



**019/17 ANNEX
REV**

Guidelines on Decision S6, introduction of inventories and reimbursement in case of retroactivity

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Introduction

1. Why do we need this guide?

This guidance has been prepared as a result of the working groups relating to Regulation (EC) No 883/2004 (the Basic Regulation) and Regulation (EC) No 987/2009 (the Implementing Regulation), which have sought to establish a common interpretation and application of (1) Decision S6 under these regulations.

The need for revision of the Decision No S6 has been pointed out by several Member States over the recent years. The mandate for the revision was given at the 124th Audit Board meeting. A working group was established and after careful consideration and consultation, the following agreement was reached:

There is no need for a revision of the Decision No S6.

But it is necessary to have guidelines to the Decision S6 in order to come to a common understanding so that a uniform application can be reached, resulting in a balanced sharing of cost.

This working group has drafted these guidelines on the application of the Decision S6, setting out different scenarios to demonstrate the correct application of the Decision, and these were approved by the Administrative Commission at its 349th meeting.

Another working group, on procedures for reimbursement in case of retroactivity, was also established at the 124th Audit Board meeting. This working group discussed two specific situations (see AC notes 597/14 and 599/14) and concluded that guidelines shall be an appropriate solution due to a lack of specific provisions in the Regulations.

After the Administrative Commission, at its 349th meeting in December 2016, rejected initially the part for reimbursement in case of retroactivity, a new working group was established at the same occasion in order to revise this part, as well as to make recommendations for the improvement of administrative procedures to minimise the time period.

The Administrative Commission approved in January 2018 the revised guidelines for procedures for reimbursement in case of retroactivity, which are presented as Part III of these Guidelines. The Administrative Commission also approved the recommendations for the improvement of administrative procedures to minimise the time period, which are presented as Annex to these Guidelines.

2. The rules at a glance

The guiding principles for the Decision No S6 are:

- The competent institution shall forward a relevant entitlement document at request of the person concerned.
- The person concerned must submit the entitlement document to the institution of the place of his/her residence in order to be registered in that institution.
- At request of the institution of the place of residence, the competent institution shall forward an entitlement document to that institution.
- The competent institution shall inform the institution of the place of residence of any change or cancellation of the entitlement document.
- The institution of the place of residence shall inform the competent institution of any change or cancellation of the registration of the entitlement document.
- The receiving institution must either confirm or contest that change or cancellation to the sending institution.
- The date from which benefits in kind shall be reimbursable is the date on which the entitlement to benefits in kind is acquired under the legislation of the

- competent Member State, or the date of change of residence or registration in another Member State where this is subsequent to the first date.
- The date from which the costs for benefits in kind shall cease to be paid is the date when the entitlement ends or the date when the insured person changes his or her residence.
 - As a rule the healthcare costs shall be borne by the (newly) competent Member State. The competency for healthcare costs switches as of the date of entitlement, even when applied retroactively.¹

The guiding principles for all topics covered by these guidelines are good cooperation between institutions, pragmatism and flexibility.

This Guide is divided into 3 parts including one Annex :

- Part I Decision No. S6
- Part II Inventories and fixed amounts
- Part III Procedures for reimbursement in case of retroactivity
- Annex to the Guidelines: Recommendations for the improvement of administrative procedures to minimise the time period

Part I: Decision No. S6

Registration provided for, according to Article 24 of the Implementing Regulation

The date from which benefits in kind shall be reimbursable is the date on which the entitlement to benefits in kind is acquired under the legislation of the competent Member State, or the date of change of residence or registration in another Member State where this is subsequent to the first date and is recorded in the document issued by the institution of the place of residence” (see point 2, (b) of Decision S 6).

If family members of an insured person are still entitled to benefits in kind in connection with their own activity or situation under the legislation of another Member State, the start date of the registration shall be the day following the date on which entitlement ends.

Cancellation provided for, according to Article 24 of the Implementing Regulation

The date from which the responsibility to bear the costs for benefits in kind shall cease is the date when the entitlement ceases. The date applied is indicated by the former competent Member State.

Paragraph I.3 of the Decision S6 uses the terminology ‘namely’, which should be interpreted as ‘mainly’ or ‘for example’. The list provided is not exhaustive.

The issue of the time gap between the end of insurance or change of residence and the receiving of the relevant information (i.e. cancellation document) should be

¹ See Fischer-Lintjens (C-543/13)

addressed by all Member States. All national institutions should carry out regular checks on citizens registered in another Member States to ensure any delay in reporting the change is kept to a minimum.

When the competent Member State cancels the entitlement document and the person is not registered in the healthcare scheme of the Member State of residence it is up to the Member State of residence to offer retroactive cover, or deal with the person to recover any costs. The responsibility of the former competent Member State to cover the costs ends on the date stated on the cancellation document.

In case of death, the entitlement ceases on the date of death.

The date of cancellation indicated by the competent Member State is the date that has to be accepted and confirmed.

When a person changes residence from one Member State to another, problems might occur because of a delay in

- the person notifying either Member State about the change
- the competent Member State informing the receiving Member State of the change (and vice versa)
- the receiving Member State's processing of the information about the change.

Member States concerned may therefore have different information available as to when the person changed his or her address.

Disputes on the habitual residence have to be solved by applying Article 11 of the Implementing Regulation and the practical guide on the applicable legislation².

If the competent Member State has not changed, then for benefits in kind provided after the change of the residence but before the cancellation document was received, the competent institution should provide a PRC to enable the reimbursement procedure.

Example 1

Member State A is competent for pensioner W who resides in Member State B with a valid document of entitlement in place. Pensioner W moves back to Member State A on 2 February 2015 but does not notify the authorities/institutions until 15 November 2015. A cancellation document is sent to Member State B with a cancellation date of 2 February 2015.

Reimbursement under the entitlement document ceases on 2 February 2015.

Example 2

² Practical guide - The applicable legislation in the EU, EEA and in Switzerland (2013)
<http://ec.europa.eu/social/keyDocuments.jsp?type=0&policyArea=0&subCategory=0&country=0&year=0&advSearchKey=4944&mode=advancedSubmit&langId=en>

In the example above pensioner W is now living in Member State A and returns to Member State B for a temporary stay and receives healthcare while the entitlement document is still in place in Member State B.

As Member State A continues to be competent, in the event pensioner W does not present an EHIC at the time of receiving treatment, a PRC has to be issued by Member State A to allow Member State B to recover the actual costs.

In instances when the competence has changed it is up to the new competent Member State to offer coverage as from the date of change, or deal with the individual to recover any costs for the treatment provided.

Example 3

Mr X is resident in Member State B but works in Member State A. He and his family members are covered by registration documents. He ceases employment in Member State A on 15 January 2014 and has not notified or taken up insurance in Member State B. Member State A notifies Member State B of the change on 15 June 2014.

Member State A ceases to be competent for the insured person and his family members from 15 January 2014 as it is clear that the responsibility for the Member State A ends when the employment or insurance ends.

In this situation there is a swap in competence. In such a situation, if the person and/or the family member is/are not insured in the Member State of residence (purely on the basis of residence), the Member State of residence should provide the possibility for coverage, meaning that it also has the obligation to cover the costs for the treatment. If the person does not wish to pay for the coverage, then he or she needs to pay for the treatment given. The Member State of residence shall recover the reimbursement for the treatment provided directly from the person concerned according to its national legislation.

Example 4

In the example above Mr X travels to Member State C for a temporary stay where he uses his EHIC on 14 February 2014. The reimbursement claim is received by Member State A in December 2014.

Even though Member State A was not competent at the time the cost arose, it has to accept the claim from Member State C as the EHIC was still valid when the treatment was given. Member State A could then follow up with Member State B or the person concerned for reimbursement.

Example 5

Mr X works in Member State A and resides in Member State B. Employment and insurance in Member State A end on 31 March 2015. The competent institution in Member State A sends a cancellation document to the competent institution in Member State B which receives it on 17 November 2015.

As from 1 April 2015 Mr X changes residence to Member State C and starts carrying out an activity as an employed person there. On 13 November, during a temporary stay in Member State B, the person visits a doctor.

Mr X is still registered in Member State B at the time of his temporary stay there. By the time the claim reaches Member State A the cancellation document has been sent to Member State B. Therefore, Member State A can reject the claim. Member State B must therefore follow up directly with Member State C for reimbursement and request a PRC.

The principles explained above are also applicable if a pension is withdrawn.

Example 6

Following the death of pensioner W while living in Member State B the family members remain in Member State B. Pensioner W was covered for benefits in kind by Member State A.

The competent Member State for the family members is to be considered:

- If they continue to be entitled to benefits in kind from the Member State A because of e.g. survivor's pension, this Member State remains competent.*
- If they are entitled to benefits in kind in the Member State of residence, the Member State of residence shall bear the costs of any treatment provided.*
- If the family members are not entitled to benefits in kind in either Member State, the Member State of residence should provide the possibility for coverage, meaning that it also has the obligation to cover the costs for the treatment. If the family member does not wish to pay for the coverage, then he or she needs to pay for the treatment given. The Member State of residence shall recover the reimbursement for the treatment provided directly from the family member concerned according to its national legislation.*

Part II: Inventories and fixed amounts

The *inventories* referred to Article 64(4) of the Implementing Regulation shall be presented by the end of the year following the reference year (Article 67(2) second sentence of the Implementing Regulation).

Claims of fixed amounts for a calendar year shall be introduced to the liaison body of the debtor Member State within the 12-month period following the month during which the average costs for the year concerned were published in the *Official Journal of the European Union* (Article 67 (2) first sentence of the Implementing Regulation).

According to Article 67 (4) of the Implementing Regulation claims introduced after the deadlines specified in paragraphs 1 and 2 of this article shall not be considered.

This stipulation is interpreted in the way that it refers to both sentences of Article 67(2) of the Implementing Regulation, therefore the effect may occur in two different situations:

- Delayed presentation of the inventories (E127, SED S100): 1 year after the reference year
- Delayed introduction of the claim: (letter, SED S110): 12 month following the month during which the average costs for the year concerned were published in the *Official Journal of the European Union*.

The delayed presentation of the inventories as well as the delayed introduction of the claim leads to the consequence that the competent Member State can contest and refuse a payment because of delayed submission/introduction (Article 67(4) of the Implementing Regulation).

Example 1

The Member State of residence is listed in Annex 3 of the Implementing Regulation. The reference year is 2016. The creditor Member State can send an inventory to the debtor Member State until 31 December 2017. The inventory is sent on 15 February 2018.

As the inventories are not introduced within the deadline the debtor Member State does not have to take them into consideration. This approach implements the aim laid down in recital 18 of the Implementing Regulation whereupon it is the aim to speed up the reimbursement processes. This aim could not be reached if an introduction after the deadline remained without consequence.

Transitional solution

The solution described above is only applicable as from the reference year 2016. For the reference years up to 2015 included it is considered sufficient if the inventories are submitted within the deadline applicable for the introduction of the claim.

Example 2

The Member State of residence is listed in Annex 3 of the Implementing Regulation. The reference year is 2014. The fixed amounts are published in the Official Journal on 15 March 2016. The creditor Member State sends claims to the debtor Member State on 24 February 2017. The deadline for the claim is 31 March 2017 according to Article 67(2) of the Implementing Regulation. The inventories were sent together with the claims on 24 February 2017.

As the reference year is 2014 the transitional solution applies, it is sufficient that the inventories were submitted within the delay applicable for the claim. The debtor Member State cannot contest on the ground that the inventories were submitted late.

Cost settlement – fixed amounts in case of registration of an entitlement document with retroactive effect

If a person is registered with retroactive effect, it has to be possible that a reimbursement process can take place even if the deadlines mentioned in Article 67 (2) sentence 1 and/or 2 of the Implementing Regulation already ran out. Under these circumstances the deadlines have to be adapted.

Example 3

The competent institution issues on the 21 February 2016 an entitlement form for a pensioner with effect as from 1 January 2013. The pensioner resides in a Member State listed in Annex 3 of the Implementing Regulation. The institution of the place of residence confirms the starting date mentioned above on 2 March 2016.

The fixed amounts for the year 2013 were published in the Official Journal on 11 March 2015 and for the year 2014 on the 3 April 2016 (approximately 1 month after the registration).

Solution:

The inventories for the reference year 2013 were to be submitted until 31 December 2014 and those for 2014 until 31 December 2015. However, as the entitlement document was issued with retroactive effect the inventory and the claim for this individual case can be sent within a period of twelve month following the year of registration.

Illustrative example for a registration date in March 2016, with the publication in the OJ as provided in the example above:

Reference year	Deadline for inventory to be sent	Deadline for claim to be sent
2013	31 December 2017	31 December 2017
2014	31 December 2017	31 December 2017
2015	31 December 2017	According to Article 67 (2) 1 sentence
2016	31 December 2017	According to Article 67 (2) 1 sentence

Part III: Procedures for reimbursement in case of retroactivity

As a rule the healthcare costs shall be borne by the (newly) competent Member State. The competency for healthcare costs switches as of the date of entitlement, even when applied retroactively.³

³ See Fischer-Lintjens (C-543/13)

- However a change of competency made retroactively may cause administrative problems if the retroactivity stretches over a longer period of time and costs for benefits in kind have already been settled.
- Most of the cases concern retroactively granted pensions. Therefore the following examples refer to this situation. However the recommendations are applicable for all types of retroactive change of competence.
- The following examples are not aimed to set new rules, as they provide guidance for the application of the existing rules, as interpreted by Decision S6 and the relevant case law.
- These examples do not prevent Member States from agreeing on bilateral basis on alternative solutions (please see the suggestions included in the section *Potential solutions to overcome administrative problems*)

Example:

Mr Z lives in Member State C and has been receiving a pension from Member State D since 1 January 2012. Member State D has been competent since that date, with the relevant registration documentation in place (article 24 Reg. 883/2004). On 2 November 2014, Mr Z is granted a pension from MS C with retroactive effect from 1 April 2012.

The start date of entitlement to the pension from Member State C is 1 April 2012 and shall be confirmed on the cancellation document from Member State C. The costs for benefits in kind shall be borne by the newly competent member state (Member State C) from 1 April 2012 (article 23 Reg. 883/2004).

Payments made in accordance with Title IV Reg. (EC) 987/2009 for benefits in kind provided in Member State C (Member State of residence) shall be refunded to the formerly competent Member State (Member State D), by a credit note or overpayment procedure for instance by offsetting. Claims for benefits in kind provided as from 1 April 2012 that have not been settled are to be contested by MS D.

Costs for benefits in kind provided in Member State D and other Member State shall be reimbursed by Member State C.

Problems may arise if according to national legislation refunds are not possible anymore.

Example:

Ms A lives in Member State C and has been receiving a pension from Member State D since 1 January 2011. Member State D has been competent since that date, with the relevant registration documentation in place (Article 24 Reg. 883/2004). On 2 November 2016, Ms A was granted a pension from MS C with retroactive effect from 1 April 2011.

The start date of entitlement to the pension from Member State C is 1 April 2011 and shall be confirmed on the cancellation document from Member State C. The costs for benefits in kind shall be borne by the newly competent member state (Member State C) from 1 April 2011 (article 23 Reg. 883/2004).

Payments made in accordance with Title IV Reg. (EC) 987/2009 for benefits in kind provided in Member State C (Member State of residence) shall be refunded to the formerly competent Member State (Member State D), by a credit note or overpayment procedure for instance by offsetting. Claims for benefits in kind provided as from 1 April 2011 that have not been settled are to be contested by MS D

Costs for benefits in kind provided in Member State D and other Member State shall be reimbursed by Member State C.

MS C has problems to refund amounts for the whole period as according to its national legislation it is only possible to provide benefits for 4 years retroactively.

However, as the Regulation doesn't contain any time limits MS C is obliged to refund for the whole period.

Problems may arise if documents don't exist anymore.

Example:

Mr. S lives in Member State C and has been receiving a pension from Member State D since 1 January 2006. Member State D has been competent since that date, with the relevant registration documentation in place (article 24 Reg. 883/2004). On 2 November 2016, Member State D became aware that Mr. S has received a pension from Member State C since 1 April 2007.

The start date of entitlement to the pension from Member State C is 1 April 2007 and shall be confirmed on the cancellation document from Member State C. The costs for benefits in kind shall be borne by the newly competent member state (Member State C) from 1 April 2007 (article 23 Reg. 883/2004, former Article 27 of the Reg. (EEC) No 1408/71).

Payments made in accordance with Title IV Reg. (EC) 987/2009 or Title V Reg. (EEC) 574/72 for benefits in kind provided in Member State C (Member State of residence) shall be refunded to the formerly competent Member State (Member State D), by a credit note or overpayment procedure for instance by offsetting (with due consideration to the deadlines mentioned in decision n° S10).

Costs for benefits in kind provided in Member State D and other Member State shall be reimbursed by Member State C.

According to national legislation Member State D has to destroy documents related to benefits in kind after 7 years and thus is not able to identify all the costs of benefits in kind provided or reimbursements made to other Member States.

*Bilateral case by case solution might be found taking into consideration contribution issues (see the point below titled **Potential solutions to overcome administrative problems**).*

It has to be clarified how the refund process takes place if a third Member State becomes competent.

Example:

Mr Z lives in Member State C and has been receiving a pension from Member State D since 1 January 2012. Member State D has been competent since that date, with the relevant registration documentation in place (Article 24 Reg. 883/2004). On 2 November 2014, Mr Z is granted a pension from MS E with retroactive effect from 1 April 2012 with longer periods of insurance in Member State E⁴. As a consequence Member State E issues the entitlement document valid as from 1 April 2012.

The start date of entitlement to the pension from Member State E is 1 April 2012 and shall be confirmed on the cancellation document from Member State C. The costs for benefits in kind shall be borne by the newly competent member state (Member State E) from 1 April 2012 (article 24.2.b Reg. 883/2004).

Payments made in accordance with Title IV Reg. (EC) 987/2009 for benefits in kind provided in Member State C (Member State of residence) shall be refunded to the formerly competent Member State (Member State D) by Member State E. The costs could be refunded outside the normal reimbursement process (to be agreed bilaterally) with support of the liaison bodies. The aim of this alternative procedure is to avoid additional reimbursement burden for the Member State of residence and to assure that also the costs for benefits in kind provided outside the Member State of residence are refunded to Member State D.

Potential solutions to overcome administrative problems:

In dealing with retroactive cases one has to consider the issue of contributions paid/due. The problem arises because of different systems of financing health care (contributions/taxes, different contribution rates, etc.) and national time limits for the collection of contributions.

To avoid administrative problems under the current rules⁵ and taking into account the interest of the person concerned the Member States involved could agree bilaterally on the date of the change of competence, for instance:

- According to moment of awareness
- Not taking into account years that have already been settled
- A future date

⁴ See judgement in case C 321/12 van der Helder and Farrington - periods in the pension insurance schemes are to be taken into account

⁵ These recommendations might be revised after the adoption of the amendment to Art. 73 IR

The reimbursement of costs for benefits in kind and the right to collect contributions follows the commonly agreed date.

Presentation of invoices linked with retroactive change to avoid contestations based on Article 67 (1) and (2)

The reference "*recorded in the accounts of the creditor institution*" in Art. 67(1) of the Implementing Regulation should be interpreted as the date when the creditor institution receives the entitlement document from the newly competent institution. As of this date the time limit set out in the Art. 67(1) and (2) of the Implementing Regulation applies.

Claims for retroactive periods could be sent separately or with specific identification and with an explanatory letter in order to avoid administrative complications.

ANNEX TO GUIDELINES: RECOMMENDATIONS FOR THE IMPROVEMENT OF THE ADMINISTRATIVE PROCEDURE TO MINIMIZE THE TIME PERIOD

Most concerns and comments from the Member States were related to the time period between the end date of entitlement or registration and the date when the cancellation document is communicated. The application of the guidelines in case of extensive time gaps may cause substantial challenges for the involved parties.

Based on the proposals from working group the following recommendations were agreed:

Improvement of the data exchange between the institutions involved in the competent Member State

The data exchange within the competent Member State between the national institutions (e.g. pension institution – health care institution) should be improved. There could be an automatic data exchange for cross-border cases.

The working group emphasized the importance of the exchange of all relevant information in cross border cases. The Member States should ensure that, with due account to the data protection principles, there are no obstacles to exchange necessary data between institutions on national level

Improvement of the exchange of information between the person concerned and the institutions involved (in the competent Member State and the Member State of residence)

The competent institutions have the obligation to check regularly if the circumstances that led to the issuance of an entitlement document are still applicable.

However the working group emphasized that the institutions in the Member State of residence also have the obligation to check if the facts for the registration of a person are given/still given. The institution of residence has the obligation to inform the competent institution about all relevant changes and has to cancel the registration itself in certain circumstances (see Article 24 (2) second para of Regulation (EC) 987/2009 and E 108 and S_BUC_04).

The institution of the Member State of residence has to check that this Member State is not competent itself before the registration, e.g. that there is no pension from the Member State of residence (exchange of information between institution of place of residence and pension institutions and/or asking the person concerned about his/her pension entitlement).

To make sure that the involved institutions receive all relevant information as soon as possible a regular contact with the person concerned is necessary. The information process could be strengthened with the following instruments:

- In the PD S1 there should be a remark that the persons are obliged to inform about all important changes of the situation (change of residence, change of status of family members, etc.). Regardless a change of PD S1 the competent Member State should advise the persons concerned of their rights and obligations (e.g. in the form of an accompanying letter to PD S1).
- The Member State of residence should inform registered persons adequately; where appropriate general information can be provided, e. g. websites, leaflets (see example Spain).
- The competent institution should regularly check if the person concerned still lives and resides in the Member State of registration, e.g. “Life-statement”, data exchange with the pension institution or – if required – direct contact with the person concerned.
- The institutions in the Member State of residence should regularly check if there are any changes in the situation of the person concerned (e.g. data exchange with other national institutions or – if required – direct contact with the registered person to remind of their obligations to communicate relevant changes). They may aim to use a national standardised questionnaire and may provide translations if needed.

The easiest way to get information from the person is when applying for entitlement document (in the competent Member State) and/or when applying for registration (in the Member State of residence). The following **best practise** should be considered:

- The United Kingdom asks all persons who apply for a new insurance number if they have a PD S1.
- Spain gives persons an information letter that the persons have to inform about change of situation.
- Spain crosschecks regularly for example with the national social security database to verify if a registered person has obtained entitlement under Spanish legislation.

- Finland regularly contacts the registered persons to confirm if the registration is still valid.
- Some Member States have automatic links to other data systems which produce a prompt when a change occurs.

In general the person concerned should be aware of the obligation to inform the (former) Member State of residence **and** the (former) competent Member State about change of residence or other change of situation.

Improvement of the exchange of information between the competent Member State and the Member State of residence

If the institutions in the Member State of residence receive relevant information (for instance the status of the family member changes or the person concerned dies) they have to inform immediately the institutions in the competent Member State. Any other institution in the Member State of residence or in the competent Member State which gets relevant information (change of residence, change of competency or other circumstances) should **immediately** inform the other institutions involved (within a Member State **and** abroad).

Some Member States have a database with all national social security data which may assist the exchange of data.

Improvement of the exchange of information between the employer and the competent institution

Many Member States have strict deadlines for the employer to inform the health care institution about the end of work. If the deadlines are not met the employers may be fined. Some countries also have (internal) deadlines for sending the information abroad.

Member States with no existing deadlines should consider implementing them.

How to find the new competent Member State

In a situation where a cancellation document has been issued and the person still resides in the same Member State but a third Member State becomes competent, the Member State of residence has to obtain information about this new competent Member State.

In most cases the former competent Member State has no information about the new competent Member State. It also has usually no chance to get this information as there is usually no contact with the person concerned anymore. Then the Member State of residence can only receive this information directly from the person.

However, if the former competent Member State has the information about the new competent Member State it should immediately inform the Member State of residence.

