

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 ⁽¹⁾, 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 ⁽²⁾,

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.

⁽¹⁾ OJ L 166, 30.4.2004, p. 1.

⁽²⁾ 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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