

**Statement
by the German National Association of
Statutory Health Insurance Funds
of 2 May 2017**

**on the Proposal for a Regulation amending Regulation
(EC) No 883/2004 on the coordination of social
security systems and Regulation (EC) No 987/2009
laying down the procedure for implementing
Regulation (EC) No 883/2004
of 13 December 2016**

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I. Preliminary remarks

On 13 December 2016, the European Commission submitted a Proposal to revise the EU's legal provisions on the coordination of the social security systems. All in all, the proposals provide for amendments in economically inactive EU citizens' access to the Member States' social benefits systems, in the provisions on the posting of workers, in long-term care and unemployment benefits, in family benefits and in technical requirements.

The goal pursued by the European Commission is to make the complex coordinating legislation fairer, more user friendly, and easier to enforce, and also to prevent fraud. The modernisation of this set of European rules is intended to promote mobility on the European Internal Market, and hence help further employment and growth.

The National Association of Statutory Health Insurance Funds explicitly welcomes the initiative to modernise the coordinating legislation, as well as the aims being pursued by the European Commission. The coordination of long-term care benefits, the provisions on posting and the pursuit of activities in more than one Member State, administrative rules, as well as several technical amendments, are particularly relevant for the statutory health insurance and long-term care insurance funds.

Long-term care benefits

The European Commission is proposing the following amendments with regard to long-term care benefits:

- introduction of long-term care benefits as a distinct branch of social security,
- introduction of a definition of long-term care benefits specifying the constituent elements of such benefits,
- introduction of a separate chapter for the coordination of long-term care benefits, and
- a detailed list of long-term care benefits in the Member States.

The proposed rules for long-term care follow the principles of the coordination of benefits in case of sickness. Long-term care benefits are already coordinated in accordance with the provisions contained in the regulations on sickness benefits, on the basis of the case-law of the European Court of Justice.

With the proposals, the European Commission intends to make the coordination of long-term care benefits more transparent for citizens and to codify the status quo for these benefits which has come about as a result of the case-law of the European Court of Justice. This is not intended to amend the previous coordination in analogy to sickness benefits.

Definition of long-term care benefits

The proposed definition of long-term care benefits is welcomed. It corresponds very largely to the definition of “need of long-term care” in accordance with section 14 of Book XI of the German Social Code. No problems in application are therefore anticipated.

Introduction of a separate chapter for long-term care benefits

The introduction of a separate chapter for long-term care benefits may lead to unwanted derogations from the previous coordination mechanism, i.e. from the status quo. This may cause significant difficulties for EU citizens when it comes to exercising their rights, as well as leading to unfair distributions of burdens between the Member States. Separate coordination of long-term care benefits, independently of sickness benefits, is contingent in particular on long-term care benefits in kind existing in the Member States which can be provided mutually. Each Member State already had a health insurance system with corresponding benefits in kind when the chapter on sickness benefits was introduced. However, long-term care benefits in kind are not currently provided for in all Member States. This causes major problems, such as possible changes in competences and additional effort concerning the reimbursement between the Member States, but in particular also creates obstacles for insured persons when it comes to gaining access to benefits, as well as a loss of entitlements.

The potential for changes in competences and loss of entitlements

The consequence of the introduction of a separate chapter for long-term care benefits is that the branches of sickness benefits and long-term care benefits need to be kept strictly separate in future. For instance, the determination of competence for long-term care benefits relating to pensioners, who are the group most likely to be affected, may only be based on whether an entitlement to long-term care benefits in kind exists. Since ten Member States have no long-term care benefits in kind, there may be a change in competences for long-term care benefits and a loss of entitlements where pensions are received from one of these other ten Member States. This was previously ruled out. Since long-term care benefits are regarded as sickness benefits, it is possible today to rely on the entitlement to a sickness benefit in kind as a starting point if there is no entitlement to long-term care benefits in kind. This ensures that competences for sickness

benefits and long-term care are not separated and that the individual in question is subject to the legislation of only one Member State.

The European Commission's Proposal entails the risk that competence for sickness and long-term care benefits may, in certain constellations, lie in two Member States in future. This contradicts the fundamental principle enshrined in the coordinating regulations, namely that the social insurance legislation of only one Member State may apply to an individual.

Obstacles for insured persons and additional effort

The coordination of long-term care benefits in a specific chapter will create new obstacles to mobility for insured persons. Unlike inclusion in the previous system of coordination of sickness benefits, instead of one joint document proving their entitlement to sickness benefits and long-term care, insured persons will need to use two different documents in future, and may need to contact two different institutions in the respective Member States.

Treating the branches sickness and long-term care separately furthermore means that only insurance periods are considered which relate to the risk of requiring long-term care. Apart from Germany, only Luxembourg and the Netherlands have separate long-term care insurance from which periods completed could be taken into account. This makes access to insurance and long-term care benefits more difficult, thus entailing an obstacle to the free movement of people. Furthermore, a separate reimbursement system will have to be set up for long-term care benefits, with all the consequences which this entails such as the creation of new business use cases, forms, etc.

Detailed list of long-term care benefits

The proposal to create a detailed list of long-term care benefits is fundamentally welcomed. Such a list provides clarity as to the existence of corresponding benefits in each Member States. What is however uncertain is the relationship between the list of long-term care benefits and the proposed Annex XII of the Regulation, which is to contain the long-term care benefits that can be coordinated in accordance with other chapters of the regulation.

Conclusion regarding the provisions on long-term care

The National Association of Statutory Health Insurance Funds welcomes the goal of creating a more unambiguous legal framework for long-term care benefits, which is to be achieved for instance with the definition of long-term care benefits and the list of long-term care benefits existing in the Member States. In its current form, the European Commission's proposal to

introduce a new chapter for long-term care benefits however entails the risk of causing difficulties to insured persons, or even leading to the loss of their entitlements. This would place insured persons at a disadvantage in comparison to the law as it currently stands, and would not be compatible with the goal of the European Commission to make the legal status quo more transparent and more user friendly.

There are better, less laborious ways of achieving this goal by including specific provisions on long-term care benefits in Chapter 1 on sickness benefits. Appropriately amending the existing provisions for sickness benefits can make the coordination of long-term care benefits for insured persons clear without making changes in competences or leading to a loss of entitlements.

Applicable law (posting) and the legal value of documents

The Proposal provides that the definition of posting contained in the coordinating regulation is to correspond to its definition in the Directive concerning the posting of workers in the framework of the provision of services (Directive 96/71/EC).

The reference to the Posting of Workers Directive does not constitute any recognisable advantage in terms of social insurance. The areas regulated by the coordinating regulations and by the Posting of Workers Directive are quite distinct from one another. For instance, Article 12 of Regulation (EC) No 883/2004 requires that the posting not exceeds 24 months in advance and that the posting undertaking normally carries out its activities in the sending State, as well as prohibiting the posted person from being sent to replace another person who had previously been posted. The Posting of Workers Directive contains no such preconditions. The National Association of Statutory Health Insurance Funds therefore rejects the reference to the Posting of Workers Directive in Article 12.

In order to counter potential unfair practices and abuse within the coordinating regulations, the Proposal provides that a document issued by an institution is only valid where all mandatory information has been completed. Furthermore, the institutions must react within a certain period of time where there is doubt as to the validity of the document. The proposals are basically right, but no sanctions are available if the issuing institution fails to react to the request to rectify or withdraw the document.

The issuing institution is unable to give a guarantee that the information provided by the employer on the basis of which the A1 certificate was issued is correct. It is a matter of course that it evaluates the relevant facts properly. The intended new provision offers no recognisable added value.

Sickness benefits

In accordance with recital 5b, Member States should ensure that economically inactive EU mobile citizens are not prevented from having access to sickness insurance. This contradicts the newly-supplemented Article 4 (2), which declares in general terms that economically inactive EU mobile citizens may be excluded from social security benefits.

Regardless of any evaluation of its content, the recital creates new legal uncertainty since, whilst it embodies a programmatic demand made of sickness insurance, it does not in itself constitute a directly-applicable legal provision. The recital interprets the Freedom of Movement Directive (Directive 2004/38/EC). It is inappropriate in the present proposal to amend the coordinating regulations, leads to a mixing of the content of these different legal instruments, and should therefore be deleted.

Financial provisions

Despite the payment deadlines and interest on arrears that were introduced on 1 May 2010, the mutual cost reimbursement system for sickness benefits between the individual Member States is not without its problems, in particular because of the recent financial crisis. In order to maintain confidence with regard to the mutual reimbursement of costs, and to satisfy the economic viability required by the social security systems, at least the possibility to offset mutual claims should be introduced and the interest rate on late payments increased.

The successful introduction of the cross-border Electronic Exchange of Social Security Information (EESSI) system must lead to a tangible, proper shortening of the deadlines for payment and contestations.

Entry into force of the amendments

The current Proposal regarding the transitional period does not reflect practical needs. Also, with regard to the Electronic Exchange of Social Security Information (EESSI), there is a need to review the provisions and their impact. One may fundamentally presume that the amendments to the regulations will come into force in a period when EESSI is already being used. This deployment requires run-up periods to enable the necessary content-related and technical alterations to be made. The time of entry into force should hence be adjusted to a realistic level.

The National Association of Statutory Health Insurance Funds represents all 113 statutory health insurance and long-term care insurance funds in Germany, and hence the interests of the more than 70 million insured persons and contributors, vis-à-vis policy-makers and care providers. It

advises Parliaments and Ministries within ongoing legislative procedures, and its statutory task is to defend the interests of the health and long-term care insurance funds in international and intergovernmental organisations and institutions. It is organised as part of the European Social Insurance Platform (ESIP) via the German Social Insurance Representation (DSV).

The German Liaison Agency Health Insurance – International (DVKA) in the National Association of Statutory Health Insurance Funds supports the health and long-term care insurance funds and their insured persons in the interpretation and implementation of international and intergovernmental health insurance law. It is this organisation which settles health and long-term care insurance benefits that are incurred abroad. This also applies to the costs which German statutory health insurance funds have expended when assisting persons who are insured abroad undergoing treatment in Germany.

II. Statement on the Proposal for a Regulation

Article 1 (Amendment of Regulation (EC) No 883/2004)

No 3

Recital 5b

A) Intended new provision

After Recital 5, the following is inserted:

“(5b) Member States should ensure that economically inactive EU mobile citizens are not prevented from satisfying the condition of having comprehensive sickness insurance cover in the host Member State, as laid down in Directive 2004/38/EC. This may entail allowing such citizens to contribute in a proportionate manner to a scheme for sickness coverage in the Member State in which they habitually reside.”

B) Statement

In accordance with recital 5b, the Member States should ensure that economically inactive EU mobile citizens are not prevented from having access to sickness insurance. This contradicts the newly-supplemented Article 4 (2), which declares in general terms that economically inactive EU mobile citizens may be excluded from social security benefits. It therefore creates legal uncertainty since recital 5b does contain a more specific provision for sickness insurance, but itself is not a directly-applicable legal provision.

Recital 5b provides for an interpretation of Article 7(1) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004, as well as of section 4 of the German Freedom of Movement Act/EU (FreizügigG/EU) (Act on the General Freedom of Movement for EU Citizens [*Gesetz über die allgemeine Freizügigkeit von Unionsbürgern*]), in accordance with which economically inactive EU citizens who are neither in training nor seeking work, and who wish to take up residence in Germany, need to prove that they have adequate means of subsistence and health insurance. Reference to the understanding of a provision of Directive 2004/38/EC within Regulation (EC) No 883/2004 is inappropriate, and leads to a mixing of the contents of these different legal instruments.

Moreover, recital 5b is to be criticised with regard to the application of the exclusion in accordance with section 5 subsection (11) of Book V of the German Social Code (*Sozialgesetzbuch – SGB V*). In accordance with section 5 subsection (11) of Book V of the Social Code, the health insurance that is needed in order for economically inactive EU citizens to take up residence in accordance with section 4 of the Freedom of Movement Act/EU cannot be based on compulsory insurance in accordance with section 5 subsection (1) No. 13 of

Book V of the Social Code. The entitlement to have access to voluntary insurance in accordance with section 9 subsection (1) No. 1 of Book V of the Social Code is handled in the same way. Such individuals must therefore prove that they have private health insurance when taking up residence.

It is however by no means certain that this group of individuals has access to private health insurance, as this is a contractual relationship that is freely entered into. Only the basic tariff is subject to a legal obligation to accept contracts on the part of the private health insurer, but access to the basic tariff in accordance with section 193 subsection (5) No. 2 of the Insurance Contract Act (Versicherungsvertragsgesetz – VVG) is contingent in turn on residence in Germany, which this group of individuals was unable to establish because of not meeting the requirement in accordance with section 4 of the Freedom of Movement Act/EU.

Recital 5b hence presents the risk that it might result in the German statutory health insurance funds being obliged to accept all economically inactive EU mobile citizens who wish to take up residence in Germany. This would not be compatible with section 5 subsection (1 1), sentence 2, of Book V of the Social Code.

Since recital 5b creates legal uncertainty by inappropriately providing indications within Regulation (EC) No 883/2004 as to how Directive 2004/38/EC is to be understood, and is in contradiction with both international and German law, it should be deleted in the view of the National Association of Statutory Health Insurance Funds.

C) Proposed amendment

The recital should be deleted.

Article 1 (Amendment of Regulation (EC) No 883/2004)

No 5

Recital 24

A) Intended new provision

Recital 24 is replaced by the following:

“(24) Long-term care benefits for insured persons and members of their families need to be coordinated according to specific rules which, in principle, follow the rules applicable to sickness benefits, in line with the case law of the Court of Justice. It is also necessary to provide for specific provisions in case of overlapping of long-term care benefits in kind and in cash.”

B) Statement

In accordance with the case-law of the European Court of Justice, long-term care benefits are currently allocated to sickness benefits within the meaning of Article 3 (1) Point (a). The National Association of Statutory Health Insurance Funds welcomes the intention to explicitly introduce rules on long-term care benefits orientated in line with the system for sickness benefits.

C) Proposed amendment

None.

No 9

Article 1

A) Intended new provision

Article 1 is amended as follows:

(a) In Point (c) the term “Title III, Chapters 1 and 3” is replaced by the term “Title III, Chapters 1, 1a and 3”.

(b) In Point (i)(1)(ii) after the term “Title III, Chapter 1 on sickness, maternity and equivalent paternity benefits” the term “and Chapter 1a on long-term care benefits” is inserted.

(c) In Point (va)(i) after the term “Title III, Chapter 1 (sickness, maternity and equivalent paternity benefits),” the term “and Chapter 1a (long-term care benefits)” is inserted and the last sentence is deleted.

(d) The following point is inserted after point (va):

“(vb) “long-term care benefit” means any benefit in kind, cash or a combination of both for persons who, over an extended period of time, on account of old-age, disability, illness or impairment, require considerable assistance from another person or persons to carry out essential daily activities, including to support their personal autonomy; this includes benefits granted to or for the person providing such assistance;”

B) Statement

Re (a): The amendment results from the introduction of the new Chapter 1a. This chapter should be deleted in the view of the National Association of Statutory Health Insurance Funds (see No 17), so that the amendment is unnecessary.

Re (b): The amendment results from the introduction of the new Chapter 1a. This chapter should however be deleted in the view of the National Association of Statutory Health Insurance Funds (see No 17). The remaining Chapter 1 should be referred to without specifying the title, so that the amendment is unnecessary.

Re (c): The version proposed for Article 1 Point (va) (i) of Regulation (EC) No 883/2004 furthermore links the latter with medical treatment by also naming sickness and long-term care benefits in kind within a single definition. This connection might create scope for a restrictive interpretation of the entitlements of mobile insured persons. Long-term care benefits in kind, such as bodily long-term care and support benefits for coping with and shaping everyday life in the domestic environment within the meaning of section 36 of Book XI of the Social Code, would no longer be included in the proposed definition. There is therefore a need to make separate reference to the definition of long-term care benefits.

Re (d): The definition of need of long-term care in accordance with section 14 of Book XI of the Social Code is based on the health-related impairment of the independence or abilities of the insured person. In accordance with the wording of the provision, this explicitly encompasses not only physical, but also cognitive and mental impairments. The definition of long-term care benefits proposed by the European Commission in Article 1 Point (vb) does not explicitly refer to cognitive and mental impairments. One may however presume that the definition of “impairments” covers these aspects.

C) Proposed amendment

Re (a): The proposed amendment should be deleted.

Re (b): The proposed amendment should be replaced with the following:

“In Point (i)(1)(ii) the term “sickness, maternity and equivalent paternity benefits” should be deleted.

Re (c): Article 1 Point (va) (i) should be replaced with the following:

i) Sickness as well as maternity and equivalent paternity benefits in kind means benefits provided for in accordance with the legal provisions of a Member State and which pursue the aim of providing medical treatment and the products and services supplementing this treatment, or paying for such directly, or reimbursing the costs thereof. This shall also include long-term care benefits in kind within the meaning of Article 1 Point (vb) of this Regulation.

Re (d): None.

Article 1 (Amendment of Regulation (EC) No 883/2004)

No 10

Article 3(1)

A) Intended new provision

In Article 3(1), the following point is inserted after point (b)

“ba) long-term care benefits;”

B) Statement

The explicit introduction of long-term care benefits into the material scope of Regulation (EC) No 883/2004 as a branch of social security leads to greater legal clarity, and is wholeheartedly welcome.

C) Proposed amendment

None.

Article 1 (Amendment of Regulation (EC) No 883/2004)

No 12

Article 11

A) Intended new provision

Article 11 is amended as follows:

(a) In paragraph 2 the term “sickness benefits in cash covering treatment for an unlimited period” is replaced by the term “long-term care benefits in cash”.

(b) Paragraph 5 is replaced by the following:

“(5) An activity as a flight crew or cabin crew member performing air passenger or freight services shall be deemed to be an activity pursued exclusively in the Member State where the home base, as defined in Annex III, Subpart FTL to Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and the Council as amended by Commission Regulation (EU) No 83/2014/EU of 29 January 2014, is located.”

B) Statement

Re a)

The intended amendment of Article 11(2) serves as a clarification, but may lead to undesirable side-effects. The “sickness benefits in cash covering treatment for an unlimited period” may also include other benefits than long-term care benefits in cash. In accordance with the previously applicable wording, persons drawing a sickness benefit in cash covering treatment for an unlimited period are no longer to be covered in the previous State of employment.

Should Article 11(2) be amended as intended, beneficiaries of a sickness benefit in cash covering treatment for an unlimited period if they receive this benefit because of or as a result of employment or self-employed activity should continue to be insured in the State in which they were employed or pursued a self-employed activity before becoming ill. An exclusion in accordance with Article 11(2) would no longer apply.

What is more, taking long-term care benefits in cash as a basis without indicating that they cover open-ended circumstances, for instance in the case of time-limited benefits in cash for long-term carers, leads to undesirable results.

The National Association of Statutory Health Insurance Funds presumes that there is a relatively small group of individuals in Germany to whom this rule can be applied. It cannot however be ruled out that there are other benefits in the other Member States which would no longer be covered by the exclusion once the wording has been amended.

Re b)

The amendment takes account of the currently valid rule in Community law on the definition of the term “home base”. It does not entail any change to the content.

It is furthermore made clear that the activity is deemed to be pursued exclusively in the Member State where the home base of the flight crew or cabin crew member is located. This underlines the principle of the uniform law applicable to an individual [Article 11(1) of Regulation (EC) No 883/2004].

There is furthermore no regulation of what applies when a flight crew or cabin crew member has no “home base”, or has several “home bases”. A reference to Article 13 of Regulation (EC) No 883/2004 is needed in this regard.

C) Proposed amendment

Re a)

The following should be added to paragraph 2:

“[...] sickness or long-term care benefits in cash covering treatment or an impairment for an unlimited period”.

Re b)

The following should be added to Article 11(5):

“Where accordingly there is no “home base”, or there are several “home bases”, the individual shall be subject to the law applicable in accordance with Article 13.”

Article 1 (Amendment of Regulation (EC) No 883/2004)

No 13

Article 12

A) Intended new provision

Article 12 is replaced by the following:

“Article 12

Special rules

(1) A person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted within the meaning of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services or sent by that employer to another Member State to perform work on that employer’s behalf shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such work does not exceed 24 months and that the person is not posted or sent to replace another employed or self-employed person previously posted or sent within the meaning of this Article.

(2) A person who normally pursues an activity as a self-employed person in a Member State who goes to pursue a similar activity in another Member State shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such activity does not exceed 24 months and that the person is not replacing another posted employed or self-employed person.”

B) Statement

On the reference to Directive 96/71/EC (Posting of Workers Directive)

The reference to Directive 96/71/EC has no recognisable additional value in terms of social insurance. The preconditions for the application of the legislation of the sending State in Article 12 of Regulation (EC) No 883/2004 are not in compliance with the provisions contained in the Posting of Workers Directive on the continued application of the legislation of the sending State. Article 12 of Regulation (EC) No 883/2004 thus requires that the posting not exceeds 24 months in advance, that the posting undertaking normally carries out its activities in the sending State, as well as prohibiting him or her from being sent to replace another person who had previously been posted. The Posting of Workers Directive contains no such preconditions. The areas covered by Regulation (EC) No 883/2004 and by the Posting of Workers Directive differ greatly.

A distinction in accordance with persons posted to other Member States within the meaning of the Posting of Workers Directive and persons who are “sent” there will lead to misattributions in practice given that there are no defining and distinguishing criteria. The consequence of this may be that A1 certificates which are incorrectly issued in the State of employment are not accepted in this context although it does not make any difference in terms of social insurance whether these are persons who have been “posted” or “sent”.

On the expansion of the prohibition of replacement to cover the self-employed

Today, the replacement of a posted worker by another posted worker leads to a situation in which the legislation of the State of employment applies to the replacing worker. The background to this provision is that employment that is intended to be permanent is not to be removed from the law of the State of employment – contrary to the principle stipulated in Article 11(3) Point (a) of Regulation (EC) No 883/2004. An expansion of the prohibition to cover the self-employed corresponds to the aim of the provision that is already applied to employees today.

C) Proposed amendment

The reference to the Posting of Workers Directive and the distinction between individuals who are “posted” and those who are “sent” should be deleted.

Paragraph 1 should be replaced with the following:

“(1) A person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted ~~within the meaning of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services or sent by that employer to another Member State~~ to perform work on that employer's behalf shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such work does not exceed 24 months and that the person is not posted or sent to replace another employed or self-employed person previously posted or sent within the meaning of this Article.”

Article 1 (Amendment of Regulation (EC) No 883/2004)

No 15

Article 32(3)

A) Intended new provision

In Article 32, the following paragraph 3 is added:

“(3) Where a member of the family has a derivative right to benefits according to the legislation of more than one Member State, the following priority rules shall apply:

(a) in the case of rights available on a different basis, the order of priority shall be as follows:

(i) rights available on the basis of an activity as an employed or self-employed person of the insured person;

(ii) rights available on the basis of the receipt of a pension by the insured person;

(iii) rights available on the basis of residence of the insured person;

(b) in the case of derivative rights available on the same basis, the order of priority shall be established by referring to the place of residence of the member of the family as a subsidiary criterion;

(c) in cases where it is impossible to establish the order of priority on the basis of the preceding criteria, as a last criterion, the longest period of insurance of the insured person under a national pension scheme shall be applicable.”

B) Statement

A new provision regarding the order of priority of derivative rights to benefits in kind of members of the family has been called for by the National Association of Statutory Health Insurance Funds for quite some time. The Proposal of the European Commission is welcomed as a matter of principle. The priority rules must however cover all conceivable constellations without gaps.

The Proposal of the European Commission does not contain any unambiguous provisions relating to circumstances in which a parent receives benefits relating to incapacity for work (or maternity benefit, paternity benefit), parental benefit or unemployment benefit. It is therefore important to indicate that, in accordance with Article 11(2), persons receiving cash benefits because of or as a result of their activity as an employed or self-employed person are considered to be pursuing said employment or activity. If therefore a parent is receiving for instance benefits relating to incapacity for work or unemployment benefit because of or

as a result of their employment, the resulting derivative right is not to be treated differently than any resulting directly from the employment.

C) Proposed amendment

Article 32(3) Point (a) (i) should be replaced with the following:

(i) rights available on the basis of an activity as an employed or self-employed person of the insured person. **These shall also include rights existing in application of Article 11(2) or Article 11(3) Point (c).**

Article 1 (Amendment of Regulation (EC) No 883/2004)

No 16

Article 34

A) Intended new provision

Article 34 is deleted.

B) Statement

This deletion is the result of the creation of a specific chapter on the coordination of long-term care benefits. The National Association of Statutory Health Insurance Funds considers that the introduction of such a chapter would have considerable disadvantages for EU citizens as well as for the social security institutions concerned (cf. our statement at No 17).

C) Proposed amendment

Article 34 should not be deleted, but worded as follows:

“(1) If a recipient of long-term care benefits in cash, which have to be treated as sickness benefits and are therefore provided by the Member State competent for cash benefits under Articles 21 or 29, is, at the same time and under this Chapter, entitled to claim benefits in kind intended for the same purpose from the institution of the place of residence or stay in another Member State, and an institution in the first Member State is also required to reimburse the cost of these benefits in kind under Article 35, the general provision on prevention of overlapping of benefits laid down in Article 10 shall be applicable, with the following restriction only: **if the person concerned claims and receives the benefit in kind, the amount of the benefit in cash shall be reduced by the amount of the benefit in kind which is or could be claimed from the institution of the first Member State required to reimburse the cost.**

(2) The Administrative Commission shall draw up a detailed list of the long-term care benefits able to satisfy the criteria listed in Article 1 Point (vb) of this Regulation, specifying which are benefits in kind and which are benefits in cash.

(3) Two or more Member States, or their competent authorities, may agree on other or supplementary measures which shall not be less advantageous for the persons concerned than the principles laid down in paragraph 1.”

Article 1 (Amendment of Regulation (EC) No 883/2004)

No 17

Chapter 1a

A) Intended new provision

After Article 35, the following Chapter is inserted:

“CHAPTER 1a

Long-term care benefits

Article 35a

General provisions

- (1) Without prejudice to the specific provisions of this Chapter, Articles 17 to 32 shall apply *mutatis mutandis* to long-term care benefits.
- (2) The Administrative Commission shall draw up a detailed list of long-term care benefits which meet the criteria contained in Article 1 (vb) of this Regulation, specifying which are benefits in kind and which are benefits in cash.
- (3) By way of derogation from paragraph 1, Member States may grant long-term care benefits in cash in accordance with the other Chapters of Title III, if the benefit and the specific conditions to which the benefit is subject are listed in Annex XII and provided that the outcome of such coordination is at least as favourable for the beneficiaries as if the benefit was coordinated under this Chapter.

Article 35b

Overlapping of long-term care benefits

- (1) If a recipient of long-term care benefits in cash granted under the legislation of the competent Member State receives, at the same time and under this Chapter, long-term care benefits in kind from the institution of the place of residence or stay in another Member State, and an institution in the first Member State is also required to reimburse the cost of these benefits in kind under Article 35c, the general provision on prevention of overlapping of benefits laid down in Article 10 shall be applicable, with the following restriction only: the amount of the benefit in cash shall be reduced by the reimbursable amount for the benefit in kind which is claimable under Article 35c from the institution of the first Member State.
- (2) Two or more Member States, or their competent authorities, may agree on other or supplementary measures which shall not be less favourable for the persons concerned than the principles laid down in paragraph 1.

Article 35c

Reimbursement between institutions

- (1) Article 35 shall apply mutatis mutandis to long-term care benefits.
- (2) If the legislation of a Member State where the competent institution under this Chapter is situated does not provide for long-term care benefits in kind, the institution which is or would be competent in that Member State under Chapter 1 for the reimbursement of sickness benefits in kind granted in another Member State shall be deemed to be the competent one also under Chapter 1a.”

B) Statement

Re Chapter 1a:

The introduction of a new chapter for long-term care benefits is in line with the intention to codify the status quo for these benefits arising as a result of the case-law of the European Court of Justice, but not to change it. The National Association of Statutory Health Insurance Funds does not consider this to have been achieved by handling long-term care benefits in a separate chapter. In the view of the National Association of Statutory Health Insurance Funds, the status quo is extensively changed by Chapter 1a, resulting in significant difficulties for EU citizens when exercising their rights and to unfair distributions of burdens between the Member States.

Obstacles may in particular emerge for insured persons if the treatment of the long-term care benefits in a separate chapter leads to specific business use cases and forms being needed in order to certify the entitlement. Instead of requesting as previously a form for sickness and need of long-term care (e.g. E 121 or PD S1) from a competent institution and presenting it to an institution in the place of residence, the separate treatment by risk areas would mean that insured persons might have to contact two institutions on both sides. The separation of the competences might even necessitate the involvement of institutions from two competent Member States.

It is also not clear which institutions are competent for registering and for processing the procedures if the competent State or the State of residence has no long-term care benefits in kind, which is the case in ten Member States. Article 35c(2) only explicitly provides for the health insurance institution to be claimed against for a cost reimbursement. The goal of creating a clear legal framework for long-term care benefits, and thus permanently establishing the status quo and contributing towards a fair burden of cost distributions, can be better achieved including specific regulations on the long-term care benefits in Chapter 1 on sickness benefits.

Re Article 35a(1):

The application of Articles 17 to 32 to long-term care benefits as a separate branch of social security in its own chapter is regarded critically. In all cases in which Articles 17 to 32 are based, in terms of their wording, on rights to sickness benefits in kind, consistently applying this principle entails that, if Article 35a(1) is applied in conjunction with these Articles, the right to long-term care benefits in kind is to be used as a basis. This leads to a change in the status quo with regard to long-term care benefits for EU citizens:

- Competence for sickness and long-term care benefits in kind is separate in ten Member States which do not have long-term care benefits in kind in accordance with the list set out in Article 34(2) of Regulation (EC) No 883/2004. This for instance affects situations in which individuals reside in Member State A and receive a pension there, but the legislation of State of residence A – unlike Member State B, from where they also receive a pension – does not provide for any long-term care benefits in kind. In such cases, in accordance with Article 23 of Regulation (EC) No 883/2004, the institution of the State of residence would be competent for sickness benefits in kind. In accordance with the wording of Article 23 of Regulation (EC) No 883/2004, the competence of the institution of the State of residence is contingent on a right to benefits in kind existing in the State of residence. In view of the lack of an entitlement to long-term care benefits in kind, the preconditions for the meeting of costs for long-term care benefits in kind by the institution of the State of residence in accordance with 35a(1) in conjunction with Article 23 of Regulation (EC) No 883/2004 would not be satisfied. Hence, in accordance with Article 35a(1) in conjunction with Article 24 of Regulation (EC) No 883/2004, the institution of Member State B would be competent for long-term care benefits instead of Member State A. The National Association of Statutory Health Insurance Funds considers this separation of the competences to be difficult to bring into harmony with the fundamental principle enshrined in Regulation (EC) No 883/2004, in accordance with which “Persons to whom this Regulation applies shall be subject to the legislation of a single Member State only” [Article 11(1)].
- What is more, a person who receives a pension from two Member States may even be placed at a disadvantage if their State of residence has no long-term care benefits in kind, but provides for cash benefits (e.g. Belgium) and the other Member State which pays a pension has benefits in kind but no cash benefits (e.g. the Netherlands). In this case, the person receiving a pension would have to pay contributions for long-term care benefits, but would be unable to claim either cash or long-term care benefits in kind in their State of residence.

- The combination of the right to long-term care benefits in kind, which indirectly impacts on the determination of competence for this branch of social security (see first indent), and of the exportable right to cash benefits, places in particular the sixteen Member States, including Germany, which have long-term care benefits in cash as covered by Regulation (EC) No 883/2004, at a disadvantage given that they would incur a one-sided cost burden.
- The application of Articles 17 to 32 to long-term care benefits in a dedicated chapter as a separate branch of social security leads to a situation in which, in order to gain access to insurance and to long-term care benefits, only insurance periods may be taken into account which relate to the risk of long-term care. Only Germany plus Luxembourg and the Netherlands have long-term care insurance.

It is questionable when it comes to long-term care benefits necessitated during a temporary stay in another Member State how need of long-term care is to be determined in accordance with the preconditions for entitlement stipulated in Article 19, given the short stay. In this context, the European Court of Justice has already pointed out in Case C-562/10 (European Commission against Federal Republic of Germany) that benefits relating to the risk of reliance on care — being generally long-term benefits — are not, in principle, intended to be paid on a short-term basis (cf. paragraph 51). The National Association of Statutory Health Insurance Funds considers that it is necessary to at least supplement Decision No S3 of the Administrative Commission¹ in order to bring about a uniform arrangement addressing long-term care benefits in case of temporary stay. The Administrative Commission should also provide information here as to the interpretation of Article 20(2) of Regulation (EC) No 883/2004. It is not clear subject to what prerequisites consent to the planned taking up of long-term care benefits must be granted in another Member State.

Re Article 35a(2):

The list that exists so far in accordance with Article 34(2) of Regulation (EC) No 883/2004 only contains a Yes/No statement as to whether long-term care benefits in kind and in cash exist in a Member State which fall within the scope of Regulation (EC) No 883/2004. When it comes to coordinating long-term care benefits, difficulties have repeatedly occurred in practice with regard to the question of what benefits are to be attributed to the categories benefits in kind or cash benefits in the individual Member States in case of need of long-term

¹ Decision No S3 of 12 June 2009 defining the benefits covered by Articles 19(1) and 27(1) of Regulation (EC) No 883/2004 of the European Parliament and of the Council and Article 25(A)(3) of Regulation (EC) No 987/2009 of the European Parliament and of the Council, OJ C 106/40.

care. The National Association of Statutory Health Insurance Funds hence wholeheartedly welcomes the initiative to draw up a detailed list broken down by long-term care benefits in kind and in cash.

Re Article 35a(3):

Paragraph 3 permits the coordination of long-term care benefits in cash in accordance with other chapters of Title III, i.e. for instance in accordance with the provisions on family benefits. This is contingent on the cash benefit being listed in Annex XII, and on the result of such coordination being at least as favourable for the beneficiaries as with the coordination of the benefit in accordance with Chapter 1a. In the past, the only possibility of deviating provisions with regard to the overlapping of long-term care benefits in kind and in cash was provided for in Article 34(3) of Regulation (EC) No 883/2004.

A possibility to deviate with regard to the overall coordination of long-term care benefits in cash constitutes an undesirable caesura in the systems of the Regulation. The regulations on the coordination of social security systems are in line with the system that benefits are first of all defined in order to then be able to be attributed to a specific chapter of the regulation. The possibility to derogate from this attribution poses a risk of legal uncertainty. Furthermore, the proposed amendment provides that “in derogation from paragraph 1”, coordination can take place in accordance with other chapters of Title III. Paragraph 2 is not named in this context, so that it is unclear whether the cash benefits in accordance with Annex XII also need to be included in the list in accordance with paragraph 2.

What is more, it is questionable whether the provision contained in Article 35b on the overlapping of long-term care benefits in kind and in cash applies in circumstances in which long-term care benefits in cash are granted in accordance with other chapters of Title III. Should it be possible to offset the benefits in kind against the cash benefits, institutions would have to exchange information on the receipt of cash benefits and of benefits in kind of a person in need of long-term care both between branches and internationally. If Article 34 or 35b were not to be applicable to such cases, the general prohibition of the overlapping of benefits in accordance with Article 10 of Regulation (EC) No 883/2004 would apply, and this could lead to a significant loss of benefits for mobile EU citizens. This would in turn not be in harmony with the stipulation that coordination must be at least as favourable for the beneficiaries as the coordination of the benefit in accordance with Chapter 1a.

In view of the above, Article 35a (3) is to be valued as constituting a backward step in comparison to the status quo. The procedures for mobile EU citizens would be more complex, the competences ambiguous and entitlements to benefits lower in the worst case.

Re Article 35b:

This Article transfers into the new Chapter 1a the previous Article 34 of Regulation (EC) No 883/2004 in case of the overlapping of benefits in kind and cash benefits. The National Association of Statutory Health Insurance Funds considers that this provision should remain in Chapter 1, Article 34.

Re Article 35c:

The provision for the settling of long-term care benefits in kind corresponds to Article 41 of Regulation (EC) No 883/2004 for the benefits in kind in respect of accidents at work and occupational diseases (Chapter 2). Article 41 of Regulation (EC) No 883/2004 determines the corresponding application of the provisions relating to cost reimbursement for sickness benefits in kind. Despite the application *mutatis mutandis*, the cost settlement for benefits in kind in respect of accidents at work and occupational diseases is however carried out separately from the settlement for sickness benefits in kind in accordance with Chapter 1 in the framework of separate business use cases, including separate forms. Taking this system as a basis would mean that it would no longer be possible to settle long-term care benefits in kind in accordance with Chapter 1a via the health insurance institutions. New business use cases would have to be laboriously developed, including forms/datasets. The procedure would also have to be carried out by different institutions than was previously the case. It can be feared that this would entail domestic and foreign institutions having to deal with the application and implementation of the provisions contained in the regulation which have no experience with it, since the long-term care benefits are provided by institutions which are not social security institutions in the classical sense, such as local authorities or regions. This would endanger the goal of enhancing the rights of mobile EU citizens. What is more, the application of the provisions contained in the regulations, which is not an everyday matter for some institutions, and the lack of implementation of corresponding settlement methods, might result in the reimbursement of amounts that had been advanced not being requested from the competent institution. Article 35c(2) confirms the method of separate cost settling in which the institution for long-term care benefits has competence for cost reimbursement as a matter of principle. The sickness insurance institutions should only be competent for the cost reimbursement of long-term care benefits in kind if no long-term care benefits in kind are provided for in the competent Member State. The provision contained in Article 35c should be rejected.

Conclusion:

As has been shown, the Proposal of the European Commission to introduce a separate Chapter 1a for long-term care benefits does not make the procedures any easier for the insured persons (cf. recital No 4). Quite the contrary, the National Association of Statutory Health Insurance Funds considers that the proposed provisions would make them considerably more complex. Together with the considerations that have already been put forward on the separation of the competences for sickness and long-term care, the National Association of Statutory Health Insurance Funds is therefore extremely critical of the introduction of a separate Chapter 1a for long-term care benefits. The goal of creating an unambiguous legal framework can be achieved by including specific regulations on long-term care benefits in Chapter 1 on sickness benefits.

C) Proposed amendment

The Chapter 1a contained in the Proposal of the European Commission should be deleted.

The title of Title III, Chapter 1 of Regulation (EC) No 883/2004 should be replaced with the following:

“Sickness, maternity and equivalent paternity benefits, as well as long-term care benefits.”

The resulting need for an amendment has been taken into account in the other parts of the statement (see at Article 1, No 16 re Article 34 and at Article 2, No 17 re Article 31).

Article 1 (Amendment of Regulation (EC) No 883/2004)

No 25

Article 76a

A) Intended new provision

After Article 76, the following Article 76a is inserted:

“Power to adopt implementing acts

(1) The Commission shall be empowered to adopt implementing acts specifying the procedure to be followed in order to ensure uniform conditions for the application of Articles 12 and 13 of this Regulation. Those acts shall establish a standard procedure including ~~[time limits for]~~

- [time limits for] the issuance, the format and the contents of a portable document certifying the social security legislation which applies to the holder;
- the determination of situations in which the document shall be issued;
- the elements to verified before the document can be issued;
- the withdrawal of the document when its accuracy and validity is contested by the competent institution of the Member State of employment.

(2) Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 5 of Regulation (EU) No 182/2011.

(3) The Commission shall be assisted by the Administrative Commission, which shall be a committee within the meaning of Regulation (EU) No 182/2011.”

B) Statement

Given that decisions of the Administrative Commission are only legally binding to a restricted degree, the intended new provision is to empower the European Commission to determine a procedure that is uniform and binding on all.

In order to make such provisions more acceptable, and to make it easier to enforce them, it would be desirable if concrete implementation rules could be added to Regulation (EC) No 987/2009 which would then be directly applicable in all Member States.

C) Proposed amendment

The provision should be deleted.

Article 1 (Amendment of Regulation (EC) No 883/2004)

No 26

Article 87b

A) Intended new provision

Article 87b is inserted as follows:

“Article 87b

Transitional provision for application of Regulation (EU) xxxx

(1) No rights shall be acquired pursuant to Regulation (EU) xxxx for the period before its date of application.

(2) Any period of insurance and, where appropriate, any period of employment and self-employment or residence completed under the legislation of a Member State prior to [the date of application of Regulation (EU) xxxx] in the Member State concerned shall be taken into consideration for the determination of rights acquired under this Regulation.

(3) Subject to paragraph 1, a right shall be acquired under Regulation (EU) xxxx even if it relates to a contingency arising before its date of application in the Member State concerned.

(4) Articles 61, 64 and 65 of this Regulation in force before [the entry into application of the Regulation (EU) xxxx] shall continue to apply to unemployment benefits granted to persons whose unemployment started before that date.”

B) Statement

Proper transitional provisions are vital in order to ensure that the new provisions are implemented seamlessly in practice, and hence to preserve EU citizens' rights to social security. The intended transitional provision does not meet this requirement. There are no unambiguous provisions regulating how to deal with pending proceedings. We should mention in this context for instance requests for recovery which have been initiated on the basis of national executory titles and which have not yet been concluded when the new provisions come into force. There is a need to ensure in such cases that the national executory title does not need to be replaced by a uniform executory title, and that the request for recovery is continued in accordance with the previous Articles 75 et seqq. of Regulation (EC) 987/2009.

In the event of the treatment of long-term care benefits in a separate chapter necessitating specific business use cases and forms for the certification of the entitlements and the reimbursement of the costs that have been incurred, appropriate run-up periods need to be

provided for the development of these processes and of the related documents.

Transitional provisions also need to be created when it comes to the Electronic Exchange of Social Security Information (EESSI) within the coordinating regulations provided for in accordance with Article 78 of Regulation (EC) No 883/2004 and Article 4(2) of Regulation (EC) 987/2009. It can be presumed that the amendments to Regulation (EC) No 883/2004 and to Regulation (EC) No 987/2009 will come into force in a period in which the Electronic Exchange of Social Security Information system is already being used. Not only will it be necessary to make content alterations, but new processes, datasets and the like will have to be created at technical level.

C) Proposed amendment

Article 87b should provide for unambiguous regulations relating to dealing with ongoing proceedings and on proper run-up periods for the content and technical development/implementation of processes and documents resulting from the amendment of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009.

Article 2 (Amendment of Regulation (EC) No 987/2009)

No 4

Article 1(2)

A) Intended new provision

In Article 1(2), the following point is inserted after paragraph (e):

“(ea) ‘fraud’ means any intentional act or omission to act, in order to obtain or receive social security benefits or to avoid to pay social security contributions, contrary to the law of a Member State;”.

B) Statement

The definition of the term “fraud” in Regulation (EC) No 987/2009 is welcomed as a matter of principle. In the past, only Decision No H5 of the Administrative Commission² has determined that the authorities and institutions of the Member States work together on combating fraud and error in order to ensure that Regulations (EC) No 883/2004 and (EC) No 987/2009 are properly enforced. The measures to combat fraud and error are to help ensure that contributions are paid in the right Member State, and that benefits are not wrongly granted or obtained fraudulently.

The proposed definition of fraud corresponds to that contained in Part A 2 Point (a) of the Resolution of the Council³ of 22 April 1999. However, it fails to take account of the fact that social security benefits can be obtained fraudulently not only in breach of the legal provisions of a Member State, but also by violating the provisions contained in Regulations (EC) No 883/2004 and (EC) No 987/2009. One example is a violation of the obligation to provide information in accordance with Article 3(2) of Regulation (EC) No 987/2009, in accordance with which persons to whom the basic Regulation applies are required to forward to the relevant institution the information, documents or supporting evidence necessary to establish their situation as well as their rights and obligations. Should a person fail to state that he or she is in employment for instance in two Member States, this may lead to contributions being paid in a Member State which is not competent, and to benefits being wrongly granted.

Furthermore, a definition of the term “error” should also be inserted. The term is used in

² Decision No H5 of 18 March 2010 concerning cooperation on combating fraud and error within the framework of Council Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council on the coordination of social security systems, OJ C 149/5.

³ Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 22 April 1999 on a Code of Conduct for improved cooperation between authorities of the Member States concerning the combating of transnational social security benefit and contribution fraud and undeclared work, and concerning the transnational hiring-out of workers, OJ C 125 of 6 May 1999, p. 1.

recital 25 and Article 5(2) Point (b) of Regulation (EC) No 987/2009 without having been defined in Regulation (EC) No 987/2009. Where the provision is to be applied, there might be confusion and misunderstandings were there to be no definition. The definition should borrow from the definition used in the Communication from the Commission on free movement of EU citizens and their families: Five actions to make a difference ⁴.

C) Proposed amendment

“(ea) ‘fraud’ means any intentional act or omission to act, in order to obtain or receive social security benefits or to avoid to pay social security contributions, contrary to **the provisions of the basic and implementing Regulations or** the law of a Member State;”.

eb) ‘error’ means unintentional wrong conduct or unintentional omission on the part of an institution or of a person falling within the scope of the regulations;”

⁴ COM(2013) 837 final.

Article 2 (Amendment of Regulation (EC) No 987/2009)

No 5

Article 2(5) to (7)

A) Intended new provision

In Article 2, the following paragraphs 5 to 7 are added after paragraph 4:

“(5) When a person's rights or obligations to which the basic and implementing Regulations apply have been established or determined, the competent institution may request the institution in the Member State of residence or stay to provide personal data about that person. The request and any response shall concern information which enables the competent Member State to identify any inaccuracy in the facts on which a document or a decision determining the rights and obligations of a person under the basic or implementing Regulation is based. The request can also be made where there is no existing doubt about the validity or accuracy of the information contained in the document or on which the decision is based in a particular case. The request for information and any response must be necessary and proportionate.

(6) The Administrative Commission shall draw up a detailed list of the types of data requests and responses which can be made under paragraph 5 and the European Commission shall give such list the necessary publicity. Only data requests and responses which are listed shall be permitted.

(7) The request and any response shall comply with the requirements of the Regulation of the European Parliament and of the Council on the protection of individuals with regard the processing of personal data and on the free movement of such data (General Data Protection Regulation), as also provided for by Article 77 of the basic Regulation.”

B) Statement

Re paragraph 5:

As a matter of principle, a concrete legal basis regarding the collection and processing of data for the purpose of measures combating fraud and errors in Regulations (EC) No 883/2004 and (EC) No 987/2009 is expedient and welcome. Such a legal basis obviates the need to invoke section 77 of Book X of the German Social Code (Data transmission to other countries and to international and intergovernmental agencies). Article 2(5) is the more specific provision for such cases, and is to be applied as a matter of priority.

Several definitions should however be altered so that the legal basis corresponds to the stipulations of permissible data processing in accordance with Regulation (EU) 2016/679, in

particular Article 5 “Principles relating to processing of personal data”. Sentence 1 speaks of “*persönliche Daten*” (in German⁵). This is not a legally-defined term. The National Association of Statutory Health Insurance Funds considers that the term “*personenbezogene Daten*” should be used in this regard, which is also used in recital 25 of Regulation (EC) No 987/2009, in accordance with Article 4 No. 1 of Regulation (EU) 2016/679. The latter reads as follows:

“‘personal data’ means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;”

Furthermore, the term “transmit”, which is customary in data protection law, should be used in place of the term “provide”. In sentence 2, the term “inaccuracy” could be interpreted in different ways, so that the National Association of Statutory Health Insurance Funds considers that it should be replaced with the term “inconsistencies”.

Sentence 2 presents the purpose for which such data processing is permissible. The determination and explanation of the purpose of data processing is crucial in accordance with Article 5 of Regulation (EU) 2016/679. Sentence 2 should therefore also be worded accordingly, stating “must concern”.

The determined presented purpose is missing from sentence 3. It merely ascertains that the request can also be made where there is no doubt about the validity or accuracy of information. The question however arises here as to the purposes for which it should be transmitted in such cases. Without presenting the concrete purpose of and the need for such a data collection, the National Association of Statutory Health Insurance Funds considers a danger here to be that a general clause will be opened up on data collection, which may lead to difficulties in interpretation and application in practice. Such data processing contradicts the principles of permissible data transmission, and hence corresponds neither to the stipulations contained in Article 5 of Regulation (EU) 2016/679, nor to the applicable provisions of Book X of the Social Code. Hence, additional information is crucial regarding the

⁵ This only applies in the German-language version. The distinction between “*persönlich*” and “*personenbezogen*” is not relevant in English.

purpose and need, for instance for the implementation of further national statutory provisions.

Re paragraph 6:

An exhaustive list has the disadvantage that the particularities of the individual case are not taken into consideration, or not appropriately. The provision contained in Article 2(5), sentence 4, of Regulation (EC) No 987/2009, in accordance with which requests for information and any response must be necessary and proportionate, is adequate. Paragraph 6 is dispensable.

Re paragraph 7:

That data protection is to be complied with in queries and responses to them is a matter of course in all areas of social security. It is therefore not necessary to point to the basic data protection Regulation and to Article 77 of the basic regulation.

C) Proposed amendment

Article 2(5) should be replaced with the following:

“(5) When a person's rights or obligations to which the basic and implementing Regulations apply have been established or determined, the competent institution may request the institution in the Member State of residence or stay to **transmit** personal data about that person **within the meaning of Article 4 No. 1 of Regulation (EU) 2016/679**. The request and any response **must** concern information which enables the competent Member State to identify any **inconsistencies** in the facts on which a document or a decision determining the rights and obligations of a person under the basic or implementing Regulation is based. ~~The request can also be made where there is no existing doubt about the validity or accuracy of the information contained in the document or on which the decision is based in a particular case.~~The request for information and any response must be necessary and proportionate.”

Article 2(5), sentence 3, should be replaced with the following:

The request can also be transmitted where there is no existing doubt about the validity or accuracy of the information contained in the document or on which the decision is based in a particular case, **but the information is needed in accordance with the legislation applicable to the competent institution.**

Article 2(6) and (7) should be deleted.

Article 2 (Amendment of Regulation (EC) No 987/2009)

No 7

Article 5(1) and (2)

A) Intended new provision

In Article 5, paragraphs 1 and 2 are replaced with the following:

“(1) Documents issued by the institution of a Member State and showing the position of a person for the purposes of the application of the basic Regulation and of the implementing Regulation, and supporting evidence on the basis of which the documents have been issued, shall be accepted by the institutions of the other Member States for as long as they have not been withdrawn or declared to be invalid by the Member State in which they were issued. Such documents shall only be valid if all sections indicated as compulsory are filled in.

(2) Where there is doubt about the validity of a document or the accuracy of the facts on which they are based, the institution of the Member State that receives the document shall ask the issuing institution for the necessary clarification and, where appropriate, the withdrawal of that document.

a) When receiving such a request, the issuing institution shall reconsider the grounds for issuing the document and, if necessary, withdraw it or rectify it, within 25 working days from the receipt of the request. Upon detection of an irrefutable case of fraud committed by the applicant of the document, the issuing institution shall withdraw or rectify the document immediately and with retroactive effect.

b) If the issuing institution, having reconsidered the grounds for issuing the document is unable to detect any error it shall forward to the requesting institution all supporting evidence within 25 working days from the receipt of the request. In urgent cases, where the reasons for urgency have been clearly indicated in the request, this shall be done within two working days from the receipt of the request, notwithstanding that the issuing institution may not have completed its deliberations pursuant to subparagraph (a) above.

c) Where the requesting institution having received the supporting evidence continues to have doubts about the validity of a document or the accuracy of the facts on which the particulars contained therein are based that the information upon which the document was issued is not correct, it may submit evidence to that effect and make a further request for clarification and where appropriate the withdrawal of that document by the issuing institution in accordance within the procedure and timeframes set out above.”

B) Statement

Re Article 5(1):

The addendum that documents are only valid if all sections indicated as compulsory are filled in is welcomed given the fact that this avoids missing information which is not relevant to the decision leading to problems of acceptance.

Re Article 5(2):

A period of 25 working days for the withdrawal or rectification of a document is not realistic, bearing in mind translation periods and times for participation by/consultation of third parties necessary in accordance with national law. The National Association of Statutory Health Insurance Funds is in favour of the requested institution having to reply to the requesting institution within three months.

The proposed wording creates the impression that a certificate is only to be retroactively withdrawn if fraud is proven. This is not the case. In principle, an incorrect determination of the applicable law must always also be corrected retroactively. Otherwise, proceedings for the withdrawal of A1 certificates would be senseless because they relate to previous periods as a rule. What is more, the case-law of the European Court of Justice Case C-543/13 (Fischer-Lintjens) is to be taken into account, in accordance with which insurance coverage (and benefit entitlements) are also to be corrected for the past.

As long as there is no European procedural law taking precedence over the national procedural law of the Member States, national procedural law and the national provisions on legal protection and the statute-of-limitations arrangements must apply to the withdrawal or rectification of documents.

It is not practicable to impose a reaction period reduced to two days on the institution which issued the document in urgent cases. Given the principle of mutual cooperation between the institutions, urgent enquiries are in any case to be answered without delay.

There is no need to separately mention the possibility to make a further request where doubts persist as to the validity of a document or the accuracy of the facts or information, as such a possibility always exists.

If agreement cannot be reached in individual cases regarding the legislation applicable to a person, the institution of the Member State could be provided with the legal remedies in the Member State in which the certificate was issued. This would be much more effective than making a further request. What is more, the person, and where appropriate their employer, would have to be involved in such proceedings, so that legal protection would also be ensured in this regard.

C) Proposed amendment

Article 5(2) should be replaced with the following:

When receiving such a request, the issuing institution shall reconsider the grounds for issuing the document and **shall inform the competent institutions of the Member States concerned of the result** within **three months** from the receipt of the request.

Upon **determination that the applicable law was incorrectly certified, the certificate shall be withdrawn or rectified, whereby the legislation applicable in the issuing Member State shall be complied with. This shall also be applied to previous periods.**

A new (5) should be added:

If no agreement can be reached regarding the withdrawal or rectification of the document, the competent institution of the State of employment shall be provided with the legal remedies in the Member State in which the document was issued.

Article 2 (Amendment of Regulation (EC) No 987/2009)

No 8

Article 14

A) Intended new provision

Article 14 is amended as follows:

(a) Paragraph 1 is replaced by the following:

“1. For the purposes of the application of Article 12(1) of the basic Regulation, a ‘person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted within the meaning of the Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services or sent by that employer to another Member State’ shall include a person who is recruited with a view to being posted or sent to another Member State, provided that immediately before the start of his employment, the person concerned is already subject to the legislation of the sending Member State in accordance with Title II of the basic Regulation.”

(b) Paragraph 5a is replaced by the following:

“5a. For the purpose of the application of Title II of the basic Regulation, ‘registered office or place of business’ shall refer to the registered office or place of business where the essential decisions of the undertaking are adopted and where the functions of its central administration are carried out, provided the undertaking performs a substantial activity in that Member State. Otherwise, it shall be deemed to be situated in the Member State where the centre of interest of activities of the undertaking determined in accordance with the criteria laid down in paragraphs 9 and 10 is located.”

(c) A new paragraph 12 is inserted after paragraph 11.

“12. If a person who resides outside the territory of the Union pursues his activities as an employed or self-employed person in two or more Member States and if this person, by virtue of the national legislation of one of those Member States, is subject to the legislation of that State, the provisions of the basic Regulation and the implementing Regulation on the determination of the applicable legislation shall apply mutatis mutandis subject to the proviso that his or her residence shall be deemed to be in the Member State where the registered office or place of business of the undertaking or his or her employer or the centre of interest of his or her activities is located.”

B) Statement

Re a) Article 14(1):

The reference to the Posting of Workers Directive should be deleted (see Statement re No 13 in respect of Article 12(1) of Regulation (EC) No 883/2004).

The precondition that a person who is recruited with a view to being posted must have been subject to the legislation of the sending Member State immediately before the start of his employment in order for the legislation of the sending Member State to continue to apply should be detailed at this point. The ad hoc group on posting issues has favoured a period of three months.

The wording of the provision currently contained in Article 14(1) stipulates that the person concerned must already be subject to the legislation of the Member State in which his or her employer is established immediately before the start of the employment. This precondition makes it clear that posting may only take place from a State in which the sending employer is established and exercises a substantial business activity.

The proposed new provision decouples this, and is intended to make it possible for persons to be posted from a State in which the undertaking is not established. This means, firstly, that for instance a person who normally works in their home office in Germany for an undertaking that is established in France continues to be subject to the German legislation when temporarily working in Denmark (this is currently only possible if Germany and Denmark conclude an exemption agreement in accordance with Article 16 of Regulation (EC) No 883/2004). Secondly, this makes Article 12 of Regulation (EC) 883/2004 applicable if an undertaking that is established in Austria which normally carries out its activities there recruits – and immediately posts to Germany – a person who lives in Bulgaria and to whom the Bulgarian legislation applied immediately prior to that (third-state posting). Having weighed up the pros and cons, the National Association of Statutory Health Insurance Funds favours to retain the previous provision.

Re b) Article 14(5a):

The legislation of the Member State in which the employer is established should only apply to a person who is normally employed in several Member States if the employer carries out a substantial part of its activities there. If the employer does not carry out any substantial activity in this Member State, the focus of the activity should be ascertained in accordance with the criteria which apply to persons who normally pursue an activity in two or more Member States. This procedure requires that the institution of the place of residence of the

person in question have laborious investigations carried out in another Member State. What is more, this cannot take place soon as a rule. A prolonged phase of legal uncertainty for all concerned would be the consequence. This can be avoided if the catch-all provision contained in Article 13(1) Point (b) (iv) of Regulation (EC) No 883/2004 were to apply in such cases (legislation of the person's State of residence).

Re c) Article 14(12):

The proposed new provision closes a gap. This is generally welcome. Having said that, this continues not to apply to other circumstances (such as with employment for two undertakings established in different Member States, or if the employer(s) is/are established in a third state). Having said that, these are likely to be isolated cases not justifying further regulation density.

C) Proposed amendment

Article 14(1):

The previous wording should be retained.

The words "immediately before the start of his employment" should be replaced with "**in the last three months** immediately before the start of his employment".

Article 14(5a):

Sentence 2 should be deleted.

Article 14(12):

None.

Article 2 (Amendment of Regulation (EC) No 987/2009)

No 10

Article 16 (1), (2), (3) and (5)

A) Intended new provision

Paragraphs 1, 2, 3 and 5 of Article 16 are replaced with the following:

“(1) A person who pursues activities in two or more Member States or his/her employer shall inform the institution designated by the competent authority of the Member State of residence thereof.

(2) The designated institution of the place of residence shall without delay determine the legislation applicable to the person concerned, having regard to Article 13 of the basic Regulation and Article 14 of the implementing Regulation. The institution shall inform the designated institutions of each Member State in which an activity is pursued or in which the employer is situated.

(3) If that institution determines that the legislation of another Member State applies, it shall do so provisionally and shall without delay inform the institution of the Member State which it considers to be competent of this provisional decision. The decision shall become definitive within two months after the institution designated by the competent authorities of the Member State concerned has been informed of it, unless the latter institution informs the first institution and the persons concerned that it cannot yet accept the provisional determination or that it takes a different view on this.

(5) The competent institution of the Member State whose legislation is determined to be applicable either provisionally or definitively shall without delay inform the person concerned and/or his or her employer.”

B) Statement

The intended new provision makes it clear that the employer can also contact the competent designated institution of the worker's State of residence so that the applicable legislation can be established. This is proper against the background that the employers are responsible for reporting and for making contributions to social insurance. It is furthermore in line with the practice that is already commonplace today. The provision is hence wholeheartedly welcomed.

The previous provision according to which the applicable legislation is determined provisionally is restricted to cases in which the institution of the State of residence determines that the legislation of another Member State applies. This provision is also wholeheartedly welcomed since this avoids a phase of uncertainty with regard to the

legislation that is applicable in a standard case.

The addendum to paragraph 5, in accordance with which the employer is to be informed of the legislation that has been determined, is also wholeheartedly welcomed. This information is already provided today so that the employer can comply with its obligations to report and make contributions.

C) Proposed amendment

None.

Article 2 (Amendment of Regulation (EC) No 987/2009)

No 11

Article 19(2)

A) Intended new provision

The following paragraphs are inserted after Article 19(2):

“(3) Whenever an institution is asked to issue the attestation referred to above, it shall carry out a proper assessment of the relevant facts and guarantee that the information on the basis of which the attestation is provided is correct.

(4) Where necessary for the exercise of legislative powers at national or Union level, relevant information regarding the social security rights and obligations of the persons concerned shall be exchanged directly between the competent institutions and the labour inspectorates, immigration or tax authorities of the States concerned this may include the processing of personal data for purposes other than the exercise or enforcement of rights and obligations under the basic Regulation and this Regulation in particular to ensure compliance with relevant legal obligations in the fields of labour, health and safety, immigration and taxation law. Further details shall be laid down by decision of the Administrative Commission.

(5) Competent authorities shall be obliged to provide specific and adequate information to concerned persons concerning the processing of their personal data pursuant to the Regulation of the European Parliament and of the Council on the protection of individuals with regard the processing of personal data and on the free movement of such data (General Data Protection Regulation), as also provided for by Article 77 of the basic Regulation and shall adhere to the requirements of Article 3(3) of this Regulation.”

B) Statement

Re Article 19(3):

The issuing institution cannot give any guarantee that the information on the basis of which the A1 certificate is provided is correct. It is a matter of course that it evaluates the relevant facts properly.

The proposed provision is also not necessarily needed in order to implement the case-law of the European Court of Justice cited by the European Commission. It is only a partial statement from the judgments that was made in a specific context.

The intended new provision offers no recognisable added value.

C) Proposed amendment

Article 19(3) should be deleted.

Article 2 (Amendment of Regulation (EC) No 987/2009)

No 12

Article 20a

A) Intended new provision

The following Article 20a is inserted after Article 20:

“Article 20a

Power to adopt implementing acts

(1) The Commission shall be empowered to adopt implementing acts specifying the procedure to be followed in order to ensure uniform conditions for the application of Articles 12 and 13 of the basic Regulation. Those acts shall establish a standard procedure including ~~[time limits for]~~

- ~~[time limits for]~~ the issuance, the format and the contents of a portable document certifying the social security legislation which applies to the holder,
- the determination of situations in which the document shall be issued,
- the elements to verified before the document can be issued,
- the withdrawal of the document when its accuracy and validity is contested by the competent institution of the Member State of employment.

(2) Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 5 of Regulation (EU) No 182/2011.

(3) The Commission shall be assisted by the Administrative Commission, which shall be a committee within the meaning of Regulation (EU) No 182/2011.”

B) Statement

See statement re No 25 in respect of Article 76a of Regulation (EC) No 883/2004.

C) Proposed amendment

See proposed amendment re No 25 in respect of Article 76a of Regulation (EC) No 883/2004.

III. Additional changes required

Article 11 of Regulation (EC) No 883/2004

A) Previous provision

Article 11(3) Point (c) previously read as follows:

Subject to Articles 12 to 16:

c) a person receiving unemployment benefits in accordance with Article 65 under the legislation of the Member State of residence shall be subject to the legislation of that Member State;

B) Statement

Article 1 No 22 of the European Commission's Proposal adjusts Article 65 of Regulation (EC) No 883/2004 on paying unemployment benefits to frontier workers and other cross-border workers who resided in a Member State other than the competent State. In accordance with the new wording, an unemployed person is enabled in certain case constellations to receive unemployment benefits either in the competent State (this refers to the State of the previous employment) or in the State of residence. In such cases, a person was previously always subject to the legislation of the State of residence. The person can now also be subject to the legislation of the State of his or her most recent activity as an employed or self-employed person.

The amendment of Article 65 leads to an indirect expansion of Article 11(3) Point (c), which was previously not described. Article 11 contains a list of provisions detailing the applicable social legislation for circumstances affecting several Member States that is also the legal provisions on sickness and long-term care insurance.

In accordance with the previous wording of Article 11(3) Point (c), it is not clear to which legislation a person will be subject who receives unemployment benefits in accordance with Article 65, in accordance with the legal provisions of the competent State of their most recent employment. It must be clearly regulated whether the former frontier worker can also be subject to Article 11(3) Point (c).

Equally, the terms "receives" and "pays" should be specified – cf. Article 11(3) Point (c) of Regulation (EC) No 883/2004 and Article 13(4) Point (a) (new). Do the provisions on competence also cover persons who have registered as unemployed and for instance do not receive any benefits because of a benefit suspension? Were one to always only presume in this context benefits actually received, unemployed persons on whom a benefit suspension is

imposed for the first period would have to be insured for the duration of this benefit suspension in another State than when receiving unemployment benefit.

C) Proposed amendment

Article 11(3) Point (c) should be amended as follows:

“c) a person receiving unemployment benefits in accordance with Article 65 under the legislation of the Member State of residence or of the State of his or her most recent activity as an employed or self-employed person shall be subject to the legislation of that Member State;”

Article 66(2) of Regulation (EC) No 987/2009

A) Previous provision

Article 66(2) previously read as follows:

The reimbursements between the institutions of the Member States, provided for in Articles 35 and 41 of the basic Regulation, shall be made via the liaison body. There may be a separate liaison body for reimbursements under Article 35 and Article 41 of the basic Regulation.

B) Statement

Despite the payment deadlines and interest on arrears that were first introduced on 1 May 2010, the payment of claims by other EU States has given cause for concern in recent years, also because of the recent financial crisis.

In order to maintain confidence with regard to the mutual reimbursement of costs and to satisfy the economic viability of budgeting required by the social security systems, the possibility of offsetting should therefore be introduced. The number of payment transactions would be reduced since only the excess amounts would be paid internationally. The amounts remaining in the country can be used to reimburse the advanced costs to the domestic creditor institutions more quickly via the liaison body.

C) Proposed amendment

Article 66(2) of Regulation (EC) No 987/2009 should be replaced with the following:

“The reimbursements between the institutions of the Member States, provided for in Articles 35 and 41 of the basic Regulation, shall be made via the liaison body. **Mutual claims shall be offset by the liaison bodies. The Administrative Commission shall establish practical implementation measures to this end.** There may be a separate liaison body for reimbursements under Article 35 and Article 41 of the basic Regulation.”

Article 67 of Regulation (EC) No 987/2009

A) Previous provision

Article 67(1), (3), (5) and (7) previously read as follows:

(1) Claims based on actual expenditure shall be introduced to the liaison body of the debtor Member State within 12 months of the end of the calendar half-year during which those claims were recorded in the accounts of the creditor institution.

(3) In the case referred to in Article 6(5) second subparagraph of the implementing Regulation, the deadline set out in paragraphs 1 and 2 of this Article shall not start before the competent institution has been identified.

(5) The claims shall be paid to the liaison body of the creditor Member State referred to in Article 66 of the implementing Regulation by the debtor institution within 18 months of the end of the month during which they were introduced to the liaison body of the debtor Member State. This does not apply to the claims which the debtor institution has rejected for a relevant reason within that period.

(7) The Audit Board shall facilitate the final closing of accounts in cases where a settlement cannot be reached within the period set out in paragraph 6, and, upon a reasoned request by one of the parties, shall give its opinion on a dispute within six months following the month in which the matter was referred to it.

B) Statement

Re paragraph (1):

The so-called batches (Global Claims) currently frequently contain several tens of thousands of individual invoices. This is because they are frequently only submitted twice per year. This can lead to delays in processing, and therefore in payment. In order to accelerate and stabilise the settlement process, the liaison bodies should spread the volumes more evenly. Monthly intervals would appear to be suitable for this. Longer periods would however be suitable if the settlement volume between two Member States is not very high.

Re paragraph (3):

Taking account of the provision provided for in Article 73 of Regulation (EC) No 987/2009 (see No 28) (Recovery of benefits unduly provided or paid), the provisions on the deadlines for the submission of claims between institutions in Article 67(3) of Regulation (EC) No 987/2009 should be adjusted appropriately.

Re paragraph 5:

Article 67(5) of Regulation (EC) No 987/2009 regulates a deadline of 18 months for the settlement or payment of invoices. The deadline of 12 months for a reaction by the creditor institution to a contestation by the debtor institution, which is highly relevant for practical implementation, by contrast, previously results from Article 12(2) of Decision No S9 of the Administrative Commission⁶. This period should also be included in the Implementing Regulation. It should also be made clear here that it is the actual receipt of the reaction within the period that is decisive, and not its sending. Article 67(5), sentence 3, of Regulation (EC) No 987/2009 should be adjusted for this. Another sentence should furthermore be added.

Re paragraph 7

Paragraph 7 provides that the Audit Board facilitates the final closing of accounts in cases where the parties have been unable to reach a settlement within 36 months. The consultation of the conciliation panel at the Audit Board is to help clarify claims quickly. In accordance with the provision, the conciliation panel must make a statement within six months following the month in which the matter was referred to it. This deadline has proven to be too short in practice, and should be extended to nine months. Furthermore, the previous provision contained in Article 67(7) does not contain a deadline for the submission of facts. Such a deadline did exist with regard to claims within the scope of Regulations (EEC) No 1408/71 and No (EEC) 574/72, within Decision No S10, and this has proven to be worthwhile. The six-month deadline specified therein has however proven to be too short in practice. A nine-month deadline can be considered appropriate.

C) Proposed amendment

The following sentence 2 should be added to Article 67(1) of Regulation (EC) No 987/09:

“Submission shall be on a monthly basis as a rule, but six-monthly at the latest.”

Article 67(3) of Regulation (EC) No 987/09 should be replaced by the following:

“The period in accordance with paragraphs 1 and 2 of the present Article shall not commence until the date when the creditor institution becomes aware of it via the debtor institution. Claims may be introduced for benefit periods of at most five calendar years in the past. Introduction to the liaison body of the debtor Member State shall be decisive.”

⁶ Decision No S9 of 20 June 2013 concerning refund procedures for the implementation of Articles 35 and 41 of Regulation (EC) No 883/2004, OJ C 279/8.

Article 67(5), sentence 2, should be replaced by the following:

“This shall not apply to the claims **for** which **the liaison body of the creditor institution has received a contestation** for a relevant reason within that period.”

In Article 67(5) the following sentence 3 should be added:

“The reaction to the contestation must be available to the liaison body of the debtor Member State at the latest twelve months after expiry of the month in which the contestation was received by the liaison body of the creditor institution; otherwise the contestation shall be deemed to have been accepted.”

Article 67(7) should be amended as follows:

“The Audit Board shall facilitate the final closing of accounts in cases where a settlement cannot be reached within the period set out in paragraph 6, and, upon a reasoned request by one of the parties, shall give its opinion on a dispute within **nine** months following the month in which the matter was referred to it.”

In Article 67(7) the following sentence 2 should be added:

“The Audit Board must receive the request at the latest nine months after expiry of the period set out in paragraph 6.”

Article 68(2) of Regulation (EC) 987/2009

A) Current provision

The interest shall be calculated on the basis of the reference rate applied by the European Central Bank to its main refinancing operations. The reference rate applicable shall be that in force on the first day of the month on which the payment is due.

B) Statement

The settlement of German claims by other Member States has given cause for concern in recent years, also because of the recent financial crisis.

Although the creditor institutions have advanced the costs, many claims (currently approx. 14 % of the amounts introduced are paid late by the debtor institution, or if at all then a very long time after the payment deadline has passed. Such payment arrears have a negative impact on the liquidity of the creditor institutions, and make their financial accounting more difficult. They are all the more detrimental to the German statutory health insurance funds in that they are unable to take up external debt finance to cover the arrears.

The basic and implementing regulations do not explicitly provide for legal enforcement of claims in case of payment arrears. It is a matter of course that the institutions cooperate mutually. There is nonetheless a need to stipulate additional provisions in order to act as a deterrent against overstepping the payment deadlines in the reimbursement procedure between the institutions.

Higher interest rates should therefore be provided for payment arrears. In analogy to Directive 2011/7/EU on combating late payment in commercial transactions, the interest on arrears due should be eight percentage points above the reference rate applied by the European Central Bank.

C) Proposed amendment

Article 68(2) should be replaced with the following:

“(2) The interest shall be calculated on the basis of the reference rate applied by the European Central Bank to its main refinancing operations plus 8 percentage points. The reference rate applicable shall be that in force on the first day of the month on which the payment is due.”

Article 75(1) of Regulation (EC) No 987/2009

A) Previous provision

Article 75(1) previously read as follows:

For the purposes of this Section:

- 'claim' means all claims relating to contributions or to benefits paid or provided unduly, including interest, fines, administrative penalties and all other charges and costs connected with the claim in accordance with the legislation of the Member State making the claim;
- [...]

B) Statement

The definition of the term "*Claim*" (*Forderung*) in the German version of Article 75(1) should be adjusted in line with the English version.

C) Proposed amendment

Linguistic amendment proposal re Article 75(1):

The German version of Article 75(1) should be worded as follows:

“(1) In diesem Abschnitt bezeichnet der Ausdruck

*• „Forderung“ alle Forderungen im Zusammenhang **mit Beiträgen oder zu Unrecht gezahlten oder erbrachten Leistungen**, einschließlich Zinsen, Geldbußen, Verwaltungsstrafen und alle anderen Gebühren und Kosten, die nach den Rechtsvorschriften des Mitgliedstaats, der die Forderung geltend macht, mit der Forderung verbunden sind;*

- [...]”

Article 86(3) of Regulation (EC) No 987/2009

A) Previous provision

Article 86(1) previously read as follows:

No later than the fourth full calendar year after the entry into force of the implementing Regulation, the Administrative Commission shall present a comparative report on the time limits set out in Article 67(2), (5) and (6) of the implementing Regulation.

On the basis of this report, the European Commission may, as appropriate, submit proposals to review these time limits with the aim of reducing them in a significant way.

B) Statement

Article 86(1) of Regulation (EC) No 987/2009 already contains a review clause on the basis of which the Administrative Commission has to present a comparative report on the deadlines set out in Article 67(2), (5) and (6) of the implementing Regulation in 2015. Also given that the cross-border Electronic Exchange of Social Security Information (EESSI) system was not yet available at that time, no changes were made on the basis of the report. It appears to be expedient to alter this provision such that a renewed review is to be carried out two years after expiry of the transitional period in accordance with Article 95 of Regulation (EC) No 987/2009. It should also be reviewed in this context from what time onwards those Member States which still reimburse on the basis of fixed amounts can adapt their legal or administrative structures to accommodate reimbursement on the basis of actual expenditure. The other paragraphs of this article can be deleted as the reviews which they regulate have taken place.

C) Proposed amendment

Article 86(1) should be amended as follows:

“No later than **two years after expiry of the transitional period stipulated in Article 95**, the Administrative Commission shall present a comparative report on the time limits set out in Article 67(2), (5) and (6) of the implementing Regulation. The report shall furthermore include a review of the time from when the possibility to settle on the basis of fixed amounts contained in Title IV, Chapter 1 Section 2 can be deleted.

On the basis of this report, the European Commission may, as appropriate, submit proposals to shorten these time limits as well as a deadline to delete Title IV, Chapter 1 Section 2.”
Paragraphs 2 and 3 should be deleted.

Article 94a of Regulation (EC) No 987/2009

A) Facts

Article 2 No 25 of the Proposal of the European Commission provides that three different age groups be introduced in Article 64(1) for persons aged from 65 in order to calculate the monthly fixed amounts.

B) Statement

The new age groups used to calculate the fixed amounts should be applied uniformly from a certain benefit year onwards. It should be borne in mind here that those Member States which settle on the basis of fixed amounts may need to make changes in the way they collect data and perform calculations. A transitional provision therefore needs to be created (Article 94a of Regulation (EC) No 987/2009). Presuming that the amending regulation comes into force sometime in 2018, it appears to be justified to continue to apply the previous age groups for the benefit years up to and including 2018.

C) Proposed amendment

After Article 94 the following Article should be inserted:

“Article 94a

In derogation from Article 64(1) of Regulation (EC) No 987/2009, the monthly fixed amounts shall be calculated for the benefit years up to and including 2018 for the following age groups:

- i = 1: persons aged under 20,
- i = 2: persons aged from 20 to 64,
- i = 3: persons aged from 65”