

LIFE SCIENCES & HEALTHCARE PRACTICE

Liberalization in the Pharmacy Sector

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The plenary session of the Greek Council of State has recently ruled on the applications for annulment, lodged by various stakeholders of the pharmacy sector against the Presidential Decree no. 64/2018 (“the PD”). The PD introduced the right to obtain a Pharmacy license without holding a pharmacist’s degree, subject to the conditions defined therein, thus leading to the liberalization and the opening up of said sector. The applicants were pharmacists, who until the PD’s enactment were the only ones entitled to issue a license to operate a pharmacy in Greece. The Council of State, via successive decisions (Decisions no. 201-208/2020), rejected their applications on the following grounds:

- The State has the primary authority to regulate pharmacy practice in the public interest in compliance with the principle of proportionality;
- Having regard to the main objective of pharmacies, namely to support public health, their operation might be subject to Government’s oversight and intervention in order for that aim to be achieved;
- The former exclusive right of pharmacists to operate pharmacies did not enjoy constitutional status. Hence, the legislator may freely abolish it and introduce a new regime for the operation of pharmacies, which safeguards public health,

without infringing provisions of the constitution;

- On this ground, the Council of State ruled that the Presidential Decree has set out various safeguards and conditions, which sufficiently fulfill the above-mentioned objective and at the same time allow for the further expansion of the pharmacy sector in Greece.

In a nutshell, the legislator has introduced the following safeguards and conditions:

- i) In order for a non-pharmacist to obtain a pharmacy license, he/she should establish a Limited Liability Company (or any other type of company other than Societe Anonyme), in which a licensed pharmacist should participate by holding at least the 33% of the company’s shares. This way, the legislator ensures that no pharmacy can operate without the participation of at least one pharmacist, who shall also be responsible for its proper operation as its “Scientific Advisor”, on account of his/her scientific background. The choice of this type of legal entity serves a twofold aim. Firstly, it ensures the pharmacist’s participation in the Company, given that Greek corporate law does not provide for the right of the majority in a LLC to drive out a partner.

Secondly, a pharmacist is subject to the rules of the Code of Conduct and any potential misconduct could result in him losing his/her license, which would discourage pharmacists and the other partners from adopting unprincipled actions, driven solely by financial motives.;

- ii) The PD sets out that a pharmacist appointed as Scientific Advisor, is not allowed to have this role in any other pharmacy owned by a non-pharmacist, which constitutes another safeguard for the proper operation of pharmacies;
- iii) A cap regarding the number of pharmacies that an individual is allowed to own prevents the rise of oligopolies in the Greek market of pharmacies;
- iv) To counterbalance to the provision allowing non-pharmacists individuals to own a pharmacy, the PD stipulates a series of conflict of interests (inter alia, a partner in a LLC operating a pharmacy is not allowed to have shares in another company related to the wholesale of medicinal products).

To recap, the Council of State held that the provisions of the PD do not contravene the Constitution. These provisions ensure systematically and coherently the legislative aim pursued, namely the removal of unjustified obstacles to business freedom relating to the establishment of pharmacies and the pursuit of their activity. This enhances free competition, which contributes to the country's economic development and to consumers' protection, whereas, at the same time, through the introduction of appropriate and necessary checks and balances, and the proper operation of the retail market for pharmaceutical products, on a solid scientific basis and with appropriate ethical standards, is ensured.

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