

Representing the NHS in Europe

Three years of achievement



The NHS European Office

The NHS European Office has been established to represent NHS organisations in England to EU decision-makers. It is funded by the strategic health authorities and is part of the NHS Confederation. EU policy and legislation have an increasing impact on the NHS as a provider and commissioner of healthcare, as a business and as a major employer in the EU.

Our work includes:

- monitoring EU developments which have an impact on the NHS
- informing NHS organisations of EU affairs
- promoting the priorities and interests of the NHS to European institutions
- advising NHS organisations on EU funding opportunities.

To find out more about us, and how you can engage in our work to represent the NHS in Europe, visit www.nhsconfed.org/europe or contact elisabetta.zanon@nhsconfed.org

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Foreword



Many people became aware of the influence of Europe on the NHS following the introduction of the European Working Time Directive (EWTD). As the NHS searched for a coordinated and managed response to the EWTD it became clear that the debate in Europe had moved from

whether European Union (EU) rules applied to the NHS to *how* they applied.

For clinicians, managers and health policy analysts this was a new challenge. Both the momentum and reach of the EU has grown rapidly in health and the NHS needs to be alert to these issues and capable of responding coherently and at a strategic level.

This was the context in which the NHS European Office was created, and in its first three years in operation it has shown its worth. EU proposals have been amended, hospitals have been exempted, expertise has been imported and exported and – above all in this current climate – money has been saved.

During this period we have learnt a significant amount about the complexities of seeking to influence in the European corridors of power. This report helpfully includes an in-depth look at the lengthy EU decision-making process and the interactions between the relevant institutions which it requires. The NHS needs to be there every step of the way.

The reputation of the NHS in Brussels has grown significantly in the last three years thanks to the representation of the NHS European Office, which acts as a focal point for the EU institutions to access views, advice and expertise from the NHS.

Now the challenge is for individual NHS organisations to make the most effective use of the NHS European Office to influence legislation and to benefit from EU funding programmes and other initiatives. The NHS is the largest organisation in the EU. The NHS European Office gives us an opportunity to lead and influence, rather than merely follow, EU developments that have a significant impact on the NHS.

Nigel Edwards
Acting Chief Executive, NHS Confederation

Director's statement



This report provides a summary of the first three years of the NHS European Office, which was established at the end of 2007 by the ten strategic health authorities in England, and which forms part of the NHS Confederation.

Given the broad remit of the NHS European office, this report goes beyond healthcare-specific policy developments and covers EU proposals in many different policy areas. A large proportion of UK policy and law originates from EU legislation and therefore it is critical for the NHS to influence proposals before they are transposed into national legislation.

Whether the topic is energy performance, contractual payments, waste management or state subsidies, EU policies and rules permeate through the NHS. Balance this with the full suite of employment and internal market EU legislation and the impact of Brussels on the day-to-day working life of NHS managers and clinicians becomes clear.

NHS leaders need to be made aware of EU affairs so they can be prepared to implement and comply with the rules agreed in Brussels, as well as to make use of the range of opportunities emerging from EU programmes and initiatives.

The programme of reforms suggested in the white paper *Equity and excellence: liberating the NHS* interlinks with EU affairs and not only in terms of the implications of EU rules for the NHS. We can also look to make use of the opportunities available at EU level to learn from and compare with other healthcare systems with a view to improving our own health outcomes.

Building on our successes over the last three years we look forward to continuing to work with you, bringing NHS views and expertise direct to EU decision-makers. Our experience is that an engaged NHS is an influential NHS – shaping policy, leading change, driving research and developing relationships.

Elisabetta Zanon
Director, NHS European Office

About us

The NHS European Office was established to monitor and influence EU developments that impact on the NHS.

EU policy and legislation are having an increasing impact on NHS organisations, not only as providers and commissioners of healthcare, but also as employers and as businesses. EU laws carry legal force in the UK and in recent years the NHS has had to implement and comply with legislation coming from Brussels in areas as diverse as the mobility of health professionals and patients, working time, public procurement, waste management, energy efficiency and many more. The NHS needs to keep abreast of these developments in Europe and seek to influence them as appropriate.

In addition to representing the NHS to EU decision-makers and influencing EU policy in the interest of the NHS, we contribute to NHS service improvement, leadership and innovation through a broad range of services, including:

- providing advice on agreed EU law and assistance in preparing for its implementation
- providing information and guidance on EU funding programmes and other EU initiatives and how they can help to deliver NHS priorities
- organising study visits to learn about the impact of the EU on NHS activity and to discuss EU affairs with EU decision-makers
- facilitating European peer links between groups of healthcare professionals or healthcare providers.

“The NHS European Office provides the essential link between policy-makers and NHS trusts, contributing front-line expertise to EU-level negotiations and translating EU decisions down to local level.”



**Candy Morris, Chief Executive,
NHS South East Coast**

“The unique capabilities of the NHS, as a very large public health provider, mean that its experts are able to offer wide-ranging insights, from a range of perspectives, on European issues. The impact of EU policies on the NHS is increasing all the time. That is why it is indispensable for MEPs and other European institutions to have ready access to NHS experience and knowledge.”



**Malcolm Harbour, MEP for the West
Midlands, Chair of the European
Parliament's Internal Market and
Consumer Protection Committee**

Our main activities

- **Monitoring** EU policy and legislative developments which are important to the NHS
- **Informing** NHS organisations of EU affairs, including EU funding opportunities
- **Influencing** EU proposals in the interest of the NHS
- **Raising the profile** of the NHS and promoting NHS expertise and good practice in Europe

Influencing: the NHS voice in Europe

The NHS European Office's remit covers EU developments across a wide range of areas which have potential implications for the NHS.

When European legislation is implemented into UK law, the window of opportunity in which to debate and, if necessary, amend it has already passed. All that remains is for the NHS to adjust and adapt. This means it is essential that EU institutions are made aware of the potential impact of the policies they propose at an early stage so that they can take account of their practical implications.

It is equally essential that the NHS is not taken by surprise when such policies are debated and implemented at UK level. The NHS needs early warning of EU proposals to enable it to form a thoughtful and informed view and to develop a timely and comprehensive influencing programme.

The office has engaged with many EU proposals in its first three years. Below we provide some case studies, which present our influencing role and the results achieved.

Case study: patient mobility

Issue

Patients have the right under European law to receive medical treatment anywhere in the EU and, subject to certain conditions, have the costs reimbursed by their home country. Following a succession of European Court rulings (including the "Watts case" which directly concerned the NHS) the European Commission put forward proposals to clarify the rules around these existing rights in July 2008.

Implications

It was clear from early discussions that the draft directive could have far-reaching implications for providers, commissioners, regulators and NHS finances if the NHS failed to successfully influence the outcome. In particular, a proportionate balance was needed between patient choice on the one hand and effective public health provision, within limited budgets and reflecting different national and sub-national practices, on the other.

Action

We undertook a major consultation exercise to explore in detail the potential implications for NHS organisations arising from the proposed directive, and worked closely with EU decision-makers to ensure NHS concerns were addressed.

In parallel, we issued guidance to inform NHS commissioners and providers of the current rules on cross-border healthcare and, on an informal basis, responded to individual requests from NHS organisations for guidance on existing rights of patients to receive healthcare in other European countries.

Outcome

We proposed a number of changes to the text, which were agreed in the European Parliament's first reading. These ensured local decision-making processes to determine what treatment a patient could receive were allowed to continue in the future, and reinforced the provisions for prior authorisation systems. We are now in the final stage of the EU decision-making process and the office is continuing to work hard to ensure the changes in the text it negotiated at first reading remain.

"The draft directive could have far-reaching implications for providers, commissioners, regulators and NHS finances."

Case study: commercial transactions

Issue

In 2009, the European Commission put forward proposals to strengthen EU rules aimed at combating late payments in commercial transactions. The proposal was set against the background of the economic crisis and aimed to help companies, especially small and medium-sized enterprises, by tackling a culture of late payments, particularly within the public sector.

Implications

The proposals sought to tackle late payments through provisions limiting payment periods to 30 days unless duly justified in the contract. For public service organisations they introduced a fixed, flat-rate late payment fee of 5 per cent of the amount due. This would have led to a fine of over £6,000 on a £100,000 bill unpaid for 31 days, and could have cost the public sector in the UK over £600 million, and the NHS specifically around £130 million annually in fines.

"The proposals could have cost the NHS around £130 million annually in fines."

Action

We undertook a broad consultation exercise with NHS trusts. While expressing full commitment to prompt payment practices, NHS organisations raised concerns at what they saw as an arbitrary and disproportionate penalty, and an attempt to bring in an uneven playing field between public and private healthcare providers. Working closely with the Department for Business, Innovation and Skills, the lead government department, we pressed EU decision-makers with NHS concerns, including the deletion of the 5 per cent penalty.

Outcome

Following our extensive lobbying, EU decision-makers agreed to abolish the 5 per cent compensatory fee and to ensure a more even playing field in payment practices between public and private hospitals. These changes represent an annual cost saving for the NHS of around £130 million, based on recent payment data.

Case study: clinical trials

Issue

The EU Clinical Trials Directive was implemented in the UK in 2004 with the aim of simplifying and harmonising the administrative requirements for clinical trials across the EU. The European Commission launched a consultation on the workings of the directive in late 2009 with a view to formally reviewing it.

Implications

While the directive has improved the safety and ethical soundness of Europe's clinical trials, it has been accused of making the region a less attractive location to conduct trials. This, in turn, has impeded innovation and reduced the competitiveness of clinical research in the UK, with potential consequences for patients' access to new medicines and treatments. The review is an opportunity to remedy these shortcomings and bring cost and safety benefits to both NHS organisations and patients.

Action

A number of NHS research managers contacted us to express their concerns with the EU rules. We subsequently consulted widely on how to improve the functioning of the directive and submitted a response to the European Commission calling for a more proportionate and streamlined approach to clinical trials.

Outcome

The European Commission has committed to address these shortcomings by proposing legislation to amend the original directive next year.

Case study: industrial emissions

Issue

The European Commission put forward proposals to strengthen existing EU rules on industrial emissions in 2007. The proposal sought to extend the scope of the legislation to cover smaller combustion installations, and had the unintended consequence of impacting on several NHS hospitals.

Implications

Despite the proposal focusing on industrial plants, around 70 NHS hospitals would have become subject to the rules because of the standby capacity needed to operate in the event of a technical failure, and therefore their potential to emit rather than their actual emissions.

Action

We worked closely with the hospitals potentially affected to gauge the implications for them and briefed the Department for Environment, Food and Rural Affairs (Defra), the lead government department, on their views. We also arranged for a leading Defra official to visit the Royal Free Hampstead NHS Trust, one of the trusts affected by the change, to highlight the practical aspects of standby capacity in NHS hospitals.

In Brussels, we informed EU decision-makers of our concerns and proposed a change to the text to recognise the need for significant standby capacity in hospitals.

“Around 70 NHS hospitals would have become subject to the rules.”

Outcome

The European Parliament endorsed both our concerns and the proposed amendment. The subsequent agreement ensures that hospitals are not penalised for their potential for emissions rather than actual emissions. The agreed directive also includes a reference in the legislative text to any future review of the legislation needing to take into account standby capacity in hospitals – another important inclusion.



NHS European Office presenting at NHS Confederation Annual Conference about the impact of EU legislation.

Case study: organ donation and transplantation

Issue

EU legal proposals aimed at ensuring the quality and safety of human organs for transplantation were released in 2008. They provided a framework of minimum standards to apply throughout the EU, covering all stages of the process from donation to transplantation, to be overseen by designated authorities in each member state.

Implications

There was concern that common EU standards could be excessively bureaucratic and might impose requirements beyond those clinically justified. Amendments proposed by the European Parliament also attempted to restrict living donations to close relatives and spouses, potentially decreasing the availability of organs for transplantation at a time when more people than ever are awaiting donors across Europe.

Actions

We worked with the Department of Health throughout the discussions to ensure the NHS was protected from overly restrictive regulations. Prior to the Parliamentary debate and vote, we arranged for a regional Member of the European Parliament (MEP) leading on this issue to visit Imperial College Healthcare NHS Trust to discuss the implications of the directive. The MEP subsequently proposed an amendment promoting in particular the value of living donations.

Outcome

The directive was agreed in July 2010 and EU countries now have some flexibility in how they implement the rules. The UK will be able to utilise its existing systems and organisations, such as NHS Blood and Transplant. The agreement also recognised the proposed amendment on living donations and consequently limited the restrictions on live donors.

"It was great to have the opportunity to share the miracle of life with EU decision-makers by having them in theatres attending a live donor kidney transplant. I believe that this along with the very productive discussions that we had empowered them for the debate and decision-making process for the directive at the European Parliament."

Vassilios Papalois, Consultant Transplant Surgeon, Hammersmith Hospital.

Case study: energy performance of buildings

Issue

The European Commission published legal proposals on the energy performance of buildings in 2008 to help achieve a 20 per cent reduction in energy consumption across Europe by 2020. The proposals placed particular emphasis on the public sector to drive these reductions by ensuring all new public sector buildings would be “nearly zero energy” by 2018, with other new buildings following this example by 2020.

Implications

The proposals sought to extend energy certification and display requirements to smaller public sector buildings, including those not frequently visited by the public, without bringing tangible environmental improvements. On the contrary, they could have diverted resources from more effective energy efficiency initiatives in NHS trusts. This extension would have placed a costly administrative burden on a number of NHS organisations. The associated certificates cost around £2,000 each.

Action

We worked closely with the Department for Communities and Local Government to merge the concerns of the NHS with those of central and local government and thus strengthen the UK influencing approach. In lobbying the European Parliament, we arranged for a regional MEP to visit East of England Ambulance Service NHS Trust to discuss the practical implications of the directive.

“The proposals would have placed a costly administrative burden on a number of NHS organisations.”

Outcome

The proposal was passed into EU law in June 2010. Although energy certification requirements have been extended to smaller buildings, our intense lobbying resulted in an exclusion from the agreement for infrequently visited buildings and a more realistic timetable to comply with the new rules.

Further information

These are just a small sample of the EU issues we have worked on in the past three years. To find out more about our work to influence EU proposals, visit: www.nhsconfed.org/europe



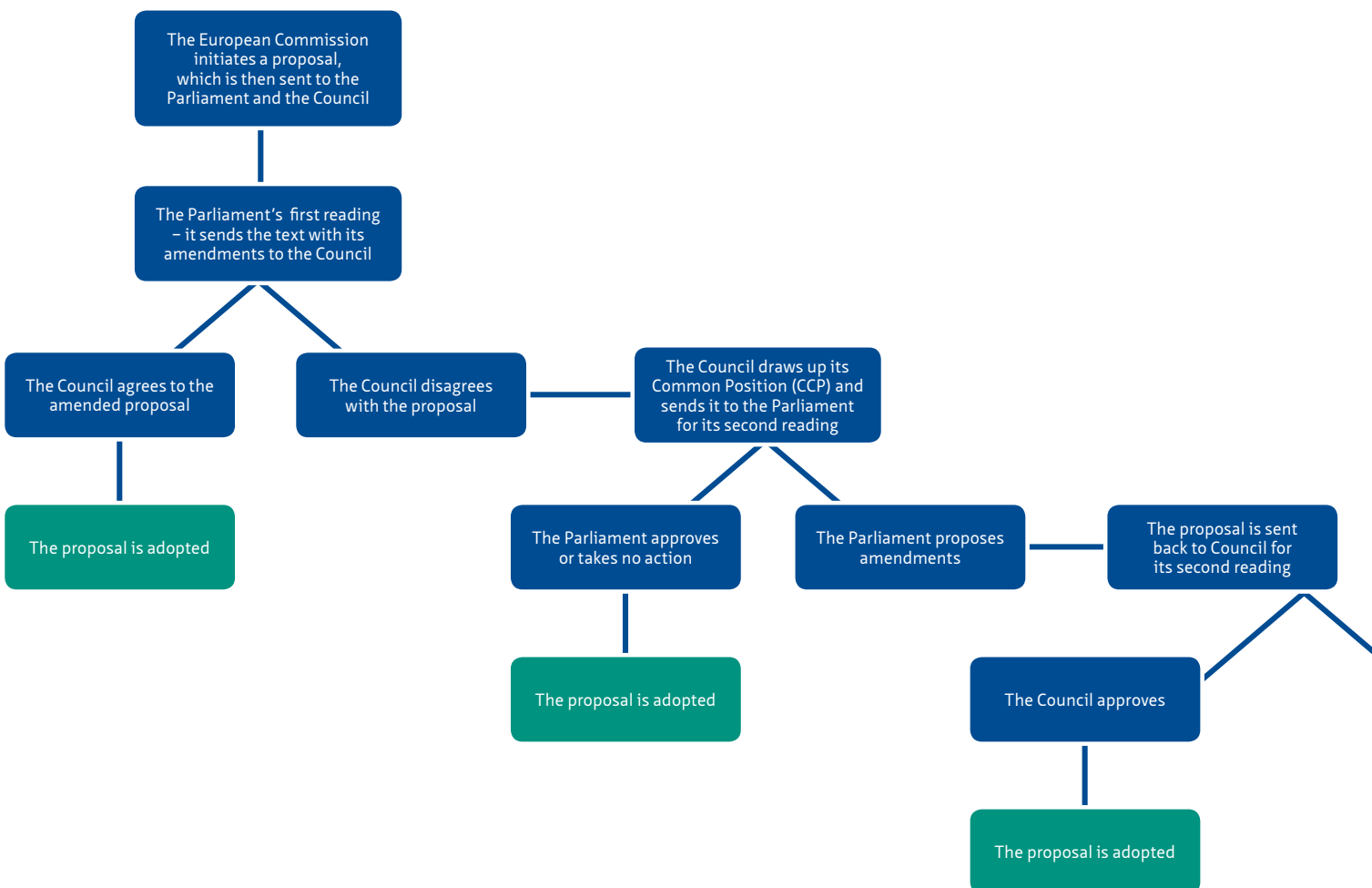
Vicky Ford MEP visiting East of England Ambulance Service NHS Trust's control room in Bedford to discuss EU proposals on the Energy Performance of Buildings.

The EU decision-making process

The EU's legislative process is lengthy and complex and vastly different from the UK's parliamentary route. A large proportion of EU laws are agreed through 'co-decision', meaning the European Parliament and the Council of Ministers (representatives of the 27 EU member states) are co-legislators. The diagram below charts the journey through the typical European legislative process. The NHS European Office engages throughout the different stages of this process to seek to exert influence.

Pre-legislative work

The European Commission often seeks the views of stakeholders on a proposal before it is published. This could be through a formal consultation process or by holding informal discussions with key stakeholders. By influencing at the earliest possible opportunity, we can shape the direction and scope of a new or revised piece of legislation.



The European Parliament is the second most lobbied body in the world. Engaging a Member of the European Parliament with his or her local NHS organisations can be a powerful means of getting across the implications of their decisions on NHS organisations or front-line services.

The legislative process

The office needs to gauge the potential impact of a proposal on the NHS to shape its influencing lines. To understand the implications and the range of services affected, we often consult publicly on an issue, utilising the NHS Confederation's networks and other communication channels to seek NHS views.

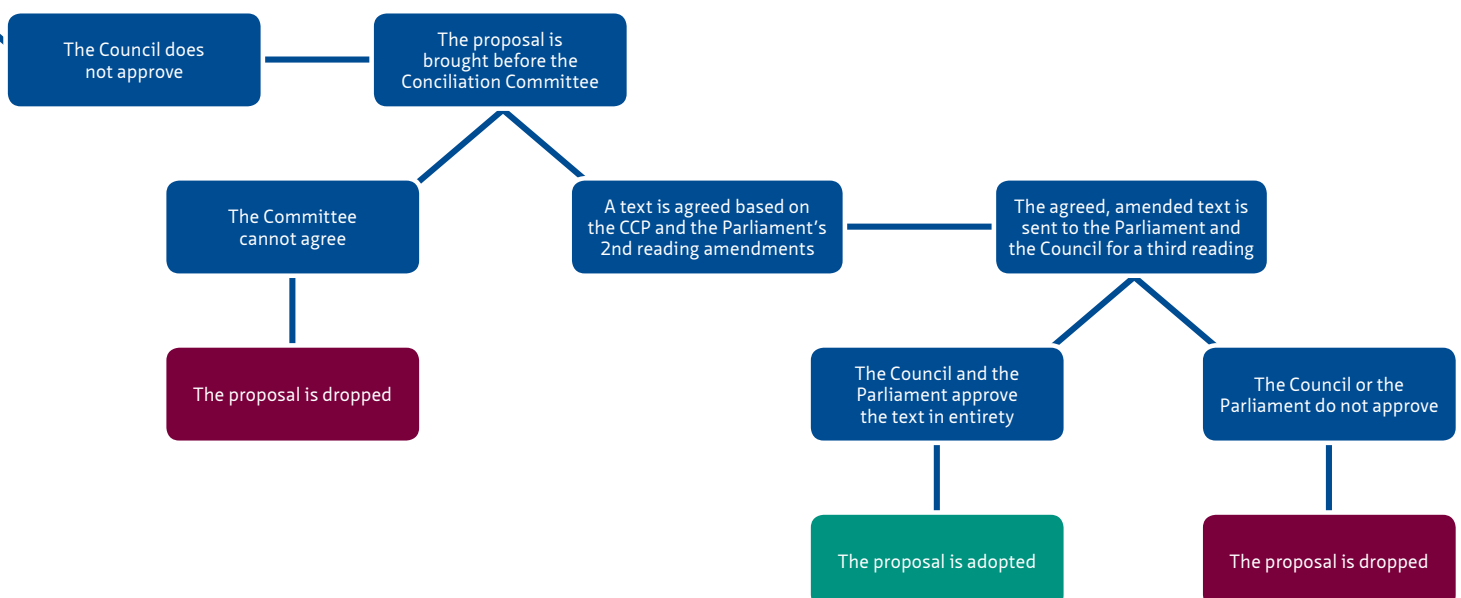
As the proposal passes through the European Parliament, we inform key MEPs of NHS views and concerns. The European Parliament debates and votes on an issue both in the relevant committee and as a full parliament, often many months apart. Agreements and opinions can change as negotiations advance and so it is important to engage at every step of the process.

The relevant government department also discusses the issue in the Council of Ministers, though not necessarily at the same time as the Parliament. We therefore work closely with the relevant government department to ensure the position being pushed by the UK reflects as far as possible NHS views.

If no agreement is reached by the EU institutions on a proposal, we will keep a watching brief as discussions may resume later.

Post-legislative implementation

When a proposal is adopted at EU level, the UK government will have a period of usually two or three years to implement it into UK law. In view of this we will inform and advise NHS organisations of the new rules so that they are prepared for the impending changes.



Involving: the NHS-EU interface

The NHS is just one of many public sector organisations represented in Brussels. On issues such as public procurement, energy efficiency, waste management and employment we often share similar concerns with these organisations. By building alliances with partners we can offer the NHS a stronger voice in the EU decision-making process.

The NHS European Office has established a formal partnership with key European organisations. This includes representing the NHS in the EU social dialogue process, which brings together representatives of employers and employees (the 'social partners') in a structured process for discussing and negotiating EU policy. The European Commission has a legal duty to consult the social partners on all employment-related proposals and the social partners can negotiate agreements which can be made legally binding. It is vital therefore to get involved in these negotiations – if we do not, they can make agreements without our input.

There are a number of benefits for the NHS – the largest employer in Europe – from involvement in the EU social dialogue, including:

- early sight of European Commission policy developments likely to affect the health sector
- the opportunity to influence proposals at an early stage by taking an active role in discussing and negotiating EU employment policy
- access to a European platform for the exchange of information, good practice and learning experiences.

The EU social partners are involved in a number of important workforce policies, including: working time; protecting workers from electromagnetic fields; the prevention of sharps injuries; maternity leave; equal treatment; and ethical cross-border recruitment and retention. To find out more about our work in these areas, visit: www.nhsemployers.org/europe

We also represent the NHS on the European Hospital and Healthcare Federation (HOPE) which gathers together public and private hospital associations from 32 countries.

As well as being an important lobbying voice in Brussels, HOPE runs periodic study visits to EU countries to learn about successful healthcare policy initiatives. For example, last year HOPE ran two study visits which NHS managers participated in. One of these visits was to Spain to discuss their internationally renowned organ donation and transplantation system and the other to Estonia to see their new approach to commissioning.

"The study tour to Spain was enormously illuminating for me personally. The NHS is often unsighted on the developments and challenges in European affairs and a greater level of engagement by NHS leaders with Brussels and other European countries would be of great value to health services in the UK."



Elisabeth Buggins, Chair, NHS West Midlands and former Chair of the UK Organ Donation Taskforce

HOPE also runs an overseas exchange programme, which, for the past 30 years, has led to an increased mutual understanding of the operation of healthcare systems within the EU.

This programme consists of a four-week placement in another EU country and is aimed at professionals who are directly or indirectly involved in the management of healthcare services and hospitals. Since 2004, 125 EU visitors have worked in the NHS through this programme, while over 50 UK participants have experienced other healthcare systems.

Further to this, HOPE publishes on a regular basis:

- a detailed web tool providing information about the situation of hospitals in each EU member state
- comparative indicators enabling a better understanding of trends in hospital activity, acute care hospital capacity and healthcare workforce
- an annual report on innovations in hospital facilities and services from across Europe.

Closer working with HOPE gives the NHS an important network with which to compare and exchange experiences as well as to cooperate on tackling common challenges.

“By working together on issues where we have some but not all the experience and expertise we can hit three targets with one effort: help the NHS influence EU policy; learn from European peers; and raise the reputation of our organisation and the NHS. I would strongly encourage colleagues in the NHS to take advantage of the opportunity to engage with the EU agenda.”



**Alan Yates, Chief Executive,
Mersey Care Trust**

Case study: parental leave

Issue

The European Commission, supported by the European Parliament, argued in 2007 that Europe’s parental leave provisions should be increased and made consistent across the European Union.

Implications

The Commission suggested increasing parental leave entitlements to four months (with the fourth month being granted if parents use and share their basic entitlements) at a compensation of no less than 66 per cent of previous salary. This proposal could have had significant cost implications for the NHS.

Action

The EU social partners agreed to negotiate to revise the existing rules autonomously, rather than allow the proposal to pass through the European Parliament and Council who may have taken a different view. The social partners reached agreement on improved provisions to be implemented at national level by December 2011.

Outcome

This agreement enabled a more flexible approach to be taken by national governments, in particular when lengthening leave entitlements from three to four months with the possibility to decide at national level how this additional month would best be used to encourage take up of parental leave by fathers. In addition, it acknowledged the role of income during parental leave with payment or otherwise to be determined at national level.

Innovating: an EU research agenda

The current emphasis on, and investment in, innovation is pushing the NHS to look further afield to identify and exploit new ways of improving the quality and productivity of its services. Europe's established networks and funding streams provide an ideal forum in which to research, discuss and pilot different solutions to our common challenges.

NHS access to European funding streams

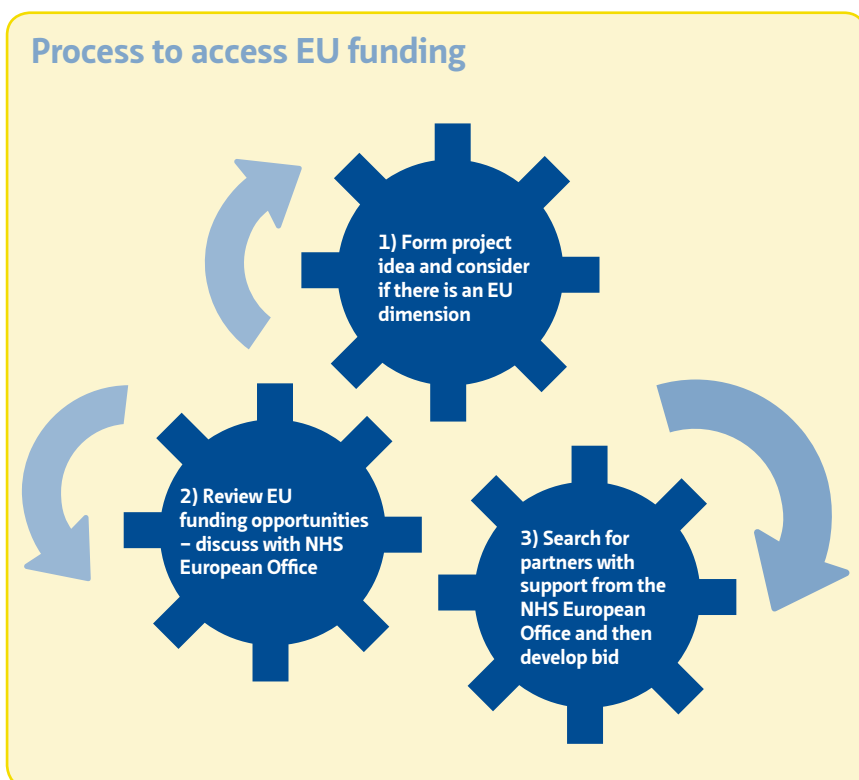
The NHS European Office has assisted NHS organisations wishing to access EU funding by:

- providing information and advice on EU programmes and their calls for project proposals
- influencing future calls to ensure NHS priorities are reflected
- liaising with the European Commission to discuss possible plans for a project proposal and whether the ideas correspond with the Commission's priorities for funding

- seeking a consortium that is currently being established around a specific topic of interest
- seeking to identify European partners to cooperate with in developing a project proposal.

The benefits of participating in a European-funded project or network are wide-ranging and include:

- complementing local NHS initiatives with European Commission match funding
- improving service delivery through information sharing and the exchange of good practice with European partners
- developing pan-European research networks
- benchmarking and comparing NHS practice with partners from other EU member states
- showcasing NHS innovations and achievements in a specific field or topic to international colleagues
- attracting world-class researchers to the NHS.



The Seventh Research Framework Programme (FP7)



This programme is the EU's main instrument for funding research and is perhaps the most relevant for NHS organisations. Projects under this programme can be very large in scale, with budgets of up to €30 million, attracting partners from many of the 27 EU countries.

Health projects are being allocated €6.1 billion for the duration of this programme (2007–13) across a range of areas, including specific disease areas, emerging epidemics, diagnostics, health promotion and the delivery of health services.

Health is not the only theme under this programme which is of interest to NHS organisations, with projects on ICT, energy, food, environment and nanotechnologies also funded.

FP7 in action: Translational Research and Patient Safety in Europe (TRANSFoRm)

King's College London is leading a consortium of 15 European universities and two private partners to develop methods, standards and systems for the integration of healthcare computer systems for clinical care and research.

The project aims to aid GPs in diagnosis by integrating decision support directly into the electronic records systems; and to speed up the recruitment, management and follow-up of patients for research studies by enabling routine electronic health record systems to link to research databases.

TRANSFoRm will receive an EU contribution of €6.95 million over five years, commencing in March 2010. Professor Brendan Delaney, the Guy's and St Thomas' Charity Chair in Primary Care Research, and a practising GP in London, is the project lead. More information can be found at:

www.transformproject.eu

"The NHS is already participating in EU funding streams but there is scope for much greater involvement. By developing a national, strategic approach to our research priorities we can further influence European programmes to ensure the NHS continues to benefit from funds and partnerships at a local level."



Charles Wolfe, Professor of Public Health, Director of Research & Development, Guy's and St Thomas' NHS Foundation Trust, and Chair, Health Services Research Network

The Public Health Programme



This EU programme runs from 2008 to 2013 and is relatively small, with a total budget of €321.5

million. It aims to complement initiatives being undertaken in EU countries by providing co-financing for innovative projects, conferences and specialised networks or bodies in the field of public health.

More specifically, the programme supports initiatives which seek to improve the level of physical and mental health and well-being of EU citizens, and reduce health inequalities across the EU.



The Public Health Programme in action: European Healthy Stadia

The Healthy Stadia project supported sports stadia across Europe to promote initiatives concerning public health, social and environmental issues. It built on work undertaken by Heart of Mersey to develop local stadia as health promoting settings by working with statutory partners such as health agencies, public transport providers and the voluntary sector. Good practice examples were identified and many of these contributed to a European 'Toolkit' that was piloted in four EU countries.

The project was co-funded between July 2007 and December 2009 by the European Commission with a budget of €531,291 over 30 months. Coordination of the project was led by cardiovascular health charity Heart of Mersey with support from NHS Sefton, and partners from seven other EU countries and the University of East London. A European Healthy Stadia Network has been launched and is currently working in 12 European countries with a membership of over 170 sports stadia and supporting organisations. The Network is funded by the World Heart Federation through its partnership with UEFA, and information can be found at: www.healthystadia.eu

Informing: a view from Europe

Whatever your NHS responsibilities, role or region, we want to keep you informed about EU affairs. We have built up an extensive communications network over the past three years with which to share information and learning, seek expert opinions and provoke debate within the NHS.

The NHS European Office is the only national representative of the NHS operating in Brussels – talking to EU decision-makers with one voice, yet informing the NHS as one system. As part of the NHS Confederation, we inform the NHS through its networks and links, reaching out to every type of NHS organisation.

We **inform** through our regular newsletter and briefings on implications for the NHS of EU affairs.

Our website provides a wide range of information on the structure and activities of the EU institutions and the EU's role in health policy more generally, as well as the different policy areas of our work plan, and how you can get involved in our work.



NHS managers being briefed on the impact of EU legislation on the way that healthcare is supplied and organised.

We **provoke** debate on EU issues at events.



We **assist** NHS trusts with implementation of agreed EU laws.



Case study: European competition law

Issue

EU competition law governs trading market structures and behaviour in order to uphold 'fair play' within the EU's internal market, and regulates anti-competitive behaviours that affect trade within the EU. Questions have arisen about when these rules apply to healthcare provision in the UK.

Implications

NHS activity has traditionally been considered as fulfilling a social function and therefore not subject to EU competition rules. However, as the NHS further develops the way it delivers healthcare to incorporate patient choice and a wider role for independent healthcare providers, the extent to which it could be challenged under these rules becomes less clear.

"It is important NHS organisations consider EU competition law when developing their services. The NHS European Office's briefing on past EU Court judgments and the way they related the complex set of competition rules to the NHS context was a great help. More importantly still, it helps NHS organisations to reduce the risk of future challenges."

Mel Rankin, Head of Enterprise Development, Guy's and St Thomas' NHS Foundation Trust

Action

We reviewed past European Court rulings, in particular one where the Spanish NHS was the subject of a complaint alleging abuse of dominant position, to understand the legal framework and the range of potential implications for the UK NHS. We also held discussions with the Department of Health and the Cooperation and Competition Panel on possible EU implications of recent policy developments in the UK.

Outcome

To reduce the risk of legal challenge, we published a briefing to help inform NHS organisations of what EU competition rules may mean for them as they develop the way they provide and structure their services and some of the potential risk areas that exist.

Case study: the EU Public Procurement Remedies Directive

Issue

This EU law, which was enacted in the UK at the end of 2009, amended the UK Public Contract Regulations and was intended to improve access to rapid and effective review procedures for suppliers who allege that public authorities have breached procurement rules, and in particular to tackle the illegal direct award of contracts and to improve the effectiveness of pre-contractual remedies.

Implications

The legislation received little attention as it passed into UK law. However, it was apparent that NHS trusts that fell foul of the rules would be subject to new fines, the possibility of having contracts shortened and, where there were serious breaches of public procurement rules, having their contracts overturned.

Action

We worked closely with NHS procurement managers to gauge the full implications of the change in law. We subsequently published a briefing to raise awareness among wider NHS leaders of the key changes to the rules and, in particular, identified new provisions in the law which public authorities could use to protect themselves from the risk of challenges.

Outcome

The briefing was used by leading law firms to help primary care trust procurement managers easily understand the changes to the law and the potential implications for both their role and their organisation.

Looking ahead



The NHS European Office has been a huge asset to the NHS. The majority of UK legislation impacting on the NHS originates in Brussels and we need to be there, shaping and influencing these policies at the very earliest stage so that they work in the interests of the NHS and our patients.

We have already secured tangible positive outcomes for the NHS, but it is by looking ahead at the challenges on the horizon that we really get a sense of how the UK and EU health agendas are aligning.

The NHS European Office is currently engaging on revisions to the EU's directives on working time, clinical trials and professional mobility, as well as working to ensure the draft directive on patients' rights in cross-border healthcare recognises our unique health service. Whatever our role and responsibilities in the NHS, these issues matter. The role of our NHS European Office is crucial in ensuring the best possible outcome for the NHS from the EU negotiations.

Sir Keith S Pearson JP
Chair, NHS Confederation

Further information

To find out more about us, and how you can engage in our work to represent the NHS in Europe, visit www.nhsconfed.org/europe or contact european.office@nhsconfed.org

NHS European Office
Rue Marie Thérèse, 21, B-1000 Brussels
Tel 0032 (0) 2 227 6440



The NHS Confederation
29 Bressenden Place
London SW1E 5DD
Tel 020 7074 3200

Email enquiries@nhsconfed.org
or visit www.nhsconfed.org

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