



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from: Presidency
to: Permanent Representatives Committee (Part 1)
Subject: Preparation of the Council meeting (**Employment, Social Policy, Health and Consumer Affairs**) on 8 and 9 June 2009

Proposal for a Directive of the European Parliament and of the Council on the application of **patients' rights in cross-border healthcare** (LA)
- *Progress report / Policy debate*
[Public deliberation, pursuant to Article 8(1) CRP]

1. Delegations will find attached a note from the Presidency on the Directive on the application of patients' rights in cross-border healthcare.
2. The Permanent Representatives Committee is invited to give its opinion on the questions included in the Annex which will serve as a basis for the policy debate, and to forward it to the Council.
3. In order to prepare for this Council meeting, the Presidency would welcome replies in writing to the questions prior to the Council meeting.

NOTE FROM THE PRESIDENCY
on the Directive on the application of patients' rights
in cross-border healthcare
Policy debate - Questions

Question 1

Discussions within the Council preparatory bodies revealed that the majority of Member States wishes to exclude certain types of healthcare or healthcare providers (particularly those not contracted to the local public health insurance or otherwise defined public system) from the scope of the Directive.

However, there is no ECJ case law suggesting that specific types of health services or healthcare providers would be excluded from the scope of the freedom to provide services as guaranteed by the EC Treaty. Hence, the suggested exclusions would result in a mere partial codification of the case law, leaving it up to the ECJ to further define the rules applicable to the services not covered by the Directive.

On healthcare providers:

So far, more than half of the Member States have expressed their preference for the limitation of the scope of the Directive to providers contracted to the local public health insurance or otherwise defined public system, taking into account their obligation to secure sufficient, safe and quality healthcare for their citizens, which requires maintaining the financial sustainability of their health systems as well as the accessibility of healthcare for their citizens.

In the light of the above, one option towards this approach is to provide in the proposal for a possibility to take certain measures, where they could be justified with regard to TEC, in order to ensure that the quality and safety of healthcare provided to patients is not threatened.

Would the MS be interested in exploring this possibility further? If so, how do they envisage implementing this in practice, i.e. excluding those providers who do not meet some quality and safety standards?

On healthcare:

In the event that the Council decides to exclude a specific type of healthcare from the scope of the Directive, is the Council aware that the TEC rules will still apply to such excluded types of healthcare and the ECJ may rule on them in the future (see e.g. the pending case Chamier-Glisczinski, C-208/07, as regards long term care)?

If so, how do the Member States envisage tackling the legal uncertainty for patients and its negative impacts on providing cross-border healthcare that may arise? (e.g. by means of adopting new legislative proposals on the excluded types of healthcare?)

Question 2

Discussions within the Council preparatory bodies on Chapter IV of the proposal on cooperation of the Member States on healthcare confirmed that the Member States wish to cooperate in this field. However, agreement has not been reached on a concrete mechanism which would be appropriate for achieving this objective.

According to the Member States, what would be the most effective mechanisms for such cooperation? Are there any other efficient alternatives to the one provided in the proposal, i.e. delegation of implementing powers to the Commission?
