

ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS

DECISION No S10

of 19 December 2013

concerning the transition from Regulations (EEC) Nos 1408/71 and 574/72 to Regulations (EC) Nos 883/2004 and 987/2009 and the application of reimbursement procedures

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

(2014/C 152/03)

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⁽²⁾,

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:

- (1) Regulations (EC) Nos 883/2004 and 987/2009 entered into force on 1 May 2010 and Regulations (EEC) Nos 1408/71 and 574/72 were repealed on the same date, except for the situations governed by Article 90(1) of Regulation (EC) No 883/2004 and Article 96(1) of Regulation (EC) No 987/2009.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) It is necessary to clarify the determination of debtor and creditor Member State in situations where benefits in kind were provided or authorised under Regulations (EEC) Nos 1408/71 and 574/72 but the reimbursements of costs for these benefits are settled after Regulations (EC) Nos 883/2004 and 987/2009 enter into force, in particular where the competence for bearing of the costs changes under the new Regulations.
- (3) It is necessary to clarify which procedure for reimbursement shall be applied in situations where benefits in kind were provided under Regulations (EEC) Nos 1408/71 and 574/72 but the reimbursement procedure takes place after the date of entry into force of Regulations (EC) Nos 883/2004 and 987/2009.
- (4) 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) Nos 883/2004 and 987/2009.
- (5) Provisions of paragraph 4 of Decision S1 and Article 2 of Decision No S9 lay down the general principles on the responsibility for the costs of benefits provided on the basis of a valid European Health Insurance Card (EHIC) which should also apply in transitional situations.

⁽¹⁾ OJ L 166, 30.4.2004, p. 1.

⁽²⁾ OJ L 284, 30.10.2009, p. 1.

- (6) Under Article 62 and 63 of Regulation (EC) No 987/2009 those Member States that are not listed in Annex 3 of Regulation (EC) No 987/2009 shall reimburse benefits in kind supplied to family members who do not reside in the same Member State as the insured person and to pensioners and members of their family on the basis of actual expenditure as from 1 May 2010.
- (7) The costs of benefits in kind provided under Articles 19(1), 20(1) and Article 27(1) and 27(3) of Regulation (EC) No 883/2004 shall be borne by the competent institution responsible for the costs of benefits in kind provided to family members who do not reside in the same Member State as the insured person and to pensioners and members of their family in their Member State of residence.
- (8) Under Article 64(7) of Regulation (EC) No 987/2009 Member States listed in Annex 3 may after 1 May 2010 continue to apply for five years Articles 94 and 95 of Regulation (EEC) No 574/72 for the calculation of the fixed amounts.
- (9) The Regulation (EC) No 987/2009 introduces new procedures for reimbursements of healthcare costs with the aim of speeding up the refunds between Member States and preventing a build-up of claims which remain unsettled for longer periods of time.
- (10) There is a need for transparency and guidance for the institutions in the situations referred above to ensure unified and coherent application of Community provisions.

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

HAS DECIDED AS FOLLOWS:

I. Transitional arrangements for determining the Member State responsible for bearing the cost of scheduled treatment and necessary care with regard to the change in competence under Regulation (EC) No 883/2004

1. If a treatment was supplied:
 - in relation to Member States, to a person before 1 May 2010, the competence for bearing the person's costs shall be determined in accordance with the provisions of Regulation (EEC) No 1408/71;
 - in relation to Switzerland, to a person before 1 April 2012, the competence for bearing the person's costs shall be determined in accordance with the provisions of Regulation (EEC) No 1408/71;
 - in relation to Iceland, Liechtenstein and Norway, to a person before 1 June 2012, the competence for bearing the person's costs shall be determined in accordance with the provisions of Regulation (EEC) No 1408/71.
2. The cost of the entire treatment shall be borne by the institution which granted the authorisation to a person to go to the territory of another Member State to receive there the treatment appropriate to his/her condition (scheduled treatment) under Regulations (EEC) Nos 1408/71 and 574/72
 - if, in relation to Member States, the treatment is provided partly or entirely after 30 April 2010;
 - if, in relation to Switzerland, the treatment is provided partly or entirely after 31 March 2012
 - if, in relation to Iceland, Liechtenstein and Norway, the treatment is provided partly or entirely after 31 May 2012.
3. If a treatment started to be supplied to a person under Article 22(3)(a) or Article 31(1)(a) of Regulation (EEC) No 1408/71, the costs of such treatment should be borne in accordance with provisions of these Articles even if the competence for bearing the person's costs has changed according to the provisions of Regulation (EC) No 883/2004. Nevertheless, if the treatment continues
 - in relation to Member States, after 31 May 2010, the costs incurred after that date shall be borne by the institution competent under Regulation (EC) No 883/2004;
 - in relation to Switzerland, after 30 April 2012, the costs incurred after that date shall be borne by the institution competent under Regulation (EC) No 883/2004;

- in relation to Iceland, Liechtenstein and Norway, after 30 June 2012, the costs incurred after that date shall be borne by the institution competent under Regulation (EC) No 883/2004.
4. If a treatment was provided under Article 19(1) or 27(1) of Regulation (EC) No 883/2004
- in relation to Member States, after 30 April 2010 on the basis of a valid EHIC issued before 1 May 2010, the claim for the reimbursement of the costs of such treatment cannot be rejected on the grounds that the competence for persons' healthcare costs has changed according to the provisions of Regulation (EC) No 883/2004;
 - in relation to Switzerland, after 31 March 2012 on the basis of a valid EHIC issued before 1 April 2012, the claim for the reimbursement of the costs of such treatment cannot be rejected on the grounds that the competence for persons' healthcare costs has changed according to the provisions of Regulation (EC) No 883/2004;
 - in relation to Iceland, Liechtenstein and Norway, after 31 May 2012 on the basis of a valid EHIC issued before 1 June 2012, the claim for the reimbursement of the costs of such treatment cannot be rejected on the grounds that the competence for persons' healthcare costs has changed according to the provisions of Regulation (EC) No 883/2004.

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.

II. Procedure for reimbursement on the basis of actual expenditure in relation to Member States

1. Claims for reimbursement on the basis of actual expenditure recorded in the accounts of the creditor Member State before 1 May 2010 shall be subject to the financial provisions of Regulation (EEC) No 574/72.

These claims shall be introduced to the liaison body of the debtor Member State no later than 31 December 2011.

2. All claims for reimbursement on the basis of actual expenditure recorded in the accounts of the creditor Member State after 30 April 2010 shall be subject to the new rules of procedures in accordance with the provisions of Articles 66 to 68 of Regulation (EC) No 987/2009.

III. Procedure for reimbursement on the basis of actual expenditure in relation to Switzerland

1. Claims for reimbursement in relation to Switzerland on the basis of actual expenditure recorded in the accounts of the creditor State before 1 April 2012 shall be subject to the financial provisions of Regulation (EEC) No 574/72.

2. All claims for reimbursement in relation to Switzerland on the basis of actual expenditure recorded in the accounts of the creditor State by 31 March 2012 shall be introduced to the liaison body of the debtor State no later than 31 December 2013.

3. All claims for reimbursement in relation to Switzerland on the basis of actual expenditure recorded in the accounts of the creditor State after 31 March 2012 shall be subject to the new rules of procedures in accordance with the provisions of Articles 66 to 68 of Regulation (EC) No 987/2009.

IV. Procedure for reimbursement on the basis of actual expenditure in relation to Iceland, Liechtenstein and Norway

1. Claims for reimbursement in relation to Iceland, Liechtenstein and Norway on the basis of actual expenditure recorded in the accounts of the creditor State before 1 June 2012 shall be subject to the financial provisions of Regulation (EEC) No 574/72.

2. All claims for reimbursement in relation to Iceland, Liechtenstein and Norway on the basis of actual expenditure recorded in the accounts of the creditor State by 31 May 2012 shall be introduced to the liaison body of the debtor State no later than 31 December 2013.

3. All claims for reimbursement in relation to Iceland, Liechtenstein and Norway on the basis of actual expenditure recorded in the accounts of the creditor State after 31 May 2012 shall be subject to the new rules of procedures in accordance with the provisions of Articles 66 to 68 of Regulation (EC) No 987/2009.

V. Procedure for reimbursement on the basis of fixed amounts in relation to Member States

1. Average costs regarding years up to and including 2009 shall be presented to the Audit Board no later than 31 December 2011. Average costs regarding the year 2010 shall be presented to the Audit Board no later than 31 December 2012.

2. All claims for reimbursement on the basis of fixed amounts published in the *Official Journal of the European Union* before 1 May 2010 shall be introduced no later than 1 May 2011.

3. All claims for reimbursement on the basis of fixed amounts published after 30 April 2010 shall be subject to the new rules of procedures in accordance with the provisions of Articles 66 to 68 of Regulation (EC) No 987/2009. Article 67(2) of Regulation (EC) No 987/2009 shall not be applied to inventories concerning reference years prior the entering into force of Regulation (EC) No 987/2009.

VI. Procedure for reimbursement on the basis of fixed amounts in relation to Switzerland

1. Average costs in relation with Switzerland regarding years up to and including 2011 shall be presented to the Audit Board no later than 31 December 2013. Average costs regarding the year 2012 shall be presented to the Audit Board no later than 31 December 2014.

2. All claims for reimbursement in relation to Switzerland on the basis of fixed amounts published in the *Official Journal of the European Union* before 1 April 2012 shall be introduced no later than 1 April 2013.

3. All claims for reimbursement in relation to Switzerland on the basis of fixed amounts published after 31 March 2012 shall be subject to the new rules of procedures in accordance with the provisions of Articles 66 to 68 of Regulation (EC) No 987/2009. Article 67(2) of Regulation (EC) No 987/2009 shall not be applied to inventories concerning reference years prior the entering into force of Regulation (EC) No 987/2009.

VII. Procedure for reimbursement on the basis of fixed amounts in relation to Iceland, Liechtenstein and Norway

1. Average costs in relation with Iceland, Liechtenstein and Norway regarding years up to and including 2011 shall be presented to the Audit Board no later than 31 December 2013. Average costs regarding the year 2012 shall be presented to the Audit Board no later than 31 December 2014.

2. All claims for reimbursement in relation to Iceland, Liechtenstein and Norway on the basis of fixed amounts published in the *Official Journal of the European Union* before 1 June 2012 shall be introduced no later than 1 June 2013.

3. All claims for reimbursement in relation to Iceland, Liechtenstein and Norway on the basis of fixed amounts published after 31 May 2012 shall be subject to the new rules of procedures in accordance with the provisions of Articles 66 to 68 of Regulation (EC) No 987/2009. Article 67(2) of Regulation (EC) No 987/2009 shall not be applied to inventories concerning reference years prior the entering into force of Regulation (EC) No 987/2009.

VIII. Uncontested claims introduced under Regulation (EEC) No 574/72

1. Uncontested claims, in relation to Member States, shall be paid as early as possible, at the latest within 12 months from the date of entry into force of the decision.

2. Uncontested claims, in relation to Switzerland, Iceland, Liechtenstein and Norway, shall be paid as early as possible, at the latest within 24 months from the date of entry into force of the decision

IX. Contested claims introduced under Regulation (EEC) No 574/72

1. Contestations to claims concerned, in relation to Member States, have to be received by the liaison body of the creditor Member State at the latest within 12 months from the date of entry into force of the decision. Contestations received after this date can be refused.

2. Contestations to claims concerned, in relation to Switzerland, Iceland, Liechtenstein and Norway, have to be received by the liaison body of the creditor State at the latest within 24 months from the date of entry into force of the decision. Contestations received after this date can be refused.

3. Replies to contestations, in relation to Member States, have to be received by the liaison body of the debtor Member State within 12 months of the end of the month during which the contestation was received and not later than 24 months from the date of entry into force of the decision. The liaison body of the creditor Member State shall reply and submit evidence required in the contestation.
4. Replies to contestations, in relation to Switzerland, Iceland, Liechtenstein and Norway, have to be received by the liaison body of the debtor State within 12 months of the end of the month during which the contestation was received and not later than 36 months from the date of entry into force of the decision. The liaison body of the creditor State shall reply and submit evidence required in the contestation.
5. Contested claims, in relation to Member States, shall be finally settled and paid at the latest within 24 months from the date of entry into force of the decision
6. Contested claims, in relation to Switzerland, Iceland, Liechtenstein and Norway, shall be finally settled and paid at the latest within 36 months from the date of entry into force of the decision.
7. In the absence of a reply by these dates, the contestation is considered as accepted. Replies received by the liaison body of the debtor State after this date can be refused.

X. Facilitation procedure

1. Claims which have not been settled within the periods set out above and for which the procedure as laid down under Article 67(7) of Regulation (EC) No 987/2009 has not been evoked by one of the parties within six months from the deadline for payment, shall be regarded as obsolete.
2. Liaison bodies of States may bilaterally agree on a general solution concerning the final settlement of claims, without considering each individual case.

XI. Final provisions

1. When applying the transitional arrangements, the guiding principle shall be good cooperation between institutions, pragmatism and flexibility.
2. This Decision shall be published in the *Official Journal of the European Union*. It shall apply from the date of its publication.
3. This Decision replaces Decision No S7 of 22 December 2009.

The Chair of the Administrative Commission

Mariana ŽIUKIENĖ
