

EU bibliographies: Directive on cross-border health care

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Section International Affairs and Defence Section

This Note brings together documents relevant to the draft directive on the application of patients' rights in cross-border healthcare (EC Draft 11307/2008) adopted as Directive 2011/24/EU on 9 March 2011. It is not an attempt to define policy in this area. For information on policy developments contact Tom Powell on extn 5751.

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1 Draft directive

The *Proposal for a Directive of the European Parliament & Council on the application of patients' rights in cross-border healthcare* EC Draft 11307/2008 (COM(2008)414 final) was issued in July 2008 with a Commission Communication, *A Community framework on the application of patients' rights in cross-border healthcare* EC Cons Doc 11327/08 (Com(08)415).

The purpose of the Draft directive, as stated in its explanatory memorandum, is “to ensure that there is a clear framework for cross-border healthcare within the EU in order to enable the rights of the patients to be exercised whilst ensuring a high level of health protection, by:

- providing sufficient clarity about rights to be reimbursed for healthcare provided in other Member States for those rights to be realised in practice;
- and ensuring that the necessary requirements for high-quality, safe and efficient healthcare are also ensured for cross-border care; whilst ensuring that such cross-border healthcare is compatible with the overall objectives of the Member States of ensuring accessibility, quality and safety of the healthcare that their health systems provide.”¹

The Dept of Health issued an Explanatory Memorandum on behalf of the UK Government on 14 July 2008. Subsequently the Dept of Health launched a consultation on the draft directive covering England (with impact assessment) on 8 October 2008. The consultation closed on 3 December 2008 and the Government’s response was published on 20 April 2009. The Dept of Health has also issued a UK-wide practical impact assessment.

The Scottish Government Healthcare Policy and Strategy Directorate issued a separate consultation which also closed on 3 December 2008. A statement including a summary of responses was published on 7 April 2009.

Following the adoption of the Directive the Department of Health issued a public consultation on the modalities of stakeholder consultation in the voluntary Health Technology Assessment network to be established under Directive 2011/24/EU on 2 May 2012. The consultation closed on 1 August 2012.

2 EU Scrutiny

The draft Directive is subject to the co-decision procedure. This procedure is outlined in Standard Note SN/IA/2120 The European Parliament: its role and powers. It is also explained, with a graphic, on the Europa website.

The EP Committee on the Environment, Public Health and Food Safety issued a draft report in November 2008.

The EP committee’s final report A6-233/2009 was adopted on 3 April 2009.

EP resolution co-decision 1st reading 23 April 2009.

¹ EC Draft 11307/08 pp7-8

The Council of Ministers produced a series of questions for debate [10345/09](#) and a progress report on 3rd June 2009 [10026/09](#).

Debated in Employment, Social Policy, Health and Consumer Affairs Council 8-9 June 2009
See [Press release 09/124](#)

Social Policy, Health and Consumer Affairs Council reached agreement 8 June 2010. See [Press release 10560/10](#). Council position sent to European Parliament 20 September 2010 as [COM\(2010\)503](#).

The EP committee's second report and recommendation for second reading on the Council position at first reading with a view to the adoption of a Directive of the European Parliament and of the Council on the application of patients' rights in cross-border healthcare A7/307/2010 was published on 4 November 2010

EP resolution co-decision 2nd reading [19 January 2011](#).

2.1 Adoption of Directive

The Directive was adopted as [Directive 2011/24/EU of the European Parliament and of the Council on the application of patients' rights in cross-border healthcare](#) on 9 March 2011, published in OJL 88 on 4 April 2011.

3 UK scrutiny

For a description of the scrutiny process for EU documents within Parliament see House of Commons Information Sheet L11 [EU Legislation and Scrutiny Procedures](#). For general background to the EU scrutiny see Research Paper 05/85 [The UK Parliament and European Business](#).

3.1 House of Commons

European Scrutiny Committee.

22nd July 2008 (published in [31st Report HC 16-xxviii 2007-08](#))

8th October 2008 (published in [34th Report HC 16-xxx 2007-08](#)).

10th June 2009 (published in [21st Report HC 19-xix 2008-09](#))

16th June 2009 (published in [23rd Report HC 19-xxi 2008-09](#))

Ministerial correspondence received [11th September 2008](#), [4th June 2009](#), [16th June 2009](#), [21st July 2009](#)

European Standing Committee:

[21st October 2008](#)

3.2 House of Lords

Select Committee on the European Union Sub-Committee G (Social Policy & Consumer Affairs)

Healthcare across EU borders: a safe framework published 24 February 2009 HL Paper 30 2008-09

Government response published 27 April 2009 Cm 7580.

Grand Committee Debate 8 June 2009 HL Deb 711 c1-20GC

3.3 National Assembly of Wales

The NAW European and External Affairs Committee published an *Interim Report of scrutiny inquiry into Draft Directive on Patients' Rights in Cross-border Healthcare* in July 2009. See also Scoping Paper EUR(3)-01-09 : Paper 1 published in January 2009.

4 Background

4.1 European Court of Justice cases.

The proposal follows a series of cases before the European Court of Justice (ECJ). The most well-known of these from a UK perspective is the case of Yvonne Watts.

Yvonne Watts travelled to France in 2003 for a hip operation and subsequently tried to seek reimbursement for her costs from the National Health Service (NHS). The case raised various questions of EU law which were referred to the European Court of Justice (ECJ) for clarification as Case C-372/04.

4.2 EU Treaty base

The Yvonne Watts case centred on the principle of the freedom to provide services throughout the European Union and it concerned the following EU Treaty Articles and laws:

- Articles 48, 49, 50, 55 of the *Treaty Establishing the European Community* (TEC).and 152(5) TEC
- Article 22 of Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community,
 - as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996
- Council Regulation (EEC) No 574/72 of 21 March 1972 fixing the procedure for implementing Regulation No 1408/71
 - as amended and updated by Regulation No 118/97: conditions for reimbursement of the costs of hospital treatment incurred without prior authorisation in a Member State other than that of the competent authority.

4.3 ECJ Judgment

Judgment on the case was given in the Grand Chamber of the European Court of Justice (ECJ) on 16 May 2006 and published in the Official Journal of the European Union, OJC 165 on 15 July 2006 pp 6-7.

For a summary of the court's findings see the Europa press release 42/06 of 16 May 2006: The obligation to reimburse the cost of hospital treatment provided in another member state also applies to a national health service which provides such treatment free of charge

There is also a summary given by the European Commission Legal service.

The full history of the case before the European Court of Justice can be found at the ECJ *Curia* website.

4.4 Previous EU documents

The Yvonne Watts case (and similar cases) were cited in the Explanatory note from the Commission Services on the provisions of the proposed Directive on services in the Internal Market relating to the assumption of healthcare costs incurred in another Member State with a particular emphasis on the relationship with Regulation N° 1408/71 EC Cons Doc 11570/04. This is an explanatory note relating to the proposal for a directive on services in the internal market. This proposal (EC Draft 6174/04) was adopted as Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market in OJ L 376, 27.12.2006, p. 36–68.

The EU Commission's Communication Consultation regarding Community Action in Health Services – SEC (2006)1195/4 – addressed the situation on cross-border healthcare and identified the need for a clearer framework. It was considered in the House of Commons EU Scrutiny Committee in HC 34-xlii (2005-06) and subsequently in European Standing Committee C on 16 January 2007. It was considered by the House of Lords EU Select Committee in HL48 2006-07. A UK consultation response was published by the Dept of Health on 12 February 2007.

5 Comment

5.1 EurActiv

EurActiv is an independent organisation which runs a website specialising in EU news and analysis. EurActiv has published two news briefings on the draft cross border healthcare directive:

EU tables weakened cross-border healthcare directive (July 2008)

Ministers divided over EU patient rights (December 2008)

They have also published the following links dossier:

Patient mobility (July 2008)

5.2 Parliamentary Questions and written statements

Mary MacLeod: To ask the Secretary of State for Health how many applications were made for funding for treatment abroad under Article 49 (now article 56 of the Lisbon Treaty) in the last 12 months; and how many such applications resulted in reimbursement.

Anne Milton: This information is not collected by the Department. Currently, the numbers of people travelling overseas for treatment are low. We know, for example, that less than 1,000 people travel each year under the arrangements enshrined in article 22 of Regulation (EEC) 1408/71—i.e. the S2 (formally E112 route). Decisions relating to the application of fundamental rights under article 56 are made locally by national health service commissioners. Accordingly, there is currently no central data collection as to how many patients are requesting treatment via this route, whether the request is approved or refused (and on what grounds), what treatment is being requested or how much it costs. However, primary legislation has been introduced in relation to EUROSTAT, the European Union (EU) organisation which collects and analyses data on a range of issues across the EU, this requires all member states to collect data on cross-border health care under article 56. Currently, we are awaiting the development of secondary legislation by the Commission before the United Kingdom (UK) can consider how to transpose these requirements. Additionally, a European directive on patients' rights in cross-border health care is currently the subject of negotiations in Europe. The intention behind the directive is to clarify and codify patients' rights in this area, within a single legal instrument. Depending on the progress of negotiations, a directive may be adopted in spring 2011. We intend looking at article 56 data collection requirements as part of the work to transpose the directive into UK law and NHS systems.

HC Deb 14 December 2010 c725-6W

Lisa Nancy: To ask the Secretary of State for Health what his policy on the proposed EU cross-border health directive is; what assessment his Department has made of its effect on the NHS; and what consultation he intends to undertake on this matter prior to the agreement of any EU directive.

Anne Milton: The Government, along with many other European Union member states, support the idea of codifying existing European Court of Justice case law relating to article 56 of the treaty on the funding of the European Union. The Government's assessment of the Council of Ministers draft of the EU cross-border healthcare directive is that it delivers a number of key aims as follows: "to protect the right of the home member state to decide entitlements to health care, whether locally or nationally;" "to ensure that member states can operate a meaningful system of prior authorisation for hospital care and other specialised care;" "to maintain the 'gatekeeper' function (i.e. to maintain the UK Commissioner, general practitioner and consultant determination of entitlements to treatment through the national health service); and" "to avoid the extension of EU competence, whether through the active text of the directive (e.g. EU-wide health care standards) or through powers delegated in the directive (e.g. legally binding measures on eHealth)." The Department launched a consultation on the European Commission's proposals for a directive on the application of patients' rights in cross-border health care in October 2008 and published the response in April 2009. A partial impact assessment was also published in October 2008, which estimated that demand was low and therefore the cost to the NHS would be limited. Further consultation will follow when a final directive is agreed with the European Parliament.

HC Deb 15 June 2010 c406W

Peter Bone: To ask the Secretary of State for Wales what recent discussions he has had with the First Minister on arrangements for cross-border healthcare.

Peter Hain: I have regular meetings with the First Minister and we keep under review the cross border implications of the policies of both Governments. The position of the Governments in Westminster and Wales is that the border should not represent a barrier to provision of health care, and to that end we have worked closely together on

the Revised Protocol for Cross-border Healthcare. The Protocol provides increased clarity on commissioning and funding arrangements and on access standards for patients. It ensures patients who live in border regions and who access health services across the border will continue to see improvements to their services. Across the entire UK the Government remain committed to the core defining principles of an NHS funded by tax and free at the point of use.

HC Deb 23 March 2010 c169W

The Minister of State, Department of Health (Dawn Primarolo): The Employment, Social Policy, Health and Consumer Affairs Council met on 16 and 17 December. The Health and Consumer Affairs part of the Council was taken on 16 December. I represented the UK. At the meeting, the Council adopted conclusions on the French presidency themes of health security on public health strategies to combat neurodegenerative diseases associated with ageing and in particular Alzheimer's disease. The United Kingdom supported the adoption of these conclusions.

The presidency provided a progress report on the proposal for a directive on cross-border healthcare, which was followed by a debate between member states on the directive. The UK intervened to highlight broad support for direction of discussions, which had taken place under the French presidency and the need to continue to work closely to address our concerns. There was a presentation by the European Commission on the recently published proposal for a Council recommendation on European actions in the field of rare diseases, followed by a brief discussion. The UK expressed broad support for the recommendation, but noted it was important that the recommendation ensured the right balance between EU action to promote co-operative action between member states and respect for member state competence for the management and organisation of their healthcare systems.

Over lunch, there was a presentation from the Commission on the work of the Council High-level Working Group on Public Health and a discussion on forthcoming elections of the World Health Organisation regional director post.

Under any other business, the presidency and the Commission provided information on a range of issues including the recently published pharmaceutical package and green paper on healthcare professionals. The incoming Czech presidency provided information on their priorities for health, which they intend to take forward under their presidency.

HC Deb 13 January 2009 cc7-8WS

John Bercow: To ask the Secretary of State for Health what assessment he has made of progress towards agreement of European Union proposals in relation to patients who wish to travel to other EU member states for treatment and have their costs reimbursed. [241350]

Dawn Primarolo: The draft directive on the application of patients' rights in cross-border health care is subject to the co-decision procedure and is at an early stage of negotiations. In the European Parliament, the rapporteur has recently published a draft report. It is possible that the European Parliament could complete its first reading before the European elections. If not, it will need to undertake this in the next parliamentary session.

Initial discussions on the draft directive on the application of patients' rights in cross-border health care have been held in the Council of the European Union working

groups under the French presidency. European Union Health Ministers will discuss several issues including the draft directive on the application of patients' rights in cross-border health care at the Employment, Social Policy, Health and Consumer Affairs Council on 16 December. We will provide an update to Parliament on the outcome of the Employment, Social Policy, Health and Consumer Affairs Council.

HC Deb 11 December 2008 c234W

Sandra Gidley: To ask the Secretary of State for Health when he expects NHS patients living outside a pilot area to be able to travel abroad for operations. [216545]

Mr. Bradshaw: The London Patient choice pilot between 2003 and 2005 included a bilateral arrangement with Belgium for patients who had waited more than six months to access treatment in Belgian hospitals. The scheme was terminated on 31 March 2005 because of low take up and increased availability of capacity within the national health service. There is therefore no possibility of extending this scheme. However, it is open to local commissioners to put in place whatever arrangements they want to make.

There are also routes in European Union law for NHS patients who wish to receive planned health care abroad, namely long-standing social security arrangements under EC Regulation 1408/71. In addition, European Court of Justice case law has established the right for patients to go to EU member states for treatment, subject to certain circumstances. On 2 July 2008 the European Commission adopted a draft directive on the application of patient rights in cross-border health care. This directive will be subject to negotiations, but aims to clarify the application of the case law on overseas treatment.

HC Deb 14 July 2008 cc203-04W

5.3 Press articles

"Europe squares up to a new era of 'patients without borders' "By Andrew Bounds and Nicholas Timmins. *Financial Times* 6 Sep 2006.

"Free health treatment for all anywhere in EU by 2011. NHS would pick up the bill for care received abroad under European Commission plan". By Kate Devlin. *Daily Telegraph* 3 July 2008.