

Cross-border health care

Three-way meeting reaches compromise

By Sophie Petitjean | Thursday 16 December 2010

During a three-way meeting organised within the framework of its second reading, on 15 December, the Belgian EU Presidency, the European Parliament's rapporteur and the Commission achieved a compromise on the directive on cross-border health care, which aims to clarify patients' rights when health care is provided in a member state other than that in which the recipient of the care is resident, including the question of refunds for care costs. The Committee of Permanent Representatives (Coreper) is now expected to clear the directive on 21 December.

If this agreement in principle is actually approved by the co-legislators, it will mean that a patient being cared for in another member state can expect equal recompense for the same or similar treatment as would be provided by his or her own national health system, if so entitled in his or her own state. The very important question of refunding and its coordination was the central subject of discussion in the latter three-way meeting, and the compromise achieved also addresses the questions of quality and safety, rare diseases and finally online health care.

Refund and refusal

The Belgian EU Presidency and the European Parliament agreed on a system of prior authorisation, which will make it possible to control the flow of patients planning to be cared for in another member state. The services that this authorisation will affect will be hospital care, specialised care, patients at particular risk and treatment that could raise serious concerns.

In addition, the agreement clarifies the cases that justify the refusal of a member state's prior authorisation. Member states previously demanded the extension of the list of cases in which prior authorisation could be refused by the member state of affiliation and MEPs, led by French rapporteur Françoise Grossetête (EPP), defended their clear and exhaustive list of reasons for justifying refusals.

Finally, the compromise represents a partial victory for MEPs in that it has removed several reasons for refusal, including the time limit during which a member state may refuse to provide prior authorisation if the care can be provided on its own territory within an acceptable time, taking into account the patient's health status and the probable evolution of his or her malady, which had not won the Parliament's approval.

Respect for subsidiarity

But obstacles were not limited to the question of refunds; respect for member states' competences was also an important issue. The legislation hinges on Article 168 of the treaty, which encourages cooperation between member states while recognising their national competences. Consequently, certain ambitions of the Commission and Parliament have been re-examined - this was the case with e-health services and standards of quality and safety; these questions will not be addressed at a EU

level, as Parliament would have preferred, but will be limited to cooperation between member states. Parliament, however, still wanted to make the Commission responsible for adopting specific measures necessary for the interoperability of health care information technology and communications systems and to ensure that the European networks establish quality and safety standards.

Finally, on the question of rare diseases that brought up sharp divisions, the aim of the compromise is to respect the provisions of Regulation 883/2004 on the coordination of social security systems while strengthening cooperation, in particular through the use of the Orphanet database.

Background

The question of the application of the principles of freedom of movement of patients, which has been the subject of numerous judgements by the EU Court of Justice, is not new: in 2004, it was also the subject of several provisions in the proposal for directive on services in the internal, before being finally rejected.

In 2008, the Commission presented a proposal devoted specifically to the application of patients' rights with regard to cross-border health care. While the European Parliament quickly provided its position in first reading, the proposal was rejected by the Council in 2009 (see *Europolitics* 4037). However, the compromise between the newly elected Parliament and the Spanish Presidency allowed negotiations to be quickly restarted.