



Patients' Rights in Cross-border Healthcare Directive

Political Agreement at the Ministers' Meeting on 8 June 2010

During the Council meeting on Employment, Social Policy, Health and Consumer Affairs on 7-8th June 2010, ministers and representatives ultimately agreed on a compromise text on the 'Patients' rights in cross-border healthcare' Directive¹. This new compromised text – drafted by the Spanish Presidency of the Council – is a second attempt to get the Directive through the Council, and will now go to the European Parliament for a second reading.

The objective of this compromise text is to 'strike the right balance between the rights of patients in cross-border healthcare and the responsibilities of the Member State for the organization and delivery of health services and medical care', as stated by the Presidency in its' introduction. The agreed text tackles a number of key points, which the CEMR had addressed in its policy paper (adopted January 2009). It clearly outlines the responsibilities of the Member States with regards to cross-border healthcare, along with the reimbursement of costs.

Following on from this, please find below the main points of the political agreement. Where applicable, linkages have been made to the original CEMR policy position on the draft directive in 2009. CEMR welcomes this compromised text and believes it is in line, where relevant, with the main points of concern addressed in its policy paper.

Double Legal Basis for the Directive: Application of Art.114 (ex 95 TEC, establishment and functioning of the single market) to health services **and** Art.168 (ex 152 TEC on public health), recognising the Member State competencies in the field of health service provisions.

✓ The initial draft directive was only based on Art. 95 TEC. CEMR had questioned the legal basis and expressed the view that the directive should (also) be based on Art. 152 TEC. The compromise text therefore reflects CEMR's position.

General Principles for Reimbursements of Costs: As a general rule, patients will be allowed to receive healthcare in another Member State and be reimbursed up to the level of reimbursement applicable for 'the same or similar treatment in their national health system if the patients are entitled to this treatment in their country of affiliation'.

Derogation from the application of the general principles for pensioners living outside their home country: The compromise text introduces a new provision for pensioners living in the EU outside their home country and receiving healthcare in a third Member State (Article 8.1a). As a general rule, the Member State 'competent to grant prior authorization according to regulation 883/2004 (i.e. the Member State of residence) will reimburse the cost of cross-border healthcare of pensioners. If a pensioner is treated in his country of origin, this country would have to provide healthcare at its own expenses'.

Member State of affiliation determines the level of assumption of the costs: The text clarifies that it is for the Member State of affiliation to determine, whether at local, regional or national level, the assumption and the level of costs for reimbursement (Article 8.2).

✓ CEMR welcomes this clarification in particular as it also refers to the local and regional level.

¹ 'Proposal for a Directive of the European Parliament and of the Council on the application of patients' rights in cross-border healthcare': Interinstitutional File: 2008/0142 (COD)

Limitation of the level of reimbursement: Member States of affiliation shall reimburse the costs of cross-border healthcare up to the level of costs that would have been assumed by them (Article 8.3).

In addition, Member States may adopt certain provisions which would ensure patients have the same rights when receiving cross-border healthcare as they would in a comparable situation in the Member State of affiliation (Article 8.3.a).

✓ CEMR welcomes this clarification. We had expressed concern that there was no provision in the draft for cases where the costs of treatment would be higher than in the Member State of affiliation.

A safety mechanism limiting the application of the rules on reimbursement: In cases of 'overriding reasons of general interest such as the risk of seriously undermining the financial balance of a social security system or the objective of maintaining a balanced hospital service open to all', the Member State of affiliation may limit the application of the rules on reimbursement (Article 8.7.a).

✓ CEMR welcomes this addition. In our position we raised the issue that Member States and hospitals had to plan and finance the healthcare system and therefore needed some control over the development of the application of the directive.

Refusal to grant prior authorisation: The compromise text introduces a number of reasons for which a Member State of affiliation may refuse to grant a prior authorisation (Article 9.4):

- a) The patient is not entitled to the treatment, as stated in Art.8;
- b) The healthcare can be provided in its Member State within a 'time-limit which is medically justifiable';
- c) The patient can be exposed to a patient safety risk, as stated by a clinical evaluation;
- d) The general public, with reasonable certainty, may be exposed to a substantial hazard;
- e) The healthcare providers raise serious and concrete concerns regarding the standards of quality of care.

✓ CEMR welcomes this addition. In our position, we advocated for prior authorisation for hospital and specialised care.

Please find below the link to the Council Press Release, with Council Conclusions on the proposed directive on patients' right to cross-border healthcare.

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lisa/114992.pdf

The compromise text is available in all Community languages at the Council's register. Please click [here](#), and fill in the following fields and choose the 'document language' of your choice at the bottom of the search box:

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