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"Enabling Good Health for All"
Commissioner Byrne's Reflection Process:
Response of BEUC the European Consumers Organisation
October 15th 2004

We welcome the opportunity afforded by the Discussion Paper to comment on the future development of Health Policy in the EU[1].

A COHERENT POLICY

First and foremost, health policy in the EU needs a clear and coherent strategy. This is more than an obvious comment; it is enormously difficult to achieve coherence here because of the different forces and factors that, often independently of each other, influence health policy.

The divided competence between the EU and member states in itself makes it difficult to develop a coherent policy – with nobody responsible for the "whole picture". While there could be some changes on the margin, this divided competence will remain the dominant feature for the foreseeable future. Policy development must live with that fact.

[1] (By the term "Health Policy in the EU" we mean the totality of health and health related policies that affect consumers/citizens, whether determined at national or EU level or both).

At EU level the following factors impact on health policy and on health service delivery at national level.

- The **Treaty** provisions on Public Health.

- The **Internal Market**, which is the basis for, among others, the pharmaceutical directives, food labelling schemes, the proposed directives on health claims and food fortification and on Services in the Internal Market. Health policy considerations are certainly taken into account in these directives but their legal and logical base remains (unfortunately, at times) the principle of free movement.

- The **jurisprudence** of the European Court, notably in relation to free movement of people and services – which can come as a surprise, welcome or otherwise, to health policy makers and which can complicate the process of policy making. (It can too have good effects in forcing national policy makers to focus on the EU dimension of heath policy.)

- **Trade Policy**. On a global level we have seen the huge impact of the **TRIPS** agreement on national health policies - and the manner in which that agreement has been cynically exploited by representatives of the pharmaceutical, particularly but not exclusively in the US. Health policy in the EU may also be deeply affected by the ongoing discussion on **GATS** and by the building of closer economic ties with the US. Both of these factors can limit policy choices directly and, more often, indirectly in the health sector Specifically on this latter point, closer economic integration with the US should not limit our current freedoms in relation to, say, the pricing of pharmaceuticals. (In Australia, there is considerable argument as to how and whether pharmaceutical pricing mechanisms and measures to restrict pharmaceutical consumption may be affected by the Australia/US free trade agreement.)

- **Interest Groups**
  In the health sector, in particular, there are enormous economic interests whose viability and profitability depends substantially on public policy decisions (and not only on the market). These interests have a powerful influence on health policy and are continually seeking opportunities for more.

Given this mix of different competences and centres of decision-making, together with the impact of external factors such as free movement, trade policy and powerful economic interests, the great danger is of a policy, strategy or power vacuum at the centre of health policy making. Any such vacuum will be exploited by those best able to do so.

We call therefore on the Commission to get together with the member states and stakeholders to develop an overall strategy for a Health Policy in the EU, taking into account the current division of competences and the many external factors that impact on health policy. Consumers should then be given a clear statement of what they can expect from health policy in the EU or at national level or both.

PROMOTING HEALTH

We warmly welcome the broad approach that the reflection process takes to health policy and the recognition that expenditure on health should be viewed in terms of an investment, rather than a cost barrier to economic development. We also welcome the emphasis on promoting good health rather than curing bad health (which is of course also essential). However many things need dong to achieve these goals.

INFORMATION AND PATIENT POWER

Consumers/citizens/patients need access to much more information about health issues in order more effectively to promote good health and cure bad health. To quote the reflection paper, consumers "should have no trouble finding clear and reliable information" (which should of course also be relevant). Such information will not come from commercial communications; we need to build reliable sources of information which may involve a consortia of different stakeholders but which would be non-profit making and which would focus exclusively on health in its totality. Consumers also need a quality mark or other way of separating good from bad sources of health information on the internet or elsewhere.

Also needed are clear statements on what they may reasonably expect in terms of information, access to care and carers, quality of care, access to records, redress, re-imbursement, patient mobility etc. This is something that is good in itself; it would also help towards the goal of achieving a higher degree of equality of access to health care across the EU. We need a comprehensive Patients Charter: assuming that this cannot be achieved by purely legal measures, the Commission and Member States should use the Open Method of Co-ordination. A Patients Charter would help to raise standards, and serve as a guide to consumers of health services.

Take the case of patient mobility. The right to travel to another member state for treatment has been highlighted in jurisprudence but consumers need more than a court judgement to avail of this right. They need information on the scope and limit of that right, on price and re-imbursement, and on such issues as quality of care cross- border, who is responsible for after-care, who is liable if problems arise, complaint and redress schemes etc

(We acknowledge that many efforts have been made to set out the rights of patients, including mobility rights, but much more needs to be done, and endorsed by all member states.)

FOOD AND NUTRITION

The discussion paper rightly highlights the urgent need to combat the frightening epidemic of obesity in Europe and the need to promote good nutritional choices. This is a multi-factored problem, involving the entire environment in which people make choices about diet and health issues. The EU need, inter alia, to look at those factors that help and those that hinder consumers in making good choices and in encouraging their children to do the same. In our view there are certain elements in food advertising and promotion that taken together make it substantially more difficult for consumers to make good choices and to encourage their children to do the same. Part of the problem is the sheer volume and ubiquity of commercial communications promoting certain foods. Another problem is that the foods that are most promoted, especially to children, are foods that should not be eaten frequently.

The importance of a diet that is balanced in food and food ingredients needs to be stressed constantly. It is not enough to try to limit calorie intake; if we do not limit the intake of specific ingredients or nutrients it will be almost impossible to achieve a balanced diet even in terms of calories.

We strongly support the commission’s proposals to require a scientific basis for health and nutrition claims, and to ban the use of health claims to promote food and food ingredients (nutritional profiles) that are high in sugar, salt or fat. Unfortunately, the proposal on food fortification does not go so far; it should.

We look forward also to the coming proposal on nutritional claims.

Services in the Internal Market

The proposed directive on Services in the Internal Market has attracted much controversy in terms of its potential impact on health services. Formally the proposal may continue to allow member states to determine the shape, structures and policy of their own health service systems but this may not be enough. In most member states, health services are delivered by a complex and often ad hoc mixture of public, private, professional, commercial, non-profit, lay, religious bodies etc. The application of the principle of free movement for service providers to this complex situation may have unforeseen and unintended effects that may be very different from one member state to another. There are also inherent logical difficulties and potential problems in applying the principle of free movement to services where member states have exclusive competence in terms of policy and delivery. At the very least, the application of free movement principles by the EU may create problems that the EU has not the competence to resolve. (In other areas the EU has the competence to impose minimum standards in harmonisation measures or in other measures applying the principle of free movement).

These and other problems have led to calls for the exclusion of health services form the scope of the services directive. It is not clear that this would make those problems go away. The treaty provisions on free movement would remain, as would the jurisprudence of the court. Other factors such as trade policy would continue to have an impact. Competence would continue to be divided between member states and the EU. It could be also that more freedom of services could alter, in favour of the consumer, the present imbalance of power between providers and consumers of health services.

The issues raised by the services directive underline the first point made in this paper – the need for a clear overall and comprehensive strategy for health services in the EU. We need a policy driven by positive policy decisions, a policy that gives proper weight to, but is not at the mercy of, the single market, the jurisprudence of the court, trade agreements or any other external factors.

OTHER ISSUES

The issues we have chosen to stress in this paper seem to us to go to the core of health policy in the EU. Without going into detail here we would acknowledge that there are many other issues that affect the health of consumers. Among these issues we would include tobacco, road safety, alcohol abuse, and the need to assess the safety or otherwise of the tens of thousands of chemicals to which we are all exposed and that have never been properly assessed.