

ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS

DECISION No U4

of 13 December 2011

concerning the reimbursement procedures under Article 65(6) and (7) of Regulation (EC) No 883/2004 and Article 70 of Regulation (EC) No 987/2009

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

(2012/C 57/04)

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, 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,

Having regard to Article 65(6) and (7) of Regulation (EC) No 883/2004,

Having regard to Article 70 of Regulation (EC) No 987/2009,

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

Whereas:

- (1) Regulation (EC) No 883/2004 introduces a reimbursement mechanism in Article 65 with the aim of providing for a fairer financial balance between Member States in the case of unemployed persons who reside in a Member State other than the competent State. The reimbursements shall compensate for the additional financial burden on the Member State of residence, which provides unemployment benefits under Article 65(5)(a) of Regulation (EC) No 883/2004 without having collected any contributions from the persons concerned during their last activity carried out in another Member State.
- (2) The unemployment benefits provided under Article 65(5)(a) of Regulation (EC) No 883/2004 by the Member State of residence within the prescribed period shall be reimbursed by the State to whose legislation the unemployed person was last subject regardless of eligibility conditions for unemployment benefits laid down by the legislation of the latter State.
- (3) While the fourth sentence of Article 65(6) of Regulation (EC) No 883/2004 allows for the period of export of

benefits under paragraph 5(b) of the said Article to be deducted from the refundable period, other periods of receipt of unemployment benefits from the State of last activity of the person concerned (in particular, under Article 65(1) or under the last sentence of Article 65(2) of Regulation (EC) No 883/2004) shall not be deducted.

- (4) Commonly agreed best practices will contribute to a speedy and efficient settlement of refunds between the institutions.
- (5) There is a need for transparency and guidance for the institutions to ensure a unified and coherent application of EU provisions concerning reimbursement procedures under Article 65(6) and (7) of Regulation (EC) No 883/2004 and Article 70 of Regulation (EC) No 987/2009,

HAS DECIDED AS FOLLOWS:

I. GENERAL PRINCIPLES OF THE REIMBURSEMENT PROCEDURE

1. Where unemployment benefits have been provided to the person concerned under Article 65(5)(a) of Regulation (EC) No 883/2004 (hereinafter 'Basic Regulation') by his/her State of residence, the reimbursements provisions of paragraphs 6 and 7 of the said Article provide for the sharing of the financial burden between the State of residence (hereinafter 'Creditor State') and the State to whose legislation the unemployed person was last subject (hereinafter 'Debtor State').
2. A claim for reimbursement may not be rejected on the grounds that the person concerned would not have qualified for unemployment benefits under the national legislation of the Debtor State.
3. The Creditor State can claim reimbursement only if the person concerned has before becoming unemployed completed any periods of employment or self-employment in the Debtor State and where such periods are recognised for the purposes of unemployment benefits in the latter State.

II. DETERMINATION OF THE REFUNDABLE PERIOD

1. The period of three or five months for which a reimbursement can be claimed, referred to in Article 65(6) and (7) of the Basic Regulation (hereinafter 'refundable period'), shall start on the first day for which unemployment benefits are actually due. The refundable period shall end once the time limit stipulated in Article 65(6) and (7) of the Basic Regulation (three or five months) lapses, regardless of any reduction, suspension or withdrawal of entitlement or payment of benefit within the said period under the legislation of the Creditor State.

2. A new claim for reimbursement can only be made once the person concerned satisfies the conditions under the legislation of the Creditor State in accordance with Article 65(5)(a) of the Basic Regulation for a new entitlement to benefit where this entitlement is not a continuation of a former decision for awarding unemployment benefits.

3. Notwithstanding the fourth sentence of Article 65(6) of the Basic Regulation, no other periods of receipt of unemployment benefits paid pursuant to the legislation of the Debtor State shall be deducted from the refundable period.

III. EXTENSION OF THE REFUNDABLE PERIOD UNDER ARTICLE 65(7) OF THE BASIC REGULATION

1. The refundable period shall under Article 65(7) of the Basic Regulation be extended to five months, provided that the person concerned has completed at least 12 months of employment or self-employment recognised for the purposes of unemployment benefits during the 24 months preceding the day for which unemployment benefits are actually due.

2. The extension of the refundable period under Article 65(7) of the Basic Regulation may not be rejected on the grounds that the person concerned would not qualify for unemployment benefits under the national legislation of the Debtor State.

IV. ESTABLISHING THE MAXIMUM AMOUNT OF THE REIMBURSEMENT UNDER ARTICLE 70 OF REGULATION (EC) No 987/2009 (HEREINAFTER 'IMPLEMENTING REGULATION')

1. The maximum amount of reimbursement applicable between the Member States listed in Annex 5 to the Imple-

menting Regulation and referred to in the last sentence of Article 70 of the said Regulation shall be notified to the Administrative Commission within six months of the end of the calendar year in question. The notification shall be made by each Member State listed in Annex 5 and contain the maximum amount valid for the calendar year in question as well as a description of the method used for the calculation of the amount.

V. MISCELLANEOUS PROVISIONS

1. Where a claim for reimbursement has been notified to the Debtor State, any subsequent change of the amount of unemployment benefit subject to reimbursement made retroactively in accordance with the legislation of the Creditor State shall have no effect on the claim notified by the Creditor State.

2. The 'full amount' of the benefits provided by the institution of the place of residence (second sentence of Article 65(6) Basic Regulation) comprises total cost of unemployment benefits incurred by the Creditor State before any deductions (gross amount).

VI. FINAL PROVISIONS

1. The reimbursement provisions under Article 65(6) and (7) of the Basic Regulation shall only concern the benefits granted on the basis of Article 65(5)(a) of the Basic Regulation.

2. When applying the reimbursement procedures, the guiding principle shall be good cooperation between institutions, pragmatism and flexibility.

3. This Decision shall be published in the *Official Journal of the European Union*.

4. This Decision shall apply from the first day of the second month after its publication for all claims for reimbursement which have not yet been settled before that date.

The Chair of the Administrative Commission

Elżbieta ROŻEK