



**Healthcare Business News for
European Pharmaceutical Markets**

Wednesday, 30 November 2011 13:00 GMT

Keywords: EUROPE PHARMACY LEGISLATION LITIGATION

EU finally accepts cannot remove local restrictions on pharmacy ownership

BRUSSELS, Nov 30 (APM) - After years of legal battles, the European Union has at last bowed to the unavoidable reality that detailed national rules on pharmacies are not something it can govern.

Last week, the European Commission quietly dropped the last of the numerous actions it had taken against member states for alleged breaches of EU rules on freedom of trade.

Over much of the last decade, the commission mounted a series of cases against what it branded as illegal restrictions on pharmacy ownership and operation.

Germany, Italy, Spain and France are among the EU countries that have a legally enshrined model of pharmacist-only ownership, and other countries impose specific rules on the establishment of pharmacies, on the basis of considerations such as location and population density.

The decision, taken at the meeting of the Commissioners on 23 November, follows two recent decisions of the European Court of Justice which found that restrictions on the ownership and establishment of pharmacies are justified in the interests of public health.

Over the last six years, the cases have involved regulations on the ownership and/or establishment of pharmacies in Austria, Bulgaria, Cyprus, France, Italy, Germany, Greece, Portugal and Spain.

The Pharmaceutical Group of the European Union welcomed the decision. It has consistently argued that EU countries should have the right to regulate the pharmacy sector in the way they feel best meets the health needs of their citizens.

John Chave, its secretary general commented: "The decision of the commission to close all pending infringement proceedings against the community pharmacy sector vindicates PGEU's view".

"These cases, which should never have been started, have cast a shadow of uncertainty and instability over the sector for the last six years."

COURT RULINGS

It was in 2009 that the European Court of Justice first affirmed the legality of restrictions on pharmacy ownership.

In May of that year, the European Court of Justice ruled that the Italian and the German legislation reserving pharmacy ownership to pharmacists is justified and therefore compatible with the EU treaty.

At the time, PGEU commented: "If the judgement had favoured the position of the European Commission, we would have witnessed the biggest reform of health systems ever seen at European level".

The court stated that the pursuit of purely economic objectives in pharmacy is a threat to health, and that it is the role of the pharmacist to ensure that professional judgement takes precedence over economic objectives.

"Unlike pharmacists, non-pharmacists by definition lack training, experience and responsibility equivalent to pharmacists. Accordingly they do not provide the same safeguards as pharmacists", the court said.

Since then, the court has also ruled (last year) against bids to open pharmacies in northern Spain in defiance of laws designed to ensure even distribution of pharmacies throughout the territory.

The objective of the Spanish constraints is the safeguarding of the public interest, and the rules are therefore consistent with EU rules, the court decided.

The commission has also launched infringement proceedings against other aspects of pharmacy regulation - including limits imposed by Portugal, Germany and Italy on horizontal and vertical integration (in other words, large pharmacy chains).

And in 2007 it adopted a more overt strategy of persuading member states to liberalise their pharmacy regimes, with a workshop on pharmacy regulation with a strong pro-liberalisation component.

It also released a report on pharmacies which called for widespread de-regulation in order to contribute to Europe's competitiveness.

Chains have consistently argued that there is no evidence of the kind of conflicts of interest referred to by the court in those countries where non-pharmacist ownership is permitted. Those favouring liberalisation of the sector have argued that free ownership encourages innovation and reduces costs.

PGEU has argued consistently from the principle that regulatory approaches should reflect economic, cultural and public health traditions, and that diversity in regulatory approaches is healthy, and can bring new perspectives to the profession.

It opposes the view that any single health system or system of regulation will suit every country, or that EU health policy should produce a single blueprint for health systems.

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[26491] 30/11/2011 13:00 GMT - DISTRIBUTION

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