

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 ⁽¹⁾, 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 ⁽²⁾,

(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 ⁽³⁾ 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 ⁽⁴⁾, 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 ⁽⁵⁾ 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,

⁽¹⁾ OJ L 166, 30.4.2004, p. 1.

⁽²⁾ OJ L 284, 30.10.2009, p. 1.

⁽³⁾ OJ L 149, 5.7.1971, p. 2.

⁽⁴⁾ OJ L 74, 27.3.1972, p. 1.

⁽⁵⁾ 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
