



ETUC Position on the proposal for a directive on patients' rights in cross-border healthcare

Adopted by the ETUC Executive Committee at their meeting held in Brussels on 3-4 December 2008

The European Commission presented – as part of the 'Renewed Social Agenda' on 2 July 2008 – a proposal for a directive on patients' rights in cross-border healthcare. The objective of the proposal is to determine how patients can exercise their right – which has been recognised by the European Court of Justice – to seek healthcare in other Member States.

The European Trade Union Confederation maintains that this proposal for a directive must be analysed first and foremost from the standpoint of its impact on the implementation of patients' fundamental rights, such as those enshrined in the European Union's Charter of Fundamental Social Rights.

On the proposal itself, the ETUC would first like to note three points of disagreement.

First, the ETUC insists that access to healthcare must be based on patients' needs and not be subordinated to their financial means. With some of its provisions, in particular the requirement for advance payment on healthcare obtained abroad, favouring those who can pay, the proposal calls into question the principle of equal access for all to quality healthcare.

The ETUC also notes that the proposal is disproportionate and that it goes beyond what is necessary to achieve its objective of clarifying the existing legal framework and increasing security for patients seeking healthcare in another European Union Member State.

Lastly, the ETUC points out that this proposal runs counter to the subsidiarity principle by proposing, among other provisions, the transfer of certain competences to the European Union authorities, for instance those relating to the organisation of the healthcare system (notably for non-hospital care and hospitalisation).

That is why the ETUC would first like to reiterate the importance it attaches to the promotion, improvement and quality of public healthcare systems as well as the universality of quality care and its accessibility for all. It notes that this role is played in the majority of cases by the national systems, which are often in the best position to meet the needs of

patients through local healthcare services. In addition, a genuine public health policy may not be reduced strictly to a curative approach (receiving and/or providing care), because it also entails a much more decisive aspect, namely prevention.

That said however, the ETUC takes note that the legislative initiative restores the key role of the Council and the European Parliament – an ETUC demand – in defining rules for cross-border healthcare, which for too many years have been laid down by the Court of Justice alone. It clarifies the responsibilities of the public authorities and other players as well as procedures, which can improve transparency and legal certainty.

The ETUC also acknowledges, with regard to out-patient healthcare, an effort to simplify administrative procedures to the benefit of patients who must seek care in another Member State of the European Union. The proposal confirms the elimination of the requirement of prior authorisation by the social security system of the country of origin, which until the Court's case law of recent years used to be the rule when seeking healthcare in another Member State, except in emergencies. It thus provides patients with a simple solution to the problem of reimbursement for treatment received outside the country of origin and for medicines prescribed as part of such treatment, by introducing the principle of mutual recognition.

Lastly, the ETUC notes the proposal's emphasis on cross-border cooperation on health – including in the development of telemedicine services and the establishment of 'centres of reference', which also corresponds to an earlier ETUC request. However, such cooperation already existed in the context of the coordination of healthcare and Regulation 1408/71, which will be replaced by Regulation 883/2004. A directive was therefore not necessary to achieve this aim.

Over and above these measures which, in certain respects, are a step in the right direction for European citizens – who are also potential patients – the ETUC is nonetheless concerned about the effects that may result from this proposal and the consequences over the medium and/or longer term on national health care systems and on inequalities between patients that it may create. These concerns are varied in nature.

First, on the approach taken with this draft directive, the ETUC regrets that the initiative is in keeping with a consumerist approach – the possibility of 'shopping for healthcare' – based on the satisfaction of individual needs, the sum of which does not determine the general interest. An individualist and consumerist approach is the negation of the principle of solidarity, on which European social protection systems and health care systems in particular are founded.

Furthermore, the Member States theoretically retain control over the organisation of their healthcare systems, including for hospitalisation. On hospital care, they may thereby implement mechanisms for planning and regulating the flow of patients through a prior authorisation system. This assertion nevertheless appears to be primarily a position of principle.

Indeed, as stated in the proposal, such authorisation may only be required in exceptional cases and will be limited 'to what is necessary and proportionate and shall not constitute a means of arbitrary discrimination'. In addition, the ETUC notes that the use of this wording adds a new element of legal insecurity – in contrast with what the proposal claimed to resolve – relating to the causes the Member States may invoke for introducing prior authorisation.

Likewise, the reimbursement of non-hospital specialised healthcare services is possible if these are included on the list drawn up by the Commission. This provision nevertheless raises certain questions, first of all on the Commission's competence in this area. Second, as already stated, it calls into question a responsibility of the Member States (the organisation of the healthcare system, in particular for non-hospital care and hospitalisation). It also carries the risk of challenging in a restrictive sense certain medical practices implemented in each of the States.

By facilitating patient mobility, this initiative could have another perverse effect: that of not giving the Member States an incentive to improve qualitatively and quantitatively their own healthcare system, particularly those where this is necessary and/or those with waiting lists. Encouraged mobility gives them a less costly opportunity to solve these problems, but to the detriment of national patients lacking the financial means to take advantage of such mobility.

Indeed, as drafted, in particular because patients will have to make an advance payment on healthcare obtained abroad, but also because travel and possible accommodation costs are not taken into account, this proposal will create a de facto two-tier European healthcare system, with the risk of intensifying one-way migrations:

- the migration of patients from more costly healthcare systems to the least costly systems, since ex post reimbursement will be based on the country of origin;
- the migration of service providers from countries where pay is lower to those where it is higher, with the dual risk of depriving the countries of origin of their best practitioners and disrupting the balance of healthcare available in the host country.

Similarly, certain consequences are not taken into account:

- on the essential question of patients' security - the necessity of medical follow-up ('post-treatment') and appropriate protection of patients' personal data;
- on healthcare professionals, both those working in healthcare systems having to cope with an influx of foreign patients (working conditions, training – including language training) and those working in systems weakened by massive departures of certain categories of professionals, which is likely to threaten the quality of care;
- on the tension that may exist within systems, including in terms of investments in structures to treat these new patients, and which will have an effect on the Member States confronted with an important influx of foreign patients;

- on the organisation of systems that could be called into question or even dismantled, in particular those regulating the possibility of setting up practice or operating healthcare establishments.

This directive can lead to indirect discrimination to the detriment of the satisfaction of national needs in relation to migrant patients. Indeed, certain hospitals in particular, but also certain professionals, could give preference to and 'specialise' – which is already the case, but the trend would be reinforced – in the financially more profitable and/or higher growth branches, assigning or attracting the most competent personnel and – since budgets are not inexhaustible - neglecting other branches or sectors.

Lastly, the ETUC considers that a distinction must be made between 'free movement of persons' (on which everyone agrees) and 'free movement of services', which is a matter of internal market laws (i.e. freedom to offer/provide services, right to engage in business). The ETUC therefore reiterates that healthcare must first of all be considered from the standpoint of the general interest. It is thus clearly opposed to the subordination of healthcare services to internal market rules, which creates the risk of accentuating the privatisation and commercialisation of healthcare in the Member States. The States must remain in a position to regulate them, to guarantee the quality and accessibility of such services, taking the limits of financial resources into account.

In conclusion, a general observation is of the essence: the 'patient' is no longer at the heart of the debate, but is replaced by the 'consumer'. Indeed, the approach when seeking healthcare while travelling or working abroad is not the same as when choosing healthcare from among the range of services available in other States! The social approach is relegated to the background, to the benefit of the consumerist approach. So what will become of healthcare systems based on solidarity?

Furthermore, in the ETUC's view, as it has already explained, this proposal appears disproportionate due to the number of measure it lays down and their negative effects. Over and above certain stated intentions, it may also create a challenge to the subsidiarity principle and the social foundations on which healthcare systems are built.

The ETUC therefore urges the Council and Parliament to operate a fundamental reorientation of this proposal so as to

- take into account its priorities as outlined above as well as the aspirations of those working in these sectors,
- correct the 'consumerist' and market-based' approach of the present text,
- put the patient back at the heart of the initiative,
- and allow the development throughout the Union of quality healthcare systems accessible to all, by developing a real public health policy and allocating the human and financial means necessary.