

EUROPEAN PARLIAMENT

2004



2009

Committee on the Internal Market and Consumer Protection

**PROVISIONAL
2006/2275(INI)**

6.3.2007

DRAFT REPORT

on the impact and consequences of the exclusion of health services from the
Directive on Services in the Internal Market
(2006/2275(INI))

Committee on the Internal Market and Consumer Protection

Rapporteur: Bernadette Vergnaud

CONTENTS

| | Page |
|---|-------------|
| MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION | 3 |
| EXPLANATORY STATEMENT | 7 |

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the impact and consequences of the exclusion of health services from the Directive on Services in the Internal Market (2006/2275(INI))

The European Parliament,

- having regard to Articles 16, 49, 50, 95(1) and 152 of the EC Treaty,
- having regard to Article 35 of the Charter of fundamental rights of the European Union;
- having regard to the judgments of the Court of Justice of the European Communities of 28 April 1998 in cases C-120/95, Decker/Caisse de maladie des employés privés¹ and C-158/96, Kohll/Union des caisses de maladie², of 12 July 2001 in cases C-157/99, Geraets-Smits and Peerbooms³ and C-368/98, Vanbraekel e.a.⁴, of 25 February 2003 in case C-326/00, IKA⁵, of 13 May 2003 in case C-385/99, Müller-Fauré and Van Riet⁶, of 23 October 2003 in case C-56/01, Inizan⁷, of 18 March 2004 in case C-8/02, Leichtle⁸, and of 16 May 2005 in case C-372/04, Watts⁹,
- having regard to Directive 2006/123/EC of the European Parliament and the Council of 12 December 2006 on services in the internal market¹⁰, in particular Article 2. 2 (f), and Recitals 22 and 23,
- having regard to the Commission communication of 26 September 2006 entitled ‘consultation on Community action in the field of health care services’,
- having regard to its resolution of 9 June 2005 on patient mobility and healthcare developments in the European Union¹¹,
- having regard to the Council Conclusions on common values and principles in European Union health systems¹²,
- having regard to Article 152(5) of the Treaty, enshrining the subsidiarity principle with regard to health care, and having regard to Council Regulation (EC) 1408/71 of 14 June 1971, on the application of social security schemes to employed persons and their families moving within the Community¹³, European Parliament and Council Regulation (EC)

¹ ECR1998, p. I-1831.

² ECR1998,p. I-1931.

³ ECR2001, p. I-5473.

⁴ ECR2001, p. I-5363.

⁵ ECR2003, p. I-1703.

⁶ ECR2003, p. I-4509.

⁷ ECR2003, p. I-12403.

⁸ ECR2004, p. I-2641.

⁹ ECR2006, p. I-4325.

¹⁰ OJ L 376, 27.12.2006, p. 36.

¹¹ OJ C 124E, 25.5.2006, p. 543.

¹² OJ C 146, 22.6. 2006, p. 1

¹³ OJ L 149, 5.7.1971, p.2

883/2004 on coordination of social security systems¹, and Article 49 of the Treaty,

- having regard to Rule 45 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection (A6-0000/2007),
- A. whereas the Member States are responsible for organising, managing, delivering and financing health services, which are different in every Member State,
- B. whereas the Court of Justice of the European Communities has issued a number of judgments authorising patients to move freely in order to find health care,

Principles

1. Considers that the mobility of patients and health professionals will increase in future years within the EU and that all European citizens, whatever their level of income or place of residence, should be guaranteed equal access to health care, in accordance with the principles of universality, quality, safety, continuity, and solidarity, thus contributing to the social and territorial cohesion of the Union;
2. Points out that in accordance with the provisions of the Treaty, the Member States must retain the necessary regulatory tools: systems for authorising and planning health care and regulating prices;
3. Stresses that health services are a special case because by their nature they are of general interest, as recognised in Articles 16 and 152 of the Treaty, and considers that this should be guaranteed in the application of the provisions on the free movement of services, freedom of establishment and competition, and state aid;
4. Points out that in any case patients must be able to have equal access to appropriate treatment as close as possible to their home and in their own language;

Definitions

5. Requests clarification of the rules on provision of health services which have a social service component, such as care for elderly or disabled people;
6. Requests further clarification of concepts such as ‘reasonable waiting time’ and definitions of inpatient and outpatient treatment;

Patient mobility

7. Notes the great diversity of mobility among patients sent abroad by their national health system, tourists who fall ill, migrant workers, students, retired people and anyone living in an EU country other than their country of origin, or living in border regions;

Improving information for patients

¹ OJ L 166, 30.4.2004, p.1

8. Notes how difficult it is for patients to obtain clear and precise information on health care, and the complexity of the procedures that have to be followed;
9. Considers that it is important to give patients the right to choose health care in another country when this choice allows them to receive better treatment more rapidly, and that prior authorisation should be easily accessible, dealt with immediately, evaluated on the basis of objective and neutral criteria and considered by an expert and independent doctor;
10. Calls for the adoption of a European charter of patients' rights on the basis of the various existing charters in the Member States and work carried out by non-governmental organisations;

Reimbursement

11. Calls for clarification of the procedures and conditions for reimbursement to provide better legal certainty for patients, national sickness insurance schemes and health care providers;
12. Calls for a European sickness insurance card to be compulsory for all European citizens, with a standardised electronic recording system for patients to ensure confidentiality of sensitive medical data;

Mobility of health professionals

13. Notes that European Parliament and Council Directive 2005/36/EC of 7 September 2005 on the recognition of professional qualifications¹, which has not yet been transposed in every Member State², does not remedy all the current regulatory shortcomings at EU level concerning the free movement of health professionals, particularly with regard to continuing training;
14. Underlines the need to take account at European level of continuing training of health care providers to ensure the best possible quality of care;
15. Calls on the Commission to set up a system for collecting data and exchanging information between the various national authorities on health care providers and to set up a European card to provide access to information on the skills of health care professionals; also calls for a ban on advertising by health care providers;

Legal liability

16. Notes that cross-border mobility of patients creates legal uncertainty with regard to the applicable law on liability in the event of failure of treatment or injury to the patient, particularly if the various stages of treatment have taken place in more than one country;
17. Therefore stresses the need to guarantee the legal security of patients and professionals, calls for clarification of liabilities in the event of injury and an obligation for all health professionals to have compulsory third-party liability insurance at reasonable cost;

¹ OJ L255, 30.9.2005, p.22

² Deadline for transposition: 20 October 2007

18. Points out that health care often requires follow-up medical checks; calls for clarification of the rules on the division of responsibilities between health care providers during the various stages of medical treatment;

Cooperation between the Member States

19. Considers that closer cooperation between health systems would make it possible to obtain appropriate treatment in other countries, improve the quality of services and thus increase citizens' confidence;
20. Encourages the development of networks of reference centres for some rare and specific diseases and the open coordination method, and exchanges of knowledge between various EU countries on best treatment practices and the organisation of health care systems; and calls on the Commission to provide significant resources to optimise transnational administrative cooperation;
21. Hopes that bilateral or multilateral agreements between Member States will develop, which would stimulate sharing of material and human resources in cross-border areas and exchanges of skills and knowledge, and would help to rationalise funding for health systems and sickness insurance schemes;
22. Calls for the creation of one-stop shops in each Member State to guarantee access to objective and independent information for patients, health professionals, health care institutions and the competent authorities; considers that health professionals can assist patients in seeking this information;

Conclusions

23. Considers that a legislative instrument is needed to clarify the rights and obligations of patients and health professionals in connection with sickness insurance schemes, and of the competent authorities with regard to cross-border services;
24. Invites the Commission to submit to Parliament and to the Council a proposal for a directive on health services, in parallel with a sectoral directive on social services of general interest, and a framework directive on services of general economic interest;
25. Instructs its President to forward this resolution to the Council and Commission.

EXPLANATORY STATEMENT

1. Health care services and pharmaceuticals were excluded from the directive on services in the internal market because of their very particular characteristics which prevent them from being considered as ordinary services that can be bought and sold.

In response to the encouragement of the Council and Parliament to devote a special reflection process to the health sector, the Commission launched a consultation process on the framework for future initiatives.

2. Health services are one of the fundamental elements of the European social model; they contribute to the economic, social and territorial cohesion of the EU and can inspire citizens' confidence, or the reverse. In such a sensitive sector which concerns people's most precious possession and affects their daily lives with its ultimate aim of preserving life, there is a great deal at stake politically.
3. In accordance with the Treaties and the principle of subsidiarity, these services fall within Member State competence, and EU action to regulate and safeguard various forms of mobility of patients and professionals, which currently is not a large phenomenon but is continually growing, must comply with shared values and principles at European level: universality, safety, quality, solidarity and equal access for all throughout the Community's territory.

In this way, EU added value may be essential.

4. Health services are a substantial source for creating large numbers of skilled jobs, make an active contribution to the Lisbon strategy objectives, and their economic and social role is considerable.
5. Health systems differ widely from one country to another but must adapt and evolve to maintain high levels of quality and effectiveness. Greater mobility of professionals should not lead to an imbalance in the medical demography in the Member States. Regulation at European level and improved cooperation between countries are therefore needed to preserve social and territorial cohesion and guarantee equal access to good quality health care throughout Europe through good territorial coverage, as Article 35 of the Charter of EU Fundamental Rights explicitly recognises.
6. The increasing mobility of patients and health professionals should not lead to the creation of an internal market in health services competing on the basis of cost, leading to a damaging levelling down of quality of care and creating a two-speed health system where only the more well-off and better informed patients would benefit.
7. In the context of patient mobility, it is essential that they have easy access to clear and precise information without bureaucratic obstacles. Cooperation between the various institutions concerned and the various health insurance schemes is therefore needed and must preserve the confidentiality of sensitive data in medical files. Patients should have a

European sickness insurance microchip card that would be standard for the whole EU.

8. In view of the general ageing of the European population and pensioners' increased transnational mobility, it seems important to anticipate the creation of sufficient structures for appropriate care, in connection with the relevant social services.
9. The mobility of health care providers should be improved, and there should be a standard European card stating their various professional qualifications, with a view to better organised transnational systems of continuing training, which is highly recommended to keep pace with continuing developments in technologies and research.
10. It is vital to set up a legal framework that determines liabilities in the event of failure of treatment, or injury to patients, particularly in the context of medical treatment carried out in several countries.

The conditions and arrangements for monitoring should be clearly set out in the same way as those in the country where the professionals work.

Whatever the level of risk they are exposed to in their profession, health care professionals should have access to reasonably priced insurance.

11. Certain concepts should also be defined: reasonable waiting time, which varies greatly from one country to another, and imprecise definitions of inpatient and outpatient treatment, which have been referred to in judgments by the European Court of Justice.

Better protection is urgently needed for patients, health professionals and sickness insurance schemes, and any legal uncertainty about treatments, authorisations, charges and conditions for reimbursement should be removed.

12. With a view to rationalising costs for sickness insurance schemes, it would be sensible to stress prevention policies at Member State level. In border areas, sharing human and material resources would contribute to the intelligent management of healthcare.
13. To optimise the conditions for research on specific and rare diseases, there should be a general rule to set up reference centres in each country as a way of improving the quality of care.
14. The Court of Justice has recognised patients' rights in its judgments. Nevertheless, legal uncertainty remains with regard to some definitions of care, the actual rights of patients, the rights of professionals who provide their services in different countries, the conditions for checks to be carried out, the standards applicable in terms of charges and reimbursement, and liability in the event of injury to patients, particularly when medical treatment is provided in more than one country.
15. The legislator, and the legislator alone because this is its role, must therefore remove all these persistent legal uncertainties by creating a legislative instrument that anticipates the problems raised by an increase in trade in health care services within the EU; this instrument should set out all the legal provisions applicable in the context of the diversity

of cases to be treated, clarify the rules on authorisations and reimbursement and link the medical area with the social area in some cases. This necessary clarification must, however, not encourage patients to indulge in ‘medical tourism’.

16. This legislative initiative, which would provide coherent and effective responses to calls to protect the way of life of European citizens, would in fact be the only legal and ethical guarantor of a social model.
17. A directive on health services, in parallel with legislation on general interest social services, included in the objective of a framework directive on services of general economic interest therefore seems to be the only instrument that would enable the European Union to add value, which is what is needed to re-establish and increase the confidence of European citizens in an area which is absolutely central to their lives.