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<sup>(1)</sup> Text of relevance to the EEA and to the EC/Switzerland Agreement

## IV

(Notices)

## NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

## EUROPEAN COMMISSION

## ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS

## DECISION No A1

of 12 June 2009

**concerning the establishment of a dialogue and conciliation procedure concerning the validity of documents, the determination of the applicable legislation and the provision of benefits under Regulation (EC) No 883/2004 of the European Parliament and of the Council**

(Text of relevance to the EEA and to the EC/Switzerland Agreement)

(2010/C 106/01)

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS,

Having regard to Article 72(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems <sup>(1)</sup>, under which the Administrative Commission is responsible for dealing with all administrative questions or questions of interpretation arising from the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems <sup>(2)</sup>,

Having regard to Article 76(3), (4) subparagraph 2 and (6) of Regulation (EC) No 883/2004 concerning the duties of cooperation of the competent authorities and institutions of the Member States to ensure a correct implementation of the Regulations,

Having regard to Article 5 of Regulation (EC) No 987/2009, concerning the legal value of documents and supporting evidence showing the position of a person,

Having regard to Article 6 of Regulation (EC) No 987/2009, concerning the provisional application of legislation and the provisional granting of benefits in cases where there is a difference of views between the institutions of two or more

Member States concerning the determination of the applicable legislation,

Having regard to Article 16 of Regulation (EC) No 987/2009, concerning the establishment of a procedure for the application of Article 13 of Regulation (EC) No 883/2004,

Having regard to Article 60 of Regulation (EC) No 987/2009, concerning the establishment of a procedure for the application of Article 68 of Regulation (EC) No 883/2004,

Whereas:

- (1) One of the key factors for an efficient functioning of the Community rules concerning the coordination of national social security systems is a close and effective cooperation between the authorities and institutions of the different Member States.
- (2) One of the elements of good cooperation under the Regulations is the exchange of information between authorities and institutions and persons, which shall be based on principles of public service, efficiency, active assistance, rapid delivery and accessibility.
- (3) It is in the interest of both the institutions and authorities, and the persons concerned that all information necessary for establishing and determining the rights and obligations of the person concerned is provided or exchanged without delay.

<sup>(1)</sup> OJ L 166, 30.4.2004, p. 1.

<sup>(2)</sup> OJ L 284, 30.10.2009, p. 1.

- (4) The principle of sincere cooperation, as also laid down in Article 10 of the Treaty, also requires that institutions conduct a proper assessment of the facts relevant for the application of the Regulations. Where there is doubt about the validity of a document or about the correctness of supporting evidence or where there is a difference of views between Member States concerning the determination of the applicable legislation or which institution should provide the benefit, it is in the interest of the persons covered by Regulation (EC) No 883/2004 that institutions or authorities of the Member States concerned reach an agreement within a reasonable period of time.
- (5) Articles 5 and 6 of Regulation (EC) No 987/2009 provide for a conciliation procedure to be followed in these cases.
- (6) These provisions confirm and extend the case-law of the Court of Justice of the European Communities under Council Regulation (EEC) No 1408/71 <sup>(1)</sup>, under which a standard procedure has been developed for disputes between Member States concerning the validity of posting certificates and which has been consolidated in former Decision 181 of the Administrative Commission of the European Communities on Social Security for Migrant Workers <sup>(2)</sup>.
- (7) Both Articles 5 and 6 of Regulation (EC) No 987/2009 provide for the possibility to refer the matter to the Administrative Commission in case no agreement can be reached between the institutions or authorities concerned.
- (8) Article 16 of Regulation (EC) No 987/2009 provides that this procedure should also be followed where there is a difference of views between the institutions or authorities concerning the application of Article 13 of Regulation (EC) No 883/2004.
- (9) Article 60 of Regulation (EC) No 987/2009 contains a similar reference to Article 6 of this Regulation in case of a difference of views about the applicable legislation by priority right in the field of family benefits.
- (10) These provisions find their basis in Article 76(6) of Regulation (EC) No 883/2004, according to which in the event of difficulties in the interpretation or application of that Regulation, the institution of the competent Member State or State of residence contacts the institutions of the Member States concerned and according to which the matter may be referred to the Administrative Commission if no solution can be found within a reasonable period.
- (11) Member States have expressed a need to establish a standard procedure to be followed before a matter may be referred to the Administrative Commission and to define more precisely the role of the Administrative Commission in reconciling opposing views held by the institutions concerning the applicable legislation.
- (12) A similar procedure has already been established in several bilateral agreements between Member States. These agreements have served as a model for this Decision.
- (13) It is advisable that, in order to accelerate the procedure, communication between the contact persons of the institutions and the authorities is conducted by electronic means.
- Acting in accordance with the conditions laid down in Article 71(2) of Regulation (EC) No 883/2004,
- HAS DECIDED AS FOLLOWS:
1. This Decision lays down the rules for the application of a dialogue and conciliation procedure which can be used in the following cases:
    - (a) cases where there is doubt about the validity of a document or about the correctness of supporting evidence stating the position of a person for the purpose of the application of Regulation (EC) No 883/2004 or of Regulation (EC) No 987/2009; or
    - (b) cases where there is a difference of views between Member States about the determination of the applicable legislation.
  2. The dialogue and conciliation procedure shall be followed before the matter may be referred to the Administrative Commission.
  3. This Decision applies without prejudice to the administrative procedures to be followed under the national law of a Member State concerned.
  4. In the event the matter has become subject of a judicial or administrative appeal procedure under national law in the Member State of the institution that issued the document in question, the dialogue and conciliation procedure must be suspended.

<sup>(1)</sup> OJ L 149, 5.7.1971, p. 2.

<sup>(2)</sup> OJ L 329, 14.12.2001, p. 73.

5. The institution or authority which expresses doubts about the validity of a document that is issued by an institution or authority of another Member State, or which does not agree with the (provisional) determination of the applicable legislation is hereinafter called the requesting institution. The institution of the other Member State is hereinafter called the requested institution.

#### **First stage of the dialogue procedure**

6. If one of the situations referred to under point 1 occurs, the requesting institution contacts the requested institution to ask for necessary clarification of its decision and, where appropriate, to withdraw or declare invalid the relevant document, or to review or annul its decision.
7. The requesting institution substantiates its request, indicating that this decision applies, and provides relevant supporting evidence that gave rise to the request. It indicates who will be its contact person during the first stage of the dialogue procedure.
8. The requested institution confirms receipt of the request by e-mail or fax without delay and at the latest within 10 working days of receipt of the request. It also indicates who will be its contact person during the first stage of the dialogue procedure.
9. The requested institution informs the requesting institution about the outcome of its investigation as soon as possible, but at the latest within three months after receipt of the request.
10. If the original decision is confirmed, annulled and/or the document is withdrawn or declared invalid, the requested institution shall notify the requesting institution. It shall also notify the person concerned and, where relevant, his employer, of its decision and of the procedures under its national legislation to contest this decision.
11. If the requested institution cannot conclude its investigation within three months, due to the complexity of the case or due to the fact that verification of certain data requires the involvement of another institution, it may extend the time limit by a maximum period of three months. The requested institution shall inform the requesting institution of the extension as soon as possible but at least one week before the expiry of the first deadline, substantiating the reasons for the delay and providing an indicative time by which the investigation will be completed.
12. In very exceptional circumstances, Member States concerned may agree to derogate from the time limits defined under points 9 and 11, provided that the extension is justified and proportionate in light of the indi-

vidual circumstances and that the extension is limited in time.

#### **Second stage of the dialogue procedure**

13. If the institutions cannot reach an agreement during the first stage of the dialogue procedure, or if the requested institution has not been able to complete its investigation within 6 months following receipt of the request, the institutions notify their competent authorities. The institutions each prepare a record of their activities.
14. The competent authorities of the Member States concerned may decide to initiate the second stage of the dialogue procedure or to refer the matter directly to the Administrative Commission.
15. If the competent authorities initiate the second stage of the dialogue procedure, they each appoint a central contact person within two weeks after having been notified by the institutions. The contact persons do not necessarily need to have direct competence on the subject matter.
16. The contact persons shall endeavour to seek an agreement on the matter within six weeks after their appointment. The contact persons each prepare a record of their activities and notify the institutions about the outcome of the second stage of the dialogue procedure.

#### **The conciliation procedure**

17. If agreement cannot be reached during the dialogue procedure, the competent authorities may bring the matter before the Administrative Commission. The competent authorities each prepare a memorandum for the Administrative Commission with the main points of contention.
18. The Administrative Commission shall try to reconcile the points of view within six months of the date on which the matter was brought before it. It may decide to refer the matter to the Conciliation Board, which may be set up under the rules of the Administrative Commission.

#### **Final provisions**

19. Member States shall report to the Administrative Commission every year their data on the number of disputes in which the procedure set out in this Decision is applied, the Member States involved, the main issues, the length of the procedure, and the outcome of the procedure.
20. Member States shall provide their first annual report within three months following the first year of application of this decision.

21. Within three months after receipt of the first annual reports, the Administrative Commission shall evaluate the experiences of the Member States with the application of this Decision, taking into account the reports of the Member States. The Administrative Commission after the first year will decide whether the reporting will continue on a yearly basis or not.
22. This Decision shall be published in the *Official Journal of the European Union*. It shall apply from the date of entry into force of Regulation (EC) No 987/2009.

*The Chair of the Administrative Commission*

Gabriela PIKOROVÁ

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## DECISION No A2

of 12 June 2009

**concerning the interpretation of Article 12 of Regulation (EC) No 883/2004 of the European Parliament and of the Council on the legislation applicable to posted workers and self-employed workers temporarily working outside the competent State**

(Text of relevance to the EEA and to the EC/Switzerland Agreement)

(2010/C 106/02)

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS,

registered office or a place of business or the State in which the self-employed person normally pursues his activity.

Having regard to Article 72(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems <sup>(1)</sup>, under which the Administrative Commission is responsible for dealing with all administrative questions or questions of interpretation arising from the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems <sup>(2)</sup>,

(3) To this end, the first decisive condition for the application of Article 12(1) of the said Regulation is the existence of a direct relationship between the employer and the worker it engages.

(4) The protection of the worker and the legal security to which he and the institution with which he is insured are entitled require full guarantees that the direct relationship be maintained throughout the period of posting.

Having regard to Article 12 of Regulation (EC) No 883/2004,

Having regard to Articles 5, 6 and 14 to 21 of Regulation (EC) No 987/2009,

(5) The second decisive condition for application of Article 12(1) of the said Regulation is the existence of ties between the employer and the Member State in which it is established. The possibility of posting should therefore be confined solely to undertakings normally carrying on their business in the territory of the Member State whose legislation remains applicable to the posted worker; assuming therefore that the above provisions apply only to undertakings which ordinarily perform substantial activities in the territory of the Member State in which they are established.

Whereas:

(1) The provisions of Article 12 of Regulation (EC) No 883/2004, which provide for an exception to the general rule laid down in Article 11(3)(a) of the said Regulation, aim in particular to facilitate the freedom to provide services for the benefit of employers which post workers to Member States other than that in which they are established, as well as the freedom of workers to move to other Member States. These provisions also aim at overcoming the obstacles likely to impede freedom of movement of workers and at encouraging economic interpenetration whilst avoiding administrative complications, especially for workers and undertakings.

(6) Indicative periods for employed persons and self-employed persons should be specified without prejudice to a case-by-case evaluation.

(2) The purpose of these provisions is thus to avoid, for workers, employers and social security institutions, the administrative complications which would result from the application of the general rule laid down in Article 11(3)(a) of the said Regulation where the period of employment is of short duration in a Member State other than the State in which the undertaking has its

(7) There can no longer be any guarantee of maintaining the direct relationship if the posted worker is made available to a third undertaking.

(8) It is necessary to be able to carry out, throughout the period of posting, all the checks, in particular with regard to the payment of contributions and the maintenance of the direct relationship, required to prevent wrongful use of the abovementioned provisions, and to ensure that administrative bodies, employers and workers are suitably informed.

<sup>(1)</sup> OJ L 166, 30.4.2004, p. 1.

<sup>(2)</sup> OJ L 284, 30.10.2009, p. 1.

- (9) The worker and the employer must be duly informed of the conditions under which the posted worker is allowed to remain subject to the legislation of the country from which he has been posted.
- (10) The situation of undertakings and workers should be assessed and monitored by the competent institutions with the appropriate guarantees so as not to impede the freedom to provide services and the freedom of movement of workers.
- (11) The principle of sincere cooperation, laid down in Article 10 of the Treaty, places a number of obligations on the competent institutions for the purpose of implementing Article 12 of Regulation (EC) No 883/2004.

Acting in accordance with the conditions laid down in Article 71(2) of Regulation (EC) No 883/2004,

HAS DECIDED AS FOLLOWS:

1. The provisions of Article 12(1) of Regulation (EC) No 883/2004 shall apply to a worker subject to the legislation of a Member State (sending State) by virtue of the pursuit of an activity in the employ of an employer and who is sent by that employer to another Member State (State of employment) in order to perform work there for that employer.

The work shall be regarded as being performed for the employer of the sending State if it has been established that this work is being performed for that employer and that there continues to exist a direct relationship between the worker and the employer that posted him.

In order to establish whether such a direct relationship continues to exist, assuming therefore that the worker continues to be under the authority of the employer which posted him, a number of elements have to be taken into account, including responsibility for recruitment, employment contract, remuneration (without prejudice to possible agreements between the employer in the sending State and the undertaking in the State of employment on the payment to the workers), dismissal, and the authority to determine the nature of the work.

For the application of Article 14(1) of Regulation (EC) No 987/2009, as an indication, having been subject to the legislation of the Member State in which the employer is established for at least one month can be considered as meeting the requirement referred to by the words 'immediately before

the start of his employment'. Shorter periods would require a case-by-case evaluation taking account of all the other factors involved.

In order, where necessary and in cases of doubt, to determine whether an employer ordinarily performs substantial activities in the territory of the Member State in which he/she is established, the competent institution in the latter is required to examine all the criteria characterising the activities carried on by that employer, including the place where the undertaking has its registered office and administration, the number of administrative staff working in the Member State in which it is established and in the other Member State, the place where posted workers are recruited and the place where the majority of contracts with clients are concluded, the law applicable to the contracts concluded by the undertaking with its workers, on the one hand, and with its clients, on the other hand, the turnover during an appropriately typical period in each Member State concerned and the number of contracts performed in the sending State. This is not an exhaustive list, as the criteria should be adapted to each specific case and take account of the nature of the activities carried out by the undertaking in the State in which it is established.

2. For the application of Article 14(3) of Regulation (EC) No 987/2009, the fulfilment of the requirements in the Member State where the person is established is assessed on criteria such as having use of office space, paying taxes, having a professional card and a VAT number or being registered with chambers of commerce or professional bodies. As an indication, pursuing one's activity for at least two months can be considered as meeting the requirement referred to by the words 'for some time before the date when he wishes to take advantage of the provisions of that Article'. Shorter periods would require a case-by-case evaluation taking account of all the other factors involved.
3. (a) Pursuant to the provisions of paragraph 1 of this Decision, Article 12(1) of Regulation (EC) No 883/2004 shall continue to apply for posting of staff if the worker, posted by an undertaking in the sending State to an undertaking in the State of employment, is also posted to one or more other undertakings in the same State of employment, in so far as, however, as the worker continues to carry out his work for the undertaking which posted him. This may be the case, in particular, if the undertaking posted the worker to a Member State in order to perform work there successively or simultaneously in two or more undertakings situated in the same Member State. The essential and decisive element is that the work continues to be carried out on behalf of the posting undertaking.

Posting to different Member States which immediately follow each other shall in each case give rise to a new posting within the meaning of Article 12(1) of Regulation (EC) No 883/2004.



- (b) Brief interruption of the worker's activities with the undertaking in the State of employment, whatever the reason (holidays, illness, training at the posting undertaking ...), shall not constitute an interruption of the posting period within the meaning of Article 12(1) of Regulation (EC) No 883/2004.
- (c) Once a worker has ended a period of posting, no fresh period of posting for the same worker, the same undertakings and the same Member State can be authorised until at least two months have elapsed from the date of expiry of the previous posting period. Derogation from this principle is, however, permissible in specific circumstances.
4. The provisions of Article 12(1) of Regulation (EC) No 883/2004 shall not apply or shall cease to apply in particular:
- (a) if the undertaking to which the worker has been posted places him at the disposal of another undertaking in the Member State in which it is situated;
  - (b) if the worker posted to a Member State is placed at the disposal of an undertaking situated in another Member State;
  - (c) if the worker is recruited in a Member State in order to be sent by an undertaking situated in a second Member State to an undertaking in a third Member State.
5. (a) The competent institution of the Member State to whose legislation the person concerned remains subject pursuant to Article 12(1) of Regulation (EC) No 883/2004, in the cases provided for by this Decision, shall duly inform the employer and the worker concerned of the conditions under which the posted worker may continue to be subject to its legislation. The employer shall thus be informed of the possibility of checks throughout the period of posting so as to ascertain that this period has not come to an end. Such checks may relate, in particular, to the payment of contributions and to the maintenance of the direct relationship.
- The competent institution of the Member State in which the person concerned is established, to whose legislation the self-employed person remains subject pursuant to Article 12(2) of Regulation (EC) No 883/2004, shall duly inform him of the conditions under which he may continue to be subject to its legislation. The person concerned shall thus be informed of the possibility of checks throughout the period during which he pursues a temporary activity in the State in which he is active, so as to ascertain that the conditions applying to that activity have not changed. Such checks may relate, in particular, to the payment of contributions and the maintenance of the infrastructure needed to pursue his activity in the State in which he is established.
- (b) Moreover, the posted worker and his employer shall inform the competent institution of the sending State of any change occurring during the period of posting, in particular:
- if the posting applied for has in the end not taken place,
  - if the activity is interrupted in a case other than that provided for in paragraph 3(b) of this Decision,
  - if the posted worker has been assigned by his employer to another undertaking in the sending State, in particular in the event of merger or transfer of an undertaking.
- (c) The competent institution of the sending State shall, where appropriate and upon request, provide the institution of the State of employment with the information referred to in subparagraph (b).
- (d) The competent institutions of the sending State and of the State of employment shall cooperate in carrying out the abovementioned checks and where there is any doubt concerning the applicability of Article 12 of Regulation (EC) No 883/2004.
6. The competent institutions shall assess and monitor the situations covered by Article 12 of Regulation (EC) No 883/2004 and provide employers and workers with all appropriate guarantees so as not to impede the freedom to provide services and the freedom of movement of workers. In particular, the criteria used for assessing whether an employer normally carries out its activities in the territory of a State, whether a direct relationship exists between the undertaking and the worker, or whether a self-employed worker maintains the infrastructure needed to pursue his activity in a State, must be applied consistently and evenly in the same or similar situations.

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7. The Administrative Commission shall encourage cooperation between the competent authorities in the Member States for the purpose of implementing Article 12 of Regulation (EC) No 883/2004 and shall facilitate follow-up work and the exchange of information, experience and good practice when fixing and grading the criteria for assessing the situations of undertakings and workers, and in connection with the control measures put in place. To this end, it shall draw up in stages, for the benefit of administrative authorities, undertakings and workers, a guide of good practice concerning the posting of workers and the pursuit by self-employed workers of a secondary activity outside the State in which they are established.
8. This Decision shall be published in the *Official Journal of the European Union*. It shall apply from the date of entry into force of Regulation (EC) No 987/2009.
- The Chair of the Administrative Commission*  
Gabriela PIKOROVÁ
-

**DECISION No E1****of 12 June 2009**

**concerning the practical arrangements for the transitional period for the data exchange via electronic means referred to in Article 4 of Regulation (EC) No 987/2009 of the European Parliament and of the Council**

**(Text of relevance to the EEA and to the EC/Switzerland Agreement)**

(2010/C 106/03)

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS,

(2) It is necessary to clarify the basic principles to be applied by institutions during the transitional period.

Having regard to Article 72(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems <sup>(1)</sup>, under which the Administrative Commission is responsible for dealing with all administrative questions or questions of interpretation arising from the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems <sup>(2)</sup>,

(3) It is anticipated that after the date of entry into force of the new Regulations there will still be a significant number of claims in progress where entitlement arose under Council Regulation (EEC) No 1408/71 <sup>(3)</sup> before this date and that in relation to these claims it is proposed that the exchange of information will generally be based on the procedures contained in Regulation (EEC) No 1408/71 and Council Regulation (EEC) No 574/72 <sup>(4)</sup>, including the use of E-forms.

Having regard to Article 72(d) of Regulation (EC) No 883/2004 on the coordination of social security systems, under which the Administrative Commission shall encourage as far as possible the use of new technologies,

(4) Article 94(1) of Regulation (EC) No 987/2009 implies that a 'double award' is made in the circumstances of the previous recital, with the beneficiary receiving the higher award.

Having regard to Article 4 of Regulation (EC) No 987/2009, under which the 'The transmission of data between the institutions or the liaison bodies shall be carried out by electronic means ...' and 'The Administrative Commission shall lay down the structure, content, format and detailed arrangements for exchange of documents and structured electronic documents',

(5) However, in practice, in the large majority of cases, if not all, an award based on the former Regulations will not be improved by the application of the new Regulations. It is considered accordingly that it is unrealistic to expect institutions in these circumstances to undertake duplicate procedures under Regulations (EEC) No 574/72 and (EC) No 987/2009.

Having regard to Article 95 of Regulation (EC) No 987/2009, concerning the transitional period, stating that 'Each Member State may benefit from a transitional period for exchanging data by electronic means ...' and that 'These transitional periods shall not exceed 24 months from the date of entry into force of the implementing Regulation',

(6) Paragraph 5 of Decision No H1 <sup>(5)</sup> clarifies the status of certificates (E-forms) and the European Health Insurance Card (including the Provisional Replacements Certificates) issued before the date of entry into force of Regulations (EC) No 883/2004 and (EC) No 987/2009.

Whereas:

(7) Within the transitional period it is entirely up to Member States to decide when they are ready to join the Electronic Exchange of Social Security Information (EESSI) as a whole or sector by sector.

(1) Article 95 of Regulation (EC) No 987/2009 empowers the Administrative Commission to lay down the practical arrangements for any necessary transitional periods, with a view to ensuring the necessary data exchange for the application of the basic Regulation and the implementing Regulation.

Acting in accordance with the conditions laid down in Article 71(2) of Regulation (EC) No 883/2004,

<sup>(1)</sup> OJ L 166, 30.4.2004, p. 1.

<sup>(2)</sup> OJ L 284, 30.10.2009, p. 1.

<sup>(3)</sup> OJ L 149, 5.7.1971, p. 2.

<sup>(4)</sup> OJ L 74, 27.3.1972, p. 1.

<sup>(5)</sup> See page 13 of this Official Journal.

HAS DECIDED AS FOLLOWS:

1. During the transitional period, the guiding principle shall be good cooperation between institutions, pragmatism and flexibility. Above all, the need to guarantee a seamless transition for citizens exercising their rights under the new Regulations is paramount.
2. As from the date of entry into force of Regulations (EC) No 883/2004 and (EC) No 987/2009, paper versions of the Structured Electronic Documents (SEDs) will replace the E-forms based on Regulations (EEC) No 1408/71 and (EEC) No 574/72.
3. Notwithstanding paragraph 2, Member States that have national electronic applications which produce E-forms or that have electronic exchanges in place (for example the Build projects), which cannot reasonably be changed in this time-frame, may continue to use them during the transitional period, as long as the rights of citizens under the new Regulations are fully guaranteed.
4. In all cases, during the transitional period, an institution shall accept relevant information on any document issued by another institution, even if it is based on an outdated format, content or structure. In case of doubts concerning the rights of the citizen concerned, the institution shall contact the issuing institution in the spirit of good cooperation.
5. As stated under paragraph 5 of Decision No H1, E-forms, documents and European Health Insurance Cards (including the Provisional Replacements Certificates) issued before the date of entry into force of Regulations (EC) No 883/2004 and (EC) No 987/2009 shall continue to be valid and be taken into account by the authorities of other Member States even after that date, until their own date of validity has expired or until they are withdrawn or replaced by the documents issued or communicated under Regulations (EC) No 883/2004 and (EC) No 987/2009.
6. Each Member State may follow a flexible phased approach, sector by sector, in implementing the Electronic Exchange of Social Security Information (EESSI), as it becomes EESSI-enabled via its access point(s). A Member State may also choose to join EESSI only when all its sectors are enabled.
7. Being 'EESSI-enabled' means that the sector/access point concerned can both send and receive all messages in that sector to/from other Member States' access points.
8. The information on which sector in which Member State is connected to EESSI shall be contained in a list accessible to national institutions and also reflected in the EESSI Directory. Member States shall inform the Administrative Commission in writing before the date of connection accordingly.
9. During the transitional period the exchange of information between two Member States within a sector shall be either under EESSI or outside EESSI; there shall be no 'mix and match', without prejudice to any bilateral arrangements that may, for instance, concern joint testing or training or analogous reasons.
10. A standardised layout for paper SEDs, to be agreed on by the Administrative Commission, shall be made accessible to institutions.
11. This Decision shall be published in the *Official Journal of the European Union*. It shall apply from the date of entry into force of Regulation (EC) No 987/2009.

*The Chair of the Administrative Commission*  
Gabriela PIKOROVÁ

## DECISION No F1

of 12 June 2009

**concerning the interpretation of Article 68 of Regulation (EC) No 883/2004 of the European Parliament and of the Council relating to priority rules in the event of overlapping of family benefits**

(Text of relevance to the EEA and to the EC/Switzerland Agreement)

(2010/C 106/04)

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS,

Having regard to Article 72(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems <sup>(1)</sup>, under which the Administrative Commission is responsible for dealing with all administrative questions or questions of interpretation arising from the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems <sup>(2)</sup>,

Having regard to Article 68 of Regulation (EC) No 883/2004,

Having regard to Article 1(a) and (b) of Regulation (EC) No 883/2004,

Whereas:

- (1) Where family benefits are payable by more than one Member State, entitlement to family benefits of a Member State where rights are available on the basis of receipt of a pension or on the basis of residence shall be suspended up to the amount of family benefits provided for by a Member State where rights are available on the basis of an activity as an employed or self-employed person. Therefore it is important to know what other periods count as an activity as an employed or self-employed person in order to establish the order of priority in the event of overlapping.
- (2) The legislations of certain Member States provide that periods of suspension or interruption of the actual activity as an employed or self-employed person by reason of holidays, unemployment, temporary incapacity for work, strikes or lock-outs, shall be treated either as periods of an activity as an employed or self-employed person for the acquisition of entitlement to family benefits or shall be regarded as periods of inactivity giving rise, where appropriate, either per se or as the result of a preceding activity as an employed or self-employed person, to the payment of family benefits.

- (3) Article 1(a) and (b) of Regulation (EC) No 883/2004 provide for definitions of 'activity as an employed or self-employed person' by referring to 'any activity or equivalent situation treated as such for the purposes of the social security legislation of the Member State in which such activity or equivalent situation exists'.
- (4) It is essential to know the scope of 'rights available on the basis of an activity as an employed or self-employed person' found in Article 68 of Regulation (EC) No 883/2004 in order to avoid any uncertainties or differences in interpretation.
- (5) In a case where a worker's status of active employment was suspended due to this person's unpaid leave following the birth of a child and for the purpose of bringing up this child, the Court of Justice of the European Communities <sup>(3)</sup> referred to Article 73 of Council Regulation (EEC) No 1408/71 <sup>(4)</sup> in conjunction with Article 13(2)(a) of Regulation (EEC) No 1408/71 <sup>(5)</sup>. Such unpaid leave must therefore also be qualified as an activity as an employed or self-employed person for the purposes of Article 68 of Regulation (EC) No 883/2004. In this context the Court reiterated that the above mentioned provisions can only apply for as long as the person concerned has the status of an employed or self-employed person within the meaning of Article 1(a) of Regulation (EEC) No 1408/71 <sup>(6)</sup> which requires that the person concerned is covered in at least one branch of social security. This excludes persons on unpaid leave who are no longer covered by any social security scheme of the relevant Member State.
- (6) There can only be a non-exhaustive list of cases where during a period of leave a person is deemed to be in an activity as an employed or self-employed person, due to the variety of systems for unpaid leave in Member States and ongoing changes in national legislation. Therefore it is not appropriate to define all the cases in which such unpaid leave is equivalent to an activity as an employed or self-employed person and those where the necessary close link to the gainful activity does not exist.

Acting in accordance with the conditions laid down in Article 71(2) of Regulation (EC) No 883/2004,

<sup>(1)</sup> OJ L 166, 30.4.2004, p. 1.

<sup>(2)</sup> OJ L 284, 30.10.2009, p. 1.

<sup>(3)</sup> Judgment of 7 June 2005 in case C-543/03, *Dodl and Oberhollenzer v. Tiroler Gebietskrankenkasse*.

<sup>(4)</sup> OJ L 149, 5.7.1971, p. 2.

<sup>(5)</sup> Now Articles 67 and 11(3)(a) of Regulation (EC) No 883/2004.

<sup>(6)</sup> Now Article 1(c) of Regulation (EC) No 883/2004.

HAS DECIDED AS FOLLOWS:

1. For the purposes of Article 68 of Regulation (EC) No 883/2004, family benefits shall be regarded as 'available on the basis of an activity as an employed or self-employed person' in particular:
  - (a) by the actual activity as an employed or self-employed person; and also
  - (b) in the course of any period of temporary suspension of such an activity as an employed or self-employed person
    - (i) as a result of sickness, maternity, accident at work, occupational disease or unemployment, as long as wages or benefits, excluding pensions, are payable in respect of these contingencies; or
    - (ii) during paid leave, strike or lock-out; or
    - (iii) during unpaid leave for the purpose of child-raising, as long as this leave is deemed equivalent to such an activity as an employed or self-employed person in accordance with the relevant legislation.
2. This Decision shall be published in the *Official Journal of the European Union*. It shall apply from the date of entry into force of Regulation (EC) No 987/2009.

*The Chair of the Administrative Commission*  
Gabriela PIKOROVÁ

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## DECISION No H1

of 12 June 2009

**concerning the framework for the transition from Council Regulations (EEC) No 1408/71 and (EEC) No 574/72 to Regulations (EC) No 883/2004 and (EC) No 987/2009 of the European Parliament and of the Council and the application of Decisions and Recommendations of the Administrative Commission for the coordination of social security systems**

(Text of relevance to the EEA and to the EC/Switzerland Agreement)

(2010/C 106/05)

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS,

Having regard to Article 72(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems <sup>(1)</sup>, under which the Administrative Commission is responsible for dealing with all administrative questions or questions of interpretation arising from the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems <sup>(2)</sup>,

Having regard to Articles 87 to 91 of Regulation (EC) No 883/2004,

Having regard to Article 64(7) and Articles 93 to 97 of Regulation (EC) No 987/2009,

Whereas:

- (3) Decisions No 74 to 208 and Recommendations No 14 to 23 of the Administrative Commission on Social Security for Migrant Workers, still in force, become obsolete on the date on which Regulations (EEC) No 1408/71 and (EEC) No 574/72 are repealed and Regulations (EC) No 883/2004 and (EC) No 987/2009 enter into force.
- (4) There is a need to adapt certain Decisions and Recommendations applicable under Regulations (EEC) No 1408/71 and (EEC) No 574/72 in order to correspond to the provisions of Regulations (EC) No 883/2004 and (EC) No 987/2009.
- (5) There is a need for transparency and guidance for the institutions in applying Decisions and Recommendations of the Administrative Commission under Regulation (EEC) No 1408/71 and (EEC) No 574/72 after the date of entry into force of Regulations (EC) No 883/2004 and (EC) No 987/2009.
- (6) Due to legal and technical complexity, a tight timeframe and a need to prioritise certain tasks of the Administrative Commission, some of the Decisions will not be ready for the publication in time before the entry into force of Regulations (EC) No 883/2004 and (EC) No 987/2009 but only at a later stage.
- (7) Certain provisions of Decisions and Recommendations applicable under Regulations (EEC) No 1408/71 and (EEC) No 574/72 are incorporated directly into the provisions of Regulations (EC) No 883/2004 and (EC) No 987/2009.
- (8) Acting in accordance with the conditions laid down in Article 71(2) of Regulation (EC) No 883/2004,
- (1) Regulations (EC) No 883/2004 and (EC) No 987/2009 enter into force on 1 May 2010 and Regulations (EEC) No 1408/71 <sup>(3)</sup> and (EEC) No 574/72 <sup>(4)</sup> shall be repealed on the same date, except for the situations governed by Article 90(1) of Regulation (EC) No 883/2004 and Article 96(1) of Regulation (EC) No 987/2009.
- (2) Subject to Article 87(8) of Regulation (EC) No 883/2004 and Article 94 of Regulation (EC) No 987/2009, in principle claims submitted before the date of entry into force of the said Regulations shall continue to be governed by the law which was applicable to them at the time they were submitted and the provisions of the said Regulations shall apply only to claims opened after their entry into force.

<sup>(1)</sup> OJ L 166, 30.4.2004, p. 1.

<sup>(2)</sup> OJ L 284, 30.10.2009, p. 1.

<sup>(3)</sup> OJ L 149, 5.7.1971, p. 2.

<sup>(4)</sup> OJ L 74, 27.3.1972, p. 1.

HAS DECIDED AS FOLLOWS:

1. The Decisions and Recommendations referring to Regulations (EEC) No 1408/71 and (EEC) No 574/72 shall not apply for cases governed by Regulations (EC) No 883/2004 and (EC) No 987/2009.

Nevertheless, the said Decisions and Recommendations remain applicable where Regulations (EEC) No 1408/71 and (EEC) No 574/72 remain in force and continue to have legal effect, in particular in situations under Article 90(1), second indent, of Regulation (EC) No 883/2004 and Article 96(1), second indent, of Regulation (EC) No 987/2009.

2. Decisions and Recommendations which are listed in Part A of the Annex shall not be substituted by any Decisions or Recommendations in respect of Regulations (EC) No 883/2004 and (EC) No 987/2009.
3. Decisions and Recommendations listed in Part B of the Annex shall be substituted by the indicated new Decisions and Recommendations in respect of Regulations (EC) No 883/2004 and (EC) No 987/2009.
4. Decisions listed in Part C of the Annex shall be adapted by the Administrative Commission at the earliest possible time

so that they correspond to the provisions of Regulations (EC) No 883/2004 and (EC) No 987/2009 because the principles in these Decisions need to be applied also with regard to the said Regulations.

5. The documents necessary for application of Regulations (EEC) No 1408/71 and (EEC) No 574/72 (that is, E-forms, European Health Insurance Cards and Provisional Replacement Certificates) issued by the competent institutions, authorities and other bodies of Member States before the entry into force of Regulations (EC) No 883/2004 and (EC) No 987/2009 shall continue to be valid (despite the fact that the references relate to Regulations (EEC) No 1408/71 and (EEC) No 574/72) and shall be taken into account by the institutions, authorities and other bodies of other Member States even after that date, until their date of validity has expired or until they are withdrawn or replaced by the documents issued or communicated under Regulations (EC) No 883/2004 and (EC) No 987/2009.
6. This Decision shall be published in the *Official Journal of the European Union*. It shall apply from the date of entry into force of Regulation (EC) No 987/2009.

*The Chair of the Administrative Commission*  
Gabriela PIKOROVÁ

## ANNEX

**PART A**

(Decisions and Recommendations referring to Regulations (EEC) No 1408/71 and (EEC) No 574/72 without successor in respect of Regulations (EC) No 883/2004 and (EC) No 987/2009)

**Decisions:**

|              |              |
|--------------|--------------|
| Decision 74  | Decision 146 |
| Decision 76  | Decision 148 |
| Decision 79  | Decision 151 |
| Decision 81  | Decision 152 |
| Decision 85  | Decision 156 |
| Decision 89  | Decision 167 |
| Decision 91  | Decision 171 |
| Decision 115 | Decision 173 |
| Decision 117 | Decision 174 |
| Decision 118 | Decision 176 |
| Decision 121 | Decision 178 |
| Decision 126 | Decision 180 |
| Decision 132 | Decision 192 |
| Decision 133 | Decision 193 |
| Decision 134 | Decision 197 |
| Decision 135 | Decision 198 |
| Decision 136 | Decision 199 |
| Decision 137 | Decision 201 |
| Decision 142 | Decision 202 |
| Decision 143 | Decision 204 |
| Decision 145 |              |

**Recommendations:**

|                   |                   |
|-------------------|-------------------|
| Recommendation 15 | Recommendation 19 |
| Recommendation 16 | Recommendation 20 |
| Recommendation 17 | Recommendation 23 |

**PART B**

(Substituted Decisions and Recommendations referring to Regulations (EEC) No 1408/71 and (EEC) No 574/72 and their successors in respect of Regulations (EC) No 883/2004 and (EC) No 987/2009)

| Decisions under Regulations (EEC) No 1408/71 and (EEC) No 574/72 | Corresponding Decisions under Regulations (EC) No 883/2004 and (EC) No 987/2009 |
|--|---|
| Decision 75  | DECISION P1   |
| Decision 83  | DECISION U1   |
| Decision 96  | DECISION P1   |

| Decisions under Regulations (EEC) No 1408/71 and (EEC) No 574/72 | Corresponding Decisions under Regulations (EC) No 883/2004 and (EC) No 987/2009 |
|--|---|
| Decision 99  | DECISION H1   |
| Decision 100   | DECISION H1   |
| Decision 101   | DECISION H1   |
| Decision 105   | DECISION P1   |
| Decision 139   | DECISION H1   |
| Decision 140   | DECISION H1   |
| Decision 160   | DECISION U2   |
| Decision 181   | DECISION A2   |
| Decision 189   | DECISION S1   |
| Decision 190   | DECISION S2   |
| Decision 191   | DECISION S1   |
| Decision 194   | DECISION S3   |
| Decision 195   | DECISION S3   |
| Decision 196   | DECISION S3   |
| Decision 200   | DECISION H3   |
| Decision 203   | DECISION S1   |
| Decision 205   | DECISION U3   |
| Decision 207   | DECISION F1   |

| Recommendations under Regulations (EEC) No 1408/71 and (EEC) No 574/72 | Corresponding Recommendations under Regulations (EC) No 883/2004 and (EC) No 987/2009 |
|--|---|
| Recommendation 18  | RECOMMENDATION U1   |
| Recommendation 21  | RECOMMENDATION U2   |
| Recommendation 22  | RECOMMENDATION P1   |

### PART C

(Decisions referring to Regulations (EEC) No 1408/71 and (EEC) No 574/72 still to be adapted by the Administrative Commission)

Decision 138

Decision 175

Decisions 147 and 150

Decision 206

Decision 170 (including 185)

Decision 208

## DECISION No H2

of 12 June 2009

**concerning the methods of operation and the composition of the Technical Commission for data processing of the Administrative Commission for the coordination of social security systems**

(Text of relevance to the EEA and to the EC/Switzerland Agreement)

(2010/C 106/06)

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS,

information it deems necessary for appropriate accomplishment of its tasks.

Having regard to Article 72 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems <sup>(1)</sup>, under which the Administrative Commission shall foster and develop cooperation between Member States by modernising procedures for the exchange of information, in particular by adapting the information flow between institutions for the purpose of exchange by electronic means, taking account of the development of data processing in each Member State; and adopt the common structural rules for data-processing services, in particular on security and the use of standards, and shall lay down provisions for the operation of the common part of those services,

Having regard to Article 73 of Regulation (EC) No 883/2004, under which the Administrative Commission shall set up and determine the methods of operation and composition of a Technical Commission, which shall deliver reports and a reasoned opinion before decisions are taken by the Administrative Commission pursuant to Article 72(d),

HAS DECIDED AS FOLLOWS:

*Article 1*

1. The Administrative Commission sets up the Technical Commission for data processing provided for in Article 73(1) of Regulation (EC) No 883/2004. It shall be called 'the Technical Commission'.

2. The Technical Commission shall have the functions laid down in Article 73(2) of Regulation (EC) No 883/2004.

3. The mandate with regard to the specific tasks of the Technical Commission shall be set by the Administrative Commission who may modify these tasks as required.

*Article 2*

The Technical Commission shall adopt its reports and reasoned opinions where necessary on the basis of technical documents and studies. It can request from national administrations any

*Article 3*

1. The Technical Commission shall be composed of two members from each Member State, one of whom shall be nominated as the standing member, with the other designated as his deputy. The nominations from each Member State shall be forwarded to the Secretary-General of the Administrative Commission by the government representative for the Member State on the Administrative Commission.

2. Reports and reasoned opinions shall be adopted by simple majority of all members of the Technical Commission, each Member State having a single vote that shall be cast by the standing member or in his absence by his deputy. The reports or reasoned opinions of the Technical Commission must indicate whether they were reached unanimously or by simple majority. They must, should there be a minority, set out conclusions or reservations of the minority.

3. The Technical Commission may decide to adopt reports and reasoned opinions by the use of written procedure if such a procedure was agreed at a prior meeting of the Technical Commission.

To this end the Chairman shall communicate the text to be adopted to the members of the Technical Commission. The Members shall be given a set time limit of at least 10 working days, within which Members shall have the possibility to state that they reject the proposed text or abstain from the voting. No response within the set time limit shall be considered as an affirmative vote.

The Chair may also decide to launch a written procedure in case no prior agreement had been obtained in a meeting of the Technical Commission. In such a case, only written agreements to the proposed text shall be counted as affirmative votes and the set time limit of at least 15 working days shall be given.

The Chairman shall, at the expiry of the set time limit, inform the members of the result of the voting. A decision having received the required number of affirmative votes shall be considered adopted on the last day set for the period within which members were asked to respond.

<sup>(1)</sup> OJ L 166, 30.4.2004, p. 1.

4. If a member of the Technical Commission in the course of the written procedure proposes that the text shall be amended, the Chairman shall either:

- (a) recommence the written procedure by communicating the proposed amendment to the members in accordance with the procedure in paragraph 3; or
- (b) cancel the written procedure in order to have the matter discussed at the next meeting;

depending on which procedure the Chairman considers appropriate for the matter in question.

5. If a member of the Technical Commission, before the expiry of the time limit set for responding, requests that the proposed text shall be examined at a meeting with the Technical Commission, the written procedure shall be cancelled.

The matter shall then be examined at the following meeting of the Technical Commission.

6. A representative of the Commission of the European Communities or a person designated by him shall act in a consultative capacity within the Technical Commission.

#### *Article 4*

The office of Chairman of the Technical Commission shall be held each half-year by either the standing member or another designated official belonging to the State whose representative on the Administrative Commission holds the office of Chairman of that Commission for the same period. The Chairman of the Technical Commission shall report on the activities of the Technical Commission as required by the Chairman of the Administrative Commission.

#### *Article 5*

The Technical Commission may set up ad-hoc working groups to consider specific issues. The Technical Commission shall describe the tasks to be taken forward by such working groups, the timetable for completion of those tasks and the

financial implications of its action in the work programme mentioned in Article 7.

#### *Article 6*

The Secretariat of the Administrative Commission shall prepare and organise the meetings of the Technical Commission and draw up the minutes thereof.

#### *Article 7*

The Technical Commission shall submit a detailed work programme to the Administrative Commission for its approval. The Technical Commission shall also report each year, to the Administrative Commission, on its activities and achievements in relation to the work programme and with any proposals for amending it.

#### *Article 8*

Any proposed action of the Technical Commission involving expenses to be borne by the Commission of the European Communities is subject to the approval of the representative of that institution.

#### *Article 9*

The languages of the Technical Commission shall be the same as those recognised as official languages of the Community institutions in accordance with the Article 290 of the Treaty.

#### *Article 10*

The supplementary rules laid down in the attached Annex shall also apply to the Technical Commission.

#### *Article 11*

This decision shall be published in the *Official Journal of the European Union*. It shall apply from the date of entry into force of Regulation (EC) No 987/2009 of the European Parliament and of the Council <sup>(1)</sup>.

*The Chair of the Administrative Commission*

Gabriela PIKOROVÁ

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<sup>(1)</sup> OJ L 284, 30.10.2009, p. 1.



## ANNEX

**SUPPLEMENTARY RULES OF THE TECHNICAL COMMISSION****1. Attendance at meetings**

- (a) If the Chairman in office is prevented from attending a meeting of the Technical Commission, his deputy shall act as chairman.
- (b) Members may be accompanied at the meetings of the Technical Commission by one or more additional experts where this is necessary because of the nature of the subjects to be dealt with. Each delegation may, as a rule, consist of not more than four persons.
- (c) The representative of the Commission of the European Communities or a member of the Secretariat or any other person designated by the Secretary-General of the Administrative Commission shall attend all meetings of the Technical Commission or its ad-hoc working groups. Those meetings may furthermore be attended, where this is relevant to the question to be dealt with, by a representative of other departments of the Commission of the European Communities.

**2. Voting**

- (a) When a standing member of the Technical Commission holds the office of Chairman, his deputy shall vote in his place.
- (b) Any member present when a vote is taken who abstains from voting shall be invited by the chairman to state his reasons for abstaining.
- (c) When the majority of members present abstain, the proposal put to the vote shall be considered as not having been taken into consideration.

**3. Agenda**

- (a) The provisional agenda of each meeting of the Technical Commission shall be drawn up by the Secretariat in consultation with the chairman of the Technical Commission. Before proposing to include an item in the agenda, the Secretariat may, where this appears necessary, ask the delegations concerned to make their views on this question known in writing.
- (b) The provisional agenda shall, in principle, comprise items for which a request submitted by a member or by the representative of the Commission of the European Communities and, where appropriate, notes relating to it have been received by the Secretariat at least 20 working days before the beginning of the meeting.
- (c) The provisional agenda shall be sent at least 10 working days before the beginning of each meeting to the members of the Technical Commission, the representative of the Commission of the European Communities, and any other person expected to be attending the meeting. The documents relating to the items on the agenda shall be sent to them as soon as they are available.
- (d) At the beginning of each meeting the Technical Commission shall approve the agenda of the meeting. A unanimous vote of the Technical Commission is required for the inclusion in the agenda of any items other than those appearing on the provisional agenda. Except in cases of urgency, members of the Technical Commission may reserve their final position until the following meeting with regard to items appearing on the provisional agenda for which they have not received the relevant documents in their own language five working days before the beginning of the meeting.

**4. Ad-hoc working groups**

- (a) Ad-hoc working groups shall be presided over by an expert designated by the Chairman of the Technical Commission in consultation with the representative of the Commission of the European Communities or, failing this, by an expert representing the State whose representative on the Administrative Commission holds the office of Chairman of that Commission.

- (b) The Chairman of the ad-hoc working group shall be summoned to the meeting of the Technical Commission in the course of which the report of that ad-hoc working group is discussed.

**5. Administrative matters**

- (a) The Chairman of the Technical Commission may give the Secretariat any instructions for meetings to be held and for the performance of activities that are within the scope of the functions of the Technical Commission.
  - (b) The Technical Commission shall be convened by a letter of convocation sent to the members and the representative of the Commission of the European Communities 10 working days before the meeting by the Secretariat in consultation with the Chairman of the Technical Commission.
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**DECISION No P1****of 12 June 2009****on the interpretation of Articles 50(4), 58 and 87(5) of Regulation (EC) No 883/2004 of the European Parliament and of the Council for the award of invalidity, old-age and survivors' benefits****(Text of relevance to the EEA and to the EC/Switzerland Agreement)****(2010/C 106/07)**

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS,

Member States have already been taken into account for the award of the benefit and no periods have been acquired following the award of the initial benefit.

Having regard to Article 72(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems <sup>(1)</sup>, under which the Administrative Commission is responsible for dealing with all administrative questions or questions of interpretation arising from the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems <sup>(2)</sup>,

However, where additional conditions apply (other than the fulfilment of insurance periods), such as the attainment of the age required for the award of the benefit or a change in the number of children to be taken into account, this shall automatically require a new calculation to be made.

Having regard to Articles 50(4), 58 and 87(5) of Regulation (EC) No 883/2004,

2. The institution which makes a new calculation of a benefit which was previously awarded by it shall, for the calculation, take into account all the periods of insurance and/or residence, as well as any other condition which the beneficiary fulfils under its own legislation and under the legislation of the other Member States on the date of the award of the recalculated benefit.

Whereas it is necessary to clarify the application of Article 50(4), Article 58 and Article 87(5) of Regulation (EC) No 883/2004 and to provide the necessary guidance to the institutions tasked with the implementation of these provisions,

Acting in accordance with the conditions laid down in Article 71(2) of Regulation (EC) No 883/2004,

3. The relevant day shall be the day on which the risk materialised in the Member State where conditions for entitlement were last satisfied.

HAS DECIDED AS FOLLOWS:

**I. Application of Article 50(4) of Regulation (EC) No 883/2004**

1. The institution which pays a benefit shall automatically make a new calculation when it is informed that the beneficiary satisfies the conditions for the award of a benefit under the legislation of another Member State.

A new calculation shall not be made in the situation where the periods completed under the legislation of the other

**II. Application of Article 58 of Regulation (EC) No 883/2004**

4. The institution which awards a supplement in accordance with Article 58 of Regulation (EC) No 883/2004 shall notify the competent institution of any other Member State under whose legislation the beneficiary is entitled to a benefit awarded in accordance with the provisions of Chapter 5 of the Regulation.
5. The competent institution of any other Member State which provides benefits under Chapter 5 of Regulation (EC) No 883/2004 to the beneficiary shall every January notify the institution paying the supplement of the amount of the benefits it pays to the beneficiary as of 1 January of that same year.

<sup>(1)</sup> OJ L 166, 30.4.2004, p. 1.

<sup>(2)</sup> OJ L 284, 30.10.2009, p. 1.

**III. Application of Article 87(5) of Regulation (EC) No 883/2004**

6. When a person makes an application for the review of an invalidity pension under the provisions of Article 87(5) of Regulation (EC) No 883/2004, it shall not be necessary to carry out a new medical examination, provided that the information contained in the beneficiary's file can be regarded as adequate.

Where this is not the case, the institution concerned may request that a new medical examination is carried out.

**IV. Publication and entry into force**

7. This Decision shall be published in the *Official Journal of the European Union*. It shall apply from the date of entry into force of Regulation (EC) No 987/2009.

*The Chair of the Administrative Commission*

Gabriela PIKOROVÁ

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**DECISION No S1****of 12 June 2009****concerning the European Health Insurance Card****(Text of relevance to the EEA and to the EC/Switzerland Agreement)****(2010/C 106/08)**

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS,

may additionally be incorporated in an electronic medium. The use of an electronic medium will furthermore become generalised at a later stage.

Having regard to Article 72(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems <sup>(1)</sup>, under which the Administrative Commission is responsible for dealing with all administrative questions or questions of interpretation arising from the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems <sup>(2)</sup>,

(3) The European Health Insurance Card must conform to a single model defined by the Administrative Commission, which should both help facilitate access to health care and help to prevent irregular, abusive or fraudulent use of the card.

Having regard to Article 19 of Regulation (EC) No 883/2004 concerning the entitlement of an insured person and the members of his/her family, staying in a Member State other than the competent Member State to benefits in kind which become necessary on medical grounds taking into account the nature of the benefits and the expected length of the stay,

(4) Institutions of the Member State determine the period of validity of the European Health Insurance Cards they issue. The period of validity of the European Health Insurance card should take into account the presumed duration of the insured person's entitlement.

Having regard to Article 27(1) of Regulation (EC) No 883/2004,

(5) In the event of exceptional circumstances, a provisional replacement certificate of limited duration should be issued. 'Exceptional circumstances' may be theft or loss of the European Health Insurance Card or departure at notice too short for a European Health Insurance Card to be issued. The provisional replacement certificate can be requested by the insured person or the institution of the State of stay.

Having regard to Article 25(A) and (C) of Regulation (EC) No 987/2009,

Whereas:

(1) The Barcelona European Council, held on 15 and 16 March 2002, decided: 'that a European Health Insurance Card will replace the current paper forms needed for health treatment in another Member State. The Commission will present a proposal to that effect before the Spring European Council in 2003. Such a card will simplify procedures, but will not change existing rights and obligations.' (point 34).

(6) The European Health Insurance Card should be used in all situations of temporary stay during which an insured person requires health care irrespective of the purpose of the stay, be it for reasons of tourism, professional activity or study. However the European Health Insurance Card cannot be used when the purpose of the stay abroad is solely to obtain healthcare.

(2) Given that the use of health and social security cards differs widely from one Member State to another, the European Health Insurance Card is initially introduced in a format in which the data necessary for the provision of health care and the reimbursement of the costs can be read with the naked eye. This information

(7) In accordance with Article 76 of Regulation (EC) No 883/2004, Members States should cooperate to put in place procedures to avoid that, in the event that a person ceases to be entitled to sickness benefits in kind on behalf of a Member State and becomes entitled to benefits in kind on behalf of another Member State, he/she continues to use the European Health Insurance Card issued by the institution of the first Member State beyond the date from which he is no longer entitled to benefits in kind on its behalf.

<sup>(1)</sup> OJ L 166, 30.4.2004, p. 1.

<sup>(2)</sup> OJ L 284, 30.10.2009, p. 1.

- (8) The European Health Insurance Card issued before the entry into application of Regulations (EC) No 883/2004 and (EC) No 987/2009 will remain valid till the expiry date mentioned on the card.

Acting in accordance with the conditions laid down in Article 71(2) of Regulation (EC) No 883/2004,

HAS DECIDED AS FOLLOWS:

#### **General principles**

1. The European Health Insurance Card certifies the entitlement of an insured person and a pensioner as well as the members of their family, staying in a Member State other than the competent Member State to benefits in kind which become necessary on medical grounds taking into account the nature of the benefits and the expected length of the stay.
- The European Health Insurance Card cannot be used in the situation where the aim of the temporary stay is to receive medical treatment.
2. The European Health Insurance Card shall be an individual card made out in the name of the card holder.
3. The period of validity of the European Health Insurance Card shall be determined by the issuing institution.
4. Benefits in kind provided by the institution of the Member State of stay on the basis of a valid European Health Insurance Card shall be reimbursed by the competent institution in accordance with the provisions in force. A valid European Health Insurance Card is a card where the validity period indicated on the card has not expired.

The competent institution may not reject the refund of the cost of benefits on the grounds that the person has ceased to be insured with the institution which has issued the European Health Insurance Card, provided that the benefits were given to the holder of the card or the Provisional Replacement Certificate within the validity period of the card or the certificate.

5. When exceptional circumstances prevent the issuing of a European Health Insurance Card, a provisional replacement certificate with a limited validity period shall be issued by the competent institution. The provisional Replacement Certificate can be requested either by the insured person or the institution of the State of stay.

6. The European Health Insurance Card and the provisional replacement certificate shall conform to a single model meeting the characteristics and technical specifications laid down by decision of the Administrative Commission.

#### **Data contained on the European Health Insurance Card**

7. The European Health Insurance Card shall contain the following data:

- surname and forename of the card holder,
- personal identification number of the card holder or, when no such number exists, the number of the insured person from whom the rights of the card holder derive,
- date of birth of the card holder,
- expiry date of the card,
- ISO code of the Member State issuing the card,
- identification number and acronym of the competent institution,
- logical number of the card.

#### **Use of the European Health Insurance Card**

8. The European Health Insurance Card can be used in all situations of temporary stay during which an insured person requires benefits in kind irrespective the purpose of the stay, be it for reasons of tourism, professional activity or study.
9. The European Health Insurance Card proves the entitlement of the card holder in the Member State of stay to sickness benefits in kind which become medically necessary and which are granted during a temporary stay in another Member State with a view to preventing the card holder from being forced to return before the end of the planned duration of stay to the competent State or the State of residence to obtain the treatment he/she requires.

The purpose of benefits of this type is to enable the insured person to continue his/her stay under safe medical conditions.



10. The European Health Insurance Card does not cover sickness benefits in kind in situations where the aim of the stay is to receive medical treatment.
11. The European Health Insurance Card guarantees that the card holder receives in the Member State of stay the same treatment (procedures and tariffs) as person covered by the sickness insurance scheme of this State.

**Cooperation between institutions in order to avoid misuse of the European Health Insurance Card**

12. In the event that a person ceases to be entitled to sickness benefits in kind on behalf of a Member State's legislation and becomes entitled to benefits in kind on behalf of the legislation of another Member State, the institutions of the

Member States concerned should cooperate in order to avoid the insured person continuing to use the European Health Insurance Card issued by the institution of the first Member State beyond the date from which he is no longer entitled to benefits in kind on its behalf. Where appropriate, the institution of the latter State shall provide a new European Health Insurance Card.

13. This Decision shall be published in the *Official Journal of the European Union*. It shall apply from the date of entry into force of Regulation (EC) No 987/2009.

*The Chair of the Administrative Commission*  
Gabriela PIKOROVÁ

**DECISION No S2**  
**of 12 June 2009**  
**concerning the technical specifications of the European Health Insurance Card**  
**(Text of relevance to the EEA and to the EC/Switzerland Agreement)**  
**(2010/C 106/09)**

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS,

Having regard to Article 72(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems <sup>(1)</sup>, under which the Administrative Commission is responsible for dealing with all administrative questions or questions of interpretation arising from the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the co-ordination of social security systems <sup>(2)</sup>.

Having regard to the Administrative Commission Decision No S1 of 12 June 2009 concerning the European Health Insurance Card <sup>(3)</sup>,

Whereas:

- (1) In order to facilitate the acceptance and the reimbursement of the costs of benefits in kind provided on the basis of a European Health Insurance Card, it is necessary for the three main parties concerned, namely the insured person, the health care providers and the institutions, to recognise easily and accept the European Health Insurance Card in conformity with a single model and uniform specifications.
- (2) The information which must be visible on the European Health Insurance Card is defined in point 7 of Decision No S1. The introduction of a European Health Insurance Card with visible data is the first stage of a process leading to the use of an electronic medium proving

entitlement to benefits in kind during a temporary stay in a Member State other than the competent one or the State of residence. Consequently, the competent institutions of the Member States wishing to do so may incorporate on an electronic medium, such as a microchip or magnetic strip, from the initial stage onwards, the data referred to in this recital.

- (3) When exceptional circumstances prevent the issuing of a European Health Insurance Card, a provisional replacement certificate in accordance with a uniform model shall be issued,

Acting in accordance with the conditions laid down in Article 71(2) of Regulation (EC) No 883/2004,

HAS DECIDED AS FOLLOWS:

1. The design and specifications of the European Health Insurance Card shall be established in accordance with Annex I to this Decision.
2. The model of the provisional replacement certificate shall be established in accordance with Annex II to this Decision.
3. This Decision shall be published in the *Official Journal of the European Union*. It shall apply from the date of entry into force of Regulation (EC) No 987/2009.

*The Chair of the Administrative Commission*  
Gabriela PIKOROVÁ

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<sup>(1)</sup> OJ L 166, 30.4.2004, p. 1.

<sup>(2)</sup> OJ L 284, 30.10.2009, p. 1.

<sup>(3)</sup> See page 23 of this Official Journal.

ANNEX I

Technical provisions concerning the design of the European Health Insurance Card

1. INTRODUCTION

In compliance with the related Decisions of the Administrative Commission for the Coordination of Social Security Systems, the European Health Insurance Card provides a minimum set of ‘eye-readable’ data to be used in a Member State other than the Member State of insurance or residence for:

- Identifying the insured person, the competent institution and the card
- Stating the entitlement to receive care during a temporary stay in another Member State.

The models shown below are based on the technical specifications defined in this document but are to be considered for illustration purposes only.



Figure 1  
Example for the front side



Figure 2  
Example for the reverse side

While the ordering of the eye-readable data is identical in both models, i.e. irrespective of the side used by the European health insurance card, a different structure has been defined for the front and the reverse side. This is the result of a compromise between the required unique model for the European card and the structural differences of both sides while retaining the overall style between the front and the back of the card.

## 2. NORMATIVE REFERENCE

| Reference       | Document Title/Description  | Issuing date |
|-----------------|---|--------------|
| ISO 3166-1      | Codes for the representation of names of countries and their subdivisions – Part 1: Country codes                     | 1997         |
| ISO/IEC 7810    | Identification cards – Physical characteristics   | 1995         |
| ISO/IEC 7816    | Identification cards – Integrated circuit(s) cards with contacts  |              |
|                 | Part 1: Physical characteristics  | 1998         |
|                 | Part 2: Dimension and location of the contacts  | 1999         |
| ISO 8859 series | 8-bit single-byte coded graphic character sets  | 1998         |
|                 | Part 1 – 4: Latin alphabet Nos 1 to 4   |              |
| EN 1867         | Machine readable cards – Health care application – Numbering system and registration procedure for issuer identifiers | 1997         |

## 3. SPECIFICATIONS

## 3.1. Definitions

The front side is the side on which the microprocessor (if any) is embedded. The reverse side is the side on which the magnetic strip (if any) is attached. If there is neither a microprocessor nor a magnetic strip, the front side of the card will be the side on which the information outlined in this document is presented.

## 3.2. Overall structure

The format of the European health insurance card complies with the ID-1 format (53,98 mm high, 85,60 mm wide and 0,76 mm thick). However, if the European health insurance card takes the form of a sticker to be applied on the reverse side of a national card, the ID-1 thickness criterion will not apply.

3.2.1. *European health insurance card: front side of the card*

The background is divided into two parts by an axis vertically splitting the card area into Part 1 on the left (53 mm wide) and Part 2 on the right.

4 placeholders are positioned thanks to a set of guiding lines:

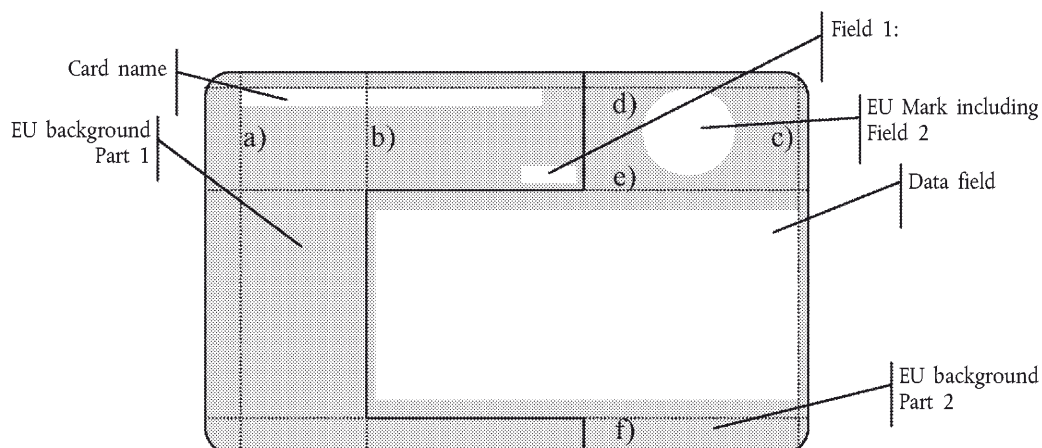
— 3 vertical guiding lines

- a) at 5 mm from the left edge of the card,
- b) at 21,5 mm from the left edge of the card,
- c) at 1 mm from the right edge of the card;

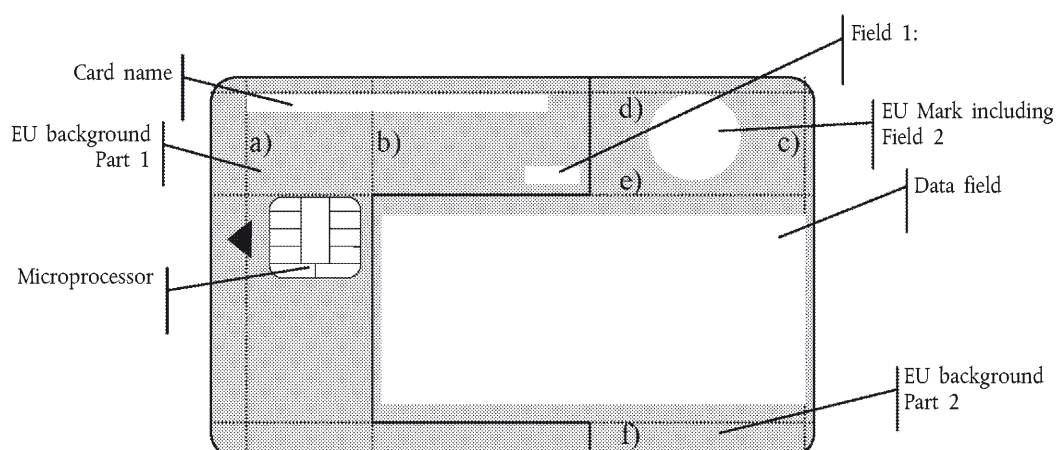
— 3 horizontal guiding lines

- d) at 2 mm from the top edge of the card,
- e) at 17 mm from the top edge of the card,
- f) at 5 mm from the bottom edge of the card.

(a) Card without chip



(b) Chip card



### 3.2.2. European Health Insurance Card: reverse side of the card

The background is divided by an axis splitting the card area horizontally into two parts of equal size. Part 1 is the top part and Part 2 the bottom part.

5 placeholders are positioned thanks to a set of guiding lines:

— Symmetrically

g) at 9 mm from the left edge of the card,

h) in the middle of the card,

i) at 9 mm from the right edge of the card.

— Vertically

j) at 3 mm from the left edge of the card,

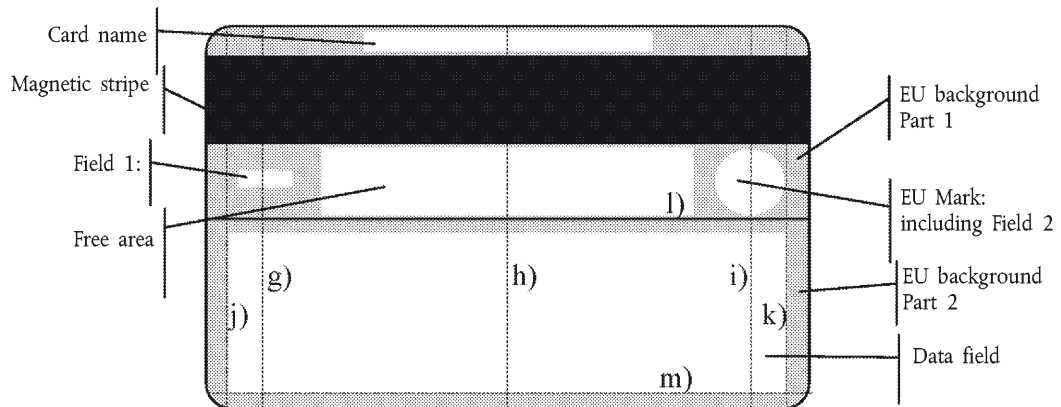
k) at 3 mm from the right edge of the card;

— Horizontally

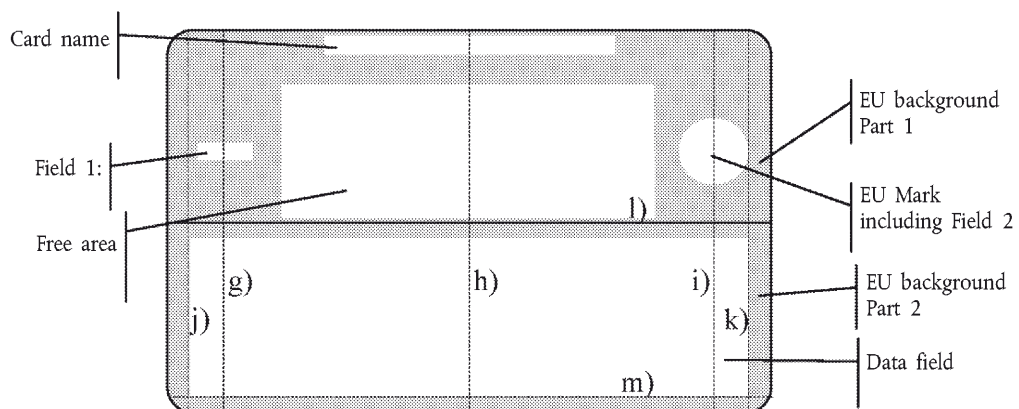
l) in the middle of the card,

m) at 2 mm from the bottom edge of the card

(c) With magnetic strip



(d) Without magnetic strip



### 3.3. Background and graphical elements

#### 3.3.1. Colours of the background

The colour scheme of the background is as follows <sup>(1)</sup>:

— Part 1 is dark blue mixed with purple <sup>(2)</sup>,

— Part 2 is one tone of grey/blue <sup>(3)</sup> which shades slightly darker from the middle to the sides of the card,

— The data field is made up of white stripes to be used as background for each of the individual data lines (see below).

<sup>(1)</sup> The technical details of the colour scheme are available on request to the Secretariat of the Administrative Commission. They will be provided in the appropriate format according to the best practices in the professional printing sector (i.e. as a Quark Xpress file. The colour scheme is 4 colours CMYK and all images are in TIFF format).

<sup>(2)</sup> The CMYK references for this colour are C78 M65 Y21 K7.

<sup>(3)</sup> The CMYK references for the grey are C33 M21 Y13 K1 and the blue C64 M46 Y16 K2.



A shading effect has been used on part 2 and the data field to create an illusion of relief, with the light coming from the top left corner of the card.

The free area is in the same colour as either Part 2 (without the shading effect) or the data field.

### 3.3.2. *European mark*

The European mark is made up of the European stars coloured in white:

- When on the front side of the card, it has a diameter of 15 mm and is positioned vertically below the guiding line 'd' and horizontally centred in part 2 of the background;
- When on the reverse side of the card, it has a diameter of 10 mm and is positioned symmetrically along the vertical axis 'i' and aligned centrally with the free area.

An alternative mark will be used for countries where a European card is to be issued but which are not members of the European Union.

### 3.3.3. *Data field*

The data field area is made up of white data stripes (5 when on the front side and 4 when on the reverse side) 4 mm high with inter-spaces of 2 mm:

- When on the front side of the card, the data field is centrally located between the vertical guiding lines 'b' and 'c' and the horizontal lines 'e' and 'f';
- When on the reverse side of the card, the data field is symmetrically located along the 'h' vertical axis and between the vertical guiding lines 'j' and 'k' and above the horizontal line 'm'.

### 3.3.4. *Free area*

The free area is an area located on the reverse side of the European card and available for national purposes. It can be used e.g. as a signature strip or for providing any text, logo or other marking. The content of this area has however no legal value but an informational value only.

This area is positioned as follows:

- When the European card is implemented on the front side of a card, the reverse side is a free area, without any specifications.
- When the European card is implemented on the reverse side of another card, a free area, without any specifications other than its dimension, remains available on the reverse side of the card (10 mm high and 52 mm wide). It is symmetrically located along the 'h' vertical axis and centred in the area between the magnetic stripe and the data field areas. It can be used by the card issuer to place an authentication signature stripe or text.
- When there is no magnetic strip, the free area is 20 mm high instead of 10 mm.

## 3.4. **Predefined data elements**

### 3.4.1. *Card name*

| Field Name  | Card name   |
|-------------|---|
| Description | The common name of the card as decided by the Administrative Commission in Decision No 190.   |
| Position    | When on the front side, below the horizontal guiding line 'd', and on the right of the vertical guiding line 'a',<br><br>When on the reverse side, symmetrically located along the 'h' vertical axis and centred in the area between the magnetic stripe and the top edge of the card |

| Field Name | Card name   |
|------------|---|
| Values     | The value 'European health insurance card' is written in a European Union official language.  |
| Format     | Font 'Verdana True Type' or equivalent, in capital and regular style, 7 point size when on the front side and 6 point size when on the reverse side, white, with character width compressed to 90 % of normal size and 'normal' position and spacing of characters. |
| Length     | 40 characters   |
| Remark     | The precise wording of the name in the language of the issuing Member State is a Member State responsibility only.  |

3.4.2. *Caption*

| Field Name  | Caption   |
|-------------|---|
| Description | The caption identifies the meaning of a data field.   |
| Position    | On the top of each of the personal data fields<br>Left alignment for the captions on the left side of the card and right alignment for the captions on the right side of the card.  |
| Values      | The values are written in a European Union official language and are set as follows (using English as the base text):<br>1. (no caption for the form identifier)<br>2. (no caption for the issuing Member State code number)<br>3. Name<br>4. Given names<br>5. Date of birth<br>6. Personal identification number<br>7. Identification number of the institution<br>8. Identification number of the card<br>9. Expiry date |
| Format      | Font 'Verdana True Type' or equivalent, in regular style, 5 point size, white, with character width compressed to 90 % of normal size and 'normal' position and spacing of characters.<br>Line spacing of 2 points plus character size.   |
| Length      | As needed by each of the above fixed values   |
| Remark      | Each caption is unambiguously identified by a number, in order to allow card superposition in different languages.<br>The precise wording of the caption values in the language of the issuing Member State is a Member State responsibility only.  |

3.4.3. *Issuing state*

| Field Name  | Issuing state ID number   |
|-------------|---|
| Description | Identification code of the card issuer's state.   |
| Position    | Field 2: Centrally positioned within the European mark with a white square 4 mm high and 4 mm wide. |
| Values      | The 2 digit ISO country code (ISO 3166-1)   |

| Field Name | Issuing state ID number  |
|------------|--|
| Format     | Font 'Verdana True Type' or equivalent, in capital and regular style, 7 point size, black, with character width compressed to 90 % of normal size and 'normal' position and spacing of characters. |
| Length     | 2 characters.  |
| Remark     | The code 'UK' will be used instead of 'GB', the standard ISO code for United Kingdom.<br>One single code will be used for each Member State.   |

### 3.5. Personal data elements

The personal data elements have the following common characteristics:

- Compliance with EN 1387 with regard to the character set: Latin alphabet Nos 1-4 (ISO 8859-1 to 4))
- If there is a need to abbreviate elements due to the limited number of spaces, this must be indicated by a full stop.

Data will be laser or thermal-transfer printed or engraved but not embossed.

Each data element will be placed in the data field according to the schemes below.

```

3. Name
ABCDEFGHIJKLMNOPQRSTUVWXYZABCDEFGHIJKLMN
4. Given names
ABCDEFGHIJKLMNOPQRSTUVWXYZABCDEFGHI
5. Date of birth
DD/MM/YYYY
6. Personal identification number
12345678901234567890
7. Identification number of the institution
1234567890 - ABCDEFGHIJKLMNO
8. Identification number of the card
12345678901234567890
9. Expiry date
DD/MM/YYYY

```

Figure 3

#### Front side model for the data field

```

3. Name
ABCDEFGHIJKLMNOPQRSTUVWXYZABCDEFGHIJKLMN
4. Given names
ABCDEFGHIJKLMNOPQRSTUVWXYZABCDEFGHI
5. Date of birth
DD/MM/YYYY
6. Personal identification number
12345678901234567890
7. Identification number of the institution
1234567890 - ABCDEFGHIJKLMNO
8. Identification number of the card
12345678901234567890
9. Expiry date
DD/MM/YYYY

```

Figure 4

#### Reverse side model for the data field

#### 3.5.1. Blank Space (former form identifier)

| Field Name  | Blank Space   |
|-------------|---|
| Description |   |
| Position    | Field 1:<br><ul style="list-style-type: none"> <li>— When on the front side, below the horizontal guiding line 'd', and on the left of the vertical guiding line 'c',</li> <li>— When on the reverse side, symmetrically located along the 'g' vertical axis and aligned centrally with the free area</li> </ul> <p>In both situations, it is positioned within a white rectangle 4 mm high and 10 mm wide.</p> |

## 3.5.2. Card holder related data elements

Note that the card holder may not be the insured person but a beneficiary as the card is individual.

| Field Name  | Name of card holder   |
|-------------|---|
| Description | The surname of the card holder as used in the issuing Member State  |
| Position    | Field 3   |
| Values      | —   |
| Format      | Font 'Verdana True Type' or equivalent, in capital and regular style, 7 point size, black, with character width compressed to 90 % of normal size and 'normal' position and spacing of characters.<br><br>Aligned to the left border.<br><br>Line spacing of 3 points plus character size |
| Length      | Up to 40 characters   |
| Remark      | The surname field may include titles, prefix or any other name supplement or prefix.  |

| Field Name  | Given name(s) or middle name(s) of card holder   |
|-------------|--|
| Description | The first (and middle) name(s) of the card holder as used in the issuing Member State.   |
| Position    | Field 4  |
| Values      | —  |
| Format      | Font 'Verdana True Type' or equivalent, in capital and regular style, 7 point size, black, character width compressed to 90 % of normal size and 'normal' position and spacing of characters.<br><br>Aligned to the left side.<br><br>Line spacing of 3 points plus character size |
| Length      | Up to 35 characters  |
| Remark      | The given name field may include initial(s)  |

| Field Name  | Date of birth   |
|-------------|---|
| Description | The date of birth of the card holder as used in the issuing Member State  |
| Position    | Field 5   |
| Values      | DD/MM/YYYY, where D stands for Day, M for Month and Y for Year  |
| Format      | Font 'Verdana True Type' or equivalent, in regular style, 7 point size, black, character width compressed to 90 % of normal size and 'normal' position and spacing of characters.<br><br>Aligned to the left side when on the front side of the card, but to the right when on the reverse one.<br><br>Line spacing of 3 points plus character size |
| Length      | 10 characters, including a slash between each group.  |
| Remark      | —   |

| Field Name  | Personal identification number of card holder   |
|-------------|---|
| Description | The personal identification number detail used by the issuing Member State.   |
| Position    | Field 6   |
| Values      | See applicable Personal identification number   |
| Format      | Font 'Verdana True Type' or equivalent, in regular style, 7 point size, black, with character width compressed to 90 % of normal size and 'normal' position and spacing of characters.<br><br>Aligned to the right border when on the front side of the card, but to the left when on the reverse one.<br><br>Line spacing of 3 points plus character size              |
| Length      | Up to 20 characters for the ID code.  |
| Remark      | The personal identification number of the card holder or, when no such number exists, the number of the insured person from whom the rights of the card holder derive.<br><br>Personal attributes, such as gender, status of family member, cannot be assigned a dedicated field on the card. They can, however, be included within the personal identification number. |

## 3.5.3. Competent institution related data elements

| Field Name  | Name of the institution   |
|-------------|---|
| Description | The 'institution' is the competent institution of insurance.  |
| Position    | Field 7, part 1   |
| Values      | The acronym of the institution is provided instead of the full name.  |
| Format      | Font 'Verdana True Type' or equivalent, in capital and regular style, 7 point size, black, with character width compressed to 90 % of normal size and 'normal' position and spacing of characters.<br><br>Field 7 is aligned to the right border and Part 1 is to the right of Part 2.<br><br>Line spacing of 3 points plus character size.   |
| Length      | Up to 15 characters<br><br>Two spaces and a hyphen will separate part 1 from part 2<br><br>The length of this part can be extended as far as the length of part 2 can be reduced.   |
| Remark      | The acronym is provided as a means to detect a possible data capture problem in the identification code of the institution (Field 7, part 2) and thus ensure quality control of the identification number of the institution.<br><br>The full name of the institution will be provided on the basis of the acronym or the identification code of the institution e.g. by an on-line tool available on the Internet.<br><br>No full stop will be used in the acronym |

| Field Name  | Identification number of the institution  |
|-------------|---|
| Description | Identification code awarded nationally to the 'institution', viz. the competent institution of insurance. |
| Position    | Field 7, part 2   |
| Values      | See national code list of competent institutions  |

| Field Name | Identification number of the institution   |
|------------|--|
| Format     | Font 'Verdana True Type' or equivalent, in regular style, 7 point size, black, with character width compressed to 90 % of normal size and 'normal' position and spacing of characters.<br><br>Field 7 is aligned to the right border and Part 2 is to the left of Part 1.<br><br>Line spacing of 3 points plus character size.   |
| Length     | Between 4 and 10 characters.   |
| Remark     | Complementary up-to-date and historical information which may be required for communicating with the institution could be made available on the Internet thanks to a knowledge centre tool.<br><br>The competent institution may be different from the liaison body or the organisation in charge of the cross-border reimbursement as well as from the organisation in charge of technically issuing the European health insurance card. This information could also be made available on the Internet thanks to a knowledge centre tool. |

#### 3.5.4. Card related data elements

| Field Name  | Logical identification number of the card  |
|-------------|--|
| Description | Logical individual number aiming at uniquely identifying the card and assigned to each card by the card issuer. It is made up of two parts, the issuer identifier number and the serial number of the card.  |
| Position    | Field 8  |
| Values      | The first 10 characters identify the card issuer in compliance with the standard EN 1867 of 1997<br><br>The last 10 digits constitute the unique serial number   |
| Format      | Font 'Verdana True Type' or equivalent, in regular style, 7 point size, black, with character width compressed to 90 % of normal size and 'normal' position and spacing of characters.<br><br>Line spacing of 3 points plus character size   |
| Length      | 20 characters (with leading 0 as needed in the 10 digits used for the unique serial number of the card).   |
| Remark      | For assigning an issuer identifier number, an ad hoc registration procedure may be used, instead of the official one as defined in the standard EN 1867, in the Member States which issue European health insurance cards without an electronic component.<br><br>This logical card ID number must enable the information carried by the card to be checked against the information held by the issuing organisation for the same logical number, for example in order to reduce the risk of fraud or to identify errors in data entry when processing the information of the card for claim reimbursement purposes. |

| Field Name  | Expiry date   |
|-------------|---|
| Description | End date of the entitlement to receive health care during a temporary stay in a Member State other than the insuring Member State.  |
| Position    | Field 9   |
| Values      | DD/MM/YYYY, where D stands for Day, M for Month and Y for Year  |
| Format      | Font 'Verdana True Type' or equivalent, in regular style, 7 point size, black, with character width compressed to 90 % of normal size and 'normal' position and spacing of characters.<br><br>Aligned to the right border.<br><br>Line spacing of 3 points plus character size. |

| Field Name | Expiry date  |
|------------|--|
| Length     | 10 characters, including a slash between each group.   |
| Remark     | A Member State will be entitled to claim reimbursement for health care costs provided during the validity period of the card, although the entitlement period may be different from the validity period of the card. |

### 3.6. Security requirements

All security measures remain the full responsibility of the card issuer, who is best placed to assess threats and implement appropriate counter-measures.

When placed on the reverse side of a national card, the European card will benefit from all security measures applied to the national card. As an additional security measure, it is, however, suggested that some data have the same values on both sides of the card.

Should other elements than those specified above be considered as required security measures (e.g. a picture of the card holder's face), then they will be applied on the other side of the card.

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*ANNEX II***Model of the Provisional Replacement Certificate of the European Health Insurance Card****1. INTRODUCTION**

The Provisional Replacement Certificate (called 'the certificate' hereafter) may be provided to the insured person, on request only, and as a provisional replacement for the European card.

The certificate is identical in format in all Member States and contains, in the same order, the same data as the European card (fields 1 to 9) as well as data for certifying the origin and validity of the certificate (fields a to d).

**2. MODEL OF CERTIFICATE**

See next page.

**PROVISIONAL REPLACEMENT CERTIFICATE  
OF THE  
EUROPEAN HEALTH INSURANCE CARD**

*as defined in Annex 2 to Decision No S2  
concerning the technical specifications of the European Health Insurance Card*

*Issuing Member State*

1.

2. ...

*Card holder-related information*

3. Name: .....
4. Given names: .....
5. Date of birth: .../.../.....
6. Personal identification number: .....

*Competent institution-related information*

7. Identification number of the institution:

.....

*Card-related information*

8. Identification number of the card: .....
9. Expiry date: .../.../.....

*Certificate validity period*

*Certificate delivery date*

(a) From: .../.../.....

(b) To: .../.../.....

(c) .../.../.....

*Signature and stamp of the institution*

(d)

*Notes and information*

*All norms applicable to the eye-readable data included in the European card and related to the description, values, length and remarks of the data fields, are applicable to the certificate.*

**DECISION No S3****of 12 June 2009****defining the benefits covered by Articles 19(1) and 27(1) of Regulation (EC) No 883/2004 of the European Parliament and of the Council and Article 25(A)(3) of Regulation (EC) No 987/2009 of the European Parliament and of the Council****(Text of relevance to the EEA and to the EC/Switzerland Agreement)**

(2010/C 106/10)

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS,

Having regard to Article 72(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems <sup>(1)</sup>, under which the Administrative Commission is responsible for dealing with all administrative questions or questions of interpretation arising from the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems <sup>(2)</sup>,

Having regard to Articles 19 and 27 of Regulation (EC) No 883/2004 concerning benefits in kind during a temporary stay in a Member State other than the competent State,

Having regard to Article 25(A)(3) of Regulation (EC) No 987/2009,

Whereas:

- (1) According to Articles 19(1) and 27(1) of Regulation (EC) No 883/2004, an insured person is entitled to receive during a temporary stay in a Member State other than the State of residence, benefits in kind which become medically necessary, taking into account the nature of these benefits and the length of stay.
- (2) According to Article 25(A)(3) of Regulation (EC) No 987/2009, the benefits referred to in Article 19(1) of Regulation (EC) No 883/2004 shall refer to the benefits in kind which are provided in the Member State of stay, in accordance with its legislation, and which become necessary on medical grounds with a view to preventing an insured person from being forced to return, before the end of the planned duration of stay, to the competent Member State to obtain the necessary treatment.
- (3) Article 25(A)(3) of Regulation (EC) No 987/2009 has to be interpreted in such a way that all benefits in kind provided in conjunction with chronic or existing illnesses are covered by this provision. The Court of

Justice ruled <sup>(3)</sup> that the concept of 'necessary treatment' cannot be interpreted as 'meaning that those benefits are limited solely to cases where the treatment provided has become necessary because of a sudden illness. In particular, the circumstance that a treatment necessitated by developments in the insured person's state of health during his temporary stay in another Member State may be linked to a pre-existed pathology of which he is aware, such as a chronic illness, does not mean that the conditions for the application of these provisions are not fulfilled'.

- (4) Article 25(A)(3) of Regulation (EC) No 987/2009 has to be interpreted in such a way that benefits in kind provided in conjunction with pregnancy and childbirth are covered by this provision. However, this provision does not cover the situation where the aim of the temporary stay abroad is to give birth.
- (5) Pursuant to Article 19(2) of Regulation (EC) No 883/2004, the Administrative Commission has been instructed to draw up a list of benefits in kind which, in order to be provided during a stay in another Member State, require for practical reasons a prior agreement between the person concerned and the institution providing the care.
- (6) The objective of the prior agreement provided for in Article 19(2) of Regulation (EC) No 883/2004 is to guarantee the continuity of the treatment needed by an insured person during a stay in another Member State.
- (7) In the light of this objective, the essential criteria for defining the benefits in kind requiring a prior agreement between the patient and the unit providing care in another Member State are the vital nature of the medical treatment and the fact that this treatment is accessible only in specialised medical units and/or by specialised staff or/and equipment. A non-exhaustive list based on these criteria is given in the Annex to this Decision.

Acting in accordance with the conditions laid down in Article 71(2) of Regulation (EC) No 883/2004,

<sup>(1)</sup> OJ L 166, 30.4.2004, p. 1.

<sup>(2)</sup> OJ L 284, 30.10.2009, p. 1.

<sup>(3)</sup> Case C-326/00, Ioannidis, judgement of 25 February 2003.

HAS DECIDED AS FOLLOWS:

1. The benefits in kind to be provided under Articles 19(1) and 27(1) of Regulation (EC) No 883/2004 and Article 25(A)(3) of Regulation (EC) No 987/2009 shall include benefits provided in conjunction with chronic or existing illnesses as well as in conjunction with pregnancy and childbirth.
2. Benefits in kind, including those in conjunction with chronic or existing illnesses or in conjunction with childbirth, are not covered by these provisions when the objective of the stay in another Member State is to receive these treatments.
3. Any vital medical treatment which is only accessible in a specialised medical unit and/or by specialised staff and/or equipment must in principle be subject to a prior

agreement between the insured person and the unit providing the treatment in order to ensure that the treatment is available during the insured person's stay in a Member State other than the competent Member State or the one of residence.

A non-exhaustive list of the treatments which fulfil these criteria is given in the Annex hereto.

4. This Decision shall be published in the *Official Journal of the European Union*. It shall apply from the date of entry into force of Regulation (EC) No 987/2009.

*The Chair of the Administrative Commission*  
Gabriela PIKOROVÁ

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ANNEX

- kidney dialysis
  - oxygen therapy
  - special asthma treatment
  - echocardiography in case of chronic autoimmune diseases
  - chemotherapy
-

## DECISION No U1

of 12 June 2009

**concerning Article 54(3) of Regulation (EC) No 987/2009 of the European Parliament and of the Council relating to increases in unemployment benefit for dependent members of the family**

(Text of relevance to the EEA and to the EC/Switzerland Agreement)

(2010/C 106/11)

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS,

communicated only after the start of the period of unemployment for which benefit is payable.

Having regard to Article 72(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems <sup>(1)</sup>, under which the Administrative Commission is responsible for dealing with all administrative questions or questions of interpretation arising from the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems <sup>(2)</sup>,

- (5) Payments in arrears of increases in unemployment benefits payable for family members must be made for the period preceding the date of submission of information concerning family members residing in the territory of a Member State other than the Member State in which the competent institution is situated, provided that the said persons were already dependent on the unemployed person at the start of the period of unemployment for which benefit is payable.

Having regard to Article 54(2) and (3) of Regulation (EC) No 987/2009,

Acting in accordance with the conditions laid down in Article 71(2) of Regulation (EC) No 883/2004,

Whereas:

HAS DECIDED AS FOLLOWS:

- (1) Pursuant to Article 54(3) of Regulation (EC) No 987/2009, if under the legislation of a Member State the amount of unemployment benefit varies with the number of members of the family, the competent institution shall also take into consideration when calculating the benefit the number of members of the family residing in the territory of a Member State other than that where the competent institution is situated.
- (2) Under Article 2(2) of the said Regulation, the institutions shall provide or exchange without delay all data necessary for establishing and determining the rights and obligations of persons to whom Regulation (EC) No 883/2004 applies.
- (3) The documents and structured electronic documents provided for under Article 4(1) of Regulation (EC) No 987/2009, are a means of proof of the rights of the person concerned, but their issue does not constitute a condition for such rights.
- (4) The documents relating to members of the family residing in the territory of a Member State other than that where the competent institution is situated can be

1. The communication of the document relating to members of the family after the start of the period of unemployment for which benefit is payable shall not have the effect of postponing the starting of the acquisition of entitlement to unemployment benefit at the increased rate for dependent members of the family, which shall be determined in accordance with the legislation of the competent State.
2. Where the institution communicating the document referred to in paragraph 1 is not in a position to certify that the members of the family are not taken into consideration for the calculation of unemployment benefits due to another person under the legislation of the Member State in whose territory they reside, the person concerned shall be allowed to supplement the said document by a declaration to that effect.
3. This Decision shall be published in the *Official Journal of the European Union*. It shall apply from the date of entry into force of Regulation (EC) No 987/2009.

*The Chair of the Administrative Commission*  
Gabriela PIKOROVÁ

<sup>(1)</sup> OJ L 166, 30.4.2004, p. 1.

<sup>(2)</sup> OJ L 284, 30.10.2009, p. 1.

## DECISION No U2

of 12 June 2009

**concerning the scope of Article 65(2) of Regulation (EC) No 883/2004 of the European Parliament and of the Council on the right to unemployment benefits of wholly unemployed persons other than frontier workers who were resident in the territory of a Member State other than the competent Member State during their last period of employment or self-employment**

(Text of relevance to the EEA and to the EC/Switzerland Agreement)

(2010/C 106/12)

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS,

Having regard to Article 72(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems <sup>(1)</sup>, under which the Administrative Commission is responsible for dealing with all administrative questions or questions of interpretation arising from the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems <sup>(2)</sup>,

Having regard to Article 65(2) and (5) of Regulation (EC) No 883/2004,

Whereas:

- (1) Article 65 of Regulation (EC) No 883/2004 lays down special rules concerning the granting and the payment of unemployment benefits to unemployed persons, who during their last activity as employed or self-employed persons, resided in a Member State other than the competent State.
- (2) The determining factor for the application of Article 65 of the said Regulation in its entirety is the fact that the persons concerned resided, during their last period of employment or self-employment, in a Member State other than the one to the legislation of which they were subject, which does not necessarily correspond to the one in which they were employed or self-employed.
- (3) According to the definition provided in Article 1(j) of the said Regulation, the term 'residence' means the place where a person habitually resides and the term 'stay' is defined as temporary residence in point (k) of that Article.
- (4) Article 11 of Regulation (EC) No 987/2009 sets out criteria for determining residence where there is a difference of opinion about this between the institutions of two or more Member States.

(5) It follows from Article 1(f) of Regulation (EC) No 883/2004 that frontier workers have their place of residence in a country other than the country of their professional activity, which, by virtue of Article 11(3)(a) of the said Regulation is the competent State and that there is therefore no doubt that such workers are covered by Article 65 of the same Regulation.

(6) The categories of persons referred to in Articles 11(4) and 13 of the said Regulation and the persons to whom an agreement referred to in Article 16 of the said Regulation applies are likely to reside, in certain cases, in a Member State other than the State determined as being competent under these Articles.

(7) Determining in what State the persons belonging to these categories have their place of residence must be examined on a case-by-case basis and, for the persons referred to in Article 13(1)(a) and 13(2)(a) of Regulation (EC) No 883/2004, this must be done for the purposes of their affiliation.

(8) Under Article 65(5) of Regulation (EC) No 883/2004, responsibility for the payment of benefits is transferred from the competent State to the State of residence where the person concerned puts himself at the disposal of the employment services of the latter State.

(9) Although this is currently acceptable in the case of frontier workers and certain categories who likewise retain close links with their countries of origin it would no longer be acceptable if, by too broad an interpretation of the concept of 'residence', the field of application of Article 65 of Regulation (EC) No 883/2004 were to be extended to include all persons who have fairly stable employment or self-employment in a Member State and who have left their families in their country of origin.

<sup>(1)</sup> OJ L 166, 30.4.2004, p. 1.

<sup>(2)</sup> OJ L 284, 30.10.2009, p. 1.

HAS DECIDED AS FOLLOWS:

1. Article 65(5) of Regulation (EC) No 883/2004 shall apply in particular to:
  - (a) the persons referred to in Article 11(4) of the said Regulation;
  - (b) the persons referred to in Article 13 of the said Regulation normally pursuing their activities in the territories of two or more Member States;
  - (c) persons to whom an agreement as referred to in Article 16(1) of the said Regulation applies
2. Persons referred to in paragraph 1 who, during their last professional activity, were subject to the legislation of a Member State other than the State of the place of activity as an employed or self-employed person, shall be eligible for benefits under the provisions of the legislation of the State of residence, as if they had previously been subject to that legislation.
3. For the purpose of applying this Decision, the State of residence shall be determined in accordance with Article 11 of Regulation (EC) No 987/2009.
4. This Decision shall be published in the *Official Journal of the European Union*. It shall apply from the date of entry into force of Regulation (EC) No 987/2009.

where they resided during their last professional activity in a Member State other than the competent State.

*The Chair of the Administrative Commission*  
Gabriela PIKOROVÁ

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## DECISION No U3

of 12 June 2009

**concerning the scope of the concept of 'partial unemployment' applicable to the unemployed persons referred to in Article 65(1) of Regulation (EC) No 883/2004 of the European Parliament and of the Council**

(Text of relevance to the EEA and to the EC/Switzerland Agreement)

(2010/C 106/13)

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS,

Having regard to Article 72(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems <sup>(1)</sup>, under which the Administrative Commission is responsible for dealing with all administrative questions or questions of interpretation arising from the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems <sup>(2)</sup>,

Having regard to Article 65(1) of Regulation (EC) No 883/2004,

Whereas:

- (1) Article 65(2) of Regulation (EC) No 883/2004 contains a provision constituting an exemption, in the case of wholly unemployed persons, from the general principle of *lex loci laboris* set out in Article 11(3)(a) of the said Regulation.
- (2) Uniform Community criteria must be applied to determine whether a person is regarded as being wholly or partially unemployed within the meaning of Article 65(1) and (2) of the said Regulation. Such assessment may not be made on the basis of criteria drawn from national law.
- (3) As the practices of the national social security institutions in the various Member States reflect differences in interpretation as regards determination of the type of unemployment, it is important to specify the scope of the said Article with a view to the adoption of uniform and balanced criteria for the purposes of application of the Article by the said institutions.
- (4) Under Article 65(2) of Regulation (EC) No 883/2004, a wholly unemployed person who no longer has any link with the competent Member State receives unemployment benefits from the institution at their place of residence.

- (5) An assessment of whether or not an employment link exists, or is maintained, is based entirely on the national legislation of the State of employment.

- (6) The objective of protecting unemployed persons that is pursued by Article 65 of the Regulation would not be achieved if a person who remained employed by the same undertaking in a Member State other than that in whose territory he resides — his activity being suspended — were nevertheless regarded as wholly unemployed, thus requiring him to apply to the institution of his place of residence in order to obtain unemployment benefits.

Acting in accordance with the conditions laid down in Article 71(2) of Regulation (EC) No 883/2004,

HAS DECIDED AS FOLLOWS:

1. With respect to the application of Article 65(1) of the Regulation (EC) No 883/2004, determination of the nature of unemployment (that is to say partial or whole) shall depend on whether or not any contractual employment link exists or is maintained between the parties, and not on the duration of any temporary suspension of the worker's activity.
2. If a person remains employed by an undertaking in a Member State other than that in whose territory he resides, but his activity is suspended although he can return to his post at any time, the said worker shall be regarded as partially unemployed, and the corresponding benefits shall be provided by the competent institution of the Member State of employment in accordance with Article 65(1) of the said Regulation.
3. If a person, in the absence of any contractual employment link, no longer has any link with the Member State of employment (for example, because the employment contract link has been terminated or has expired), he shall be regarded as wholly unemployed in accordance with Article 65(2) of the said Regulation, and benefits shall be provided by the institution of the place of residence.

<sup>(1)</sup> OJ L 166, 30.4.2004, p. 1.

<sup>(2)</sup> OJ L 284, 30.10.2009, p. 1.

4. If a self-employed person does not carry out any professional or trade activity in the Member State of activity, he shall be regarded as wholly unemployed in accordance with Article 65(2) of the said Regulation, and benefits shall be provided by the institution of the place of residence.
5. This Decision shall be published in the *Official Journal of the European Union*. It shall apply from the date of entry into force of Regulation (EC) No 987/2009.

*The Chair of the Administrative Commission*  
Gabriela PIKOROVÁ

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## RECOMMENDATION No P1

of 12 June 2009

**concerning the Gottardo judgment, according to which the advantages enjoyed by a State's own nationals under a bilateral convention on social security with a non-member country must also be granted to workers who are nationals of other Member States**

(Text of relevance to the EEA and to the EC/Switzerland Agreement)

(2010/C 106/14)

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS,

Having regard to Article 72(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems <sup>(1)</sup>, under which the Administrative Commission is responsible for dealing with all administrative questions or questions of interpretation arising from the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems <sup>(2)</sup>,

Having regard to Article 72(c) of Regulation (EC) No 883/2004, under which it shall foster and develop cooperation between Member States and their institutions in social security matters,

Whereas:

- (1) Regulation (EC) No 883/2004, adopted on the basis of Articles 42 and 308 of the Treaty, is an essential instrument for exercising the fundamental freedoms provided for by the Treaty.
- (2) The principle of non-discrimination on the grounds of nationality is an essential safeguard for the freedom of movement of employed persons, as provided for in Article 39 of the Treaty. This implies the abolition of all discrimination between the settled workers in the Member States and migrant workers with respect to employment, pay and other working conditions.
- (3) In Gottardo <sup>(3)</sup>, the Court of Justice acted on this principle as set out in Article 39 of the Treaty in relation to a person resident in the Community who had worked in France, Italy and Switzerland. This person did not have sufficient entitlement for a pension in Italy and asked for her periods of insurance completed in Switzerland and Italy to be aggregated, as provided for under the bilateral convention between Italy and Switzerland for the benefit of their nationals.

<sup>(1)</sup> OJ L 166, 30.4.2004, p. 1.

<sup>(2)</sup> OJ L 284, 30.10.2009, p. 1.

<sup>(3)</sup> Judgment of 15 January 2002 in case C-55/00 *Elide Gottardo v Istituto nazionale della previdenza sociale (INPS)*, ECR [2002], p. I-413.

- (4) The Court ruled in this case that when a Member State concludes a bilateral international convention on social security with a non-member country which provides for account to be taken of periods of insurance completed in that non-member country for acquisition of entitlement to old-age benefits, the fundamental principle of equal treatment requires that that Member State grant nationals of the other Member States the same advantages as those which its own nationals enjoy under that convention unless it can provide objective justification for refusing to do so (paragraph 34).
- (5) In this connection, the Court stated that its interpretation of the term 'legislation' in Article 1(j) of Council Regulation (EEC) No 1408/71 <sup>(4)</sup> (the present Article 1(l) of Regulation (EC) No 883/2004) cannot affect the obligation of every Member State to comply with the principle of equal treatment laid down in Article 39 of the Treaty.
- (6) The Court considered that disturbing the balance and reciprocity of a bilateral international convention concluded between a Member State and a non-member country did not constitute an objective justification for the refusal by the Member State party to that convention to extend to nationals of the other Member States the advantages which its own nationals derive from that convention.
- (7) Nor did the Court accept the objections to the effect that a possible increase in the financial burden and administrative difficulties in liaising with the competent authorities of the non-member country in question could justify the Member State which is party to the bilateral convention failing to comply with its Treaty obligations.
- (8) It is important that all appropriate conclusions be drawn from this judgment, which is crucial for Community nationals who have exercised their right to move freely to another Member State.

<sup>(4)</sup> OJ L 149, 5.7.1971, p. 2.

- (9) For this reason, it should be made clear that bilateral conventions on social security between a Member State and a non-member country must be interpreted to the effect that the advantages enjoyed by nationals of the Member State which is party to the convention should in principle also be granted to a Community national who is in the same situation in objective terms.
- (10) Irrespective of the uniform application of the Gottardo ruling to individual cases, the existing bilateral conventions should be reviewed. With regard to agreements concluded previously, Article 307 of the Treaty states: 'the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established', and with regard to agreements concluded after 1 January 1958, or after the date of a Member State's accession to the European Community, Article 10 of the Treaty requires that these same Member States 'abstain from any measure which could jeopardise the attainment of the objectives of the Treaty'.
- (11) With regard to new bilateral conventions on social security concluded between a Member State and a non-member country, it is important to bear in mind that these should include a specific reference to the principle of non-discrimination on the grounds of nationality in relation to nationals of other Member States who have exercised their right to move freely in the Member State which is a party to the convention concerned.
- (12) The application of the Gottardo judgment to individual cases depends largely on the cooperation of non-member countries, since they must certify the periods of insurance completed there by the person concerned.
- (13) The Administrative Commission should deal with this question, given that the ruling in Gottardo is concerned with the application of the principle of equal treatment in the field of social security.

Acting in accordance with the conditions laid down in Article 71(2) of Regulation (EC) No 883/2004,

HEREBY RECOMMENDS TO THE COMPETENT SERVICES AND INSTITUTIONS THAT:

1. In accordance with the principle of equal treatment and non-discrimination between a State's own nationals and the nationals of other Member States who have exercised their right to move freely pursuant to Article 39 of the Treaty, the advantages as regards pensions which are enjoyed by a State's own workers (employed and self-employed persons) under a convention on social security with a non-member country are also, in principle granted to workers (employed and self-employed persons) who are nationals of the other Member States and are in the same situation in objective terms.
2. New bilateral conventions on social security concluded between a Member State and a non-member country should make specific reference to the principle of non-discrimination, on the grounds of nationality, against nationals of another Member State who have exercised their right of free movement in the Member State which is a party to the convention concerned.
3. The Member States should inform the institutions in countries with which they have signed social security conventions whose provisions apply only to their respective nationals about the implications of the Gottardo ruling and should ask them to cooperate in applying the ruling of the Court. Member States which have concluded bilateral conventions with the same non-member countries may act jointly in requesting such cooperation. This cooperation is clearly essential if the ruling is to be complied with.
4. This recommendation shall be published in the *Official Journal of the European Union*. It shall apply from the date of entry into force of Regulation (EC) No 987/2009.

*The Chair of the Administrative Commission*  
Gabriela PIKOROVÁ

**RECOMMENDATION No U1****of 12 June 2009****concerning the legislation applicable to unemployed persons engaging in part-time professional or trade activity in a Member State other than the State of residence****(Text of relevance to the EEA and to the EC/Switzerland Agreement)****(2010/C 106/15)**

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS,

Having regard to Article 72(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems <sup>(1)</sup>, under which the Administrative Commission is responsible for dealing with all administrative questions or questions of interpretation arising from the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems <sup>(2)</sup>,

Having regard to Articles 11(3)(a) and 16(1) of Regulation (EC) No 883/2004 and Article 18 of Regulation (EC) No 987/2009,

Whereas:

- (1) Where persons residing in the territory of a Member State are eligible, under the legislation applicable to them, to receive unemployment benefits, they should be allowed to pursue a part-time professional or trade activity in the territory of another Member State, while retaining entitlement to unemployment benefits provided by the State in which they reside.
- (2) It is necessary in this situation to determine the legislation applicable to such persons under Article 11 of Regulation (EC) No 883/2004, in order to avert possible conflicts of laws.
- (3) Under Article 11(2) of the said Regulation, persons receiving cash benefits because of, or as a consequence of, their activity as an employed or self-employed person shall be considered to be pursuing the said activity.
- (4) Under Article 11(3)(a) of the said Regulation, persons pursuing an activity as an employed or self-employed person in a Member State shall be subject to the legislation of that Member State.

- (5) In the interests of the persons referred to in recital 1 above, it is desirable that such persons should continue to be subject to the legislation of their country of residence as regards both the payment of contributions due by virtue of their professional or trade activity and the granting of benefits.
- (6) Article 16(1) of Regulation (EC) No 883/2004 permits Member States to provide for exceptions to Articles 11 to 15 of the said Regulation.

Acting in accordance with the conditions laid down in Article 71(2) of Regulation (EC) No 883/2004,

HEREBY RECOMMENDS TO THE COMPETENT SERVICES AND INSTITUTIONS THAT:

1. The competent authorities of the Member States concerned conclude, or instruct the bodies designated by these competent authorities to conclude, agreements pursuant to Article 16(1) of Regulation (EC) No 883/2004 on the following conditions:

The agreements should provide that persons receiving unemployment benefit in their State of residence and simultaneously pursuing part-time professional or trade activity in another Member State shall be subject exclusively to the legislation of the former State as regards both the payment of contributions and the granting of benefits.

The institution providing the unemployment benefit in the State of residence of the person concerned shall inform the institution designated by the competent authority of that State of any part-time professional or trade activity in which the person concerned engages in another Member State.

The latter institution shall immediately inform the institution designated by the competent authority of the Member State in whose territory the person concerned is engaging in part-time activity that the person remains subject to the legislation of the Member State of residence.

<sup>(1)</sup> OJ L 166, 30.4.2004, p. 1.

<sup>(2)</sup> OJ L 284, 30.10.2009, p. 1.

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2. Under these agreements, the administrative procedures set out in Articles 19 to 21 of Regulation (EC) No 987/2009 shall apply.
3. The agreement concluded by Member States pursuant to Recommendation No 18 of 28 February 1986, which is annexed hereto, shall remain valid under Regulations (EC) No 883/2004 and (EC) No 987/2009, subject to point 2 of this Recommendation.
4. This Recommendation shall be published in the *Official Journal of the European Union*. It shall apply from the date of entry into force of Regulation (EC) No 987/2009.
- The Chair of the Administrative Commission*  
Gabriela PIKOROVÁ

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ANNEX

Agreement of 28 October 1986 between Belgium and Luxembourg on the determination of the legislation applicable to unemployed persons residing in one of the two States, in which State they receive unemployment benefits, while working part-time in the other State.

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## RECOMMENDATION No U2

of 12 June 2009

**concerning the application of Article 64(1)(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council to unemployed persons accompanying their spouses or partners pursuing a professional or trade activity in a Member State other than the competent State**

(Text of relevance to the EEA and to the EC/Switzerland Agreement)

(2010/C 106/16)

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS,

Having regard to Article 72(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems <sup>(1)</sup>, under which the Administrative Commission is responsible for dealing with all administrative questions or questions of interpretation arising from the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems <sup>(2)</sup>,

Having regard to Article 64(1) of Regulation (EC) No 883/2004 and Article 55(1) of Regulation (EC) No 987/2009,

Whereas:

- (1) Under the terms of Article 64(1) of Regulation (EC) No 883/2004 a person who is wholly unemployed and who goes to a Member State other than the competent State in order to seek employment is allowed, subject to certain conditions and limits, to retain his entitlement to unemployment benefits in cash.
- (2) One of the conditions set out in subsection (a) of the said paragraph is that the person concerned must have remained available to the employment services of the competent State for at least 4 weeks after becoming unemployed.
- (3) The final sentence of subsection (a) does, however, allow the competent services or institutions to authorise the job-seeker's departure before 4 weeks have expired.

- (4) This authorisation should not be denied to persons who, while meeting the other conditions set out in Article 64(1) of the said Regulation, wish to accompany their spouse or partner who has taken a job in another Member State.

Acting in accordance with the conditions laid down in Article 71(2) of Regulation (EC) No 883/2004,

HEREBY RECOMMENDS TO THE COMPETENT SERVICES AND INSTITUTIONS THAT:

1. Authorisation of departure before 4 weeks have expired as provided for in the final sentence of Article 64(1)(a) of Regulation (EC) No 883/2004 shall be granted to a person who is wholly unemployed, meets all the other conditions laid down in Article 64(1) and is accompanying his/her spouse or partner who has taken a job in a Member State other than the competent State.

The partner shall be determined on the basis of the legislation of the competent Member State.

2. This Recommendation shall be published in the *Official Journal of the European Union*. It shall apply from the date of entry into force of Regulation (EC) No 987/2009.

*The Chair of the Administrative Commission*  
Gabriela PIKOROVÁ

<sup>(1)</sup> OJ L 166, 30.4.2004, p. 1.

<sup>(2)</sup> OJ L 284, 30.10.2009, p. 1.



**DECISION No S4**  
**of 2 October 2009**  
**concerning refund procedures for the implementation of Articles 35 and 41 of Regulation (EC) No 883/2004 of the European Parliament and of the Council**

(Text of relevance to the EEA and to the EC/Switzerland Agreement)

(2010/C 106/17)

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF  
SOCIAL SECURITY SYSTEMS,

Acting in accordance with the conditions laid down in  
Article 71(2) of Regulation (EC) No 883/2004,

Having regard to Article 72(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems <sup>(1)</sup>, under which the Administrative Commission is responsible for dealing with all administrative questions or questions of interpretation arising from the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems <sup>(2)</sup>,

Having regard to Articles 35 and 41 of Regulation (EC) No 883/2004,

Having regard to Articles 66 to 68 of Regulation (EC) No 987/2009,

Whereas:

- (1) The cost of the benefits in kind provided by the institution of one Member State on behalf of the institution of another Member State, shall be fully refunded.
- (2) The refunds between institutions, if not otherwise agreed, must be carried out with speed and efficiency in order to prevent a built-up of claims which remain unsettled for longer periods of time.
- (3) An accumulation of claims could endanger the efficient functioning of the Community system and jeopardise the right of individuals.
- (4) The Administrative Commission in Decision No S1 <sup>(3)</sup> has decided that the institution of the place of stay shall be reimbursed for the cost of health care provided on the basis of a valid European Health Insurance Card.
- (5) Commonly agreed best practices would contribute to a speedy and efficient settlement of refunds between the institutions.

HAS DECIDED AS FOLLOWS:

**A. Reimbursement on the basis of actual expenditure  
(Article 62 of Regulation (EC) No 987/2009)**

1. The institution which claims a refund based on actual expenditure shall introduce the claim at the latest within the deadline mentioned in Article 67(1) Regulation (EC) No 987/2009 (hereinafter 'Implementing Regulation'). The institution which receives a claim shall ensure the payment of the claim within the time limit provided for in Article 67(5) of the Implementing Regulation but before this deadline as soon as it is in a position to do so.
2. Claims for refund of benefits, which have been provided on the basis of a European Health Insurance Card (EHIC), a document replacing the EHIC or any other entitlement document, may be rejected and the claim returned to the creditor institution in case the claim, for example:
  - is incomplete and/or incorrectly filled out,
  - concerns benefits which have not been given within the validity period of the EHIC or the entitlement document used by the recipient of the benefits.

A claim may not be rejected on the grounds that the person has ceased to be insured with the institution, which has issued the EHIC or the entitlement document, provided that the benefits were given to the beneficiary within the validity period of the document used.

An institution which is obliged to refund the cost of benefits provided on the basis of an EHIC may request that the institution with which the person was rightly registered at the time of the award of the benefits shall refund the cost of those benefits to the first institution, or if the person was not entitled to use the EHIC, settle the matter with the person concerned.

<sup>(1)</sup> OJ L 166, 30.4.2004, p. 1.

<sup>(2)</sup> OJ L 284, 30.10.2009, p. 1.

<sup>(3)</sup> See page 23 of this Official Journal.

3. A claim may not be reviewed by the debtor institution as regards its compliance with Articles 19 and 27(1) of Regulation (EC) No 883/2004, unless there are reasonable grounds to suspect abuse as clarified under the case-law by the European Court of Justice <sup>(1)</sup>. The debtor institution is consequently obliged to accept the information on which the claim is based and to reimburse the claim. In the case there is suspicion of abuse the debtor institution may for relevant reasons reject the claim as provided for under Article 67(5) of the Implementing Regulation.
4. For the purpose of the application of points 2 and 3, if the debtor institution expresses doubts as to the correctness of the facts, on which a claim is based, it is incumbent on the creditor institution to reconsider, whether the claim was properly issued and, if appropriate, to withdraw or recalculate the claim.
5. A claim, which is introduced after the deadline specified in Article 67(1) of the Implementing Regulation, shall not be considered.

**B. Reimbursement on the basis of fixed amounts (Article 63 of Implementing Regulation)**

6. The inventory provided for in Article 64(4) of the Implementing Regulation shall be presented to the liaison body of the debtor member State by the end of the year following the reference year, and the claims based on this inventory shall be introduced to the same body as soon as possible following the publication in the *Official Journal of the European Union* of the annual fixed amounts per person, but within the time limit provided for in Article 67(2) of the Implementing Regulation.
7. The creditor institution shall whenever possible present the claims which concern a particular calendar year on the same occasion to the debtor institution.
8. The debtor institution which receives a claim for a refund determined on the basis of fixed amounts shall ensure the payment of the claim within the time limit provided for in Article 67(5) of the Implementing Regulation but before this deadline as soon as it is in a position to do so.

9. A claim, which is introduced after the deadline specified in Article 67(2) of the Implementing Regulation, shall not be considered.
10. A claim for a refund determined on the basis of fixed amounts may be rejected and returned to the creditor institution in case the claim, for example:
  - is incomplete and/or incorrectly filled out,
  - refers to a time period which is not covered by registration on the basis of valid entitlement document.
11. If the debtor institution expresses doubts as to the correctness of the facts on which a claim is based, it is incumbent on the creditor institution to reconsider, whether the invoice was properly issued and, if appropriate, to withdraw or recalculate the claim.

**C. Down payments under Article 68 of Implementing Regulation**

12. In case of making a down payment under Article 68 of the Implementing Regulation, the amount to be paid shall be determined separately for claims based on actual expenditure (Article 67(1) of the Implementing Regulation) and claims based on fixed amounts (Article 67(2) of the Implementing Regulation).

**D. Cooperation and Exchange of information**

13. The institutions should ensure a good cooperation between themselves and act as implementing their own legislation.

**E. Entry into force**

14. This Decision shall be published in the *Official Journal of the European Union*. It shall apply from the date of entry into force of Regulation (EC) No 987/2009.

*The Chair of the Administrative Commission*

Lena MALMBERG

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<sup>(1)</sup> Judgement of 12 April 2005 in case C-145/03 *Heirs of Annette Keller v Instituto Nacional de la Seguridad Social (INSS) and Instituto Nacional de Gestión Sanitaria (Ingresa)* ECR [2005] p. I-02529.

**DECISION No 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 of the European Parliament and of the Council in the event of sickness or maternity pursuant to Articles 17, 19, 20, 22, 24(1), 25, 26, 27(1, 3, 4 and 5), 28, 34 and 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 of the European Parliament and of the Council**

(Text of relevance to the EEA and to the EC/Switzerland Agreement)

(2010/C 106/18)

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS,

Having regard to Article 72(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems <sup>(1)</sup>, under which the Administrative Commission is responsible for dealing with all administrative questions or questions of interpretation arising from the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems <sup>(2)</sup>,

Having regard to Articles 35 and 41 of Regulation (EC) No 883/2004,

Whereas:

- (1) For the purposes of application of Articles 17, 19, 20, 22, 24(1), 25, 26, 27(1, 3, 4 and 5), 28, 34 and 36(1 and 2) of Regulation (EC) No 883/2004, a precise meaning, binding on all Member States, should be attached to the concept of sickness and maternity 'benefits in kind' as defined in Article 1(va) of Regulation (EC) No 883/2004.
- (2) The concept of sickness and maternity benefits in kind, in accordance with the case law of the European Court of Justice must include benefits in kind provided to persons reliant on care.

Acting in accordance with the conditions laid down in Article 71(2) of Regulation (EC) No 883/2004,

HAS DECIDED AS FOLLOWS:

**I. General provisions**

1. The sickness and maternity benefits in kind to be considered when calculating the refunds referred to in Articles 62, 63 and 64 of Regulation (EC) No 987/2009 (hereinafter 'Implementing Regulation') shall be those regarded as benefits in

kind under the national legislation administered by the institution which has provided the benefits in so far as they can be acquired in accordance with the provisions of Articles 17, 19, 20, 22, 24(1), 25, 26, 27(1, 3, 4 and 5), 28, 34 and 36(1 and 2) of Regulation (EC) No 883/2004 (hereinafter 'Basic Regulation').

2. The following shall also be regarded as benefits in kind within the meaning of the abovementioned Articles of the Basic Regulation:

- (a) care insurance benefits in kind giving entitlement to full or partial direct payment of certain expenditure entailed by the insured person's reliance on care and incurred for his or her direct benefit, for example nursing care and home help provided in the home or in specialised establishments, purchases of care equipment, or work carried out to improve the home environment; benefits of this kind are essentially intended to supplement sickness insurance benefits in kind in order to improve the state of health and the quality of life of persons reliant on care;
- (b) benefits in kind not arising from care insurance but having the same characteristics and purposes as those referred to in (a) above, in so far as they may be regarded as social security benefits in kind within the meaning of the Basic Regulation and may be acquired in the same way as those referred to in (a) in accordance with the provisions of the abovementioned Articles of the Basic Regulation.

The benefits in kind referred to in (a) and (b) shall be included in the expenditure referred to in point 1 above.

3. The following shall not be regarded as costs for benefits in kind within the meaning of the abovementioned Articles of the Basic Regulation:

- (a) Expenditure linked to the administration of the sickness insurance scheme, for example costs which are incurred by the handling and processing of reimbursements to individuals and between institutions;

<sup>(1)</sup> OJ L 166, 30.4.2004, p. 1.

<sup>(2)</sup> OJ L 284, 30.10.2009, p. 1.

(b) Expenditure linked to the award of benefits, such as doctor's fees for issuing medical certificates needed to evaluate a claimant's degree of invalidity or ability to perform work;

(c) Expenditure on medical research and subsidies to institutions of preventive medicine, granted for general health protection measures, as well as expenditure on measures of a general (not risk-related) nature;

(d) Co-payments made by individuals.

#### **II. Provisions for the calculation of the fixed amounts provided for in Article 63 of Implementing Regulation**

4. The calculation of the monthly and total fixed amounts in accordance with Article 64 of the Implementing Regulation shall include the following:

(a) the amount of benefits in kind provided under the national schemes in the Member State of residence on the basis of Articles 17, 24(1), 25 and 26 of the Basic Regulation;

(b) the amount of benefits in kind provided on the basis of scheduled treatment outside the Member State of residence in accordance with Articles 20 and 27(3) and (5) of the Basic Regulation;

(c) the cost of benefits in kind provided which an insured person received during temporary stay outside the state of residence in so far as the costs of those benefits have

to be carried under national law; except for the costs provided for in point II paragraph 5 letter (a) of this Decision.

5. The calculation of the monthly and total fixed amounts in accordance with Article 64 of the Implementing Regulation shall not include the following:

(a) the amount of benefits provided during a temporary stay outside the state of residence on the basis of Articles 19(1) and 27(1) of the Basic Regulation;

(b) the amount of benefits refunded in accordance with the Basic Regulation or on the basis of bilateral or multi-lateral agreements with the exception of refunds for scheduled treatment.

#### **III. Other provisions**

6. The calculation of the amounts to be refunded shall as far as possible be based on the official statistics and accounts of the place of stay or residence, and preferably on the published official data. The sources of the statistics used shall be indicated.

7. This Decision shall be published in the *Official Journal of the European Union*. It shall apply from the date of entry into force of Regulation (EC) No 987/2009.

*The Chair of the Administrative Commission*  
Lena MALMBERG

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**DECISION No H3****of 15 October 2009****concerning the date to be taken into consideration for determining the rates of conversion referred to in Article 90 of Regulation (EC) No 987/2009 of the European Parliament and of the Council****(Text of relevance to the EEA and to the EC/Switzerland Agreement)**

(2010/C 106/19)

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS,

Having regard to Article 72(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems <sup>(1)</sup>, under which it is responsible for dealing with all administrative questions or questions of interpretation arising from the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems <sup>(2)</sup>,

Having regard to Article 90 of Regulation (EC) No 987/2009 concerning currency conversion,

Whereas:

- (1) Many provisions such as e.g. Articles 5(a), 21(1), 29, 34, 52, 62(3), 65(6) and (7), 68(2) and 84 of Regulation (EC) No 883/2004 and Articles 25(4) and (5), 26 (7), 54(2), 70, 72, 73, 78 and 80 of Regulation (EC) No 987/2009, contain situations, where for the purpose of the payment, calculation or recalculation of a benefit or contribution, a reimbursement, or for the purposes of offsetting and the recovery procedures, the exchange rate needs to be determined.
- (2) Article 90 of Regulation (EC) No 987/2009 empowers the Administrative Commission to fix the date to be taken into consideration for determining the rates of conversion to be applied when calculating certain benefits and contributions.

Acting in accordance with the conditions laid down in Article 71(2) of Regulation (EC) No 883/2004,

HAS DECIDED AS FOLLOWS:

1. For the purpose of this Decision the rate of conversion shall be understood as a daily conversion rate published by the European Central Bank.

<sup>(1)</sup> OJ L 166, 30.4.2004, p. 1.

<sup>(2)</sup> OJ L 284, 30.10.2009, p. 1.

2. If not otherwise stated in this Decision, the rate of conversion shall be the rate published on the day when the operation is performed by the institution.

3. An institution of a Member State, which for the purpose of the establishment of an entitlement and for the first calculation of the benefit has to convert an amount into the currency of another Member State, shall use:

- (a) when, according to national legislation, an institution takes into account amounts, such as earnings or benefits, during a certain period before the date for which the benefit is calculated, the rate of conversion published for the last day of that period;

- (b) when, according to national legislation, for the purpose of calculation of the benefit an institution takes into account one amount, the rate of conversion published for the first day of the month immediately preceding the month when the provision must be applied.

4. Paragraph 3 shall apply *mutatis mutandis* when an institution of a Member State for the recalculation of the benefit due to changes in the factual or legal situation of the person concerned, has to convert an amount in the currency of another Member State.

5. An institution which pays benefit that is regularly indexed according to the national law, and where the amounts in other currency have an impact on that benefit, shall, when recalculating it use the rate of conversion applicable on the first day of the month preceding the month when the indexation is due, unless provided for differently in the national legislation.

6. For the purposes of the offsetting and recovery procedures, the exchange rate applicable to convert the sum to be deducted or paid shall be the rate of conversion for the day when the request was sent for the first time.

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7. For the purposes of Article 65(6) and (7) of Regulation (EC) No 883/2004 and Article 70 of Regulation (EC) No 987/2009 when the comparison is made between the amount actually paid by the institution of the place of residence and the maximum amount of the reimbursement referred to in the third sentence of Article 65(6) of Regulation (EC) No 883/2004 (the amount of the benefit to which a person concerned would be entitled according to the legislation of the Member State to which he/she was last subject if registered with the employment services of that Member State), the date to be taken into consideration for determining the rate of conversion shall be the first day of the calendar month in which the reimbursable period ended.
8. This Decision shall be revised after the first year of the entry into application of the Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009.
9. This Decision shall be published in the *Official Journal of the European Union*. It shall apply from the date of entry into force of Regulation (EC) No 987/2009.
- The Chair of the Administrative Commission*  
Lena MALMBERG
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<sup>(1)</sup> Text of relevance to the EEA and to the EC/Switzerland Agreement

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