



PGEU GPUE

Pharmaceutical Group of European Union
Groupement Pharmaceutique de l'Union Européenne

**Concept Paper on a Common Logo for
Legally Operating Online
Pharmacies/Retailers**

PGEU RESPONSE

- 1 The Pharmaceutical Group of the European Union (PGEU) is the association representing community pharmacists in 32 European countries. In Europe over 400.000 community pharmacists provide services through a network of more than 160.000 pharmacies, to an estimated 46 million European citizens daily.

PGEU's objective is to promote the role of pharmacists as key players in healthcare systems throughout Europe and to ensure that the views of the pharmacy profession are taken into account in the EU decision-making process.

- 2 We strongly welcome the decision of the Commission to consult on the form of the Common Logo and we hope that this is indicative of a preference for public consultation on the use of Delegated and Implementing Acts.
- 3 PGEU has consistently argued that the use of a Common Logo to identify legally authorised sellers of medicines is potentially counterproductive. For example, there can be no assurance that both the Logo and the national list of legally operating pharmacies and retailers can be excluded from risk of falsification. The suggestion at paragraph 15 of the Concept Paper that information campaigns are needed to raise awareness of this risk is reasonable, but the effect of this may in fact be to undermine confidence in the usefulness of the Logo.

The use of the reciprocal link offers limited reassurance, since there can be no certainty that potential purchasers will click on the link and undertake further verification – in which case the use of the Common Logo may actually be of assistance to criminal operators who can easily attach the logo to their websites.

Notwithstanding these observations, the Commission is surely correct to point to the difficulty of defining technical and cryptographic requirements in Implementing Acts. Technology can be assumed to move more quickly than the EU legislative process, and the risk of technological redundancy in this area is a real one. It is to be hoped that solutions at national level may allow best practices to emerge without the straitjacket of prescription through the Implementing Act.

- 4 In the view of Europe's pharmacists, as a minimum the Logo must avoid generating confusion. Here, regrettably, both options put forward by the Commission fall into serious difficulty. As the Commission is aware, given that only a small number of EU Member states permit the sale of prescription only medicines through the internet, most of the users of the Common Logo will be sellers of non-prescription medicines (NPMs). As the Commission is also aware, in 14 EU Member States, general retailers are permitted to sell NPMs. As the Directive makes no distinction between pharmacies and general retailers, if these retailers choose to sell online, they will have to adopt the Logo.
- 5 It is therefore troubling that in both options, the Commission has chosen to adopt the medical cross as an integral part of the Common Logo. In Option 1, this is the green cross, used in the majority of EU Member States as a pharmacy symbol. In Option 2 the cross is not green, but the cross in this form is still a globally acknowledged medical symbol (as the

Commission may be aware, the pharmacy green cross derives from the medical red cross, which itself derives from the Swiss national flag.)

Where the green cross is used in the case of pharmacies (including authorised internet pharmacies), it provides assurances to consumers and patients that the seller is subject both to regulations specific to the pharmacy sector, and to professional and deontological rules.

- 6 It seems that the Commission has approached this as primarily an issue of intellectual property, and may have been advised that the use of a generic cross would not in itself risk trademark infringement. This is certainly debatable in those EU Member States where the green cross is subject to intellectual property rights. For example in France, the green cross is a registered trademark (as well as being reserved for use by the pharmacy profession in the French Public Health Code – see below for more examples of this). The precise scope of generic and stylised crosses may be subject to litigation in some member states if Option 1 is selected, given that the cross proposed in Option 1 is without doubt confusingly similar to any number of green crosses currently used in the EU, and which may, as in France, be trademark protected

It cannot have been the intention of the legislator that the legitimate rights of trademark owners should be undermined by the Logo.

But the problem goes beyond the question of trademarks. The use of the green cross by pharmacies, and crosses in general by medical professionals and institutions, is often the means by which assurance is provided to consumers and patients about the nature of the seller or services provider, and through which a demarcation is drawn between providers who are subject to certain professional and deontological requirements, and those who are not. It is thus of the utmost importance that its integrity is respected.

Three examples will suffice from countries where non-prescription medicines are available outside pharmacies. In Italy, Legislative Decree 153/2009 Article 5 reserves the use of the green cross to pharmacies with the explicitly stated intention that this should facilitate the identification of pharmacies operating within the national health system:

Art. 5.

Utilizzo di denominazioni e simboli

1. Al fine di consentire ai cittadini un'immediata identificazione delle farmacie operanti nell'ambito del Servizio sanitario nazionale, l'uso della denominazione: «farmacia» e della croce di colore verde, su qualsiasi supporto cartaceo, elettronico o di altro tipo, e' riservato alle farmacie aperte al pubblico e alle farmacie ospedaliere.

In Portugal, Decree 307/2007 Article 27 provides that the green cross can only be used to identify pharmacies.

In Ireland, according to the Irish Pharmacy Act 2007 section 32, the use of symbols that may lead members of the public to 'reasonably infer' that the user is a registered pharmacist is a criminal offence:

32.— (1) A person other than a registered pharmacist who holds himself or herself out as a registered pharmacist shall be guilty of an offence.

(3) A person other than a registered retail pharmacy business who holds himself, herself or itself out as a registered retail pharmacy business shall be guilty of an offence.

(4) A person, other than a registered pharmacist, who—

(b) uses any emblem or device from which the public might reasonably infer that he or she is a registered pharmacist, or

(c) causes or permits such a public description or use to occur,

is, without prejudice to the generality of subsection (1), to be regarded as holding himself or herself out as a registered pharmacist.

In all cases, if Option 1 is adopted national pharmacy laws will have to be rewritten to accommodate the Logo. This is an infringement of national competence in health matters, and surely cannot have been the intention of the legislator.

- 7 It is inevitable that online shoppers who see the Common Logo as currently proposed will assume that the seller has pharmaceutical or medical credentials. Since evidence suggests that most consumers still prefer to buy NPMs from pharmacies, even where they are available from other retailers, this has the potential to be very misleading. This is not a question of limiting the rights of general retailers to sell NPMs where this is permitted. It is a question of ensuring that patients and consumers are not misled.
- 8 It is moreover, wholly inappropriate in our view to create confusion among the general public about those entities who are entitled to use pharmaceutical or medical symbols and those which are not. In Appendix 1) we illustrate the case of Irish and UK online retailers who would be obliged to display a pharmaceutical or medical symbol if the either of the options were adopted. While we do not dispute the right of such retailers to sell medicines in accordance with the national law, we believe that it is clear that the use of the medical cross in these cases is inappropriate. We anticipate that such retailers would themselves find this unsatisfactory, since the use of these symbols implies either certain professional and deontological standards which they are not obliged to observe, or in fact that they are authorised pharmacies. This may amount to legally actionable misrepresentation, or may be a criminal offence as in Ireland.

It cannot have been the intention of the legislator that the use of the Logo should cause confusion between pharmacies and other retailers. After all, the whole point of the Logo is to reduce confusion.

- 9 In order to avoid confusion, to avoid compromising the integrity of the cross itself as a universally recognized medical/pharmacy symbol, and to avoid the possibility of legal action, we strongly urge the Commission to reconsider requiring the use of the cross, either the green cross as in Option 1 or the medical cross in Option 2. We would urge the Commission to replace the cross with a picture of a pill or capsule, as illustrated below:



END

Appendix 1

OCADO ONLINE RETAILER UK – HOME PAGE

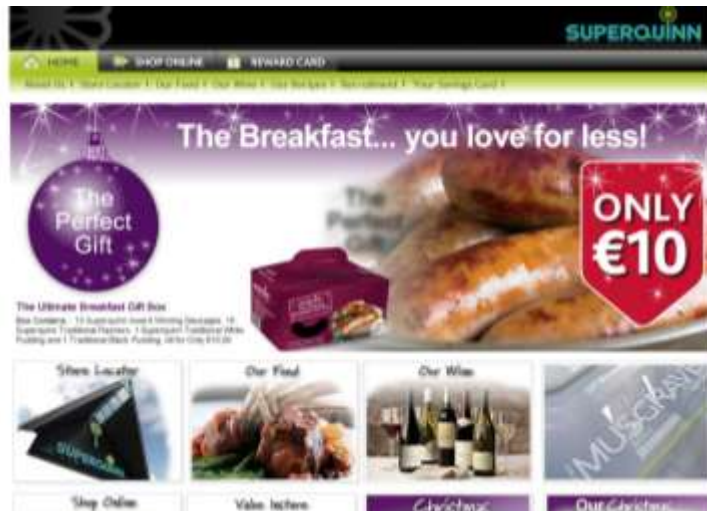
WWW.OCADO.COM



OCADO PAGE OFFERING NPMs:



SUPERQUINN ONLINE RETAILER IN IRELAND- HOME PAGE
WWW.SUPERQUINN.IE



SUPERQUINN PAGE OFFERING NPMs:

