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CHAPTER 7: CLAIMS PAYMENT

This chapter contains:

- Payment in two installments
- The processes of payment of the claims
- Taxation of compensation payments
- Payment in different currencies
- Setting a deadline for the payment process
- Final accounting and archiving of payment records

INTRODUCTION: FAST, SECURE AND RELIABLE

The payment of the monetary amounts awarded to eligible beneficiaries is the main purpose of a compensation program. It is a crucial stage of the process, both for the beneficiaries and for the program as a whole, and it should be reached as quickly as possible. At the same time, it is also important that the payments are made in a safe and secure way and that the payment system is reliable so that the right beneficiaries receive the correct compensation amount/s and that no fraud or other irregularities occur. As is the case in other phases of a large-scale compensation program, different challenges must thus be balanced at the payment stage as well.

Like the processing and resolution of the claims, in the case of the forced labor compensation program the payment of the awarded compensation was the responsibility of the partner organizations and not the EVZ Foundation. The payment process was a massive task for each of the organizations: together, they paid out 4.34 billion Euros to a total number of 1.66 million eligible beneficiaries.¹ This task was made even more challenging by the fact that the compensation to the beneficiaries was paid out in two installments. This was prescribed by the Foundation Law and was due to the fact that the funds available to each of the partner organizations for the payment of compensation were fixed from the beginning, but the exact number of compensable beneficiaries only became known after completion of the processing of all claims by the respective partner organization.² The allocation of funds to the various payment stages was further complicated by the need to keep a reserve for anticipated successful appeals.

All the partner organizations had to deal with certain common issues in the payment process, such as creating an infrastructure for the payments and finding solutions for payments that had been returned. As with the processing of the claims, other aspects of the payment process differed, however, due to the different geographical scope of their work and because of other particularities in the situations of the various partner organizations. Some of the partner organizations used, for instance, the network of a domestic bank, the postal system, or the social security agency for the distribution of the compensation to the beneficiaries. Others worked with an international bank as intermediary to effect the payments to the beneficiaries in a large number of different countries worldwide. Funds were either deposited into the bank, postal office or social security branch for withdrawal by the beneficiary, or checks were issued to the beneficiaries for cashing at the designated bank or its partner institutions.

This chapter describes the most relevant aspects of the payment process for all partner organizations and details the challenges for two of the partner organizations, the FPNP, the Polish partner organization, which issued payments to citizens in Poland, and the IOM, which was responsible for paying out compensations to beneficiaries worldwide.

1 These numbers include survivors of forced labor and their eligible legal successors only, and not the other program lines described in Chapter 9.

2 For details concerning estimates of eligible beneficiaries during the negotiations and at the time of the Foundation Law, see Chapter 2.

PAYMENT IN TWO INSTALLMENTS

The payment in installments was necessary because the funds available to each of the partner organizations for the payment of compensation were fixed, but the exact number of beneficiaries only became known after completion of the processing of all claims by the respective partner organization (see Chapter 3). Payments were made in two installments, with different ceilings for the amounts that could be paid out as first installments set by the Foundation Law for the different categories of claims.³ This payment method had the regrettable, although unavoidable, effect of upsetting many beneficiaries when they did not receive the full amount of their compensation right away. However, a worse option would have been to pay out the full amount only after all claims were processed and decided upon, when the amount available for each eligible claimant would be clearly allocated. This would have meant that the beneficiaries would have waited even longer until they received any payment, and it was thus preferable to at least pay some compensation earlier.⁴

The Polish partner organization FPNP was the only one of the seven partner organizations to initiate preliminary payments even before the EVZ Foundation authorized the first installment. As outlined in Chapters 5 and 6, the Polish Partner organization was able to use existing databases and contacts and was well aware of the claimants' situation. Due to its existing knowledge, the FPNP was ready to begin paying out the first installments shortly after the enactment of the Foundation Law. However, during the international negotiations it was agreed that all claims before US courts had to be withdrawn before the beginning of the payments, and this process took longer than anticipated. There were also other factors that led to an initial delay of the "green light" for partner organizations to start with the payments. In Poland, the FPNP experienced an "atmosphere of waiting" during these months as well as political pressure to begin with the payments.

Eventually, the FPNP decided to issue preliminary payments to the oldest and most vulnerable beneficiaries. This was a group of about 60,000 individuals who were born before January 1921 and who were able to present claim forms and evidence of their eligibility. In March 2001, the FPNP sent out checks to this group who had to sign an agreement that this sum would be deducted from the regular first installment. This decision was taken entirely by the Polish partner organization, as the EVZ Foundation was legally bound by the Foundation Law.

On 18 May 2001, the last lawsuits against German companies in the US were withdrawn or rejected and the German Parliament on 30 May 2001 decided that this amounted to "legal security." In June 2001, about ten months after the enacting of the Foundation Law, the FPNP was finally able to pay out the first regular installment to the beneficiaries.

3 The ceiling for the first installment to beneficiaries in Category B was 35 percent, the ceiling for the first installment in Category A was 50 percent. In addition, IOM had to make a (third) "top-up" payment to certain legal successor categories.

4 Taking into account international agreements and other specific regulations, payments in Poland were made up of three segments: payment of a first installment (75 percent of the total amount), a lump sum payment to cover losses that were caused due to unfavorable exchange rates (this is explained in more detail in Chapter 3), and the payment of the second installment (25 percent of the total amount).

THE PROCESSES OF PAYMENT OF THE CLAIMS

The main stages of the payment process were the same for all the partner organizations. They were closely coordinated with the EVZ Foundation and followed a mutually agreed procedure. Payments were made to groups of beneficiaries according to lists (so-called “tranches”) of beneficiaries from the partner organizations, which were approved for payment by the EVZ Foundation. First, the funds needed for the payment of such a group (tranche) were transferred from the EVZ Foundation to the respective partner organization. The partner organization then arranged for the actual payout to the individual beneficiaries pursuant to the arrangements it had put in place in its area of responsibility.

In principle, it was decided that the lists of eligible claimants should be transferred to the EVZ Foundation every two months. This timeframe was decided together with all seven partner organizations, which allowed enough time for internal review and data registration in the EVZ Foundation’s own database, as well as the provision of financial resources needed to prompt tranche payments and other review activities. Either simultaneously with or prior to the payment, beneficiaries were informed about the decision on their claim, the amount of the compensation awarded to them, and the method of payment.

Setting up the payment infrastructure

The partnership agreements required the partner organizations to make arrangements with banks regarding payment procedures. In choosing banks to cooperate with, factors such as shareholder background, deposit guarantees, and a sufficient branch network with ample cash supply played an important role. The selected banks and respective cooperation agreements needed the approval of the EVZ Foundation. In order to avoid any risks due to instability of banks, the EVZ Foundation and its partner organizations negotiated state guarantees for eventual losses with the respective governments. This was the case in the Ukraine, for example.

To transfer payments to the Polish beneficiaries, the Polish partner organization cooperated with the PKO Bank. Payments made available by the EVZ Foundation took place nationwide via 1,200 PKO bank branch offices. For this, the FPNP concluded a contract with the PKO Bank that stipulated the conditions and principles regarding the disbursement of the compensation payments. The contract also defined the form of the financial accounting on both sides, the principles of controlling, as well as logistical aspects of the payment process.

Like the other partner organizations, the Polish partner organization established a separate Department for Compensation Payments, the main tasks of which were:

- Preparing and sending out payment notices to the beneficiaries;
- Collecting and disseminating information about the paid compensation;

- Cooperation with the implementing bank, e.g., explaining questions raised by the bank employees, confirming payment notices, or correcting personal data;
- Receiving and registering payments that had been carried out; and
- Corresponding with legal successors of persons who had received notices of payment but who could for various reasons not realize them.

When IOM evaluated different options for making worldwide compensation payments, it became clear that a decentralized payment strategy in a large number of countries was complex to implement and required extensive staff involvement. Wholesale bank transfers were very difficult and costly to implement as many claims lacked the necessary banking information in the claim form. Cash payments, on the other hand, were neither practical nor cost effective, as it required all claimants to come to the IOM country offices to collect the funds. Both scenarios involved issues related to logistics and security, as well as significant expense. On balance, IOM decided to pay by check with an international bank as intermediary. Citibank, which was selected through a bidding process, was accessible in most of the countries where IOM needed to make payments; Citibank's IT systems were compatible with the GFLCP database; and the price charged by Citibank was competitive.

Compatibility of IT systems and competitive pricing were also reasons given in the selection of the service provider for the mailing of the letters by which the checks were sent and through which the award and payment information was provided.

Similarly to the FPNP, within IOM's GFLCP program, a separate team was responsible for the payment process. This ensured that dedicated staff members with relevant expertise were working in this area, and staff who were organizationally independent, and who had not been involved in the prior review and verification of the claims, did this work.

Transferring money to the beneficiaries

Once the payment infrastructure was established and the claims were decided, the payments could be transferred to the beneficiaries. In Poland, the procedure of paying out compensation was based on lists of eligible beneficiaries sent by the FPNP to PKO Bank branches electronically. By means of these lists, the banks could make the respective payments. At the same time, beneficiaries received a payment notice by mail, which entitled them to pick up the payment. Exceptions were made for beneficiaries who were very old, bedridden or seriously ill and who had no possibility of visiting a PKO branch themselves. In these cases, a FPNP team visited the respective beneficiary to hand out the money personally.

In the case of IOM, which paid compensation to beneficiaries in some 80 countries, the payments were made through checks mailed to the individual beneficiaries, which the beneficiaries could,

in turn, cash in the branches of the designated bank.⁵ The checks were generated by the partner bank of IOM, based on data from the GFLCP database that IOM transmitted electronically to that bank. The checks were then mailed by an international service provider to the beneficiaries, together with information on the decision on the claim, the amount of the compensation awarded, and instructions on how to cash the checks. An exception to this procedure was made in Romania, where the majority of the beneficiaries were Sinti and Roma for whom access to the banking system would have been difficult. Here, IOM issued payments through local post offices.

The workflow of IOM's payment process can be summarized as follows. From the GFLCP database, an electronic file was created with all relevant data to be included in the checks that were to be sent to the beneficiaries included in a particular payment tranche. This file was transmitted electronically from IOM to Citibank, based on an agreed technical protocol. Citibank generated a check for each beneficiary in the tranche, in the language of the country of the beneficiary's residence. The checks were transmitted to the selected service provider for inclusion in the notice letters to the beneficiaries. These letters also contained information, drafted by IOM, about the appeals possibility and about the payment in two installments. The service provider then mailed out the letters to the beneficiaries.⁶

A more general aspect, particularly in large reparations programs such as this one, is the question of prioritization, that is, should there be certain beneficiary groups that receive their compensation before others? Again, this depends on the context and purpose of a reparations program, as well as the (technical) possibilities to identify such groups. In this program, it was indeed an important issue as some of the claimants were extremely old and/or vulnerable. It was decided that any priority order of payments was left to the partner organizations themselves, some of which chose to pay out compensation first to those who were born before a certain date, and/or who were in category A (forced labor in concentration camps or similar situations).

Finally, the payment phase of such a program must not be looked at merely from a technical perspective. This is perhaps the most symbolic moment of the process for the beneficiaries of a reparations program, and organizations involved in the process could acknowledge that in several ways. The authors of this book feel that in the forced labor compensation program it was, for example, a missed opportunity that the checks were not accompanied by a direct message from the German side. In fact, it was discussed at one point to include a letter with the payment notification mail or check envelope. A possibility would have been to include a copy of a 1985 speech by former German President Johannes Rau who had apologized for

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5 For property loss claims, payments of amounts higher than 10,000 Euros were made through transfers into a bank account designated by the beneficiary.

6 Difficulties arose with the mailing of letters to Roma beneficiaries in Romania. Because of the similarity of names and other obstacles for the postal service in identifying the proper recipients, IOM decided to add the birth date of the beneficiary on the envelope by which the notice letter was mailed, and to engage in additional training for the postal service. This increased the reliability of the delivery process considerably.

German war crimes, including forced labor, during a visit to Poland.⁷ Including such a message with the checks would certainly have been easy to realize and would possibly have increased the sense of acknowledgment on the part of the beneficiaries.

Receipt of the payments by the beneficiaries

Depending on the different payment system that each of the partner organizations had set up, the way in which the beneficiaries ultimately received the compensation amounts, in hand, differed.

In Poland, the PKO Bank was well prepared for these procedures and very few complaints were filed in this matter. Bank employees received special training about compensation payments and each branch office was informed on disbursements by mail. In addition, the FPNP tested their payment infrastructure. Employees of the Polish partner organization were sent to several PKO Bank branches to check whether the procedure was working properly and reported back positively. Bank employees dealt with beneficiaries in a respectful manner and the latter did not hold back their emotions. Payments were indeed running so smoothly that already on the first day of disbursements one third of all beneficiaries included in the first tranche received their payments.

To better ensure security of the payment process, the FPNP also approached the head of the prevention office at police headquarters to request special assistance by the police. The organization was concerned that beneficiaries who had received their payments in cash were at risk of being robbed. In cooperation with the Polish police it was agreed to increase police presence near banks on payment days. The police received a map of Poland informing about the number of beneficiaries in every district, which helped them to adequately position police officers.

In IOM's case, a beneficiary could cash the check in any Citibank branch in its place of residence, or in the branch of a bank cooperating with Citibank for this purpose in places where Citibank had no branch. Normally, the check was made out in Euros, and the beneficiary received the corresponding amount in Euros.

Frequently, checks were returned to IOM because the notifying letter could not be mailed to the beneficiary or because the check was not cashed at the bank. These instances increased during the payment of the second installment. Typically, the reason was that the claimant had changed address without informing IOM, or he or she was deceased before compensation

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 7 Authers describes that this has actually happened, but he may have observed individual actions by staff members of some partner organizations (John Authers, "Making Good Again: German Compensation for Forced and Slave Laborers," in *The Handbook of Reparations*, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006), 440. The authors of this book are not aware of such practices.

was awarded or received. In the latter case, legal successors had six months to notify IOM of the death of the claimant. However not all legal successors complied with this deadline and some were not aware that their relative had claimed the compensation or even that they had been forced laborers at all. When a check was returned, IOM attempted again to locate the beneficiary. If it did not succeed, the unpaid amount was credited to a future payment tranche.

TAXATION OF COMPENSATION PAYMENTS

In addition to these more technical aspects, several issues have to be considered when paying out compensations. First, financial compensation payments may, inadvertently, be subjected to taxes or count as income for people receiving social welfare. When administering such a program, this possibility has to be kept in mind. In order to ensure that payments remain tax free, for example, the organizations involved in such programs should make clear arrangements with all authorities involved. This is particularly important as taxation is not in the domain of organizations, but has to be coordinated with government authorities and needs government collaboration.

In the case of the forced labor compensation program, it was decided beforehand that amounts received under the Foundation Law should not be taxed in the beneficiary's country or count as social security benefit. Therefore, no amount was to be deducted from any compensation payment. The EVZ Foundation and the partner organizations attempted to ensure compliance with this obligation through understandings with the national authorities concerned. At the same time, the Federal Foreign Office of Germany directly contacted numerous governments to ensure that these conditions were implemented. This is by no means standard procedure — for example, there are no such agreements in the recent German compensation program for former Soviet prisoners of war.⁸

The issue of taxes is again important when reparations programs have clauses for legal successors, as these sums may then be subject to inheritance tax as well, and this may require different agreements with different authorities. In Poland, for example, payments to legal successors were paid nominally and they were exempt from all fees and taxes (including inheritance and gift tax). The Polish parliament issued a law in this regard in 2000.⁹

8 This compensation program was decided upon by the German Parliament in 2015. It is carried out by the German Federal Office for Central Services and Unresolved Property Issues (BADV). See www.badv.bund.de/EN/UnresolvedPropertyIssues/PaymentToFormerSovietPrisonersOfWar/start.html (accessed 13 April 2017).

9 Polish Law of 21 September 2000 on tax exemptions of compensation payments for victims of Nazi persecution (*Dz. U. 2000 Nr. 93, Poz. 1028*).

PAYMENT IN DIFFERENT CURRENCIES

While this may be not relevant for many reparations programs, the issue of different currencies has to be thought about when setting up a payment infrastructure or process. There may be different possibilities depending on the context, and reparations programs may choose certain currencies for particular reasons. The choice of currency of the payment can also be left to the beneficiaries, which in turn requires a certain infrastructure.

In the case of the forced labor compensation program, the situation was rather complex as payments were issued to beneficiaries all over the world. The EVZ Foundation made the funds for the compensation amounts at first available in the German currency Deutsche Mark, and starting from January 2002 in Euros.¹⁰ It was left to each partner organization whether it would make the actual payments in Euros or in the currency of the beneficiary's residence. National organizations, like the FPNP, mostly issued payments in the national currency.

A more fundamental problem arose in the forced labor compensation program due to a currency conversion that happened *before* the actual payments to beneficiaries, namely when the EVZ Foundation exchanged a large lump sum dedicated for the Polish Partner organization from Deutsche Mark into Złoty, the Polish currency. As a result, and a large sum of money was lost during the transaction. This incident is primarily related to financial management and communication and is described in Chapter 3.

SETTING A DEADLINE FOR THE PAYMENT PROCESS

In order to avoid a reparations program from becoming open-ended and to ensure it remains “active” until the last claim is settled and the last beneficiary is paid, a cut-off date for making payments may be a good solution. The drafters of the Foundation Law did not foresee this, but as the sums to be distributed were fixed and eventually it was known how many beneficiaries were eligible, setting an end date for the payments was the most efficient way to conclude the compensation program. It was therefore agreed that payments were no longer to be made available after 31 December 2006, including payments to legal successors. The EVZ Foundation set this date to avoid that large numbers of staff still had to be employed for the processing of very little numbers of cases. This also had to be coordinated with the German Ministry of Finances, and the Foundation Law had to be amended accordingly (Section 14 (4) of the Foundation Law was later supplemented).

For the partner organizations, this meant that they had to actively seek out and inform beneficiaries and legal successors whose cases were still open. While all claims had been processed at the

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 10 European Union countries that opted for the Euro changed to this currency on 1 January 2002.

time, legal successors still had six months to claim their eligibility in case the beneficiary passed away in the meantime, and beneficiaries still had three months to file an appeal. When setting the deadline, these time limits could no longer be offered, so the respective individuals or families had to be adequately informed. Moreover, not all legal successors were aware that they were eligible. For example, the FPNP organized a separate information campaign in Poland and used public records to find potential legal successors. The aim was to pay out as much as possible to the eligible beneficiaries and successors and the organization was able to process more than 6,000 cases in 2006.

Despite the efforts of the partner organizations, certain sums could not be paid out by 2006. Chapter 11 discusses how these so-called “leftover funds” were used to finance humanitarian projects for the benefit of Nazi-era victims.

FINAL ACCOUNTING AND ARCHIVING OF PAYMENT RECORDS

At the end of the payment process, the EVZ Foundation undertook a detailed and comprehensive final accounting with each of the partner organizations. This did not reveal any discrepancies or other issues. The Foundation also performed checks for a random sample of individual beneficiaries of each of the partner organizations to establish whether they had indeed received the amounts awarded to them (this is explained in Chapter 8). Again, no significant problems were found, which was a remarkable result given the total amount paid out (4.34 billion Euros), the number of 1.66 million beneficiaries and their spread over 89 countries.

Each partner organization implemented its own system of archiving and maintaining payment records.¹¹ IOM, for instance, keeps one set of its payment records on paper, and it also maintains a database of its payment information. Pursuant to an agreement between the Foundation, IOM and Citibank, the latter also maintains its payment information from the program in electronic form and has undertaken to make the respective data available to IOM or the Foundation in the event that there are specific questions concerning an individual payment. The amounts and the beneficiaries paid are also contained in a comprehensive database about its program that IOM made available to the EVZ Foundation and the German Federal Archive upon completion of the program.

SUMMARY

The payment is perhaps the most meaningful and yet a very technical moment of a reparations program. This chapter outlined how the partner organizations of the forced labor compensation program issued payments to beneficiaries and highlighted a number of issues that have to be taken into consideration.

¹¹ For details concerning archiving of the files related to the program generally, see Chapter 11.

CHALLENGES AND LESSONS LEARNED

- While unavoidable in the circumstances, the payment in two installments added waiting time for the beneficiaries, as well as cost and administrative and logistical burdens for the partner organizations.
- The problem of “gatekeepers” (such as bank employees, police or even program staff) must also be avoided at the payment stage.
- When compensation payments are made in a currency different from that of the funds originally made available for them, one needs to address the issue of currency conversion and define who bears the risk of fluctuations in the value of the respective currencies.
- Each partner organization was struggling with the consequences when payments could not be made or were returned, for instance because the beneficiaries had moved to a different address or had deceased.
- Provision must be made for the secure storage and preservation of payment data, both within the program and with service providers used in the payment process. Considering the total amount paid out, the number of beneficiaries and their spread over so many countries and locations, the payment systems and controls implemented by the partner organizations and the EVZ Foundation worked very well and no significant discrepancies or other issues arose in the process.
- Compensation payments could have been complemented by a formal apology, given that compensation for historical injustice exceeds well beyond being a merely technical matter. In view of the relatively small payment amount available for each beneficiary, it would have been appropriate to recognize the injustice and the suffering of the victims together with the payment notice.
- The safety of the actual payout was not an issue in the forced labor compensation program. It can be, and has been, a major challenge in other programs, particularly if payments are made in cash.