



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.06.2003

COM(2003)378 final

2003/0138 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community, and Council Regulation (EEC) No 574/72 fixing the procedure for implementing Regulation (EEC) No 1408/71, in respect of the alignment of rights and the simplification of procedures

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

The Barcelona European Council, held on 15 and 16 March 2002, decided that a European health insurance card would replace the current paper forms needed for medical treatment in another Member State. The Commission was to present a proposal to that effect before the spring European Council in 2003. This card will simplify procedures, but will not change existing rights and obligations.

On 17 February 2003, therefore, the Commission presented a communication on the introduction of a European health insurance card¹ (“European card”) proposing a scenario for the gradual replacement by the European card of the forms currently needed for health treatment during a temporary stay in a Member State other than the competent State.

Two measures are recommended in order to enable the replacement of the forms by the European card and in order for the introduction of this card to truly simplify procedures.

Firstly, the rights of all groups of insured persons during a temporary stay in a Member State other than the competent State must be brought into line to enable all persons covered by the Regulation to receive any benefits in kind that may become necessary for medical reasons during a stay in another Member State.

Secondly, the formalities for patients who need care in the State of stay must be simplified, specifically by doing away with the obligation to contact the social security institution of the place of stay before seeing a care provider, thus allowing them direct access to care providers.

Finally, a provision must be drawn up that defines the relationship between social security institutions and users.

2. COMMENTS ON THE ARTICLES

2.1. Article 1

Amendment of Regulation (EEC) No 1408/71

2.1.1. Amendment of Article 22

The provisions of the Regulation currently provide for access to different types of health care during a temporary stay in a Member State other than the competent State or State of residence, depending on the category to which the insured person belongs. Employed or self-employed persons and members of their families can receive immediately necessary benefits in kind during a stay in another Member State. Pensioners and members of their families can receive necessary benefits in kind (not only in an emergency) during a stay in a Member State other than the State of residence. Persons employed and staying in a Member State other than the competent State (posted workers, international transporters, etc.) and members of their families can receive necessary benefits in kind in the State where the activity is performed.

¹ COM(2003)73final.

Unemployed persons who travel to another Member State to look for employment can receive necessary benefits in kind in this Member State.

Different forms have been created in order to enable persons belonging to these different categories to claim these benefits in kind during their temporary stay.

In order to guarantee equal treatment for all of these categories of insured persons and facilitate the replacement of the forms by the card, the rights of all of the categories of person covered by the Regulation must be brought into line.

Article 22 (1) (a) must therefore be amended in order to enable employed or self-employed persons and members of their families to receive benefits in kind that become necessary for medical reasons during a stay in another Member State.

For certain types of healthcare, dialysis for example, it is vital for the patient that continuous treatment be available when he is staying in another Member State. A new paragraph (1a) is therefore added to Article 22 allowing the Administrative Commission referred to in Article 80 to draw up a list of the benefits in kind which, for practical reasons, require a prior agreement between the person concerned and the healthcare institution so that these benefits can be provided during the stay.

2.1.2. Deletion of Article 22b

Article 22b is intended to enable persons who perform their activity in a Member State other than the competent State (or on board a vessel flying the flag of a Member State other than the competent State) and who are staying in the State where the activity is performed (or whose flag the vessel aboard which the worker is employed is flying), and members of their families, to receive necessary benefits in kind during their stay.

Given that the amendment to Article 22(1)a entitles employed and self-employed persons to receive benefits in kind that become necessary for medical reasons during a stay on the territory of a Member State other than the competent State, Article 22b becomes superfluous and may be deleted.

2.1.3. Amendments to Article 25 and 31

In the interests of legal clarity and in order to demonstrate that the extent of entitlement to benefits in kind in cases of temporary stay is identical for all of the categories of persons covered by the regulation, the text of Articles 25 (unemployed persons) and 31 (pensioners) should be brought into line with the text of Article 22.

2.1.4. Deletion of Article 34b

Article 34a of the Regulation states that Article 22(1)(a) applies to students by analogy, which implies that these students are entitled to immediately necessary benefits in kind during a stay in a Member State other than the competent State. Article 34b as it stands is intended to enable students and members of their families staying in a Member State other than the competent State in order to pursue a course of study to receive necessary benefits in kind (not only in an emergency) during their stay on the territory of this Member State.

In the light of the amendment to Article 22 (1)(a) (to which reference is made in Article 34a) students may receive benefits in kind that become necessary for medical reasons during a stay

on the territory of a Member State other than the competent State. Article 34b therefore becomes superfluous and may be deleted.

2.1.5. Insertion of Article 84a

In order to improve the effectiveness of the application of the Regulation it is useful to clearly define the relationship between social security institutions on the one hand and the persons covered by the Regulation on the other. Sincere co-operation between these two parties not only increases the effective implementation of the Regulation but also ensures that persons covered can fully enjoy the rights conferred on them by the Regulation. This co-operation would make relations between the two parties smoother.

Provision should therefore be made for the institutions and the insured persons to keep each other informed of any changes that could affect entitlement to benefits. For example, as far as institutions are concerned, any amendments to the legislation that could have implications for the status of the person involved, and as far as insured persons are concerned, any cessation or change of the employment or self-employment of the person concerned, any transfer of the residence or stay of that person or of a member of his family, or changes to family circumstances. Failure to respect this obligation to provide information could mean those involved being subject to penalties. The Member States could determine the penalties in accordance with their national legislation, while respecting the fundamental principle of proportionality. In accordance with the Court case-law in the Camarotto and Vignone cases (C-52/99 and C-53/99, ruling of 22.2.2001), these penalties must be equivalent to those applicable to similar situations under domestic law and must not make it impossible or excessively difficult in practice for claimants to exercise the rights conferred on them by the Regulation.

In order to enable them to fully enjoy the advantages associated with the coordination of social security systems, the institutions are for their part required to offer insured persons all necessary assistance. If the implementation of the provisions of the Regulation proves complicated the institution in question may approach the Administrative Commission for advice through its government's representative.

2.2. Second Article

Amendment of Regulation (EEC) No 574/72

2.2.1. Amendment of Articles 2 and 117

Article 2(1) concerns the models of certificates, certified statements, declarations, applications and other documents necessary for the application of Regulation (EEC) No 1408/71 and its implementing Regulation. To enable the Administrative Commission to keep up with technical developments, this list should be replaced by the single concept of "document" as defined in Article 3, subparagraph a) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, namely: "*any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording)*[...]". This concept would allow the E forms to be replaced by cards containing visible data and by all forms of smart card.

In the interests of legal clarity, the second subparagraph of paragraph (1) should be deleted. The objective of coordinating social security systems is to make it easier to switch from one

social security system to another in the context of the free movement of workers. It is therefore important that the documents submitted to enable this switch to another social security system follow a single and thus directly recognisable model. However, Member States have the option of reaching mutual administrative agreements whereby not all the fields on the forms have to be filled in, but the model remains unchanged. In this case, the opinion of the Administrative Commission is not necessary.

Article 117 should also be amended by replacing the words “certificates, certified statements, declarations, applications and other documents” with the single concept of “documents”.

2.2.2. Amendment of Article 17

In the interests of simplification, paragraph (6) of this Article, which obliges the institution of the place of residence, in the event of hospitalisation, to inform the competent institution of the date of admission to hospital and the probable duration of hospitalisation, should be deleted. In practice, the hospitalisation notification is of little use and is increasingly rarely provided.

Also in the interests of simplification, paragraph (7), which obliges the institution of the place of residence to notify the competent institution in the event of granting any major benefits in kind, can be deleted.

Following the deletion of paragraphs (6) and (7) of Article 17, Articles 19a (2), 21(2), 22(2), 23(2), 26(3) and 31(2) will need to be amended.

2.2.3. Deletion of Article 20 and amendment of Articles 21, 26 and 31

Following the introduction of the European card and the alignment of the rights of all categories of insured persons, Article 20, which covers only persons employed in international transport, is no longer necessary and can be deleted. In practice, persons employed in international transport will have a European card issued by the institution and conferring entitlement to any necessary benefits in kind during a temporary stay in a Member State other than the competent State whatever the purpose of this stay.

Articles 21, 26 and 31 state that the individual must submit to the institution of the place of stay a certified statement stating that he is entitled to benefits in kind.

This obligation to contact the institution of the place of stay before having access to a care provider seems unrealistic and disproportionate particularly in the case of a short stay in another Member State and could constitute a real obstacle to free movement of persons particularly in that access to benefits in kind could be refused if the insured person had not previously submitted the required form to the institution of the place of stay. Moreover, insured persons are frequently unaware of this obligation and may quite reasonably believe that merely possessing a form guarantees access to benefits in kind. Furthermore, many Member States have stopped penalising failure to respect this procedure.

In addition, the Court of Justice stated in its judgment of 25 February 2003 in the IKA case (C-326/00, not yet published) that *it should however be noted that the possible absence of such a spontaneous submission would not have major implications.* (point 47).

Furthermore, in the context of the introduction of the European card, the Barcelona European Council of 15-16 March 2002 decided that procedures should be simplified in order to facilitate access to healthcare.

The title and first paragraph of Article 21, the first paragraph of Article 26 and the first paragraph of Article 31 should thus be reformulated to enable the individuals to contact healthcare providers directly in order to have access to benefits in kind based on a document proving their entitlement, namely the European card. Nonetheless, if the insured person has lost or forgotten this document he should be given the possibility of contacting the institution of the place of stay so that the latter can request an equivalent certified statement from the competent institution.

Since the European card only concerns benefits in kind, the existing procedure should continue to apply for cash benefits. A new paragraph (1a) must therefore be added to Article 26.

2.3. Third article

This article concerns the date on which the Regulation will enter into force.

3. APPLICATION IN THE COUNTRIES OF THE EUROPEAN ECONOMIC AREA AND THE SWISS CONFEDERATION

The free movement of persons is one of the objectives and principles of the Agreement on the European Economic Area (EEA) which came into force on 1 January 1994². In Chapter 1 of the third part, concerning the free movement of persons, services and capital, Articles 28, 29 and 30 deal with the free movement of employed and self-employed workers. Article 29, more specifically, restates the principles listed in Article 42 of the EC Treaty in respect of social security for persons moving within the Community. Consequently this proposal for a Regulation should, if it is adopted, apply with respect to the EEA member countries.

The agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, on the free movement of persons, which came into force on 1 June 2002³, contains an Article 8 which restates the principles listed in Article 42 of the EC Treaty in respect of social security for persons moving within the Community. Consequently this proposal for a Regulation should, if it is adopted, apply with respect to the Swiss Confederation.

² OJ L 1 of 3.1.1994, as amended by the Decision of the EEA Joint Committee No 7/94 of 21.3.1994 (OJ L 160 of 28.6.1994).

³ OJ L 114 of 30.4.2002.

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(Text with relevance for the EEA and for Switzerland)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 42 and 308 thereof,

Having regard to the proposal from the Commission⁴,

Having regard to the opinion of the European Economic and Social Committee⁵,

Having regard to the opinion of the Committee of the Regions⁶,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁷,

Whereas:

- (1) In the words of the conclusions of the Barcelona European Council of 15 and 16 March 2002, “a European Health Insurance Card will replace the current paper forms needed for health treatment in another Member State. The Commission will present a proposal to that effect before the spring European Council in 2003. Such a card will simplify procedures, but will not change existing rights and obligations”.
- (2) To attain and even surpass this objective by optimising the advantages offered by the European card for insured persons and institutions, certain changes to Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, self-employed persons and their families moving within the Community⁸ are necessary.

⁴ OJ C [...] of [...], p [...].

⁵ OJ C [...] of [...], p [...].

⁶ OJ C [...] of [...], p [...].

⁷ OJ C [...] of [...], p [...].

⁸ OJ L 149 of 5.7.1971, p. 2. Regulation updated by Regulation (EC) No 118/97 of the Council (OJ L 28 of 30.1.1997, p. 1) and last amended by Regulation (EC) No 1386/2001 of the European Parliament and of the Council (OJ L 187 of 10.7.2001, p. 1).

- (3) The Regulation currently provides for access to different types of health care during a temporary stay in a Member State other than the competent State or the State of residence, depending on the category to which the insured persons belong, making a distinction between “immediately necessary care” and “necessary care”. For greater protection for insured persons, provision should be made to bring into line the rights of all insured persons in respect of access to benefits in kind during a temporary stay in a Member State other than the State in which he is insured or resident.
- (4) For certain types of continuous treatment requiring a specific infrastructure, such as dialysis, it is essential for the patient that the treatment be available during his stay in another Member State; in this connection, the Administrative Commission draws up a list of the benefits in kind that are subject to a prior agreement between the insured person and the institution providing the treatment in order to guarantee the availability of the care and the insured person’s freedom to stay temporarily in another Member State.
- (5) Access to benefits in kind during a temporary stay in another Member State is granted, in principle, on presentation of the appropriate form provided for by Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community⁹. Certain Member states still require – formally, even if not in practice – the completion of extra formalities on arrival in their territory. These requirements, specifically the obligation to submit systematically and in advance a certified statement to the institution of the place of stay certifying entitlement to benefits in kind, appear today to be needlessly restrictive and of a nature to hamper the free movement of the persons concerned.
- (6) For the effective and fair implementation of the Regulation, co-operation between the institutions and the persons covered by the Regulation is indispensable. This co-operation presupposes, on the part of both the institutions and the insured persons, full information on any changes that could affect entitlement to benefits, such as any cessation or change of the employment or self-employment of the insured person, any transfer of the residence or stay of that person or of a member of his family, changes to the family situation, or amendments to the legislation.
- (7) Given the complexity of certain individual situations related to the movement of persons, provision must be made for a mechanism allowing institutions to rule on individual cases in which differing interpretations of Regulation (EEC) No 1408/71 and its implementing regulation could jeopardise the rights of the person concerned. If a solution respecting all of the rights of the individual cannot be found, provision must be made for the option of referring the matter to the Administrative Commission.

⁹ OJ L 74 of 27.3.1971, p. 1. Regulation updated by Regulation (EC) No 1290/97 of the Council (OJ L 176 of 4.7.1997, p. 1) and last amended by Regulation (EC) No 1386/2001 of the European Parliament and of the Council (OJ L 187 of 10.7.2001, p. 1).

- (8) In order to bring the Regulation into line with developments in data processing, of which the European card is an essential element as it is intended in the long term to constitute an electronic medium readable in all Member States, the wording of Articles 2 and 117 of Regulation (EEC) No 574/72 must be amended to cover the concept of “document” as “any content whatever its medium, written on paper or stored in electronic form or as a sound, visual or audiovisual recording”,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1408/71 shall be amended as follows:

- 1) Article 22 is amended as follows:

- a) Sub-paragraph (1) (a) is replaced by the following:

“a) for which benefits in kind are necessary for medical reasons during a stay on the territory of another Member State, taking account of the nature of the benefits and the expected duration of the stay.”

- b) The following new paragraph (1a) is inserted:

“1a. For practical reasons, certain benefits in kind must, in order to be granted during a stay in another Member State, be the subject of a prior agreement between the person concerned and the institution providing the care. The Administrative Commission shall draw up the list of these benefits.”

- c) The first sub-paragraph (i) in paragraph (3) is replaced by the following:

“The provisions of paragraphs (1), (1a) and (2) shall apply by analogy to members of the family of an employed or self-employed person.”

- 2) Article 22b is deleted.

- 3) In Article 25, paragraph (1) is replaced by the following:

“1. For the period of time referred to in Article 69(1)(c), an employed or self-employed person who is unemployed and who is subject to the provisions of Article 69(1) or article 71(1)(b)(ii), second sentence, and who satisfies the conditions laid down in the legislation of the competent State for entitlement to benefits in kind and cash benefits, taking account where necessary of the provisions of article 18, shall receive:

- a) benefits in kind that become necessary for this person for medical reasons during his stay on the territory of the Member State where he is seeking employment, taking account of the nature of the benefits and the expected duration of the stay. These benefits in kind are provided on behalf of the competent institution by the institution of the Member State in which he is seeking employment, pursuant to the provisions of the legislation applied by the latter institution, as if he were insured with it;

b) cash benefits provided by the competent institution in accordance with the provisions of the legislation which it administers. However, by agreement between the competent institution and the institution of the Member State in which the unemployed person seeks employment, benefits may be provided by the latter institution on behalf of the former institution in accordance with the provisions of the legislation of the competent State. Unemployment benefits under Article 69 (1) shall not be granted for the period during which cash benefits are received.”

4) Article 31 is replaced by the following:

“Article 31

Stay by pensioner and/or members of his family in a State other than the State in which they reside

A pensioner entitled to a pension or pensions under the legislation of one Member State or to pensions under the legislation of two or more Member States who is entitled to benefits under the legislation of one of those States shall, with members of his family who are staying in the territory of a Member State other than the one in which they reside, receive:

a) benefits in kind that are necessary for medical reasons during a stay on the territory of the Member State other than the state of residence, taking account of the nature of the benefits and the expected duration of the stay. These benefits in kind are provided by the institution of the Member State of stay, pursuant to the provisions of the legislation that it administers, on behalf of the competent institution of the place of residence of the pensioner or of the members of his family;

b) cash benefits provided, where appropriate, by the competent institution as determined by the provisions of Article 27 or 28(2), in accordance with the provisions of the legislation which it administers. However, upon agreement between the competent institution and the institution of the place of stay, these benefits may be provided by the latter institution on behalf of the former, in accordance with the provisions of the legislation of the competent State.”

5) Article 34b is deleted.

6) Article 84a is inserted as follows:

“Article 84a

Relations between the institutions and the persons covered by this Regulation.

1. The institutions and persons covered by this Regulation have a duty of mutual information and co-operation to ensure the correct implementation of this Regulation.

The institutions, in accordance with the principle of good administration, shall respond to all queries within a reasonable period of time. They shall notify the persons concerned of any information that could enable them to enjoy the rights conferred on them by this Regulation.

The persons concerned must inform their competent institution/institutions as soon as possible of any changes to their personal or family situation.

2. Failure to respect the obligation of information referred to in paragraph (1), third subparagraph, may result in the application of the relevant penalties in accordance with national law. Nevertheless, these penalties must be equivalent to those applicable to similar situations under domestic law and must not make it impossible or excessively difficult in practice for claimants to exercise the rights conferred on them by this Regulation.

3. In the event of difficulties in the interpretation or application of this Regulation which could jeopardise the rights of a person covered by this Regulation, the institution of the place of residence of the person involved must contact the institution/institutions of the Member State or Member States concerned. If a solution cannot be found within a reasonable period, the Administrative Commission may be called on to intervene.

Article 2

Regulation (EEC) No 574/72 shall be amended as follows:

1) In Article 2, paragraph (1) is replaced by the following:

“1. Models of the documents necessary for the application of the Regulation and of the implementing Regulation shall be drawn up by the Administrative Commission.

These documents may be transferred between institutions either in paper form or by means of telematic services as standardised electronic messages in accordance with the provisions of Title VI(a). The exchange of information by means of telematic services is subject to an agreement between the competent authorities of the sending Member State and the destination Member State.”

2) In Article 17, paragraphs (6) and (7) shall be deleted.

3) In Article 19a, paragraph (2) shall be replaced by the following:

“The provisions of Article 17(9) of the implementing Regulation shall apply by analogy.”

4) Article 20 shall be deleted.

5) Article 21 shall be replaced by the following:

“Article 21

Benefits in kind in the case of a stay in a Member State other than the competent State

“1. In order to receive benefits in kind under Article 22(1)(a)(i) of the Regulation, an employed or self-employed person shall submit to the institution of the place of stay a certified statement issued by the competent institution stating that he is entitled to benefits in kind. This document shall be drawn up in accordance with the provisions of Article 2. If the person concerned is not able to submit the said document, he shall contact the institution of the place of stay which shall request from the competent institution a certified statement certifying that the person concerned is entitled to benefits in kind.

2. The provisions of Article 17(9) of the implementing Regulation shall apply by analogy.”

6) In Article 22, paragraph (2) shall be replaced by the following:

“2. The provisions of Article 17(9) of the implementing Regulation shall apply by analogy.”

7) In Article 23, the second paragraph shall be replaced by the following:

“However, in the cases referred to in the second subparagraph of Article 22 (3) of the Regulation, the institution of the place of residence and the legislation of the country of residence of the members of the family shall be considered, respectively, as the competent institution and as the legislation of the competent State for the purposes of Articles 21 and 22 of the implementing Regulation.”

8) Article 26 is amended as follows

a) Paragraph (1) is replaced by the following:

“1. In order to receive benefits in kind under Article 25 (1) of the Regulation, an unemployed person or the family member accompanying him shall submit to the care provider a document issued by the competent institution certifying that he is entitled to benefits in kind. This document shall be drawn up in accordance with the provisions of Article 2. If the person concerned is not able to submit the said document, he shall contact the institution of the place of stay which shall request from the competent institution a certified statement certifying that the person concerned is entitled to benefits in kind.”

b) The following paragraph (1)(a) is inserted:

“1(a) In order to receive benefits in cash under Article 25 (1) of the Regulation for himself and for the members of his family, an unemployed person shall submit to the sickness insurance institution of the place where he has gone a certified statement for which, prior to his departure, he should have applied to the competent sickness insurance institution. If the unemployed person does not submit the said certified statement, the institution of the place to which he has gone shall obtain it from the competent institution. This certified statement must testify the existence of the right to the said benefits under the conditions set out in Article 69 (1) (a) of the Regulation; indicate the duration of such right taking into account the provisions of Article 69 (1) (c) of the Regulation; and specify the amount of cash benefits to be provided, where appropriate, by way of sickness insurance during the above mentioned period, in the case of incapacity for work or hospitalisation.”

c) Paragraph (3) is replaced by the following:

“3. The provisions of Article 17(9) of the implementing Regulation shall apply by analogy.”

9) Article 31 is replaced by the following:

“Article 31

Benefits in kind for pensioners and members of their families staying in a Member State other than the one in which they are resident

1. In order to receive benefits in kind under Article 31 of the Regulation, a pensioner shall submit to the care institution a certified statement testifying that he is entitled to the said benefits in kind. This document shall be drawn up in accordance with the provisions of Article 2. If the person concerned is not able to submit the said document, he shall contact the institution of the place of stay which shall request from the competent institution a certified statement testifying that the person concerned is entitled to benefits in kind.

2. The provisions of Article 17(9) of the implementing Regulation shall apply by analogy.

3. The provisions of paragraphs 1 and 2 shall apply by analogy in respect of the granting of benefits in kind to the members of the family covered by Article 31 of the Regulation. If these family members reside on the territory of a Member State other than that of the pensioner, the document referred to in paragraph 1 shall be issued by the institution of their place of residence.”

10) In Article 117, paragraph (1) shall be replaced by the following:

“1. Based on the research and proposals of the Technical Commission referred to in Article 117c of the implementing Regulation, the Administrative Commission shall adapt to the new data processing techniques the models of documents as well as the routing channels and the data transmission procedures necessary for applying the Regulation and its implementing Regulation.”

Article 3

This Regulation shall enter into force on the [...] day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [...]

For the European Parliament
The President

For the Council
The President