

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(82) 48 final

Brussels, 12 February 1982

Proposal for a

COUNCIL REGULATION (EEC)

establishing, in the relations between the Italian institutions and the institutions of the other Member States, special measures for the reimbursement of the sickness and maternity insurance benefits in kind

(submitted to the Council by the Commission)

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EXPLANATORY MEMORANDUM

INTRODUCTION

1. Article 36 of Regulation 1408/71 lays down that benefits in kind provided by the institution of one Member State on behalf of the institution of another Member State shall be fully refunded, either on production of proof of actual expenditure or on the basis of lump-sum payments. It also provides for the opportunity for two or more Member States to provide for other methods of refunding or to waive all refunds. The amounts to be refunded under the general principle must be determined under the conditions laid down in Articles 93, 94 and 95 of Regulation No 574/72.

Article 93 lays down that the institution on whose behalf the benefits in kind have been provided shall reimburse the amounts of these benefits as shown in the accounts of the institution providing the benefits.

Where this amount is not shown in the abovementioned accounts, the lump sums shall be determined in accordance with the rules laid down in Articles 94 and 95.

2. Since 1977, the Italian institution, INAM, (National Sickness Insurance Institution) has experienced administrative difficulties, which in the meantime have increased even more, as a result of the gradual dismantling and eventual abolition of that institution in connection with the setting up of a national health service in Italy.

In particular, the INAM is no longer in a position to control the claims for refunds presented by the institutions of other Member States or to determine or submit its own claims in respect of the institutions of other Member States.

3. Since these circumstances threatened to endanger the coordination that had been established by Regulations Nos 1408/71 and 574/72 between the social security institutions of the Member States, a solution to this problem was called for at short notice.

On 3 April 1981, the Commission informed the Italian Minister for Health of its concern in this matter.

In May 1981, the abovementioned Italian Minister sent a note to his colleagues in the other Member States in which he undertook to honour the obligations of the INAM. At the same time, in the context of Article 36 of Regulation No 1408/71 he proposed that compensatory arrangements be introduced at bilateral level on the basis of lump sums for the purpose of making a definitive settlement in respect of the debts and claims of the INAM in relation to the benefits granted up to 31 December 1980, the date on which the INAM was abolished. He emphasised that it was necessary that this mechanism should result in a simultaneous overall settlement coupled with off-setting operations in respect of the claims and debts as quickly as possible.

4. In close cooperation with all the national delegations, the Audit Board of the Administrative Commission of the EEC for the Social Security of Migrant Workers took upon itself the task of finding an adequate solution to this problem.

Although undoubtedly recourse could be had to the bilateral agreements, preference was given to an overall Community method which permits the quickest settlement of this special situation regarding claims and debts of the INAM; this solution was based as far as possible on the Regulations.

On 18 December 1981 the Administrative Commission unanimously adopted the draft proposal for a Council Regulation in which the aims had been laid down.

MAIN POINTS OF THE PROPOSED REGULATION

5. In principle, every effort was made to adhere to the provisions of Regulation No 574/72 relating to the determination of the amounts of benefits in kind to be refunded whether or not it was a question of claims on the basis of invoices (on production of proof of actual expenditure) or claims on the basis of lump sums.

For the benefits provided up to 31 December 1980:

(a) the claims on the basis of invoices by the other Member States in respect of Italy (INAM) were determined on the basis of documents as laid down in Article 93 of Regulation No 574/72;

(b) the claims on the basis of lump sums by other Member States in respect of Italy (INAM) and vice versa have been determined in accordance with the provisions of Articles 94 and 95 of Regulation No 574/72.

6. However, it was not possible to avoid using these special rules for different evaluation criteria in the case where documentary proof was not available or where other data was lacking; the use of these special rules was restricted to a minimum however.

(a) This applied in particular to the claims on the basis of invoices for 1977-80 by Italy (INAM) in respect of other Member States. Since Italy is not in a position to determine these claims, they have been evaluated by means of extrapolation of the real data for 1973-76, except in the case of dealings between Italy and Germany where the data related to 1973-77.

(b) Furthermore, the creditor countries (Belgium, Germany and France) proposed supplementary amounts for claims on the basis of invoices in respect of claims which they would be able to submit after 31 December 1981. These amounts have been accepted by Italy and constitute a maximum refund.

7. Furthermore, evaluations were also necessary for part of the claims relating to 1980 on the basis of lump sums. These evaluations have been fixed at bilateral level. As regards dealings between Italy and Germany, the determination of the claims on the basis of lump sums by Italy will be determined by the German institutions, taking into account the abolition of the INAM before 30 September 1982, by virtue of a bilateral agreement in force since 1958.

8. In other dealings, waiver agreements have been drawn up and accepted on both sides but have not yet been ratified; this is the case for Denmark and Italy and Ireland and Italy. For Italy and the United Kingdom an agreement has also been approved fixing the amount of reciprocal claims but has not yet been ratified.

9. The amounts of claims determined in this way and accepted by all the delegations constitute a settlement (as at 31 December 1981). They are converted into Italian lire at the rate of exchange in force on that date as determined by the Commission in the context of the European Monetary System. This is done with a view to the global off-setting operations and the inclusion of the INAM debts in the Italian budget. The claims will be paid to each creditor Member State in its own currency on the basis of the amounts determined on 31 December 1981; the rate of exchange to be applied, however, will be that of the day of payment. The payments will be made in fixed percentages on 31 March, 30 June and 31 December 1982.

10. On the basis of the criteria stated above, the Commission, in cooperation with the national delegations represented in the Administrative Commission for the Social Security of Migrant Workers, drew up the amounts of claims and debts in respect of Italy (INAM) which are presented in an Annex to the proposal for a Regulation.

In this respect, it should be noted that all delegations accepted these amounts which are regarded as being definitive.

ANALYSIS OF THE PROPOSAL FOR A REGULATION

The first Article lays down that the settlement refers only to benefits in kind for sickness and maternity insurance which have been provided before 31 December 1980 and which have not yet been refunded.

Article 2 lays down the manner in which the amounts of the claims on the basis of invoices are to be refunded for the benefits.

Several possibilities have been provided for:

(1) The amounts claimed from the INAM (Italy) up to 30 September 1981 under the provisions of Article 93 of Regulation No 574/72 (on production of documentary proof) are aggregated;

(2) The amounts which could be claimed from Italy after 30 September 1981 under Article 100 of Regulation No 574/72 are evaluated and added to the amounts mentioned in (1);

(3) Each of the amounts determined in accordance with (2) constitutes a maximum refund in the case where documentary evidence is submitted up to 30 April 1982;

(4) The arrangement mentioned in (1) is applicable to the claims made by the INAM for the financial years 1976 and preceding years;

(5) The amounts of the claims in respect of INAM for 1977-80 are evaluated on the basis of data relating to 1973-76, except in the case of dealings with Germany where this is done on the basis of data relating to 1973-77.

Article 3 lays down the manner in which the amounts of the claims on the basis of lump sums are determined:

(1) The amounts already determined under the provisions of Articles 94 and 95 of Regulation No 574/72 are aggregated for all Member States;

(2) Since there is no multiplication factor for the determination of part of the amounts for 1980, an evaluation is provided for on the basis of data relating to 1977, 1978 and 1979.

Article 4 provides for the aggregation of the amounts of claims by a Member State in respect of Italy for the purpose of a bilateral and overall aggregation; it also states the rate of exchange to be applied.

Article 5 lays down that:

every creditor Member State receives a refund in its own currency of the total amount owed to it in accordance with the manner in which this amount is determined in the currency of the State concerned under Article 4;

refunds will be made in three separate payments on 31 March, 30 June and 31 December 1982.

Article 6 lays down that the application of the Regulation is intended to constitute a definitive settlement;

that after 30 April 1982 no application for refunds can be submitted; that the competent national authorities will take the necessary measures for the implementation of the Regulation.

Article 7 states that the amounts determined under the Regulation will be included in an Annex.

Article 8 lays down that the Regulation will enter into force on 28 February 1982.

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to Treaty establishing the European Economic Community, and in particular Article 51 thereof;

Having regard to the proposal from the Commission, drawn up after consulting the Administrative Commission on Social Security for Migrant Workers;

Whereas Article 36 of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community¹, as last amended by Regulation (EEC) No 2793/81², provides that the benefits in kind provided by the institution of a Member State on behalf of the institution of another shall be fully refunded, either on production of proof of actual expenditure or on the basis of lump-sum payments;

Whereas Articles 93, 94, 95 and 100 of Council Regulation (EEC) No 574/72³, as last amended by Regulation (EEC) No 2793/81², fixing the detailed rules for the application of Regulation (EEC) No 1408/71, lay down the method for determining the amounts to be refunded and for making such refunds;

¹ OJ No L 149, 5.7.1971, p. 2

² OJ No L 275, 29.9.1981, p. 1

³ OJ No L 74, 27.3.1972, p. 1

Whereas the establishment of a national health service in Italy has entailed the abolition of all the sickness and maternity insurance management bodies and in particular that of the Istituto nazionale per l'assicurazione contro le malattie (National Sickness Insurance Institution), hereinafter referred to as the INAM, which was the liaison body and the competent institution within the meaning of Regulations (EEC) Nos 1408/71 and 574/72;

Whereas this abolition has made it impossible to carry out the operations for checking claims submitted by the institutions of the other Member States, on the one hand, and the operations for drawing up the INAM claims vis-à-vis the said institutions, on the other hand, for the purposes of the refunds provided for in Article 36 of Regulation (EEC) No 1408/71;

Whereas it appears advisable to resolve this particular situation by a single Community method applying simultaneously to all the claims by and on the INAM so as to expedite the overall and final settlement of these claims;

Whereas this method should deviate as little as possible from the above-mentioned provisions of Regulation (EEC) No 574/72 and care should be taken to avoid having recourse to other criteria for the assessment of claims and debts or to special rules except where absolutely necessary,

HAS ADOPTED THIS REGULATION:

Article 1

By way of derogation from the provisions of Title V of Regulation (EEC) No 574/72, the reimbursements provided for in Article 36 of Regulation (EEC) No 1408/71 of sickness and maternity insurance benefits in kind provided up to 31 December 1980 by the institutions of the Member States on behalf of the INAM and by the INAM on behalf of the said institutions, which have not been effected following the abolition of the INAM, shall be determined and effected in accordance with the procedure laid down in this Regulation.

Article 2

The amounts to be reimbursed pursuant to Article 93 of Regulation (EEC) No 574/72 shall be determined as follows:

1. The sums which the institutions of the Member States claimed from the INAM on 30 September 1981 in respect of benefits in kind provided up to 31 December 1980 on the basis of documentary evidence shall be aggregated as such, account being taken of the accepted rejects, save in the event of material error;
2. The sums which the institutions may still claim pursuant to Article 100 of Regulation (EEC) No 574/72 but for which no documentary evidence is available, in particular for benefits provided in 1980, shall be estimated; they shall be added to the sums referred to in subparagraph 1;
3. This estimate shall for each Member State constitute a ceiling; in the event that the documentary evidence submitted for the INAM to the Italian Ministry of Health up to 30 April 1982, the date of the postmark being recognized as the date of despatch, corresponds to an amount not exceeding this ceiling, this amount shall be reimbursed; however, if the ceiling is exceeded, the amount to be reimbursed shall be equal to this ceiling;
4. The sums claimed by the INAM which were submitted for claims relating to the financial years 1976 and earlier shall be aggregated as such, account being taken of the accepted rejects, save in the event of material error;
5. The amounts of the INAM claims for the financial years 1977 to 1980 shall be determined by projecting the amounts reimbursed to the INAM for the financial years 1973 to 1976; however, with regard to Germany, the amount adopted for the financial year 1977 shall be that corresponding to the amount based on the documentary evidence which the Italian Ministry has communicated to the German liaison body; moreover, in the relations between Italy and Germany, the claims and debts of the Cassa mutua provinciale di malattia di Bolzano shall not be covered by this Regulation.

Article 3

The amounts to be reimbursed pursuant to Articles 94 and 95 of Regulation (EEC) No 574/72 shall be determined as follows:

1. The lump sums already determined for the benefits provided up to 1979 shall be aggregated as such, account being taken of the accepted rejects, save in the event of material error;
2. The lump sums for benefits provided in 1980 shall be estimated with regard to the annual average number of families and the annual average number of pensioners covered by Articles 94 and 95 respectively of Regulation (EEC) No 574/72; this estimate shall be obtained by projecting the data relating to 1977, 1978 and 1979.

Article 4

1. The amounts of the claims determined in accordance with Articles 1 to 3 shall be aggregated for each Member State, in the currency of that State, as at 31 December 1981;
2. For the purpose of an offsetting operation, the amounts referred to in paragraph 1 shall then be converted into Italian lire in order that the Italian competent authority may know the balance payable by it.
3. The conversion shall be made on the basis of the official exchange rate as at 31 December 1981 determined by the Commission in the framework of the European Monetary System.

Article 5

1. Taking account of the provisions of Article 2(3), the amount to be offset in accordance with Article 4 shall be expressed in the national currency of the creditor country and shall be reimbursed in that currency.
2. For the conversion of currencies for the purpose of making the reimbursements in accordance with paragraph 3, the rate of exchange to be applied shall be that valid on the day of payment.
3. The reimbursements due shall be made by the liaison bodies in accordance with the following timetable and percentages:

on 31 March 1982, 15 to 20% of the amount due,
on 30 June 1982, 50% of the balance still due,
on 31 December 1982, the balance still outstanding.

Article 6

1. The application of Articles 1 to 5 shall constitute a settlement of accounts. This settlement of accounts shall also comprise the amounts provided for by the waiver agreements or other agreements that have been or will be concluded.
2. By way of derogation from Article 100 of Regulation (EEC) No 574/72, no request for reimbursement relating to the benefits referred to in this Regulation may be submitted after 30 April 1982.
3. The competent authority of each Member State shall take the necessary measures for the application of this Regulation, in particular for proceeding from the national balance, determined at Community level, to the settlement of the accounts of the institutions concerned.

Article 7

The amounts of the claims for each Member State determined pursuant to the provisions of Articles 2 to 5 are listed in the Annex.

Article 8

This Regulation shall enter into force on 28 February 1982.

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

ANNEX

Statement of claims by and on the INAM (Italy) relating to benefits in kind provided before 31 December 1980

Settlement of accounts at 31 December 1981

Amounts determined pursuant to Articles 2, 3 and 4.

I. ITALY AS DEBTOR

II. ITALY AS CREDITOR

A. BELGIUM as creditor

B. BELGIUM as debtor

Article	Amounts (Bfrs)	Amounts (Lit)
2(1)/(4), (5)	747 427 908	2 381 011 627
2(2)	66 190 047	-
3(1)	483 815	1 011 732 004
3(2)	249 407 807	12 123 931 379
4(1) (TOT.)	1 063 509 577	15 516 675 010
		(Lit)
4(2)	33.208.831.000 15.516.675.010 -	15 516 675 010
	17.692.155.990	=
5(1)	566.589.570 (FB)	=

C. DENMARK as creditor

D. DENMARK as debtor

WAIVER

(Waiver agreement to be signed)

E. GERMANY as creditor

F. GERMANY as debtor

Article	Amounts(DM)	Amounts (Lit)
2(1)/(4), (5)	43.976.412,55	27.831.565.224
2(2)	7.023.588,-	—
3(1)	}	.
3(2)	}	.
4(1) (TOT.)	(50.000.000)	(27.831.565.224)
	(Lit)	
4(2)		(27.831.565.224)
	26.664.850.000	(26.664.850.000) -
	=	(1.166.715.224)
5(1)	.	.

(1) Amounts to be determined by the German institutions before 30.9.1982

F. FRANCE as creditor

H. FRANCE as debtor

Article	Amounts (FF)	Amounts (Lit)
2(1)/(4), (5)	523 004 819	1 299 250 076
2(2)	81 593 356	2 754 450 000
3(1)))
) 50 330 885) 14 988 420 084
3(2)))
4(1) (TOT.)	654 929 060	19 042 120 160
		- 808 895 630 *
	(Lit)	
4(2)	137.661.503.910	18 233 224 530
	18.233.224.530 -	
	119.428.279.380	=
5(1)	568.183.900 (FF)	=

* Previous offsetting operation.

I. IRELAND as creditor

J. IRELAND as debtor

WAIVER
(Waiver agreement to be signed)

K. LUXEMBOURG as creditor

L. LUXEMBOURG as debtor

Article	Amounts (FL)	Amounts (Lit)
2(1)/(4), (5)	9 057 823)
2(2)	-) 171 081 660
3(1))) 188 287 740
3(2)) 7 707 530) 431 019 035
4(1) (TOT.)	<u>16 765 353</u>	<u>790 688 435</u>
		(Lit)
4(2)	523.509.885	790.688.435
		523.509.885 -
	=	267.178.550
5(1)	=	267.178.550

M. NETHERLANDS as creditor

N. NETHERLANDS as debtor

Article	Amounts (HFL)	Amounts (Lit)
2(1)/(4), (5)	5 150 315)
2(2)	-) 372 447 205
3(1)	28 862) 238 347 410
3(2)	104 909) 261 020 350
4(1) (TOT.)	<u>5 284 086</u>	<u>871 814 965</u>
		(Lit)
4(2)	2.567.257.330	871 815 965
	871.815.965 -	
	1.695.441.365	
5(1)	3.489.660 (fl)	=

O. UNITED KINGDOM as creditor

P. UNITED KINGDOM as debtor

Article	Amounts (Pound Sterling)	Amounts (Lit)
2(1)/(4), (5)	522.197,66	801.967.351
2(2)	—	—
3(1)	498,05	328.821.363
3(2)	1.084.848,00	2.697.923.372
4(1) (TOT.)	1.607.543,71	3.828.712.086
	(Lit)	3.828.712.086
4(2)	3.698.958.077	3.698.958.077 -
	=	129.754.000
5(1)	=	129.754.000

SUMMARY OF OFFSETTING OPERATIONS IN LIT

I. ITALY AS DEBTOR

II. ITALY AS CREDITOR

Creditor	Amounts (Lit)	DEBTOR	Amounts (Lit)
BELGIUM	17.692.155.990	GERMANY	(1.166.715.225)
FRANCE	119.428.279.380	LUXEMBOURG	267.178.550
NETHERLANDS	1.695.441.365	UNITED KINGDOM	129.754.000
TOT.	138.815.876.735	TOT.	(1.563.647.775)
TOT. I - TOT. II			