



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 20 July 2009 (22.07)
(OR. fr)**

**Interinstitutional File:
2006/0006 (COD)**

**11162/09
ADD 1**

**CODEC 874
SOC 405**

ADDENDUM TO "I/A" ITEM NOTE

from : General Secretariat of the Council
to : COREPER/COUNCIL

No. Cion 5896/06 SOC 44 CODEC 93
prop.:

Subject : Proposal for a Regulation of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems [**second reading**]
- Approval of the European Parliament's amendments (**LA + S**)
Statements

I. STATEMENT BY THE COUNCIL AD TITLE II

The Council considers that, where, under Title II of the draft implementing Regulation, information has to be made available, it is to be understood that this information will be provided without delay at the request of the institution of the Member State concerned and not automatically.

II. STATEMENT BY THE COUNCIL AD ARTICLE 16

In relation to Article 16, the Council considers that this provision does not apply in cases where an activity exercised in another Member State is considered to be marginal within the meaning of Article 14(5)(b).

III. STATEMENTS BY THE SPANISH DELEGATION

1. ad Article 25(5), (6) and (7)

Spain considers that Article 25(5), (6) and (7) of the Common Position is related to Article 19 of Regulation (EC) No 883/2004 and has to be understood and interpreted in this way. Therefore, bearing in mind that the Spanish Public Health Services, according to Spanish legislation, do not refund, except in exceptional cases of vital emergency, treatments provided by private health institutions, the Spanish Social Security Administrations will apply paragraph 7 and will not be able to provide national reimbursement rates in these cases.

For treatments provided by doctors and hospitals depending on public institutions, taking into account that the sharing of costs by the insured person does not exist, the invoices that are issued by public doctors and hospitals correspond to the actual amount referred to in Article 62 of the Common Position.

2. ad Article 30

Spain considers that Article 30 of this Regulation should have included paragraph 2 of the Ruling on the case C-50/05, Maija T I Nikula that establishes: "*However, Article 39 EC precludes the amount of pensions received from institutions of another Member State from being taken into account if contributions have already been paid in that other State out of income from work received in that State. It is for the persons concerned to prove that the earlier contributions were in fact paid.*".

Trying to obtain the necessary consensus and unanimity, the Spanish delegation can accept not including a specific paragraph in Article 30 which would refer to paragraph 2 of this ruling, convinced that, in any case, the content of this judgment will continue to be applicable and therefore institutions and beneficiaries could require its implementation. In this sense, the Spanish Administration reserves its right to support the claims of the eventual beneficiaries of this ruling. Furthermore, the Spanish Administration is committed, in the event that a Member State applies Article 30 of Regulation (EC) No 883/2004 and consequently deducts contributions from the Spanish pensions in order to finance their sickness insurance, to reach agreements and arrangements with this Member State for assuming and transferring directly the amounts of contributions. The intention of the Spanish Administration is to avoid financial losses to the detriment of migrant workers who are beneficiaries of Spanish pensions and who reside in the territory of other Member States which provide for the collection of contributions on these pensions.

IV. STATEMENT BY THE COUNCIL AD ARTICLE 33

With regard to Article 33, the Council considers that :

- the document to be established by the Administrative Commission for the determination of the legislation applicable should clearly require that an indication be given with regard to the worker's entitlement to any benefits in respect of accidents at work and occupational diseases;
- as in the case of Article 36(1) and (2) of the basic Regulation, paragraphs (1) and (2) of Article 33 should be considered jointly.

V. **JOINT STATEMENT BY THE AUSTRIAN, GERMAN, ITALIAN, NETHERLANDS AND SPANISH DELEGATIONS AD ARTICLES 45(6) AND 46(2) AND (3)**

While recognising the importance that the implementing Regulation

- does not restrict the rights of a person to defer a pension under the legislation of one or more Member States (Article 46(2) of the Common Position) or to withdraw a claim for a pension not in all Member States involved (Article 46(3) of the Common Position); or
- does not oblige Member States to grant retroactive pensions if the person concerned withholds information on periods completed in that state when claiming a pension of other Member States (Article 45(6) of the Common Position);

the agreement of Austria, Germany, Italy, the Netherlands and Spain to these provisions is subject to the understanding that this is no obstacle to the application of national legislation or legal principles due to which a renunciation of rights which could be claimed cannot lead to a burden for institutions granting social security benefits or institutions granting income support or any kind of social assistance.

VI. **STATEMENT BY THE COUNCIL AD ARTICLE 54**

The Council considers that further examination by the Administrative Commission will be needed in order to settle practical implementing measures, namely with respect to the technical aspects of the calculation of unemployment benefits for self-employed persons.

VII. STATEMENT BY THE COUNCIL AD ARTICLE 55(4)

Article 55(4) provides for a requirement that the institution of the Member State to which an unemployed person has gone to seek work should provide monthly information upon request. The Council considers that there is no need to specify in the text that the information requested includes details as to whether the unemployed person is actively seeking work, since the competent institution in the Member State where the unemployed person has gone to seek work will treat that person in the same way as an unemployed person under its own legislation, ensuring that the unemployed person is subject to the same obligations and checking procedures. In addition, it is to be understood that the non-provision of information on a monthly basis by the institution of the Member State where the unemployed person seeks work does not, in itself, lead to the suspension of the award of benefits by the competent Member State.

VIII. STATEMENT BY THE COUNCIL AD ARTICLE 59

The Council considers that it is to be understood that Article 59 covers changes of both competence and the order of priority right between Member States.

IX. STATEMENT BY THE COUNCIL AD ARTICLE 60

The Council considers that, with respect to Article 60 and in relation to the priority rules referred to in Article 68 of the basic Regulation, it should be made clear that for the purpose of the application of Article 68 "rights available on the basis of an activity as an employed or self-employed person" means rights under the legislation of a Member State whose legislation applies under Title II of the basic Regulation because of the exercise of an activity as an employed or self-employed person, including the cases mentioned under Article 11(2) of the basic Regulation.

X. STATEMENT BY THE COUNCIL AD ARTICLE 64

With respect to Article 64, the Council considers that, for the calculation of the annual average cost per person in each of the age groups listed in that Article, a Member State may determine aggregate averages on the basis of their statistical data where these data are broken down into smaller age groups.

XI. STATEMENT BY THE COUNCIL AD ARTICLE 70

With respect to Article 70, the Council considers that further examination by the Administrative Commission will be needed with regard to reimbursement methods. No later than five years after the entry into force of this Regulation, this provision should therefore be evaluated in order to examine if it results in an equal and balanced sharing of costs between Member States. In addition, the Council agrees that this Article has no impact on the content of Article 86 of the basic Regulation.

XII. STATEMENT BY THE COUNCIL AD ARTICLE 72(3)

The Council agrees that the obligation to transfer without delay should not apply to small amounts in order to avoid disproportionate costs.

XIII. STATEMENT BY THE COMMISSION WITH REGARD TO DATA FORWARDED THROUGH THE EESSI (ELECTRONIC EXCHANGE OF SOCIAL SECURITY INFORMATION) NETWORK

The data forwarded through EESSI (Electronic Exchange of Social Security Information) network, pertaining to social security coordination laid down by Regulation 883/2004 and its implementing regulation is solely exchanged between competent institutions and for the purpose of the aforementioned Regulations.

The Commission recalls that currently according to Regulations 1408/71 and 574/72 the same data are exchanged between competent institutions mostly using paper forms. The directory doesn't contain sensitive data as it provides details of the institutions dealing with all social security branches as it now exists for sickness institutions for the purpose of the European Health Insurance Card (EHIC).

The Commission reaffirms that the data that are forwarded through the EESSI network is encrypted during transit between the Access Points. The Commission has no access to the data exchanged via the EESSI network for other purposes than for guaranteeing, from a technical point of view, the proper operational functioning, the maintenance and the development of the EESSI network.
