



Free movement of patients

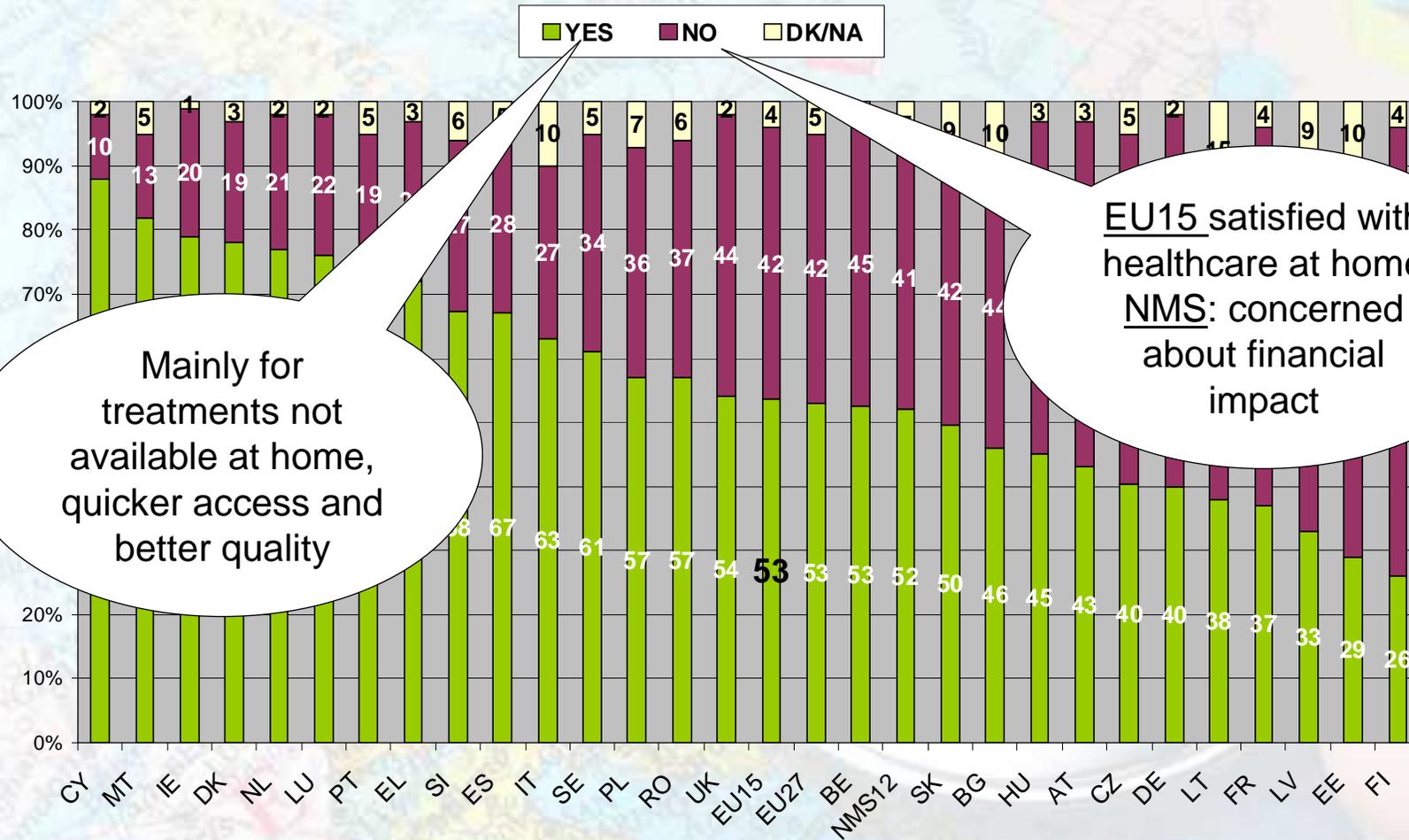
Health Systems Governance in Europe: the Role of EU Law and Policy

Brussels, 11 December 2008

Willy Palm

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Would you be willing to travel to another EU country to receive medical treatment?



Mainly for treatments not available at home, quicker access and better quality

EU15 satisfied with healthcare at home
NMS: concerned about financial impact

Source: Eurobarometer 2007

People's readiness to travel for care

- **Push factors**

- Availability of treatment
- Timeliness (waiting lists)
- Quality and safety
- Provider's reputation
- Affordability
- Responsiveness
- Information
- Increased mobility

- **Pull factors**

- No need felt
- Language and cultural barriers
- Financial cost
- Administrative complexity
- Legal uncertainty
- Lack of information
- Lack of trust

Main focus for cross-border care

- Smaller countries / Border regions
- High mobility areas (tourist zones) / Pensioners
- Rare diseases and high-tech services (reference centers and networks)
- Long waiting times
- Treatments with high user charges (e.g. dental care)
- Well-informed and mobile citizens
- Ethically controversial treatments
- telemedicine

What else do we (already) know...?

- Cost of cross-border care is marginal but on the rise
- Detailed and consistent data are lacking
- Patient mobility routes
 - Traditional (social security) coordination route
 - Treaty-based route (based on the ECJ jurisprudence)
 - Contractual route
 - Private patient route
- Need to re-establish coherence and clarity in the entitlements to cross-border care
- Court rulings have indeed had an effect on Member States (tackling domestic problems)
- Debate has changed: not only reimbursement, also broader conditions

Milestones in the 10 years debate on free movement of health services

1998 **First rulings Kohll & Decker**

2001 Smits-Peerbooms rulings

2002 Revision of the sickness benefits chapter of Reg. 1408/71 on social security coordination

2003 Müller-Fauré/van Riet ruling
Report on the application of internal market rules to health services

High level reflection process on patient mobility and healthcare developments in the EU

2004 Commission proposal on services in the internal market
Creation of the high level group on health services and medical care
Adoption of Reg. 883/04 on social security coordination

Introduction of the European Health Insurance Card

2005 EP Report on patient mobility

2006 Commission draft Regulation implementing Reg. 883/04

Exclusion of health services from the Services Directive

Watts ruling

Council Statement on common values and principles in EU health systems

2007 EP report on the impact of the exclusion of health services from the Services Directive

Consultation process on Community action on health services

2008 **Adoption of the new proposal by the College of Commissioners**

The proposal on the application of patients' rights in cross-border healthcare

Consultation

1) A framework for the reimbursement of cross-border care (Chapter III)

2) A framework for the ensuring the common principles (Chapter II)

3) A framework for cooperation between Member States (Chapter IV)

Need for more legal clarity on entitlements to care in another Member State

Guarantees for high-quality, safe and efficient health care

Improve information about rules and procedures, availability and quality

Foster cross-border cooperation

- Respect common values and principles underpinning health systems

1. Use of healthcare in another Member State

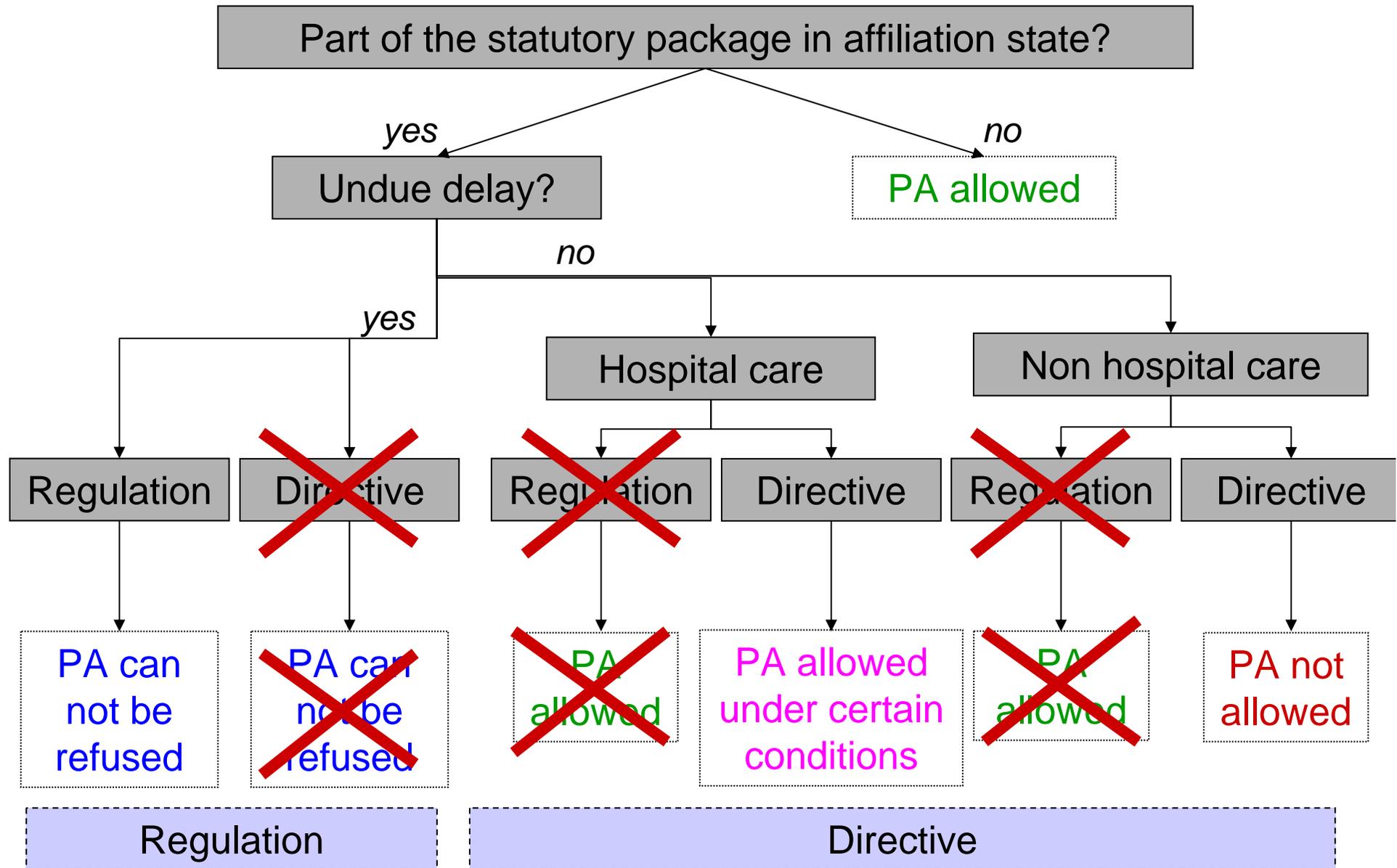
- Remaining scope for prior authorisation
 - Hospital – non-hospital
 - Burden of proof
 - Legal status of « conditions and formalities »?
 - « same or similar »
 - What protection for receiving countries?
- Alignment between Directive and Regulation
 - Priority rule (Regulation goes first!)
 - Advantages and disadvantages of the Regulation
 - Increase clarity by mutually exclusive procedures?

Free movement of citizens	Free movement of services
<ul style="list-style-type: none"> • Art. 42 ECT - Regulation 1408/71 (883/04) 	<ul style="list-style-type: none"> • Art. 95 ECT - Draft Directive
<ul style="list-style-type: none"> • Reimbursement as if care was delivered to <u>an insured person of the MoT*</u> <ul style="list-style-type: none"> – Additional compensation payment if reimbursement level in MoA** is higher (Vanbraekel, Watts) – Formalities and conditions of MoT* apply 	<ul style="list-style-type: none"> • Reimbursement as if care was delivered to <u>an insured person of the MoA**</u> <ul style="list-style-type: none"> – Can not be higher than real payment – Obligation to develop a calculation mechanism – Formalities and conditions of MoA** apply for as long as they are necessary, proportional and non discriminatory
<ul style="list-style-type: none"> • Statutory coverage of cross-border treatment by MoA** subject to conditions <ul style="list-style-type: none"> – Care becoming medically necessary during a temporary stay in MoT* – Care which is part of the statutory benefit package in MoA** but cannot be delivered there within medically justifiable time-limits (undue delay) 	<ul style="list-style-type: none"> • Statutory coverage of cross-border treatment by MoA** NOT subject to conditions <ul style="list-style-type: none"> – Except for « hospital care »: prior authorisation by MoA** allowed under certain conditions
<ul style="list-style-type: none"> • Functions as a minimum safety net with best tariff guarantee! (Cf. Vanbraekel) • MoA** allowed to widen conditions to other situations 	<p>* MoT = Member State of treatment ** MoA = Member State of affiliation</p>

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Remaining scope of prior authorisation (PA)



2. Responsibilities of the Member State of treatment

- Subsidiarity?
 - Common Statement on values and principles = mandate for regulatory action?
 - Difficulty: variety of approaches and progress levels
- Continuity of care and data protection
- From information deficit to information abundance?

Who's responsible for what?	Member State of affiliation	Member State of treatment
Quality and safety: define standards, mechanisms for implementation, monitoring and sanctioning, information by providers, complaints and compensation for harm, professional liability, data protection, equal treatment (Art. 5)		✓
Reimbursement (Art. 6)	✓	
Access to medical records (Art. 6.5)		✓
Prior authorisation and reimbursement procedures: information , time limits, criteria, review and appeal (Art. 8.5 and 9)	✓	
Prior information concerning the use of healthcare in another Member State: entitlements, procedures, appeal and redress, harm (Art. 10)	✓	
National contact points: information on rights, guarantees of quality and safety, data protection, complaints and redress; support patients, etc. (Art. 12)	✓	

3. Cooperation on health care

- Largely depends on « willingness » of Member States
- Limitative list?
- What about border regions?!
- What about cross-border contracting?
- Comitology (Art. 19)
 - High Level Group?

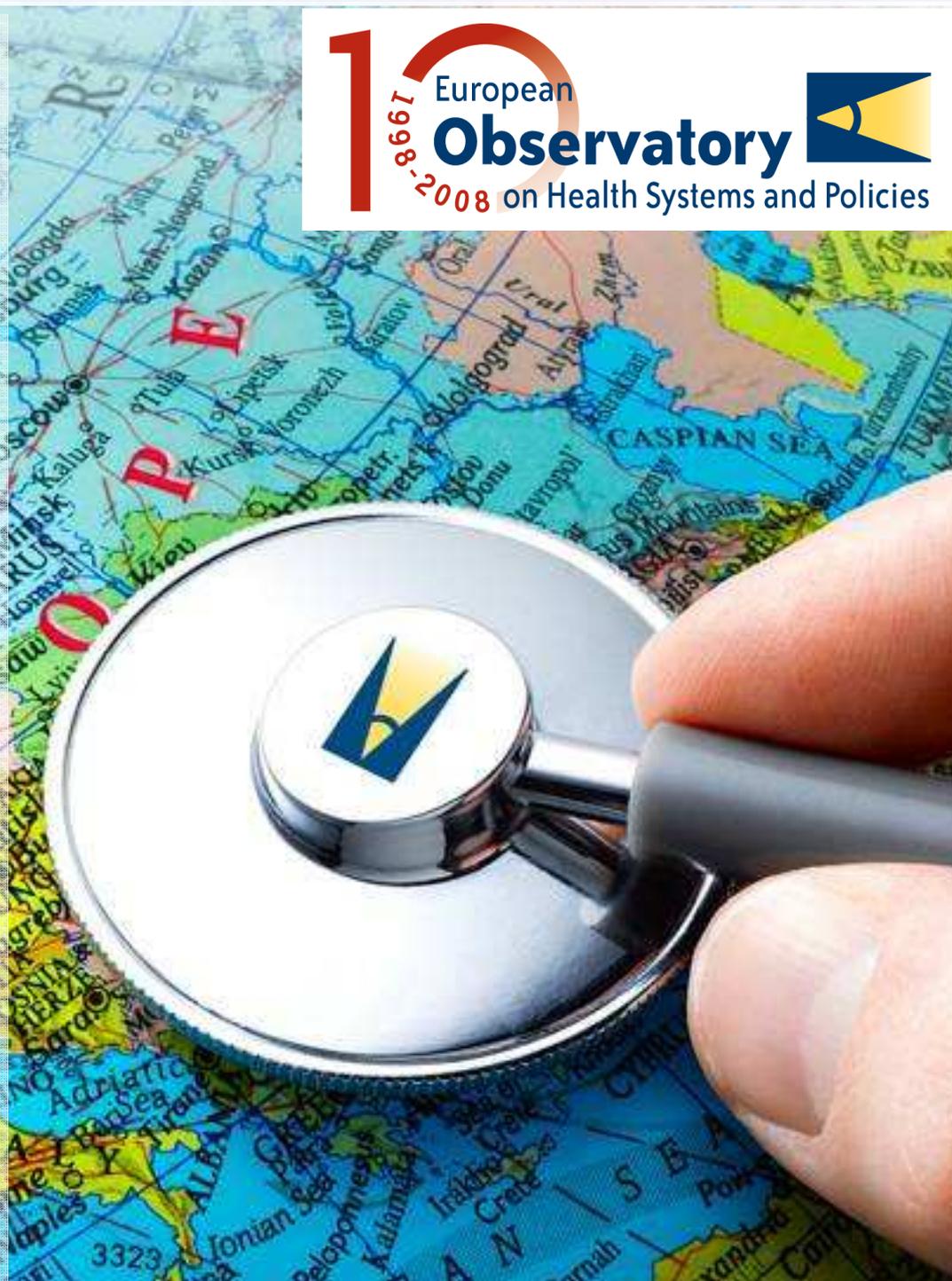
Concluding remarks

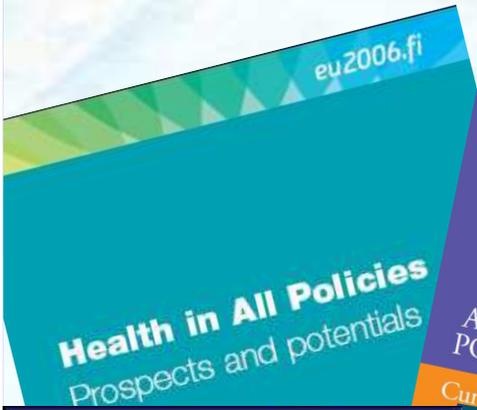
- The proposed draft Directive is a step forward on the road to clarity
- Long and fierce debate in EP and Council likely
- Reinstatement of the social security coordination Regulation
- Choice of care / choice of procedure?
- Regulation alone can not provide the required clarity and confidence

Thank you
for
your attention

Analysing Health

Systems and Policies





<http://www.euro.who.int/observatory>