

ISF Report 2013:14

# Free movement in Europe and the right to sickness benefits in cash

Swedish Social Insurance Inspectorate

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# Summary

The Swedish Social Insurance Inspectorate (Inspektionen för socialförsäkringen, ISF) is an independent supervisory agency for the Swedish social insurance system. The objectives of the agency are to strengthen compliance with legislation and other statutes, and to improve the efficiency of the social insurance system through system supervision and efficiency analysis and evaluation.

The ISF's work is mainly conducted on a project basis and is commissioned by the Government or initiated autonomously by the agency. This report has been initiated by the ISF.

## *Background*

Free movement of workers and other EU-citizens is one of the fundamental rights and freedoms in the European Union. Information from Statistics Sweden (SCB) shows that migration between Sweden and the countries of the European Union is about to increase in the years to come. Social security is a pre-condition for the realization of free movement, and the right to sickness benefit is an important part of social security. A person who belongs to the Swedish Social Security System, earning more than 1 100 Euro and who loses his or hers capacity to work due to sickness is entitled to sickness benefit. One has the right to sickness benefit when the incapacity for work is at least 25 percent.

## *Objectives*

The objectives of this report are to investigate how the Swedish legislation concerning right to sickness benefit in cash (sjukpenning) are influenced by the European Union system of coordination of national social security systems, and how the internal documents of

the Swedish Social Insurance Agency (Försäkringskassan, henceforth the Agency) are adapted to the European system. The report also aims to explore whether the Agency's public information is updated.

### *Methods*

The report uses traditional legal method. At a first stage, the influence of EU-law on the Swedish legal system has been established through examination of legal sources, such as statutes and case law. At a second stage, the internal documents of the Swedish Social Insurance Agency have been reviewed and compared with the legal sources.

### *Findings*

The study shows that the principles of co-ordination exert considerable pressure on Swedish rules. The rules of affiliation to the Swedish system - which is the first requirement for right to sickness benefit - are mainly influenced by the principles of aggregation and assimilation when one comes to Sweden, and by the choice of law rules when one leaves Sweden. The same principles affect the second requirement according to Swedish legislation, namely that a person has an income from employment or other economic activity in Sweden. Incapacity for work is the third and final requirement for right to sickness benefit in cash. Work incapacity is mainly established in Sweden according to the procedure described in the Social Insurance Code. However, the EU-system of co-ordination has limited influence. The right of an EU-migrant to sickness benefit in cash in Sweden is dependent on a number of decisions that have to be made with regard to the three requirements in national legislation, where factors such as the insured person's status as active or non-active worker and the place of residence or stay during sickness play a significant role.

The internal documents of the Agency contain adequate legal references and a considerable number of updates according to EU-law. However, they also display shortcomings. Information about EU-law is incoherent. In some cases, unclear, incomplete or contradictory. Some conflicts between Swedish legislation and EU-law are not highlighted enough. It has been questioned in the report whether the Agency goes too far in its interpretation of the principle of assimilation and it has been pointed out that the reasoning of the European Court of Justice about the importance of taking into

consideration the fundamental right of free movement and the provisions of the Treaty on the Functioning of the European Union has not been given proper attention in the documents.

Public information, which is available through the Agency's website, is not up-to-date and adapted to the European Union Law of co-ordination of social security.

#### *Recommendations/Conclusions*

It has been concluded that the quality of internal and external information documents would improve if:

- Importance of taking into consideration the provisions of the Treaty on the Functioning of the European Union in decision-making were emphasized.
- The documents including information about affiliation to the Swedish social security system were better co-ordinated with one another. Starting and ending of social security coverage in Sweden were highlighted. References to Regulation 1408/71 were less comprehensive.
- Information regarding the requirement of having an income in Sweden and the rules of income protection period were clarified and completed with respect to several categories of EU-migrants and benefits (in particular, with respect to sickness benefit in cash).
- Information about medical certificates from other Member States, as well as administrative controls and co-operation with other Member States regarding work incapacity in sickness insurance were inserted in relevant documents.
- Information about EU migrants' right to short-term cash benefits (including sickness benefit) were described separately with both general and specific requirements with regard to each benefit.
- The public information material about right to sickness benefit in EU-context were updated.