



## B

Title

Benefits in kind (sickness)

Created 20/10/2009

Modified 12/01/2010

### References:

- **Recital(s):** ----
- **BR :** Article 1 (va )- Article 33
- **IR:** ---
- **AC Decision (s) :** Decision S.5; Administrative Commission Decision No. 115 of 15<sup>th</sup> December 1982 (in the process of revision)
- **ECJ CASE Law:** Case C-160/96 *Molenaar*, C-208/70 *Van Chamier – Gliszinski* (pt40)

### Comments:

- The EU social security coordination regulations entitle insured persons in another MS to sickness benefit rights (see Articles 19, 20, 22 to 28 31 to 34 BR) .
- For the purpose of the coordination rules, there is no difference between a system where institutions reimburse the costs of treatment to insured persons and/or to service providers, and a public health system where a patient receives health care free of charge. Healthcare provision, financed as part of a statutory social security/public health system, is called "a sickness benefit in kind".
- The term, "benefits in kind" covers treatment which becomes necessary during a temporary stay in another Member State (Article 19 BR – see the EN on necessary care), as well as scheduled treatment subject to authorisation from the competent authorities (Article 20 BR), or also where a person receives a treatment in a State of residence on behalf of the competent state (i.e the MS which is financially responsible for the costs of the sickness benefits) in the case of, for example, pensioners, frontiers workers and posted workers.
- It also covers long-term care benefits, as the ECJ clearly stated in Case C-160/96 *Molenaar* and Case C-208/07 *Van Chamier-Glisczinski*
- It is national legislation that determines which benefits in kind are to be granted to insured persons and under which conditions. The coordination regulations ensure equal treatment with regard to such benefits in cross-border situations.

- There was previously no definition of this type of benefits covered by the coordination system. However, the following definition of benefits in kind was inserted into Regulation 883/2004 by Regulation 988/2009:

"(va) "Benefits in kind" means:

- (i) for the purposes of Title III, Chapter 1 (sickness, maternity and equivalent paternity benefits), benefits in kind provided for under the legislation of a Member State which are intended to supply, make available, pay directly or reimburse the cost of medical care and products and services ancillary to that care. This includes long-term care benefits in kind;
  - (ii) for the purposes of Title III, Chapter 2 (accidents at work and occupational diseases), all benefits in kind relating to accidents at work and occupational diseases as defined in point (i) above and provided for under the Member States' accidents at work and occupational diseases schemes";
- This definition is very important and is intended to avoid misunderstandings as to the scope of the term and to prevent detrimental effects on persons' rights to sickness benefits in a cross-border situation.
  - In certain judgments (see in the last instance C-466/04 *Acereda Herrera* points 27 to 29) the ECJ has inferred that benefits in kind can be interpreted as covering only medical care. However, this interpretation does not correspond with some national social security legislation, nor indeed with the meaning of the term under the coordination Regulations. For instance, all kinds of care for a person such as medico-social care, personal care, catering and ambulance transport must be considered as sickness benefits in kind if their costs are currently met by a public health system, or reimbursed by a social security system.
  - The definition does not expressly refer to transport costs, However, if the legislation of a MS provides for transport or for the reimbursement of transport costs (for example, the cost of an ambulance), these types of benefits shall be dealt with as being "benefits in kind". Furthermore, by virtue of the equal treatment principle in Article 4 BR, those benefits shall be granted equally, regardless of the nationality of the person to whom the legislation of this Member State applies .
  - Article 26(8) IR illustrated this principle in the case of scheduled treatment: *'Where the national legislation of the competent institution provides the reimbursement of the costs of travel and stay which are inseparable from the treatment of the insured person, such costs for the person concerned and, if necessary, for a person who must accompany him/her, shall be assumed by this institution when an authorisation is granted in the case of treatment in another Member State'*
  - Article 33 BR applies a slightly modified rule in the case of "substantial" benefits in kind. "Substantial benefits in kind" is a category which encompasses benefits such as a prosthesis, any major appliances and also other benefits set down in a list drawn by the Administrative Commission. In the case of this category of benefits, an insured person shall receive them from the institution which recognized the right to such a benefit, even if she later becomes an insured person in another Member state. This category and definition of "substantial benefits in kind" is not new and is carried over from Article 24 of Regulation 1408/71. At the time of writing Administrative Commission Decision No. 115 of 15<sup>th</sup> December 1982 contains a list of benefits to be considered as "substantial benefits in kind". This list is to be modernised and the AC should adopt a revised decision on this issue before 1 May 2010.

**To go further:**

- ---