

ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS

DECISION No E6

of 19 October 2017

**concerning the determination of when an electronic message is considered legally delivered in the
Electronic Exchange of Social Security Information (EESSI) system**

(Text with relevance for the EEA and for Switzerland)

(2018/C 355/04)

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 this Regulation 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, under which the Administrative Commission shall encourage as far as possible the use of new technologies,

Having regard to Article 81 of Regulation (EC) No 883/2004 setting out the procedure to be followed in case a claim, declaration or appeal should have been submitted within a specified period to an authority, institution or tribunal of a Member State but was instead submitted within the same period to a corresponding authority, institution or tribunal of another Member State,

Having regard to Article 4 of Regulation (EC) No 987/2009, under which ‘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 2(4) of Regulation (EC) No 987/2009, under which ‘where data are transferred indirectly via the liaison body of the Member State of destination, time limits for responding to claims shall start from the date when that liaison body received the claim, as if it had been received by the institution in that Member State’.

Having regard to Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits ⁽³⁾,

Whereas:

- (1) It is necessary to lay down a rule determining when a message is considered legally delivered through EESSI, in order to determine deadlines in accordance with Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009, in conjunction with Regulation (EEC, Euratom) No 1182/71.
- (2) The social security coordination rules in Regulation (EC) No 883/2004 and Article 2(4) of Regulation (EC) No 987/2009 set out that a message is considered delivered when it reaches the competent institution or the liaison body of the destination Member State, even in cases where that institution will not be directly handling the case.
- (3) The EESSI Architecture approved by the Administrative Commission provides for a technical mechanism ensuring that the sender of a message is informed when the message was successfully delivered, based on the use of the ebMS AS4 electronic data transport protocol in EESSI.

⁽¹⁾ OJ L 166, 30.4.2004, p. 1.

⁽²⁾ OJ L 284, 30.10.2009, p. 1.

⁽³⁾ OJ L 124, 8.6.1971, p. 1.

- (4) The ebMS AS4 protocol provides message reliability, meaning that when a message is sent over this protocol, the sender is informed when the message was successfully delivered to the endpoint of the EESSI message exchange under the ebMS AS4 protocol, or, should the sending of the message fail, the sender is informed of the failure.
- (5) The endpoint of the ebMS AS4 protocol represents the closest electronic equivalent of the concept of a message arriving at the competent institution or liaison body; therefore in electronic exchanges through EESSI the message will be considered legally delivered when it reaches the endpoint of the ebMS AS4 protocol.
- (6) Member States are free to determine the details of national architecture and decide whether the endpoint of an EESSI message exchange under the ebMS AS4 protocol will coincide with a National Application of the institution handling the cases, or if it will be placed in a National Gateway, or an entity providing Intelligent Routing Services acting on behalf of a National Application, meaning that in the second case messages will travel beyond the ebMS AS4 endpoint to reach the case handling institution. It is national responsibility to ensure that messages reach the case handlers in a timely manner beyond the ebMS AS4 endpoint.
- (7) Member States are free to determine the details of national architecture in terms of whether messages technically are 'pushed' or 'pulled' from an Access Point to the ebMS AS4 endpoint of the EESSI message exchange. Therefore a general rule is needed to ensure that messages are extracted from the Access Point and delivered to the ebMS AS4 endpoint of the EESSI message exchange on a regular basis.
- (8) The sending clerks working on case handling must be able to determine the date of delivery of their messages in case of doubts. The Administrative Commission will define the specific procedure to enable this.
- (9) Until the end of the transitional period towards full electronic message exchange, the practical arrangements for good cooperation between national authorities, including the leading principles of pragmatism and flexibility are set out in Decision E5 of the Administrative Commission 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 of the European Parliament and of the Council ⁽¹⁾,

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

HAS DECIDED AS FOLLOWS:

1. Following the general principle of the social security coordination rules in Regulation (EC) No 883/2004 and Article 2(4) of Regulation (EC) No 987/2009, whereby a message is considered delivered when it reaches the competent institution or the liaison body of the destination Member State, in the electronic exchanges the corresponding concept where a message is considered delivered is defined as the endpoint of the ebMS AS4 electronic data transport protocol in EESSI.
2. A message is considered legally delivered in EESSI on the date of the acknowledgement generated at the ebMS endpoint confirming the delivery of that message.
3. Member States shall ensure that messages delivered to their national Access Point are extracted and delivered to the endpoint of the EESSI message exchange at least once every 24 hours and that the acknowledgement about delivery or failure of delivery of the message is generated at the ebMS endpoint, no later than the day after the date when the message was sent.
4. The Member States must ensure that in case of doubt about the date of delivery of a message, the clerks will be able to consult the date of acknowledgment or failure of delivery of the message at the ebMS endpoint of the receiving Member State. The Administrative Commission will define the details of this consultation procedure.

⁽¹⁾ OJ C 233, 19.7.2017, p. 3.

5. 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.

The Chair of the Administrative Commission

Agne NETTAN-SEPP
