

## I

(Acts whose publication is obligatory)

**REGULATION (EC) No 631/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 31 March 2004**

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

(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 Conclusions of the Barcelona European Council of 15 and 16 March 2002 concerning the creation of a European Health Insurance Card,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(2)</sup>,

Whereas:

- (1) According to the conclusions of the Barcelona European Council of 15 and 16 March 2002 a European Health Insurance Card would replace the current paper forms needed for health treatment in another Member State. The Commission was called on to present a proposal to that effect before the Spring European Council of 2003. Such a card would simplify procedures.
- (2) To attain and even surpass this objective by optimising the advantages offered by the European Health Insurance 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 Community <sup>(3)</sup> are necessary.

- (3) Regulation (EEC) No 1408/71 currently provides for access to different types of benefits in kind 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 person belongs, and draws 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 the person concerned is insured or resident. In these conditions, all insured persons shall be entitled to the benefits in kind which become necessary on medical grounds during their stay in the territory of another Member State, taking account of the nature of the benefits and the expected length of the stay.

- (4) It is essential that all measures be taken to ensure the proper implementation of Article 22(1)(a)(i) in all Member States with particular reference to care providers.

- (5) 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 establishes a list of the benefits in kind that are subject to 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.

<sup>(1)</sup> OJ C 32, 5.2.2004, p. 78.

<sup>(2)</sup> Opinion of the European Parliament of 4 December 2003 and Decision of the Council of 4 March 2004.

<sup>(3)</sup> OJ L 149, 5.7.1971, p. 2. Regulation as consolidated by Regulation (EC) No 118/97 (OJ L 28, 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, 10.7.2001, p. 1).

- (6) 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 laying down the procedure for implementing Regulation (EEC) No 1408/71<sup>(1)</sup>. 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.
- (7) Member States should ensure that appropriate information is provided regarding changes in rights and obligations introduced by this Regulation.
- (8) For the effective and fair implementation of Regulation (EEC) No 1408/71, cooperation between the institutions and the persons covered by the said Regulation is indispensable. This cooperation presupposes, on the part of both institutions and insured persons, the provision of complete 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 place of stay of that person or of a member of his family, changes in the family situation or amendments to legislation.
- (9) Given the complexity of certain individual situations involving the movement of persons, provision should 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 cannot be found whereby all the rights of the individual concerned are observed, provision should be made for the option of referring the matter to the Administrative Commission.
- (10) In order to bring the Regulation into line with developments in data processing, in which the European Health Insurance Card is an essential element as it is intended in the long term to constitute an electronic medium readable in all Member States, certain Articles of Regulation (EEC) No 574/72 should 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 or visual or audiovisual recording,

HAVE ADOPTED THIS REGULATION:

#### Article 1

Regulation (EEC) No 1408/71 is hereby amended as follows:

1. Article 22 shall be amended as follows:

(a) subparagraph 1(a) shall be replaced by the following:

‘(a) whose condition requires benefits in kind which become necessary on medical grounds during a stay in the territory of another Member State, taking into account the nature of the benefits and the expected length of the stay;’

(b) the following paragraph shall be inserted:

‘1a. The Administrative Commission shall establish a list of benefits in kind which, in order to be provided during a stay in another Member State, require, for practical reasons, a prior agreement between the person concerned and the institution providing the care;’

(c) in paragraph 3, the first subparagraph shall be replaced by the following:

‘Paragraphs 1, 1a and 2 shall apply by analogy to members of the family of an employed or self-employed person.’

2. Article 22a shall be replaced by the following:

‘Article 22a

#### Special rules for certain categories of persons

Notwithstanding Article 2, Article 22(1)(a) and (c) and (1a) shall also apply to persons who are nationals of one of the Member States and who are insured under the legislation of a Member State and to the members of their families residing with them.’

3. Article 22b shall be deleted;

4. Article 25 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

‘1. An unemployed person who was formerly employed or self-employed and to whom the provisions of Article 69(1) or Article 71(1)(b)(ii), second sentence apply 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 for the period of time referred to in Article 69(1)(c):’

<sup>(1)</sup> OJ L 74, 27.3.1972, p. 1. Regulation as consolidated by Regulation (EC) No 118/97 and last amended by Commission Regulation (EC) No 1851/2003 (OJ L 271, 22.10.2003, p. 3).

(a) benefits in kind which become necessary on medical grounds for this person during his stay in the territory of the Member State where he is seeking employment, taking account of the nature of the benefits and the expected length of the stay. These benefits in kind shall be provided on behalf of the competent institution by the institution of the Member State in which the person is seeking employment, in accordance with the provisions of the legislation which the latter institution administers, 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.

(b) the following paragraph shall be inserted:

'1a. Article 22(1a) shall apply by analogy.'

5. Article 31 shall be replaced by the following:

'Article 31

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

1. 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 State in which they reside, receive:

(a) benefits in kind which become necessary on medical grounds during a stay in the territory of the Member State other than the State of residence, taking into account the nature of the benefits and the expected length of the stay. These benefits in kind shall be provided by the institution of the place of stay, in accordance with the provisions of the legislation which it administers, on behalf of the 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 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.

2. Article 22(1a) shall apply by analogy.'

6. Article 34a shall be replaced by the following:

'Article 34a

#### **Special provisions for students and members of their families**

Articles 18, 19, 22(1)(a) and (c) and (1a), 22(2), second subparagraph, 22(3), 23 and 24 and sections 6 and 7 shall apply by analogy to students and the members of their families as required.'

7. Article 34b shall be deleted;

8. the following Article shall be inserted:

'Article 84a

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

1. 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.

The institutions, in accordance with the principle of good administration, shall respond to all queries within a reasonable period of time and shall in this connection provide the persons concerned with any information required for exercising the rights conferred on them by this Regulation.

The persons concerned shall inform the institutions of the competent State and of the State of residence as soon as possible of any changes in their personal or family situation which affect their right to benefits under this Regulation.

2. Failure to respect the obligation of information referred to in paragraph 1, third subparagraph, may result in the application of proportionate measures in accordance with national law. Nevertheless, these measures shall be equivalent to those applicable to similar situations under domestic law and shall 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 it, the institution of the competent State or of the State of residence of the person involved shall contact the institution(s) of the Member State(s) concerned. If a solution cannot be found within a reasonable period, the authorities concerned may call on the Administrative Commission to intervene.'

## Article 2

Regulation (EEC) No 574/72 is hereby amended as follows:

1. in Article 2, paragraph 1 shall be replaced by the following:

'1. Models of the documents necessary for 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 or other form or by means of telematic services as standardised electronic messages in accordance with Title VIa. The exchange of information by means of telematic services shall be subject to agreement between the competent authorities or the bodies designated by the competent authorities of the sending Member State and those of the receiving 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:

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

4. Article 20 shall be deleted;

5. Article 21 is 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 care provider a document issued by the competent institution certifying that he is entitled to benefits in kind. That document shall be drawn up in accordance with Article 2. If the person concerned is not able to submit that 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.

A document issued by the competent institution for entitlement to benefits in accordance with Article 22(1)(a)(i) of the Regulation, in each individual case concerned, shall have the same effect with regard to the care provider as national evidence of the entitlements of the persons insured with the institution of the place of stay.

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

6. in Article 22, paragraph 2 shall be replaced by the following:

'2. 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 17(9), 21 and 22 of the implementing Regulation.'

8. Article 26 is amended as follows:

- (a) paragraph 1 shall be replaced by the following:

'1. In order to receive benefits in kind under Article 25(1)(a) and (1a) of the Regulation, an unemployed person or a 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. That document shall be drawn up in accordance with the provisions of Article 2. If the person concerned is not able to submit that 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.

A document issued by the competent institution for entitlement to benefits in accordance with Article 25(1)(a) of the Regulation, in each individual case concerned, shall have the same effect with regard to the care provider as national evidence of the entitlements of persons insured with the institution of the place to which the unemployed person has gone.'

- (b) the following paragraph shall be inserted:

'1a. In order to receive benefits in cash under Article 25(1)(b) of the Regulation for himself and for members of his family, an unemployed person shall submit to the insurance institution of the place where he has gone a certified statement for which, prior to his departure, he shall have applied to the competent insurance institution. If the unemployed person does not submit that certified statement, the institution of the place to which he has gone shall obtain it from the competent institution. That certified statement must testify the existence of the right to the benefits in question 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, in the case of incapacity for work or hospitalisation, specify the amount of cash benefits to be provided, where appropriate, by way of sickness insurance during the abovementioned period.'

(c) paragraph 3 shall be replaced by the following:

'3. Article 17(9) of the implementing Regulation shall apply by analogy.'

9. Article 31 shall be 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 reside**

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

A document issued by the competent institution for entitlement to benefits in accordance with Article 31 of the Regulation, in each individual case concerned, shall have the same effect with regard to the care provider as national evidence of the entitlements of persons insured with the institution of the place of stay.

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

3. 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 in 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 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 the implementing Regulation.'

*Article 3*

Member States shall ensure that appropriate information is provided regarding the changes in rights and obligations introduced by this Regulation.

*Article 4*

For the purpose of the implementation of this Regulation, the institutions in the State of stay shall ensure that all care providers are fully aware of the criteria set out in Article 22(1)(a)(i) of Regulation (EEC) No 1408/71.

*Article 5*

This Regulation shall enter into force on 1 June 2004.

Direct access to care providers shall be guaranteed by 1 July 2004 at the latest.

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

Done at Strasbourg, 31 March 2004.

*For the European Parliament*

*The President*

P. COX

*For the Council*

*The President*

D. ROCHE