



## CROSS-BORDER HEALTHCARE

### Analysis paper

#### **1. Introduction**

Healthcare was primarily supposed to be regulated in the frame of Directive 2006/123/EC on services in the internal market. Due to great resistance it was excluded from the scope of Directive 2006/123/EC. The Commission was asked to address issues relating to cross border healthcare in a separate instrument on cross-border healthcare, in a way explicitly adapted to, and respecting, the unique nature of the healthcare sector. This follows calls from both the European Parliament and the Council of Ministers. It was felt that specificities of health services were not sufficiently taken into account, in particular their technical complexities, sensitivity for public opinion and major support from public funds.

In October 2007 a preliminary version of the directive on cross-border healthcare became known.

#### **2. Need for action**

Discussions about cross-border healthcare and in particular 'patient mobility' were prompted after *judgments of the European Court of Justice* in a number of cases concerning the mobility of individual citizens from different Member States. In its judgments on these cases, the Court has consistently ruled that patients have the right to be reimbursed for healthcare received in another Member State that they would have

received at home. Despite these confirming rulings *uncertainty remains* over how to apply the principles of this *jurisprudence* more generally.

The Commission carried out a *public consultation* to clearly identify the problems in the field of cross-border healthcare. The majority of the 280 contributions received favored some form of Community action on healthcare, combining both legislative elements and practical support for cooperation between European health systems.

On that basis, the Commission developed the new draft directive.

### **3. Commission adopted a draft Directive on the application of patients' rights in to cross-border healthcare as part of the Renewed Social Agenda**

On July 2<sup>nd</sup> 2008 the Commission adopted a *proposal for a directive to facilitate the application of European patients' rights in relation to cross-border healthcare*, as well as a *Communication on improving co-operation between Member States* in this area. With this proposal the Commission aims to provide legal certainty on this issue. They are part of the ***Renewed Social Agenda***.

This proposal for a directive aims at clarifying and promoting the right of patients to gain access to healthcare in another EU country by ensuring, at the same time, high quality and safe cross border healthcare throughout Europe.

On this basis, patients will be able to make an informed choice, in full confidence about the reimbursement that they are entitled to and about safety and quality of the care that they will receive. The challenge is to give more opportunities and guarantees to citizens without affecting the financial sustainability of national health systems.

This approach answers also to the demands of the Parliament and Council to develop specific proposals in this area of cross border healthcare, which is adapted to the specific characteristics of the health sector and takes them into consideration.

The proposed legal framework should also provide a sound basis to explore the enormous potential of European cooperation with regards to the improvement of the efficiency and effectiveness of all EU-wide health systems. Also the exchange of best

practice should be improved, innovation should be supported and the information offers will be expanded.

#### **4. Elements and goals of the proposed directive**

The Commission proposes the establishment of a *Community framework for cross-border healthcare*, as set out in this proposal for a directive.

As well as setting out relevant legal definitions and general provisions, this is structured around three main areas:

- ***common principles in all EU health systems***, setting out which Member State shall be responsible for ensuring the common principles for healthcare and what those responsibilities include;
- ***a specific framework for cross-border healthcare***: the directive will make clear the entitlements of patients to have healthcare in another Member State, including the limits that Member States can place on such healthcare abroad, and the level of financial coverage that is provided for cross-border healthcare;
- ***European cooperation on healthcare***: the directive establishes a framework for European cooperation in areas such as cooperation in border regions, recognition of prescriptions issued in other countries, European reference networks, health technology assessment, data collection and quality and safety, in order to enable the potential contribution of such cooperation to be realized effectively and on a sustained basis.

Based on the *case-law*, the initiative aims at ensuring a clear and transparent framework for the provision of cross-border healthcare within the EU, for those occasions where the care patients seek is provided in another Member State than in their home country. There should be no unjustified obstacles and the care should be safe and of good quality. The procedures for reimbursement of costs should be clear and transparent.

Overall, this directive, once adopted by the Council and the European Parliament, will provide a clear framework for cross-border care. Under its major ***goals*** and provisions:

- Patients have the right to seek healthcare abroad and be reimbursed up to what they would have received at home.
- Member States are responsible for healthcare provided on their territory. Patients should be confident that the quality and safety standards of the treatment they will

receive in another Member State are regularly monitored and based on good medical practices.

- The directive will facilitate European cooperation on healthcare and provide a basis to support the development of European reference networks. This collaboration has great potential to bring benefits to patients through easier access to highly specialized care.
- Health technology assessment is another clear area of European added-value.
- Activities in the field of "e-Health" will also be strengthened. What is lacking, however, are shared formats and standards that can be used between different systems and different countries. The directive will help these to be put in place.

## 5. Conclusions

- ***Potential impact for citizens***

The directive brings added-value in the sense that it will provide clarity about these additional rights conferred to patients when they seek the healthcare, to which they are entitled from providers in other Member States and how they are reimbursed. Patients can have confidence about the quality and the safety of that healthcare. The proposal therefore provides an additional option for cross-border healthcare and there are additional rights that citizens can choose to exercise. Certain Member States have already chosen, under certain conditions, to extend the benefits in kind schemes to the patients seeking cross-border healthcare.

The creation of European reference networks while on a voluntary basis will enhance the expertise in new therapeutic fields and will help making these therapies more easily available to patients irrespective of their home country.

- ***Potential impact for health professionals***

Health professionals could benefit from a clear set of rules about the quality and safety standards applicable when they treat patients from other Member States or when they provide services in other Member States.

But the directive does not touch existing provisions of Community law. In particular, it will not affect provisions regarding the recognition of professional qualifications or create

additional barriers to such recognition; nor will it affect the rights of health professionals to establish themselves in other Member States. Moreover, it will make clear that regardless of the status of a healthcare professional, the rules applicable to healthcare are those of the country of treatment (the country where the care is provided).

- ***Potential impact on the Member States and public budgets***

In the long term, the added value of European cooperation will help to improve the quality and efficiency of all healthcare, both for those patients who move and those who do not.

According to impact assessment of the Commission the additional costs of treatment arising from these proposals are not likely to be such as to undermine the sustainability or planning of health systems overall, because citizens are only entitled to be reimbursed for healthcare that they were entitled to at home, so Member States only have to pay for healthcare that they would have had to pay for in any case. The impact assessment estimated that the additional costs of treatment would be a small fraction of one percent of overall health expenditures, and far outweighed by the benefits.

- ***Potential impact on the overall organization of health systems***

Could the potential of cross-border healthcare alter the possibilities of Member States to control access to healthcare? Healthcare provision requires a critical mass of patients in order to enable and maintain high quality services and of course to justify investments which can be for certain new therapies heavy and not available in certain Member States. If providing cross-border care can help to generate such a critical mass, it can also help to support more developed healthcare which will also benefit domestic patients.

In any event, providing care to patients from other countries must not undermine the provision of healthcare to their own residents. The proposed directive makes clear that using this framework for cross-border care does not entitle people from abroad to be treated more quickly than domestic patients. Moreover, healthcare providers are not obliged to accept patients from abroad for planned treatment if this would endanger the

maintenance of treatment capacity or medical competence in the receiving Member State.

The main objective of the proposed legal framework can contribute to *clarify the Court of Justice principles* stating that the patients have the right to be reimbursed for healthcare received in another Member State up to the level that they would have been for healthcare received in their own Member State. This right is the direct application of the EC Treaty and the legal framework proposed by the Commission aims at facilitating its practical application. Nevertheless, the key first step is to establish a clear legal framework within which such European cooperation can take place. That is the aim of this initiative.

**LINKS:**

DRAFT DIRECTIVE ON APPLICATION OF PATIENTS' RIGHTS IN CROSS-BORDER HEALTHCARE: [http://ec.europa.eu/health/ph\\_overview/co\\_operation/healthcare/cross-border\\_healthcare\\_en.htm](http://ec.europa.eu/health/ph_overview/co_operation/healthcare/cross-border_healthcare_en.htm)

A COMMUNITY FRAMEWORK ON THE APPLICATION OF PATIENTS' RIGHTS IN CROSS-BORDER HEALTHCARE:

[http://ec.europa.eu/health/ph\\_overview/co\\_operation/healthcare/docs/COM2008415\\_en.pdf](http://ec.europa.eu/health/ph_overview/co_operation/healthcare/docs/COM2008415_en.pdf)

RESULTS OF THE PUBLIC CONSULTATION:

[http://ec.europa.eu/health/ph\\_overview/co\\_operation/healthcare/cross-border\\_healthcare\\_en.htm](http://ec.europa.eu/health/ph_overview/co_operation/healthcare/cross-border_healthcare_en.htm),

[http://ec.europa.eu/health/ph\\_overview/co\\_operation/healthcare/results\\_open\\_consultation\\_en.htm](http://ec.europa.eu/health/ph_overview/co_operation/healthcare/results_open_consultation_en.htm)