



European Economic and Social Committee

SOC/121
Updating Regulations 1408/71
and 574/72 – Social Security

Brussels, 29 October 2003

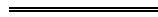
OPINION

of the European Economic and Social Committee

on the

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, self-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

(COM(2003) 378 final - 2003/0138 COD)



On 10 July 2003, the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

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, self-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 (COM(2003) 378 final - 2003/0138 COD).

The European Economic and Social Committee decided to appoint **Mr Peter Boldt** as rapporteur-general for its opinion.

At its 403rd plenary session on 29 and 30 October 2003 (meeting of 29 October), the European Economic and Social Committee adopted the following opinion with 71 votes in favour and two abstentions.

1. Introduction

1.1. Regulation 1408/71 has often been amended to reflect changes to Member State social security systems and to the case law of the European Court of Justice, which impacts on the future implementation of the regulation. In 1999, work began on reviewing the regulation in order to simplify and modernise it. The European Economic and Social Committee has commented on the proposed amendments in several opinions, including: "Amendments to Social Security – unemployment"¹, "Social Security – Application"², "Social Security when moving within the Community"³, "Extension of Social Security to non-EU nationals"⁴, "Application of Social Security systems to employed persons when moving within the Community"⁵ and "Social Security systems"⁶.

1.2. For reasons of consistency, amendments to Regulation 1408/71 need to be accompanied by amendments to Regulation 574/72, which covers application of the former.

1.3. In recent years, particular attention has been paid to facilitating the free movement of people within the Union. It is therefore extremely important that EU citizens can access without

1 OJ C 295, 7.10.1996

2 OJ C 89, 19.3.1997

3 OJ C 73, 9.3.1998

4 OJ C 157, 25.5.1998

5 OJ C 101, 12.4.1999

6 OJ C 367, 20.12.2000

undue difficulty the treatment they need during a temporary stay in a Member State other than their own.

1.4. Under the current wording of Regulation 1408/71, persons temporarily staying in a Member State other than their own shall be entitled, under the same conditions as the citizens of the Member State they are visiting, to "*immediately necessary care*" or "*necessary care*", depending on the reason for their temporary stay (whether they are on holiday, posted abroad by his employer, a student, jobseeker, or working in international road transport).

1.5. Access to treatment and reimbursement is currently guaranteed by a form that the insured obtains, on request, from the social security organisation in his country of origin. Various forms (E110, E111, E119 and E128) exist, depending on whether the insured is on holiday, posted abroad by his employer, a student, jobseeker, or working in international road transport.

1.6. In connection with approval of the action plan to remove obstacles to geographical mobility by 2005, the Barcelona European Council decided, in March 2002, to create a European health insurance card. The spring European Council in Brussels called for the necessary decisions to be taken to ensure that the card can be used as of summer 2004. The card "*will replace the current paper forms needed for medical treatment in another Member State*". The aim is to "*simplify procedures, [without changing] existing rights and obligations*". The proposal for a regulation is a response to the Barcelona and Brussels decisions.

2. Gist of the Commission proposal

2.1. The main objective of the proposal is to enable the adoption of a European health insurance card. An important aspect of the amendment is the proposal to harmonise the right to healthcare and to simplify access procedures.

2.2. Under the proposal, all groups of persons, whatever their situation, would be entitled to "medically necessary" care during a temporary stay in another Member State.

2.3. To this end, it lays down the provisions governing relations and cooperation between the institutions and persons covered by the regulation (Article 84a). The proposal for a new Article 84a covers the duty of mutual information and cooperation between individuals and the institutions. The current regulation only covers cooperation between the institutions in the various Member States.

2.4. In a proposed amendment to Regulation 547/72, the text will only refer to "documents" instead of models of certificates, certified statements, declarations, applications and other documents. This would allow the existing E forms to be replaced by the future health insurance card.

2.5. The Commission proposal to amend Regulations 1408/71 and 574/72 is, then, a continuation of the Commission Communication of 17 February 2003 (COM(2003) 73 final), and aims to provide the legal framework for the adoption of the European health insurance card in 2004.

3. **General comments**

3.1. The plan to introduce a European health insurance card will provide a real fillip for a Citizen's Europe. However, the plan is by no means simple, either technically or legally. The Member States use different criteria for establishing entitlement to treatment, and levels of preparation for switching to a single card vary.

3.2. The European Economic and Social Committee welcomes the proposal to introduce the same entitlement to "necessary care" for all categories of persons, which the EESC had called for in its Opinion on the "European health insurance card" of 18 June 2003.

3.3. European citizens' real prospects of moving within the European Union will be enhanced if the entitlement to medically necessary care also includes care requiring prior agreement. A list of such types of care should be drawn up without delay by the Administrative Commission on Social Security for Migrant Workers.

3.4. The European Economic and Social Committee, which supports the drive to secure a single card, is also aware of the difficulties posed by the very tight timetable for implementation of the reform, particularly since only some of the current Member States and a few of the new countries that are set to join the EU on 1 May 2004 will be in a position to introduce a European health insurance card by the proposed deadline.

3.5. Work on simplifying and comprehensively reforming Regulations 1408/71 and 574/72 is underway and it will not be facilitated by proposals for partial reforms to the regulations as the work proceeds.

4. **Specific comments**

4.1. The numbering of Article 1(1), covering the amendment of the current Article 22, is particularly complicated and would benefit from greater clarity.

4.2. The proposal for a new Article 84a improves implementation of the regulation by defining the respective duties of the institutions and of persons. However, the way the article is worded could make it difficult to give a clear interpretation of its scope. In particular, Article 84a (1)(3) is too general on the obligation to report any changes to personal or family

situation. It should be restricted to the obligation to report any relevant changes. Similarly, in Article 84a(2), "proportionate"* is left completely open to interpretation.

4.3. The objective of simplifying procedures cannot be achieved immediately after the proposal has been adopted. Not all Member States are ready to introduce the card without a (relatively long) transitional period, during which the old and new procedures would run in parallel. This could create a certain confusion and make increased demands for information on both the competent authorities and citizens.

4.4. There will be considerable demands for information on all bodies within the EU that are likely to come into contact with the card. Not only will forms and a European card exist side by side, but each Member State will be able to decide on the detailed rules for the card. The card could be a separate European card or it could be a joint national/European card. The Administrative Commission decides on the information the card is to contain.

4.5. Since the intention is to secure uniform entitlement for all users, including during the transitional period, and to simplify the procedure for seeking treatment regardless of whether the patient has the old form or the new card, the Administrative Commission must waste no time in drafting the necessary instructions/regulations for dealing with the different documents during the transitional period.

4.6. The regulation only addresses the risk of using false cards in the proposal for a new Article 84a). There could be major risks of intentional or unintentional misuse, particularly during the transitional period, and this should be borne in mind in the Member States.

4.7. Article 2(1) states that documents can be transmitted in paper form or electronically. This would, however, require agreement between the authorities in the sender- and destination Member States, i.e. many hundreds of bilateral agreements. Since an arrangement of this kind would probably involve a lot of red tape, a solution that does not require separate bilateral agreements for transmitting information electronically should be found as soon as possible under the TESS programme (Telematics in Social Security).

5. Conclusions

5.1. The Committee welcomes the proposed amendment of both regulations and assumes that future amendments to Regulations 1408/71 and 574/72 can be included in the major overhaul of these regulations.

*

Translator's Note: EN version of COM doc has "relevant penalties in accordance with national law". All other language versions have "proportionate"

5.2. Under the co-decision procedure, the Committee, as a consultative body, should have the opportunity to comment on any changes made to the texts during the decision-making procedure.

Brussels, 29 October 2003.

The President
of the
European Economic and Social Committee

The Secretary-General
of the
European Economic and Social Committee

Roger Briesch

Patrick Venturini
