

This edition of the newsletter will deal with the following:

1. EU Court of Justice (ECJ) Ruling on Ownership of Pharmacies
2. Infringement Proceedings
3. 2010 EU Budget
4. EU Parliament Critical of Property Sector in Spain
5. European Elections

1. EU Court of Justice (ECJ) Ruling on Ownership of Pharmacies

In an important ruling concerning the freedom of establishment and the free movement of capital the ECJ has held that the owning and running of pharmacies "can be restricted to pharmacists alone". The ruling concerns two joined cases involving Italy and Germany. The European Commission had taken Italy to court over national rules stipulating that only pharmacists can own and run a pharmacy. A German court had referred a case brought by several pharmacists and their professional associations challenging the right of a Dutch company to open a branch pharmacy in Germany. The ECJ held that, whilst excluding the possibility for non-pharmacists to run a pharmacy does constitute a restriction of freedom of establishment and the free movement of capital, it is "justified" if it has the aim to ensure that the provision of medicinal products to the public is "reliable and of good quality". A Member State is able to take protective measures concerning public health. The ECJ distinguished medicinal products from other goods due to their therapeutic effects.

This ruling is particularly important because it comes at a time when Member States are transposing the Services Directive (the deadline for which is at the end of 2009). The French National Council of the Order of Architects has welcomed the decision and is using the opportunity to warn the French government against "blind" transposition of the Directive which they believe would amount to deregulation of the profession. The French order argues that opening up the capital of architects' companies to persons who do not belong to the profession would generate "major" conflicts of interest and would lead to the disappearance of architects' "specificity".

2. Infringement Proceedings

Infringement proceedings under European law are continuing against four Member States for failure to comply with EU internal market rules concerning financial markets and free movement of persons. These include an action brought against Portugal for failure to notify measures for the transposition of the Eligible Assets Directive. A letter of formal notice will be sent to Greece for its continued failure to recognise other Member States' optician diplomas. Austria will be sent a letter of formal notice seeking information on the implementation of a court ruling outlawing a scheme found to violate freedom of establishment whereby foreign nationals wishing to set up a company in Austria had to undergo an excessively lengthy procedure. A reasoned opinion will be sent to Poland over the incomplete transposition of Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision.

Member associations may wish to note that information concerning infringement proceedings can be obtained from the European Commission at

http://ec.europa.eu/community_law/infringements/infringements_decisions_en.htm

3. 2010 EU Budget

On 29 April the European Commission presented its preliminary draft budget for 2010. This indicates that 45% of anticipated funds will be channelled into measures to fight the effects of the economic and financial crisis. The budget will reach a total of €138.6 billion in commitments (1.18% of the Union's gross national income). For the European Commission expenditure in projects intended to save and create jobs, help companies and restore competitiveness will be the EU's top priority (total of €62 bn).

4. EU Parliament Critical of Property Sector in Spain

The European Parliament approved a report by Danish MEP Margrete Auken which is critical of certain practices in the property sector in Spain damaging to private property rights and the environment. This report was prepared on the basis of petitions received (Article 194 of the EC Treaty). In particular the report criticizes Spain for:

- Violating individual property rights by forcing owners to "cede legitimately acquired private property without due process and proper compensation" and "pay arbitrary costs for unrequested and often unnecessary infrastructure development".
- Arbitrarily and retroactively using the 1998 Ley de Costas or Coastal Law to expropriate coastal property without compensation.
- Pursuing rampant, speculative building programmes with little regard for the environment, the needs of society, or Spain's cultural heritage.
- Encouraging unsustainable macro-urbanisations without sufficient water resources.
- Violating EU public procurement procedures.
- Failing to provide timely and meaningful justice.
- Allowing corruption to become endemic.

The non-binding report calls on Spain to deal with the problems identified in the report, beginning with a freeze on all contentious housing projects and to compensate individual property owners who have suffered as a result of the application of legislation whereby people who have bought property in good faith find that the transaction has been declared illegal. The report also notes that the EU has the power to interrupt or delay structural and cohesion fund payments "in order to persuade a Member State to end serious breaches of the rules and principles". The European Commission is called upon to initiate an information campaign directed at EU citizens buying real estate in a Member State other than their own.

A copy of the report is available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2009-0082+0+DOC+PDF+V0//EN&language=EN>

5. European Elections

As member associations will be aware, campaigning is now taking place for the European elections which will take place 4-7 June 2009. The next plenary session will be held after the elections on 14 July. It will be important for member associations to monitor whether or not MEPS with whom they have contact are re-elected. This is useful for the preparation for the next lobby week due to be held in January 2010. No doubt member associations will follow the results of the elections and it would be helpful if they are able to advise the CEPI Secretariat of changes in their country's MEPs, particularly those who are existing contacts or who were seen during the last lobby day.