Book Reviews

T.K. Hervey, C.A. Young and L.E. Bishop (eds.)

1 An Overview

The question on the scope of the EU’s competence and authority in the area of health is a relatively standard one in the field, albeit by no means easy to answer. The editors of this book — Hervey, Young and Bishop — invited 32 scholars of various academic generations, disciplines and geographic locations engaged in the area of European health law and policy (law, political science, policy studies and sociology) to contribute to the handbook and examine the EU’s constitutional structure, institutional architecture as well as a large number of substantive issues with the intention of providing an understanding of the EU’s involvement in the area of public health law and policy and foreseeable further developments.

The editors of this book have organized the contributions into five distinct parts that embrace 18 subjects of EU health law and policy. The first part guides the reader through the “History, scope, institutions” of the EU; the second part focuses on “People and products”; the third part addresses the “Systems”; the fourth is devoted to questions relating to “Public health”; and part five examines “The external dimension” of EU health law and policy. The editors have decided to give readers some rest from the extensively discussed question of cross-border care as they have deliberately chosen not to include a chapter on it in the handbook (p. 3). Nonetheless, in the same way as the development of EU health law has occurred by the backdoor through the principle of conferral, so too have considerations on cross-border healthcare regulatory issues found their way into different parts of the handbook, thus giving intellectual refreshment to those thirsting after discussions on patient mobility, for example.
Insights provided in “History, scope, institutions” demonstrate that EU health law and policy was not built in a day. In “The history and scope of EU health law and policy”, Guy and Sauter guide the reader through three distinct periods in the history of the expansion of EU power in the field of health: Rome-Maastricht, Maastricht-Lisbon, and post-Lisbon. In so doing, the authors identify milestones that simultaneously set the scene for further chapters in the handbook. In furthering and shaping the EU, a particular role can be assigned to fundamental rights. Young, in his contribution on “Fundamental rights and EU health law and policy”, and conducts a fundamental rights impact assessment on health law and policy. Although fundamental rights have a critical role in shaping EU law in numerous health-related areas, the author concludes that they suffer from a “frustrated potential” (p. 108). There is room for further deployment of fundamental rights, as well as some political will, yet, they might not necessarily be considered when the EU’s health policy aims are being defined. This shortcoming is, perhaps, something that links back to the EU’s DNA and constitutional structure, and this is reflected upon by de Ruijter in the concluding chapter of the handbook.

It is evident that achieving the current state-of-art of EU health law and policy has not been an easy task. Not least because, as observed by Sindbjerg Martinsen in her contribution “Governing EU health law and policy — on governance and legislative politics”, the idea of a European health community was not on the agenda for the EEC’s founding fathers (p. 36). As demonstrated by Rieder in her contribution “Courts and EU health law and policies”, the CJEU, by assuming the role of a caveman and interacting with the national courts, Member States and other actors, such as the ECtHR, has had significant influence in the area. Today, this initially un-implanted area of law has obtained a secure place for itself in the EU framework; it is subjected to a substantial governance structure (p.44), and is filled with “a considerable mix of actors and institutions, with different positions and interests” (p. 55). This area is subjected to heavy legislative machinery that produces outcomes that condition the subsequent outcomes (approached as limits of application) of a regulatory framework. The functioning of heavy machinery is exemplified through insights behind the lawmaker’s veil for the Patients’ Rights Directive. The political scientist’s viewpoint of the legislative instrument labelled a “solution without a problem” (p. 3) offers insights into how the scope and limits of EU regulatory tools are set and how it affects their further interpretation and application.

“People and products” is not solely about healthcare professionals, patients and various goods that find their place in healthcare personnel-patient in-