



St. Gallen, 6 September 2019

## **Press Release**

regarding judgment C-5123/2018 of 4 July 2019

### **Jurisdiction for outpatient flat-rate contributions for services**

**Outpatient flat-rate contributions for services applicable throughout Switzerland are to be approved by the Federal Council. This was decided by the Swiss Federal Administrative Court and thus confirms a decision by Thurgau Cantonal Council, which did not address a corresponding application concerning ophthalmic surgery.**

On 2 March 2018, Santésuisse and the Foederatio Medicorum Chirurgicorum Helvetica (FMCH; the umbrella organisation for surgical and invasive professional societies and three professional associations) concluded a tariff agreement regarding outpatient flat-rate contributions for services for a selected field of ophthalmic surgery (cataract, glaucoma and combined cataract and glaucoma operations and intravitreal injections).

Thurgau Cantonal Council did not address the application submitted by the tariff partners to approve the tariff agreement on the grounds that they had requested the same level of tariffs in all cantons. In addition, the respective tariff agreements had the same content everywhere. It was therefore a tariff applicable throughout Switzerland, which had to be compulsorily approved by the Federal Council and was not the responsibility of the cantonal government. Santésuisse and the FMCH appealed against this decision to the Federal Administrative Court.

#### **Tariff applicable throughout Switzerland**

In its landmark judgement, the Federal Administrative Court has ruled that the tariff parties have submitted a tariff agreement for approval with identical flat-rate contributions for services in all the cantons concerned. In addition, the tariff agreement was concluded by organisations active throughout Switzerland (santésuisse and FMCH).

The argument of the appealing associations that a further review and a cantonal or regional tariff differentiation, if necessary, was planned after the conclusion of a one-year pilot phase is not significant. However, the principles of the legality, profitability and fairness of the tariff are to be complied with from the start. Also, the tariff agreement does not provide any criteria for the (subsequent) adjustment or regional differentiation of the tariff. To sum up, the case thus concerns a tariff

applicable throughout Switzerland which the Federal Council is responsible for approving.

### **Gradual replacement of the applicable TARMED**

The Court also ruled that, according to the agreement, the parties planned a gradual replacement of the applicable TARMED tariff system for the entire field of outpatient ophthalmic surgical services. This procedure is aimed to change the existing tariff structure or the tariff model. The Federal Council is responsible for regulating the TARMED tariff for individual medical services as well as changes to it. The Federal Administrative Court doubts that gradually replacing TARMED with flat rates for the entire field of ophthalmic surgery without involving the Federal Council is permitted. Since a tariff applicable throughout Switzerland and thus the jurisdiction of the Federal Council are to be confirmed in this case, the Court has not made a definitive decision on this matter.

This judgment is final and may not be appealed to the Federal Supreme Court.

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### **About the Federal Administrative Court**

Located in St. Gallen, the Federal Administrative Court (FAC) was established in 2007. With its staff of 355 employees (305.5 FTE) and its 76 judges (68.4 FTE) it is the largest federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal authorities. In specific matters, the FAC may grant review on decisions rendered by cantonal authorities. Recourse actions are also reviewed by the Court. The FAC is composed of six divisions. It renders an average of 7,500 judgments every year.