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Council agrees on new rules for patients' rights in cross-border healthcare

The Council in charge of Employment, Social Policy, Health and Consumer Affairs today agreed on a draft directive concerning the application of patients' rights in cross-border healthcare, on the basis of a compromise proposal of the Spanish presidency ([9948/10](#) + [9948/10 COR 1](#)).

The draft directive aims to facilitate the access to safe and high-quality cross-border healthcare and to promote cooperation on healthcare between member states. The compromise reflects the Council's intention to fully respect the case law of the European Court of Justice on the patients' rights in cross-border healthcare while preserving member states' rights to organise their own healthcare systems. The draft directive provides clarity about the rights of patients who seek healthcare in another member state and supplements the rights that patients already have at the EU level through the legislation on the coordination of social security schemes (regulation 883/04).

More specifically, the draft directive contains the following provisions:

- as a general rule, patients will be allowed to receive healthcare in another member state and be reimbursed up to the level of **reimbursement** applicable for the same or similar treatment in their national health system if the patients are entitled to this treatment in their country of affiliation;
- in case of overriding reasons of general interest (such as the risk of seriously undermining the financial balance of a social security system) a member state of affiliation may limit the application of the rules on reimbursement for cross-border healthcare; member states may **manage the outgoing flows of patients** also by asking a prior authorisation for certain healthcare (those which involve overnight hospital accommodation, require a highly specialised and cost-intensive medical infrastructure or which raise concerns with regard to the quality or safety of the care) or via the application of the "gate-keeping principle", for example by the attending physician;

P R E S S

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- in order to **manage ingoing flows of patients** and ensuring sufficient and permanent access to healthcare within its territory a member state of treatment may adopt measures concerning the access to treatment where this is justified by overriding reasons;
- member states of treatment will have to ensure, via **national contact points**, that patients from other EU countries receive on request information on safety and quality standards on their territory in order to enable patients to make an informed choice;
- the **cooperation** between member states in the field of healthcare **is strengthened**, for example in the field of e-health and through the development of European reference networks which will bring together, on a voluntary basis, specialised centres in different member states;
- the **recognition of prescriptions** issued in another member state is improved; as a general rule, if a product is authorised to be marketed on its territory, a member state must ensure that prescriptions issued for such a product in another member state can be dispensed in its territory in compliance with its national legislation;
- sales of medicinal products and medical devices via **internet, long-term care services** provided in residential homes and the access and allocation of organs for the purpose of **transplantation** fall outside the scope of the draft directive;

During the Council meeting the discussions focused on four issues:

- the definition of the member state of affiliation with regard to pensioners living abroad;
- reimbursement and prior authorisation;
- the legal basis;
- the provisions on e-health.

The two first issues remained open at the EPSCO Council meeting of 1 December 2009.

With regard to the **member state of affiliation** (which concerns in particular the reimbursement of healthcare costs of a pensioner living in the EU outside their home country and receiving healthcare in a third member state), the Council agreed that as a general rule the member state competent to grant a prior authorisation according to regulation 883/2004 (i.e. the member state of residence) reimburse the cost of cross-border healthcare of pensioners. If a pensioner is treated in his country of origin, this country would have to provide healthcare at its own expenses.

Concerning **healthcare providers**, the compromise seeks to ensure that patients looking for a healthcare in another member state will enjoy the quality and safety standards applicable in this country, independently of the type of provider. Furthermore, the Council agreed that member states may adopt provisions aimed at ensuring that patients enjoy the same rights when receiving cross-border healthcare as they would have enjoyed if they had received healthcare in a comparable situation in the member state of affiliation.

Concerning the **legal basis**, the Council agreed on a double legal basis, striking herewith a balance between the case law of the European Court of Justice on the application of Article

114 to health services and the member states' competencies recognized by the Treaty for the organisation and provision of health services (according to Article 168 on public health).

As far as **e-health** is concerned, the ministers agreed on a close collaboration between the member states and the Commission in this field.

The draft directive is part of the social agenda package of 2 July 2008, focusing on a triple objective: to guarantee that all patients have care that is safe and of good quality, to support patients in the exercise of their rights to cross-border healthcare; and to promote cooperation between health systems. The aim of the second objective is in particular to codify the case law of the Court of Justice relating to the reimbursement of cross-border healthcare, avoiding a "third method" of reimbursement (in addition to regulation 883/2004 and the draft directive).

After the legal-linguistic revision of the draft directive, the Council will adopt its position at first reading and forward it to the European Parliament for its second reading.
