

ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS

DECISION No F2

of 23 June 2015

on the exchange of data between institutions for the purpose of granting family benefits

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

(2016/C 52/07)

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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⁾, and in particular Article 72(a) thereof,

Having regard to 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⁾, and in particular Article 2(2) and Title III, Chapter VI thereof,

Whereas:

- (1) At the 340th meeting of the Administrative Commission on 22-23 October 2014, delegations expressed concerns about problems they encountered with regard to the speed, uniformity and structure of the exchange of information by the competent institutions for the purposes of granting and calculating family benefits.
- (2) The complexity and the length of the procedure for granting family benefits was also discussed at the Working Party of the Administrative Commission on family benefits of 18 April 2012 and at the Reflection Forum on issues of export and competence of Family Benefits on 10 March 2015.
- (3) The exchange of information between institutions should comply with Articles 68(3) and 76(4) of Regulation (EC) No 883/2004 and Articles 2, 60(2) and (3) of Regulation No (EC) 987/2009.
- (4) In accordance with Article 60(3) of Regulation (EC) No 987/2009, where the institution to which an application for family benefits has been made concludes that its legislation is applicable but not by priority right, it should take a provisional decision, without delay, on the priority rules to be applied and should forward the application, in accordance with Article 68(3) of Regulation (EC) No 883/2004 to the institution of the Member State it believes has primary competence.
- (5) Save where the institution receiving a forwarded application under Article 60(3) of Regulation (EC) No 987/2009 has communicated that it disputes the provisional decision within the two month timeframe specified, that provisional decision will become definitive either from the date when the receiving institution approves the decision or where the receiving institution fails to communicate its position on the provisional decision, upon expiry of two months from receipt of the application by the receiving institution (whichever is the soonest).
- (6) In accordance with Article 68(3)(a) of Regulation (EC) No 883/2004 and Article 60(3) of Regulation (EC) No 987/2009, the differential supplement should be calculated and paid without delay as soon as the person concerned becomes entitled to the benefit and the Member State has the information necessary for the calculation of the differential supplement.
- (7) Where the institution to which an application for family benefits was made has taken a provisional decision on the priority rules to be applied but does not yet have all the information required to calculate definitively the amount of the differential supplement, that institution should, at the request of the person concerned, calculate and award the differential supplement on a provisional basis, if such calculation is possible on the basis of the information available in accordance with Article 68(3)(a) of Regulation (EC) No 883/2004 and Articles 7 and 60(3) of Regulation (EC) No 987/2009. Where there is a difference in views between the institutions concerned about which legislation is applicable by priority right, Article 6(2) to (5) and 60(4) of Regulation (EC) No 987/2009 should apply.

⁽¹⁾ OJ L 166, 30.4.2004, p. 1.

⁽²⁾ OJ L 284, 30.10.2009, p. 1.

- (8) The use of the forms for the exchange of data for the purposes of granting and calculating family benefits under Regulations (EC) No 883/2004 and (EC) No 987/2009 should comply with Decision No E1 ⁽¹⁾.
- (9) In order to facilitate the uniform application of Regulations (EC) No 883/2004 and (EC) No 987/2009, the Administrative Commission therefore agrees that clearer deadlines should be established for the exchange of data for the purposes of granting and calculating family benefits under Regulations (EC) No 883/2004 and (EC) No 987/2009 and in addition there should be clearer rules for the payment of the differential supplement (including on a provisional basis),

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

HAS DECIDED AS FOLLOWS:

1. An institution shall, without delay, provide all the necessary information for establishing an entitlement and calculating the family benefit to the concerned institutions of other Member States. Likewise, where an institution becomes aware of information that may be relevant to a decision on the entitlement or amount of an award of family benefits it shall forward the relevant information to other institutions concerned as soon as possible.
2. An institution shall reply promptly to a request for information from another Member State and in any event, no later than:
 - a. two months after the day of receipt of the request in a case concerning a request for a position on a provisional decision on the priority rules referred to at Article 60(3) of Regulation (EC) No 987/2009), or
 - b. three months after the day of receipt of the request for information in all other cases.
3. In exceptional cases, where for justified reasons it is not possible for the institution receiving a request for information to reply within the deadlines set out at paragraph 2(b), it shall notify the requesting institution of this fact and the reasons for the delay; and where possible the institution shall indicate when it will provide the requested information and keep the requesting institution informed of any changes to the indicative timeframe.
4. If at least two Member States are concerned, the competent institutions shall, upon request, exchange information on the family situation of the beneficiaries and the amount and rates of the benefits paid. Such requests shall be subject to the timeframes referred to in paragraph 2(b). Without prejudice to the obligation in paragraph 1, in the case of generic periodic requests either for the control of the amount of benefit or verification of entitlement to benefit made without concrete grounds a competent institution shall not submit such a request more than once a year, nor shall the receiving competent institution be obliged to answer such a request more than once a year.
5. The differential supplement shall be calculated and paid without delay as soon as the person concerned becomes entitled to the benefit and the Member State has the information necessary for the calculation of the differential supplement. The supplement or provisional supplement shall be paid at the intervals laid down in the national legislation of the competent Member State for the payment of family benefits.
6. This Decision shall be published in the *Official Journal of the European Union*. It enters into force on the twentieth day following that of its publication.

The Chair of the Administrative Commission

Liene RAMANE

⁽¹⁾ 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 (OJ C 106, 24.4.2010, p. 9).