



COURTESY TRANSLATION

To Ms. M. Wallström,  
Vice-president of the European Commission  
B – 1049 Brussels  
Belgium

City/town and Date           The Hague,   24 February 2009  
Subject                         Subsidiarity assessment of the directive on cross-border healthcare (COM(2008) 414)  
Our reference                 31545

Dear Ms. Wallström,

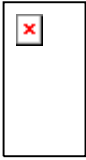
Thank you very much for your letter of 4 December 2008, in which you addressed the comments of both Houses of the States General of the Kingdom of the Netherlands in the document dated 2 October 2008 about the proposal for a directive on cross-border healthcare (COM(2008) 414).

As stated in this document, both Houses found it necessary to suspend issuing of a final opinion about the subsidiarity and proportionality of the proposed measures until the existing issues they consider important regarding this subject are answered satisfactorily and clarity is obtained on this matter.

In the meantime, in the House of Representatives, this subject has been discussed repeatedly with the Dutch Cabinet. A Round Table Discussion has also been organised in the context of forming an opinion about the subsidiarity and proportionality. A wide range of representatives from special-interest groups and experts contributed diverse positions and assessments of the implications of this draft directive for the Netherlands.

**Tweede Kamer  
der Staten-Generaal  
Lange Poten 4  
Den Haag**

**Postbus 20018  
2500 EA Den Haag**



Subject  
Ref

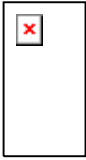
Subsidiarity assessment of the directive on cross-border healthcare (COM(2008) 414

On the basis of the input described above, the House of Representatives was able to formulate a conclusive position with regard to the subsidiarity and proportionality of the draft directive.

This information is included in the appendix. A copy of this official position will be sent to the Dutch Cabinet, COSAC, the European Parliament and the Council.

Yours sincerely,

Ms. Gerdi A. Verbeet,  
President of the House of Representatives of the States General



Subject  
Ref

Subsidiarity assessment of the directive on cross-border healthcare (COM(2008) 414

**Assessment of the proposal for a directive of the European Parliament and of the Council on the application of patients' rights in cross-border healthcare (COM(2008)414)**

**Subsidiarity**

The House of Representatives has assessed the subsidiarity of the proposal as positive. The following considerations play a role in this opinion:

- Healthcare does not end at the border. For this reason, it is a good idea for rules to be made at a European level with respect to cross-border healthcare;
- The European Court of Justice has already issued several rulings that are relevant to the member states. As policy makers form an opinion on this basis, it is necessary to have some method to codify these rulings (what is only allowed at a European level and also what forms the core of the proposal here). Only then can political considerations of these points take place.

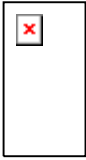
However, the House of Representatives is asking that attention be paid to the following comment: the current text of the draft directive seems to offer the possibility that, in the future, the right of Dutch citizens to healthcare abroad, or the right of patients in other countries to Dutch healthcare, could be expanded to, for example, long-term care (Exceptional Medical Expenses Compensation Act – AWBZ). As these possibilities are not excluded, which could affect the organisation and practical aspects of healthcare in the Netherlands, this remains a critical point of attention for subsequent action in this file.

**Proportionality:**

For the time being, the House of Representatives has assessed the proportionality of the proposal as negative. The following considerations play a role in this opinion:

- Although it is a good idea to stipulate patient rights and the right to cross-border healthcare, various aspects have already been safeguarded through treaties, bilateral agreements and rulings from the European Court. The means of a directive is not proportional to resolve the problems and uncertainties that still exist.
- The intended objective could possibly be achieved otherwise, because there are other instruments that require this clarity and legal certainty (such as providing public information and starting infringement procedures against member states).
- There is still a significant lack of clarity about the impact of a directive on the Dutch healthcare system. The question of whether the problems concerning cross-border healthcare should be resolved by means of a directive (instead of by another method) has not yet been clearly answered.
- A number of provisions in the draft directive point towards the expansion of the influence/control of the European Commission with respect to the member states. More specifically: Article 5.3, Articles 8.2, 10.3, 12.3, 14.2, 15.3 and Article 16.

**In conclusion:**



Subject  
Ref

Subsidiarity assessment of the directive on cross-border healthcare (COM(2008) 414

Based on the current proposal and the Impact Assessment, at this stage, it is difficult to estimate the specific practical, legal and financial implications of the proposal for the Netherlands. The Health, Welfare and Sport (VWS) committee understands that, even during the consideration process, there are many substantive questions that still exist between the member states and in society. In this context, the House of Representatives emphasises that the political positions of the parties with regard to the content of the proposal are also separate from the opinion provided above about subsidiarity and proportionality.

Therefore, the House of Representatives will continue to closely follow this subject, and keep it on the agenda in the debates with the Dutch government.