

EPF EXPLANATORY NOTE FOR MEMBERS REGARDING THE DIRECTIVE ON APPLICATION OF PATIENTS' RIGHTS IN CROSS-BORDER CARE

The EU Treaty states that the organization, management, financing and delivery of health care are the responsibility of the EU Member States, and not within the EU remit. However, health systems and health policies across the EU are becoming more interconnected, due to many factors, including movement of patients and professionals, dissemination of new medical technologies, etc.

EU LEGISLATION ON COORDINATION OF SOCIAL SECURITY SCHEMES

EU Regulation 1408/71 and implementing Regulation 574/72¹ offer some practical solutions to most of the cross-border problems that arise in the field of social security. These Regulations do not harmonise but co-ordinate the social security schemes of EU Member States. Member States are free to determine the details of their own social security systems (which benefits shall be provided, the conditions of eligibility, the value of these benefits), as long as they adhere to the basic principle of equality of treatment and non-discrimination. They look at two key aspects:

Unforeseen treatment – European Health Insurance Card

If a citizen needs treatment while travelling in EU country the *European Health Insurance Card (EHIC)* ensures that the cost of the necessary treatment is covered at a reduced cost or sometimes free of charge. EHIC doesn't allow to go abroad specifically to receive medical care

Since 2004, EHIC replaces the previously used forms:

- E111 and E111B used by tourists,
- E110 used by international haulage companies,
- E128 used by workers posted to another Member State and by students,
- E119 used by unemployed people seeking work in another Member State (only for benefits in kind).

Planned treatment – prior-authorisation

If the treatment concerned is planned and if this represents the patients' reason for travelling abroad, the patients' health insurance institution in his/her country of affiliation will require a prior-authorisation. This is given through E112 form - a standard European form, identical in all countries and all languages, where the health insurance institution certifies that it will cover the cost of the treatment abroad.

¹ http://ec.europa.eu/employment_social/social_security_schemes/index_en.htm

In practice, one of the main problems with this system has been the complicated administrative procedures to obtain the prior-authorisation and the long waiting lists for patients before getting the prior-authorisation. The lack of information about patients' rights in this context and financial and practical aspects was also a barrier.

This led to some patients bringing their Member States to the **European Court of Justice**. On the basis of EU internal market rules, they asked for their right to access healthcare products and services in other Member States than their own country. Since 1998, several judgments of the European Court of Justice judgements² have confirmed that patients have, in certain cases, the right to access healthcare services in other Member States than their own country, with the cost being borne by their own health system. Barriers to seeking health care in other Member State were considered barriers to the principle of free movement of citizens.

In 2006 **The Directive on Services in the Internal Market**³ (the so-called Bolkenstein Directive) tried to address these issues. However, the European Parliament and the Council excluded health services from the Directive and invited the Commission to come forward with a specific initiative addressing health services. It was considered that the patients were not ordinary consumers. They are in vulnerable positions because their health is at stake and this is not merely a commercial commodity.

Finally, on 2 July 2008, after a public consultation on health services and cross-border healthcare, the Commission came up with a proposal for a **Directive on the application of patients' rights in cross-border healthcare**⁴.

DIRECTIVE ON PATIENTS' RIGHTS IN CROSS-BORDER CARE

The Directive does not modify the existing framework for coordination of social security schemes and does not create other possibilities to receive healthcare abroad than those established by the ECJ rulings. It puts in place an alternative mechanism that allows patients to seek any healthcare in another Member State:

Patient may seek healthcare in another country any other Member State without prior authorisation, and be reimbursed up to the level of reimbursement provided by their own country of affiliation. For hospital care, however, under certain circumstances, a Member State may decide to put in place a system of prior authorisation to safeguard its overall system if necessary.

² http://ec.europa.eu/employment_social/social_security_schemes/healthcare/e112/caselaw_en.htm

³ http://ec.europa.eu/internal_market/services/services-dir/index_en.htm

⁴ http://ec.europa.eu/health/ph_overview/co_operation/healthcare/cross-border_healthcare_en.htm

In any event, Member States may impose the same conditions on seeking cross-border care as they apply domestically, such as the requirement to consult a general practitioner before consulting a specialist or before receiving hospital care.

As regards long-term care, the Directive does not apply to assistance and support for families or individuals who are, over an extended period of time, in a particular state of need (for example, to residential homes or housing, assistance provided to elderly people or children by social workers, volunteer carers or professionals other than health professionals)

Another important element put forward by the Directive is that patients will have easier access to relevant information about cross-border healthcare (practical and financial aspects, redress and compensation mechanisms in case of harm etc), in particular through national contact points, before they decide to seek treatment in another EU country.

Finally, the Directive is not aimed at changing how Member States organise their national health systems – this remains the primary responsibility of each of them – but facilitates cooperation between Member States health systems, which will lead ultimately to improved quality and safety.