UEMS — EUROPEAN UNION OF MEDICAL SPECIALISTS

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Spanish compromise on cross-border care

The Employment, Social Policy, Health and Consumer Affairs Council convened on 7th and 8th June 2010 in Brussels. As expected by many, EU ministers reached an agreement on the draft directive on patients' rights in cross border healthcare. This draft directive aims to facilitate access to safe and high-quality cross-border healthcare and to promote cooperation between EU Member States.

The agreed compromise reflected the Council's intention to comply with the case law of the European Court of Justice on patients' mobility while preserving Member States' rights to organise their own healthcare systems. The draft directive aims to provide clarity about the rights of patients who would seek healthcare in another Member State and complements the rights that patients already have under the EU legislation on the coordination of social security schemes (Regulation 883/04).

According to the compromise text from the Spanish European Presidency, the Council of Ministers agreed on the following key items:

Member State of affiliation

As a general rule, the Member State of affiliation is defined as the one competent to grant a prior authorisation according to Regulation 883/2004 (i.e. the Member State of residence) shall reimburse the cost of cross-border healthcare.

Healthcare providers

The compromise seeks to ensure that patients looking for healthcare in another member state will enjoy the quality and safety standards applicable in that 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.

The legal basis

A double legal basis was agreed in order to strengthen the balance between the European Court of Justice case law and the Member States competencies as regards healthcare matters.

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Mutual recognition of qualifications for health professionals

At the EU Council, the Danish government released a declaration whereby it expressed concerns as regards free movement of healthcare professionals across Europe. With the support of Sweden, Denmark aimed to raise awareness about potential pitfalls in the scope of the current directive and the need to address them with the revision to come.

For the sake of clarity, we reproduced the full text of the Danish declaration:

"The European Commission is currently conducting an evaluation of the Professional Qualifications Directive (Directive 2005/36/EC) in order to assess to which extent the initial policy objectives set by this instrument have been met and whether there is a need for reform. Denmark fully supports the work undertaken by the Commission and will participate actively in the process.

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Spanish compromise on cross-border care

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Reimbursement

The patients will be reimbursed for care received in an other Member State up to the level of reimbursement that would have been assumed by their own Member State.

Prior authorisation

In order for Member States to manage the flow of patients, they have the possibility to grant authorisation for certain healthcare in case of overriding reasons or apply the "gate-keeper principle" according to which patients should be referred by their general practitioner before being able to see a specialist.

Patient flows

Member States may also manage the inflow of patients through the adoption of measures concerning the access to treatment where this is justified by overriding reasons in the general interest. Member States will also elaborate criteria for refusing prior authorisation

According to the draft directive, overriding reasons are elements such as "the risk of seriously undermining the financial balance of a social security system, the objective of maintaining on grounds of public health a balanced medical and hospital service open to all or the objective of maintaining treatment capacity or medical competence on national territory, essential for the public health, and even the survival of the population. It is also important to take in consideration the general principle of protecting the safety of the patient in a sector well known by information asymmetry when managing a prior authorization system" (point 29 a)

National Contact Point

A National Contact Point will be established in each Member State so as to inform patients as regards safety and quality standards and enable patients to make informed choices

Closer cooperation

The cooperation between Member States is strengthened notably in the field of e-Health and through the development of European Reference Networks

Prescription

The recognition of prescriptions issued in another Member State will be improved; as a general rule if a product is authorised to be marketed on its territory, a given Member State must ensure that prescriptions issued for such product in another Member State can be dispensed in its territory in compliance with national legislation. ¢

e-Health maintained within the directive

Article 14 was at the center of a sharp discussion between Member States and the Commission. Several Member States wanted to delete this article from the scope of this draft directive thus preventing the important issue of e-health from having a legal existence. The Member States feared an excessive control by the EU over IT in health at national level.

Amid these discussions, the UEMS joined other European Organisations in a text in order to support the Commission's effort to introduce e-Health in the scope of the draft directive thus expressing its commitment to address the e-Health issue at European level as a mean to improve patient safety.

As a matter of fact, the UEMS advocates for the inclusion of such provisions in accordance with the agreement found by the European Parliament in first reading whereby it encompassed quality and safety guarantees in the use of e-Health and telemedicine.

See also the UEMS News Thema on Mobility of May 2009.

Mutual recognition of qualifications for health professionals

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An essential part of the Directive concerns health professionals, and it foresees a minimum set of training requirements which allow that the acquired qualifications are automatically recognised by a host Member State.

Medical doctors with qualifications acquired in other countries and doctors that move from one country to another have attracted political attention in Denmark, the starting point of the debate being a concern about patient safety. The main public focus has been on medical doctors who have acquired their qualifications in a third country or in one of the Nordic countries.

It has been questioned whether the check conducted by the competent authorities in Denmark of qualifications acquired in other countries before granting a – temporary – authorisation to work in a Danish hospital is sufficient to ensure patient safety.

The question has also arisen whether the competent Danish authorities have access to all relevant information when a Danish hospital is planning to employ a medical doctor with foreign medical qualifications, i.e. access to information about the medical qualifications or authorisation acquired in another Member State or a third country.

Denmark will work actively to contribute to making the necessary progress in the ongoing work with the Directive in order to secure exchange between Member States of relevant information about qualifications, authorization, good standing of medical doctors working in one or more host Member States. This exchange of information should include problems and possible restrictions in the past on the doctor's right to exercise his or her profession."

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The EU Court of Justice further defines the terms of patient mobility

- *By distinguishing scheduled and unscheduled treatment, EU Judges specified the conditions for reimbursement*

In a recent judgment, the European Court of Justice addressed the issue of reimbursement when receiving healthcare in another Member State, ruling that where unscheduled hospital care is administered during a temporary stay in a Member State other than the Member State of affiliation, the latter is not required to reimburse the patient as regards costs which fall to be paid by the patient in the State where the care was administered.

The Court took its decision after that a French citizen living and affiliated in Spain returned in France for a temporary stay. During his stay, he had to receive care from the French healthcare system. Afterwards, when seeking reimbursement back in Spain for the costs of care which is not covered by the French healthcare system, the Spanish authorities refused to reimburse these costs. This citizen then complained to the European Commission which decided to bring an action to the Court of Justice against Spain for failure to fulfill its obligations.

The litigious Spanish regulation (Royal Decree 16/2003) states that "All common services shall be provided solely by facilities belonging to the national health system or under contract thereto, except in life-threatening situations where it is shown that it was not possible to use the facilities of that system. In cases where immediate, urgent, life-saving treatment has been administered outside the national health system, the related costs shall be reimbursed provided that it is shown that it was not possible to use the facilities of that system in good time and that the treatment does not amount to an inappropriate use or an abuse of this exception."

The Commission argued that this regulation infringed the European principle of free provision of services (Art. 49 EC) since it denied reimbursement to persons insured under the national health system for that portion of the costs of care which is not covered by the institution of the Member State of stay.

Conversely, the Spanish government argued that the national regulation complied with the European Treaties since it enabled reimbursement of care received in another Member State in so far that the situation of the patient is urgent, immediate and of vital necessity.

In its judgment, the Court of Justice made several remarks:

- Medical care fall within the scope of the free provision services including situation where care is provided in a hospital environment.
- The freedom to provide services implies the freedom to provide services in different Member States but also to receive services from a provider from another Member State without any restriction.
- "It follows from the above considerations that the freedom to provide services encompasses the freedom of an insured person established in a Member State to travel – as a tourist or student, for example – to another Member State for a temporary stay and to receive hospital care there from a provider established in the latter Member State, where the need for such care during that stay arises because of his state of health."
- The Court made a distinction between scheduled treatment and unscheduled treatment.

  *** Scheduled treatment Condition**: Unavailability of treatment in Member State of Affiliation within a reasonable delay.

  ~ The level of cover should be as advantageous as the level of cover for a treatment which would have been received in the Member State of Affiliation

  ~ The insured person can compare the cost of the treatment and evaluate whether he can afford paying if no reimbursement is being offered

  *** Unscheduled treatment Condition**: Uncertainty as to whether a treatment will be needed or uncertainty of the cost at the moment of receiving care

  ~ The freedom to provide services does not imply that a person receiving unscheduled treatment will have nothing to pay at the end.

  ~ Unscheduled treatment covers such a variety of cases that reimbursement cannot be guaranteed by Member States for each cases

  ~ The insured person has a right to receive cares while being abroad so as to prevent him from being forced to come back and thus create a restriction to the freedom of movement in Europe

In consequence, the Court of Justice ruled that the European Commission had failed to demonstrate that the Spanish regulation constituted a breach in its obligations under Article 49 of the EC Treaty.

Article 49 EC of the Lisbon Treaty

Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be prohibited in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.

The Council may, acting by a qualified majority on a proposal from the Commission, extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Community.

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Internal Affairs

UEMS Board Meeting (Munich, Germany — 2nd June 2010)

Further to the cancellation of the UEMS Board and Council Meetings mid-April, an extraordinary meeting of the Board of UEMS was convened in Munich on 2nd June 2010.

On this occasion, Heads of Delegations from the UEMS Full Members approved the accounts of 2009 and discussed potential options for the future of the organisation. The Board notably agreed to mandate the UEMS Executive to envisage the purchase of premises. This mandate was extended to establish a Domus Medica and find the commitment and participation from all the other European Medical Organisations. ¢

UEMS-ECAMSQ — e-Platform Pilot Project

Further to the mandate given by the Board of the UEMS to its Executive, the UEMS launched a pilot to establish an e-platform in the specialties of Anaesthesiology, Cardiology and Radiology. For this purpose, MCQs and specialist training curricula are being collected in order to be integrated within this platform. It is also envisaged to conduct in a near future a first pan-European assessment of trainees in these fields. ¢

UEMS-EACCME New Web Application Form & Taskforce Meeting

(Lisbon, Portugal — 29th May 2010)

A meeting of the EACCME Taskforce was convened in Lisbon on 29th May. On this occasion, Members of the Taskforce discussed current issues relating to the accreditation process. This work notably encompassed the following issues:

~ The Accreditation of e-learning materials by the EACCME
~ The avoidance of bias in educational activities
~ Use of EACCME logo and name
~ Guidelines for commercial support of CME events

Relevant documents will be proposed for adoption by the UEMS Council in October 2010.
In parallel, a new version of the online application form was released in February to the great satisfaction of the users of the website. From the first figures already available, the number of events submitted via the website www.eaccme.eu has significantly increased. ¢

Working Group on the Future Structure of UEMS

(Amsterdam, The Netherlands — 23rd July 2010)

The WG on the Future Structure of UEMS was established in order to examine and formulate recommendations on the internal functioning of the organisation.
At its Meeting in Istanbul in October 2009, the UEMS Council approved the idea to invite representatives of the UEMS Sections & Boards to its next meetings. This formula should be first experimented at the October Meeting in Prague and the practicalities of this change are currently under scrutiny.
The other areas of work that are envisaged and for which recommendations shall be put forward are the following:

~ The creation of Standing Committees for each of the UEMS key areas of interest, namely Postgraduate Training, Continuing Medical Education and Professional Development as well as Quality Assurance in Specialist Practice.
~ The limitation of Working Groups to specific issues with clearer mandate and defined time period.
~ The enforcement of Discussion Fora to allow time for further debates before plenaries.
~ The harmonisation of mandate periods for elected representatives within Council and Sections & Boards.

The outcomes of the WG work will be circulated after its meeting to be held in July, in time for concrete proposals to be cast for adoption at the October Council Meeting in Prague. ¢