

EUROPEAN PARLIAMENT

Working Documents

1983 - 1984

June 1983

Document 1-461/83

MOTION FOR A RESOLUTION

by Mr KYRKOS

pursuant to Rule 47 of the Rules of Procedure

on a plan for a European drugs and pharmaceutical
substances industry

Calls on the Commission,

1. to begin forthwith studying the possibilities and working out means of collaboration between public corporations of Member States with a view to the production and marketing of drugs and pharmaceutical substances;
2. to submit at the earliest opportunity to the Council and to the governments of Member States a plan for the creation of a 'European drugs and pharmaceutical substances industry' with a view to the manufacture and marketing of its products; this industry shall comprise the national concerns engaged in the production and marketing of these products and shall operate on the basis of Community standards common to all Member States and substantially under Community control;
3. Instructs its President to forward this resolution to the Commission, the Council and the governments of the Member States.

European Communities

EUROPEAN PARLIAMENT

Working Documents

1983 - 1984

30 June 1983

DOCUMENT 1-462/83

REPORT

drawn up on behalf of the Committee on Economic and
Monetary Affairs

on the status of the mobile trades

Rapporteur: Mr G. DELEAU

PE 84.014

On 12 March 1982, the motion for a resolution (Doc. 1-17/82) on the status of the mobile trades was referred to the Committee on Economic and Monetary Affairs as the committee responsible and to the Legal Affairs Committee for its opinion.

On 30 March 1982, the Committee on Economic and Monetary Affairs appointed Mr DELEAU rapporteur.

It considered the draft report at its meetings of 28 and 29 April and 15 June 1983, and adopted it by 13 votes to 1 with 1 abstention.

The following took part in the vote: Mr Moreau, chairman; Mr Hopper, vice-chairman; Mr Deleau, vice-chairman and rapporteur; Mr Beazley, Mr von Bismarck, Mr Bonaccini, Mrs Nielsen (deputizing for Mr Delorozoy), Mrs Desouches, Miss Forster, Mr de Goede, Mr Albers (deputizing for Mr Mihr), Mr Müller-Hermann, Mr Nyborg, Mr Papantoniou and Mr Rogalla (deputizing for Mr Ruffolo).

The final text of the report was tabled on 21 June 1983.

C O N T E N T S

	<u>Page</u>
A. MOTION FOR A RESOLUTION	5
B. EXPLANATORY STATEMENT	8
I. OUTLINE OF THE ECONOMIC, SOCIAL AND CULTURAL IMPORTANCE OF THE MOBILE TRADES	8
1. Importance and economic role	8
2. The cultural role of itinerant tradesmen and fairground workers	9
3. Factors threatening the future of the mobile tradesmen	10
II. THE LEGAL STATUS OF MOBILE TRADESMEN	10
1. Freedom of movement and freedom to provide services of mobile tradesmen	11
2. Legislation on transport	12
III. THE ECONOMIC STATUS OF MOBILE TRADESMEN	12
1. Equal conditions for competition	13
2. Taxation and access to financing	13
3. Vocational training	14
4. Town planning	14
5. Representation of mobile tradesmen	15
IV. DIRECT SELLING	15
ANNEX: Motion for a resolution (Doc. 1-17/82)	17
Opinion of the Legal Affairs Committee	18

A

The Committee on Economic and Monetary Affairs hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

on

the status of the mobile trades

The European Parliament,

- having regard to motion for a resolution (Doc. 1-17/82)¹,
- having regard to the report by the Committee on Economic and Monetary Affairs and the opinion of the Legal Affairs Committee (Doc. 1-462/83),

1. Stresses the vital economic and social role of mobile tradesmen on whom a large and specific section of the distribution network is dependent and the socio-cultural function of city markets which are irreplaceable as centres of activity;

2. Notes that the development of the activities of mobile tradesmen is often hampered by obstacles to freedom of movement, instances of inequality as regards conditions for competition and by local authorities' frequent failure to recognize the needs of these professions;

Considers it necessary, therefore, to improve the legal and economic status of mobile tradesmen within the Community;

3. Calls on the Commission to examine the general legal status of mobile tradesmen within the Community and to submit the necessary proposals to ensure genuine freedom of movement for mobile tradesmen unhampered by interference and discrimination ;

¹See Annex

Draws attention in this respect to the advisability of adopting a European passport and a European driving licence;

4. Believes that mobile tradesmen should be able to engage in their profession on equal terms both among themselves and in relation to non-mobile tradesmen;

Whereas in particular the activities of distribution performed by mobile tradesmen and the services provided by them are irreplaceable, calls on the Commission to submit proposals to:

- make the right to engage in the mobile trades subject to the issue of a trader's licence valid in all EEC countries;
 - harmonize throughout the Community the conditions giving mobile tradesmen access to markets and fairs;
 - ensure that mobile tradesmen are not affected by restrictions or discrimination as regards products sold on markets in relation to products sold in the established trade in general;
 - promote and, as far as possible, guarantee opportunities for adequate schooling and vocational training for mobile tradesmen and their children;
 - take into account the particular situation of fairground workers, in particular by introducing and harmonizing the rate of VAT applicable to them throughout the Community;
 - safeguard the existence of markets, which are the workplaces of mobile tradesmen, by means of an appropriate policy on town planning;
 - allow access to SMU financing for mobile tradesmen;
 - promote the representation of mobile tradesmen in Community bodies;
5. Recognizes the development of certain modern forms of direct selling and insists that the consumer be adequately protected in terms of a trial period and the right to cancel an order;

Calls in this connection:

- on the Council to adopt immediately the proposal for a directive on consumer protection in respect of contracts negotiated away from business premises,
 - at the same time for the general ban on direct selling to be lifted in those countries where such a ban still exists;
6. Instructs its President to forward this resolution to the Council and the Commission.

EXPLANATORY STATEMENT

It is appropriate in 1983, the European Year of the SMU and the Craft Industry, for the European Parliament to devote a special report to the situation and future of mobile tradesmen, a profession which plays an important and specific part in the distribution network.

As a result of the itinerant nature of their activities, these tradesmen are more exposed than any others to the barriers, obstacles and shortcomings which typify the Community's internal market and stand in the way of the development of their activities.

We will consider in turn the economic and social importance of this sector, the legal and economic status of mobile tradesmen and the specific question of direct selling.

I. OUTLINE OF THE ECONOMIC, SOCIAL AND CULTURAL IMPORTANCE OF THE MOBILE TRADES

1. Importance and economic role

2. Mobile tradesmen represent a large part of the working population. The number of persons earning their living in the mobile trades within the Community is estimated at two million and the trend is upwards¹. Of 600,000 traders in France, 100,000 are reported to be itinerant. Between 27 and 30% of housewives shop at public markets and the figure is 60% in rural areas. Between 28 and 30% of distributed goods are sold by mobile tradesmen throughout the Community.

¹ Belgium: 26,000 in 1972 - 69,400 in 1982
France: 86,000 in 1972 - 100,000 in 1982

Mobile tradesmen actually cover a wide range of activities. The term 'mobile tradesman', a useful one in view of its general nature, covers itinerant tradesmen, i.e. traders, natural or legal persons who sell goods outside their place of residence or their domicile, at fairs, on markets or in the consumer's home, fairground traders who are engaged in the same activities as itinerant tradesmen but who have no fixed place of residence or home and also street traders, stallholders, ice cream sellers, furniture repairers etc. There are approximately 60,000 fairground employees working in travelling shows, fairgrounds and circuses within the Community.

These activities, many of which are highly traditional, are now complemented by certain modern forms of mobile trading. A particular example of this is direct selling which has been extremely successful for some products in some sectors and which will be dealt with in a separate section.

3. But returning to our main point of interest, mobile tradesmen, we should stress their vital economic role in the distribution network, particularly in rural and mountain regions and along the coasts during the summer months.

All traders benefit from the atmosphere created by mobile traders on markets in city centres. Furthermore, their presence is an important source of competition and helps to combat inflation.

2. The cultural role of itinerant tradesmen and fairground workers

4. The atmosphere of towns and cities would suffer greatly from the disappearance of these categories of tradesmen and of the markets where they meet regularly. Unlike large department stores which are often anonymous places, markets are not restricted to trade in goods but serve as points of social contact. The same is true of fairground workers, professionals employed in travelling shows, fairgrounds and circuses who travel from place to place across borders bringing with them an atmosphere of jollity and entertainment.

3. Factors threatening the future of the mobile tradesman

5. These categories of tradesmen whose economic and social role we have just underlined have been under threat for several years.

The main threat is the evolution of modern society which, in the name of efficiency and rationalization, all too often puts a ban on itinerant trades, forces mobile tradesmen to the margin of society and subjects them to formalities which are discriminatory and sometimes even oppressive.

Finally, by the very nature of their activities, mobile tradesmen suffer most directly from the failure to establish a complete internal market within the Community and, in general terms, from the inadequacy of current provisions in favour of SMUs.

It was therefore essential for the status of mobile traders to come under consideration. The value of the motion for a resolution (Doc. 1-17/82)¹ is that it raised the question of the general status, both legal and economic, of mobile tradesmen within the Community.

II. THE LEGAL STATUS OF MOBILE TRADESMEN

6. It is not within the terms of reference of the Committee on Economic and Monetary Affairs to give detailed consideration to the legal provisions relating to the freedom of movement and freedom to provide services of mobile tradesmen. We will confine ourselves to underlining the economic disadvantages caused by the gaps in the legal status of these professions as it stands at present and to making a few suggestions.

¹ See Annex

1. Freedom of movement and freedom to provide services of mobile tradesmen

7. The aim of all legislation concerning the freedom of movement of these categories of tradesmen who by the very nature of their profession are called on to travel constantly and to cross the borders of the Member States of the Community, must be two-fold.

We must begin by abolishing the exceptional and occasionally oppressive measures which have affected or could still affect these categories and fairground workers in particular. In France, the Law of 3 July 1969 abolished provisions which had made it compulsory for fairground workers and itinerants to register with the local authorities and have them stamp the official pass introduced by the earlier Law of 16 July 1912.

8. It would also seem to be essential as far as possible to harmonize existing regulations, avoid the discrimination caused by these different regulations and achieve greater simplicity.

In this respect, the Council adopted on 16 June 1975¹ a directive on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of itinerant activities in application of Article 57 of the EEC Treaty which is designed to make it easier for persons to pursue activities as self-employed persons within the Community.

This directive lists the conditions of eligibility and qualifications to be fulfilled by itinerant tradesmen within the Community and the documents constituting proof of these qualifications. However, these provisions were merely a first step towards harmonization, more specifically they are merely transitional measures pending coordination of the conditions for access to the activities in question.

¹OJ No. L 167 of 30 June 1975, p. 29

9. We must go ahead with work on the harmonization of the freedom of establishment and the freedom to provide services in respect of itinerant activities as a matter of priority without waiting for the harmonization of legislation on the freedom of establishment and the freedom to provide services in respect of tradesmen with established premises. Mobile tradesmen suffer the effects of disparities in the legislation in force throughout the Community every day. Itinerant tradesmen should no longer be subject to harassment at frontiers or discrimination resulting from legislation or tax systems in different Member States. It is quite clear that these professions would welcome the early completion of the work in hand on the simplification of formalities at borders and in particular on the adoption of a European passport.

2. Legislation on transport

10. As regards the field of transport, these professional workers would certainly welcome the adoption of a European driving licence. Those who organize travelling shows and are often forced to use vehicles with trailers for the transport of roundabouts are subjected to extremely protracted administrative procedures in some Member States (e.g. special permission is required for each département crossed in France). The harmonization of legislation in this field and the fixing, for example, of a maximum length for vehicles with trailers in the Community, would certainly be appreciated¹.

Of all the issues outlined here, the Commission should therefore give special consideration to the legal status of mobile tradesmen with a view to improving their situation by submitting the requisite proposals.

III. THE ECONOMIC STATUS OF MOBILE TRADESMEN

11. Apart from matters of an essentially legal nature concerning the freedom of movement of mobile traders, there is the question of their general status in society. The mobility of these professions

¹Written questions No. 530/80 by Mr Albers and No. 184/81 by Mr Moreland

and the difficulties they occasionally face in making their position clear to local authorities, when they are not merely forgotten or misunderstood, leads us to consider the need to improve the economic status of these professions whose economic, social and cultural role was stressed in the introduction. A number of areas where improvements are needed are given below.

1. Equal conditions for competition

12. Mobile tradesmen do not always enjoy equal conditions for competition, either among themselves or in relation to tradesmen with established premises.

Access to fairs and markets for mobile tradesmen varies from one Member State to another. In some Member States, market stalls are allocated to the highest bidder whilst in others they are allocated on payment of a fixed fee. In this connection, it would be necessary to harmonize the arrangements for access to public markets and to introduce within the Community a register of fairs and markets open, without discrimination, to itinerant tradesmen resident in the Community. It would also be necessary in this respect to consider 'non-regulated' markets (farmers' stalls, second-hand goods fairs) and to protect the rights of mobile tradesmen from the effects of this phenomenon. If mobile tradesmen were made to obtain a trader's licence as a compulsory requirement in all Community countries, this concern would certainly be alleviated.

In more general terms, there should be no discrimination as regards the products sold on markets in relation to products sold in established premises in general.

2. Taxation and access to financing

13. In order to be able to carry out their commercial activities, mobile tradesmen must not be subjected to tax discrimination in different Member States (taxes payable for this type of business in some Member States which do not exist in other Member States).

More specifically as regards those who organize travelling shows, it seems appropriate, in view of the cultural content of their activities, that they should pay a lower rate of VAT in all Member States.

Consideration should be given in general terms to ways of improving access to financing for this category of SMU at interest rates which will encourage their development.

3. Vocational training

14. Today, vocational training is essential. In the case of mobile tradesmen, however, it is sometimes difficult to provide as families move around a good deal. In this connection, a motion for a resolution was tabled in the European Parliament in October 1982 by Mrs VIEHOFF and others, calling on the Commission to carry out a study on the educational problems of circus and fair children and on measures to ensure that an adequate number of special educational establishments are provided for these children¹.

4. Town planning

15. It happens all too often nowadays that the main squares of old cities where the market used to be held are now used for other purposes and that even in new towns and conurbations the concept of the 'market place' no longer exists.

This type of policy will ruin the mobile trades in the long term. We must therefore take steps both to safeguard the working places of itinerant tradesmen, who are often neglected in favour of department stores set up by major companies, and to protect the tradesmen from the activities of non-regulated markets.

¹-----
Doc. 1-841/82

5. Representation of mobile tradesmen

16. Mobile tradesmen wish to be better represented at both international and Community level. They must certainly be represented on town planning committees set up by the relevant ministries. The organizations representing these professions¹ should also be encouraged to make effective representations to the Community bodies and particularly to the Commission in order to establish a permanent dialogue.

Finally, the provision of comprehensive, up-to-date statistics on these professions and their activities within the Community would be most welcome.

Generally speaking, in the words of the resolution adopted by the European Congress of the European Union of Travelling Traders held in Brussels on 31 January 1983, 'travelling tradesmen should have the same rights and obligations as regards taxation and in the social and professional fields as non-itinerant tradesmen on all markets in all the Community countries'.

IV. DIRECT SELLING

17. Direct selling is also used by specialist companies, most of which are members of the European Direct Selling Federation. This method of selling has been enormously successful in connection with certain categories of products (domestic appliances, beauty care products, books etc.) The advantage of this method of selling is that it relieves the consumer of the stress of shopping in city centres while in rural areas it provides the consumer with goods and services which he would not find in his own area in addition to giving him time to consider his decision and the right to cancel orders.

Several Member States have in fact introduced a trial period, usually seven days, as a compulsory requirement in their legislation

and this is linked with a right to a cancellation enabling the consumer to take precautions against any surprise demands¹.

In view of the advantages of these selling methods for the consumer and the part-time job opportunities which they could create, harmonization of legislation at European level would be desirable. The Commission submitted a proposal for a directive to protect the consumer in respect of contracts which have been negotiated away from business premises several years ago and this was the subject of a report adopted by the European Parliament². The Council should adopt this directive without further delay since it offers the advantage of generalizing the conditions governing direct selling whilst providing the consumer with the greatest possible degree of protection. This in turn could only result in greater equality of conditions for competition for direct selling companies which have already undertaken to respect these conditions under their own internal charter.

The proposal for a directive provides for a seven-day period of notice during which the consumer is entitled to cancel the order placed at his home without any penalty or other action against him. It does not apply to products whose value does not exceed 15 ECU, a figure which might seem rather low today.

The adoption of this directive would also result in the abolition of the general ban on this type of trading which still exist in some Member States³, in view of the protection which it would offer the consumer.

¹In France, Law No. 72137 of 22 December 1972

²Report by Mr James W. SPICER (Doc. 227/77)

³Denmark, Luxembourg

MOTION FOR A RESOLUTION (Doc. 1-17/82)

tabled by Mr de La MALENE, Mr ANSQUER, Mr COUSTE, Mr CRONIN, Mr DAVERN, Mr DELEAU, Mr DENIAU, Mrs EWING, Mr FANTON, Mr FLANAGAN, Mr GERONIMI, Mr ISRAEL, Mr JUNOT, Mr LALOR, Mr MEO, Mr MOUCHEL, Mr NYBORG, Mr PAULHAN, Mr REMILLY, Miss de VALERA, Mr VIE and Mrs WEISS

on behalf of the Group of European Progressive Democrats

pursuant to Rule 47 of the Rules of Procedure

on the status of the mobile trades

The European Parliament

- Having regard to the importance of the mobile trades to the economy of Europe,

1. Calls upon the Commission to examine the possibility of harmonizing the laws of the Member States concerning the mobile trades, while taking account of the individual circumstances in each country;
2. Calls upon its Committee on Economic and Monetary Affairs to hold a hearing of representatives of these trades and to bring about an exchange of experience between the representatives of the ten countries;
3. Instructs its President to forward this resolution to the Commission of the European Communities.

OPINION OF THE LEGAL AFFAIRS COMMITTEE

of the Legal Affairs Committee for the Economic and
Monetary Affairs Committee.

Draftsman: Mr PROUT

On 27 May 1982 the Legal Affairs Committee
appointed Mr PROUT draftsman of the opinion.

The Committee considered the draft opinion at its meeting
of 25 and 26 May 1983.

It adopted the draft opinion unanimously at this meeting.

The following took part in the vote: Mrs Veil, chairman;
Mr Turner and Mr Chambeiron, Vice-Chairmen; Mr Tyrrell,
acting draftsman; Mrs Baduel Glorioso, Lord Bethell
(deputising for Mr Prout), Mr D'Angelosante, Mr Goppel,
Mrs Vayssade and Mr Vié.

INTRODUCTION

1. The committee responsible has taken care to illustrate the economic, social and cultural importance of the mobile trades in its remarks*on the motion for a resolution (Doc. 1-17/82) tabled by Mr De la MALENE and others. The Legal Affairs Committee shall therefore confine its observations to the relevant provisions of Community law and to certain aspects of the motion for a resolution which the committee responsible proposes to submit to Parliament.

2. There is no doubt that the freedom of movement of persons and the freedom to provide services laid down in Articles 48 - 66 EEC are of particular interest to those engaged in the itinerant retail trade, especially those operating in the areas of the Community within a short distance of its internal frontiers. While the jurisprudence of the Court of Justice has emphasised on numerous occasions¹ the fundamental importance it attaches to the principle of the free movement of persons, there has been little activity on the part of the Community legislative authorities to improve the legal situation of persons engaged in such activities to supplement those rights which arise from the direct effect of those of the Treaty provisions cited for which such effect has been recognized².

3. The sole legislative measure to date which covers the particular case of the mobile trades is a Council Directive of 16 June 1975, Directive 75/369/EEC³, on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of itinerant activities.

1

See, for example: Van Duyn (1974) ECR 1346, Reyners (1974) ECR 652, Van Binsbergen (1974) ECR 1312 and Watson and Belmann (1976) ECR 1185.

2

In Watson (1976) ECR 1185, the Court however has recognized in a general way that the measures adopted in implementation of Articles 48-66 EEC can have direct effect.

3

OJ L 167, 30 June 1975, page 29.

* See the explanatory statement to the draft report by Mr DELEAU (PE 84.014)

Somewhat limited in scope, the directive lays down provisions concerning proof of a trader's good repute where this is a condition of pursuing mobile trades in the host Member State (Article 3); it also ensures that such a trader be informed of the rules in force governing the occupation he wishes to engage in (Article 4). Articles 5 and 6 lay down quite detailed provisions on the recognition of periods of experience gained in another Member State where the host Member State requires the possession of general, commercial or professional knowledge or ability. Directive 75/369/EEC largely reflects for the mobile trades the earlier Directives 68/363/EEC and 68/364/EEC¹ which regulated the activities of self-employed persons in what may be termed the sedentary branch of the retail trade.

4. The measures taken in implementation of Directive 75/369/EEC combined with the direct effect of certain of the relevant articles of the EEC Treaty, guarantee a degree of freedom of movement for itinerant traders within the Community. Article 57 EEC, however, requires that the Council issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications and the coordination of the provisions governing the taking up and pursuit of activities as self-employed persons. In the absence of such directives, it is unlikely that the provisions in force can guarantee mobile traders the degree of freedom of movement intended by the Treaty.

THE MOTION FOR A RESOLUTION PROPOSED BY THE COMMITTEE RESPONSIBLE

5. The Legal Affairs Committee can wholeheartedly agree with the call for the abolition of obstacles to the mobility of trade within the Community and the equalization of competitive conditions.

¹ OJ L 260, 22 October 1968, pages 1 and 6 respectively. These two directives were adopted on the same day as Regulation No. 1612/68.

Indeed, the Legal Affairs Committee takes the view that the Commission of the European Communities should examine the working of the transitional measures in operation governing both branches of the retail trade, with a view to their eventual replacement by definitive, or at least more progressive, measures more in keeping with the letter and the spirit of Title III, Part Two of the EEC Treaty.

6. The Legal Affairs Committee can also support the proposal to subject mobile trades to a sales authorization valid throughout the Community. For the purposes of clarification, and in line with similar existing legislation, such an authorization could be granted in the trader's country of origin on fulfilment of certain conditions set out in a harmonizing measure, and its validity recognized by the host Member State. The Legal Affairs Committee would also like to draw the attention of the Committee responsible to the position taken by the European Parliament in its opinion on the proposals for directives which eventually came to be enacted as Directive 75/369/EEC. In its resolution of 20 January 1971¹, the European Parliament opined that to allow a host Member State require that a mobile trader, in order to provide a service in a Member State other than his own, maintain links with a district of the host Member State, and be obliged to provide proof thereof, would be hardly judicious and far from appropriate to the objective sought.
7. The principle that mobile and sedentary retailers should be able to exercise their trade on conditions of equality both as amongst themselves and between the two branches of such activity seems hardly contestable. In this regard, therefore, the Legal Affairs Committee felt a certain reservation towards the proposal that fairground operators should benefit from a Community-wide reduced rate of VAT, in the absence of sufficient evidence to justify a measure which would amount in effect to discrimination in favour of one sector of the mobile trades.

¹ OJ C 11, 5 February 1971, page 43.

CONCLUSIONS

8. The Legal Affairs Committee calls upon the committee responsible to take the following considerations into account in the motion for a resolution it submits to Parliament:

- a) The Commission of the European Communities should examine the operation of the transitional measures contained in Directives 68/363/EEC, 68/364/EEC and 75/369/EEC on the whole of the retail trade with a view to replacing them with definitive measures;

- b) The issuing of the sales authorization proposed should be left to the Member State of origin of each mobile trader and its recognition throughout the Community guaranteed by a future Directive in this area.

In the case of a mobile trader providing a service or services in a Member State other than his own, Member States should not be allowed to require that he maintain links with a district of the host Member State.

- c) Mobile and sedentary retailers should be enabled to exercise their trade on conditions of equality, both inter_se and as between the two branches of the trade;