

# **Movement of patients**

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**Many difficulties for persons moving between EU Member States but EU guarantees freedom of persons, goods, services and capital**

Country A

Benefit Package A  
using  
Service Taxonomy A  
and  
Fee Schedule A

Country B

Benefit Package B  
using  
Service Taxonomy B  
and  
Fee Schedule B



# Solution: EU Regulation 1408/71

but increasingly this is seen as insufficient – as demonstrated by the cases in front of the European Court of Justice (ECJ)



Situation 1: Person wants to live (with his/ her family) in Country A but to work in Country B.



Country A



Benefit Package A  
using  
Service Taxonomy A  
and  
Fee Schedule A

Country B



Benefit Package B  
using  
Service Taxonomy B  
and  
Fee Schedule B



# Solution: Form E106

- Insurance in country of work place (Country B)
- Enables frontier workers and their dependents have choice to receive services in both countries (under national conditions)
- Patient presents E106 to provider in Country A (but insurance card in Country B)
- Sickness fund in B will reimburse providers in A based on fee schedule in Country A



Situation 2: Person from Country A happens to be in Country B (for tourism, business ...) when he/she falls ill and needs treatment.

Country A

Benefit Package A  
using  
Service Taxonomy A  
and  
Fee Schedule A

Country B

Benefit Package B  
using  
Service Taxonomy B  
and  
Fee Schedule B

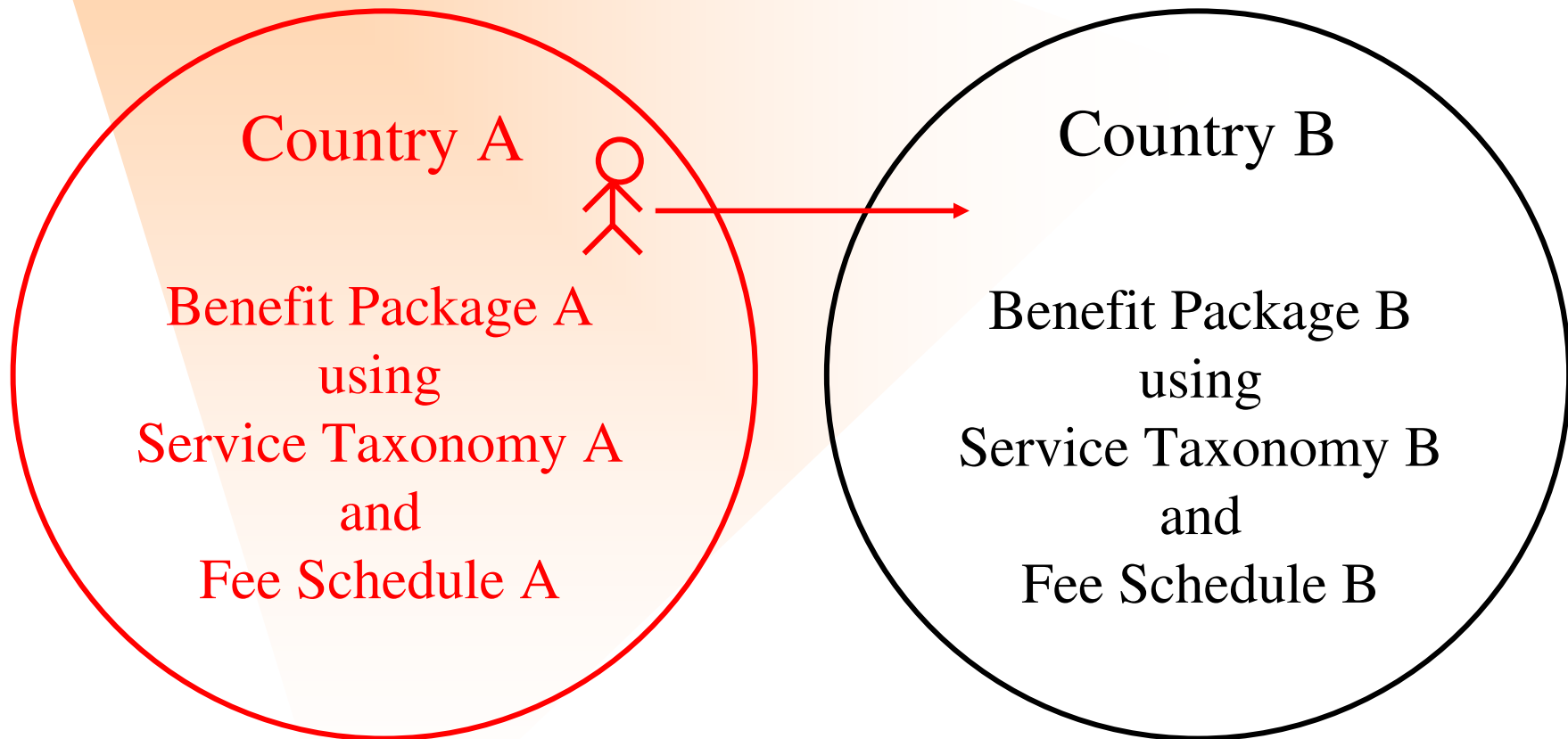


# Solution: Form E111

- Patient takes E111 from his/her sickness fund in Country A and gives it to provider in Country B
- E111 entitles to benefits covered in Country B which are immediately necessary (copayments etc. as in Country B)
- Sickness fund in A will reimburse Country B (via national offices) – if there is no waiver agreement
- CAVE: Country B has to ensure that money reaches providers (e.g. Spain keeps money in Madrid!)



Situation 3: Patient from Country A needs go to Country B for treatment as it is not available in Country A.



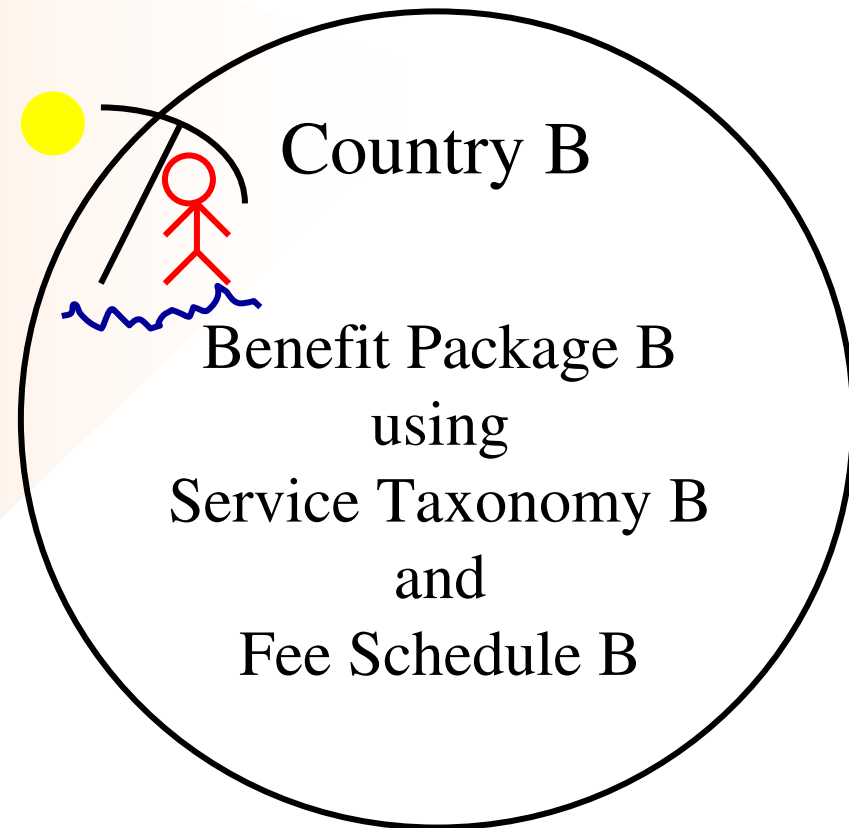
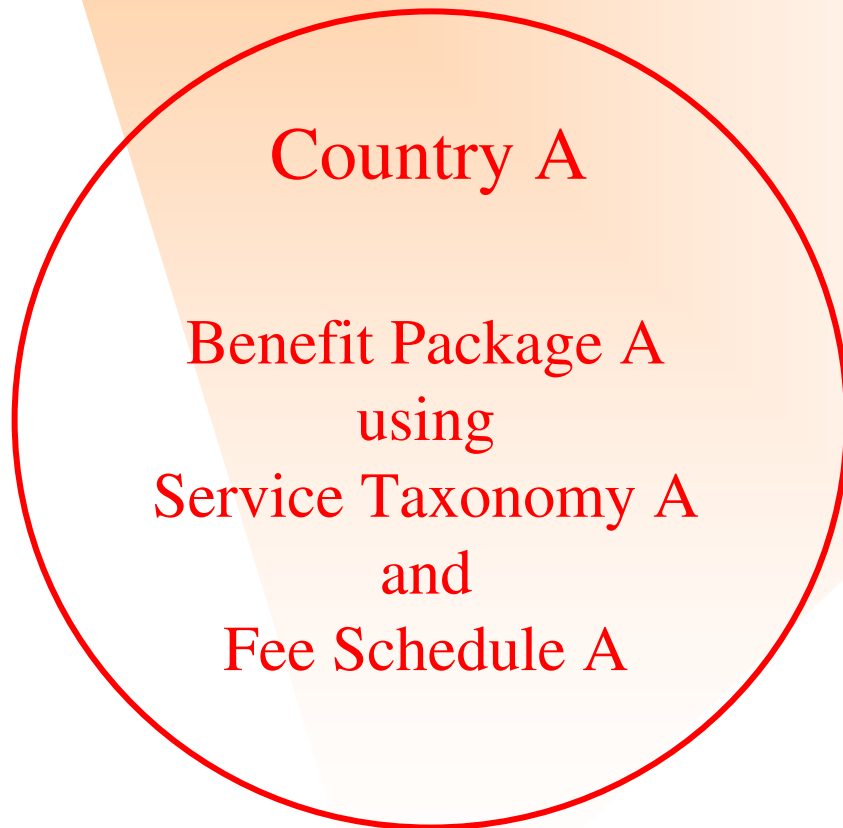


# Solution: Form E112

- Patient applies to his/her sickness fund in Country A for authorization to get treatment in Country B
- E112 entitles to specific service in Country B (coverage and copayments as in Country A)
- Sickness fund in A will reimburse provider in Country B based on fee schedule in Country B



New Situation 1: Retired person from Country A wants to live in Country B (including receiving health care there).

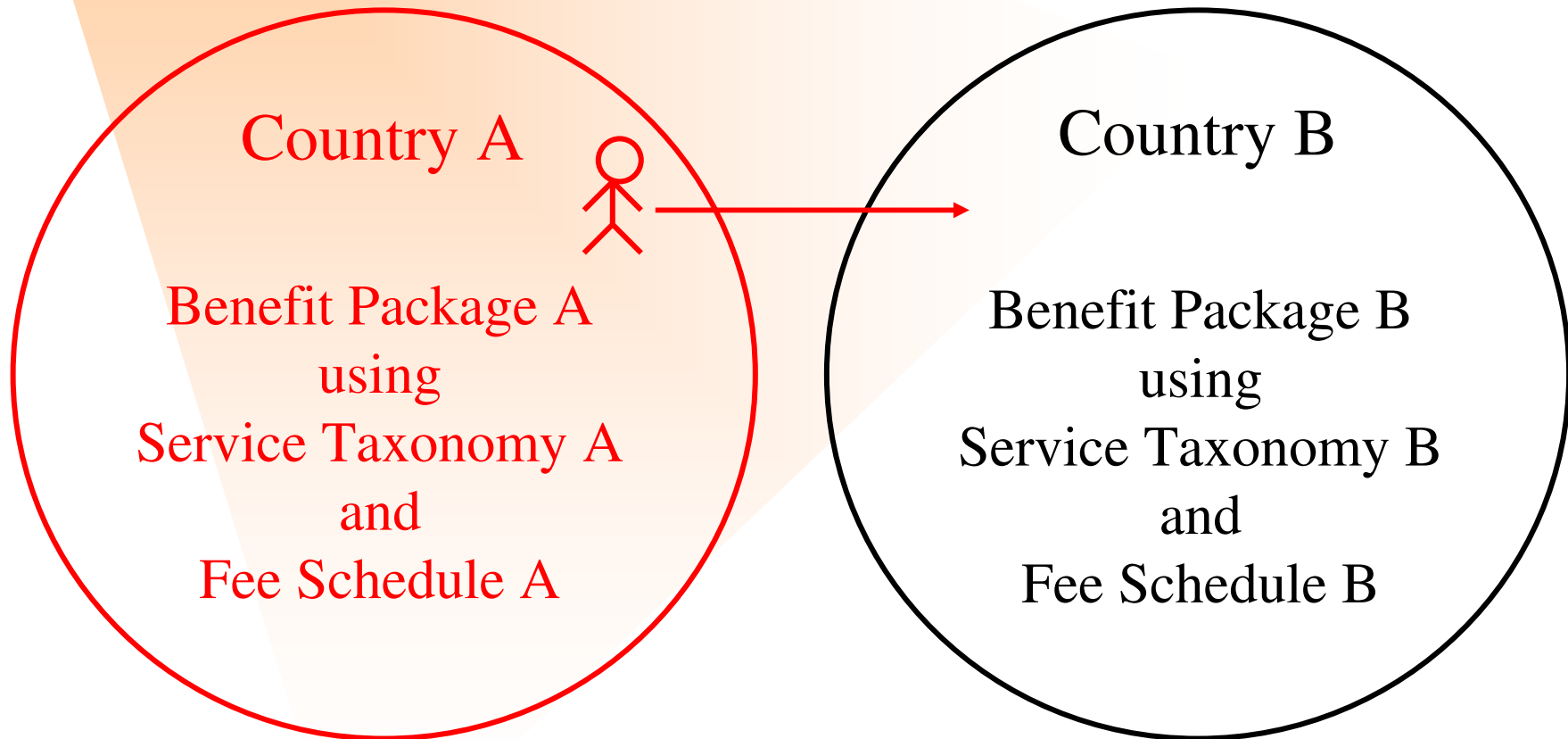


# Solution: Extension of Form E111

- Retired people receive all medically necessary benefits covered in Country B (not only those immediately necessary)
- Sickness fund in A will reimburse country B (via national offices) – if there is no waiver agreement
- CAVE: Country B may be more generous than Country A (e.g. no co-payments for elderly in Spain)



New situation 2: Patient from Country A *wants* go to Country B for treatment – to bypass waiting lists in A, because of perceived higher quality ...



# Not included in Regulation 1408/71!

Two major developments:

1. Extension of network of contracted providers across borders, especially in EuRegios – patients are treated as if inside their country.
2. Patient-enforced flexibility – starting with Kohll and Decker going from Luxembourg to Belgium and Germany and claiming reimbursement afterwards which the sickness fund refused but the ECJ granted (at fee rate in Luxembourg).



# Three Rulings that changed our Perception of the “Free Movement of Patients”

## **Decker (C-120/95)**

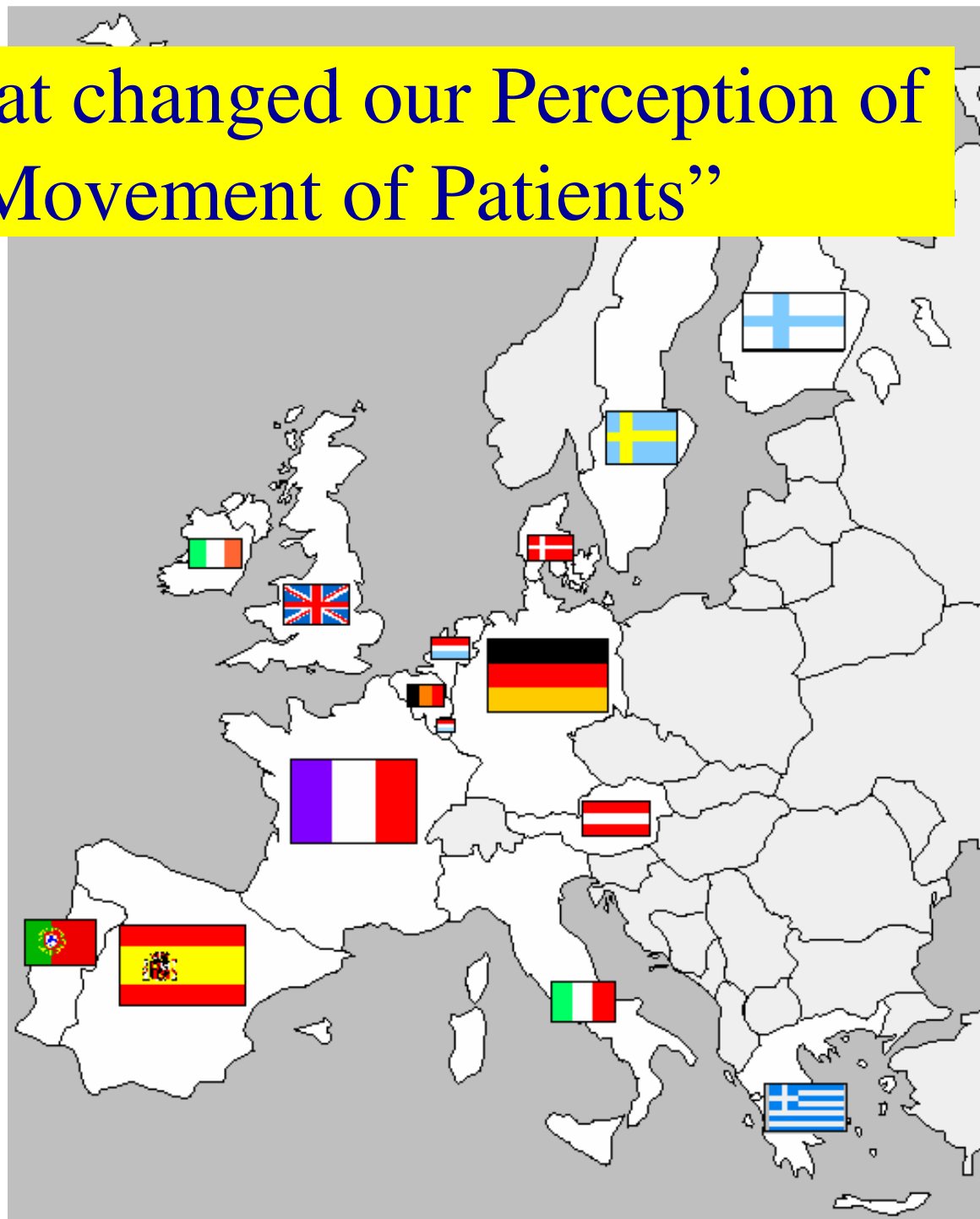
*free movement of  
goods*

## **Kohll (C-158/95)**

*free movement of  
services*

## **Molenaar (C-160/96)**

*free movement of  
service-equivalent  
cash-benefits;  
definition of what  
belongs to health  
service and what not*



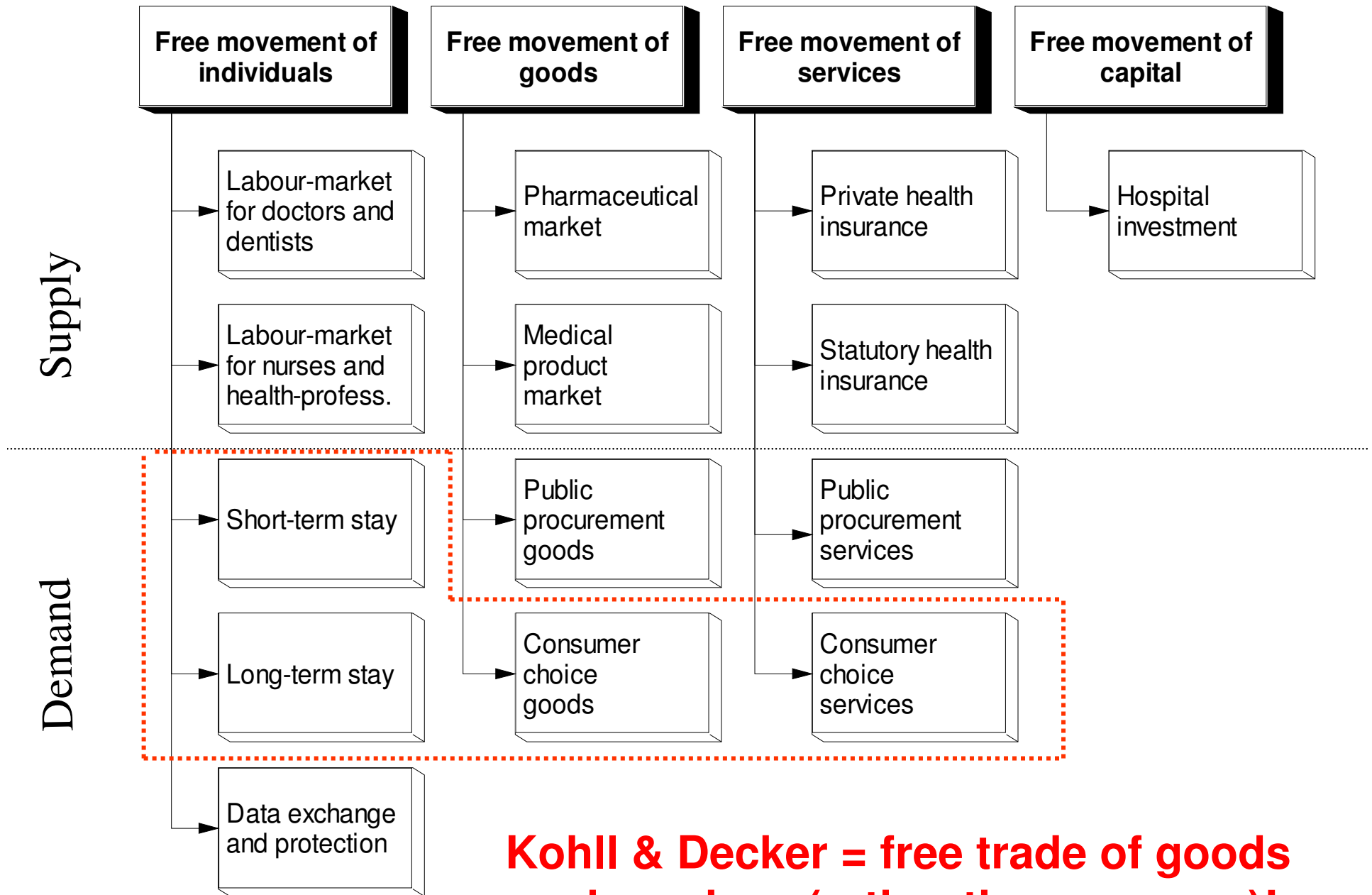
# Kohl ruling

“The fact that national **rules** fall **within the sphere of social security** cannot exclude the application of **Art. 59 and 60** of the Treaty. While Community law does not detract from the powers of the Member States to organise their social security systems, they must nevertheless comply with Community law when exercising those powers, i.e. the fact that a national measure may be consistent with a provision of secondary legislation, in this case Art. 22 of **Regulation No 1408/71**, does not have the effect of removing that measure from the scope of the provisions of the Treaty.”



Legal source	Articles, paragraphs or rulings of relevance
TEC	<ul style="list-style-type: none"> <li>● <u>Art. 23 (ex-Art. 9), Free movement of goods</u></li> <li>● Art. 28-30 (ex-Art. 30, 34, 36), Prohibition of quantitative restrictions between Member States</li> <li>● <u>Art. 49-50 (ex-Art. 59-60), Free movement of services</u></li> </ul>
Secondary legislation	<ul style="list-style-type: none"> <li>● <u>EEC 1408/71 (Art. 13, 19, 22), modified/ extended by EEC 1390/81 [self-employed], 2791/81 [modification following the Pierik cases] and 1606/98 [civil servants]</u></li> <li>● EEC 574/72</li> </ul>
ECJ	<ul style="list-style-type: none"> <li>● C-117/77 &amp; C-182/78 Pierik I &amp; II</li> <li>● C-120/95 Decker &amp; C-158/96 Kohll</li> <li>● other cases currently pending at the ECJ: C-368/98 Vanbraekel; C-385/99-1 Müller-Fauré/ van Riet; C-157/99 Geraets-Smits/ Peerbooms</li> </ul>





**Kohl & Decker = free trade of goods and services (rather than persons)!**

# Economic definitions (and consequence for trade balance)

- If a patient requires/ asks for a health care service in another country, the home country **imports** that service.
- If a country receives foreigners for treatment, it **exports** those services.



Expenditure on patients receiving healthcare services in other EU Member States in Euro per capita

(= volume of imported healthcare services per capita)

Source: Palm et al. 2000

	1989	1993	1997	1998
Belgium	3.62	8.93	8.93	4.38
Denmark	-	0.16	0.83	0.63
France	0.79	1.87	1.21	1.05
Germany	1.77	1.83	2.08	2.21
Greece	0.95	2.51	2.68	3.15
Ireland	0.18	0.65	1.68	0.93
Italy	2.99	8.36	3.52	2.89
Luxembourg	58.01	149.55	135.29	116.00
Netherlands	1.95	0.26	1.98	2.85
Portugal	0.82	3.76	6.81	7.00
Spain	0.33	1.48	1.03	1.11
United Kingdom	0.33	1.61	1.92	0.36
Austria	-	-	0.48	1.87
Finland	-	-	0.49	0.52
Sweden	-	-	0.65	0.96
<b>AVERAGE</b>	<b>1.31</b>	<b>2.95</b>	<b>2.37</b>	<b>1.99</b>

# Limitations of the data

- Existence of *waiver agreements* between several countries, for example between Germany and the United Kingdom: healthcare services provided on that basis do not appear in the expenditure data.
- **France** was the *claimant* for more than half of all money in 1993 (57.6 %) while **Italy** was the *debtor* for 43.1% which can either be explained by an extensive cross-border movement of patients from Italy to France or simply by incomplete, and therefore misleading, statistics.
- **Expenditure** per capita seems to be *decreasing*, even though *public awareness* of the issue has *increased*, especially in 1998.



# Which dimensions does consumer choice have?

- to have access to a range of services (“benefits”) as encompassing as possible,
- to get them with as few restrictions (such as necessary referrals or prescriptions) as possible,
- to have choice among as many different providers as possible, and
- to get fully reimbursement for any amount charged by the provider



**Advantages (green) and disadvantages (red) of E111, E112 and Kohl/Decker procedures vs. provision in country of insurance (CoI) [CoS = Country of Service Provision]**

	<b>Inside country of insurance (CoI)</b>	<b>Short-term stay: 1408/71, 22(1)a (E111)</b>	<b>Preauthorisation: 1408/71, 22(1)c (E112)</b>	<b>“Kohl/Decker” procedure</b>
<b>Countries in which applicable</b>	CoI	Non-CoI EEA countries plus others with E111-agreement	Non-CoI EEA countries plus others with E112-agreement	Non-CoI EU countries
<b>Benefits available</b>	Benefits catalogue of CoI	Benefits catalogue of CoS, provided the condition necessitates immediate care	Legally benefits catalogue of country of service provision (CoS), de facto often that of CoI	Ambulatory benefits of CoI
<b>Conditions to get service</b>	Referral/ prescription/ rationing measures if necessary/ existing in CoI	Referral/ prescription if necessary in CoS	Pre-authorisation for particular service by responsible CoI-payer (but through certain rationing measures in CoI, e.g. waiting lists, patient has right to E112)	Referral/ prescription if necessary in CoI
<b>Service providers available</b>	Those contracted by CoI-payers (all providers in Austria and Belgium)	Those contracted by CoS-payers	Those contracted by CoS-payers	Wide availability as no contracts with CoI- or CoS-payers necessary
<b>Rate of reimbursement</b>	As agreed with CoI-payers, with possible reductions (e.g. 20% for non-contracted providers in Austria)	Usually as agreed with CoS-payers (CoI-rate if no CoS-rate exists or with consent of patient)	As agreed with CoS-payers	Price charged by provider, limited to patient/ provider reimbursement in CoI

# Smits-Geraets/ Peerbooms ruling

“... the need to have resort to a **system of prior authorisation**, ..., makes it possible to ensure that there is sufficient and permanent access to a balanced range of high-quality hospital treatment on the national territory, to ensure that costs are controlled and to prevent any wastage of financial, technical and human resources. None the less, any **conditions**, ..., which must be satisfied in order to obtain prior authorisation **must be justified** and must satisfy the principle of proportionality. ...



# Smits-Geraets/ Peerbooms ruling

Thus, the condition that the proposed hospital treatment in another Member State must be regarded as normal is acceptable only in so far as it refers to what is **sufficiently tried and tested by international medical science**. The second condition, namely the necessity of the proposed treatment, that is to say the requirement that the insured person receive treatment in a foreign establishment owing to his medical state, must mean that authorisation can be **refused only if the patient can receive the same or equally effective treatment without undue delay** from an establishment with which his sickness insurance fund has contractual arrangements.“





# Müller-Fauré/ Van Riet ruling

“Article 59 of the EC Treaty (now, after amendment, Article 49 EC) and Article 60 of the EC Treaty (now Article 50 EC) must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, which (i) makes the assumption of the costs of hospital care provided in a Member State other than that in which the insured person's sickness fund is established, by a provider with which that fund has not concluded an agreement, conditional upon prior authorisation by the fund and (ii) makes the grant of that authorisation subject to the condition that such action is necessary for the insured person's health care.

However, **authorisation may be refused** on that ground **only if treatment which is the same or equally effective for the patient can be obtained without undue delay in an establishment which has concluded an agreement with the fund.**



# Müller-Fauré/ Van Riet ruling

By contrast, Articles 59 and 60 of the Treaty do preclude the same legislation in so far as it makes the assumption of the costs of non-hospital care provided in another Member State by a person or establishment with whom or which the insured person's sickness fund has not concluded an agreement conditional upon prior authorisation by the fund, even when the national legislation concerned sets up a system of benefits in kind under which insured persons are entitled not to reimbursement of costs incurred for medical treatment, but to the treatment itself which is provided free of charge.“





European Commission  
Directorate-General  
Science, Research and Development

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THE EUROPEAN UNION AND HEALTH SERVICES

R. Busse et al. (Eds.)

# THE EUROPEAN UNION AND HEALTH SERVICES

THE IMPACT OF THE SINGLE EUROPEAN MARKET ON MEMBER STATES

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