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The Future of the Working Time and the Crossborder Healthcare Directives

European Union governments may have reached a political agreement on the implications of future working time rules on hospital employees, but the draft legislation still faces a bumpy ride before reaching the statute book.

Alejandro Cercas, the Spanish Socialist MEP, who will act as draughtsman for the proposal when it goes through the European Parliament, has already made clear that he is opposed to three key elements of the current text.

In addition to his overall opposition to the continued existence of the possibility for employees to opt out of the maximum 48 hour week, he is looking to overturn two specific features of the ministers' agreement in June.

The first is their decision to create a category of "inactive" on-call time, whereby medical staff would not be paid if they are required to be on hospital premises, but are not working. "This is scandalous. Ministers talk of a social Europe and then decide this. It goes against rulings of the European Court of Justice (ECJ). Governments have a hidden agenda. They do not want to pay the costs and want to make Europe responsible. All on-call time should count as working time," he explains.

He is also critical of the current wording of the compensatory rest periods that employees must be given after working long hours. This states that the rest should be granted "within a reasonable period". Arguing that this is a regression from the existing situation, he maintains: "Health staff are extremely tired after working long hours and so should have their rest straightaway."

Cercas will start tabling amendments to the ministers' text in September and is already canvassing support for the changes he has in mind. Initial soundings suggest he has the backing of most left of centre European MPs, and also a number of centre right, including members from France, Germany and Italy.

He is hoping that the Parliament will give its final opinion on the draft legislation in November or December at the latest. If he succeeds in pushing through the changes he has in mind, then the Parliament and EU governments, led by the French European presidency, will face tense negotiations if they are to bridge their differences before the end of the year.

Most governments are waiting for a political decision on the draft legislation to clarify the confused situation. But some, partly under pressure from national courts to implement the European Court judgements stating that all on-call time counts towards the working week, have begun to do so.

That is notably the case of Germany, Poland, the Netherlands and Hungary. Given the nonregression principle, it is unlikely they could deviate from that, even if the draft legislation as approved by employment ministers in June remains in its present form.

France has adopted a different approach. It announced immediately after the June ministerial meeting that it would treat all on call time as work, using the provision in the draft legislation that this is possible if set out in national legislation or in collective agreements.

Legislation on the maximum working week is not the only issue on which politicians will try to agree European measures affecting the health sector this autumn in response to earlier far reaching judgements from the Lu - xembourg-based European judges. They also have on their agenda a proposal tabled by the Commission in early July that would set out the parameters allowing patients to receive medical treatment in another EU country and be reimbursed by their own national health authority.

This right has been confirmed by the ECJ, but uncertainty exists on how it may be exercised and the impact any sudden increase in demand may have on health services.

The Commission stresses that the draft legislation, which must be approved by EU governments and the European Parliament, is not designed to harmonise health systems. They remain a national responsibility.

The proposal would allow patients to receive reimbursable non-hospital care in another EU country without requiring prior authorisation from their own authorities.

However, mainly because of the potential costs involved, governments could insist on that authorisation for any hospital treatment whether this involves an overnight stay or not. In either case, patients would have to pay the costs themselves and be refunded the amount the operation would have cost in their own country.

It is unclear how much use the public will make of this right. Only 4% of Europeans say they have received medical care in another country, and the Commission estimates that crossborder patient mobility accounts for only 1% of total health expenditure in the 27-member EU.

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