

ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS

DECISION No S9

of 20 June 2013

concerning refund procedures for the implementation of Articles 35 and 41 of Regulation (EC) No 883/2004

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

(2013/C 279/05)

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 ⁽²⁾,

Having regard to Articles 35 and 41 of Regulation (EC) No 883/2004,

Having regard to Articles 66 to 68 of Regulation (EC) No 987/2009,

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

Whereas:

- (1) The cost of the benefits in kind provided by the institution of one Member State on behalf of the institution of another Member State, shall be fully refunded.
- (2) The refunds between institutions, if not otherwise agreed, must be carried out with speed and efficiency in order to prevent a built-up of claims which remain unsettled for longer periods of time.
- (3) An accumulation of claims could endanger the efficient functioning of the Union system and jeopardise the right of individuals.
- (4) The Administrative Commission in Decision No S1 has decided that the institution of the place of stay shall be reimbursed for the cost of health care provided on the basis of a valid European Health Insurance Card.
- (5) Commonly agreed best practices would contribute to a speedy and efficient settlement of refunds between the institutions,

HAS DECIDED AS FOLLOWS:

A. Reimbursement on the basis of actual expenditure (Article 62 of Regulation (EC) No 987/2009)

Article 1

The institution which claims a refund based on actual expenditure shall introduce the claim at the latest within the deadline

mentioned in Article 67(1) Regulation (EC) No 987/2009 (hereinafter 'Implementing Regulation'). The institution which receives a claim shall ensure the payment of the claim within the time limit provided for in Article 67(5) of the Implementing Regulation but before this deadline as soon as it is in a position to do so.

Article 2

1. Claims for refund of benefits, which have been provided on the basis of a European Health Insurance Card (EHIC), a document replacing the EHIC or any other entitlement document, may be rejected and the claim returned to the creditor institution in case the claim, for example:

- is incomplete and/ or incorrectly filled out,
- concerns benefits which have not been given within the validity period of the EHIC or the entitlement document used by the recipient of the benefits.

2. A claim may not be rejected on the grounds that the person has ceased to be insured with the institution, which has issued the EHIC or the entitlement document, provided that the benefits were given to the beneficiary within the validity period of the document used.

3. 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.

Article 3

A claim may not be reviewed by the debtor institution as regards its compliance with Articles 19 and 27(1) of Regulation (EC) No 883/2004, unless there are reasonable grounds to suspect abuse as clarified under the case-law by the European Court of Justice ⁽³⁾. The debtor institution is consequently obliged to accept the information on which the claim is based and to reimburse the claim. In the case there is suspicion of abuse the debtor institution may for relevant reasons reject the claim as provided for under Article 67(5) of the Implementing Regulation.

⁽¹⁾ OJ L 166, 30.4.2004, p. 1.

⁽²⁾ OJ L 284, 30.10.2009, p. 1.

⁽³⁾ Judgement of 12 April 2005 in case C-145/03 'Heirs of Annette Keller v Instituto Nacional de la Seguridad Social (INSS) and Instituto Nacional de Gestión Sanitaria (Ingesa)', ECR 2005 Page I-02529.

Article 4

For the purpose of the application of Articles 2 and 3, if the debtor institution expresses doubts as to the correctness of the facts, on which a claim is based, it is incumbent on the creditor institution to reconsider, whether the claim was properly issued and, if appropriate, to withdraw or recalculate the claim.

Article 5

A claim, which is introduced after the deadline specified in Article 67(1) of the Implementing Regulation, shall not be considered.

B. Reimbursement on the basis of fixed amounts (Article 63 of Implementing Regulation)

Article 6

The inventory provided for in Article 64(4) of the Implementing Regulation shall be presented to the liaison body of the debtor member State by the end of the year following the reference year, and the claims based on this inventory shall be introduced to the same body as soon as possible following the publication in the *Official Journal of the European Union* of the annual fixed amounts per person, but within the time limit provided for in Article 67(2) of the Implementing Regulation.

Article 7

The creditor institution shall whenever possible present the claims which concern a particular calendar year on the same occasion to the debtor institution.

Article 8

The debtor institution which receives a claim for a refund determined on the basis of fixed amounts shall ensure the payment of the claim within the time limit provided for in Article 67(5) of the Implementing Regulation but before this deadline as soon as it is in a position to do so.

Article 9

A claim, which is introduced after the deadline specified in Article 67(2) of the Implementing Regulation, shall not be considered.

Article 10

A claim for a refund determined on the basis of fixed amounts may be rejected and returned to the creditor institution in case the claim, for example:

- is incomplete and/ or incorrectly filled out,
- refers to a time period which is not covered by registration on the basis of valid entitlement document.

Article 11

If the debtor institution expresses doubts as to the correctness of the facts on which a claim is based, it is incumbent on the creditor institution to reconsider, whether the invoice was properly issued and, if appropriate, to withdraw or recalculate the claim.

C. Settlement of claims (Article 67 of Implementing Regulation)

Article 12

1. In line with Article 67(5) of the Implementing Regulation, no claims can be contested after 18 months of the end of the month during which they were introduced to the liaison body of the debtor Member State.

2. Where the liaison body of the creditor Member State has not replied and submitted the requested evidence within 12 months of the end of the month during which the contestation was received by the liaison body of the creditor Member State, the contestation shall be deemed to be accepted by the creditor Member State and the claim or its relevant parts shall be definitively rejected.

D. Down payments and interest on late payments (Article 68 of Implementing Regulation)

Article 13

In the case of a down payment under Article 68 of the Implementing Regulation be made, the amount of the down payment shall be determined separately for claims based on actual expenditure (Article 67(1) of the Implementing Regulation) and claims based on fixed amounts (Article 67(2) of the Implementing Regulation).

Article 14

1. A down payment pursuant to Article 68(1) of the Implementing Regulation shall represent at least 90 % of the total amount of the initial claim by the liaison body of the creditor Member State.

2. If the creditor Member State has made a general statement that it accepts down payments such payments will be automatically considered to be accepted. The Audit Board shall draw up a list of Member States that have stated they accept down payments.

3. The Member States that have not stated that they accept down payments generally shall reply to specific offers of down payment within six months of the end of the month during which the claim is introduced. In the absence of a reply within the given timeframe the down payment shall be considered as accepted and shall be executed.

Article 15

1. In the settlement of a claim for which a down payment was made, the debtor shall only be bound to settle the difference between the final amount of the claim and the down payment.

2. If the amount of the claim is less than the down payment determined on the basis of the original amount of the claim, the creditor Member State shall either:

- (a) Repay the amount in excess to the debtor Member State. Such settlement transaction shall be carried out by the liaison body of the creditor Member State without any delay and no later than six months after the end of the month during which the amount of the claim was determined; or

(b) Agree with the debtor Member State to recover the excess amount by offsetting a later claim. The settlement act shall clearly identify the excess amount recovered through the later claim.

3. Interest generated by a down payment does not reduce the debt of the debtor Member State and shall remain as an asset of the creditor Member State.

Article 16

1. Interest on late payments charged pursuant to Article 68(1) of the Implementing Regulation shall be calculated on the basis of months according to the following formula:

$$I = \left[PV \left(1 + \frac{i}{12} \right)^n \right] - PV$$

Where:

— I represents the interest on late payment.

— PV ('present value') represents the value of the late payment; the value being determined as the amount of the outstanding claim which has not been settled within the time limits set out in Articles 67(5) and 67(6) of the Implementing Regulation and which has not been covered by a down payment in accordance with Article 68(1) of the Implementing Regulation. The present value shall include only the claim or its parts, which have been mutually recognised by the debtor and creditor Member States as valid, even if all or part of the claim was subject to a contestation procedure.

— i represents annual interest rate established by the European Central Bank to its main refinancing operations, which was in force on the first day of the month on which the payment was due.

— n represents the period (months) starting with the first month after the deadlines specified in Article 68(1) of the Implementing Regulation has passed and continuing until and including the month before the month during which the payment is received. The period shall not be interrupted in the course of the procedure pursuant to Article 67(7) of the Implementing Regulation.

2. The claim for interest on late payment shall be introduced by the liaison body of the creditor Member State to the liaison body of the debtor Member State within six months following the month during which the late payment was made.

3. The claim for interest on late payments introduced after the deadline set out in paragraph 2 shall not be considered.

Article 17

1. The interest on late payment shall be paid to the liaison body of the creditor Member State within 12 months of the end of the month during which the claim was introduced to the liaison body of the debtor Member State.

2. The Audit Board shall facilitate the final closing of accounts where a settlement of the claim for interest on late payment was not reached within the periods set out in paragraph 1, upon a reasoned request by one of the parties. The reasoned opinion of the Audit Board shall be delivered within six months following the month in which the matter was referred to it.

E. Miscellaneous provisions

Article 18

1. For the purpose of payments referred to in the Decision, the date of payment is the value date of the transaction as introduced by the banking institution of the liaison body of the creditor Member State.

2. The liaison body of the debtor Member State shall acknowledge receipt of an introduced claim within two months from the date of receipt of the claim. The acknowledgment shall specify the date when the claimed was received.

3. Two or more Member States, or their competent authorities or liaison bodies, may waive or provide for other methods of settlement for items covered by this Decision.

4. The opinion of the Audit Board delivered under Article 67(7) of the Implementing Regulation may waive or provide for other methods of settlement for items covered by this Decision, taking into account the principle of a good cooperation between the authorities and institutions of the Member States.

F. Final provisions

Article 19

1. The institutions should ensure there is good cooperation between them and act as if they were implementing their own legislation.

2. This Decision will be published in the *Official Journal of the European Union*. It will apply from the first day following the publication to all claims for reimbursement on the basis of actual expenditure recorded in the accounts for the creditor Member State after the entry into force of Regulation (EC) No 987/2009 and to all claims for reimbursement on the basis of fixed amounts published in the *Official Journal of the European Union* after the entry into force of Regulation (EC) No 987/2009.

3. This Decision replaces Decision No S4 of 2 October 2009.

4. By derogation from paragraph 2, Articles 12(2) and 18(2) apply to claims referred to in paragraph 2 which were introduced to the liaison body of the debtor Member State after the publication of this Decision in the *Official Journal of the European Union*.

The Chair of the Administrative Commission

Anne McMANUS