

# EUROPEAN PARLIAMENT

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*Committee on Legal Affairs*

**2008/0142(COD)**

13.2.2009

## **OPINION**

of the Committee on Legal Affairs

for the Committee on the Environment, Public Health and Food Safety

on the proposal for a directive of the European Parliament and of the Council  
on the application of patients' rights in cross-border healthcare  
(COM(2008)0414 – C6-0257/2008 – 2008/0142(COD))

Rapporteur: Diana Wallis

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## SHORT JUSTIFICATION

The rapporteur welcomes the increased legal certainty produced by the judgments of the Court of Justice on patients' right to receive health care in a Member State other than their own. She emphasises that this is a matter of direct importance to the daily lives and welfare of many EU citizens, particularly in view of the increasingly ageing profile of the population.

The rapporteur confirms the choice of legal basis and finds that the proposal for a directive complies with the principle of subsidiarity. This should serve to protect national health systems and allay concerns about the impact of the proposed directive on their future funding.

The rapporteur further notes the importance of the interaction of the directive with Regulation No 1408/71<sup>1</sup> and the complementary role which it will play thereto. Indeed, it is important to note that the proposal does not seek to replace the existing framework for cross-border healthcare set forth in that regulation. In fact, Regulation No 1408/71 organises the coordination of the national social security schemes, whilst the provisions regarding entitlements set out in the proposed directive and the provisions of Regulation No 1408/71 constitute alternative mechanisms for the assumption of medical costs incurred in other Member States. As a result, the patient has a choice: an insured person either benefits from the mechanism of that regulation or may opt for the system of the proposed directive.

The proposed directive will give EU citizens the right to seek non-hospital care in another Member State without their having to obtain prior authorisation from their national health schemes. Patients will need to pay for the care first and then seek reimbursement from their national systems. Under the proposal, the reimbursement will cover the costs of the care which would have been paid for by the national social security system had the care been provided on the national territory.

In view of the fact that the directive raises certain issues of private international law (claims may arise in both tort and contract in the course of the provision of medical care), the rapporteur has been at pains to underscore that the Community rules on jurisdiction and applicable law apply. There is no incompatibility with either the Rome I<sup>2</sup> or the Rome II<sup>3</sup> Regulation.

Having said that, your rapporteur would point to one aspect of "unfinished business" in that Parliament is awaiting a study promised by the Commission on damages in personal injury cases. With this aspect in mind, she has considered it appropriate to include in the proposed directive a recital on damages taken from the Rome II Regulation.

Lastly, as regards jurisdiction and the application of the Brussels I Regulation<sup>4</sup>, the rapporteur considers that where the conditions set forth in the Court's judgment in the *Odenbreit*<sup>5</sup> case

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<sup>1</sup> Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, OJ L 148, 5.6.1974, p. 35.

<sup>2</sup> Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177, 4.7.2008, p. 6.

<sup>3</sup> Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), OJ L 199, 31.7.2007, p. 40.

<sup>4</sup> Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12, 16.01.2001, p. 1.

are satisfied, an injured party in a medical negligence case should be able to bring an action directly against his or her insurer in the Member State where the injured party is domiciled.

## AMENDMENTS

The Committee on Legal Affairs calls on the Committee on the Environment, Public Health and Food Safety, as the committee responsible, to incorporate the following amendments in its report:

### Amendment 1

#### Proposal for a directive

##### Title

*Text proposed by the Commission*

Proposal for a directive of the European Parliament and of the Council on the application of patients' rights ***in cross-border*** healthcare

*Amendment*

Proposal for a directive of the European Parliament and of the Council on the application of patients' rights ***to access to safe, high-quality and effective*** healthcare, ***under equitable conditions***

##### *Justification*

*El marco específico para la asistencia sanitaria afecta sólo a una minoría de pacientes, mientras que la mejora de la calidad y seguridad de la asistencia, así como la cooperación entre EEMM son cuestiones que redundarán en beneficio de la generalidad de los ciudadanos y se considera que deberían constituir el núcleo principal de la propuesta.*

*Se propone que la asistencia sanitaria transfronteriza no sea presentada como un ideal en la propuesta de directiva, sino como una segunda opción a considerar si no es posible la asistencia sanitaria en el lugar de residencia del ciudadano. Debe quedar claro que el objetivo es que el ciudadano pueda acceder a una asistencia sanitaria segura y de la mayor calidad lo más cerca posible de su lugar de residencia.*

### Amendment 2

#### Proposal for a directive

##### Recital 16 a (new)

*Text proposed by the Commission*

*Amendment*

***(16a) Notwithstanding the foregoing, in the case of claims based on contractual or***

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<sup>5</sup> Case C-463/06 *FBTO Schadeverzekering v. Odenbreit* [2007] ECR I-11321.

*non-contractual liability, the applicable law should be determined in accordance with the provisions of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)<sup>1</sup> and Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)<sup>2</sup>. Jurisdiction should be determined in accordance with the provisions of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<sup>3</sup>, it being understood that, where the conditions are satisfied, injured parties may bring an action directly against their insurer in the Member State in which they are domiciled.*

<sup>1</sup>OJ L 177, 4.7.2008, p. 6.

<sup>2</sup>OJ L 199, 31.7.2007, p. 40.

<sup>3</sup>OJ L 12, 16.1.2001, p. 1.

### Amendment 3

#### Proposal for a directive Article 1

##### *Text proposed by the Commission*

This Directive establishes a general framework for ***the provision of*** safe, high quality and efficient ***cross-border*** healthcare.

##### *Amendment*

This Directive establishes a general framework for ***access by EU citizens to*** safe, high quality and efficient healthcare ***under equitable conditions, and establishes mechanisms for cooperation between Member States in the field of health, respecting national competences as regards the organisation and provision of healthcare.***

##### *Justification*

*Se propone que el objetivo de la propuesta no se centre en abordar la movilidad de los pacientes, sino que su núcleo fundamental sean los otros 2 ejes en los que la Comisión*

*Europea dice estructurar la propuesta: principios comunes a todos los sistemas sanitarios de la UE y cooperación europea en el ámbito de la salud.*

*La actual propuesta, centrada en la movilidad de pacientes, podría considerarse beneficiosa por un determinado perfil de ciudadanos (con alto poder adquisitivo, informados, con conocimiento de idiomas), pero se trata de una minoría de ciudadanos.*

*No obstante, la propuesta descuida las necesidades de la mayoría de los ciudadanos (perfil: sin recursos suficientes para adelantar el coste de la atención sanitaria prestada en otro EM, sin conocimientos suficientes de idiomas, sin suficiente información para poder desplazarse a otros EEMM) y genera inequidades.*

*Se propone que la propuesta no se centre en abordar la movilidad de pacientes (que sólo afecta a una minoría), sino en mejorar la calidad y seguridad de la asistencia, así como en la cooperación entre EEMM, aspectos que redundarán en beneficio de la generalidad de los ciudadanos.*

#### **Amendment 4**

##### **Proposal for a directive**

##### **Article 5 – paragraph 1 – point e**

*Text proposed by the Commission*

*Amendment*

(e) systems of professional liability insurance or a guarantee or similar arrangement, ***which are equivalent or essentially comparable as regards their purpose and*** which are appropriate to the nature and the extent of the risk are in place for treatment provided on their territory;

(e) ***sufficient and effective*** systems of professional liability insurance or a guarantee or similar arrangement, which are appropriate to the nature and the extent of the risk are in place for treatment provided on their territory;

*Justification*

*The concern is that the wording deleted might legitimise the provision of discretionary indemnity schemes.*

#### **Amendment 5**

##### **Proposal for a directive**

##### **Article 11 – title**

*Text proposed by the Commission*

*Amendment*

***Applicable rules*** to healthcare provided in another Member State

***Rules applicable*** to healthcare provided in another Member State ***and the law applicable to any claims arising on the basis of contractual or non-contractual***

## *liability*

### *Justification*

*It is necessary to distinguish in this provision between the rules applicable to the provision of healthcare services and the law applicable to any claims which might arise out of the provision of those services.*

### **Amendment 6**

#### **Proposal for a directive Article 11 – paragraph 1**

##### *Text proposed by the Commission*

1. When healthcare is provided in a Member State other than that where the patient is an insured person, or in a Member State other than that where the healthcare provider resides, is registered or established, such healthcare service is provided **according to** the legislation of the Member State of treatment **in accordance** with *Art.5*.

##### *Amendment*

1. When healthcare is provided in a Member State other than that where the patient is an insured person, or in a Member State other than that where the healthcare provider resides, is registered or established, such healthcare service is provided **in accordance with** the legislation of the Member State of treatment **and** with *Article 5*.

### **Amendment 7**

#### **Proposal for a directive Article 11 – paragraph 1a (new)**

##### *Text proposed by the Commission*

##### *Amendment*

***1a. In so far as the provision of healthcare in a Member State other than that in which the patient is an insured person gives rise to claims based on contractual or non-contractual liability, the applicable law shall be determined in accordance with the provisions of Regulation (EC) No 593/2008 and Regulation (EC) No 864/2007. Jurisdiction shall be determined in accordance with the provisions of Regulation (EC) No 44/2001, it being understood that, where the conditions are satisfied, injured parties may bring an action directly against their insurer in the Member State in which they are***

*domiciled.*

## **Amendment 8**

### **Proposal for a directive Article 12 – paragraph 2 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

***(da) provide information and assistance to patients as injured parties where they bring an action directly against their insurer in the Member State in which they are domiciled.***

## **Amendment 9**

### **Proposal for a directive Article 12 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. The national contact point in the Member State of affiliation shall provide, to patients so requesting, contact data for national contact points in other Member States.***

### *Justification*

*Como se ha indicado en relación con el 10, este art. impone a los Estados miembros obligación de informar sobre datos en poder de otros EEMM, lo que supone una sobrecarga excesiva para los primeros. Además, para que la información fuera útil para los ciudadanos, se requeriría de una actualización continua, lo cual parece inviable. Entendemos que bastaría con que cada Estado miembro se responsabilizase de facilitar información en relación con la asistencia sanitaria prestada en su propio territorio y, en todo caso, facilitara información relativa a los datos de contacto de los puntos nacionales de contacto de otros Estados miembros.*

## **Amendment 10**

### **Proposal for a directive Article 13 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall render such mutual

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assistance as is necessary for the implementation of this Directive.

assistance as is necessary for the implementation of this Directive, ***in cooperation with the regional and local authorities when they are responsible for the healthcare system.***

## PROCEDURE

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| <b>Title</b>  | Patients' rights in cross-border healthcare  |
| <b>References</b>   | COM(2008)0414 – C6-0257/2008 – 2008/0142(COD)  |
| <b>Committee responsible</b>                                      | ENVI   |
| <b>Opinion by</b><br>Date announced in plenary                    | JURI<br>2.9.2008   |
| <b>Drafts(wo)man</b><br>Date appointed                            | Diana Wallis<br>22.9.2008  |
| <b>Discussed in committee</b>                                     | 20.1.2009  |
| <b>Date adopted</b>   | 12.2.2009  |
| <b>Result of final vote</b>                                       | +: 14<br>-: 7<br>0: 3  |
| <b>Members present for the final vote</b>                         | Alin Lucian Antochi, Marek Aleksander Czarnecki, Bert Doorn, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Neena Gill, Klaus-Heiner Lehne, Alain Lipietz, Manuel Medina Ortega, Aloyzas Sakalas, Francesco Enrico Speroni, Diana Wallis, Rainer Wieland, Jaroslav Zvěřina, Tadeusz Zwiefka |
| <b>Substitute(s) present for the final vote</b>                   | Sharon Bowles, Mogens Camre, Jean-Paul Gauzès, Kurt Lechner, Arlene McCarthy, Georgios Papastamkos, Jacques Toubon   |
| <b>Substitute(s) under Rule 178(2) present for the final vote</b> | Michael Cashman, Helga Trüpel  |