



Press and Information

Court of Justice of the European Union
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Judgment in Case C-255/09
Commission v Portugal

Portuguese legislation on reimbursement for non-hospital medical care provided in another Member State is contrary to European Union law

With the exception of care that requires the use of major and costly equipment, Member States must make it possible to obtain reimbursement, in accordance with their own scales, for non-hospital medical care provided in another Member State without prior authorisation

In Portugal, other than in the circumstances specified in Regulation 1408/71¹, the possibility of obtaining reimbursement for non-hospital medical expenses incurred in another Member State is limited. While it is true that the Portuguese legislation (specifically, Decree-Law No 177/92) provides for the reimbursement of non-hospital medical care that it considers to be 'highly specialised', where this cannot be provided in Portugal, the reimbursement is subject to a threefold prior authorisation (that is to say: (i) a detailed medical report in favour of the treatment, (ii) approval of that report by the medical director of the hospital service, and (iii) the consent of the Director General for Hospitals). For other non-hospital medical care, Portuguese law provides no possibility of reimbursement.

Of the view that this Portuguese system for the reimbursement of non-hospital medical costs incurred in another Member State is incompatible with the freedom to provide services, the Commission brought the present infringement action.

In the meantime, however, on 5 October 2010, the Court of Justice ruled² that it was compatible with EU law for a Member State to make **reimbursement for non-hospital care** planned in another Member State subject to prior authorisation if that care required the use of **major and costly equipment**. Following that judgment, the Commission decided to review the scope of the present action. As a consequence, **the present action is concerned only with non-hospital medical care provided in another Member State which does not involve the use of major and costly equipment³ and which is not covered by Regulation No 1408/71.**

In its judgment delivered today, the Court recalls, first, that medical services supplied for consideration fall within the scope of the provisions on the freedom to provide services. Accordingly, **the freedom to provide services precludes the application of any national rules which have the effect of making the provision of services between Member States more difficult than the provision of services in a purely national situation.**

¹ Namely, where the state of health of a worker affiliated to the Portuguese health system gives rise to the need for medical services in the course of a stay in the territory of another Member State (unforeseen treatment) or where the worker has received prior authorisation from the competent institution to go to the territory of another Member State to receive treatment there, the reimbursement rates being those applicable in the Member State where treatment is received (planned care authorised in advance). Council Regulation of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ 1971 L 149, p. 2), replaced by Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p.1).

² Case [C-512/08](#) *Commission v France*; see Press Release No [97/10](#).

³ More specifically, this relates to major and costly equipment, exhaustively listed in the national legislation, such as a nuclear magnetic resonance imaging or spectrometry apparatus for clinical use or a medical scanner.

On that basis, the Court examines, **first, the situation in relation to non-hospital medical care provided in another Member State which is covered by the Portuguese Decree-Law and which does not involve the use of major and costly equipment.**

In that regard, the **Court finds that the prior authorisation system to which reimbursement for that type of care is subject constitutes a restriction of the freedom to provide services.** According to the Court, the prospect of a possible refusal to reimburse the medical costs as a result of an unfavourable administrative decision is, in itself, clearly liable to deter the patients concerned from approaching a provider of medical services which is established in another Member State. Furthermore, provision is made under the legislation for medical costs incurred abroad to be met solely in exceptional cases where the treatment needed for patients affiliated to the Portuguese health system is not available under that system. By its very nature, that condition will severely limit the circumstances in which such authorisation can be obtained.

Next, **the Court finds that that restriction cannot be justified by overriding reasons and, in particular, by the supposed existence of a risk that the financial balance of the social security system would be seriously undermined.**

On that point, the Court states that, on the evidence, there is no indication that removal of the prior authorisation requirement for that type of care would result in patients travelling to other countries in such large numbers that the financial balance of the Portuguese social security system would be seriously upset. If emergencies are disregarded, the most obvious cases of patients travelling abroad are in border areas or where specific conditions are to be treated. Lastly, the Court states that, if insured persons go without prior authorisation to a Member State other than that in which their sickness fund is established to receive treatment there, they can claim reimbursement of the cost of the treatment given to them only within the limits of the cover provided by the health insurance scheme in the Member State of affiliation.

Similarly, **the essential features of the Portuguese national health system cannot justify the restriction at issue.** On that point, in particular, the Court states that Member States, like Portugal, which have established a system providing benefits in kind (that is to say, a system under which the insured persons have the right, not to reimbursement of the costs incurred for medical care, but to the care itself) are required to provide mechanisms for *ex post* reimbursement in respect of care provided in another Member State.

The Court therefore concludes that **Portugal has failed to fulfil its obligations under the principle of the freedom to provide services, by making the possibility of obtaining reimbursement for medical expenses connected with the provision in another Member State of ‘highly specialised’ non-hospital treatment, not involving the use of major and costly equipment, subject to prior authorisation.**

Secondly, the Court examines **the situation relating to other forms of medical care,** that is to say, non-hospital care provided in another Member State, other than the care **covered by the Portuguese Decree-Law,** not involving the use of major and costly equipment and not covered by Regulation No 1408/71.

In that connection, the Court points out that no provision is made under Portuguese law for the reimbursement of costs relating to that type of care – **such as consultation with a general practitioner or dentist, without prior authorisation. Since there is no possibility of reimbursement for that type of care, the Court concludes that Portugal has failed to fulfil its obligations under the principle of the freedom to provide services**

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been

notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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