

## Volume 9, Issue 1 /2007 - News

### Europe

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The German government is making its contribution during its EU presidency to the European Commission's plans to draw up a clear strategy for the health sector. To enable as many views as possible to be injected into the debate, it organised a two-day conference on "The social dimension in the internal market – Perspectives of healthcare in Europe" in Potsdam in mid-January. The event attracted over 200 people ranging from national and European administrations to politicians and representatives from different areas of the sector with a strong presence of health insurance companies.

Robert Madelin, the Commission Director General for Health and Consumer Protection, provided the context for the discussions by setting out the aim of the new health strategy, which is expected to be presented before the summer. It will examine the role the EU can play as national health services have to deal with challenges ranging from demographic change to new technologies. It will also aim to end the uncertainty over patient rights and authorities' responsibilities which have emerged as a result of European Court of Justice rulings, and to draw into a coherent framework the many diverse health-related activities the EU currently operates.

Prof. Yves Jorens from the University of Ghent emphasised that after the ECJ judgements, two different procedures on individual patient mobility now apply in parallel. The failure to reconcile these through general EU legislation on services and on social security for migrant workers means a new legal framework is necessary. This should provide clear criteria on individual care for which authorisation from health authorities is required or not. It should cover issues ranging from information rights for patients to fees for medical services for foreign patients. He pointed to the need for clear rules on cross-border contracting – an area that is growing in importance, but which currently lacks the necessary legal framework.

Evelyne Gebhardt, the German Socialist MEP who steered the Services Directive through the European Parliament last year, welcomed the ECJ rulings which have strengthened patient rights inside the Union. However, she made clear that in the debate on the organisation of Europe's many national healthcare systems, the primacy of politics had to apply. The Luxembourg-based judges could support politicians in this task, but it fell to European legislators to create a regulatory

environment that provided legal certainty and took proper account of patients, service providers and third party payers.

The exercise should identify those areas where the EU and its internal market could help to improve national healthcare and require some form of European regulation and determine how the very different structures in place can be organised, so they conform to EU rules. The fundamental principle at stake, she insisted, was not about softening national systems, but about extending their portability.

John Bowis, a British Conservative MEP, agreed with Mrs Gebhardt on the need to clarify the present system in which patients, doctors and administrators alike are operating in a system for planned treatment "bedevilled by inconsistency and bureaucracy". At the same time, national authorities should provide guidance and information to frontline staff who have to handle demands from patients becoming more aware of their rights.

With several speakers pointing to the benefits of cross-border care, particularly in frontier regions, Prof. Jacques Scheres, from the University Hospital Maastricht, gave details of the Euroregion Meuse Rhine project. This has established an effective network of Belgian, German and Dutch healthcare insurance companies and hospitals for a population of almost four million. In addition to ambulant and hospital care, other cross-border activities include moves to tackle the spread of antibiotic resistance, comparisons of hospital costs in the three countries, costs of medical aids, and other forms of care.

The conference gave the Commission much food for thought and raised more questions than answers. It is not the only input to the debate. The Commission also organised a public consultation on the various issues, which closed at the end of January. The shape of the final proposal is still unclear, but as a Commission official told participants, it will be based on two clear pillars.

The first will seek to provide legal certainty, the absence of which is keenly felt by patients and national local health bodies. That is likely to require legislation. The second will develop the EU's traditional role in the health sector of giving support to national activity where European involvement can bring added value to the health Services being provided.

The public consultation launched by the European Commission on how to ensure legal certainty regarding cross-border healthcare and support cooperation between the health systems of the Member States closed on 31 January 2007.

The consultation follows discussions held by the Commission and the Commissioner for Health, Markos

Kyprianou, who wants to achieve legal clarity and certainty on these complex issues to ensure high quality and efficient healthcare (see EAHM news, page 6).

The consultation seeks input on issues such as:

- Under what conditions can cross-border treatment take place and paid?
- What are the patient's rights in another country?
- What information does the patient receive about their treatment in another country?
- Who authorises and pays for cross-border healthcare?
- Whose rules apply?
- Who pays damages?

The contributions will serve as a basis for Commission proposals, which will be made later in 2007.

Contributions received from national and regional authorities, NGOs, universities, individual citizens, companies and associations who participated in this reflection process are available on the website:

[http://ec.europa.eu/health/ph\\_overview/co\\_operation/mobility/results\\_open\\_consultation\\_en.htm](http://ec.europa.eu/health/ph_overview/co_operation/mobility/results_open_consultation_en.htm)

#### **European Parliament makes Recommendation on Cross-Border Disputes**

On 1 February 2007 the European Parliament approved a resolution in which it requested the European Commission to draft a legislative proposal with regard to the cross-border disputes in the case of personal injury or fatal accidents, which could also be applied in cases of medical error or unforeseen events during stationary treatment.

In their resolution the delegates stressed that there would be a divergence in respect of limitation periods, the commencement of the running of time, the date of knowledge, the ability to interrupt or stop the running of time, the presentation of evidence and the assertion of the defence of the expiry of the limitation period. Therefore, it is necessary to carry out an inquiry into the effects of the existence of differing limitation periods.

Based on this, a report should show whether legislation on the European level is necessary. Parliament considers that principles governing limitation periods should be laid down in an appropriate form, in so far as the Community possesses legislative competence in this area, for damages claims.

The delegates justified their request with the fact that the differences were so large that they could lead to unwanted consequences for the accident victims in cross-border disputes. Injured persons are faced with difficulties if they want to exercise their rights in any other Member States, and thus forced to subject themselves to foreign law.

In some countries, minors and persons with a disability are not afforded any special protection with respect to the running of time for limitation purposes, and may thus lose rights to claim compensation, which they would otherwise retain, when injured in a Member State other than their own

Furthermore, Member States will be obliged to set up national information centres for keeping a register of all criminal investigations or pending proceedings involving foreign victims and for providing written answers to reasoned requests for information made by or on behalf of foreign victims. (HH)

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