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## **EU Ministers reject Directive proposal on patients' rights in cross-border healthcare**

Spain and Hungary lead efforts to block Directive proposal on 'the application of patients' rights in cross-border healthcare'.

At the end of last Tuesday's Council meeting it was clear that the future of the proposal in question was in doubt despite of its approval by the EP in first reading last April.

Spain and Hungary were in fact the most vocal of nine countries who were actively disagreeing with the proposed text. Sweden, current chair of the EU Council, has battled for a compromise until the last moment, but was forced to concede defeat after last-ditch discussions broke down.

*"There are member states that still have difficulties reaching an agreement that could have meant certainty for our member states and fellow citizens,"* said **Göran Hägglund**, Sweden's health and social affairs minister, who chaired the meeting. *"I am forced to conclude that we are not going to make any more progress."*

The European Commission said it may now abandon the proposal, leaving the European Court of Justice (ECJ) to decide when patients are entitled to be reimbursed for healthcare treatment in another EU country.

*"The next European Commission will take time to think about this failure and honestly I do not exclude the possibility of withdrawing this proposal,"* **Androulla Vassiliou**, the European commissioner for health, told health ministers after the failure of the compromise talks.

*“This is a sad moment for patients. They are the main losers today. A golden opportunity has been missed to reinforce their rights to seek treatment in another member state and to be reimbursed,”* add the Commissioner.

The European Commission published the proposal in July 2008 following a decade of rulings from the European Court of Justice establishing that patients have the right to be reimbursed for treatment in other EU countries when facing lengthy delays for treatment at home Member-State.

But governments opposed to the draft law feared it would undermine equality within domestic systems. They worried it would give patients travelling abroad entitlements to be treated by private providers they would not get at home. **Trinidad Jiménez García-Herrera**, Spain's Minister for Health, insisted that she did not want to exclude private providers, but wanted guarantees on quality.

Spain also feared that it would be left footing the bill for large numbers of northern European pensioners who retired in their country. “The Directive proposal places unfairly a burden on those countries who import retired persons as opposed against those who export them,” Jimenez told ministers this morning.

As well as Spain and Hungary, Ireland, Portugal, Romania, Slovakia, Slovenia, Greece and Lithuania raised objections to the proposal.

EU institutions have been battling over the ideas behind this Directive for several years. Earlier versions of the draft law raised opposition in the European Parliament and the European Commission.

**Pascal Garel**, chief executive of the European Hospital and Healthcare Federation (HOPE), which represents public and private hospitals, said the failure to reach an agreement was a surprise. While Mr. Garel was not confident about the survival of the draft law, he insisted that the issue has a future, noting the EU has had “*a similar experience with the working time directive, when it took four years to get an agreement*”.

*“It is of course not satisfactory to be in this situation...but it doesn't change much in our lives. We shall cope with patients crossing borders as we did in the past.”*

On average, EU countries spend around 1% of the public healthcare budget on cross-border care. This mainly affects patients with rare diseases and people living in border regions. The European Commission has estimated that its proposal would increase costs by €90 million each year, around two-thirds of which would be administrative costs.

Today's failure to reach an agreement on the cross-border Directive is just the latest twist in more than a decade of debate about patients' rights in the EU.

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***Small reminder of the facts that lead to this Directive proposal***

The story began in the mid 1990s when a Luxembourg citizen asked the family's health insurer to pay for his daughter's visit to an orthodontist in Trier, Germany. The insurance company refused and the Kroll family went to court. The case made it to the European Court of Justice, which ruled in 1998 in Kroll and Decker case (a similar case concerning spectacles) that patients had the right to be reimbursed for some healthcare in another EU country. In 1999 the Smits/Peerbooms case established that no healthcare system could be exempt from the EU treaty. Patients' rights were given a further boost by the case of Watts in 2006, when the European Court of Justice ruled that a health care system could not refuse to refund patients who had gone abroad because they faced waiting times at home that exceeded clinical advice.

EU member states began debating cross-border healthcare in late 2003, but sensitivities over national governments' control over health services have always been strong. An early attempt to legislate at EU level stalled: healthcare was removed from the EU directive to liberalize services that was agreed in 2006. Then the Directive proposal on cross-border healthcare was bogged down in the European Commission for months in internal battles and countless re-drafts before finally appeared in July 2008.

Whether to revive the proposal will be one of the big decisions for **John Dalli**, the designated European commissioner for health.

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