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Interview with Andrzej Rys

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Some of our readers may remember that Mr. Rys was one of the speakers at our association's seminar on accreditation last November in Düsseldorf. He took advantage of his address to emphasise the importance of regular and in depth contacts between EU institutions and stakeholders of the health sector. Hospital met him in his office to further discuss upcoming EU legislation and future prospects for an EU hospital accreditation model. The health services directive proposal was expected to be released last December….

Andrzej Rys: Due to time constraints, the directive proposal was taken off the agenda of the College of Commissioners on 19 December 2007. It might be adopted by the Commission in the beginning of this year.

In your view, what are the main obstacles, the areas of friction around that draft directive ?

Andrzej Rys **:** I can think of three major difficulties with that proposal. First it has to balance, comply and be consistent with existing pieces of legislation, i.e. the regulation covering social insurance and protection, and legal provisions for health professionals. Then, the Commission took jurisprudence into account and wanted to make sure the new directive would follow the decisions made by the Court of Justice (ECJ) over the years on this issue. Finally, the definitions which the new piece of legislation bases itself on are crucial and sometimes hard to formulate. There are so many differences between national health systems. But some EU countries, such as Sweden or Germany, are already adapting their legislation and even their way of thinking about crossborder care.

Can you tell us today how the draft framework will differ from the socalled Bolkestein directive in terms of 'health services'?

A.R.: The main difference is that the original proposal for a directive on services in the internal market addressed primarily issues of free movement of services providers; the new crossborder healthcare initiative focuses on the rights of patients and their effective exercise.

As regards more technical issues, under the original proposal for a directive on services in the internal market, the country of origin principal was applicable for the services provider. This would mean that providers providing services in another member state would be subject only to the national provisions of their member state of origin. That is not the case for this proposal. Under the new directive, wherever a patient is treated, the rules of the country where the treatment is provided apply. So this directive will not change the existing legal regime applicable to healthcare providers or their employees.

In addition, according to the Bolkestein proposal, member states were prohibited from making establishment of the services provider on their territory subject to requirements listed in that proposal. This was criticised by some stakeholders as liberalising the markets and restricting the tools available to member states for ensuring quality and safety of services provided on their territory. As the new directive does not address the issue of establishment of healthcare providers, it does not include any similar provisions.

I have already mentioned the importance of ECJ decisions in this proposal. Although both pieces of legislation include provisions codifying the rulings of the ECJ regarding the assumption of healthcare costs incurred in another member state, this proposal goes into more detail in order to provide greater clarity. Moreover, the Bolkestein proposal did not address uncertainties over how to apply the Court principles in practice: uncertainty about the quality and safety of health care provided in another member state, about which country is responsible for clinical oversight for crossborder healthcare,…

What will be the significance of the directive on crossborder healthcare for hospital management, in terms of services financing, mobility of healthcare staff, reimbursement of costs incurred through the treatment of patients from other member states?

A.R.: This directive will not affect existing provisions regarding the recognition of professional qualifications or create additional barriers to such recognition, nor will it affect the rights of health professionals to establish themselves in another member state. Furthermore, I personally don't think it will boost massive crossborder care. It is estimated that presently about 1% of EU health expenses are devoted to crossborder care. I don't expect this figure to grow significantly. Patients will still have to overcome distance, language and therapeutic procedures obstacles if they want to receive treatment in another country.

This proposal will nevertheless have implications for health professionals and healthcare providers. Healthcare providers will benefit from a clear set of rules about the quality and safety standards applicable when they treat patients from other member states or when they provide services in other member states.

Healthcare providers will benefit from set rules about which crossborder care is, or is not reimbursed. The proposal would also require clear and transparent procedures to be put in place by member states to ensure more security regarding timely payments to healthcare providers. Moreover, this proposal will also enable healthcare providers to benefit from the economies of scale of European cooperation when this is useful, in areas such as cooperation in border regions and efficient use of spare capacity, cooperation through European networks of centres of reference, health technology assessment and on ehealth.

Finally, the proposal will fix the limits that member states can put on crossborder healthcare. By providing clarity about what those limits are, it will enable them to plan effectively their domestic healthcare systems. It is worth emphasising that patients' entitlements are limited to those defined domestically by their own member state authorities.

In any event, the organisation, financing and delivery of healthcare is a primary responsibility of the member state and the Commission proposal will change nothing in that respect. Member states may continue to organise their health systems as they wish, provided restrictions do not constitute unjustified discrimination against EU citizens.

Of course, managers who want to prepare their establishment to crossborder care will need to guarantee an access to information provided in a way that the patient can understand and find a way to follow up on their patients after they are discharged from hospital. Some EU hospitals might also want to develop ehealth solutions, as a way to market their skills and competences while retaining their health professionals.

Some will say that the complementarity thus created between health establishements, for instance in border regions, could also turn into competition between hospitals…

You were present at the seminar our association organised last November on the theme of accreditation. How can the health services directive contribute to laying the foundation of a future European hospital accreditation model?

A.R.:Well, the directive itself would not contain any provisions on accreditation – the approach that we have in mind is that we simply state that it is up to the country where the treatment is provided to set and monitor their own standards, and we leave it up to individual countries to decide how to do that. However, when I was in Düsseldorf, I explained how the Commission values accreditation as a patient safety tool. One way of identifying high standards and assuring their application in practice is through accreditation of hospitals and other clinical centres. Many people in the healthcare sector favour accreditation for quality and safety. But it is essential to make sure that all the relevant stakeholders (e.g. healthcare managers and professionals) are of the same view and work towards consensus- building within the sector as the first step.

So rather than associating this with the directive, we want to use the current momentum around the separate patient safety area to promote accreditation. On 5 February, the Commission is holding a meeting of experts on the integration of accreditation into the patient safety package. We are bringing together experts in Brussels, with a triple mission: first, they have to collect European experience on the subject. Research has already been carried out on the subject with EU funding and results have to be thoroughly reviewed. Then, synergies will have to be found between the specific issue of accreditation and the broader patient safety question. Finally, experts will have to come up with an implementation procedure.

Finally, I would like to emphasise the importance of the upcoming French presidency. As you know, France will take over the presidency in the second semester of 2008. And France also has a very elaborate and regulated hospital accreditation policy, which could provide a good example for other countries to learn from – although legally, there will of course be no obligation to do so at Community level.

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