

Patients' Rights in Cross Border Healthcare – Grand Expectations Unfulfilled?

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In March 2011, the European Parliament and the Council finally adopted Directive 2011/24/EU on the application of patients' rights in cross-border healthcare. The directive

had been long under way and the final result mirrored intense disagreements and some downscaling compromises.

It all started back in the late 1990s with controversial rulings of the Court of Justice of the European Union, laying down that also healthcare is a service within the meaning of the Treaty. On a case-by-case basis, judicial decisions clarified that as a service in the internal market, healthcare should circulate freely across borders - under certain conditions. Back then politicians found jurisprudence 'revolutionary' challenging the very sustainability of national healthcare systems. Patients, on the other hand, raised great expectations to this turn in European integration, seeing new opportunities in exiting national healthcare systems and accessing better treatments in other member states.

The Commission was requested to come up with a proposal clarifying the state of Union law within this area. In 2004, the Commission first tried to codify the case-law of the Court in the service directive, but the European legislators refused to insert healthcare as part of an internal market directive. After this failed attempt, the Commission prepared its initiative for another four years and was not ready to present its proposal before July 2008. Two and a half year of political negotiations followed. The Commission's proposal was changed considerably and much more national control on how to access healthcare in another member state was ensured. The final result of political negotiations stipulate that patients can only receive healthcare treatment in another member state, if such treatment is also part of the national healthcare package and will only be reimbursed the costs of what a similar treatment cost back home. Most cross-border non-hospital care can be accessed without prior authorization from the relevant domestic authority. Highly specialized and cost-intensive non-hospital care as well as hospital care, however, require prior authorization. Member states also have the possibility to limit the inflow of foreign patients if necessary for 'overriding reasons'.

During negotiations, the Commission criticized the legislators for departing from the case-law of the Court, by allowing member states an extended use of prior authorization. Whereas the final result may not have met the healthcare aspiration of the European executive, it nevertheless manifests that healthcare is within the scope of EU competences.

The member states have had to transpose the directive by 25 October 2013. On that day, the European Commissioner for health Tonio Borg declared that the Directive empowered European patients to a greater choice of healthcare, more information, easier recognition of prescriptions across borders, etc. The Commissioner, however, also urged 'all Member States to deliver on their obligations and fully transpose this Directive'. The Commissioner's appeal to the member states suggests that national implementation in some member states may be disputed and criticized for not fulfilling the aim of the Directive.

On 30. October 2014, Centre for European Politics is the co-organizer of a public conference where the content and implementation of the Patients' Rights directive will be examined. This Copenhagen conference on cross border healthcare seeks answers to questions such as: Which balance does the directive strike between the patients' rights in cross-border health care and member states' competences to organize their national health care systems? How has the directive been implemented so far in various Member States? Which lessons can be learned from the implementation processes? Does the directive really strengthen patients' rights in the European Union?

EU patients' rights has come to stay. It allows for exit from national healthcare supplies, under certain conditions. If patients increasingly make use of their right to exit, national healthcare systems will face new challenges and governance dilemmas. The Copenhagen conference aims to initiate a debate on the current and future state of cross-border healthcare as well as the national responses hereto.

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