



Healthcare Regulation in the European Union - final report

EU regulation is becoming increasingly important, even in the area of health care which was previously regarded as the sole responsibility of the member states. For more than a decade, case-law interpretations by the Court of Justice of the European Union (CJEU) has gradually questioned the national demarcations and organizational boundaries within the member states and judicial activism has brought the healthcare sector far into the organizing principles of the internal market. In response, healthcare only slowly moved on the political EU agenda. Directive 2011/24/EU on the application of patients' rights in cross-border healthcare constitutes one of the few instances of hard EU law that directly concerns healthcare. EU healthcare policy now also includes initiatives to foster the quality and safety of healthcare goods and services. As happened previously in other welfare policy areas, the EU now intervenes at the core of Member states' healthcare policies, the delivery of services to patients.

The project has examined the policy-making process establishing the EU patients' rights directive and its subsequent transposition in selected member states. The project combined a focus on the inter-institutional and political dynamics of EU policy-making with comparative research on national implementation processes. Furthermore, the policy-making study compared the institutional and political dynamics of negotiating the patients' rights directive with the policy processes of the EU posting of workers regulation and the working time directive, thus investigating more current dynamics of social Europe.

The project aimed to contribute to our empirical and theoretical knowledge on the complex interplay between judicial and political policy-making and the impact of national institutions in subsequent processes of Europeanisation.

The project has been divided into two main parts:

Part 1 examined the policy-making process behind the now adopted Directive on Patients' rights in cross-border healthcare 2011/24/EU, which grants patients' rights to be treated in another member state, albeit under certain conditions. It examined the inter-institutional and political dynamics in the policy-process unfolding between the European Commission, the European Parliament and the Council of Ministers. Particular analytical attention was paid to the role played by the European Court of Justice, when negotiating 'in the shadow of the law'. The process unfolding around negotiating the patients' rights directive was compared to EU integration of social policies in a historical perspective as well as two other major policy-making processes, taking place in a post-Lisbon constitutional setting; 1) the EU posting of workers regulation, rejecting the European Commission's Monti II proposal COM (2012) 130 but adopting the enforcement directive on the posting of workers, proposed as COM (2012) 131 and 2) the revision of the working time directive, proposed as COM (2004) 607.

Part 2 examined the subsequent transposition processes of the patients' rights directive in eight selected member states; Denmark, the Netherlands, Belgium, Spain, Austria, Poland, the Czech Republic and Bulgaria. The implementation studies include the PhD project of Nikolay Vasev, examining transposition and implementation in Austria and Bulgaria.

In terms of methods and data the project triangulated different sources. Large datasets of EUR-lex and the CJEU's curia data were compiled. Official and unofficial documents were gathered and more than 150 research interviews with key respondents have been conducted.

The research project has resulted in various publications and outputs:

Higher doctorate (doktor-afhandling):

Dorte Sindbjerg Martinsen "An Ever More Powerful Court? The Political Constraints of Legal Integration in the European Union". Successfully defended at the Department of Political Science, University of Copenhagen 13. November 2015. Assessment Committee: Ben Rosamond, University of Copenhagen (chair), Mark Pollack, University of Pennsylvania, Susanne K. Schmidt, University of Bremen

PhD-Thesis:

Nikolay Vasav (2016) "Patient mobility amidst political paralysis: Europeanization of national healthcare systems or the lack thereof". Successfully defended 23. June 2016

Peer-reviewed articles:

Dorte Sindbjerg Martinsen and Juan Antonio Mayoral Diaz-Asensio (2016) "A Judicialisation of Healthcare Policies in Denmark and Spain? The Universalist Healthcare Model Meets the European Union". In Comparative European Politics. E-pub ahead of print.

Nikolay Vasev, Karsten Vrangbæk and Filip Křepelka (2016) "The end of eastern territoriality? CJEU compliance in the new member states". In Comparative European Politics. E-pub ahead of print.

Hans Vollaard and Dorte Sindbjerg Martinsen (2016) "The Rise of a European Healthcare Union. An Introduction". Special Issue in Comparative European Politics. E-pub ahead of print.

Hans Vollaard, Hester van de Bovenkamp and Dorte Sindbjerg Martinsen (2016) "The making of a European healthcare union: a federalist perspective". Journal of European Public Policy. 23 (2), pp. 157-176.

Dorte Sindbjerg Martinsen (2015) "Judicial Influence on Policy Outputs? The Political Constraints of Legal Integration in the European Union". *Comparative Political Studies*. 48 (12), pp. 1612-1660.

Dorte Sindbjerg Martinsen and Juan Antonio Mayoral Diaz-Asensio (2015) "A Judicialisation of Healthcare Policies in Denmark and Spain? The Universalist Healthcare Model Meets the European Union". *ICourts Working Paper Series*, no. 30.

Dorte Sindbjerg Martinsen and Nikolay Vasev (2015) "A Difficult Encounter – National Health Care Models and the EU". *Social Policy & Administration*, 49 (4), pp. 427-444

Dorte Sindbjerg Martinsen and Hans Vollaard (2014) Guest editors of special issue. "Implementing Social Europe in Times of Crisis; Re-established Boundaries of Welfare?" *West European Politics*. 37:4.

Nikolay Vasev and Karsten Vrangbæk (2014) "Transposition and National Level resources - Introducing the Cross Border Healthcare Directive in Eastern Europe". *West European Politics*. 37:4.

Hans Vollaard and Dorte Sindbjerg Martinsen (2014) "Bounded Rationality in Transposition Processes: The Case of the Patient Rights Directive". *West European Politics*. 37:4.

Dorte Sindbjerg Martinsen and Ayca Uygur Wessel (2014) "On the Path to Differentiation. Upward Transfer, Logic of Variation and Sub optimality in EU Social Policy". *Journal of European Public Policy* 21:9.

Dorte Sindbjerg Martinsen (2013) "Danmarks Implementering af EU Politik" in *Tidsskriftet Politica* 45 (4), pp. 437-456.

Hans Vollaard, Hester van de Bovenkamp and Karsten Vrangbæk (2013) "The emerging EU quality of care policy: from sharing information to enforcement" in *Health Policy*, Vol. 111, issue 3, pp. 226-233.

Dorte Sindbjerg Martinsen (2012) "Sundhed i den Europæiske Union" in *Tidsskriftet Socialpolitik*, Vol. 1. Udgivet af Socialpolitisk Forening, pp. 10-15. For electronic version in Danish, see: <http://socialpolitisk-forening.dk/social-politik/tidligere-temaer/>

Books:

Dorte Sindbjerg Martinsen (2015) "An Ever More Powerful Court? The Political Constraints of Legal Integration in the European Union". Oxford University Press, 256 pages + data annexes.

Dorte Sindbjerg Martinsen and Hans Vollaard (2015) The WEP special issue published as book; "Implementing Social Europe in Time of Crises. Re-established boundaries of welfare?" (2015). Routledge.

Book chapters:

Nikolay Vasev and Karsten Vrangbæk (2015) "Transposition and National-Level Resources: Introducing the Cross-Border Healthcare Directive in Eastern Europe" in Dorte Sindbjerg Martinsen and Hans Vollaard (eds) "Implementing Social Europe in Time of Crises. Re-established boundaries of welfare?". Routledge, pp. 17-35.

Dorte Sindbjerg Martinsen and Hans Vollaard (2015) "Implementing Social Europe in Times of Crises: Re-established Boundaries of Welfare" (2015) in Dorte Sindbjerg Martinsen and Hans Vollaard (eds) "Implementing Social Europe in Time of Crises. Re-established boundaries of welfare?". Routledge, pp. 17-35

Hans Vollaard and Dorte Sindbjerg Martinsen (2015) "Bounded Rationality in Transposition Processes: The Case of the Patients' Rights Directive" (2015), in Dorte Sindbjerg Martinsen and Hans Vollaard (eds) "Implementing Social Europe in Time of Crises. Re-established boundaries of welfare?". Routledge, pp. 36-56.

Dorte Sindbjerg Martinsen and Nikolay Vasev (2014) book contribution "Cross border healthcare in the European Union; EU governance and national responses in healthcare" in "Studying Public Policy: An International Approach" ed. Michael Hill. pp. 281-295

Dorte Sindbjerg Martinsen (2014) "Public administration, civil servants and implementation" in L. Miles & A. Wivel (ed.), Denmark and the European Union. Routledge, pp. 189-203, see: <http://www.routledge.com/books/details/9780415611343/>

Dorte Sindbjerg Martinsen (2013) "Welfare States and Social Europe" I Neergaard, U. et. al. (eds.) Social Services of General Interests in the EU. The Hague: T.M.C. Asser Press. 53-73, see: <http://www.springer.com/law/international/book/978-90-6704-875-0>

Dorte Sindbjerg Martinsen (2012) "The Europeanization of Healthcare: processes and factors" in Exadaktylos, T. and Radaelli, C. (eds.) Research Design in European Studies: Establishing Causality in Europeanization, Palgrave Macmillan, 141-160, see: <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-5965.2005.00607.x/abstract>.

Dorte Sindbjerg Martinsen (2011) "Social Policy: Problem Solving Gaps, Partial Exits and Court Decision Traps" (2011). With Gerda Falkner. In Gerda Falkner (ed.) The EU's Decision Traps: Comparing Policies, Oxford: Oxford University Press, pp. 128-145