

PRESS RELEASE

Berlin, 13 July 2023

GÖRG successful for Federal Ministry of Health against former pharmaceutical wholesaler Lunapharm

In a judgment of 17 May 2023 - 4 O 144/21 - served on 5 July 2023, the Potsdam Regional Court dismissed an action for damages brought by the former pharmaceutical wholesaler Lunapharm Deutschland GmbH against the Federal Republic of Germany, represented by the Federal Ministry of Health.

In 2019, the Brandenburg State Office for Occupational Safety, Consumer Protection and Health (LAVG), as the competent medicinal products supervisory authority, revoked the licences originally granted to the company for the manufacture and wholesale of medicinal products on the grounds of unreliability and prohibited it from the corresponding activities. Lunapharm's appeal against this decision was unsuccessful, most recently to the Higher Administrative Court of Berlin-Brandenburg.

In its lawsuit, which has now been dismissed by the Potsdam Regional Court, Lunapharm sought damages from the Federal Republic of Germany on the basis of official and state liability law for the following the cessation of its wholesale trade and manufacture of medicinal products brought about by the revocation and prohibition notices. Lunapharm claimed that federal authorities had the LAVG's official actions. In addition, the Federal Republic of Germany had insufficiently implemented the requirements of European pharmaceutical law, so that the Lunapharm on the basis of federal law that was contrary to European law.

The Potsdam Regional Court has dismissed Lunapharm's lawsuit for damages against the Federal Republic of Germany as unfounded. The Federal Republic of Germany was not responsible for the notices issued by the competent Brandenburg medicines supervisory authority, so that the action was directed against the wrong defendant from the outset. In addition, the prerequisites for an official or state for an official or state liability claim were not present here, since the relevant provisions of the of the Medicines Act and the European law on directives were not intended to protect the rights of individuals, but to protect but were intended to protect public health.

The processes in connection with the Lunapharm company continue to be reported extensively throughout Germany due to both the political and the pharmaceutical law significance of the case. The judgement of the Potsdam Regional Court is the first court decision on state liability due to allegedly insufficient implementation of European law requirements in federal pharmaceutical law; in this respect, the decision also goes beyond the individual case in terms of its significance.

GÖRG represents the Federal Ministry of Health in several legal proceedings brought by Lunapharm and has also been representing LAVG since August 2018. With many years of expertise in regulatory GÖRG advises clients in the area of healthcare as well as in the entire field of public commercial law and also represents their interests in court.

Representation of the Federal Ministry of Health

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About GÖRG

GÖRG is one of Germany's leading and independent business law firms.

With more than 300 lawyers and tax advisors in Berlin, Cologne, Frankfurt am Main, Hamburg and Munich, we advise well-known domestic and foreign businesses from all areas of industry, banking, real estate, trade, media and services on all core areas of business law.

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