

DECISION No H5

of 18 March 2010

concerning cooperation on combating fraud and error within the framework of Council Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council on the coordination of social security systems

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

(2010/C 149/05)

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 of the European Parliament and of the Council ⁽²⁾,

Having regard to Article 76 of Regulation (EC) No 883/2004,

Having regard to Articles 2(2), 20, 52 and 87(3) of Regulation (EC) No 987/2009,

Whereas:

- (1) Competent authorities and institutions are required by Article 76 of Regulation (EC) No 883/2004 to cooperate to ensure the correct implementation of the Regulation.
- (2) Measures to combat fraud and error are closely linked to the branches of social security as defined by Article 3(1) of Regulation (EC) No 883/2004 and at guaranteeing that contributions are paid to the right Member State and that benefits are not unduly granted or fraudulently obtained.
- (3) Action to combat fraud and error is therefore part of the proper implementation of Regulations (EC) No 883/2004 and (EC) No 987/2009.
- (4) Closer and more effective cooperation between competent authorities and institutions is a key factor in taking action to combat fraud and error.

(5) The identification of persons is of fundamental importance to the administration of the Regulations, both in terms of tracing persons in an institution's database and in ensuring persons are who they claim to be.

(6) Article 3(3) of Regulation (EC) No 987/2009 underlines that, when collecting, transmitting or processing personal data pursuant to their legislation for purposes of implementing the Regulations, Member States shall ensure that the persons concerned are able to exercise fully their rights regarding personal data protection in accordance with Community provisions on the protection of individuals with regard to the processing of personal data and the free movement of such data.

(7) Article 5(3) of Regulation (EC) No 987/2009 permits the competent institution, where there is doubt, to request the institution of the place of stay or residence to verify information provided by the person concerned or the validity of a document.

(8) Effective cooperation to combat fraud and error involves building on the mechanisms for providing information on changes of applicable legislation and in Articles 20 and 52 of Regulation (EC) No 987/2009.

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

HAS DECIDED AS FOLLOWS:

General issues

1. The authorities and institutions of the Member States shall, for the purposes of the correct implementation of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009, cooperate in relation to combating fraud and error.

⁽¹⁾ OJ L 166, 30.4.2004, p. 1.

⁽²⁾ OJ L 284, 30.10.2009, p. 1.

2. The Administrative Commission shall, once a year, discuss cooperation on fraud and error issues. This discussion will be based on voluntary reporting from Member States about their experience and progress in this field. The suggested content for such reports is listed in Annex 1.

3. Member States shall nominate a point of contact for fraud and error to whom either risks of fraud and abuse, or systematic difficulties which cause delays and error, can be reported by competent authorities or institutions. This contact point shall be included in a list to be published by the Secretariat of the Administrative Commission.

Error

4. In order to limit the risks of error, competent authorities and institutions shall take steps to ensure that the timely and correct provision of information is achieved, in particular when using the system for the Electronic Exchange of Social Security Information. To this end, competent authorities and institutions should:

- (a) make sure that the information sent electronically via Standard Electronic Documents to authorities or institutions of other Member States is subject to a quality control process, especially with regard to the identification of the person concerned and the PIN number; and
- (b) report to the Technical Commission and Administrative Commission on any systematic difficulties, which cause delays or errors, in exchanging information for the purposes of the Regulations.

Reporting of death

5. As regards cooperation in relation to the reporting of death:

- (a) Member States shall share through the Administrative Commission any innovative practices they have introduced in this field, or report any obstacles in securing cooperation on this issue;

(b) Member States shall review their practices as regards combating the non-reporting of death in cross-border cases in order to ensure that insofar as possible such practices are consistent with best practice in this area. A list of identified best practices is contained in Annex 2.

(c) Requests for information from institutions or competent authorities concerning the reporting of death shall be dealt with as quickly as possible by the receiving party.

Requests for Information

6. Taking into account the requirement to act in accordance with Community provisions on the protection of individuals with regard to the processing of personal data and the free movement of such data, competent authorities and institutions shall cooperate with requests from other Member States for information aimed at tackling fraud and ensuring the correct implementation of the Regulations. They shall undertake a careful assessment of the legal position before any such request is refused on data protection grounds.

7. Where a request for information aimed at tackling fraud and error concerns data related to the implementation of the coordination Regulations, but is not being handled directly by an institution or competent authority, the institution or competent authority shall assist the requesting institution or authority in identifying a third party as the appropriate source of information and lend its good offices in any negotiations with that third party.

Review Clause

8. This Decision shall be reviewed at the latest by the end of the second year following its entry into force.

9. This Decision shall be published in the *Official Journal of the European Union*. It shall apply from the first day of the second month after its publication.

The Chair of the Administrative Commission
José Maria MARCO GARCÍA

ANNEX 1

Matters to be covered, inter alia, in annual reports from the Member States on fraud and error

1. Steps taken throughout the year to combat fraud and error in cases determined under the Regulations;
2. Specific problems in implementing the coordination rules which may lead at least to risks of fraud and error;
3. Agreements and bilateral cooperation arrangements with other EU Member States entered into for the purposes of combating fraud and error;
4. In the field of benefits in kind, steps taken to promote compliance by institutions and healthcare providers with the coordination rules and to provide information to citizens.

ANNEX 2

Best practices as regards combating the non-reporting of death in cross-border cases ⁽¹⁾

Setting up a system for direct notification of death by the host state

Data-matching

Requesting an administrative check from the host state

Access to reports of death between health institutions

Life certification

Providing direct physical presence in the host state

⁽¹⁾ A fuller account of these best practices can be found in Section 9.2 of the Report of the Administrative Commission Ad Hoc Follow-up Group on Combating Fraud and Error of 16 November 2009, published as CASSTM Note 560/09.