

ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS

DECISION No E5

of 16 March 2017

**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**

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

(2017/C 233/03)

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 ⁽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⁾,

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,

Having regard to Article 4 of the 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',

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.',

Whereas:

- (1) Article 95 of the 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.
- (2) It is necessary to clarify the basic principles to be applied by institutions during the transitional period.
- (3) After the date of entry into force of the new Regulations a significant number of claims were in progress where entitlement arose under Regulation (EEC) No 1408/71 ⁽³⁾ and that in relation to these claims the exchange of information will generally be based on the procedures contained in Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 ⁽⁴⁾, including the use of E-forms.
- (4) Article 94(1) of the 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.
- (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 Regulation (EEC) No 574/72 and Regulation (EC) No 987/2009.

⁽¹⁾ OJ L 166, 30.4.2004, p. 1.

⁽²⁾ OJ L 284, 30.10.2009, p. 1.

⁽³⁾ Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ L 149, 5.7.1971, p. 2).

⁽⁴⁾ Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community (OJ L 74, 27.3.1972, p. 1).

- (6) Paragraph 5 of Decision No H1 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 Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009.
- (7) Within the transitional period Member States are free to decide when they are ready to join the Electronic Exchange of Social Security Information (EESSI) as a whole or by Business Use Cases (BUCs), while at the same time endeavouring to follow the planned implementation of EESSI within Member States and the sequence of BUCs to commence electronic exchange as recommended by the Administrative Commission.

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

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 Regulation (EC) No 883/2004 and the Regulation (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 Regulation (EC) No 883/2004 and Regulation (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 Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009.
6. Each Member State may follow a flexible phased approach in implementing the Electronic Exchange of Social Security Information (EESSI), as it becomes EESSI-enabled via its Access Point(s).
7. A collaborative agreement within the Administrative Commission will define the planned sequence of BUCs in EESSI for Member States to follow, without prejudice to paragraph 6. This sequence will be based on a gradual build-up of BUCs and will include bundling of BUCs where this is appropriate.
8. For each BUC where electronic exchanges have commenced, each Member State shall endeavour to join as soon as possible once their technical integration allows this.
9. Member States will manage both paper and electronic exchanges across the same BUC until all Member States are EESSI enabled for that particular BUC.
10. Being 'EESSI-enabled' for a particular BUC means that the Member State concerned can both send and receive all messages in that BUC to and from other Member States.

11. The information on which BUC in which Member State is EESSI-enabled shall be contained in a list accessible to national institutions and also reflected in the EESSI Institution Repository. Member States shall inform the Administrative Commission in writing within a reasonable time before becoming EESSI enabled for a specific BUC.
12. During the transitional period the exchange of information between two Member States for a BUC shall be either under EESSI or outside EESSI for all exchanges covered by that BUC, without prejudice to any bilateral arrangements that may, for instance, concern joint testing or training or analogous reasons; and shall be carried out only under EESSI from the moment they both declared being EESSI enabled for that BUC.
13. In case of a multilateral BUC, meaning a BUC where more than two Member States participate in the exchange, the exchanges under EESSI shall only start once it is established that only Member States which declared to be EESSI-enabled for that particular BUC are participating in that exchange. The principles outlined under paragraph 12 also apply in cases where more than two Member States participate in a BUC.
14. This decision shall be published in the *Official Journal of the European Union*. It shall apply from the twentieth day following that of its publication.
15. This Decision replaces Decision No E1 of 12 June 2009.

The Chair of the Administrative Commission

Malcolm SCICLUNA
