

MoveS Webinar

Cross-border healthcare

7 July 2023

Online

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MoveS

project presentation

PRESENTED BY:

SOFIA FALCONE

MOVES SEMINARS AND WEBINARS RESPONSIBLE

MoveS

EU-wide network of independent legal
experts in the fields of
free movement of workers (FMW)
social security coordination (SSC)
Posting

MoveS objectives

1) To provide legal expertise in the areas of Free Movement of Workers, Social Security Coordination and Posting through:

Legal Reports
Bimonthly Monitoring Reports
Ad hoc requests
Comparative assessments

2) To disseminate expertise and increase experts' and practitioners' knowledge by means of

National seminars (8)
Webinars (3)
Training for EC staff (4)
Information tools & communication

MoveS Cooperation and networking

- **MoveS webpage (EUROPA)**

<https://ec.europa.eu/social/main.jsp?catId=1098&langId=en>

MoveS LinkedIn group:

MoveS – free movement and social security coordination

<https://www.linkedin.com/groups/4291726>

Cross-border Healthcare

Today's agenda

Content	Timeslot	Presenter
Introduction	11:00 – 11:10	Sofia Falcone MoveS
The relationship between the Regulations on the coordination of social security systems and the Directive on the application of patients' rights in cross-border healthcare	11:10 – 11:45	Gabriella Berki University of Szeged (Hungary)
Access to cross-border telemedicine under EU law: analysis of controversial issues	11:45 – 12:15	Francesco Costamagna University of Turin (Italy)
Wrap up of Session 1 Questions and Answers	12:15 – 12:30	Grega Strban MoveS Coordinator
<i>Break</i>	12:30 – 12:40	
The dilemma situation of the National contact points in cross-border healthcare	12:40 – 13:00	Christl Bernd NCP, Germany
The free movement of healthcare professionals in the EU: current criticalities and future challenges	13:00 – 13:20	Giacomo di Federico University of Bologna (Italy)
Questions and Answers	13.20 – 13:30	ALL

The relationship between the Regulations on the coordination of social security systems and the Directive on the application of patients' rights in cross-border healthcare

PRESENTED BY:

GABRIELLA BERKI
University of Szeged, Hungary

Content

I. CBHC in the EU – where do we come from and where are we today?

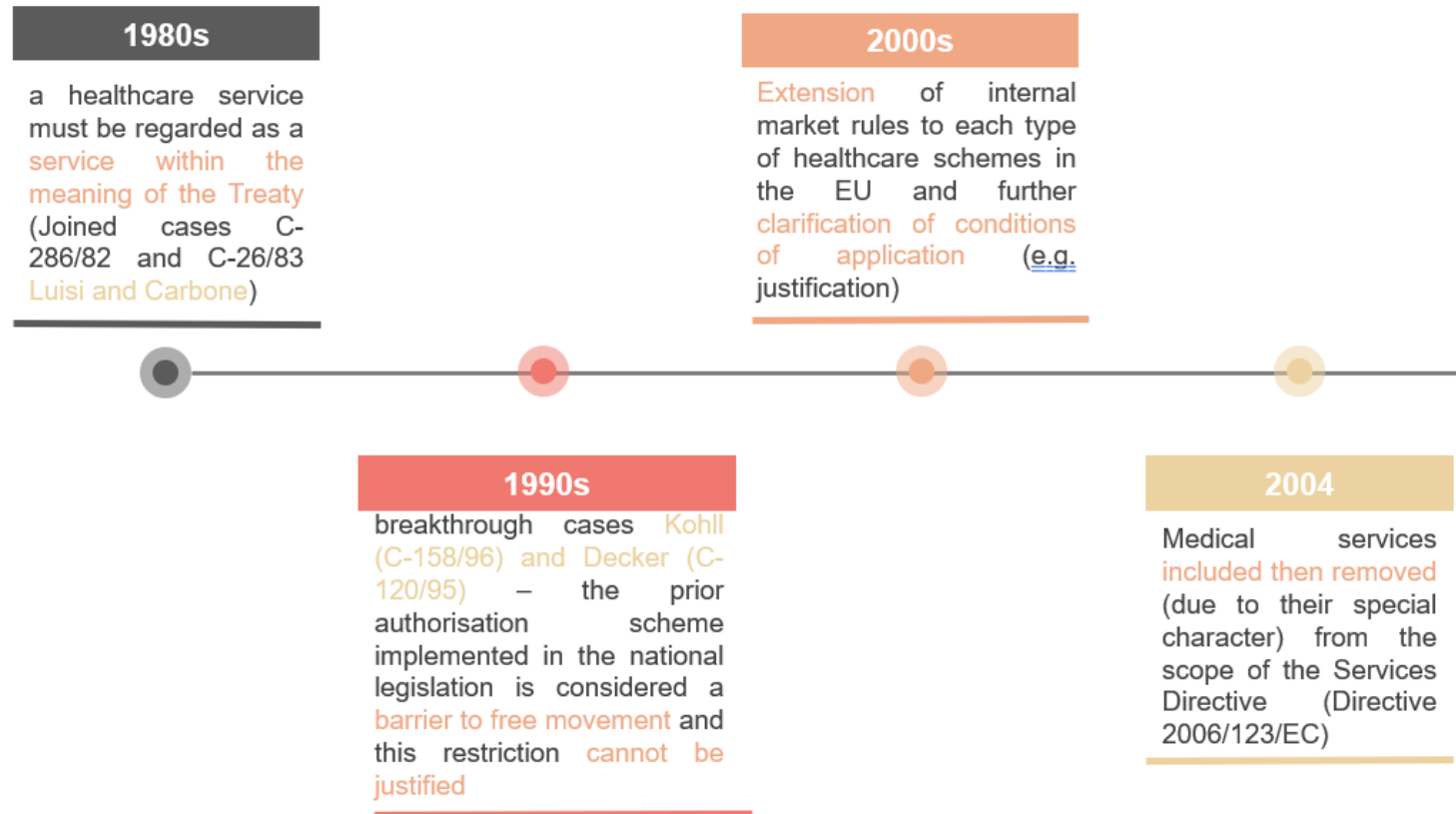
II. Presentation of the MoveS Legal report 2022 on cross-border healthcare

I. CBHC in the EU – where do we come from and where are we today?

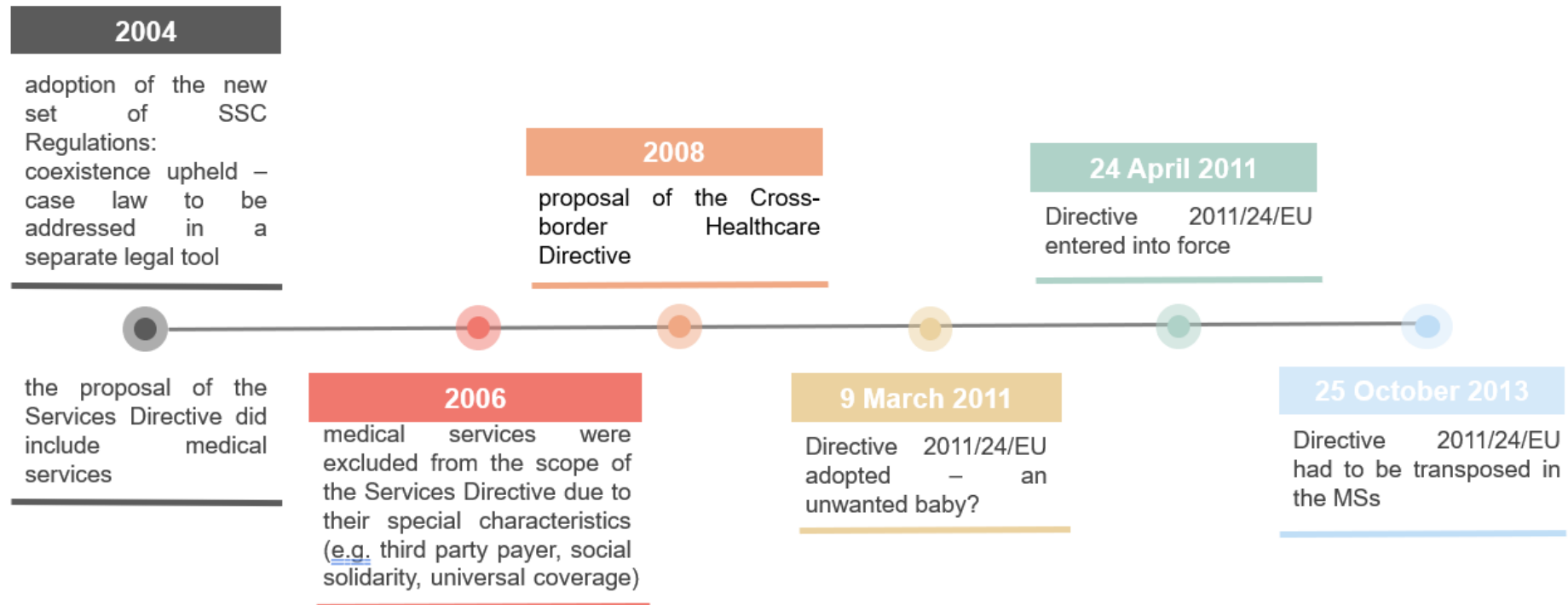
How did it start?

- From the 1950s: **SSC Regulations** have been providing rules for receiving healthcare abroad on the basis of **free movement of workers**
- From the 1980s: the **CJEU** have been paving the path for **a new type of patient mobility** on the basis of **free movement of services**

Healthcare: a special internal market service?



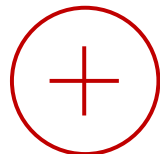
The birth of a trichotomous system



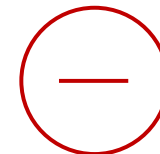
Where are we today?

- In 2022, the **third Commission report** on the operation of the CBHC Directive was published ([EC Report 2022](#))
- „The Directive’s potential for improving access to cross-border healthcare continues to be **hampered by some issues.**”

Achievements & challenges



- enshrined important patient rights, such as **equal treatment** of EU and domestic patients
- achieved a more consistent approach at EU level to **reimbursement** of cross-border healthcare costs for EU citizens
- acted as a driver for patient rights in general, increasing **transparency** on treatment prices and bringing about changes in various national health systems to the benefit of patients



- low level of **awareness** over patients' rights to cross-border healthcare
- inadequate patient **information**
- disproportionate **administrative burdens**
- uncertainty over healthcare costs abroad and **reimbursement**
- **inequalities** in access to healthcare due to the obligation of upfront payment

II. Presentation of the MoveS Legal Report 2022 cross-border healthcare

Objectives and structure of the report

Three objectives, three substantive chapters

1. The relationship of the SSC Regulations and the CBHC Directive
2. Provision of clear information on cross-border healthcare
3. Access to cross-border telemedicine

1. The relationship of the SSC Regulations & the CBHC Directive

Coexistence of two parallel systems: overlapping, similarities & differences

- The two sets of acts pursue by and large the **same general objective**, but **differ in their specific objectives, their legal bases and their inner logic**.
- Although there is **no hierarchy** between the two legal tools, their **relationship remains complex and not easily understood** by patients or service providers.

Objectives, legal bases, scope

- The **material scope** of the Regulations and the Directive **overlap to a large extent**. Questions continue to be raised with regards to **long-term care, unplanned care, medical assistance and public vaccination programs**.
- In relation to the latter, it is argued that these are in principle **subject to the Regulations**, but they **fall out of the Directive's scope**.

Rules on the different types of health-care abroad

- The **lack of distinction between unplanned and planned care under the Directive** is somewhat problematic as it may bring about paradoxical results in cases of unforeseen need for healthcare in situations where the treatment in question is subject to prior authorisation. However, different opinions emerge on this issue.
- The **undue influence** (whether intentional or not) **of patient choice** by health care providers must be overcome by **patient education and monitoring measures**.

Rules on the different types of health-care abroad

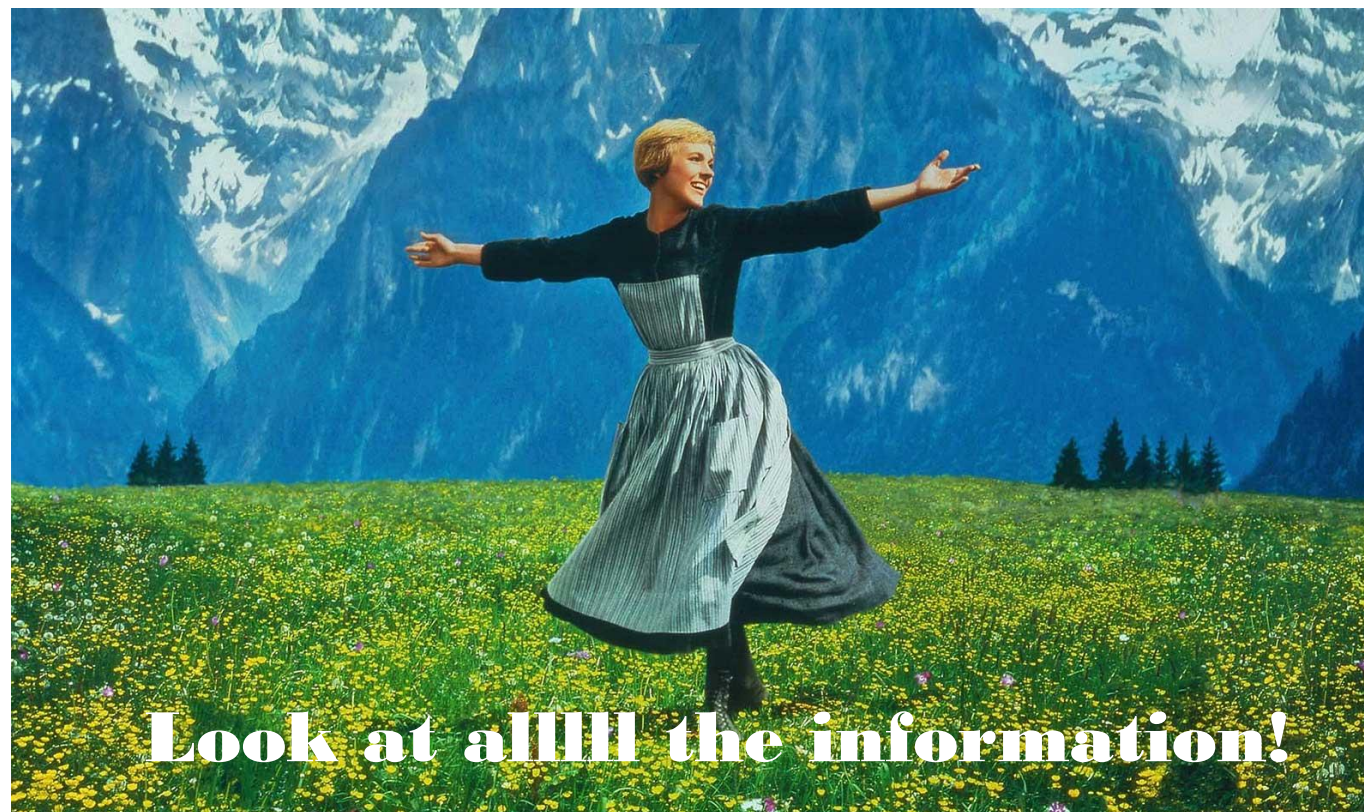
- **Prior authorisation** is the **main rule** under the Regulations, while it is an exception under the Directive.
- The CJEU has identified some situations where the patient is entitled to have the costs reimbursed even **without a properly issued prior authorisation**, provided that all the other conditions for cross-border healthcare services are met.
- Under both sets of rules, the most controversial issue concerning the decision to grant or refuse the authorisation is **whether an equally effective treatment can be given in the home Member State**.

Relationship status

„The complex legal relationship between the Directive and the Regulation is **difficult** for the general public **to understand**, and for NCPs and health insurers **to communicate** to patients. At the same time, **the responsibility for choosing the route** that is more beneficial is often left to patients, with **uncertain financial implications**. This raises doubts as to whether clarity between the Directive and the Regulation has been achieved for the benefit of patients.” (EC Report 2022)

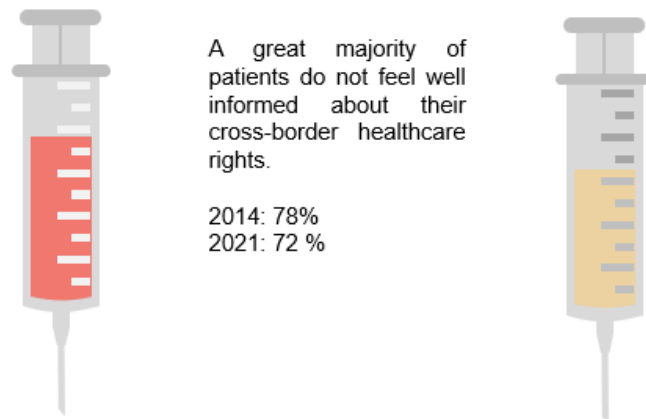
2. Provision of clear information on cross-border healthcare

Information everywhere



Patient awareness

- In 2021, 72% of the patients surveyed felt **not well informed** about their cross-border healthcare rights.



Patient: customer of an internal market service

- *'unless the patient requests otherwise'* – is the cross-border patient to be treated as an **informed customer**?
- The complex legal relationship between the Directive and the Regulations is very **difficult for citizens to understand**.

Clear, complete & reliable information on CBHC

- **Information duties** under the Regulations and the Directive
- The Directive contains an **extensive set of information obligations** that must be met by the Member State of affiliation and the Member State of treatment.
- A fresh analysis of the NCPs' websites found that **less than half of the NCPs** provide information on the **distinction between the Directive and the Regulations**.

Clear, complete & reliable information on CBHC

- Sources of information:
 - **National authorities** responsible for cross-border healthcare issues
 - **National contact points**
 - **Healthcare providers**
 - **Patient organisations**

All play a distinctive role in information provision and patient education.

Tools to support information provision & communication

- 1) Focus on the **tools in existence**
- 2) **Continued development of NCPs**
- 3) Involvement of **further players** in information dissemination
- 4) Strengthening the **weakest point**
- 5) **Talk to the people, so they listen**

• Useful sources on the topic:

- [EC DG SANTE website](#)
- [EC DG EMPL website](#)
- [MoveS website](#)
- MoveS Analytical Report 2016 on Access to healthcare in cross-border situations
- MoveS Legal Report 2022 on The relationship between the Regulations on the coordination of social security systems and the Directive on the application of patients' rights in cross-border healthcare

Thank you for your attention!

Access to cross-border telemedicine under EU law: analysis of controversial issues

PRESENTED BY:

FRANCESCO COSTAMAGNA
University of Turin, Italy



Agenda

An increasingly important way to provide healthcare, but still many gaps in the legal framework: who should bear the costs of cross-border telemedicine?

- No legally binding definitions
- The Commission's failed attempt to settle the issue in the European Health Data Space Regulation
- The uncertain application of the EU cross-border healthcare rules in 5 possible scenarios



The definition of telemedicine

No legally binding definition (so far)

- “the provision of healthcare services, through the use of ICT, in situations where the health professional and the patient (or two health professionals) are not in the same location. It involves secure transmission of medical data and information, through text, sound, images or other forms needed for the prevention, diagnosis, treatment and follow-up of patients” (COM/2008/0689 final)
- “provision of healthcare services, including remote care and online pharmacies, through the use of information and communication technologies, in situations where the health professional and the patient (or several health professionals) are not in the same location” (Article 2 Proposal EHDS Regulation)



Cross-border telemedicine and MSs' reimbursement policies

Tension between two poles: **national competences vs free movement**

- “Under Article 168 of the Treaty Member States are responsible for their health policy, in particular for decisions on the services (including telemedicine) that they provide and reimburse. Different reimbursement policies should, however, not constitute barriers to the free movement of digital health services such as telemedicine” (Recital 21 Proposal EHDS Regulation)

The Commission tried to solve it:

- Article 8 of the Proposal: “Where a Member State accepts the provision of telemedicine services, it shall, under the same conditions, accept the provision of the services of the same type by healthcare providers located in other Member States”

The Council decided to scrap the provision from the Proposal – the tension is still there



Telemedicine and EU cross-border healthcare rules

Rules of thumb

- Regulation 883/2004 does not apply
 - Article 20 requires physical presence of the patient in the State of treatment
- Directive 2011/24 can apply
 - Article 3, lett. d), defines “MS of treatment” in the case of telemedicine
 - Article 7(7) includes telemedicine in prohibiting discriminatory or unduly restrictive national reimbursement policies



Telemedicine in a MS other than the MS of affiliation

MS of affiliation	MS of telemedicine provider
A	B

Reg 883/2004 does not apply

Dir 2011/24 applies: MS affiliation must reimburse if the healthcare is in its benefit basket

- What if it is covered only when in-person?
 - 1) Excluded on the basis of Article 7(1)? Narrow reading
 - 2) Eligibility criterion under Article 7(7)? Exclusion of telemedicine in all cases seems not to be “objectively justified”
 - 3) Any role for Article 56 TFEU on the basis of *Kohll*? Unlikely



Telemedicine in a MS other than the MS of in-person treatment

MS of affiliation	MS of physical treatment	MS of telemedicine provider
A	A	B

Reg 883/2004 does not apply

Dir 2011/24 applies: same as in previous scenario with further questions

- Is professional-to-professional telemedicine covered? Maybe not, according to the definition of “healthcare” (Article 3, lett. a), Directive 2011/24)
- Can in-person and telemedicine be separated?
- If not, where to locate the treatment? Problems with both A and B



Telemedicine in the MS of in-person treatment

MS of affiliation	MS of physical treatment	MS of telemedicine provider
A	B	B

Reg 883/2004 applies but issues may arise if in the MS of affiliation that treatment is covered only if in-person

- The exclusion of telemedicine is problematic also in this case

Dir 2011/24 applies: same issues as in previous scenario but separability less a problem here



Telemedicine in the MS of affiliation

MS of affiliation	MS of physical treatment	MS of telemedicine provider
A	B	A

Reg 883/2004 applies to the in-person treatment in B but what about telemedicine in A?

- Key issue is again separability
- No rules on where telemedicine is to be located

Dir 2011/24 applies to in-person treatment in B but not to telemedicine in A

- Problematic to consider as joint treatments and locate both in B: Directive contains rules on location of telemedicine



Telemedicine in a MS other than the MS of treatment

MS of affiliation	MS of physical treatment	MS of telemedicine provider
A	B	C

Reg 883/2004 applies to the in-person treatment in B but not to telemedicine in C (not physical presence there)

- unless they are jointly considered
- No rules on where telemedicine is to be located

Dir 2011/24 applies to in-person treatment in B and also to telemedicine in C

- Problematic to consider as joint treatments for the reasons seen in previous scenario



Need for reforming the rules?

- ❖ Call for reforming Reg 883/2004, adopted when in-person was still the only way to receive healthcare
- ❖ Some authors call for the explicit inclusion of telemedicine, but it may open up new problems
- ❖ Uncertainty is detrimental for the development of telemedicine

Thank you for your attention!

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Q&A TIME!



COFFEE BREAK 12.30-12.40

NCP - The Unknown Competence and The Bermuda Triangle of Directive and Regulation

PRESENTED BY:

BERND CHRISTL
Germany, NLO

NCP - The unknown Competence

German NCP is online since 10/2013:

- Nearly nobody knows what the NCP is and who and when you can find help there
- Patients and healthcare provider are focused on the national healthcare system
- Patients only in the border regions are interested in health care abroad or patients who can't find a suitable treatment in an acceptable time-frame
- The need for NCP consultation arises only when no solution can be found nationally. Until then, the existence of an NCP is irrelevant for patients and healthcare providers.
- Not all stakeholders see the NCP's as uncritical
- Most inquirers have found us via Google

How can NCP's become more visible to those seeking advice

Possible Solutions:

- One possible approach is our proposal to the Commission to route all requests for cross-border healthcare on Google to a single platform. From there, you will find general information in the national language and a link to the NCP page of the respective Member State.
- Participation of NCPs in events of cross-border workers' associations or cross-border projects in order to be informed of them on the NCP website.
- Participation of NCPs in cross-border projects concerning cross-border treatment in hospitals or larger specialised treatment centers.

The Bermuda Triangle of Directive and Regulation

- Neither patients nor healthcare providers know the Directive or the EC Regulation and do not know their rights
- The difficulty lies essentially in the different approaches of the Regulation and the Directive
(Forms, their handling, contractual services and contract service providers on the one hand and private providers with unclear costs and reimbursements on the other)
- The [website](#) of the German NCP provides an overview of the advantages and disadvantages of treatment under the Directive or the EC Regulation
- Most, especially elderly patients, don't understand the information on the web. They need personal advice, therefore we have a direct link.
- Most patients do not regularly cross the border for treatment. They therefore also have many questions that are not directly related to the regulation or directive, e.g. liability issues, questions about language, contracts, etc.

DIRECTIVE AND REGULATION

How can we find suitable solutions?

- Making the NCPs more visible
- Finding agreements with the MS that every NCP is reachable by phone
- Simplify the Directive (e.g. [Article 9](#)) by cancelling prior authorization in most of the cases
- Implementing a system of guaranteed reimbursement by the health insurance companies in advance (voucher system)
- Working together with SOLVIT

Thank you for your attention!

The free movement of healthcare professionals in the EU: current criticalities and future challenges

PRESENTED BY:

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Thank you for your attention!

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