



R

Title

REIMBURSEMENT ON THE BASIS OF FIXED AMOUNTS
of sickness benefits in kind between Member states

Created 9/11/2009

Modified 10/12/2009

References:

- **Recitals** 15 of Reg. 987/2009
- **BR** : Art. 35
- **IR** : Art. 63, 64, 65, 67
- **AC decisions:** Decision N° S4 of 2 October 2009 concerning refund procedures for the implementation of Articles 35 and 41 of Regulation (EC) No 883/2004
Decision N° S5 of 2 October 2009 on interpretation of the concept of 'benefits in kind' as defined in Article 1 (va) of Regulation (EC) No 883/2004 in the event of sickness or maternity pursuant to Article 17, Article 19, Article 20, Article 22, Article 24 (1), Article 25, Article 26, Article 27 (1, 3, 4 and 5), Article 28, Article 34 and Article 36 (1 and 2) of Regulation (EC) No 883/2004 and on calculation of the amounts to be refunded under Articles 62, 63 and 64 of Regulation (EC) No 987/2009

Comments :

- The EU social security coordination regulations not only give rights to sickness benefits to insured persons in other Member States (see Articles 17, 19, 20;22 to 28 and 31 to 34 BR), but they also deal with the financial consequences for the Member State which provided its health services. The aim is to provide for a fair distribution of financial burdens: the general principle is that the costs of the healthcare provided by the Member State of stay or residence to a person who is insured in another Member State has to be refunded by the institution of the State where the person is insured.
- Title IV, Article 74 BR sets up a special committee – the Audit Board – which monitors the reimbursements of healthcare costs between Member States. It is attached to and reports to the Administrative Commission. Title IV of IR lays down the special rules and procedures for the refund processes.
- A definition of benefits in kind was inserted into Regulation 883/2004 by Regulation 988/2009 (see EN on Benefits in Kind). Benefits in kind are those benefits received during a temporary stay in another Member state (Article 19 BR- necessary care and Article 20 BR – scheduled treatments), as well as in case of residence of a person in Member State other than the competent State (of insurance).

Reimbursement of the cost of benefits in kind between Member states

- Benefits in respect of accidents at work and occupational diseases:

- According to Article 41 BR (which refers to Article 35 BR), the benefits in kind provided on behalf of the institution of another Member State shall give rise to full reimbursement. This shall be made on the basis of actual costs. However, Member States are also allowed to provide between themselves for other methods of reimbursement or to waive all reimbursement between the institutions coming under their jurisdiction.

- Sickness benefits:

- According to Article 35 BR, the benefits in kind provided on behalf of the institution of another Member State shall give rise to full reimbursement.
- The reimbursements are determined and effected either on production of proof of actual expenditure (actual costs) or on the basis of fixed amounts (average costs). Member States are also allowed to provide between themselves for other methods of reimbursement or to waive all reimbursement between the institutions coming under their jurisdiction.
- As far as Article 35 is concerned, in principle, the general method of reimbursement is the refund on the basis of actual expenditure (the actual amount of the expensis for benefits in kind as shown in the accounts of the institution that provided them).
- Only by a way of exemption, those Member States whose legal or administrative structures are such that the use of reimbursement on the basis of actual expenditure is not appropriate, can reimburse benefits in kind on the basis of fixed amounts in relation to certain categories of persons (see Article 63(2) IR).¹ This is an important difference from Regulation 574/72 under which average costs were applied by all Member States for persons falling under Article 94 and 95 of Regulation 574/72.
- The Member States that apply fixed amounts reimbursements under the new Regulations are those listed in Annex 3 to IR (IE, ES, IT, MT, NL, PT, FI, SE and UK).

Establishment of the fixed amounts

- Each Member State applying reimbursements based on fixed amounts has to calculate for each calendar year the monthly fixed amount per person. The fixed amount should be as close as possible to actual expenditure. The method of calculation is laid down by Article 64 IR. In order to calculate the monthly fixed amount per person, annual average cost per person broken down by age group is determined, which is then divided by 12 and a reduction of 20% or 15% is applied.
- The annual average cost per person in each age group is obtained by dividing the annual expenditure on all benefits in kind provided in the creditor Member State to all persons in the age group concerned insured under its legislation by the average number of persons concerned in that age group in the calendar year in question. The expenditures and amounts which are to be included and excluded for the purpose of average costs calculation are laid down in Decision S5 of the Administrative Commission .

¹ That is, in the case of family members who do not reside in the same Member State as the insured person, as provided for in Article 17 BR, and to pensioners and members of their family , as provided for in Article 24(1) and Articles 25 and 26 BR.

- Compared to the previous situation, in order to get a closer approximation of costs , there are three age groups used for calculating the fixed amounts: under 20, 20 – 64, 65 and over.
- The reduction to be applied is normally 20%. Where the debtor Member State does not provide more rights to pensioners returning to it as to their State of insurance under Article 27(2) BR (ie. the MS is not listed in Annex IV BR) only the reduction of 15% is applied. This "rebate" stems from a highly sensitive debate between hosting member States and receiving ones. The need for a fair share of costs and a more satisfactory balance is reflected in this mechanism . The legislator has fixed a review clause to assess this financial provision among others, see Article 86 (3) IR.
- For each debtor Member State, the total fixed amount to be reimbursed for a calendar year is obtained by multiplying the calculated monthly fixed amount per person by the number of months completed by persons insured with the debtor State in the creditor State in each age group. The number of months completed by persons concerned is determined by the creditor State from an inventory kept for that purpose. The inventories shall be presented to the debtor State by the end of the year following the reference year.
- For a transitional period of five years, Member States applying fixed amounts can continue to use the old method of calculation based on Articles 94 and 95 of Regulation 574/72, provided that the reduction set out in Article 64 (3) IR is applied.
- The Administrative Commission should provide more detailed guidelines for the elements for calculating the fixed amounts. Within five years after entry into force of the new Regulations, the AC should also present a specific report on the fixed amounts calculations which may serve as a basis for a review of fixed amounts calculation method with the aim of avoiding unbalanced payments between Member States.

Procedures for reimbursement between institutions

- The new Regulation 987/2009 introduced more detailed procedures and tighter deadlines so as to improve the efficiency and timeliness of the refund processes between Member States. The main objective of the Commission was to speed up the procedures and to achieve sound financial management of public money. This indeed is not supposed to affect the situation of individuals with regard to their rights to benefits. However, experience has shown that when confidence (loyal cooperation) is not established between MS particularly in the context of social security debts, some undesirable effects on the situation of individuals can happen. The European Parliament shared this concern and was keen to have the review clause in Article 86 (1) IR, in particular to address the time limits for settling claims between Member States. It is beyond doubt that, compared to the actual expenditure method, the fixed amount calculation takes more time and slows down the process of reimbursement of claims between Member States.
- The fixed amounts determined by a creditor Member State are presented to the Audit Board and subsequently formally adopted by the Administrative Commission. The notification to the Audit Board must be done at the latest by the end of the second year following the year in question: if the notification is not made within this deadline, the annual average costs for a previous year are used.
- Once the fixed amounts are adopted by the Administrative Commission, they are published in the Official Journal.
- Within a 12 month period following the month during which the fixed amounts for the year concerned were published in the Official Journal, the creditor Member State shall introduce claims of fixed amounts for the year in question to the liaison body of the debtor Member State. Claims introduced after this deadline shall not be considered. The claims which concern a particular

calendar year should be presented to the debtor institution on the same occasion (in bulk).

- The debtor institution which receives a claim for a refund determined on the basis of fixed amounts shall ensure the payment of the claim to the liaison body of the creditor Member State as soon as it is in a position to do so but no later than 18 months after the claims were introduced.
- More detailed provisions on reimbursement procedures between Member States are contained in Decision S4 of the Administrative Commission.

To go further:

-