



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.3.2005
COM(2005) 93 final

Proposal for a

COUNCIL DECISION

on a Community Position regarding draft Decision of the Joint Committee established under the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons

(presented by the Commission)

EXPLANATORY MEMORANDUM

On 1 June 2002 the Agreement between the European Community and its Member States of the one part and the Swiss Confederation of the other, on the Free Movement of Persons entered into force. Annex II of this Agreement provides for the coordination of social security schemes.

According to Article 14 and 18 of the Agreement, the EU-Swiss Joint Committee on the Free Movement of Persons may adopt amendments to Annex II of the Agreement by decision of the Joint Committee. Article 2 of the Decision (2002/309/EC, Euratom) of the Council, and of the Commission as regards the Agreement on Scientific and Technological Cooperation, of 4 April 2002 on the conclusion of seven Agreements with the Swiss Confederation provides that the Council, on a proposal from the Commission, lays down the position to be taken by the Community as regards such decisions of the Joint Committee.

To ensure a coherent and correct application of Community legislation and to avoid administrative and possibly legal difficulties Annex II of the Agreement should refer to all the relevant Community legislation and the Decisions of the Administrative Commission. Therefore, Annex II of the Agreement needs to be updated to also refer to those amending Regulations of Regulations (EEC) No 1408/71 and (EEC) No 574/72 which have entered into force since Annex II of the Agreement was last amended by Decision 2/2003 of the Joint Committee. It also needs to refer to the decisions of the Administrative Commission which have been adopted in the meantime, including the three decisions which introduce the European Health Insurance Card. Furthermore, Annex II to the Agreement needs to be completed and updated to reflect changes at national level.

The Council is therefore invited to approve the Community position on the adoption of the draft Decision No .../... of the EU-Swiss Joint Committee on the Free Movement of Persons, regarding the Joint Committee's Decision on amending Annex II to the Agreement following the entry into force of the Agreement.

The amendments to be made to Annex II of the Agreement are the following:

The amending Regulation No 631/2004 which entered into force on 1 June 2004, thus after the last amendment of the Agreement by Decision 2/2003 of the Joint Committee, aligns the rights and simplifies the procedures in respect of sickness or maternity benefits in kind.

Adaptations of Annex VI of Regulation 1408/71 concern in particular the possibility to demand exemption from compulsory Swiss sickness insurance coverage, a possibility which does not exist under Regulation 1408/71:

The Portuguese government wishes to offer to pensioners who receive a Swiss pension and who reside in Portugal the individual right to demand exemption from compulsory Swiss sickness insurance and be covered by the Portuguese National Health Service instead.

The French government has expressed the wish that a person who resides in France and who is insured under the Swiss sickness insurance scheme despite the possibility to ask for exemption and have alternative coverage by the French sickness insurance scheme shall not only have access to health care in France but also in Switzerland.

An entry needs to be made to Annex VIII of Regulation 1408/71 for Switzerland, indicating that Switzerland does not have a scheme which provides only for family allowances or supplementary or special allowances for orphans.

The competent German institution and liaison body regarding pension insurance for manual workers in relation to Switzerland needs to be named in Annex 2 of Regulation 574/72.

Legal effects of amendments

According to Article 18 of the Agreement, decisions of the Joint Committee on Annex II may enter into force immediately after the decision.

In the interest of the persons covered by the Agreement, the reference to amending Regulation 631/2004 shall have effect as of the date of entry into force of this Regulation on 1 June 2004. Overall, the application of common and homogeneous provisions and an effective and coherent coordination for the complicated and technical nature of the coordination of social security schemes is essential. As Regulation 631/2004 facilitates the introduction of the European Health Insurance Card by aligning the rights and simplifying procedures for access to medical care, applying it as of the date of its entry into force avoids parallel application of different coordinating provisions. This would not only increase administrative burdens and delay decisions but also be to the detriment of persons concerned as different procedures and rights to medical care would apply in relation to Switzerland.

The amending provisions extending the right to demand exemption from compulsory Swiss sickness insurance to pensioners residing in Portugal shall be effective as of 1 June 2004 as they are in the interest of the persons concerned and have already been applied on the basis of a mutual agreement between Switzerland and Portugal since that date. Equally, the request of the French government is in the interest of the persons concerned and has been applied since 1 January 2004 so this amendment should be effective as of this date.

The Council is requested to approve the attached draft decision for adoption by the EU-Swiss Joint Committee on Free Movement of Persons.

Proposal for a

COUNCIL DECISION

on a Community Position regarding draft Decision of the Joint Committee established under the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Decision 2002/309/EC, Euratom of the Council and of the Commission as regards the Agreement on Scientific and Technological Cooperation of 4 April 2002 on the conclusion of seven Agreements with the Swiss Confederation¹, and in particular Article 2 thereof,

Having regard to the proposal from the Commission²,

Whereas:

- (1) 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 (hereinafter referred to as "the Agreement") entered into force on 1 June 2002.
- (2) Articles 14 and 18 of the Agreement provide that the EU-Swiss Joint Committee on Free Movement of Persons may, by decision, adopt amendments to Annex II to the Agreement, dealing with coordination of social security schemes.
- (3) In order to preserve a coherent and correct application of Community legislation and to avoid administrative and possibly legal difficulties, Annex II to the Agreement needs to be amended to integrate the Community legislation which has entered into force since the last adaptation of Annex II by Decision No 2/2003 of 15 July 2003 of the EU-Swiss Joint Committee on the Free Movement of Persons, and to which the Agreement does not currently refer.
- (4) In view of changes at national level, Annex II to the Agreement needs to be completed and updated.
- (5) Annex II of the Agreement needs to be amended by the integration of the Decisions of the Administrative Commission on Social Security of Migrant Workers which have been adopted since the last adaptation of the EU-Swiss Agreement by Decision

¹ OJ L 114, 30.4.2002, p. 1.

² OJ C [...], [...], p. [...].

No 2/2003 of 15 July 2003 of the EU-Swiss Joint Committee on the Free Movement of Persons and to which the Agreement does not currently refer.

(6) The Community should now adopt its position for a decision of the Joint Committee,

HAS DECIDED AS FOLLOWS:

Sole Article

The Position of the European Community in the Joint Committee created by Article 14 of 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 shall be based on the draft decision of the Joint Committee set out in the Annex to this Decision.

Done at Brussels,

*For the Council
The President*

ANNEX

Draft Decision

of the EU-Swiss Joint Committee on the Free Movement of Persons amending Annex II (Social Security) to the Agreement between the European Community and its Member States and the Swiss Confederation

THE JOINT COMMITTEE,

Having regard to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons and in particular Articles 14 and 18 thereof,

Whereas:

- (1) The Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons (hereinafter referred to as "the Agreement") was signed on 21 June 1999 and entered into force on 1 June 2002.
- (2) Annex II to the Agreement, as amended by Decision No 2/2003 of 15 July 2003 of the EU-Swiss Joint Committee on the Free Movement of Persons, refers in particular to Council Regulations (EEC) No 1408/71³ and (EEC) No 574/72⁴, as updated by Regulation (EC) No 118/97⁵ as well as to subsequent amending Regulations, including Regulation (EC) 1386/2001⁶ of the European Parliament and of the Council and Commission Regulation (EC) 410/2002⁷.
- (3) Regulations (EEC) No 1408/71 and (EEC) No 574/72 have, since the adoption of Decision 2/2003 of the EU-Swiss Joint Committee of 15 July 2003, been amended twice. Consequently, it is now necessary to incorporate the relevant amending acts, namely Commission Regulation (EC) 1851/2003 of 17 October 2003⁸ and Regulation (EC) No 631/2004⁹ of the European Parliament and of the Council of 31 March 2004, into the Agreement, and specifically into Annex II thereto.
- (4) The option to request exemption from compulsory Swiss sickness insurance should be offered to pensioners who receive a Swiss pension and who reside in Portugal as they will be covered by the Portuguese sickness insurance.
- (5) Persons who reside in France and who are insured under the Swiss sickness insurance scheme despite the possibility to ask for exemption should have access to health care in France and in Switzerland.

³ OJ L 149, 5.7.1971, p. 2.

⁴ OJ L 74, 27.3.1972.

⁵ OJ L 28, 30.1.1997, p. 1

⁶ OJ L 187, 10.7.2001, p. 1.

⁷ OJ L 62, 5.3.2002, p. 17.

⁸ OJ L 271, 22.10.2003, p. 3.

⁹ OJ L 100, 6.4.2004, p. 1.

- (6) It needs to be indicated that Switzerland does not have a scheme which provides only for family allowances or supplementary or special allowances for orphans.
- (7) Annex II needs to be amended to list the competent German institution and liaison body regarding pension insurance in relation to Switzerland.
- (8) The complicated and technical nature of the coordination of social security schemes requires effective and coherent coordination, through the application of common and homogeneous provisions within the territory of the Contracting parties.
- (9) It is in the interest of the persons covered by the Agreement to resolve, or at least limit in time, any negative effects arising from the application of different coordination rules by the Contracting Parties.
- (10) Amendments to Annex II which insert the reference to Regulation 631/2004 and on the possibility to exempt pensioners residing in Portugal from Swiss compulsory insurance should take effect as from 1 June 2004, and amendments which concern the possibility for persons residing in France to access health care in Switzerland should take effect as from 1 January 2004.

HAS DECIDED AS FOLLOWS:

Article 1

Annex II to the Agreement shall be amended as set out in the Annex to this Decision.

Article 2

This Decision shall enter into force on the day of its adoption by the Joint Committee.

Provisions of this Decision which insert the reference to Regulation 631/2004, as well as regarding Point 3 letter (b) of Annex II to the Agreement, extending the possibility of exemption from Swiss compulsory insurance for pensioners residing in Portugal shall take effect on 1 June 2004. Provisions of this Decision regarding Point 4 offering access to health care in Switzerland to persons who are covered by the Swiss sickness insurance scheme and who reside in France shall take effect on 1 January 2004.

Article 3

This Decision shall be published in the *Official Journal of the European Communities*.

Done at Brussels,

*For the Joint Committee
The Chairman
The Secretaries*

Annex

Annex II to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons is amended as follows:

- (1) The following is inserted under the Title "Section A: Acts referred to" under point 1 "Regulation (EEC) No 1408/71" after "301 R 1386: Regulation (EC) No 1386/2001 of the European Parliament and of the Council...":

"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 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 (OJ L 100, 6.4.2004, p.1)."

- (2) Under the heading "For the purposes of this Agreement, the Regulation shall be amended as follows:", point 1 of Section A of Annex II of the Agreement is amended as follows:

- (a) Under letter (o), concerning Annex VI, insert the following under No 3 letter (b) after the word "... Finland":

"and with regard to persons referred to in (a) (ii), Portugal."

- (b) Under letter (o), concerning Annex VI, insert under No 4 after the word "Belgium," the word "France".

- (c) After letter p), concerning Annex VII, add a new paragraph q):

"q) The following shall be added to Annex VIII:

Switzerland

None"

- (3) The following is inserted under the Title "Section A: Acts referred to" under point 2 "Regulation (EEC) No 574/72" after "302 R 410: Commission Regulation (EC) No 410/2002...":

"Commission Regulation (EC) No 1851/2003 of 17 October 2003 amending Council Regulation (EEC) No 574/72 laying down the procedure for implementing 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 (OJ L 271, 22.10.2003, p.3).

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 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 (OJ L 100, 6.4.2004, p.1)"

(4) Under the heading "For the purposes of this Agreement, the Regulation shall be amended as follows:", point 2 Section A of Annex II of the Agreement is amended as follows:

(a) Under letter b), concerning Annex 2, the following section is inserted before the section headed "Switzerland":

"C. GERMANY

(1) Under point 2 "Pension insurance for manual workers, clerical workers and miners", the following addition is made to letter (a)(i), first sentence:

- if the person concerned is resident in Switzerland or is a Swiss national resident in the territory of a non-member State:

Landesversicherungsanstalt Baden-Württemberg (Regional Insurance Office of Baden-Württemberg), Karlsruhe".

(2) Under point 2 "Pension insurance for manual workers, clerical workers and miners", the following addition is made to letter (b)(i), first sentence:

- if the last contribution under the legislation of another Member State was paid into a Swiss pension insurance institution:

Landesversicherungsanstalt Baden-Württemberg (Regional Insurance Office of Baden-Württemberg), Karlsruhe".

(b) Under letter c) concerning Annex 3, the following section is inserted before the section headed "Switzerland":

"C. GERMANY

Under point 3 "Pension insurance", the following addition is made to letter (a):
In relation to Switzerland:

Landesversicherungsanstalt Baden-Württemberg (Regional Insurance Office of Baden-Württemberg), Karlsruhe".

(c) Under letter d) concerning Annex 4, the following section is inserted before the section headed "Switzerland":

"C. GERMANY

Under point 3 "Pension insurance", the following addition is made to letter (b):
In relation to Switzerland:

Landesversicherungsanstalt Baden-Württemberg (Regional Insurance Office of Baden-Württemberg), Karlsruhe".

(5) Section B of Annex II is amended as follows:

(a) Nos 4.19, 4.32, 4.48 and 4.68 are deleted.

(b) After No 4.68, the following new numbers are added:

"4.69 : Decision No 184 of 10 December 2001 on the model forms necessary for the application of Council Regulations (EEC) No 1408/71 and (EEC) No 574/72 (E 201 to E 207, E 210, E 213 and E 215) (OJ L 304, 6.11.2002, p.1)

4.70 : Decision No 185 of 27 June 2002 amending Decision No 153 of 7 October 1993 (form E 108) and Decision No 170 of 11 June 1998 (compilation of the lists provided for in Article 94(4) and Article 95(4) of Council Regulation (EEC) No 574/72 of 21 March 1972) (OJ L 55, 1.3.2003, p.74)

4.71 : Decision No 186 of 27 June 2002 on the model forms necessary for the application of Council Regulations (EEC) No 1408/71 and (EEC) No 574/72 (E 101) (OJ L 55, 1.3.2003, p.80)

4.72 : Decision No 187 of 27 June 2002 on the model forms necessary for the application of Council Regulations (EEC) No 1408/71 and (EEC) No 574/72 (E 111 and E 111B) (OJ L 93, 10.4.2003, p.40)

4.73 : Decision No 188 of 10 December 2002 on the model forms necessary for the application of Council Regulation (EEC) No 574/72 (E 210 and E 211) (OJ L 112, 6.5.2003, p.12)

4.74 : Decision No 189 of 18 June 2003 aimed at introducing a European health insurance card to replace the forms necessary for the application of Council Regulations (EEC) No 1408/71 and (EEC) No 574/72 as regards access to health care during a temporary stay in a Member State other than the competent State or the State of residence (OJ L 276, 27.10.2003, p.1)

4.75 : Decision No 190 of 18 June 2003 concerning the technical specifications of the European health insurance card (OJ L 276, 27.10.2003, p.4)

4.76 : Decision No 191 of 18 June 2003 concerning the replacement of forms E 111 and E 111 B by the European health insurance card (OJ L 276, 27.10.2003, p.19)

4.77 : Decision No 192 of 29 October 2003 concerning the conditions for implementing Article 50(1)(b) of Council Regulation (EEC) No 574/72 (OJ L 104, 8.4.2004, p.114)

For the purposes of the present agreement, the Decision is amended as follows:

In section 2.4 the following shall be added:

Switzerland

Schweizerische Ausgleichskasse, Genf - Caisse suisse de compensation, Genève - Cassa svizzera di compensazione, Ginevra.

4.78 : Decision No 193 of 29 October 2003 on the processing of pension claims (OJ L 104, 8.4.2004, p.123)

4.79 : Decision No 194 of 17 December 2003 concerning the uniform application of Article 22(1)(a)(i) of Council Regulation (EEC) No 1408/71 in the Member State of stay (OJ L 104, 8.4.2004, p.127)

4.80 : Decision No 195 of 23 March 2004 on the uniform application of Article 22(1)(a)(i) of Regulation (EEC) No 1408/71 as regards health care in conjunction with pregnancy and childbirth (OJ L 160, 30.4.2004, p.134)

4.81 : Decision No 196 of 23 March 2004 pursuant to Article 22(1a) of Regulation (EEC) No 1408/71 (OJ L 160, 30.4.2004, p.136)

4.82 : Decision No 197 of 23 March 2004 on the transitional periods for the introduction of the European Health Insurance Card in accordance with Article 5 of Decision No 191

4.83 : Decision No 198 of 23 March 2004 concerning the replacement and abolition of the model forms necessary for the implementation of Council Regulations (EEC) No 1408/71 and 574/72 (E110, E111, E111B, E113, E114, E119, E128, E128B)

(6) In Section C: "Acts of which the contracting parties shall take note" after No 6.4 the following new number is added:

"6.5 : Recommendation No 23 of 29 October 2003 on the processing of pension claims (OJ L 104, 8 April 2004, p.125)."