

The History and Scope of EU Health Law and Policy

Authors

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KEYWORDS:

Healthcare; public health; subsidiarity; European integration; governance

BACKGROUND

- EU Health Law and Policy has developed in parallel to the evolution of the European Union. Following an implied EU-level competence in healthcare created by general EU Treaty provisions from the 1980s onwards, a specific public health provision was developed after the Maastricht Treaty of the early 1990s - now Article 168 'Treaty on the Functioning of the European Union' (TFEU). Article 168 TFEU is important not only for its specific reference to public health, but also for raising issues about the potential scope for harmonising healthcare policies at EU level and enshrining the ability of Member States to determine their own systems for healthcare provision. These matters are particularly relevant as the general development of EU health law and policy is inextricably linked to more "economic" aspects of EU law, such as the development of the Internal Market and governance instruments such as the European Semester.
- We approach the history and scope of EU health law and policy from the perspective of three research questions:
 - Is the competence of the EU in the area of health law and policy expanding, and if so, in which directions?
 - Are there clear and fixed limits to the scope of the EU's competence?
 - Is the development of healthcare law and policy a special case and to what extent do general trends in EU integration play a role in this area?

METHODOLOGY

- In addition to using doctrinal sources (case law, Treaty provisions), we also draw on recent literature on EU health law and policy (inter alia; Hervey and McHale, 2015; Greer et al., 2014; and Mossialos et al., 2010) to discuss developments in this area and to consider possible future directions.

KEY FINDINGS

- Formal EU competence remains largely the same through time vis-à-vis healthcare, and may even be restricted primarily by Article 168 TFEU and related case law, although harmonization legislation relating to healthcare is not ruled out.
- However, EU involvement in healthcare appears to be expanding in all directions, with recent examples including patients' rights to the reimbursement of healthcare costs incurred in other Member States and the financial sustainability of healthcare funding in the context of the European Semester annual review process.
- We believe healthcare to be a special case in terms of the strenuous efforts that Member States have made to retain control over their national healthcare systems. However, general trends towards EU integration have had an impact.

¹ The opinions represented in this paper are personal.

POLICY ISSUES

- Overall, the effect of developments in EU health law and policy is for EU policies to have an increasing impact on healthcare even in the absence of a dedicated EU policy on health for the foreseeable future.

SUGGESTED CITATION

Guy, Mary, Sauter, Wolf, The History and Scope of EU Health Law and Policy. CCP Working Paper No.16-2. Available at <http://competitionpolicy.ac.uk/publications/working-papers>

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