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CONTRIBUTION OF THE MINISTRY OF HEALTH OF THE REPUBLIC OF SLOVENIA TO THE COMMUNICATION FROM THE COMMISSION - CONSULTATION REGARDING COMMUNITY ACTION ON HEALTH SERVICES - SEC(2006) 1195/4

General Position

The Republic of Slovenia basically welcomes the launch of a broad discussion based on the text of the Communication from the European Commission, which constitutes a good basis for further discussion, since it includes the range of outstanding questions or areas on which the Member States should adopt a position with a view to the establishment of a suitable Community framework for ensuring safe, high-quality and efficient health services.

On the basis of Article 152 of the Treaty, under which the organisation and provision of health services and health care are the responsibility of the Member States, future action at EU level should be directed towards areas which could provide added value in improving the provision of such services and the functioning of health systems.

In this area, we consider it essential for the discussion to be based on principles and common values, such as universality, solidarity, equality and accessibility to high-quality health care, which are characteristic of socially oriented health systems that operate in the public interest and guarantee that the right to health can be exercised as a basic human right. The responsibility of states for the practical implementation of these values and for ensuring the stable functioning and financial sustainability of health systems requires a long-term plan for health policy at national level and balanced solutions at Community level in terms of consistent compliance with the principles of subsidiarity and proportionality, the mobility of patients and health service providers and the specific and, in our view, limited impact of other Treaty provisions on this area.
A liberalisation of the right to use services, irrespective of the place of their provision and of the place of residence of the insured person, could have a major negative

impact on the foundations of existing health care systems. Investment in physical capacity in health, like the development of knowledge and staff training, involve very long cycles of time, which are rarely shorter than 12-15 years. The whole logic of social healthcare systems is based on their economic sustainability at national level. Major movements of patients and thus of services can have many consequences (especially for small countries and more regulated systems), such as jeopardising the financial sustainability of the systems of Member States that "export" patients and that are obliged to pay the costs of treatment in other States; jeopardising the accessibility of services in "receiving" countries if national monitoring and control mechanisms no longer have an influence over, and/or are no longer able to carry out appropriate control of, the flows of patients and services; the marginalisation of services and capacity in "exporting" countries when there are major movements from small to large countries, since the former are less adaptable. Last but not least, the health systems of the Member States are so diverse that it is hard to expect that only the principles of the lowest common denominator could prevail, which could lead, in countries where there is a lack of capacity and consequently there are waiting lists, to greater interest in the provision of such services elsewhere; in countries in which there are no particular restrictions on the use of services, even with respect to the place in which they are provided, patients could become interested in health care in other countries.

For these reasons – the diversity of health care systems with different categories of insured persons, differences in the range of rights, different providers of health care services, different rules on quality, etc. – we believe that it would be necessary to undertake a comparative analysis of the situation and of the effects of this process on several typical cases of national health care systems which objectively operate in different circumstances; such an analysis should cover all four types of cross-border healthcare provision, as defined in the Communication from the Commission.

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

The current impact of cross-border health care on the accessibility, quality and financial sustainability of the healthcare system in Slovenia is relatively minor. According to various studies and sources, the number of Slovenian insured persons who have taken the personal decision to use services in neighbouring countries and in other Member States of the EU is very small and does not exceed several dozen in each country. Generally speaking, the largest number of patients comprises those who use healthcare services on the basis of the Regulations on the coordination of social security systems, for both Slovenian insured persons in other Member States and citizens of these countries in Slovenia. According to the national data available, even in the hospitals with the most foreign patients, the highest proportion of people from other countries treated is 6%, the majority of whom were treated on the basis of inter-governmental agreements or the relevant EU legislation.

Mention should be made in this context of the problem of obtaining detailed information on the extent of cross-border health care and of the adaptation of the information system so as to be able to satisfy the needs for comparability between different countries of the data available to health authorities, healthcare providers and

individuals for their respective needs.

As regards the outstanding questions of how health care in other countries is to be regulated in the future in the event of freedom of choice of the provider of outpatient care and of how to deal with any shift of patients off national waiting lists to take up treatment available more quickly in other Member States, as well as the expected rise in costs for public providers of funding for healthcare services despite the possibility that individuals will pay the differences in price, the national regulator must be able to establish levers to prevent, due to non-selective voluntary treatment in other countries, any threat to the universality of, and equality of access to, all statutorily guaranteed health services, the public interest and the financial sustainability of the national system. An increase in the programme of health services would result in necessary shifts in individual categories of expenditure and lead sooner or later to pressure to increase healthcare expenditure overall.

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

As regards the practical implementation of the right to access to treatment in other Member States and decision-making by doctors, competent authorities or patients, they should have access to information on the scope and conditions for exercising these rights in an individual Member State, the accessibility of healthcare providers depending on speciality or the type of service, their quality and waiting periods, the prices of such services and the level of reimbursement of costs, and possible means of redress and risk indemnity insurance, etc.

In order to ensure safe, high-quality and efficient cross-border health care, it is necessary to make every effort to establish comparable and verifiable basic standards of quality and safety (which could include requirements for the appropriate registration and accreditation of providers) and a system of protection of personal data, especially concerning the exchange of medical documentation.

Which issues (e.g. clinical oversight, financial responsibility) should be the responsibility of the authorities of which country? Are they different for the different kinds of cross-border health care described in Section 2.2. above?

The judgements of the European Court and interpretations thereof interfere with the current manner of providing health care in the Member States. Slovenia has a number of objections about this, some of them fundamental in nature and others based on the practical experience that has already been acquired.

From the standpoint of the home (source) Member State, it is important that national law applies to all cases of cross-border use of health care that are not covered by Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community. Accordingly, as regards the financial obligations that that State takes on, individuals may receive a

reimbursement of the costs of treatment only at the prices and under the conditions that apply in that country, provided that the treatment was medically required.

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?

The provider of healthcare should be responsible for ensuring safe provision of healthcare, and monitoring should be the responsibility of the competent body in the country in which the services are provided.

As regards the exercising of rights concerning harm resulting from inappropriate treatment, the rules on the responsibility of the country in which the patient was treated should apply, and it is necessary to set up appropriate mechanisms to provide patients with legal security, effective enforcement of claims for compensation and the simplest possible procedures for exercising these rights in these cases as well.

The settlement of disputes should be the responsibility of the body in the country in which the provider of healthcare services operates, irrespective of the type of cross-border health care. At EU level the legal framework concerning the rights of patients and the minimum rules on coordination for settling disputes should be complied with.

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)?

In the national public healthcare network, states are responsible for planning and maintaining sufficient capacity to ensure a suitable level of, and suitable access to, healthcare services for all inhabitants depending on their needs and in accordance with the principle of equal treatment, including for EU citizens who exercise these rights under the legal framework for the coordination of social security systems. Other forms of cross-border provision of healthcare services will, for objective reasons, continue to be largely dependent on available capacity inside and outside the public healthcare service in a given country. In no event should patients be obliged to seek services from providers outside their home country if it were to experience an increase in demand for healthcare services of the same type from patients from other Member States, which requires transparency in regulation and appropriate management of waiting lists.

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?

Although, in our view, Community legislation already provides a satisfactory legal framework in this area, this question cannot be answered in detail until the comparative analysis of the healthcare systems of the individual Member States has been conducted.

In what ways should European action help support the health systems of the Member States and the different actors within them? Are there areas not identified above?

The possible forms of Community support for the Member States in improving the functioning of their healthcare systems certainly include the activities which, with support from the European Commission, are organised through the High-Level Group on Health Services and Medical Care. Encouraging close cooperation between the Member States, guaranteeing the conditions for networking at EU level, exchanging experience and good practices, reaching agreement on joint guidelines and other forms of common action and finding solutions to outstanding questions in the areas of cross-border healthcare, the mobility of patients, the improvement of access to highly specialised services and expert knowledge through European reference networks, patient safety and the introduction of systems of quality, the development of e-medicine and IT support, the development of methodologies for assessing the influences of the various policies and measures on health and healthcare systems and for assessing health care technologies all make a significant contribution to efforts at national level to provide the population with the highest possible level of health care and to produce synergies in the implementation of jointly agreed development objectives in this area in the Community.

We consider a good example to be the "Guidelines for purchase of treatment abroad" which were drawn up in 2005 by the High-Level Group on Health Services and Medical Care and which were presented to the Ministers of Health of the Member States at the Council meeting on health on 9.12.2005.

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?

As regards the numerous outstanding questions of a substantive, organisational and, last but not least, financial nature, given the differences in legislation of the Member States, the different regulation of health care and the financial capacity of the individual Member States, which determines financial sustainability and their view of the range of issues, it is hard to talk about specific tools in the range of secondary legal instruments under the Treaty without carrying out in-depth substantive and financial studies. For the time being, we take the view that a unifying document (Regulation) would not be the most suitable form of regulation at EU level, given the diversity of the areas dealt with. One possible solution would be to adopt a directive for a limited subject area on the basis of a discussion of the subject matter (which would determine its potential future minimum and maximum content, fix the objectives and the inter-relationship with other legislative instruments already in force, e.g. in the area of the coordination of social security systems) and of an agreement between the Member States (e.g. on the regulation of quality and especially safety in health care), but a more realistic solution could be the adoption of several secondary non-binding measures (recommendations, guidelines, etc.), which would be based on the expanded document "Statement on common values and

principles", which could provide the outline for the content of the preamble of a future secondary measure.