products not subject to medical prescription.

33 It follows that a service such as that provided by Doctipharma must, subject to the verifications to be made by the referring court, be classified as an 'information society service' within the meaning of Article 1(2) of Directive 98/34 and Article 1(1)(b) of Directive 2015/1535.

34 That conclusion is not called into question by the case-law established by the Court in the judgments of 20 December 2017, *Asociación Profesional Elite Taxi* (C-434/15, EU:C:2017:981), of 19 December 2019, *Airbnb Ireland* (C-390/18, EU:C:2019:1112), and of 3 December 2020, *Star Taxi App* (C-62/19, EU:C:2020:980).

35 It follows from that case-law that a service whose purpose is to connect customers with providers of another service of a different nature and which fulfils all the conditions laid down in Article 1(2) of Directive 98/34 and Article 1(1)(b) of Directive 2015/1535 must be classified as an 'information society service' where such a service is distinct from the service of a different nature supplied by those service providers. However, the situation must be different if it is apparent that that service which connects sellers with customers forms an integral part of an overall service, the main element of which is subject to a legal classification other than that of 'information society service' (judgment of 3 December 2020, *Star Taxi App*, C-62/19, EU:C:2020:980, paragraph 49 and the case-law cited).

36 As the Advocate General pointed out in paragraphs 28 and 29 of his Opinion, a service for connecting pharmacists and customers for the purpose of selling non-prescription medicinal products from the websites of pharmacies which have subscribed to that service is not capable of forming an integral part of an overall service, the main element of which does not qualify as an 'information society service'.

37 Consequently, in the absence of a separate legal regime applicable to such a service, there is no need to take account of the interpretation and criteria derived from the judgments referred to in paragraph 34 of this judgment in answering the first question.

38 In the light of the foregoing considerations, the answer to the first question is that Article 1(2) of Directive 98/34 and Article 1(1)(b) of Directive 2015/1535 must be interpreted as meaning that a service provided on a website consisting in connecting pharmacists and customers for the sale, via the websites of pharmacies which have subscribed to that service, of medicinal products not subject to medical prescription falls within the concept of an 'information society service' within the meaning of those provisions.

The second to sixth questions

39 By its second to sixth questions, which must be considered together, the referring court asks, in essence, whether Article 85c of Directive 2001/83 must be interpreted as meaning that the Member States may, on the basis of that provision, prohibit the provision of a service consisting in connecting pharmacists and customers, via a website, for the sale, from the websites of pharmacies which have subscribed to that service, of medicinal products not subject to medical prescription.

40 In that regard, it should be borne in mind that Article 1(20) of Directive 2011/62 inserted into Directive 2001/83 a Title VIIA entitled 'Sale at a distance to the public'. That title contains in particular Article 85c of the latter relating to the distance selling of medicinal products to the public.

41 It follows from that provision, first, that the Member States must authorise the distance selling to the public, by means of information society services as defined in Directive 98/34, of medicinal products not subject to medical prescription. A prohibition under the legislation of a Member State on the offer for distance selling to the public is permissible only in respect of medicinal products subject to prescription.

42 Secondly, paragraph 1 of Article 85c of Directive 2001/83 lays down the conditions relating to persons, medicinal products and websites which must be met by the distance selling of medicinal products to the public by means of information society services and which the Member States must ensure are complied with.

43 In particular, with regard to the persons authorised or entitled to carry out such a sale, point (a) of paragraph 1 thereof specifies that the natural or legal person offering such medicinal products must be authorised or entitled to supply those medicinal products at a distance 'in accordance with [the] … legislation of the Member State in which that person is established'.

44 The powers thus conferred on the Member States are supplemented by paragraph 6 of Article 85c, which states that the Member States are also competent to penalise persons other than those referred to in paragraph 1 thereof, who offer medicinal products for distance selling to the public by means of information society services, as defined in Directive 98/34.

45 Consequently, the Member States alone are competent to determine the natural or legal persons authorised or entitled to supply medicinal products to the public at a distance.

46 With regard to the conditions to which distance selling to the public by means of information society services may be subject, it should be noted that, under Article 85c(2) of Directive 2001/83, Member States may impose conditions for the retail supply, on their territory, of medicinal products offered for sale to the public by means of information society services.

47 As follows from the wording of that provision, however, Member States may impose such retail supply conditions only if they are 'justified on grounds of public health protection'.

48 In order to determine whether a service such as that provided by Doctipharma may be prohibited on the basis of national legislation adopted pursuant to Article 85c(1)(a) of Directive 2001/83, it is for the referring court to assess whether, having regard to the characteristics of that service of connecting pharmacists and customers for the online sale of medicinal products not subject to medical prescription, the provider of that service must be regarded as merely connecting sellers and customers by means of a service which is specific to and distinct from the sale, or whether that provider must be regarded as itself providing the sale.

49 In that regard, it is for the referring court to determine, on the basis of a purely factual assessment, not the nature of the service provided by Doctipharma, which is, in any event, as the Court indicated in the answer to the first question, an information society service, but the person, whether Doctipharma or the pharmacists using the service it provides, who carries out the sale of non-prescription medicinal products.

50 If, at the end of that analysis, it were to be concluded, having regard to the specific features of the service provided by Doctipharma, that it must itself be regarded as the sales service provider, then Article 85c(1)(a) of Directive 2001/83 would not preclude the prohibition of that service by the Member State in whose territory it is established.

51 As is clear from paragraphs 43 to 45 of this judgment, the Member States alone are competent to define the persons authorised or entitled to sell non-prescription medicinal products to the public at a distance by means of information society services. The French authorities may therefore restrict the distance selling of such medicinal products to the public by means of those services to persons who are qualified pharmacists.

52 By contrast, if the referring court were to find that that service consists solely in connecting sellers with customers, so that Doctipharma provides a service of its own distinct from selling, then that service could not be prohibited on the basis of Article 85c(1)(a) of Directive 2001/83 on the ground that it participated in e-commerce for the sale of medicinal products without having the status of pharmacist.

53 Furthermore, in such a case, the service provided by Doctipharma does not fall within the concept of 'conditions for the retail supply' of medicinal products offered for distance selling to the public within the meaning of Article 85c(2) of Directive 2001/83, nor could it be prohibited on the basis of that provision.

54 As is clear from the answer to the first question, a service provided on a website consisting in connecting pharmacists and customers for the sale, via the websites of pharmacies which have subscribed to that service, of medicinal products not subject to medical prescription must be classified as an 'information society service' within the meaning of Article 1(2) of Directive 98/34 and Article 1(1)(b) of Directive 2015/1535.

55 Article 85c(1) of Directive 2001/83 explicitly provides that, without prejudice to national legislation prohibiting the offer for distance selling to the public of medicinal products subject to prescription, Member States are to ensure that medicinal products are offered for distance selling to the public by means of information society services, as defined in Directive 98/34.

56 It would therefore be inconsistent to hold that the use of such a service could be prohibited by the Member States on the basis of Article 85c(2) of Directive 2001/83.

57 In the light of the foregoing considerations, the answer to the second to sixth questions is that Article 85c of Directive 2001/83 must be interpreted as meaning that the Member States may, on the basis of that provision, prohibit the provision of a service consisting in connecting, via a website, pharmacists and customers for the sale, from the websites of pharmacies which have subscribed to that service, of medicinal products not subject to medical prescription, if it transpires, having regard to the characteristics of that service, that the provider of that service is itself selling such medicinal products without being authorised or entitled to do so under the law of the Member State in whose territory it is established.

Costs

58 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **Article 1(2) of 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 and of rules on Information Society services, as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998, and Article 1(1)(b) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services**

   must be interpreted as meaning that a service provided on a website consisting in connecting pharmacists and customers for the sale, via the websites of pharmacies which have subscribed to that service, of medicinal products not subject to medical prescription falls within the concept of an 'information society service' within the meaning of those provisions.

2. **Article 85c of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, as amended by Directive 2011/62/EU of the European Parliament and of the Council of 8 June 2011,**

   must be interpreted as meaning that Member States may, on the basis of that provision, prohibit the provision of a service consisting in connecting, via a website, pharmacists and customers for the sale, from the websites of pharmacies which have subscribed to that service, of medicinal products not subject to medical prescription, if it transpires, having regard to the characteristics of that service, that the provider of that service is itself selling such medicinal products without being authorised or entitled to do so under the law of the Member State in whose territory it is established.

[Signatures]