

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS

DECISION No A1

of 12 June 2009

concerning the establishment of a dialogue and conciliation procedure concerning the validity of documents, the determination of the applicable legislation and the provision of benefits under Regulation (EC) No 883/2004 of the European Parliament and of the Council

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

(2010/C 106/01)

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 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 76(3), (4) subparagraph 2 and (6) of Regulation (EC) No 883/2004 concerning the duties of cooperation of the competent authorities and institutions of the Member States to ensure a correct implementation of the Regulations,

Having regard to Article 5 of Regulation (EC) No 987/2009, concerning the legal value of documents and supporting evidence showing the position of a person,

Having regard to Article 6 of Regulation (EC) No 987/2009, concerning the provisional application of legislation and the provisional granting of benefits in cases where there is a difference of views between the institutions of two or more

Member States concerning the determination of the applicable legislation,

Having regard to Article 16 of Regulation (EC) No 987/2009, concerning the establishment of a procedure for the application of Article 13 of Regulation (EC) No 883/2004,

Having regard to Article 60 of Regulation (EC) No 987/2009, concerning the establishment of a procedure for the application of Article 68 of Regulation (EC) No 883/2004,

Whereas:

- (1) One of the key factors for an efficient functioning of the Community rules concerning the coordination of national social security systems is a close and effective cooperation between the authorities and institutions of the different Member States.
- (2) One of the elements of good cooperation under the Regulations is the exchange of information between authorities and institutions and persons, which shall be based on principles of public service, efficiency, active assistance, rapid delivery and accessibility.
- (3) It is in the interest of both the institutions and authorities, and the persons concerned that all information necessary for establishing and determining the rights and obligations of the person concerned is provided or exchanged without delay.

⁽¹⁾ OJ L 166, 30.4.2004, p. 1.

⁽²⁾ OJ L 284, 30.10.2009, p. 1.

- (4) The principle of sincere cooperation, as also laid down in Article 10 of the Treaty, also requires that institutions conduct a proper assessment of the facts relevant for the application of the Regulations. Where there is doubt about the validity of a document or about the correctness of supporting evidence or where there is a difference of views between Member States concerning the determination of the applicable legislation or which institution should provide the benefit, it is in the interest of the persons covered by Regulation (EC) No 883/2004 that institutions or authorities of the Member States concerned reach an agreement within a reasonable period of time.
- (5) Articles 5 and 6 of Regulation (EC) No 987/2009 provide for a conciliation procedure to be followed in these cases.
- (6) These provisions confirm and extend the case-law of the Court of Justice of the European Communities under Council Regulation (EEC) No 1408/71 ⁽¹⁾, under which a standard procedure has been developed for disputes between Member States concerning the validity of posting certificates and which has been consolidated in former Decision 181 of the Administrative Commission of the European Communities on Social Security for Migrant Workers ⁽²⁾.
- (7) Both Articles 5 and 6 of Regulation (EC) No 987/2009 provide for the possibility to refer the matter to the Administrative Commission in case no agreement can be reached between the institutions or authorities concerned.
- (8) Article 16 of Regulation (EC) No 987/2009 provides that this procedure should also be followed where there is a difference of views between the institutions or authorities concerning the application of Article 13 of Regulation (EC) No 883/2004.
- (9) Article 60 of Regulation (EC) No 987/2009 contains a similar reference to Article 6 of this Regulation in case of a difference of views about the applicable legislation by priority right in the field of family benefits.
- (10) These provisions find their basis in Article 76(6) of Regulation (EC) No 883/2004, according to which in the event of difficulties in the interpretation or application of that Regulation, the institution of the competent Member State or State of residence contacts the institutions of the Member States concerned and according to which the matter may be referred to the Administrative Commission if no solution can be found within a reasonable period.
- (11) Member States have expressed a need to establish a standard procedure to be followed before a matter may be referred to the Administrative Commission and to define more precisely the role of the Administrative Commission in reconciling opposing views held by the institutions concerning the applicable legislation.
- (12) A similar procedure has already been established in several bilateral agreements between Member States. These agreements have served as a model for this Decision.
- (13) It is advisable that, in order to accelerate the procedure, communication between the contact persons of the institutions and the authorities is conducted by electronic means.
- Acting in accordance with the conditions laid down in Article 71(2) of Regulation (EC) No 883/2004,
- HAS DECIDED AS FOLLOWS:
1. This Decision lays down the rules for the application of a dialogue and conciliation procedure which can be used in the following cases:
 - (a) cases where there is doubt about the validity of a document or about the correctness of supporting evidence stating the position of a person for the purpose of the application of Regulation (EC) No 883/2004 or of Regulation (EC) No 987/2009; or
 - (b) cases where there is a difference of views between Member States about the determination of the applicable legislation.
 2. The dialogue and conciliation procedure shall be followed before the matter may be referred to the Administrative Commission.
 3. This Decision applies without prejudice to the administrative procedures to be followed under the national law of a Member State concerned.
 4. In the event the matter has become subject of a judicial or administrative appeal procedure under national law in the Member State of the institution that issued the document in question, the dialogue and conciliation procedure must be suspended.
- ⁽¹⁾ OJ L 149, 5.7.1971, p. 2.
⁽²⁾ OJ L 329, 14.12.2001, p. 73.

5. The institution or authority which expresses doubts about the validity of a document that is issued by an institution or authority of another Member State, or which does not agree with the (provisional) determination of the applicable legislation is hereinafter called the requesting institution. The institution of the other Member State is hereinafter called the requested institution.

First stage of the dialogue procedure

6. If one of the situations referred to under point 1 occurs, the requesting institution contacts the requested institution to ask for necessary clarification of its decision and, where appropriate, to withdraw or declare invalid the relevant document, or to review or annul its decision.
7. The requesting institution substantiates its request, indicating that this decision applies, and provides relevant supporting evidence that gave rise to the request. It indicates who will be its contact person during the first stage of the dialogue procedure.
8. The requested institution confirms receipt of the request by e-mail or fax without delay and at the latest within 10 working days of receipt of the request. It also indicates who will be its contact person during the first stage of the dialogue procedure.
9. The requested institution informs the requesting institution about the outcome of its investigation as soon as possible, but at the latest within three months after receipt of the request.
10. If the original decision is confirmed, annulled and/or the document is withdrawn or declared invalid, the requested institution shall notify the requesting institution. It shall also notify the person concerned and, where relevant, his employer, of its decision and of the procedures under its national legislation to contest this decision.
11. If the requested institution cannot conclude its investigation within three months, due to the complexity of the case or due to the fact that verification of certain data requires the involvement of another institution, it may extend the time limit by a maximum period of three months. The requested institution shall inform the requesting institution of the extension as soon as possible but at least one week before the expiry of the first deadline, substantiating the reasons for the delay and providing an indicative time by which the investigation will be completed.
12. In very exceptional circumstances, Member States concerned may agree to derogate from the time limits defined under points 9 and 11, provided that the extension is justified and proportionate in light of the individual circumstances and that the extension is limited in time.

Second stage of the dialogue procedure

13. If the institutions cannot reach an agreement during the first stage of the dialogue procedure, or if the requested institution has not been able to complete its investigation within 6 months following receipt of the request, the institutions notify their competent authorities. The institutions each prepare a record of their activities.
14. The competent authorities of the Member States concerned may decide to initiate the second stage of the dialogue procedure or to refer the matter directly to the Administrative Commission.
15. If the competent authorities initiate the second stage of the dialogue procedure, they each appoint a central contact person within two weeks after having been notified by the institutions. The contact persons do not necessarily need to have direct competence on the subject matter.
16. The contact persons shall endeavour to seek an agreement on the matter within six weeks after their appointment. The contact persons each prepare a record of their activities and notify the institutions about the outcome of the second stage of the dialogue procedure.

The conciliation procedure

17. If agreement cannot be reached during the dialogue procedure, the competent authorities may bring the matter before the Administrative Commission. The competent authorities each prepare a memorandum for the Administrative Commission with the main points of contention.
18. The Administrative Commission shall try to reconcile the points of view within six months of the date on which the matter was brought before it. It may decide to refer the matter to the Conciliation Board, which may be set up under the rules of the Administrative Commission.

Final provisions

19. Member States shall report to the Administrative Commission every year their data on the number of disputes in which the procedure set out in this Decision is applied, the Member States involved, the main issues, the length of the procedure, and the outcome of the procedure.
20. Member States shall provide their first annual report within three months following the first year of application of this decision.

21. Within three months after receipt of the first annual reports, the Administrative Commission shall evaluate the experiences of the Member States with the application of this Decision, taking into account the reports of the Member States. The Administrative Commission after the first year will decide whether the reporting will continue on a yearly basis or not.
22. This Decision shall be published in the *Official Journal of the European Union*. It shall apply from the date of entry into force of Regulation (EC) No 987/2009.

The Chair of the Administrative Commission

Gabriela PIKOROVÁ
