

ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS

RECOMMENDATION No S1

of 15 March 2012

concerning financial aspects of cross-border living organ donations

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

(2012/C 240/04)

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 Article 168(7) TFEU,

Having regard to Article 48 TFEU,

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

Whereas:

- (1) Union action shall respect the responsibilities of the Member States for the definition of their health policy and for the organisation and delivery of health services and medical care.
- (2) Union action shall not affect national provisions on the donation or medical use of organs and blood.
- (3) Regulation (EC) No 883/2004 does not provide a solution for the reimbursement of sickness benefits in

kind to a living donor where his applicable legislation excludes or does not provide for the reimbursement of costs and the legislation of the organ recipient does not cover the donor's costs.

- (4) It is acknowledged that organ transplantation is a cost-effective treatment that has brought immense benefits to patients and living donations need to be performed in a manner that minimises the social risk to the individual donor.
- (5) The competent institution of the organ recipient should find a humanitarian ad hoc solution and reimburse the benefits in kind necessitated by cross-border living donation, if the applicable legislation of the organ donor does not provide reimbursement for living organ donors or for living organ donations in general.
- (6) The living donor has to be able to take an independent decision on the basis of all the relevant information and should be informed in advance about the health care coverage, reimbursement of costs relating to the cross-border organ donation and possible loss of income compensated by sickness cash benefits,

RECOMMENDS:

1. The competent authorities of an organ recipient, when they prepare or authorise the living organ donation with an organ coming from a living donor insured in another Member State, should consider the access of the living donor to the health care system for problems related to the procedure of donation;

2. The competent authorities of an organ recipient shall find a humanitarian solution and reimburse the benefits in kind necessitated by cross-border living donation for the donor, if the legislation covering the donor does not provide entitlement to sickness benefits in kind for the donor;

⁽¹⁾ OJ L 166, 30.4.2004, p. 1, (as corrected in OJ L 200, 7.6.2004, p. 1).

⁽²⁾ 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 (OJ L 284, 30.10.2009, p. 1).

3. The competent authority of the donor shall provide sickness cash benefits in accordance with the legislation it applies, regardless of which Member State the organ donation took place in or of who was the organ recipient. Possible loss of income by the donor linked to the donation should be treated like any other incapacity for work by the donor's applicable legislation as there is no reason to treat the incapacity for work related to the organ donation differently from other incapacities based on medical grounds.

The Chair of the Administrative Commission

Karin MØHL LARSEN
