

**Title**

INFORMATION TO AND FROM CITIZENS

Created 26/08/2009**Modified** 25/11/2009**References:**

- **Recitals :** 4, 21 IR
- **BR:** Arts. 76(4), 76(5), 87(11)
- **IR:** Arts. 1(2)(b), 2(1), 2(2), 3, 55 (1) (3); 89.
- **AC Decision :** N/A
- **ECJ CASE Law:** Cases C-52/99 & C-53/99 Camarotto and Vignone

Comments:

- The modernised social security coordination rules place special emphasis on the need for Member States to provide active assistance to citizens in enforcing their rights under the coordination regime. A key aspect of this assistance is via the provision of information to citizens about their rights and obligations.
- As a counterbalance to the duties imposed on the institutions and Member State authorities, there are similarly obligations on citizens covered by the Regulations to provide the necessary information to the institutions of both the competent State and the state of residence about any changes that could affect their rights to benefits under the Regulations. The duty to provide information is therefore mutual.

Information to citizens

- One of the key amendments made by the European Parliament to the IR was to move what is now Article 3(1) IR to its prominent position at the start of the IR. The Article sets out the obligations on Member States both to provide user-friendly services and to ensure that the necessary information is made available to citizens to inform them of the changes introduced by the new Regulations in order to allow them to assert their rights. The Parliament's aim in giving greater prominence to this provision was to guarantee the "effet utile" of the rights given by the Regulations. The coordination regulations are complicated instruments: citizens will be better placed to enforce and enjoy their rights under the Regulations if they – and their representatives – are provided with more and better quality information about the rights contained therein.
- The requirement in Article 3(1) IR sets out the standards to be met when providing such information. Services provided should be "user-friendly": institutions should communicate with

the citizen in a way that can be easily understood. Article 2(1) IR sets further standards for the provision of information to citizens: this should be based on principles of "public service, efficiency, active assistance, rapid delivery, accessibility, including e-accessibility, in particular for the disabled and elderly".

- Article 3(1) IR supplements Article 87(11) BR, which requires that Member States shall ensure that appropriate information is provided regarding the changes in rights and obligations introduced by the BR and the IR.
- Article 76(4) BR, which has been carried over from Article 84a of Regulation 1408/71, requires institutions to respond to all queries within a reasonable time and to provide citizens with the information required for exercising rights conferred on them by the Regulation. This provision, which forms part of the provisions requiring good cooperation between all stakeholders in order to achieve the aims of the coordination regime, makes clear that the information duty on institutions covers information to citizens about all their rights in the Regulations and not just to information where changes have been introduced by the new coordination rules. The focus of Art. 76(4) BR, as in the case of Article 3(1) IR, is on providing practical information that will allow citizens to access their rights. There is the additional procedural requirement that requests for information should be responded to within a reasonable period of time.
- The competent authorities and the institutions are to be assisted by the national liaison bodies in fulfilling these information duties. The role of the liaison body - set out by Article 1(2)(b) IR - should be read in the context of the duty in Article 3(1) IR. Article 1(2)(b) IR gives the liaison body an important role in responding to requests for information and assistance for the purposes of applying the Regulation. Part of this role of course involves the provision of information to citizens.
- In addition, Article 89 IR (which updates and expands the previous Article 2(3) of Regulation 574/72) gives a role to the Administrative Commission to prepare the information needed to ensure that parties are aware of their rights and the administrative formalities needed in order to assert them. On the basis of this requirement, the European Commission has produced the so-called "Small Guide" for citizens ("The Community provisions on social security: Your rights when moving within the EU"), which will be updated in the light of the new Regulations. The Commission also maintains a web-page for citizens. In addition, the Commission has produced these Explanatory Notes, aimed principally at social security institutions and other more specialist users of the Regulations.
- A central element of the modernised coordination rules is the introduction of the compulsory exchange of information between institutions via electronic data exchange. Citizens have not been left out of this process as they will have internet access to the so-called "EESSI Public Directory", hosted at the European Commission's Data Centre, which will contain the addresses and contact details of all the social security institutions that are part of the coordination regime. The information in this Directory will make it easier for citizens to make contact with social security institutions in countries other than their own.

Information from citizens

- Article 76(4) BR makes clear that citizens are also bound by information duties. They too are bound by a duty of mutual information and cooperation to ensure the correct implementation of the Regulation. That is, they should keep the institutions and competent authorities informed of any changes that could affect their entitlement to benefits by virtue of the Regulations. In particular, they must inform the institutions of the competent Member State and of the Member State of residence as soon as possible of any changes in their personal or family situation which affects their rights to benefits under the Regulations.

- Failure by a citizen to respect this obligation to provide information could mean they may be subject to penalties. Member States may determine the penalties in accordance with their national legislation, while respecting the fundamental principle of proportionality (see Article 76 (5) BR).
- In assessing whether this principle of proportionality is met, it would of course be relevant for a national court to consider the extent to which a citizen was sufficiently informed about the extent to which a change in his circumstances could affect his entitlement to benefits under the Regulation. It is clear therefore that part of the information duty borne by the institutions, competent authorities and the Administrative Commission involves providing information on the relevance of changes of circumstances. Information on the effect of a change of residence on entitlement is of particular importance.

To go further:

- A further source of information about the social security coordination rules is provided by the TRESS network: see www.tress-network.org
- The attachment presents the full range of information duties contained within the modernised coordination Regulations.



ANNEX TO E. N. INFORMATION TO AND FROM CITIZENS

INFORMATION DUTIES

RIGHTS AND OBLIGATION OF CITIZENS VIS-À-VIS THEIR INSTITUTIONS

RIGHTS AND OBLIGATIONS OF INSTITUTIONS VIS-À-VIS CITIZENS

This document presents an overall view of so-called "information rights and duties " contained in the Regulations as they apply both as regards information flows from the institution to the citizen and from the citizen to the institution.

THE MODERNISED COORDINATION SYSTEM IMPROVES THE RIGHT OF CITIZENS TO OBTAIN INFORMATION

- An important aspect of the modernised social security coordination rules is that they place special emphasis on the need for Member States to provide active assistance to citizens in enforcing their rights under the coordination regime. The table in the annex gives full details
- The task of the institutions and authorities is to provide information which allows the person to assess his or her rights; this information also should include guidance on procedures and administrative formalities. These duties to provide active assistance and information are part of the more general duty of good administration, which has been enhanced under the new coordination regime.
- Furthermore, the duties to assist and provide information are expressed in terms of concrete objectives: efficiency; active assistance; rapid delivery; and accessibility. The modernisation of the Regulations thus makes significant progress towards avoiding putting the weight of complexity of social security issues solely on citizens' shoulders; instead the burden of the procedures and formalities is now shared in a more friendly and fair way.

ANNEX

MUTUAL OBLIGATION OF INFORMATION AND COOPERATION

B.R Article 76 §4 sets out the general principle:

"4. The institutions and persons covered by this Regulation shall have a duty of mutual information and cooperation to ensure the correct implementation of this Regulation"

INFORMATION ABOUT PROTECTION OF PERSONAL DATA

IR Article 3 §2

2. When collecting, transmitting or processing personal data pursuant to their legislation for the purposes of implementing the basic Regulation, Member States shall ensure that the persons concerned are able to exercise fully their rights regarding personal data protection, in accordance with Community provisions on the protection of individuals with regard to the processing of personal data and the free movement of such data.

GENERAL PROVISIONS

Citizen, employee, self- employed, employer	Institutions, authorities and AC
<p>BR Article 76 §4 sub par 3 The person concerned must inform the institutions as soon as possible of any changes in their personal or family situation which affects their rights to benefits</p> <p>BR Article 76 §5 Possibility of sanction if the obligations are not fulfilled in accordance with national law.</p>	<p>BR Article 76 §4 sub par 2 Principle of good administration Institutions shall respond... to all queries within a reasonable period of time and shall in this connection provide the person concerned with any information required for exercising the rights conferred by the Regulation</p>
	<p>BR Art.87 §11 Member States shall ensure that appropriate information is provided regarding the changes in rights and obligations introduced by this Regulation and the Implementing Regulation.</p>
	<p>IR recital (7) The persons covered by this Regulation should receive from the competent institution a timely answer to their requests. The answer should be provided at the latest within the time-limits prescribed by the social security legislation of the Member State in question, where such time-limits exist. It would be desirable if Member States whose social security legislation does not make provision for such time-limits considered adopting them and making them available to concerned persons as necessary.</p>
	<p>IR Recital (22) Informing persons concerned of their rights and obligations is a crucial component of a relationship of trust with the competent authorities and the Member States' institutions. Information should include guidance on administrative procedures. Persons concerned may include, depending on the situation, the insured persons, their family members and/or their survivors or other persons.</p>
	<p>IR Art 2 §1 exchanges between institutions and persons shall be based on the principle of public services, efficiency, active assistance, rapid delivery and accessibility including e-accessibility, in particular for the disabled and the elderly.</p>
<p>IR Art 3§1 persons shall be required to forward to the institutions documents or supporting evidence necessary to establish their situation, to establish or maintain their rights.</p>	<p>IR Article 3 par-1.The Member States shall ensure that the necessary information is made available to the persons concerned in order to inform them of the changes introduced by the basic Regulation and by the implementing Regulation to enable them to assert their rights. They shall also provide for user friendly services.</p>

	<p>IR Art 3 §3 To the extent necessary for the application of the basic Regulation and the implementing Regulation the relevant institutions shall without delay forward the information and issue the documents to the persons concerned without delay and in any case within any time limits specified under the legislation of the Member State in question.</p>
	<p>IR Art §3 par 4 second sub paragraph notification of the decisions to the claimants residing or staying in another MS; when a negative decision is taken by an institution it shall indicate the reasons for refusal, the remedies and periods allowed for appeal.</p>
	<p>IR Art 89 "information" §1 "The AC shall prepare the information needed to ensure that the parties concerned are aware of their rights and the administrative formalities in order to assert them. The information shall, where possible, be disseminated electronically via publication on line on sites accessible to the public. The AC shall ensure that the information is regularly updated and monitor the quality of services provided to customers".</p>

Applicable legislation	
Citizen, employee, self- employed, employer	Institutions, authorities and AC
<p>IR Art 15 §1 (mainly posting situation) employer or self employed worker shall inform the competent institution whenever possible in advance</p> <p>1. Unless otherwise provided for by Article 16 of the implementing Regulation, where a person pursues his activity in a Member State other than the Member State competent under Title II of the basic Regulation, the employer or, in the case of a person who does not pursue an activity as an employed person, the person concerned shall inform the competent institution of the Member State whose legislation is applicable thereof, whenever possible in advance.</p> <p>Same obligation in IR §2 for members of the armed forces or for civilian service and in</p> <p>3 for employer who has an employee on board of a vessel flying the flag of another MS</p>	<p>IR Art 15 §1 second sentence: The institution shall without delay make the information available to the person concerned and to the designated institution where the person is posted.</p> <p>Same obligation</p> <p>Same obligation</p>
<p>Art 16 §1 a person who pursue activities in two or more MS shall inform the institution designated in his/her MS of residence</p>	<p>IR Art 16 §5 the competent institution shall without delay inform the person concerned of the either provisionally or definitively applicable legislation §6 if the person does not inform the institution of the MS of residence (see par §1), this institution will follows at its own initiative the process to determine the applicable legislation in accordance with the situation of the person concerned.</p>
<p>IR Article 17 contract staff of the European Community : the authorities empowered to hire the agent shall inform the institution designated in the MS for whose legislation the person has opted.</p>	
	<p>IR Art 19 §1 "The competent institution of the MS whose legislation becomes applicable ... shall inform the person concerned and where appropriate, his employer of the obligation laid down in that legislation. It shall provide them with the necessary assistance to complete the formalities required by that legislation".</p> <p>§2 At the request of the person concerned or the employer, the competent institution ... shall provide an attestation that such legislation is applicable ..."</p>
<p>IR Art 21 specific obligation on the employer, who does not have a place of business in the MS whose legislation applies, to inform the competent institution (the employee agrees to represent the employer and fulfil its obligations)</p>	

Sickness, maternity and equivalent paternity benefits	
Citizen, employee, self- employed, employer	Institutions, authorities and CA
	<i>IR Art 22 §1 the competent authorities or institutions shall ensure that any necessary information is made available to insured persons regarding the procedures and conditions for the granting of benefits in kind where such benefits are received in the territory of a MS ...</i>
	<i>IR Article 24 "the rights to benefits in kind in the MS of residence shall be certified by a document issued by the competent institution upon request of the insured person "</i>
	<i>IR Article 31 §1 The competent institution shall inform the person concerned of the provision contained in Article 34 of the basic Regulation regarding the prevention of overlapping of benefits</i>

Invalidity benefits and old age and survivors pensions

Citizen, employee, self- employed, employer	Institutions, authorities and CA
<p>IR Art.45 §6 By way of derogation from paragraph 5, if the claimant does not, despite having been asked to do so, notify the fact that he has been employed or has resided in other Member States, the date on which the claimant completes his initial claim or submits a new claim for his missing periods of employment or/and residence in a Member State shall be considered as the date of submission of the claim to the institution applying the legislation in question, subject to more favourable provisions of that legislation.</p>	<p>IR Art.45 §6 By way of derogation from paragraph 5, if the claimant does not, despite having been asked to do so, notify the fact that he has been employed or has resided in other Member States, the date on which the claimant completes his initial claim or submits a new claim for his missing periods of employment or/and residence in a Member State shall be considered as the date of submission of the claim to the institution applying the legislation in question, subject to more favourable provisions of that legislation.</p>
<p>IR Art.46 §1 The claim shall be submitted by the claimant in accordance with the provisions of the legislation applied by the institution referred to in Article 45(1) or (4) of the implementing Regulation and be accompanied by the supporting documents required by that legislation. In particular, the claimant shall supply all available relevant information and supporting documents relating to periods of insurance (institutions, identification numbers), employment (employers) or self-employment (nature and place of activity) and residence (addresses) which may have been completed under other legislation, as well as the length of those periods</p>	<p>IR Art 46 §2 situations where a claimant requests deferment of the award of an old age benefit under the legislation of two or more MS "In order to enable the claimant to exercise that right, the institution concerned shall upon request of the claimant, notify him of all the information available to them so he can assess the consequences of concurrent or successive awards of benefits which he might claim."</p>
	<p>IR Art.47 §1 concerning <u>the contact institution</u> "In addition to investigating the claim for benefits under the legislation which it applies, this institution shall, in its capacity as contact institution, promote the exchange of data, the communication of decisions and the operations necessary for the investigation of the claim by the institutions concerned, and supply the claimant, upon request, with any information relevant to the Community aspects of the investigation and keep him/her informed of its progress."</p>

	<p>IR Art.48 §1 Each institution shall notify the claimant of the decision it has taken in accordance with the applicable legislation. Each decision shall specify the remedies and periods allowed for appeals. Once the contact institution has been notified of all decisions taken by each institution, it shall send the claimant and the other institutions concerned a summary of those decisions. A model summary shall be drawn up by the Administrative Commission. The summary shall be sent to the claimant in the language of the institution or, at the request of the claimant, in any language of his choice recognised as an official language of the Community institutions in accordance with Article 290 of the Treaty</p>
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Unemployment benefits	
Citizen, employee, self- employed, employer	Institutions, authorities and CA
<p>IR Art 55 §1 <i>the unemployed person going to another MS shall inform the competent institution prior to his departure</i> and request a document certifying that he retains entitlement to benefits....</p>	<p>IR Art 55 §1 <i>that institution shall inform the person concerned of his obligation and shall provide a document</i> which shall include the following information...</p>
	<p>IR Article 55 §3 <i>the employment services</i> in the MS to which the unemployed person has gone to seek employment shall inform the unemployed person of his obligations</p>
<p>IR Article 56 §1 the unemployed person who decides to make him available to the employment services where he was last employed, he shall inform the institution and the employment services of the MS of his place of residence.</p>	

Family benefits	
Citizen, employee, self- employed, employer	Institutions, authorities and CA
	<p>Article 60 IR §2, 3 information of the applicant about the differential supplement or priority rules</p>

HM 29/09/2009