The Transposition of the Directive on Patients’ Rights in Cross-Care Healthcare in National Law by the Member States: Still a Lot of Effort to Be Made and Questions to Be Answered

After a rather long period of preparation, the European Parliament and the Council adopted Directive 2011/24/EU on the application of patients’ rights in cross-border healthcare. It entered into force on 24 April 2011, and had to be transposed by the Member States by 25 October 2013. With this Special Issue we aim to give an overview of whether and how the cross-border healthcare directive has been transposed in a (non-representative) selection of EU Member States.1

On 25 October 2013, Tonio Borg, the European Commissioner for Health, made a public statement on the entry into force of the Directive on Patients’ Rights in Cross-border Healthcare, stating amongst other things:

Today is an important day for patients across the European Union. As of today, EU law in force enshrines citizens’ right to go to another EU country for treatment and get reimbursed for it. From today, all EU countries should have transposed the Directive on Patients’ Rights in Cross-border Health Care, adopted 30 months ago, into their National law. For patients, this Directive means empowerment: greater choice of healthcare, more information, easier recognition of prescriptions across-borders (…). For patients to benefit from the rights granted by EU law, the law needs to be properly transposed and enforced. The Commission has provided a great

---

1 The information is as of 1 December 2013.
deal of support to Member States during the transposition period. Now I urge all Member States to deliver on their obligations and fully transpose this Directive.

The last sentence in Borg’s statement seems to suggest that not all Member States had already transposed the Directive on 25 October 2013. The contributions to this special issue of the European Journal of Health Law confirm this suggestion. Of course, this does not come completely as a surprise. Although legally binding as to its contents, the very fact that transposition into national law is required creates an opportunity for different rules, even if this is not always intentional. Moreover, the Directive on Cross-border Care itself is not free from ambiguity as to the concepts used and the rules it contains. The contributions in this issue contain interesting evidence. It is not my intention to make a summary here. Rather, I would like to draw your attention to several topics regulated in the Directive about which divergent opinions exist in the legal literature and in the Member States and that could in future lead to new jurisprudence of the ECJ. In this regard I refer to the legal status of patient’s rights in Europe, the notion of ‘cross-border healthcare’ and long-term (health) care, the range of the right to information in the frame of national contact points and the way these contact points function, the information that has to be offered by healthcare providers and the choice between healthcare providers.

1 The Status of Patients’ Rights in Europe

1.1 The European Charter on Patients’ Rights

Thirty years ago, on 19 January 1984, the European Parliament approved a Resolution on a European Charter on the Rights of the Patient. In this Resolution, the European Parliament invited the Commission ‘to submit as soon as possible a proposal for a European Charter on the Rights of Patients’. It took more than 20 years to give effect to this resolution. In 2002 the Active

---
