HOSPEEM.2007/RESPONSE.01
January 2007

European Hospital and Healthcare Employers' Association (HOSPEEM)

Response to the Consultation regarding Community action on health services

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The European Hospital and Healthcare Employers' Association (HOSPEEM) was formed in 2005 in order to represent the interests of European Hospital and Healthcare Employers on workforce and industrial relations issues. HOSPEEM was created by the members of the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP) who felt that there was a need for a separate, distinct voice on health workforce issues at European level. As CEEP has a remit covering the whole public sector, CEEP's hospital and healthcare members established HOSPEEM as a sectoral association. CEEP has an observer status within HOSPEEM. HOSPEEM is a full member of CEEP.

HOSPEEM has members across the European Union both in the state or regionally controlled hospital sector and in the private health sector. HOSPEEM members are health employer organisations with the powers to negotiate on pay and on terms and conditions of service with their respective Trade Union partners. HOSPEEM members are also concerned with ensuring good employment practice for healthcare staff.

Since July 2006 HOSPEEM has been officially recognised by the European Commission as a European Social Partner in the Hospital Sector Social Dialogue alongside the European Federation of Public Service Unions (EPSU). The Sectoral Social Dialogue Committee was then officially launched in September 2006.

The consultation

HOSPEEM is pleased that the Commission acknowledges the general interest nature of healthcare services. These irreplaceable services perform special missions and are provided directly or are controlled by the public authorities or entrusted to specific actors who are responsible for them. They are therefore subject to a process of public regulation under the general supervision of the Member State based on the objectives of the public policies assigned to them with respect to public health.

HOSPEEM would like to underline the important nature of health services and the requirement of access to quality health services for all citizens. It recalls that it is the responsibility of Member States to define and to organise the services in

question as well as the scope of coverage of the health and social needs to be satisfied, in keeping with the principles of subsidiarity and of universal access to healthcare services in the Member States. Furthermore, healthcare services are characterised by asymmetric information between the principal (the patient) and the agent (the doctor). Therefore, we consider as main result that economic allocation of the usual market mechanisms do not apply in this area, but rather resources are planned / organised by the respective authorities.
In view of the diversity of the services concerned and the variety of approaches, organisational and funding methods in the Member States, HOSPEEM welcomes an in depth consultation on these matters.

At the end of this consultation process, the relationship between a possible general framework on services of general economic interest and potential legal initiatives on health services should be answered. Furthermore, any future Community action should include an assessment of the potential impact on national healthcare systems.

HOSPEEM is mainly concerned with workforce and industrial relations issues in the hospital and healthcare sector. HOSPEEM will therefore principally address aspects of the consultation that relate to workforce and industrial relation issues.
As far as the provision of Healthcare Services of General Interest is concerned, HOSPEEM would like to refer to the CEEP framework on Services of General Economic Interest..

Moreover, before addressing the individual questions posed by the Commission there are some key principles that HOSPEEM members believe are important to state in relation to cross border healthcare in the European Union.

As stated in the Commissions consultation regarding Community action on health services, mechanisms already exist which enable European Union citizens to access emergency medical care whilst in another Member State in the shape of Regulations (EC) 1408/71 and 574/729. HOSPEEM's response will therefore aim to help clarify issues around cross-border healthcare treatment including impacts for patients, healthcare providers as well as healthcare funding organisations.

Subsidiarity

According to Article 152 of the EC Treaty, the European Commission has always had limited competence in the field of health. The funding, organisation and delivery of health systems has been in the competence of individual Member States. Whilst acknowledging that there are issues to address in relation to cross border healthcare following a series of judgments by the European Court of Justice (ECJ), HOSPEEM supports the principle of subsidiarity. HOSPEEM believes that any action which appears to undermine the principle of subsidiarity could have long term serious unintended consequences for the health sector in the respective Member States.

Member States should retain the right to plan services and manage resources (including workforce) in order to ensure the financial viability of their health systems. As HOSPEEM supports the principle of subsidiarity, its also supports Member States' public healthcare provision, i.e. the understanding of healthcare as a central part of Member States' services of general interest. In addition HOSPEEM supports common values of solidarity, social justice, social cohesion along with the requirements of universality, accessibility and quality of healthcare.

HOSPEEM is also of the view that healthcare is different to other 'services' that are offered throughout the European Union and that the free market principles should be counterbalanced. Therefore, developments in healthcare systems should not be the result of the expansion of internal market rules based on ECJ rulings but on political consensus based on the EC Treaty provisions on public health (Article 152 EC).

A referral system

A key element of Member States being able to manage the finances of their healthcare systems is prior authorisation procedures. If a patient is going to another Member State for treatment then s / he should be obliged to go through a referral system in his / her own Member State. This will allow the 'sending' Member State to examine whether the care can be firstly delivered in their own state within a reasonable amount of time. 'Undue delay' should not be measured solely in terms of waiting time. Clinical need based on medical criteria's defined by the national Member States, should be an important consideration.

The referral process allows the financer of the care to monitor finances but is also an opportunity for patients and their healthcare funding organisation to assess the risks of treatment abroad, agree which parties will be responsible and liable, determine what the care package will involve, what it will cost and what the outcomes will be. It is also an opportunity to allow the patients a chance to understand their care pathway.

The referral process will also allow Member States to determine the benefits package that their citizens enjoy. Patients should not be able to access care abroad that isn't available in their own country.

Scope

In order to ensure the Member States ability to exercise control over the cost and to maintain the financial sustainability of the healthcare systems, it is essential that the patients who wishes to seek treatment abroad, only has the right to receive treatments that are offered in the national health care systems. The national healthcare systems should not get bypassed or extended, and the financial, medical etc. reasons there is not to offer certain treatments in the national healthcare systems should be respected.

Access to healthcare

HOSPEEM believes that any action at European level on health should aim to improve healthcare for all patients and should not have the unintended consequence of lowering standards of existing healthcare systems in Member States or of reducing access to healthcare and destabilising the health system. If large numbers of patients begin flowing out of an individual Member State there is the potential for this to happen. For example, if workforce numbers fall due to increasing numbers of patients going abroad for treatment it could lead to a situation where patients who remain in the country have their ability to access healthcare reduced. This may not happen immediately and will be difficult to track without monitoring.

HOSPEEM members also feel that access to healthcare in the 'receiving' country also needs to be clarified. Patients who travel abroad for treatment should not be able to gain access to healthcare quicker than patients already on waiting lists in the 'receiving' country who have greater clinical need. Member States should continue to have the freedom to manage their waiting lists and allocate resources as they see fit.

The principle of equal access to healthcare services must be ensured for both foreign and national patients who live in that country.

Financial sustainability

Healthcare is expensive and Member States with ageing populations will find it increasingly expensive. In general, any proposals by the European Commission should not increase the financial or human resource burden upon healthcare systems. In workforce terms this could include regulatory burdens that could prove expensive for employers.

If patient mobility is to be properly managed, it is imperative that the 'receiving' Member State is properly compensated for the treatment of foreign patients. The method by which providers of healthcare claim back the costs they have spent on treating a patient from another Member State (including the costs of employing their staff) need to be clarified to ensure payment is received. Some HOSPEEM members have previously experienced difficulties in claiming back costs from healthcare funding organisations in other Member States. If this issue is not satisfactorily resolved then cross-border healthcare will not operate successfully and the financial sustainability of health systems could be threatened.

Caveat emptor (buyer beware)

HOSPEEM feels strongly that for treatment abroad, the standards of care, governance and liability of the receiving country should apply. Patients should also not be able seek redress from their 'home' healthcare system should something go wrong. This should be made clear to the patient at the referral stage. The responsibility for correcting mistakes made by the provider should remain with the provider and payment should be made by the provider to the country of origin, if the mistake was rectified in the patients' home country.

The personal liability of healthcare staff also needs to be clarified. Staff should not be liable if something goes wrong during the treatment of a patient they have referred abroad. This should be made clear and agreed by both the provider and funding body.

Workforce planning

Cross-border healthcare will raise significant issues around the training and resourcing of healthcare staff. It is important to understand how long it takes to train doctors, nurses and other healthcare professionals and that any significant increase or decrease in the numbers of patients in any Member State is likely to create serious problems in managing the workforce. This is one of the reasons why it is important that healthcare systems have a prior authorisation system for referring their patients abroad so they are able to monitor the impact of cross-border healthcare.

One specific aspect of cross border healthcare referred to in the Commission's communication is the movement of health professionals across borders. The movement of professionals between States will raise several issues for healthcare employers.

In Members States where staff are migrating to other European Union States it can create problems in meeting the healthcare needs of their population. HOSPEEM and EPSU are working together in the Hospital Sector Social Dialogue Committee to provide solutions to the problems of recruitment and retention of staff that some countries (particularly the "new" member states and acceding countries) are experiencing. Any proposals by the Commission on cross-border healthcare should not exacerbate these problems.

Furthermore, patient mobility is likely to be unevenly distributed, both in terms of the "receiving" and "sending" countries. Some Member States will experience a larger pressure than others. The pressure can also differ in relation to some specialised treatments, which could create problems in terms of shortage of healthcare professionals within some medical specialities.

HOSPEEM believes that patient safety is paramount. In countries that are receiving healthcare staff, there are issues for employers around the protection of patients and action to prevent dangerous healthcare professionals moving from country to country. HOSPEEM would support a system put in place where incidents of professional misconduct or criminal behaviour by healthcare professionals are made available to the relevant regulatory bodies or where one does not exist, to all healthcare employers across the European Union. This would help employers ensure the suitability of the staff they employ and help increase patient safety. Passing on information should be a simple process without additional financial burdens for employers.

An increase in cross-border healthcare treatment will raise issues about the communication and the training of staff. Increased patient mobility will result in increased demands on the healthcare professionals. If staff do not speak the language of the patients they are treating this could lead to an increased need (and therefore increased cost) for language and interpretation skills. Staff may also require increased training and new skills in order to better treat patients from different cultural backgrounds. HOSPEEM and EPSU are considering these issues in two social dialogue sub-committees on recruitment and retention and new skill needs.

Question responses

1. **What is the current impact (local, regional, national) of cross-border healthcare on accessibility, quality and financial sustainability of healthcare systems, and how might this evolve?**

   Currently there seems to be a lack of solid information regarding cross border healthcare. Available data is insufficient but there is a feeling that figures could rise significantly in the future.

   As discussed in greater depth above, any increase in cross-border healthcare will raise significant issues in the management of healthcare systems. These issues include:

- The systematic exchange of information
- A common definition of 'healthcare services' (hospital and non-hospital)
- The health and safety standards in each Member State
- The potential to lower healthcare standards in some Member States
- The potential to restrict access to healthcare
- The potential that 'mobile' patients could jump waiting lists in 'receiving' States thereby reducing access to healthcare of the resident population
- The financial sustainability of healthcare systems
- The need for increased training for healthcare staff
- Accelerated migration of healthcare professionals from the accession states
- The need for action to prevent dangerous healthcare professionals crossing borders.

2. **What specific legal clarification and what practical information is required by whom (for instance, authorities, purchasers, providers, patients) to enable safe, high-quality and efficient cross-border healthcare?**

   HOSPEEM believes that the issue of funding the treatment of cross-border care and issue of liabilities need to be clarified. HOSPEEM would support passing on of information about professional misconduct or criminal behaviour by healthcare professionals and this being accessible across the European Union.

   In general there will be a greater need for Member States to exchange information between them and to increase information to patients. The different legislation in the Member States in this area could create problems of ensuring equal patient rights. Practical and sufficient information between the Member States regarding treatment must be ensured with respect to the data protection regulations. Moreover it is essential that the patients receive proper and sufficient information prior to treatment in another Member State. This information should contain information about their rights, the treatment, the risk for complications, the liability rules, waiting time, etc.

3. **Which issues (such as clinical oversight, financial responsibility) should the responsibility of the authorities of which country? Are these different for the different types of cross-border healthcare?**

   HOSPEEM feels strongly that with regard to cross-border healthcare the standards of care, governance and liability of the receiving country should apply.

4. **Who should be responsible for ensuring safety in the case of cross-border healthcare? If patients suffer harm, how should redress for patients be ensured?**

   It should be the responsibility of Member States to regulate the types of treatment available to their citizens. HOSPEEM believes that the rule 'caveat emptor' (buyer beware) should apply. The safety regulations, quality standards, data protection regulation, patient rights, liability

systems etc, of the country that provides the treatment/healthcare services should apply. Patients should not be able to seek redress from their 'home' healthcare system should something go wrong. This should be made clear to the patient at the referral stage. However depending on the legislation in the different European Member States, there is a risk that the patients will not have equal legal rights. Therefore it is crucial that patients receive proper and sufficient information about their rights prior to seeking treatment in another Member State.

Cooperation agreements and bilateral agreements between Member States concerning cross-border healthcare service could have other settlements and the possibility to enter into bilateral agreements, should not be affected by any European initiative concerning healthcare services.

The personal liability of healthcare staff who refer patients abroad needs to be clarified. Staff should not be liable if something goes wrong during the treatment of a patient they have referred abroad. This should be made clear and agreed by both the provider and funding body.

In terms of permanent and contemporary presence of healthcare providers, the healthcare providers should apply to the rules of the country where they provide the service.

Equal access

HOSPEEM members also feel that access to healthcare in the 'receiving' country also needs to be clarified. Patients who travel abroad for treatment should not be able to gain access to healthcare quicker than patients already on waiting lists in the 'receiving' country who have greater clinical need. Member States must retain the ability to manage their waiting lists and allocate resources.

5. **What action is needed to ensure that treating patients from other Member States is compatible with the provision of balanced medical and hospital services accessible to all (for example, by means of financial compensation for their treatment in 'receiving' countries)?**

An important and underlying principle of European health policy must remain the fulfilment of public provision of healthcare in the respective Member States. Thus intervention by the responsible public authorities is made with regard to the planning and commissioning of healthcare services. Ultimately, it must be ensured that whatever entity pays for healthcare services rendered is the principal.

Migration

In the long term the movement of health professionals could cause problems of people accessing health services. If there are significant movements in the numbers of health professionals leaving a Member State then the subsequent reduction in the number of professionals could leave patients unable to access treatment or have a lower quality of healthcare available.

The migration of staff is already an issue within some Member States (particularly the "new" member states and acceding countries) and any

proposals by the Commission should not exacerbate these problems. HOSPEEM and EPSU are currently working together in the Hospital Sector Social Dialogue Committee to find solutions to the problems of recruitment and retention of healthcare professionals.

Financial Compensation

Furthermore as stated earlier, it is essential that the "receiving" Member State is ensured payment for the treatment of foreign patients. There are significant differences in how the European Member States organise and finance their healthcare systems, also in terms of reimbursement etc. In order to ensure the financial sustainability of the national healthcare systems, it must be ensured that the financial compensation is in accordance with the expenses and that the compensation are canalised back to the national healthcare systems.

6. **Are there further issues to be addressed in the specific context of health services regarding movement of health professionals or establishment of healthcare providers not already addressed by Community legislation?**

In addition to the answer given against question 5 (please see above) there are several issues raised by the mobility of professionals. In countries that are receiving healthcare staff there are issues for employers around the protection of patients and action to prevent dangerous healthcare professionals moving from country to country within the European Union. HOSPEEM would strongly support the passing on of information on professional misconduct or criminal behaviour by healthcare professionals. This would help employers ensure the suitability of the staff they employ and help increase patient safety.

The national law and the regulations in the collective agreements in the country where the healthcare service is provided, should apply to health professionals and healthcare providers, who permanently or temporarily are delivering healthcare services in another Member State.

An increase in cross-border healthcare treatments will raise issues about the communication and the training of staff. If staff does not speak the language of the patients they are treating then this could lead to an increased need (and therefore increased cost) for language and interpretation skills. Staff may also require increased training and new skills in order to better treat patients from different cultural backgrounds. Some consideration needs to be given to these potential costs as employers can not meet these costs alone.

Mobility changes will have an impact on training and education budgets, with greater potential movement of the workforce to areas where working conditions are at a higher level. This could have significant implications for the workforce and how we educate them.

Following the 1999 Bologna Declaration, a number of local universities have been participating in the "Tuning Educational Structures in Europe" project. This work has relevance to the issue of patient mobility, particularly in relation to workforce mobility and assuring safe practice.

Common competencies for Nursing and Occupational Therapy have already been completed, with on-going work on competences for medicine, radiography and social work. Whilst being focussed on education, the ultimate goal is to enhance workforce mobility throughout Europe.

7. **Are there other issues where legal certainty should also be improved in the context of each specific health or social protection system? In particular, what improvements do stakeholders directly involved in receiving patients from other Member States – such as healthcare providers and social security institutions – suggest in order to facilitate cross-border healthcare?**

8. **In what ways should European Action help support the health systems of Member States and the different actors within them? Are there areas not identifies above?**

   HOSPEEM believes that in order to assess the impact of any Community action on cross-border healthcare on respective national health systems, a clear methodology is required. In this respect European action could be taken to improve the availability and compatibility of Europe-wide indicators for both the health and social care sector.

9. **What tools would be appropriate to tackle the different issues related to health services at EU level? What issues should be addressed through Community legislation and what through non-legislative means?**

   HOSPEEM believes that it could be an advantage to create common, legal guidelines concerning patient's rights and patient mobility in order to stop the European Court of Justice making policy in the healthcare arena through decisions in individual cases. It is essential that the European basic goal of free movement does not limit the European Member States' national competence in relations to the health care area.

   HOSPEEM also believes that the issue around the sharing of information on health professionals by regulatory bodies, information to patients and financial compensation to receiving countries for the treatment of patients will require some form of legal certainty. Furthermore it should be clear, that the legal system (liability rules, safety regulations, collective agreements, quality standard etc) of the country where patients are treated and where health professionals and healthcare providers are delivering healthcare services should apply.

   In closing, HOSPEEM states firmly that any action on European level that affects health systems across Europe as a whole, whether directly or indirectly should be based on the EC Treaty articles on public health rather than the internal market rules. Thus it would be ensured that any European action regarding health services respects the principle of subsidiarity.