

Distribution of Competences For The Organisation of Health Care

Article 152 EC



- A high level of human health protection is an **horizontal objective** that must be ensured in the definition and implementation of all Community policies and activities (Article 152 (1) first sentence)
- Community action shall **complement** national policies (Art. 152(1), second sentence):
 - encourage **cooperation** between the Member States
 - and, if necessary, lend **support** to their action (Article 152 (2))

- Article 152 (4) and (5) impose two important limits on the activities and policies that the Community can adopt in the field of public health.
 - Any form of harmonisation is excluded to protect and enhance human health (Article 152 (4))
 - The Community action in the field of public health has to **fully respect** the responsibilities of the Member States for the organisation and delivery of health services and medical care (Article 152 (5))

- But article 152 (5) is not intended to recognise a **general exception** to obligations under the Treaty based on the responsibilities of the Member States in the health care sector.
- The responsibilities of the Member States for the organisation and delivery of health services are '**sovereign**' **responsibilities** that have to be exercised with full respect of the provisions of the Treaty

- A comparison may be made with the case law of the Court of Justice in the field of the organisation and the financing of the social security
- In this respect, it is established that
 - Community law does not detract from the power of the Member States to organise their social security systems
 - Given the lack of harmonisation at Community level, it is up to the legislation of individual Member States to lay down the conditions governing the grant of social security benefits

- Yet, when exercising this competence, Member States are required to comply with Community law
- Member States have to respect, *inter alia*, the free circulation of goods and services as well as the competition rules.
- The achievement of the fundamental freedoms guaranteed by the Treaty may oblige Member States to make some adjustments to their national social security system
- It does not follow that this would undermine their sovereign powers in this field”

These principles can be applied in the health care sector

- The European Court of Justice has made clear that Treaty provisions on free movement apply to health services, regardless of how they are organised or financed at national level.
- The special nature of these services does not remove them from the ambit of the fundamental principle of the freedom of movement
- This fundamental principle may oblige Member States to adopt adjustments to the organisation of health care.

Why a specific approach for the health care sector?

- Access to health care is a fundamental right. Article 35 of the Charter of Fundamental Rights of the EU states that “Everyone has the right of access to preventative healthcare and the right to benefit from medical treatment under the conditions established by national law and practices”
- Health services constitute a major component of the European social model and contribute to social and territorial cohesion in Europe

- Even if each Member State has the right to choose how its health care system is organised, all the national systems are based on the solidarity principle, and are characterized by a high degree of public coverage, directly financed through taxes and/or social contributions
- Health services are to be accessible for everybody and reasonably priced
- It is necessary to ensure high levels of quality for health services

Conclusion

- Application of rules on internal market and competition have to respect the right for the Member states to ensure the availability of high-quality health care that is accessible to the population ,
- without endangering the financial balance of their national social security system