

**DECISION No R1**  
**of 20 June 2013**  
**concerning the interpretation of Article 85 of Regulation (EC) No 987/2009**  
**(Text of relevance to the EEA and to the EC/Switzerland Agreement)**  
(2013/C 279/06)

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS,

Having regard to Article 72(a) of Regulation (EC) No 883/2004 <sup>(1)</sup>, 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 <sup>(2)</sup>,

Having regard to Article 84(2) and (4) of Regulation (EC) No 883/2004,

Having regard to Articles 80(1) and 85(1) and (2) of Regulation (EC) No 987/2009,

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

Whereas:

- (1) Chapter III of Title IV of Regulation (EC) No 987/2009 on recovery of benefits and contributions was originally based on the EU provisions relating to recovery applicable in the tax field, namely Directive 76/308/EEC <sup>(3)</sup>, subsequently replaced by Directive 2008/55/EC <sup>(4)</sup>.
- (2) During the discussions in the Administrative Commission the question arose whether the costs related to recovery by the requested party, which could not be recovered from the person concerned, should be reimbursed by the applicant party.
- (3) Pursuant to Article 84(2) of Regulation (EC) No 883/2004, enforceable decisions of the judicial and administrative authorities relating to the collection of contributions, interest and any other charges, or to the recovery of benefits provided but not due under the legislation of one Member State, shall be recognised and enforced at the request of the competent institution in another Member State within the limits and in accordance with the procedures laid down by the legislation and any other procedures applicable to similar decisions of the latter Member State.
- (4) Following the recently adopted Directive 2010/24/EU <sup>(5)</sup> (concerning mutual assistance for the recovery of claims

relating to taxes, duties and other measures) which replaces the former Directive 2008/55/EC on that matter, the approach in the tax field concerning the recovery of requested party costs which cannot be recovered from the person concerned has been reassessed and clarified.

- (5) In accordance with Article 85(1) of Regulation (EC) No 987/2009 the requested party shall recover from the natural or legal person concerned, and subsequently retain, any costs it incurs, linked to the recovery, in accordance with the laws and regulations of the Member State of the requested party that apply to similar claims.
- (6) In accordance with Article 85(2) of Regulation (EC) No 987/2009 mutual assistance shall, as a rule, be free of charge, reconfirming the general rule laid down in Article 76(2) of Regulation (EC) No 883/2004. It is therefore necessary to determine the scope of mutual assistance for the purposes of cross-border recovery of claims.
- (7) It is desirable, wherever possible, to align the interpretation of Chapter III of Title IV of Regulation (EC) No 987/2009 with the rules and principles concerning the mutual assistance for the recovery of claims relating to taxes and duties,

HAS DECIDED AS FOLLOWS:

1. Mutual assistance shall, as a rule, be free of charge. This means that institutions of the Member States shall provide administrative assistance to each other free of charge. This applies only to the costs of activities undertaken by the requested party itself.
2. The costs related to recovery shall be charged in accordance with the laws and regulations of the requested party and, as a rule, be refunded by the debtor in addition to the amount of the claim.
3. The costs related to recovery shall be settled first, and only after these costs are settled shall the claim of the applicant party be satisfied (priority rule for the costs).
4. In cases where costs related to recovery cannot be recovered directly from the debtor by the requested party as a consequence of the national legislation of the requested party, or because the amount recovered from the debtor does not permit the satisfaction of the entire claim including costs related to recovery, such costs can be deducted from the recovered amount and only the balance shall be remitted by

<sup>(1)</sup> OJ L 166, 30.4.2004, p. 1.

<sup>(2)</sup> OJ L 284, 30.10.2009, p. 1.

<sup>(3)</sup> OJ L 73, 19.3.1976, p. 18.

<sup>(4)</sup> OJ L 150, 10.6.2008, p. 28.

<sup>(5)</sup> OJ L 84, 31.3.2010, p. 1.

the requested party to the applicant party. Evidence that these costs were incurred by the requested party during the recovery procedure shall be provided by the requested party to the applicant party.

5. In cases where recovery action does not result in the recovery of an amount which at least covers the costs related to recovery, or where recovery action was completely unsuccessful but costs related to recovery other than those referred to in paragraph 1 were incurred by the requested party, the applicant party shall reimburse these costs, unless the parties agree on a reimbursement arrangement specific to the case, or a waiver of reimbursement of such costs is concluded between the applicant party and the requested party.

6. Where it is obvious that recovery poses a specific problem or concerns a very large amount in costs which are not likely to be recovered from the debtor, the applicant and requested parties may agree, preferably in advance, on reimbursement arrangements specific to the case in question.

7. This decision shall be published in the *Official Journal of the European Union*. It shall apply from the date of its publication.

*The Chair of the Administrative Commission*

Anne McMANUS

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