

Patient Mobility in the EU

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With the support of the
Erasmus+ Programme
of the European Union

Outline

- Occasion
- Theoretical concept
- Legal Framework
- Consequences
- Response EC
- Outcomes sofar
- Conclusions



1. Occasion

- Motives
- Emerging problems and challenges national health systems
- Groundbreaking rulings

2. Notion of Patient Mobility

Central question

Part of right to health care, social 'positive' right

ECJ/EUCJ: 'negative' right to seek medical care anywhere in the EU

Clash freedoms and finite resources

Equity implications

3. Legal Framework

- Art. 168 TFEU (ex Article 152 TEC):

s. 7: 'Union action shall respect the responsibilities of the Member States for the definition of their health policy and for the organisation and delivery of health services and medical care. The responsibilities of the Member States shall include the management of health services and medical care and the allocation of the resources assigned to them.'

- Article 56 and 57 TFEU (ex 49, 50): Free movement of services

- Coordination Regulation 883/04, art. 20 (ex 1408/71/EEC)

- Right to emergency care
- 'Planned' healthcare: Prior authorization
- Full reimbursement costs

- Patient Mobility Directive

Legal framework cont.: EUCJ case law

PA principle: Barrier to free movement?

Decker & Kohll (C-120/95, 158/96): Prior authorization and non-hospital care

Smits/Peerbooms & Muller-Fauré (C-157/99, C-385/99): In-patient health care; 'normal' treatment in professional circles-criterion: overly restrictive?

Watts (C-372/04): Acceptable medical waiting times; NHS hospital services under art. 49 EC; Calculation of costs; Full or partial reimbursement ?

Stamatelaki (C-444/05): reimbursement of *private* hospital care abroad?

Elchinov (C-173/09): 'same or equally effective treatment'

Legal framework cont.: EUCJ case law (2)

Commission v France (C-512/08): PA and 'major medical equipment'

Petru (C-268/13): lack of medication/equipment, undue delay?; contrary A-G's approach (seminar)

4. Consequences EUCJ case law

- Prior authorization contrary to Article 56
- Not accepted for out-patient care, except for cost-intensive equipment
- Non-urgent hospital care: prior authorisation justified
- Restriction discretionary power MS

4. Consequences (2): Parallel sub-systems of PM

Contractual arrangements planned care: 'tailor-made contracting solutions'

Bilateral agreements in border regions: regional projects facilitating PM modalities

'Private' patients cheaper or outlawed treatment

5. Response EC: Directive 2011/24/EU

Result of EUCJ case law: 'Towards a Community framework for safe, high quality and efficient care'.

Setting common principles:

- Continuity of care
- Excluded services
- Right to privacy
- Informed choice
- Reimbursement CBC, conditionally:
 - benefit package & 'undue delay'
 - PA: art 8/9, exceptions (eg, listed services)
 - upfront payment competent state tariffs (actual costs)
 - non-discrimination by the state of treatment
- National contact points

6. First analysis outcomes CBC Directive

- MS incorporated PA modalities: from “copy and paste” approach (Hr.) to highly complicated multilevel decision-making process (It.)
- Potential discriminatory effect and overly complicated multilevel approach discourages patients seeking CBC
- Challenged by Commission under Art. 258 TFEU, citizens CFR (Arts. 2, 21(2), 35 EUCFR
- NCPs: “web portal” poorly developed
- Tendency of ‘soft law’ harmonization combined with ‘hard law’ Directives: Implicit convergence European healthcare standards?

Erasmus

29 Jan. 2019, EC Infringement notices

- **Cross-border healthcare: Commission calls on the NETHERLANDS to comply with rules on level of reimbursement**
- The Commission has decided to send a letter of formal notice the **Netherlands**. The Commission calls on the Dutch authorities to ensure that the costs of healthcare received in another EU country under the Cross-border Healthcare Directive (Directive 2011/24/EU) are reimbursed up to the level applicable when healthcare is received in the Netherlands. The Directive lays down patients' rights to choose to receive healthcare in another Member State and to claim reimbursement for it when returning back home. As to the level of reimbursement, it states clearly that this must be up to the level of the costs that would have been assumed by the patient's own Member State if the healthcare had been provided there, without exceeding the actual costs. The Netherlands now has two months to respond to the arguments put forward by the Commission. Otherwise, the Commission may decide to send a reasoned opinion.

**Fig. 3. Number of requests for prior authorisation
[Question 3.1 a)]**

Member State of affiliation ¹	Received in 2015	Authorised in 2015	Refused in 2015	Withdrawn/ Inadmissible in 2015
BE	54	34	20	0
BG	8	6	1	1
CY	15	9	3	3
DK	76	6	54	18
ES	24	15	6	2
GR ²	12	3	0	9
HR	14	4	10	0
HU ²	1	0	0	1
IE ³	216	93	15	85
IT ²	194	73	70	n/a
LU ²	334	253	29	52
MT	1	1	0	0
PL ²	42	3	4	29
RO ²	7	5	1	0
SI	39	7	20	12
SK	178	146	8	24
UK	142	95	37	20

Source: EC 2015 MS Data CBC Directive

7. Conclusions

Several modes of patient mobility

EUCJ's activism in cross-border care has challenged MS discretionary powers in health care: CBC Directive

Legal clarity and certainty has not been achieved, yet

Role of the European Commission

Shifting debate on new issues of different nature challenging health systems