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Author	Ms Laura Rius Mendez
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*c/o Swedish Medical Association, P.O. Box 5610, Villagatan 5, SE-114 86 Stockholm
Tel: +46 8 790 34 52, Fax 46 8 20 57 18, E-mail: info@uemo.org*

Services Directive: update (28/04/2006)

1. The amended proposal¹ of the European Commission

On 4 April 2006, the European Commission put forward its amended proposal following the first reading of the European Parliament on 16 February 2006 and the conclusions of European Council meeting on 23/24 March 2006.

The revised proposal takes on board the majority of the amendments put forward by the European Parliament's resolution. The legislative process should take new steps forward rapidly: the common position of the Council is expected before the end of the Austrian Presidency and the Commissioner McCreevy hopes that a final agreement could be reached by the end of the year.

The main features of the amended proposal are:

Country of origin principle

The much-disputed country of origin principle has been deleted. It is replaced with provisions referring to the "freedom to provide services" and stipulates under which conditions the national requirements of the country of destination can be applicable.

Scope

The Commission has accepted most of the Parliament's amendments reducing the scope of the directive. Non economic services of general interest fall outside the scope of the Directive while services of general economic interest are included.

Healthcare also will remain excluded from the scope of the directive: the main amendments of the Parliament have been taken on board.

As for services already covered by sector-specific legislation, such as the recognition of professional qualifications, the provisions of the Professional recognition Directive will prevail on the services Directive, which will complement the text on all other aspects.

Concerning labour law, the EC accepts that provisions on such issues as employment conditions, working conditions including health and safety at work shall not be affected by the Directive. All provisions on posting of workers are deleted.

Finally, the European Commission maintains its initial two years deadline of transposition of the Directive, rejecting the three years deadline proposed by the Parliament.

2. A new Healthcare services Directive

Following its exclusion from the scope of the Services Directive, Commission adopted on 26 April 2006 a Communication on Social Services of General Interest². This Communication does not include health services, as they will be dealt with by a separate initiative from the Commission.

¹ The text of the amended proposal is available at:
http://europa.eu.int/comm/internal_market/services/services-dir/proposal_en.htm

² http://europa.eu.int/comm/employment_social/emplweb/news/news_en.cfm?id=153

In the amended proposal for a Services Directive, the European Commission already confirms, “its commitment to come forward with a specific initiative on health services, which Commissioner McCreevy indicated it should cover issues such as patient mobility. This initiative was made the responsibility of Health and Consumer Protection Commissioner Kyprianou.

Commissioner Kyprianou, speaking at the European Health Policy Forum on 5 April 2006, announced that a first proposal for a “Health Services Directive will be published in 2007, and that stakeholders will be invited to take part in a consultation process.

With the aim to draft a position on a new sectoral Directive on health services, the CPME Board created on 11 March a working group. Members of the WG are President Dr. MART (leader), SG Mrs. TIDDENS-ENGWIRDA, Dr. KOMOR (Poland), Dr. BORMAN (UK), Dr. MONTANE (France), Ms. ROSEL-SCHMID (Austria), Mr. LONNQUIST (Sweden), Prof. JOSET (Belgium), Dr. HUERTA (Spain), Mr. SCHIRMER (Germany) and a representative from UEMS.

3. EU Court recent activities: the WATTS Case

On Thursday 15th December advocate general Leendert Adrie Geelhoed of the European Court of Justice presented an Opinion³ on the case C-372/04 of Yvonne Watts versus Bedford Primary Care Trust & Secretary of State for Health.

The case involves insurance authorities in Great Britain who refused to refund a hip-replacement operation that Yvonne Watts decided to undergo in France due to the 4-months waiting period for receiving the same treatment in the United Kingdom. Yvonne Watts submitted the case to the European Court of Justice after the UK High Court rejected the refund application claiming that there was no undue delay of treatment in her case, as it is defined and required by the law.

According to the advocate’s opinion, EC Treaty provisions on the free movement of services apply to the case in question and that “absence of a clearly defined procedure within the NHS for considering applications for treatment abroad restricts the possibilities for patients to seek treatment outside the system. It therefore constitutes a restriction of their freedom to receive services and is contrary to the EC Treaty.”

The Judges of the Court of Justice are now deliberating in this case. Judgment will be given at a later date. Even though the European Court of Justice follows the advice of its advocate generals in the majority of cases, it is not bound to do so.

³ <http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en&Submit=Submit&alldocs=alldocs&docj=docj&docop=docop&docor=docor&docj o=docjo&numaff=C-372/04&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100>