

# Patient Mobility in the European Union

## Abstract

Medical services in the EU, being governed by the principle of freedom of movement, shall be provided without any barriers however, it is very unlikely in reality, since the financing of health care might vary a lot in the Member States. Nonetheless, healthcare services can no longer be regarded as being provided solely by the Member State of patients' affiliation as there are increasing flows of patients from one Member State to another.

The term Patient Mobility covers situations when EU citizens are obtaining medical treatment abroad. In the course of preliminary ruling procedure, the European Court of Justice has indeed contributed to the development of European medical policy, particularly the intended patient mobility. Obtaining cross-border medical care and the subsequent reimbursement is primarily governed by the Regulation 1408/71 which requests an authorization of patient's insurance institution. However, the Court of Justice ruled that such authorization is regarded as an obstacle to the free movement of services within the EU and can thus be justifiable only under certain conditions. Such conditions can be met only in case of hospital treatment since such requirement is both necessary and reasonable in order to maintain national social security systems balanced. Hence, the Court has made a difference between hospital and non-hospital medical treatment. In line with the constant ECJ case law, EU citizens can rely on the article 49 EC Treaty and travel abroad in order to obtain the non-hospital medical treatment without any prior authorization. Subsequently, the patients are to be reimbursed up to the amount that would the national system pay if similar treatment was provided in the state of patient's affiliation. Contrary to that, in case of hospital care, if the patient has obtained the authorization, costs are to be reimbursed based on the the amount actually charged to the in the Member State of treatment. Covering ancillary costs such as travel and accommodation are to be covered only in those cases where they would be covered as part of treatment in the Member State of affiliation.

However, due to the absence of proper definition of hospital and non-hospital treatment, patients can only rely on the interpretation provided by their insurance institutions or the national court. They are thus often “forced” to wait for the judgment in order to get reimbursed for medical treatment obtained in other Member State. The “harmonisation” delivered by the Court of Justice is not sufficient for proper and lawful functioning of this phenomena on the internal market. The absence of proper harmonisation regarding intended patient mobility thus causes incoherency in the legal system of the European Union. Moreover, it constitutes difficulties for European citizens to take advantage of the free movement principle.

In line with the Art. 152 EC Treaty, the organization, delivery and access to health care is still the matter for national law however, it cannot be isolated from the application of principles of Community law. Due to substantial differences among national legal provisions, cross-boarder health care should be subject to a single legal framework on the Community level measures in order to foster legal certainty of European citizens and to minimize barriers within the European market. This has been done by the Commission which has introduced a proposal for Directive on the application of patients’ rights in cross-border healthcare. This Directive mostly codifies the rules settled by the ECJ case-law. However, it introduces one new element which is the „alternative mechanism system“. This means that Member States may decide whether they will require prior authorization with cross-border hospital treatment or whether the patients will have the right to travel abroad to seek medical treatment regardless the nature of provides of such treatment. This Proposal is currently being discussed in the European Parliament and the Council.

Even if the Directive is adopted, certain legal uncertainty will still remain. It will thus be for the courts to further develop the rules in details so that EU citizens could travel abroad in order to seek medical care without undertaking substantial financial risk.