



# Fraud and error in the field of EU social security coordination

Reference year: 2015



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# **Fraud and error in the field of EU social security coordination**

Reference year: 2015

## Network Statistics FMSSFE

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## EXECUTIVE SUMMARY

This study summarises the information provided by the Member States in their annual voluntary reports on their experience and progress concerning cooperation on fraud and error, as provided for in Decision H5 of the Administrative Commission for the Coordination of Social Security Systems.<sup>1</sup> The Member States' reports have been analysed with the aim of identifying several elements. First, particular attention goes to the steps taken throughout the year to combat and prevent fraud and error in the field of EU social security coordination. Secondly, the aim of the country reports was to identify specific problems in implementing the EU coordination rules which may lead to, at least risks of, fraud and error. Thirdly, an outline is provided of the steps taken to promote compliance by institutions and healthcare providers with the coordination rules and to provide information to citizens, in the field of benefits in kind. Finally, the report notes good practices, lessons learned and remaining issues or concerns when dealing with cross-border cooperation and information exchange within the framework of Regulations (EC) No 883/2004 and (EC) No 987/2009 on the coordination of social security systems. Finally, the report contains an annex I (National legislation relevant to preventing and combatting social security fraud and error within the framework of Regulations (EC) No 883/2004 and (EC) No 987/2009 on the coordination of social security systems, including the relevant definitions of fraud and error and penalties and sanctions that apply), annex II (Inventory of bilateral agreements and bilateral cooperation arrangements with other EU or EEA Member States entered into for the purposes of combatting fraud and error within the framework of Regulations (EC) Nos 883/2004 and 987/2009 on the coordination of social security systems) and annex III (Quantitative data for reference year 2015 regarding fraud and error in cases determined under the Regulations, namely in cross-border aspects of social security).

First of all, the reports reveal that fraud and error in the field of social security are generally recognised as problematic phenomena. The provided data, notwithstanding the limited amount of data received, confirms this finding. The increase of national legislation concerning fraud and error is additional proof thereof, although national legislation specifically dealing with fraud and error under the Regulations seems to be lacking.

Concerning the steps taken in dealing with fraud and error, the national reports reveal that Member States focus on prevention of fraud and error as well as combatting it. Information dissemination among institutions, healthcare providers and citizens in order to promote compliance with the coordination rules, is vital in the prevention of and fight against fraud and error, as demonstrated by the focus thereupon by the Member States. In addition, information exchange and cooperation between internal competent authorities as well as the competent authorities in other Member States is just as important. Various bilateral agreements on data exchange were concluded and working groups concerning fraud and error in the field of social security were set up.

Still, a number of difficulties remain problematic in a majority of Member States when attempting to combat fraud and error in the field of social security coordination. These shared issues include, amongst others, the delayed or absent cooperation between the competent authorities in the respective Member States, the determination of residence and the applicable legislation, and issues concerning data protection in the context of the exchange of data.

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<sup>1</sup> DECISION No H5 of 18 March 2010 concerning cooperation on combatting 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 (Text of relevance to the EEA and to the EC/Switzerland Agreement) (2010/C 149/05), OJ C149 of 8.6.2010, 5-7.

Overall, the report reveals two broad conclusions. First and foremost, all reporting Member States have undertaken efforts to fight fraud and error, albeit on different levels or with varying intensity. These efforts repeatedly concentrate on strengthening the information exchange and cooperation between internal competent authorities as well as the competent authorities in other Member States. Secondly, one of the predominant concerns amongst all Member States relates to the delay in or absence of cooperation or exchange of data between the competent institutions of the respective Member States. In turn this results in scenarios – amongst others – where illegitimate double affiliation and/or undue payments occur. Improvement thus remains possible and necessary – both with regard to the prevention and early detection of fraud and error in cross-border situations as well as concerning cross-border administrative cooperation and information exchange between Member States.



## 1. INTRODUCTION

Restrictions to the free movement of persons can and do appear in many different respects, not in the least in the field of social security, where both fraudulent and erroneous situations can put a strain on the free movement of persons. With respect to social security coordination, fraud is defined as *"any act or omission to act, in order to obtain or receive social security benefits or to avoid obligations to pay social security contributions, contrary to the law of a Member State"* while error is defined as *"an unintentional mistake or omission by officials or citizens"*.<sup>2</sup> Although both fraud and error often end up having the same effects, the capital difference between them is the fact that error is always unintentional.

Strong cooperation between Member States is crucial in order to prevent and combat fraudulent and erroneous situations in the realm of social security coordination. In order to boost and strengthen this cooperation, Regulation (EC) No 883/2004 on the coordination of social security systems<sup>3</sup> has provided for the establishment of several mechanisms (e.g. decision A1; decision H5). Although it has to be noted that only a few specific references to fraud and error are made in Regulation (EC) No 883/2004.<sup>4</sup> The Administrative Commission is, in accordance with said Regulation, responsible for handling questions of interpretation concerning the Regulation's provisions or concerning agreements or accords concluded in the framework of the Regulation. In addition to the Administrative Commission, there is a Technical Commission, which among other things assembles technical documents and studies; an Audit Board, which establishes the average costs for the reimbursement of health care costs in Member States; and an Advisory Committee, which is responsible for preparing opinions and proposals for the Administrative Commission.

At the 307<sup>th</sup> meeting of the Administrative Commission, the Member States decided to create an Ad Hoc Group in order to assist the Administrative Commission in its efforts to strengthen the cooperation between competent institutions, particularly concerning the fight against social security fraud and error. This Ad Hoc Group has produced two reports on this type of fraud and error issues and has identified some major problem areas. The conclusions and recommendations led to Decision H5 in March 2010. As stated in that Decision, the Administrative Commission discusses cooperation on fraud and error issues once a year, based on the voluntary reporting by the Member States of experiences and progress in the field.

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<sup>2</sup> See the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Free movement of EU citizens and their families: Five actions to make a difference (COM(2013) 837 final).

<sup>3</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 314, 7.6.2004, p. 1).

<sup>4</sup> The coordinating Regulations do not contain a general prohibition on fraud or abuse of rights. The Regulations mention fraud and abuse only once, in Recital 19 of Regulation (EC) No 987/2009 *"Procedures between institutions for mutual assistance in recovery of social security claims should be strengthened in order to ensure more effective recovery and smooth functioning of the coordination rules. Effective recovery is also a means of preventing and tackling abuses and fraud and a way of ensuring the sustainability of social security schemes"*.

It is suggested that this voluntary reporting covers a number of matters:

- first, the steps taken throughout the year to combat fraud and error in cases determined under the Regulations;
- second, specific problems in implementing the coordination rules which may lead at least to risks of fraud and error;
- third, agreements and bilateral cooperation agreements with other EU Member States entered into for the purposes of combatting fraud and error;
- fourth, the steps taken, in the field of benefits in kind, to promote compliance by institutions and health care providers with the coordination rules and to provide information to citizens;
- lastly, best practices, lessons learned, issues or concerns (including with regard to privacy and data protection) when dealing with cross-border cooperation and information exchange within the framework of Regulations (EC) No 883/2004 and (EC) No 987/2009 on the coordination of social security systems.

At the request of several Member States, the European Commission and the Network's experts, the questionnaire which was revised in 2015 was again revised for the 2016 report after consultation with the European Commission and a delegation from the European Platform for combat cross-border social security fraud and error.<sup>5</sup> On the one hand, the questionnaire was deemed too extensive by several Member States and therefore the number of questions was reduced. On the other hand, it was stressed that the questionnaire is about fraud and error within the framework of the coordination Regulations and therefore the content of the questions was revised. Furthermore, a new approach to the collection of statistical information was agreed upon and it was agreed that the 2016 questionnaire would be of a transitive nature, situated between the old and the new way of collecting statistical information. Last but not least, the Network's experts agreed to the European Commission's desire to draw up country sheets on e.g. national legislation and bi- or multilateral agreements between Member States.

This report summarises the information received for 2016 through the voluntary reporting by 24 Member States of the European Union, i.e. Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, the Netherlands, Malta, Poland, Portugal, Romania, Slovakia, Spain, Sweden and the United Kingdom; by two Member States of the European Economic Area, i.e. Iceland and Norway; and by Switzerland (hereinafter: the Member States). In general, it is at times hard to tell whether the steps taken, reported in the country replies, refer to fraud and error in a cross-border context or a strictly national context. Many times, strictly internal measures, which have nothing to do with the coordination rules and fraud on a European level, were reported. Despite the fact that fewer country replies were received this year in comparison with the previous year and despite the finding that social fraud and error are not yet generally considered as a priority on the Member States' political agendas, a growing interest in the subject of fraud and error can be recorded. At the end of each part, a table summarises whether or not the Member States, from which the replies were received, replied to the question concerned.

Besides the aforementioned Ad-Hoc group on fraud and error another Ad-Hoc Group on the exchange of personal data on Fraud and Error was set up at the 334th meeting of the AC on 19-20 June 2013. In accordance with its mandate this Ad-Hoc Group presented its report to the AC on 18 December 2013.<sup>6</sup> Certain legislative changes were recommended

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<sup>5</sup> The former H5NCP network.

<sup>6</sup> Administrative Commission for the Coordination of Social Security Systems, *Note AC 537/13*, (not published).

which, if adopted, would provide a clearer legal base for the exchange of data on fraud and error. In this respect it should be underlined that in the proposal for the revision of Regulation (EC) No 987/2009 the AC agreed to the creation of a legal base for data exchange which must be in line with the General Data Protection Regulation.<sup>7</sup> In addition, in its proposal to modify Regulations (EC) No 883/2004 and (EC) No 987/2009, published on 13 December 2016, the European Commission proposed to insert a legal base for data exchange, which shall be in line with the General Data Protection Regulation.<sup>8</sup>

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<sup>7</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1 4.5.2016.

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN>.

<sup>8</sup> Proposal for a regulation of the European Parliament and of the Council 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, 13 December 2016, COM(2016)815 final – (COD), <http://ec.europa.eu/social/main.jsp?langId=en&catId=849&newsId=2699&furtherNews=yes>. See in particular Articles 2.6 and 2.11.

## 2. STEPS TAKEN THROUGHOUT THE REFERENCE YEAR (2015) TO COMBAT FRAUD AND ERROR IN CASES DETERMINED UNDER THE REGULATIONS

### 2.1. Steps taken to combat fraud and error

The country replies to the questionnaire reveal that in 2015 the Member States of the European Union and Norway have taken a diversity of steps in order to combat fraud and error in cases determined under the Regulation. What follows is an overview of the reported measures, whereby a distinction is made between **general steps**, which are affecting all branches of social security horizontally, and **specific steps** per branch. A summary table of these general and specific steps can be found at the end of this section (p. 23).

#### 2.1.1. General steps taken to combat fraud and error

The Member States took some general steps on their own initiative in the fight against fraud and error. To keep a better track of the situation and to gain a better insight into the amount and nature of cases of fraud and error, in 2015 Member States invested in systems to make structural data monitoring actions possible.

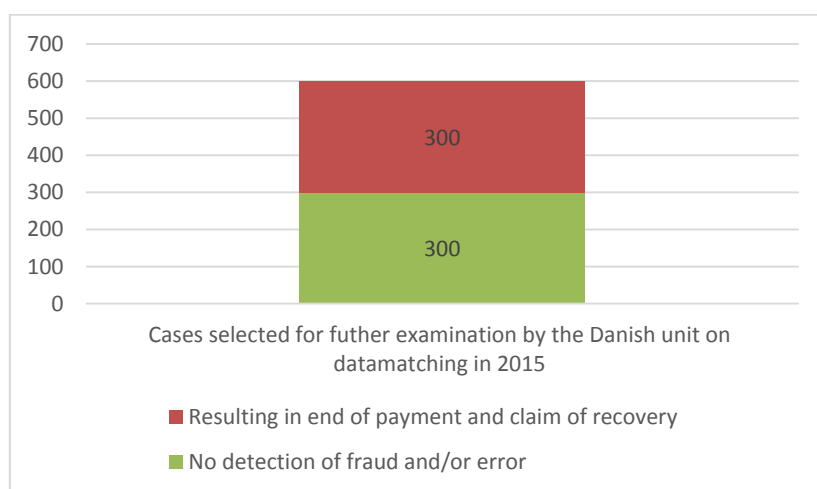
In that respect, the **Norwegian** Health Economics Administration (*Helfo*) followed up and reported on expenditure developments related to social security on a regular basis. In **Lithuania**, specialists of the competent institutions verify the information provided in structural electronic documents (SEDs), portable documents (PDs), E-forms and other documents by checking if the documents or forms are filled out and signed properly. In case of suspicion about the credibility of the presented information, the relevant Member State's competent institution will be contacted to throw light on the specific matter. As part of the verification of the documents, the Lithuanian competent institutions also check the information about the employer or person concerned which is available from different registers and other institutional databases (e.g. information from tax authorities, the register of Lithuanian residents etc). If PDs or E-forms are only partly filled out, the Lithuanian competent institutions use a computerised procedure to complete the documents with information from electronic databases. Data that is still missing is added by hand. On a regular basis, meetings are organised with Lithuanian competent institution specialists to discuss individual cases and to share best practices.

In **Poland** too, the National Health Fund (*Narodowy Fundusz Zdrowia – NFZ*), the competent institution regarding benefits in kind, verifies whether the claims sent by the liaison bodies of other Member States are justified. For example, the *NFZ* examines whether the person was entitled to the benefits during the period when the benefits in kind were provided. In unjustified cases the received claims are contested in order to clarify the matter with an institution of the other Member State. When a claim cannot be contested, it is settled by the *NFZ*, and the recourse proceedings are initiated against the person involved. The Allowances Department of the Polish Social Insurance Institution reported that in order to combat fraud and error, investigations were pursued and decisions were issued requiring the recovery of unduly paid benefits with interest.

Also in **Austria**, there is a process of ongoing checks. Through a comprehensive "joint examination of all wage-related levies" it is checked whether all social security contributions as well as payroll taxes and local taxes are paid correctly. Furthermore, there are on-the-spot checks, mainly in connection with the applicable legislation (cases of posting, work in several Member States etc).

In **Denmark**, a dedicated unit on data matching has been established under the auspices of *Udbetaling Danmark*. Already discussed in last year's report, this section came into full operation in 2015 and conducts data matching in an effort to combat fraud and error regarding family benefits, maternity benefits, invalidity pension, old-age pension, sickness benefits in cash as well as social assistance. One focus area of the unit on data matching has been risk analysis and case selection under Regulation (EC) No 883/2004.

However, Denmark regrets that the work in this regard is somewhat impeded by the lack of (large scale) data from other EU Member States. As an example of case selection based on risk profile under the Regulations, the data matching unit has carried out an initiative in relation to family benefits. On the basis of the Danish digital income register, the unit has selected cases for further examination by checking for compliance with the income criteria.



In close cooperation with the unit on data matching, in autumn 2015 *Udbetaling Danmark* has initiated the preparation of a campaign in 2016. One aspect of the campaign aims specifically at combatting fraud, as a thematic control initiative has been prepared. The other aspect is primarily preventive in nature and will be discussed in the next part.

In **Italy**, the *Istituto Nazionale della Previdenza Sociale (INPS)*, National Institute of Social Security, NISS) generally implements data matching and data mining in its own databases, by means of its own IT system to combat fraud and error. Over the years, it has developed an IT system to manage instances of fraud and the associated risk analysis. During 2015, the database was further developed, which allowed the matter under examination to be broadened.

The Italian NISS has also implemented an application for the acquisition of contributions from migrant workers. For some years now, the NISS has been acquiring the contributions communicated by institutions abroad with respect to migrant workers, by means of Community forms. A new version of the acquisition procedure was developed in 2015. It provides for certain automatic checks of the adequacy of acquisitions and improves the traceability of the entire process, as it provides a link to the electronic document management system of the Institute and the acquisition of the computer imprint of the paper document received from the foreign institution.

The application now contains a function which allows a sample-based computerised management to monitor the productive activity on the basis of the forms acquired each month by operators using the application. This sampling activity enables the application to produce special lists which are made available to the head office from the first day of the month following the end of the reference period.

With a view to the adoption of any corrective actions, relevant reports are produced and statistics are generated on the basis of the profile of the requesting operator (Director of the Office, Regional Director, National Director) for the visualisation of:

- reports on compliant and non-compliant practices;
- the months processed;
- the type of practice (e.g. by State/foreign institution, by type of contribution, by time to implement the practices etc).

**Malta's** social security entity has interconnected its IT infrastructure to that of other entities, such as the Public Employment Service and the Inland Revenue Department. This feature enables the verification of the actual registration of the employment activity as well as the payment of the relative contributions, in order to combat fraud. In **Slovakia** there is a scrupulous cooperation and data exchange among the Health Care Surveillance Authority, health insurance companies providing public health insurance and health care providers relating to the coverage of health insurance of persons concerned.

Besides the steps taken concerning the monitoring of data, Member States keep working together and try to improve the internal relationships between institutions in order to combat fraud and error:

The **United Kingdom** remains committed to fighting fraud and error in the UK and internationally by working with partners in the EU and the rest of the world. In 2015/2016 they investigated approximately 400 cases of alleged fraud elsewhere in the EU. This was predominantly done by their specialised abroad fraud team aided by their overseas teams based in Madrid and Alicante. The United Kingdom is committed to the detection and investigation of benefit fraud and the appropriate use of available penalties, including criminal prosecution where appropriate.

**Spain** reported that bilateral agreements on data exchange with other Member States were negotiated, aiming at the detection of cases of fraud and error in the fields of old-age survivor's benefits and healthcare. Such bilateral agreements make it possible to monitor the allocation of the '*complemento por mínimos*' supplement, a benefit to ensure that pensioners receive a minimum pension, and, where appropriate, to recover benefits unduly paid. A cooperation agreement between Germany and Spain was already in place. In December 2015 an agreement was concluded with the Netherlands to share data about pensioners from both States.<sup>9</sup> In the light of the information provided by Germany, Spain has begun to screen these data with a view to establishing whether such persons have a priority entitlement to healthcare, whereby the costs are to be met by the country that pays their pension, provided that they are currently recognised as entitled to healthcare under Spanish legislation solely on the basis of their residence in Spain. Although no formal agreement has been concluded with the United Kingdom in this regard, both sides have agreed in practice to regularly share data regarding inactive British nationals resident in Spain who are insured solely on the basis of their residence there. In 2015 cross-referencing of these data resulted in a significant number of these insured parties losing their entitlement following confirmation by the United Kingdom that they were pensioners and should have made use of a form S1. Furthermore, as regards benefits in kind, expenditure resulting from fraudulent use of entitlement forms may be recovered from the parties concerned as benefits which were not due in accordance with Article 76 of Regulation (EC) No 883/2004.

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<sup>9</sup> See Annex II of this report.

At the headquarters of the *Bundesagentur für Arbeit* in **Germany**, the "Mutual reporting by the federal government and the federal states of findings regarding the combatting of misuse of the freedom to provide services and the freedom of establishment" has been updated. In this context, authorities which have new findings concerning fraud in relation to gainful employment and the receipt of benefits exchange information with one another about new fraud patterns or the clustering of practices used by perpetrators.

This reporting does not specifically target abuse in relation to Regulations (EC) No 883/2004 and (EC) No 987/2009, but tackles these as well, as recipients of benefits who import an entitlement to benefits to Germany, and cross-border workers are also included in the data cross-checks. If information gleaned from other authorities through the updated reports may be relevant for a particular authority, this information will be passed on.

**Romania's** National Health Insurance House provided a permanent methodological guidance to the Health Insurance Offices in order to implement the Regulations correctly.

Lastly, the Member States considered the improvement of the functioning of the National Contact Points (NCPs) through the former H5NCP project, since the beginning of 2016 formalised as the European platform to combat cross-border social security fraud and error. Through this project NCPs became entry points for incoming enquiries from other NCPs concerning fraud and error via an online platform which also enabled countries to report systematic difficulties that are causing delays and errors. The project produced a common set of guidelines so as to support the NCPs in their role.<sup>10</sup> On 15 January 2014, the project formally ended. It was agreed during the AC meeting of December 2013 that on the basis of a mandate adopted by the AC both Belgian and Dutch delegations would continue to manage the platform. As a result, the project activities continued and the online platform remained online during this transitory period. As from 1 January 2016 the online platform was transferred to the Commission's server overseen by a steering committee composed of representatives from the Member States who have the status of an ad-hoc group of the Administrative Commission.

### **2.1.2. Specific steps taken to combat fraud and error**

In addition to the foregoing general steps, specific measures were also taken in particular branches of social security.

#### *2.1.2.1. Old-age and survivor's benefits*

The national reports show that various Member States have measures installed to combat fraud and error in the fields of old-age and survivor's benefits, starting with the coordination of the implementation of the Regulations concerned by one institution, towards central screening of suspected cases of fraud or error, and the implementation of suitable measures in cases of fraud or error (the recovery of unduly paid benefits, criminal charges etc.). Mentioned as a general step to combat fraud and error, in the specific field of old-age and survivor's benefits as well, some Member States invested in systems to make structural monitoring actions of data possible.

With an eye to uniformity of interpretation and application, in **Romania** the Directorate for International relations within the National House of Public Pensions (NHPP), as the competent institution, coordinates the implementation of the EU social security Regulations by the 42 territorial pension offices.

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<sup>10</sup> Note AC 082/14.

In **Poland**, the Agricultural Social Insurance Fund (*Kasa Rolniczego Ubezpieczenia Społecznego – KRUS*) carried out ad hoc inspections in the KRUS regional units, with the purpose to examine whether the pension cases considered under the European Regulations are handled correctly.

In the **Czech Republic**, with the purpose to combat fraud, the legislation on social security defines the responsibility of the applicants and beneficiaries: if their behaviour leads to an unjustified awarding of benefits, internal directives determine that the erroneous pension payment can be stopped, the pension can be revoked, the overpayment can be recovered or/and the applicant/beneficiary can face criminal charges.

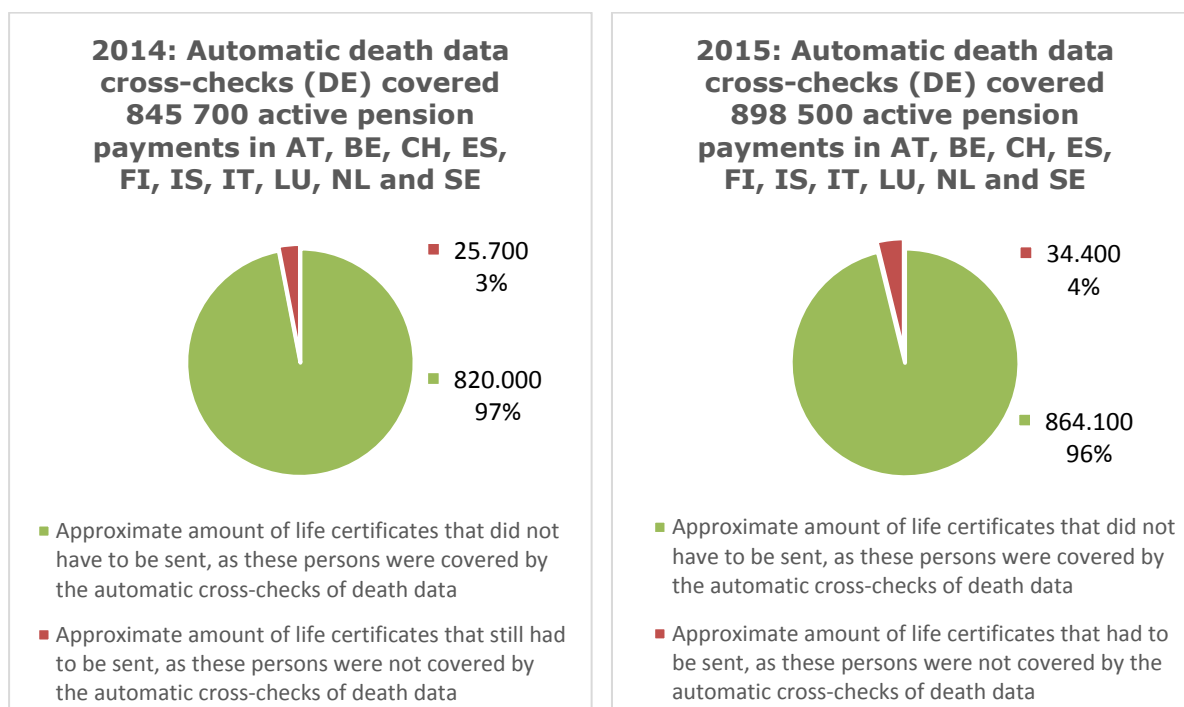
**Austria** organises a central screening of suspected cases of fraud (e.g. the unlawful receipt of benefits by means of falsifying or failing to disclose a date of death), recovers unduly received benefits and reports the offence to the law enforcement agency if necessary.

**Denmark** has achieved a significant step in the battle against errors in the field of old-age and anticipatory pension. The procedure of adjusting pension rates to match the claimant's level of income was changed from a yearly check-up to an automatic monthly check-up on the basis of the Danish digital income register. Thus, the pension rates are adjusted automatically each month rather than yearly to the advantage of both the claimants and *Udbetaling Danmark*. The built-up of large amounts due for recovery is thereby avoided to a significant extent. It should be emphasised that the cases of recovery in this respect are not to be understood as evidence of fraud, but rather illustrate errors made by the claimants who may not have been aware of their obligation to inform about changes in circumstances on a continuous basis. Still, the new procedure also results in cases of fraud being detected at an earlier stage. Unfortunately, this measure seems to work solely at national level.

To combat fraud as well as error, **Portugal** has implemented a verification procedure to detect overlapping contributions from other institutions and/or countries. Whenever there is an overlap in the contributions between different national institutions or between Portugal and another Member State, further clarification is requested either from the (foreign) institution or from the beneficiary him or herself. Next to this procedure already implemented, a procedure concerning the proof of life for foreign residents is under development: there is an ongoing open competition in Portugal to contract the annual verification of pension rights.

Furthermore, the German Pension Service of *Deutsche Post AG (DE)* regularly carries out automatic death data cross-checks with different EU Member States and non EU-countries on behalf of the *Deutsche Rentenversicherung*. Several such death data cross-checks were conducted in the 2015 reporting period.





Similarly to the foregoing mentioned practice in Germany, the provider of payment services in **Italy** has to verify whether the pensioners living abroad are still alive.

The provider of payment services in **Italy**, the bank, in fulfilment of the obligation to ensure the regularity of payments, is required to verify that the pensioner is still alive when the first pension payment is made and, annually, to conduct a general verification that all pension recipients are still alive. The general verification is based:

- on a request on the part of the bank for confirmation by a 'credible witness', i.e. an authority authorised to do so (either a diplomatic representation of Italy or local authorities designated for each country of residence of pensioners);
- on the payment of one or more pension instalments via a local operator ('support partner'), for personal collection by the pensioner: the payment is usually made via a Western Union outlet.

The various confirmation systems are used in conjunction with each other so as to limit the inconvenience for pensioners and guarantee the effectiveness of the procedure. In order to avoid uncertainty about how to provide proof of life, pensioners are sent a letter which clearly sets out in detail what they need to do and the authorities to contact. This verification system has made it possible to discreetly limit the risk of payments being made to parties other than the proper beneficiary: following the instalments paid via the counters of the bank's support partner, it was found that, from the start of the contract up to the end of 2015, just under 13,000 pensions had been found suspect. However, this form of verification is restricted by the fact that it is only carried out once a year. For this reason, the INPS is always seeking additional verification tools.

Various initiatives based on partnerships with public institutions and employers have been developed in order to facilitate the acquisition of information on deaths by the INSS. Furthermore, initiatives are under way to set up systems for the exchange of information on the death of pensioners with social security institutions in other countries.

The INSS has concluded agreements with the social security institutions of Germany, Switzerland and Australia<sup>11</sup> to exchange data electronically through the mutual transmission of requests and responses. The INSS is also conducting negotiations with institutions in various other countries, such as the Netherlands, Argentina, Brazil, the United Kingdom, Switzerland, Uruguay and the USA with regard to the conclusion of similar agreements.

In conjunction with the foregoing, for many years the INSS has been managing pensions claims based on the accumulation of periods abroad by means of an application known as *Stazione di lavoro CI*. In 2015, a new version of this application was planned which, by implementing new technological strategies that allow more efficient information exchanges between the various applications and archives of the Institute, leads to a reduction in data entry activity, historical processing of information and a significant reduction in the use of paper communication between offices, enhancing the transparency, security and traceability of work processes.

Italy also stated that the processing of international cases has become more complicated over time, also due to new EU rules which amended the forms used for the exchange of information between Member States and which made them more structured. These tasks have, so far, generally been conducted using paper documentation, in order to make the examination of forms received from foreign States or other actors more traceable.

Taking the foregoing into account, a procedure has been developed known as MOFE (Monitoring of Forms from Abroad), which allows for the monitoring of operational activities with respect to flows of international exchanges of information in the pensions sector and the income support benefits sector, by means of computerised registration and scanning of documents.

In the context of the post-mortem payment of pensions to nationals resident abroad, Italy estimated the following:

Number of cases at the end of 2015 which could be described as <b>error</b> :	Number of cases at the end of 2015 which could be described as <b>fraud</b> :
<ul style="list-style-type: none"> <li>•1.685</li> <li>•For an amount of € 579,766.01</li> </ul>	<ul style="list-style-type: none"> <li>•808</li> <li>•For an amount of € 277,947.54</li> </ul>

The geographical distribution of beneficiaries and the resulting complexity of the payment processes makes it almost inevitable that one or two pension benefit instalments will continue to be paid after pensioners have already died. It was therefore decided to define cases where up to two benefit instalments were paid after the death as errors, while cases where at least three monthly payments were drawn are to be defined as fraud. In all these cases, the local bodies of the National Institute of Social Fraud launched the procedures for the recovery of any unduly paid benefit amounts and, if appropriate, passed the matter on to the judicial authorities. In this context, a plan of action was launched aimed at recovery of post-mortem pensions unduly paid over the past decade and not re-credited by the payment authorities.

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<sup>11</sup> See Annex II to this report, pages 77-82.

Recovery activities led to some 2,000 debit notes being sent to heirs regarding pensions paid abroad. Through exchanges of information with other EU countries, it was possible in 2015 to discontinue some 924 pensions paid to persons resident in Germany on the grounds of the death of the recipient, and around 222 pensions paid to persons resident in Switzerland. Pending the development of IT applications allowing the transmission of data in real time, all death notifications regarding pensioners registered by consulates abroad are being collected on a two-monthly basis. This allowed the NISS to remove around 2,400 pensions from the books in 2015 on the grounds of the death of the recipient. Unfortunately, the data obtained in this way are not exhaustive, since it is not always the case that family members communicate a pensioner's death to the consulate.

To combat fraud, the **Swiss** Guarantee Fund (*Sicherheitsfonds Berufliches Vorsorge Gesetz*) refused, based on Article 56(5) of the *Bundesgesetz über die berufliche Alters-, Hinterlassenen- und Invalidenvorsorge (BVG)*, to guarantee benefits of occupational pensions. For an amount of CHF 2.4 million in 113 cases in 2015, on account of abuse whereby a person was insured under the occupational benefit scheme but does not pay contributions, the guarantee of benefits of occupational pensions was refused. Furthermore, based on Article 76 *BVG*, charges were brought against fourteen people for deducting, in their capacity of employer, occupational benefit contributions from the salaries of employees but failing to pass them on to the benefit scheme.

#### 2.1.2.2. Applicable legislation

Member States also took action against fraud and error concerning the applicable legislation to migrant workers and pensioners living abroad:

The reports reveal the will of the Member States to cooperate with each other and to establish international forms of cooperation between institutions.

In **Romania** and **Finland**, a cooperation was set up between the tax authorities and the authorities competent in the field of social law. The main focus of such cooperation is on the exchange of information which can be used in the fight against both fraudulent behaviour and erroneous situations.

With regard to the cooperation with other Member States, **Romania** states that their competent institution double-checks the posting conditions for the Romanian companies that have posted employees abroad, every time after receiving a request from a control/similar institution from another Member State. **Austria** reported a liaison with foreign institutions and/or liaison bodies in the context of cross-border cooperation, with the aim of detecting cases of fraud and finding solutions in cases of error via dialogue procedures. By the end of 2014, **Denmark** went one step further and established a Central Unit for International Administrative Cooperation. This unit works on establishing close relations both with other Member States as well as with countries outside the European Economic Area, aiming at enhancing cooperation and information exchange in order to combat fraud. A central task of the unit is to facilitate information exchange in individual cases between the local administrations of the municipalities and the competent institution of the other Member State in order to be able to verify and/or complete application forms.

The **Danish** Central Unit for International Administrative Cooperation prepares country profiles on other Member States in order to share information with other Danish authorities (including the municipalities), concludes agreements on data exchange with other Member States and works to strengthen the professional network in the field of social security internationally.

The unit also functions as a single point of contact (SPOC) by assisting Danish municipalities and *Udbetaling Danmark* in collecting information from other Member States and third countries and works across social security branches.

The unit covers e.g. family benefits, maternity benefits, anticipatory pension, old-age pension, sickness benefits in cash as well as social assistance.

Besides cooperation between them, Member States have also tried to optimise their own procedures concerning applicable law:

As regards identity verification, in order to combat fraud, applications for social security numbers and benefits in **Malta** have to be supported by an official document. Such documents are vetted against the Public Registry database in order to verify authenticity. However, this can only be applied in the case of Maltese nationals and Maltese residents who are issued a Maltese Identity Card. In the case of foreign nationals, the foreign identity card or passport is required in its original format in order to avoid fraud. Moreover, the system has a built-in mechanism whereby upon the creation of a new person in the database, the user is alerted when another person with the same surname and date of birth already exists in the system. This helps to avoid cases of double registration. **Denmark** on the other side has automatised its administration of specific types of applications, resulting in faster and more uniform processing as well as higher quality in decisions. To combat fraud and error in the field of posting, an 'A1 database' is maintained at the data centre of the German authority in charge of the pension fund (*Datenstelle der Deutschen Rentenversicherung, DSRV*) (**DE**). The data of all posting certificates (A1 certificates) to which German legal regulations are not applicable are stored in this database.

In **Italy**, during 2015, some regions (Liguria, Lombardy, Trentino Alto Adige and Umbria) verified compliance with (EC) Regulations No 883/2004 and No 987/2009 and to combat fraud and error with respect to the determination of the legislation applicable in cases of transnational postings. In collaboration with the *Guardia di Finanza*, investigations were conducted to combat the phenomenon of recipients of social benefits formally resident in Italy but in fact permanently residing abroad. This phenomenon relates to both Italian nationals and foreign citizens (EU and non-EU). The project was launched following the investigation of extension requests for the posting of certain workers in Italy, and as a result of some alerts from other authorities which revealed elements of doubt about whether the conditions for transnational postings existed in those cases.

The resulting inspections confirmed that the postings were not genuine but were designed to circumvent Italian social security legislation, through the application of the legislation of the posting States (Poland, Romania), which is/was more favourable to the employers from an economic point of view. In some cases, the workers were not in possession of an A1 form, or were in possession of an A1 on which a period of work subsequent to the period actually worked in Italy was indicated. In other cases, workers of Italian nationality and resident in Italy were formally employed abroad for the sole purpose of immediately posting them, for the entire duration of the employment relationship, to Italian undertakings.

In yet more cases, workers posted from abroad were used to replace Italian workers, who then drew income support benefits from the Wage Guarantee Fund (*Cassa Integrazione Guadagni*). Where possible, the inspectors linked the employment relationships in question to posting undertakings, so that Italian social security legislation became applicable. In other situations, the Italian posting undertakings were held jointly liable for social security contributions owed by them.

Regarding transnational postings, 652 cases of fraud were identified during 2015, for a total amount of € 1,233,878. This amount is the sum of the contributions that the undertakings should have paid under Italian law for workers not in possession of an A1 form or with an irregular A1. The total does not include income support benefits received

by Italian workers under the Wages Guarantee Fund who were, in fact, replaced by posted workers.

The total number of cases identified was calculated in terms of 'worker years': for example, one worker posted illegally for two years is counted as two 'worker years'. For 223 workers, no contributions to be recovered were calculated, as they were posted to Belgium: in such cases, the employment relationship in Italy was simply disregarded.

With regard to the general problem of social payments unduly received by persons formally established in Italy but, in reality, permanently resident abroad (thus broader than the posting context), the following situation was found:

- 517 Italians (notionally resident in Italy, but permanently resident abroad) in 19 regions and 81 provinces had unduly received social allowances paid by the NISS, a fraud against the state with an estimated value of more than € 16.5 million.
- 174 migrants of various nationalities had declared residency in Italy (in the municipalities of Bari, Barletta Andria and Trani), despite having returned to their countries of origin some time before. The total amount of benefits unduly paid amounted to approximately € 5.6 million.

#### *2.1.2.3. Work-related accidents and occupational diseases*

Regarding work-related accidents and occupational diseases, a few Member States have introduced specific measures for the purpose of combatting fraud and error:

The General Directorate for Work Accidents and Occupational Diseases within the National House of Public Pensions (NHPP) of **Romania** has undertaken monitoring and guidance actions regarding the activity performed by work-related accidents departments and occupational disease departments within the territorial pension offices. The same Directorate also developed a permanent information exchange with other Romanian institutions and similar institutions from other Member States.

In order to combat fraud and error, the *Deutsche Gesetzliche Unfallversicherung*, the competent institution in **Germany**, contacted employers in other countries if it was suspected that Article 11 et seq of Regulation (EC) No 883/2004 were not observed or an A1 certificate was not issued.

In **Finland**, the training of the members of the Worker's Compensation Centre has been a key measure for the purpose of combatting error. No other specific measures have been made for the purpose of combatting fraud, since cases of fraudulent behaviour have not emerged nor been suspected in Finland.

**Denmark** reported that in 2015 no new measures were initiated to combat or prevent fraud and error in cases regarding benefits for accidents at work and occupational diseases determined under the Regulations.

#### *2.1.2.4. Unemployment benefits*

In the area of unemployment benefits, **Portugal** has taken various steps to combat fraud and error. When it comes to combatting fraud, it was noticed that in some situations of unemployment, the PD U1 was issued by employers and subsequently, when applying for reimbursement of unemployment benefits by means of an SED U020, the other Member State clarifies that those beneficiaries do not have insurance periods/contributions in that country in the periods concerned. In that perspective, the *Instituto Segurança Social* (ISS) alerted the services to pay attention to the documents that are presented. In order to combat error on the other hand, the ISS requested administrative assistance of the Member States concerned in case of difficulties in validating the residence criteria.

As already reported in 2014, in 2015, too, **Italy** found various situations where unemployed persons in receipt of an Italian unemployment benefit went to other EU Member States or third countries in search of work, without first notifying the competent Italian institution, thereby contravening the communication obligation expressly provided for in Article 55(1) of Regulation (EC) No 987/2009, and continued to unduly receive Italian benefits even during the period of employment abroad. On this front, and with particular reference to the flow of cross-border workers to and from France, the collaboration continues with the *Service Prévention et Lutte contre la fraude* of the *Pôle Emploi* in Lyon (FR), through the Piedmont regional directorate.

#### 2.1.2.5. Family benefits

Bulgaria, Belgium and Italy took certain measures concerning family benefits. Besides the obligation for individuals to share certain specific data with the competent institutions and an improvement of the national and international cooperation between competent authorities, two kinds of inspections were introduced. In the first place, checks at home of insured persons took place in order to verify the declarations of the applicants and the situation of the household with the aim of combatting fraud and error. Apart from these inspections, the *modus operandi* of the family benefit funds themselves were examined, in order to improve the quality of the services they provide.

In **Bulgaria**, all the letters or SEDs F026 need to specify the insurance periods and the amount of benefits paid by the State of origin to people who are not entitled to family benefits in Bulgaria. Bulgaria does not record any errors in this branch.

In **Belgium**, checks at home of insured persons permit to combat fraud in the field of family benefits.

When there is any doubt about the accuracy of the insured person's declaration or when the actual situation of the household does not appear to match the official data from an authentic source, the social inspectors from FAMIFED (the federal agency in charge of family allowances in Belgium) perform checks at the insured person's home at the request of the file manager. These inspections are carried out at the behest of the family allowance funds which disburse family benefits.

The inspectors carry out the checks necessary to clarify the situation. For example, they monitor whether the persons actually live at their stated address, by checking energy bills, leases, passports and other relevant documents.

If this is insufficient as a means of clarifying the situation, cooperation with the local police, approved by the Labour Law Prosecutions Offices may make a decisive contribution which enables the inspectors to come to a decision. This cooperation may also give rise to an amended entry in the national register. The social inspections are independent, qualitative and targeted. The inspectors' fast-track access to the relevant state institutions enables them to base their decisions on evidence such as the lack of an educational attendance certificate or extremely low energy consumption, which justify the assumption that the person concerned does not reside at the indicated address.

Furthermore, the inspectors regularly cooperate with other social inspection services at both federal and at Community and Regional level, which means that the results of the inspections can be used not only for the family benefits sector but also by the National Employment Office (*ONEM/RVA*), the National Institute for Health and Disability Insurance (*INAMI/RIZIV*), social housing organisations etc.

The checks at the insured person's home also permit to combat error in the field of family benefits. By making use of the recipient's social and employment data, the inspections make it possible to determine whether the conditions for the award of benefits are fulfilled, and whether the benefit is addressed to the correct payee (by verifying the composition of the household to ensure that the beneficiary is actually raising the child and to identify the children concerned by ascertaining that they are resident or staying in Belgium or on EU territory). This also makes it possible to determine whether the conditions are met for awarding benefits after the child reaches the age of 18.

Along with the domicile-checks, FAMIFED also focuses on checks of family benefit funds which include an administrative check and a financial check. The administrative check verifies the correct and uniform application of the law on family benefits. Throughout the year, administrative inspectors visit family allowance funds (which disburse family benefits) and use a scientific method to ascertain whether the recommended quality standards are being met.

On the basis of this check, FAMIFED establishes error profiles that are highly relevant for adapting the regulations, determines what changes the administrative body concerned can make in order to improve the quality of the service provided, or makes suggestions to improve the funds' management. Part of the grants made to these institutions is determined with reference to the quality of the service which they provide. The financial check on the other hand validates the financial operations of the family benefit funds. This check evaluates the expenditure on family benefits and the institutions' running costs. The financial checks focus on the funds' key financial transactions to determine whether their expense claims reflect the facts.

With regard to family benefits, in **Italy** the National Institute of Social Security (NISS) and the Ministry of Labour and Social Policy, as the competent authorities, urged the Administrative Commission in 2015 to issue, by means of a formal decision of the European Commission, clearer rules on the times and arrangements for exchanging forms on such benefits.<sup>12</sup>

The National Institute of Social Security of **Italy** and the Social Insurance Institution of Bellinzona (Ticino) have launched a technical working group on the application of the EU social security rules relating to family benefits, with reference to cross-border workers insured with the Swiss Compensation Office (SCO).

The aim of the initiative is the joint desire to step up collaboration between the INPS and the Swiss authorities, to ensure that operators in the sector stay abreast of national rules on family benefits, in order to limit any administrative errors, and identify and share any cases of suspected benefit fraud.

#### 2.1.2.6. Healthcare and sickness/accident insurance

In the field of healthcare and sickness/accident insurance different measures were taken concerning the (inappropriate) use of the European Health Insurance Card. Specialised counter-fraud teams were introduced to trace down cases of fraud or error in healthcare. In the event of fraud and/or error, the benefits paid or the costs of the given treatment are recovered.

In **Switzerland**, the Swiss National Accident Insurance Fund (*Schweizerische Unfallversicherung – Suva*) has a special team that systematically fights insurance abuse. In two cases, authenticity checks are carried out abroad either with regard/relating to documents that have been submitted or with regard to the accident reported.

<sup>12</sup> Decision F2 of 23 June 2015 published on 11 February 2016.

Other activities were limited to Switzerland, along with consulting liaison bodies as necessary for the proper settlement of claims.

In the **United Kingdom**, each territory has its own counter-fraud organisations or teams that investigate fraud and error in healthcare. Their role is to prevent, deter and detect any potential fraudulent activity by overseas visitors. The main counter-fraud bodies are the NHS Protect (National Health Service Protect) in England, the Criminal Intelligence Unit in Gibraltar, Counter Fraud Services in Scotland, Local Counter Fraud Specialists in Wales and the Counter Fraud and Probity Services team in Northern Ireland. Healthcare in the UK is a devolved function, which means that different healthcare systems operate in England, Scotland, Wales, Northern Ireland and Gibraltar. Entitlement to free National Health Service (NHS) hospital treatment in the UK is based on the individual being 'ordinarily resident', not on nationality or the payment of UK taxes or national insurance contributions. A person will be 'ordinarily resident' in the UK when that residence is lawful, adopted voluntarily and with the purpose to settle as part of the regular order of his or her life for the time being, whether of short or long duration. There is no standard or centralised register of people who are ordinarily resident in the UK at any given time, which means that there may be occasions where patients are not charged for their care when they should be, namely while not being covered by the NHS, and such either as a result of fraud or error. There is anecdotal evidence of some EEA residents travelling to the UK specifically to access services who do not have an EHIC or an S2. However, in 2015 new regulations were introduced which apply to all courses of treatment that started on or after that date. These regulations place a legal obligation on NHS Trusts, NHS foundations trusts and local authorities in the exercise of public health functions in the UK, to establish whether a person is an overseas visitor to whom charges apply, or whether they are exempt from charges.

The role of an Overseas Visitors Manager is established in the NHS to ensure that those patients who are not exempt from charges make a fair contribution for the care they receive.

In the **Netherlands**, the National Health Care Institute (*Zorginstituut Nederland*) is the competent institution in the situation where a person who is receiving a Dutch old-age pension or benefit is residing outside the Netherlands and who is entitled to sickness benefits in kind at the expense of the Netherlands.

In relation to combating fraud and error, the National Health Care Institute aims to resolve or prevent inconsistencies in national file comparisons. Especially the information about the income of the person concerned is important to determine the contribution rate and the correctness of the registration in the Member State of residence.

**Austria** also recovers the costs incurred through misuse of the European Health Insurance Card (EHIC). However, the national report did not contain more information on this topic.



#### 2.1.2.7. Social and invalidity benefits

In **Italy**, the National Institute of Social Security (NISS), in order to combat (the risk of) fraud associated with social and invalidity benefits, has identified certain indicators of possible irregularities, such as:

- failure to declare or incomplete or incorrect declaration of income in the case of recognised invalidity between 74% and 100% for applicants, children or adults up to the age of 65;
- failure to declare income of spouses, where the social allowance is granted to married persons;
- non-communication to the NISS of absence from Italy for a period of more than six consecutive months in the case of receipt of invalidity benefits;
- non-communication to the NISS of absence from Italy for a period of less than 30 days in the case of social benefits.

For the purposes of verification of the income requirement, moreover, the NISS conducts an annual batch recovery of pensions, cross-checking its own data with those held by the Public Revenue Agency.

#### 2.1.2.8. Non-contributory cash benefits

**Malta** is the only Member State that reported on a measure implemented in order to combat fraud concerning special non-contributory cash benefits. Article 133 of the Maltese Social Security Act (Chapter 318) empowers the Director of Social Security to make any necessary investigations and to demand persons and/or entities to provide information so that the benefit being claimed can and will be calculated and determined correctly. Consequently, an agreement with the local banking institutions has been concluded whereby details of bank accounts are provided to the Department in cases of application for non-contributory benefits. In so doing, cases of fraudulent declarations of income are immediately identified. Applicants (have to) give their consent for this exchange of information upon applying for the benefits.

#### 2.1.2.9. Closing remarks

A few Member States (**DK** and **NO**) stated that further steps to combat fraud and error in cases determined under the Regulations are under development.

Lastly, **Estonia** reported that no steps to combat fraud and error were taken at all since there were no reported cases of fraud and only one identified case of error.

Steps taken to combat fraud and error	Member States
<b>In general:</b>	
Data mining and data matching	AT, DK, IT, LT, MT, NO, PL and SK
Cooperation between internal competent authorities as well as the competent authorities in other Member States	DE, ES, PL, RO and UK
Recovery of unduly paid benefits	ES, PL and UK
<b>In the area of:</b>	

<b>Old-age and survivor's benefits:</b>	
Coordination by one institution / ad hoc inspections in regional units	PL and RO
Central screening of suspected cases of fraud/error	AT
Suitable measures in cases of fraud/error	AT, CH, CZ and IT
Data mining, data matching and exchange of data	DE, DK, IT, PL and PT
<b>Applicable legislation:</b>	
Cooperation between internal competent authorities as well as the competent authorities in other Member States	AT, DK, FI and RO
Optimisation of national procedures concerning applicable law	DE, DK, IT and MT
<b>Work-related accidents and occupational diseases:</b>	
Monitoring and guidance actions	DE and RO
Training of staff	FI
<b>Unemployment benefits:</b>	
Authenticity checks of PDs and verification of the data presented in these documents	PT
Cooperation between internal competent authorities as well as the competent authorities in other Member States	IT
<b>Family benefits:</b>	
Data mining	BG
Cooperation between internal competent authorities as well as the competent authorities in other Member States	BE and IT
Checks at home of insured persons	BE
Checks on family benefit funds	BE
<b>Healthcare and sickness/accident insurance:</b>	
Specialised counter-fraud teams	CH, NL and UK
Recovery of unduly paid benefits/costs of given treatment	AT
<b>Social invalidity benefits</b>	
Data mining and data matching	IT

Special non-contributory cash benefits	
Monitoring and guidance, national cooperation between authorities/institutions	MT

Member State who replied to Q1.1	Member States who refrained from replying to Q 1.1
AT, BE, BG, CH, CZ, DE, DK, EE, ES, FI, HU, IE, IS, IT, LT, MT, NO, PL, PT, RO, SK and UK	CY, HR, LV, NL and SE

## 2.2. Steps taken to prevent fraud and error and the effect of these preventive steps

Not only did the Member States take various steps towards combatting fraud and error (cf. supra), they also took several measures with the aim of preventing them. Again a distinction can be made between general steps and specific steps in particular branches of social security. A summary table of these general and specific steps can be found at the end of this section (p. 40).

### 2.2.1. General steps taken to prevent fraud and error

Some general steps taken in 2015 to prevent fraud and error are the improvement of the communication between Member States, the improvement of the communication between institutions in the same Member State and/or the expansion of the dissemination of information among institutions, healthcare providers, employers and citizens:

Mentioned as a general step towards combatting fraud and error, the **National Contact Points** appointed pursuant to Decision H5 are also considered able to fulfil a substantial role in the prevention of fraud and error. Thanks to cooperation and mutual assistance, both fraud and error could be prevented. *Udbetaling Danmark (DK)* reported that it has had positive experiences working together with the NCPs of e.g. Germany, Poland and Switzerland.

The National Health Insurance House of **Romania** has maintained a permanent communication with Romanian Health Insurance Offices, healthcare providers and insured persons through meetings and information published on its own website. **Denmark** initiated the preparation of a 2016 campaign. One aspect of the campaign is primarily preventive in nature as it focusses on informing applicants and beneficiaries on their rights and obligations. In **Sweden**, the Social Insurance Agency is continuously updating its supporting documents and guidelines in order to achieve clarification of the EU legal framework with the aim to support the case handlers and prevent wrongful decisions. The competent institutions in **Latvia** also publish information about social security coordination on their website. This information is updated on a regular basis. At the same time, the information about social security coordination is constantly spread by using different mass communication measures. **Austria** provides 'Practical guidelines for employers – working abroad: Who is insured where?' to businesses, to inform them on an ongoing basis about the EU legal provisions on social security benefits.

In the fight against fraud and error in **Finland** the emphasis has been on training and communication. The Finnish Centre for Pensions trains employers, employees and trade unions, sends newsletters on applicable legislation and uses social media to reach employees and employers. From the Workers' Compensation Centre's view, internal training leads to fluency of handling claims and therefore has an effect on the prevention of errors. The Finnish Centre for Pensions has extensive online guidelines and provides lots of information on their web pages. **Portugal** also provides information by means of practical guides to prevent fraud. The **Hungarian** National Health Insurance Fund (NHIF) has organised a couple of information days for the competent institutions (county government offices) during which best practices about preventing potential cases of fraud and error were shared with around 100 participants to raise the level of awareness in the field of applicable legislation and sickness benefits in kind.

In **Spain**, to prevent error, the National Social Security Institute (NSSI) gave instructions to its Provincial Directorates on matters where processing and settlement issues, in cases which fall under the European coordination Regulations, give rise to legal uncertainty. These instructions ensure that the flow of information through all channels is constant and the information itself is kept up to date. The Spanish administrators are given constant guidance enabling them to resolve any queries or doubts concerning the application of the European law in force in practical cases.

Furthermore, to keep the administrators fully informed, a wide range of information and modelling tools are published on the NSSI intranet, with summary and synoptic tables, which are constantly updated whenever changes are made to the legislation or the criteria for administrative activity. There is also an online messaging service, developed and included in the Automated International Healthcare Application (ASIA), which has been implemented nationwide and is used by all provincial and local NSSI offices for cross-border management of outgoing and incoming healthcare documents. This messaging service is used to provide information on all new additions and updates to the cited application.

In 2015, the Agricultural Social Insurance Fund (*Kasa Rolniczego Ubezpieczenia Społecznego – KRUS*) of **Poland** took measures to eliminate the errors of *KRUS* employees by means of an enhanced check of the correctness of the case-handling by regional units, ongoing verification of records, and training of *KRUS* employees. *KRUS* has little impact on errors arising due to the beneficiaries' fault. A possible reduction in such errors can only be influenced by *KRUS* by posting relevant articles in the local press by the regional units, sending leaflets to the beneficiaries, and organising meetings with the beneficiaries. Furthermore, in order to prevent fraud and error, the Allowances Department of the Social Insurance Institution (*Zakład Ubezpieczeń Społecznych, Departament Zasiłków, ZUS*) has organised training sessions (e-learning and stationary ones) and meetings for employees, contribution payers and customers on the legal provisions applicable to the granting of rights and the payment of benefits in case of sickness and maternity. *ZUS* has also provided subordinate units with written explanations and guidelines, replied to ad hoc queries and doubts, provided customers with written explanations and optimised the rules on administrative procedures. In addition, substantive support was implemented for the *ZUS* Call Centre. Functional and internal inspections in the Allowances Sections of the *ZUS* branch offices were carried out in order to prevent fraud and error in the field of cases handled by these offices. Lastly, the cooperation with Polish and foreign institutions was improved.

In **Poland**, direct meetings were organised with the representatives of other Member States in order to exchange information concerning changes in national legislation or institutional structure, to exchange contact details of persons indicated in each institution for the purpose of direct contact in questionable cases, as well as to resolve legal or procedural (bilateral) issues.

Other reported general steps taken in 2015 to prevent fraud and error concern the improvement of IT-systems and software:

In **Latvia**, changes to the software were introduced to prevent service overpayment due to the employer clarifying contribution data as a result of which the contributions are reduced. The changes to the software introduced an option to indicate that for particular contributions a reduction is to be expected from the State Revenue Service of Latvia (*Valsts ieņēmumu dienests, VID*). In such a case, the service (except for a funeral benefit) cannot be granted until the indication or flag is removed. The flag will be removed if the information on personal income is clarified and correct information from the VID relevant for the granting of the service is received. Statistical data on such cases has not been collected.

To prevent service overpayment due to benefit recipients leaving Latvia to live abroad, there is an option to draft a report which lists individuals who have (had) a place of residence abroad during the reporting period. With the introduction of these changes, the state social benefit overpayment is prevented. Following receipt of information from the Office of Citizenship and Migration Affairs that an individual left Latvia to permanently live abroad, the State Social Insurance Agency (*Valsts sociālās apdrošināšanas aģentūra, VSAA*) immediately terminates the payment of social benefits to said individual. If a person is still entitled to a benefit after leaving Latvia, the payment is restored after receiving information from the other Member State. Unfortunately, statistical data on such cases has also not been collected.

As a central tool in the prevention of error, *Udbetaling Danmark (DK)* uses advisory notes to an extensive degree in the day-to-day administration of *Udbetaling Danmark's* tasks. The advisory notes are generated automatically when relevant changes in circumstances are registered in public registers such as the civil register and the income register. The automatically generated advisory notes notify, for instance, about a change of address, a change in income or the decease of the claimant. This procedure has been effectively implemented for a considerable time and *Udbetaling Danmark* processed a total of 1,316,797 advisory notes in the field of maternity/paternity benefits, family benefits and pensions in 2015. Besides the advisory notes, a small-scale study made by *Udbetaling Danmark* indicates some degree of preventive effect in the field of data matching. The study indicates evidence of changed behaviour by the claimants after being informed about them being selected for a check.

It appears that claimants to a rather significant degree actively seek to correct or update information about relevant circumstances after receiving such notice. It should be noted, however, that the statistical basis of this study is rather small, and thus the result is merely an indication.

In **Italy**, the National Institute of Social Security (NISS) has introduced an automatic payment blocking procedure, known as SCUP, in order to prevent fraud. This procedure is initiated in certain circumstances where a risk is detected in order to prevent undue payments being made, pending appropriate checks. In particular, the payment of pensions is automatically blocked and employment benefits are terminated:

- when payments to persons are included in specific blacklists, via intelligence systems or application procedures in the event of contribution irregularities which may have an impact on the amount of or entitlement to pension payments;
- in the case of payments to IBANs considered at risk of fraud and included in specific blacklists, via systems of intelligence.

In **Belgium**, as part of the collaboration between the Public Social Security Institutions (PSSIs), a system of electronic exchanges of authentic sources, coordinated by the Crossroads Bank for Social Security, has been developed since the early 1990s. Every PSSI which disburses social benefits in the light of the social and employment situation of the insured person has automated access to the information necessary for the proper management of the file. Thus, once they have obtained approval from the Sectoral Committee on Social Security, every PSSI has access, free of charge, to relevant data which it is legally entitled to receive – and, in the light of privacy and data protection requirements, to that data only.

Lastly, a couple of Member States introduced some processes of verification:

To prevent fraud and error, **Austria** performs ongoing checks and controls (e.g. verification of registration of residence, surveys of insured persons and foreign institutions) and ensures that individuals can be identified by making available the relevant ELDA (electronic data exchange with the Austrian social security institutions) data records, which entails registering by means of a 'mobile signature'.

When issuing international forms, some Austrian institutions allocate a serial number to the form allowing an accuracy check to be carried out if necessary. Some forms bear the official signature stamp of the institution concerned. Alongside the application principle, the facts of cases must be checked and, in certain instances, an investigation will be carried out. Austria uses electronic documentation of cross-border cases for the purposes of transparency. In **Estonia**, the competent institutions have to make sure that every document is properly signed and stamped (if needed) in order to prevent fraud. To prevent error, the competent institutions have to make sure that all documents are drawn up properly and contain the necessary information. If there is suspicion of fraud or error, the source of the document has to be double-checked. These steps are found effective by Estonia since no cases of fraud were detected in 2015 and only one case of error was identified.

### **2.2.2. Specific steps taken to prevent fraud and error**

In addition to the abovementioned general steps, specific measures were taken in particular branches of social security.

#### *2.2.2.1. Applicable legislation*

In the field of applicable legislation, some Member States have introduced new measures concerning PDs in 2015. The **Czech** Social Security Administration (CSSA) and its regional offices, for example, have developed a centralised information system. They issue PDs A1 on paper with registration numbers which are generated by that IT system. At the same time, they inform clients, in person or via the website of the CSSA, about their rights and obligations in respect to paid activities in another Member State. **Malta** went one step further and has automated the issuance of the U1 and A1 documents, in order to prevent fraud, by means of an online system whereby applications are received electronically, vetted, and where applicable the required form is issued bearing a unique sequential number which certifies its authenticity. In order to prevent error, Malta heightened its due diligence process by increasing liaison with the national Transport Authority in cases involving mariners and aircrew, requests for company profiles and company information in cases of posting of workers, as well as individualised questionnaires for self-employed persons.

Other implemented measures in the area of applicable legislation concern the improvement of the communication between Member States. In **Romania**, the Directorate for International Relations within the National House of Public Pensions (*Casa Nationala de Pensii Publici, CNPP*), as competent institution, organised a bilateral meeting with the *SPF Sécurité Sociale – DG Appui Stratégique*, *l'Office National de Sécurité Sociale* and *SPF Sécurité Sociale – DG Inspection Sociale*, in Brussels, Belgium, to discuss the application of the provisions of Decision A1 of 12 June 2009 concerning the establishment of a dialogue and conciliation procedure concerning the validity of documents, the determination of the applicable legislation and the provision of benefits under Regulation (EC) No 883/2004 and to analyse the bilateral cases. The same Directorate collaborated with similar institutions from other Member States in order to combat undeclared work, through the exchange of relevant information/databases (e.g. FR, NL) and collaborated with the Romanian National Tax Administration Agency, within the Ministry of Public Finance and with the Labour Inspection/Territorial Labour Inspectorates, through the exchange of concrete information/annual databases, in order to verify the compliance by the Romanian companies which provide temporary personnel on the territory of other Member States with the conditions imposed by the relevant European legislation.

Finally, in **Bulgaria**, in order to create a unified practice and to minimise fraud and error in determining the applicable law, rules and procedures for inspections were established by the National Revenue Agency (NRA). The rules were approved through the issuance of an instruction from the deputy executive director of the NRA.

Based on the respective powers of the revenue authorities, which are entitled to inspect, they can require from persons or third parties any documents proving which Member State's legislation is applicable in the field of social security. In the event of refusal or non-cooperation, the revenue authority terminates the proceedings and leaves the request for issuing a certificate without consequence. Upon receipt of requests from the competent institutions of other Member States concerning the authenticity of the submitted A1 certificates, a check is performed in a special register. If necessary or at the explicit request of the competent institution, additional checks of circumstances are carried out.

In **Spain**, a standard approach to prevent social security fraud was developed by the General Social Security Fund. The first results and proposals for action began to emerge in 2015. The approach relates essentially to two types of fraud: fraudulent posting of workers and bogus companies, and the fraudulent registration of workers. This standard approach will be as wide-ranging as possible in the interest of increased monitoring of the main sources of fraud, preventing cross-border social security fraud as regards registration, contributions and collections, and especially early detection to prevent and combat fraudulent or incorrect access to social security benefits.

#### *2.2.2.2. Old-age and survivor's benefits*

Concerning old-age and survivor's benefits, various Member States took different measures at the level of the investigation of facts:

The **Czech Republic** for example, started to use data from the database of the Ministry of the Interior (i.e. information about deceased persons, place of residence etc.) and from employers, health insurance companies, medical institutions, labour institutions and other state authorities in their investigation of facts that affect the entitlement to old-age and survivor's benefits. To certify that the entitlement to an invalidity pension still persists, there are regular medical checks. In order to prevent fraud and error, various Member States (**AT, DE, DK, MT, PL** and **RO**) send declarations of honour and/or bilingual certificates of life to the applicants/beneficiaries who are residing in another Member State. In cases where, after the time period indicated on the form, the pensioner

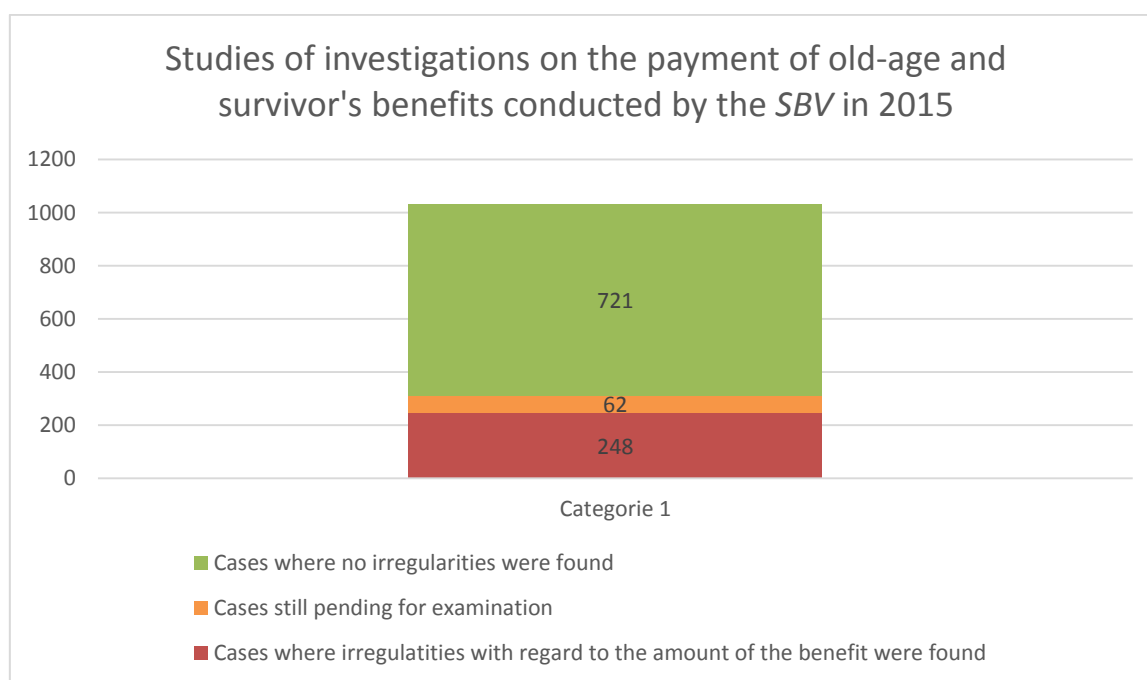
fails to provide proof of life or return a declaration of honour, the pension is suspended until further notice.

This measure allows the identification of cases of unreported deaths (considered as fraudulent) but also cases of changes of address not reported to the Department as well as changes in the marital status (widowed, divorced, married) which may be unintentional and therefore considered as error. Due to these forms of verification, the payment of pension rights to deceased applicants/beneficiaries is prevented.

In **Malta**, in order to prevent false declarations, the life certificate must be witnessed either by an official from the social security institution in the country of residence, or an official from the Maltese Embassy/Consulate in the country of residence, or by a person from the Legal or Medical Profession or equivalent, a Police Official, or an officer of a bank authorised to sign documents on the bank's behalf.

In **Romania**, the declarations of honour and the bilingual certificates of life have to be filled in and returned to the territorial pension house in order to avert the creation of different pension files relating to the same beneficiary.

In 2015, the Control Unit for Foreign Affairs of the Social Insurance Bank (*Socialeverzekeringsbank – SVB*) of the **Netherlands** conducted 1,031 studies of investigations on the payment of old-age and survivor's benefits in Belgium, Germany, the Czech Republic, France, Canada, Sweden, Portugal and Bosnia.



Checks were also carried out on the payment of a supplement to top up the old-age pension to the social minimum. Residence, personal assets and pension rights are checked annually. In 2015, the pensions paid from Hungary, Italy, Poland, Portugal and Spain to pensioners residing in the **Netherlands** were submitted to checks. When there is a suspicion of fraud, the Social Insurance Bank will start an investigation and if there is sufficient proof, the fraud is reported to the public prosecutor. The Netherlands also stated that information exchange with other institutions regarding old-age and survivor's benefits has intensified.

To facilitate these investigations of facts, some Member States started negotiations concerning (automatic) data exchange on the demise of pensioners living abroad and other relevant facts:



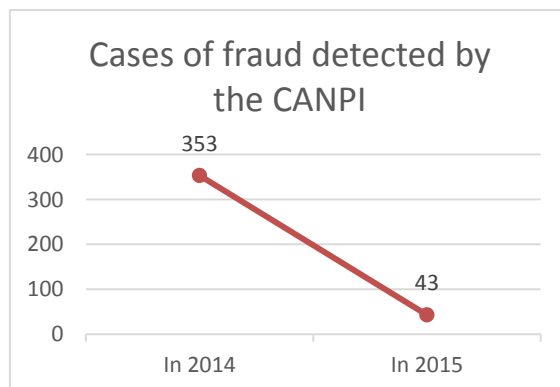
**Poland** reported that no annual certificates of life are sent to Germany and Australia when the electronic exchange of information on deaths with these countries is successful.

In 2015, Poland initiated cooperation with the German institution *Deutsche Post AG Renten Service* in order to avoid both overpayments of pension benefits resulting from the undue payment of pensions after the death of beneficiaries, and the costs associated with the investigation of unduly paid amounts. The electronic exchange of information on deaths concerning the 8,200 Polish beneficiaries residing in Germany resulted in the identification of 318 deaths, which reduced the amount of overpayments by nearly € 4 million. Furthermore, thanks to having access to the European Online Information System of the German statutory pensions insurance (EOA) Poland can regularly verify the correctness of the payment of the supplement payable pursuant to Article 58 of Regulation (EC) No 883/2004. In addition, the access to the EOA is used during the inspections carried out in order to verify whether the already paid pensions were granted correctly, to verify the beneficiaries' address, to confirm whether the beneficiaries residing in Germany are still alive and residing there, as well as to obtain information regarding the registration in the German social insurance system of persons who are at the same time subject to the farmers' social insurance.

**Austria** has held discussions with other Member States with a view to laying the groundwork for an automated system for cross-checking data on deaths. In this respect, the work of the *Deutsche Rentenversicherung* in **Germany** with regard to combat fraud and error should be referred to (*supra*).

In addition to certificates of life, **Denmark** and **Malta** also request other information, for example about the pensioners' marital status, in order to keep the databases updated. Moreover, *Udbetaling Danmark* exchanges data on a regular basis with other Member States on the demise of pensioners living abroad. It is the intention to continue to expand the number of countries with whom data on deceased persons are exchanged. The Finnish Centre for Pensions, as a representative of the earnings-related pension scheme in **Finland**, has also negotiated new agreements concerning data exchange with the aim to prevent fraud and error (see Annex II).

In **Portugal**, the *Instituto Segurança Social* (ISS) wants to develop procedures on electronic exchange of data with foreign institutions concerning the timely knowledge of deaths and the amount of benefits or income received in order to verify eligibility conditions provided in internal legislation, namely in the case of means-tested benefits and supplementary benefits. The **Hungarian** Central Administration of National Pension Insurance (CANPI) has had continuous contact with other liaison bodies competent in the pension sector with the aim of mutually investigating how further added value could be provided on the level of preventing fraud, especially in the light of the fact that information related to declarations of death is frequently not transmitted to the competent institutions of another Member State or is provided with considerable delays. The CANPI confirmed that the steps taken resulted in the diminution of cases connected to fraud.



According to the assessment of the CANPI, the higher numbers for 2014 are partly due to a different statistical approach (which has been adjusted since). Furthermore, the improvement of the communication system with liaison bodies / competent institutions from other Member States significantly contributed to avoiding a considerable number of potential fraud cases in 2015.

The **United Kingdom** has maintained its level of life certificates issued to overseas pensioners. In 2015/2016 they issued approximately 65,000 life certificates to pensioners in 10 Member States they do not have a data sharing agreement with. The UK continued participation in the Cross Border Operational Forum with Ireland and Northern Ireland where data matching on unreported deaths of pensioners continues. A UK delegation also visited Ireland to discuss the sharing of data regarding benefit rates; this data is expected to be shared in 2016/2017. Besides the cooperation with Ireland and Northern Ireland, the data matching with Spain on unreported deaths of pensioners continues and the data matching with Malta went live in 2015/2016. Furthermore, testing on data matching of unreported deaths has taken place with Germany, Poland and the Netherlands; live running is expected in 2016. Initial discussions on unreported deaths and cross-border workers between the UK and France took place in 2015; the work on this is on-going. Lastly, the UK hosted a visit from Danish fraud and error colleagues who were interested in how the UK tackles fraud and error. Talks are on-going on data matching for unreported deaths and cross-border workers.

**Romania** reported that it did not conclude agreements, nor arrangements with other Member States for the purpose of communicating information related to the death of pensioners.

A few Member States took some steps to promote compliance by institutions and healthcare providers with the legislation concerning old-age and survivor's benefits and to provide information to citizens:

To prevent error, the **Romanian** Directorate for International Relations within the National House of Public Pensions (*Casa Nationala de Pensii Publici, CNPP*) coordinated, as a liaison body and with an eye to the uniformity of interpretation and application, from a methodological point of view, the implementation of EU Social Security Coordination Regulations by the 42 territorial pension offices. The territorial pension offices experienced difficulties in processing the applications for pension rights of EU citizens and of Romanian citizens entitled to pensions from more than one Member State due to the shortfall of necessary information (the lack of a Romanian PIN, address in Romania, correct name of the applicant, the lack of documents attesting the length-of-service performed in Romania, the lack of medical certificates etc). In order to solve these situations, the territorial pension offices have submitted to the liaison bodies/competent authorities in other (Member) States of the European Union, of the European Economic Area and of Switzerland information/requests for completing the relevant files of Community pensions.

In **Germany**, the *Deutsche Rentenversicherung* provides measures for informing and advising citizens and for the further training of administrators as measures for the prevention of fraud and error. The measures for the further training of administrators consist of information conveyed through work instructions and trainings. The members of the *Deutsche Rentenversicherung* operate a joint working group to discuss legal issues. In addition, internal meetings are held, where current topics of supranational and international law are presented. Informing and advising citizens is a legal mandate. To be able to comply with this mandate even in cross-border cases, the *Deutsche Rentenversicherung* takes different measures to be able to inform about national law, and also the resolutions on the coordination of social security systems.

In addition to the regular compliance with this in individual advisory consultations and in presentations at events, the 'International Advisory Days' (*Internationale Beratungstage*)

are an additional example of carrying out the mandate. These days are a special advisory service for clients with German and/or foreign insurance periods under the German pension insurance scheme.

The clients are usually individually advised during previously arranged appointments by the staff of the *Deutsche Rentenversicherung* and the relevant foreign insurance carriers, usually jointly at the same place (in Germany and abroad). International Advisory Days are regularly held jointly with the following countries: Belgium, Bulgaria, France, Greece, United Kingdom, Italy, Croatia, Liechtenstein, Luxembourg, Macedonia, the Netherlands, Austria, Poland, Portugal, Switzerland, Slovakia, Slovenia, Spain, the Czech Republic and Hungary.

In the **Netherlands**, to prevent fraud and error, the Social Insurance Bank informed its customers about their duties. The Foreign Pensions Department of the **Polish** Social Insurance Institution (*Zakład Ubezpieczeń Społecznych, Departament Rent Zagranicznych – ZUS DRZ*) cooperates with the ZUS Customer Service Centre in the context of providing current legal and procedural information to customers. Furthermore, ZUS DRZ disseminated information about the social security system in Poland, the European coordination rules and the rules included in bilateral or multilateral agreements with other Member States on social security coordination.

For example, annually information about changes in the **Polish** legislation concerning old-age benefits is sent to foreign liaison insurance institutions in other Member States, to be used when handling cases, or to other national institutions or citizens living abroad.

Also leaflets and guides in Polish and English were made available in all ZUS offices and on the ZUS website, which includes a newsroom. The ZUS DRZ improved its cooperation with the academic society, practicing lawyers, TV and radio stations and journalists by organising conferences and tutorials and by doing research which resulted in publications. Tutorials for persons who prepare for the consular exam were also organised.

Lastly, the ZUS DRZ participated in the 'Counselling Days', which are regular meetings with the Polish community living in other Member States and in countries with which Poland concluded an international agreement on social security. During the meetings experts from ZUS give advice in individual cases and share information about the social security system in Poland, the European coordination rules, as well as the rules included in bilateral or multilateral agreements on social security coordination.

In the **Czech Republic** there are directives concerning the training of the relevant staff who take on the applications for benefits, decide on the application and ensure the payment of the benefits. Finally, a verification system was introduced concerning the correctness of the decision, i.e. the 'four-eyes method'.

#### 2.2.2.3. Healthcare and sickness benefits in kind

In the area of healthcare, a couple of measures were introduced concerning the European Health Insurance Card (EHIC). The biggest issues regarding the EHIC concern the validation period of the card, which does not automatically end when there is no longer an entitlement to benefits and with this, the fact that the EHIC is a paper document, not an electronic card, which makes it impossible to quickly update the card when circumstances change.

To prevent fraud, **Spain** continued its information campaign on the EHIC and constantly updated its content concerning the EHIC on the Spanish social security website<sup>13</sup> and on the information sheets issued to insured parties.

**Norway** has taken steps to assure that EHICs presented to healthcare providers after the benefits in kind have been provided, are not accepted. This in order to reduce the number of invoices E125 based on EHICs issued after the benefits in kinds were provided. Norwegian hospitals have been informed to only accept Provisional Replacement Certificates (PRCs) in such cases. The Norwegian Health Economics Administration (*Helfo*) is not in the capacity to provide information and statistics about the effects of these preventive steps since the steps have not been fully realised.

The **Hungarian** National Health Insurance Fund (NHIF) has expectations that the legislative measure (entered into force on 1 January 2015), which aims at limiting the validity period of the EHIC to the actual period of social security coverage (with a maximum of three years of validity), shall contribute to preventing the use of EHICs without insurance coverage.

The Hungarian NHIF has developed its IT system following the abovementioned legislative measure: it became possible to issue the EHIC for periods shorter than three years, which is supposed to bring at a later stage additional impetus for the prevention of error for the services concerned.

In **Austria**, in some cases where there is no longer an entitlement to benefits but the EHIC is still valid, the EHIC will be withdrawn. In order to prevent fraud and error, the **Lithuanian** National Health Insurance Fund under the Ministry of Health (NHIF) has adopted a new application form for the EHIC which was supplemented by an additional section. The additional section informs the person about the obligation to cover the expenditure in the cases of inappropriate use of the EHIC. The application form was renewed in order to assure the better awareness of insured people about the proper usage of the EHIC. The aim of such a step is to prevent the inappropriate use of a seemingly valid EHIC by a person who is no longer insured under the health insurance in Lithuania.

Moreover, a new IT tool for the issuance of entitlement documents (SEDs) and invoices was introduced by **Lithuania** in order to improve and facilitate the revision of the data and to speed up the process of exchanging information between the competent authorities. The introduction of this new IT tool was found to be a good pattern to avoid human errors.

In order to prevent fraud and error during the application process of the EHIC, the **United Kingdom** requires additional proof of entitlement and residency and individuals are required to confirm a mandatory declaration, which includes an acknowledgement of possible penalties for misuse. The acceptable proofs of entitlement and residency have been tightened as a result. If such details are not provided, the application is not processed.

Individuals are also asked to sign a mandatory declaration stating that any significant changes in circumstances (that will have an effect on eligibility) need to be disclosed. The declaration also clarifies that information from the form may be used by other NHS and government organisations for the purpose of the prevention, detection and investigation of fraud and error, including for the prosecution of fraud. If the declaration is not signed, the application is not processed further and the EHIC is not issued. The UK also introduced email verification, where an email is sent to the applicant in order to identify the IP address. This is mainly to counter fee paying websites but also to check that online

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<sup>13</sup> [www.seg-social.es](http://www.seg-social.es).

applications are not being made from abroad (as such applications should be made by post). Email verification applies only to online applications.

Portugal and the United Kingdom also took some specific steps to promote compliance by institutions and healthcare providers with the legislation concerning sickness benefits in kind and to provide information to citizens:

In **Portugal**, the Central Administration of the Health system (*Administração Central De Sistemas De Saúde, ACSS*) has developed a set of measures related to benefits in kind at operational level, addressed to the health units and the respective information systems involved in the invoicing process of health care provided under the Regulations.

The ACSS disseminated Guidelines concerning the access of foreign citizens to the health care system, identifying access flows to primary and hospital health care services.

The ACSS also introduced data validation rules in information systems of the National Health Service involving the processes of admission of the patient, invoicing of expenditure and presentation of credit forms to the respective Member States on the creditor side.

These rules allow the validation of the competent institution mentioned on the application document and the validity of the document on the date that health care was provided. The validation of the competent institution code and the document expiration dates were implemented in the debtor process. The initiation of the automatic validation process for the insured's ID number is expected in 2017. The validation of the competent institution prevents the presentation of fake entitlement documents, and avoids contestations/rejections from the Member States regarding institutions not recognised. This measure allows an improvement in the invoicing process.

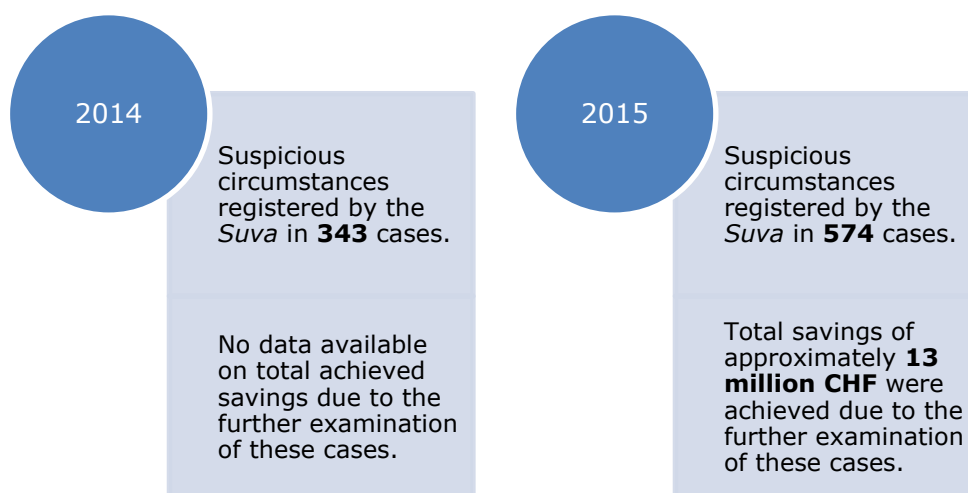
In all processes related to Regulations (EC) No 883/2004 and (EC) No 987/2009, the government of the **United Kingdom** has sought to put in place robust processes to prevent error and potential fraud. It is general practice in the UK for health and care organisations to have anti-fraud processes in place.

Governments across the UK run a number of on-going initiatives to train front-line staff in healthcare to identify patients who should have an EHIC, S2, S1 or A1 and to correctly recognise and record these where appropriate. For example, they have presentations for NHS staff, practitioner groups and circulate newsletters, posters and leaflets to raise awareness of potential NHS fraud risks, including overseas visitors. They also produced a video and developed a suite of e-learning modules to train overseas visitor managers, finance and frontline staff (including administrators, clinicians and nurses).

However, it is difficult to identify overall whether error occurs due to incorrect competency decision-making without understanding whether that was staff error, patient error (or deception) or an incorrect understanding or interpretation of the complexities of the social security coordination Regulations.

#### 2.2.2.4. Accident insurance

Regarding accident insurance, the **Swiss** National Accident Insurance Fund (*Schweizerische Unfallversicherung, Suva*) clarifies the facts in case of suspicion of fraud and takes the corresponding appropriate action in order to prevent fraud. Besides consulting the liaison bodies as necessary for the proper settlement of claims, there were no cross-border activities aimed at prevention.



#### 2.2.2.5. Invalidity benefits

In the field of invalidity, the **Hungarian** National Office for Rehabilitation and Social Affairs (NORSA) noted that invalidity benefits paid by another Member State may have an effect on the amount of the invalidity benefit paid under the Hungarian legislation.

Therefore, the NORSA asked for information about the benefits paid at the time of the investigation from other Member States in order to combat/prevent errors in respect of payment of benefits and to avoid undue payments. If the information provided in the course of the benefit award procedure requires further clarification or verification, the NORSA contacts the competent institution of the other Member State requiring the clarification of the individual and particular situation as well as the verification of any facts and/or events relevant with regard to the application of the Hungarian legislation. The relevant information was double-checked in every single case.

Additionally, in the course of the application procedure, the NORSA informs all claimants in writing of the consequences set forth by law, if any information relevant to the award of the benefit is not reported to the competent institution. The final decision taken on the claim clearly describes the roles and responsibilities of the beneficiaries in combatting and preventing errors, as well as the legal and financial consequences they have to face if they fail to comply with their obligation of cooperating with the authorities.

The NORSA stated that the number of overpaid and undue benefits reduced significantly and their competent institutions took preventive steps in approximately 2,500 individual cases.

#### 2.2.2.6. Work-related accidents and occupational diseases

With regard to work-related accidents and occupational diseases, the Work Accidents and Professional Diseases General Directorate within the **Romanian** National House of Public Pensions has undertaken monitoring and guidance actions of the activity performed by work-related accidents and occupational disease departments within the territorial pension offices and has developed a permanent information exchange with the competent Romanian institution and similar institutions from other Member States, in order to prevent fraud.

In **Germany**, the *Deutsche Gesetzliche Unfallversicherung* provides information to employers and employees in Germany and other Member States in cases where there was a suspected violation of Article 11 et seq of Regulation (EC) No 883/2004.

To prevent fraud and error, the **Belgian** competent institutions verify: whether the beneficiary is still alive or is deceased, the address of residency abroad, the identity of

the applicants or beneficiaries by obtaining an official document of the civil status in the country of residence and by comparing data given by the applicant/beneficiary with available data through the Crossroads Bank for Social Security (CBSS), pension data by comparing with the available data through the Crossroads Bank for Social Security.

#### 2.2.2.7. Family benefits

In the area of family benefits, various Member States implemented measures concerning data exchange both internationally and intranationally:

*Udbetaling Danmark (DK)* and *Försäkringskassan (SE)* enhanced cooperation on information exchanged in order to secure the correct payment of benefits in each institution. Enhanced cooperation in this field between Denmark and Sweden is valuable because of the level of mobility between the two countries, affecting the number of cases to be processed.

In **Belgium**, in order to prevent error and fraud, FAMIFED, the Belgian competent institution, developed the Family Benefits Register, which was introduced in July 2004. This instrument lists all family benefit files and the names of all children for whom benefits are paid, and the recipients of family benefits. It facilitates the routing of electronic exchanges, making it a tool for administrative simplification and a weapon in the fight against family benefit fraud.

By blocking any attempt to obtain double payment for the same child and for the same period, the Register helps prevent overlaps and therefore also to counter various errors and fraudulent (or attempted fraudulent) activities. In order to combat fraud involving the use of a fictitious address, the various public institutions and the offices of the Public Prosecutors at the Labour Courts cooperate and exchange data. Their cooperation takes either a direct form, via the labour inspectors, or via the competent police districts. It should be noted that FAMIFED, like other Belgian public institutions, works in collaboration with the Social Intelligence and Investigation Service on matters relating to social security fraud. The Social Intelligence and Investigation Service is a special service which is accountable to the Ministers for Labour, Social Affairs, Justice and the Self-employed, and the State Secretary for the Fight against Social Fraud. It supports and coordinates the joint actions of the different enforcing bodies in the fight against (cross-border) social fraud. In order to prevent error, FAMIFED verifies whether the legislation concerning family benefits is correctly and uniformly applied by randomly sampling files.

This prevention policy prevents the undue payment of benefits and thereby minimalises the number of cases of recovery of unduly paid benefits and the accessory risks such as insolvability and impossibility to prosecute the debtor in Belgium or abroad.

In 2015, FAMIFED was able to thwart 20,950 attempts at fraud involving double payment in respect of a child for periods of one month or more. Thanks to the Family Benefits Register, fraud and error of a total value of at least € 3,915,974 was avoided.

In **Hungary**, the Central Administration of National Pension Insurance emphasised that more focus was put on the prevention of fraud by asking for information from other Member States and the claimants themselves. The technics used by their clerks are very similar to what has been detailed in connection with the practices of NORSA. The Social Assistance Directorates of **Bulgaria** send SEDs to other Member States when the claimants declare that the other parent of the child works/resides in another Member State.

Germany took some specific steps to promote compliance by institutions and healthcare providers with the legislation concerning family benefits and to provide information to citizens.

The Family Benefit Offices (*Familienkassen*) in **Germany** have taken various measures to prevent fraud and error in cases related to the granting of family benefits and determined by the Regulations. To better inform recipients of family benefits of their rights and obligations, a newly developed 'Leaflet on child benefits in cross-border cases' was published in German and in 15 other language versions. The improved information to families in their mother tongues is intended to prevent fraud and error. Besides informing the citizens, Germany also organises meetings with liaison institutions of other Member States; during a meeting of the Liaison Offices responsible for family benefits in Poland and Germany, discussion centred particularly on the latest changes in legislation in the two Member States. At the same time, important procedural issues were discussed to improve bilateral communication. In addition to meetings, the Liaison Office for Family benefits (*Verbindungsstelle für Familienleistungen*) organised training for all the employees of the institution in Luxembourg responsible for family benefits in Germany. The training covered national German legislation on family benefits. The trainings are intended to prevent any errors during the processing of German-Luxembourg cases determined under the Regulations.

#### 2.2.2.8. Unemployment benefits

Regarding unemployment benefits, the **Hungarian** Ministry for National Economy (MNE) made efforts to achieve more success in the field of prevention of fraud by enhancing its activities in requesting more information from other Member States and claimants. By doing so, 34 cases of inappropriate use of a Portable Document U1 and 69 other cases of fraud or error were detected in 2015. These cases have been detected by permanent monitoring and integrated process control.

The **Belgian** competent institution, the National Employment Office (NEO), devised an 'Operational plan to combat cross-border fraud'. The objectives of the plan are as follows:

- to perform checks, based on objective criteria and where there is a suspicion of fraud, on benefit application files which contain references to work or equivalent performed abroad;
- to perform checks, both on a random basis and where there is a suspicion of fraud, to verify whether unemployed persons are actually resident in Belgium;
- to develop and intensify contacts and exchanges of information with the competent Belgian and foreign authorities in order to prevent, detect and curb cross-border fraud.

When devising the details of the operational plan, the National Employment Office decided on the following checks:

- systematic checks of the actual place of residence, by requesting proof of residence);
- systematic checks of applications for benefits based on employment in another country, followed by a brief period of employment in Belgium;
- checks, using lists of anomalies, on the removal of insured persons (unemployed persons and persons entitled to an interruption of their employment or to time credit) from the population register (these checks may be performed either because of a stay abroad or on an ex officio basis);
- checks on persons who have been reported by the police because they have moved abroad (outside the EU);
- checks using listings:



- a listing of unemployed persons who handed in their unemployment cards for the summer months at the same time the previous year;
- a listing of temporary unemployment among frontier workers;
- a listing of unemployment among persons with a CBSS identification number (a "bis number");
- checks on social dumping – abuse of postings (as part of cooperation with other inspection services within the District Cell, led by the Labour Law Prosecutions Office).

The National Employment Office is also assuming the chairmanship of the Benelux Working Party on Benefit Fraud. The Working Party was set up in 2014. In 2015, it continued its activities and increased the level of cooperation between various institutions in the countries concerned. The cooperation gave rise to the following specific measures and outcomes in 2015:

- in Belgium, the CBSS was designated as the SPOC for data exchanges with residents of third countries;
- the delegations drew up an inventory of the data which they wish to receive from their counterparts;
- the delegations decided what data are needed for the unique identification of individuals;
- decisions on identification and data set were made;
- decisions on the technical procedure (with input from the CBSS) were made;
- approval of the Belgian proposal for data exchange between the Dutch competent institutions and the NEO, NSSO and CBS was gained.

Furthermore, since 2013, the National Employment Office has been cooperating with France's Pôle Emploi in a project on (structured) information exchange. In 2015, cooperation between the two institutions gave rise to the following specific measures and outcomes:

- an inventory was made of the data which each of the two institutions have at their disposal and what data they wish to receive from the other;
- a decision was taken on the minimum data which are needed in order to create unique identifiers for persons and businesses (e.g. surname, first name, address, sex, date of birth, last known address);
- the exchange took place of a preliminary, depersonalised test file which the National Employment Office sends to *Pôle Emploi*;
- an analysis was made of the results and further refinement took place, in mutual consultation;
- the exchange took place of a second, non-depersonalised test file with a small number of persons and data.

In the fight against undeclared work, under the 'Action plan to combat social security fraud', implemented by the Federal Government, the inspection services adopt a sectoral approach, focusing on areas which are considered susceptible to fraud, such as the

construction, meat, cleaning, transport, security and catering sectors. Following the action plan, since 1 January 2016, it is obliged to keep a register of workers' presence on building sites with a value of at least € 500,000 instead of € 800,000, as of 1 January 2016. The use of the 'ConstruBadge' in the construction sector was implemented. It is now also obliged to keep a register of workers' presence in the meat sector and a '*caisse blanche/witte kassa*', a cash register system was introduced in the hotel and catering sector. Moreover, the government has announced a more structured data exchange between the social and tax administrations and more rigorous cross-checking of the various social security institutions' databases. A 'point of contact for fair competition' has been operational since October 2015. Citizens, businesses and other organisations can use this site to report instances of social security fraud.

Lastly, the Belgian inspection services will organise unannounced social security checks to prevent social security fraud in 2016.

#### 2.2.2.9. Closing remarks

Steps taken to prevent fraud and error	Member States
<b>In general:</b>	
Cooperation between internal competent authorities as well as the competent authorities in other Member States	RO
Dissemination of information towards institutions, healthcare providers, employers and citizens	AT, DK, ES, FI, HU, LV, PL, PT and SE
Improvement of national IT systems and software	BE, DK, IT and LV
Processes of verification of data	AT and EE
<b>In the area of:</b>	
<b>Applicable legislation:</b>	
Measures concerning PDs	CZ and MT
Cooperation between internal competent authorities as well as the competent authorities in other Member States	RO
Rules and procedures regarding inspections	BG
Implementation of a standard approach to prevent social security fraud	ES
<b>Old-age and survivor's benefits:</b>	
Investigation of facts	AT, CZ, DE, DK, MT, NL, PL and RO
(Automatic) data exchange between Member States	AT, DE, DK, FI, HU, MT, NL, PL, PT and UK
Steps to promote compliance by institutions and healthcare providers with the legislation concerning old-age and survivor's benefits and to provide information to citizens	CZ, DE, NL and RO
<b>Healthcare and sickness benefits in kind:</b>	
Measures concerning the EHIC	AT, ES, HU, LT, NO and UK

Steps to promote compliance by institutions and healthcare providers with the legislation concerning old-age and survivor's benefits and to provide information to citizens	PT and UK
<b>Accident insurance</b>	
Monitoring and guidance actions	CH
<b>Invalidity benefits</b>	
Cooperation between internal competent authorities as well as the competent authorities in other Member States	HU
<b>Work-related accidents and occupational diseases:</b>	BE, DE and RO
Monitoring and guidance actions	RO
Spread of information towards employers and employees	DE
Verification of data by comparing it with available data through data banks	BE
<b>Family benefits:</b>	
Data exchange between internal competent authorities as well as the competent authorities in other Member States	BE, BG, DK, HU and SE
Steps to promote compliance by institutions and healthcare providers with the legislation concerning old-age and survivor's benefits and to provide information to citizens	DE
<b>Unemployment benefits:</b>	
Data mining, data matching and monitoring	HU
Cooperation, communication and data exchange between the internal competent authorities as well as the competent authorities in other Member States	BE

Member States who replied to Q 1.2	Member States who refrained from replying to Q 1.2
AT, BE, BG, CH, CZ, DE, DK, EE, ES, FI, HU, IE, IT, LT, LV, MT, NL, NO, PL, PT, RO, SE, SK and UK	CY, HR and IS
Member States who replied to Q 1.3	Member States who refrained from replying to Q 1.3
AT, BE, CH, CZ, DE, DK, EE, ES, FI, HU, IE, IT, LT, LV, MT, NL, NO, PL, PT, RO, SK and UK	BG, CY, HR, IS and SE

### **2.3. National legislation relevant to preventing and combatting fraud and error**

None of the Member States have reported any legislation specifically dealing with fraud and error under the Regulations. Based on the country submissions, Annex I suggests that separate legislation specific to combat and/or prevent social security fraud and error within the framework of the EU Regulations on coordination, seems non-existent on the national level.

Even so, it is clear that Member States keep introducing new national legislation concerning social fraud and error, although not specific for cross-border cases. In a couple of Member States, the legal provisions concerning social fraud and error have been implemented in separate legislation (**AT, NL**), while in the other Member States these provisions became part of general social legal provisions.

Lastly, it is clear that still no uniform definition of social security fraud and error is available. Just like the European coordination Regulations, the national legislations often do not provide any kind of definition. In the cases where a definition is provided, it often concerns a very broad definition which is not repeated in other legislation. Instead of definitions, some Member States use descriptions of criteria which should trigger a check of the questionable cases (**DE**), or make use of legal notions (**BG**). Often no reference is made to the concept of 'fraud' or 'error' itself, but rather to offences, sanctions, and legal proceedings related to omissions.

Please see Annex I for the detailed country sheets on the existing national legislation concerning social fraud and error.

Member States who replied to Q 1.4	Member States who refrained from replying to Q 1.4
AT, BE, BG, CH, CZ, DE, DK, ES, FI, HR, HU, IE, IT, LT, LV, MT, NL, PL, PT, RO, SK and UK	CY, EE, IS, NO and SE

### 3. SPECIFIC PROBLEMS IN IMPLEMENTING THE EU COORDINATION RULES WHICH MAY LEAD TO (AT LEAST RISKS OF) FRAUD AND ERROR

The Member States have reported various specific problems in implementing the EU coordination rules which may lead to fraud and error. The problems are categorised and set forth hereinafter. Problems arise concerning the exchange of data, cross-border investigation and cooperation in general, the determination of the applicable legislation, the recovery of unduly paid benefits and some other particular difficulties. A summary table of these specific problems in implementing the EU coordination rules which may lead to fraud and error can be found at the end of this section (p. 51).

#### **3.1. Problems regarding the (lack of) exchange of data between Member States**

Almost all the Member States who have replied to question 2 of the questionnaire (**AT, BE, BG, CH, CZ, DE, DK, ES, FI, HU, HR, IE, IT, LV, NL, PL, PO, RO, SE** and **SK**) have expressed their concerns about the (absence of) exchange of data between the Member states.

The lack of a unified, formalised system for the exchange of information is a source of anxiety. More specific, **Belgium** and **Switzerland** quoted the lack of/unknown/inconsistent legal bases for the international exchange of information

**Italy** reported that the arrangements for the exchange of information and the implementation of the related operating procedures depend on the willingness of the institutions involved, requiring long negotiations between the parties. In some cases, agreements are not reached because of concerns resulting from the constraints of the national laws on the protection of personal data. On the other hand, it does not seem possible to obtain satisfactory results by means of almost spontaneous initiatives implemented in the framework of administrative cooperation provided for under the current European legislation.

The lack of a European-level database that registers migration outflows and inflows as a result of free movement makes it, according to **Italy**, difficult to monitor the permanent, habitual residence of recipients of social welfare benefits (a prerequisite for the payment of benefits). To better monitor the residence of citizens who receive social benefits outside Italy, Italy deems it useful to strengthen and/or tighten the current agreement with the Ministry of Foreign Affairs and conclude memorandums of understanding with foreign embassies/consulates in Italy and/or Italian embassies and consulates abroad, as well as possibly conclude agreements with the border police.

The main problems identified during inspections by Italian inspection services are the difficulties in acquiring information on posting undertakings with a registered office abroad (in particular financial data, such as the turnover and the distribution thereof among the various European countries, and the effective presence in the posting country of operational offices and staff) and notifying measures to these undertakings abroad.

Furthermore, Italy believes that talks between the institutions, in accordance with the provisions laid down in European law, are a prerequisite to ensure EU citizens' social security rights associated with the freedom of movement in the EU, and to allow the relevant institutions to carry out their tasks in a proper and uniform manner within a reasonable timeframe. Italy finds it desirable to complete the preparations for the launch of the EESSI platform.

One aspect of the reported problems regarding the exchange of data concerns the communication between the Member States of the fact of death (pension benefit) or any other fact that influences the entitlement to a benefit. Member States notified that such communication is still hard and is often submitted to unreasonably long handling times. For example, the Social Insurance Bank (*Socialeverzekeringsbank – SVB*) of the **Netherlands** stated that it gives high priority to creating electronic data exchanges with other Member States with regard to deaths of its clients who are residing in another Member State, since this kind of data exchange prevents fraud and error and reduces the administrative burden on clients to yearly supply life certificates. Nevertheless, they experienced that the process of creating electronic data exchanges is advancing very slow. The Foreign Pension Department of the Social Insurance Institution (*Zakład Ubezpieczeń Społecznych, Departament Rent Zagranicznych – ZUS DRZ*) in **Poland** too, experienced a lack of information about the death of persons entitled to benefits and about circumstances that determine the entitlement to and the amount of the benefit (e.g. information about changes of address/place of residence, foreign income, the continuation of employment, the non-exhaustion of the benefit period), resulting in the overpayment of benefits. The *ZUS DRZ* experienced the impossibility of getting assistance from some Member States concerning the deaths of unshared customers due to the lack of access to institutions' registers, which results in a need to continue to send 'Certificates of Life' in paper form. These circumstances leave vast opportunities for fraud and/or error: the applicants and/or beneficiaries sometimes fail to establish the factual circumstances or to file the requested documentation, do not – know that they have to – report changes affecting the acquired entitlement (e.g. their leaving to another country, place of residence abroad, employment abroad, remarrying) or just furnish fake documents (e.g. forged certificates of education, false place of residence, false information about financial resources, false life certificates, false employment certificates or old E-forms/SEDs which are no longer up to date).

Besides the (non-)behaviour of the applicants and/or beneficiaries, the competent institutions of the Member States themselves sometimes feed the process that leads to fraud and/or error. **Slovakia** reported, for example, that the institutions responsible for the granting of family benefits do not communicate the start of the payment to the institutions of the Member State of origin of the beneficiary, which can lead to the double payment of family benefits. In this respect, **Spain** notified that there are still problems related to the management of entitlement to benefits in kind, stemming from the significant delays – years in some cases – with which the competent institutions from other Member States inform the competent Spanish institution that pensioners from those States resident in Spain are no longer entitled to healthcare. The problem arises because the competent institution expects that the date of the end of entitlement – which was notified excessively late – will be accepted with retroactive effect.<sup>14</sup> The significant delay with which notifications of the end of an entitlement are received is often due to information coordination problems between the national institutions competent for the pension and those competent for the sickness insurance. Such anomalies are also the result of failure by the insured parties themselves to provide information about any change in their personal and/or family circumstances, such as a change in residence. Moreover, according to Spain, this inappropriate conduct by those concerned is encouraged by the fact that they suffer no economic consequences, even though there are economic repercussions for both the competent institutions and the institutions of the place of residence. It is common knowledge that, until the date on which the notification of the end of the entitlement (E-108) is received, the institution of the place of residence is unaware of the change in the entitlement status of the insured person, which prevents the person from being deregistered in the National Health System. As long as insured persons continue to hold a document entitling them to health care and have not been deregistered in the computer systems, they may and do continue to use the national health system without Spain receiving any economic compensation.

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<sup>14</sup> This in breach of point 3, final paragraph of Decision S6 (OJ 27 April 2010).

In this respect, the **Czech Republic** stated that periods of insurance are often wrongfully confirmed by other Member States by not making a difference between the reference period and the periods of insurance. In addition, **Latvia** reports that Member States occasionally include Latvian insurance periods in their insurance periods and use a different methodology in the registration of the insurance period whereby there is no indication of the particular dates of the beginning and end of insurance periods.

Furthermore, various Member States stated that SEDs or PDs sometimes do not contain sufficient information, for example about the salary; does it concern a nett or gross salary, a monthly or weekly salary or a salary for the whole period of employment? **Finland** noted that information on the earnings received in a Member State is often not at all available for other Member States, which can lead to cases of fraud and/or error. For example, if a person receives an invalidity benefit and works at the same time, his or her earnings will influence the amount of the benefit. If no information on the income is available, it will be possible for the beneficiary to receive a full benefit and a salary simultaneously. What is more, in general the slow and, at times, lack of any response from other Member States to requests for information on payments being received and decisions on applicable legislation can lead to incorrect payments being made and/or social security contributions being paid to the wrong institutions.

**Finland** also reported the desire to have confidence in the correctness of information as stated on PDs and SEDs by the competent institutions of a Member State. Certain Member States do not necessarily consider this information to be sufficient when persons residing in Finland apply for a pension from those Member States. In such cases, the pension claimants have been asked to provide certification by apostille on the basis of the Hague Convention in order to authenticate, for example, birth certificates or other documents. Additionally, they have been asked to send certified translations of their medical and other information, i.e. about family relations.

In Finland's opinion the situation described above is not in accordance with the provisions of the Regulations (Article 80(2) and Article 76(7) of Regulation (EC) No 883/2004 and Article 5 of Regulation (EC) No 987/2009) and may lead to error in some cases. Also requiring the person to visit the State from which the benefit has been applied, is not in line with the provisions of the Regulations either.

Demands for different certificates and authenticated signatures, for example, are sometimes justified with the purpose of combatting fraud and error.

**Hungary** reported on another practice that hinders the exchange of data between the Member States; some Member States rather sought to have information from the persons concerned, instead of contacting the liaison bodies/competent institutions of the other Member State. This practice regularly leads to undue payments.

### **3.2. Problems regarding cross-border investigation and cooperation in general**

The lack of exchange of data between the Member States has a causal connection with the current level of cross-border investigation and cooperation in general, which is very low. A few Member States (**AT, BE, DE, DK, FI, PL** and **SK**) expressed their concerns about this.

In **Denmark**, for example, *Udbetaling Danmark* finds it problematic that the coordination rules do not include procedures for investigating cases of suspected fraud and error across borders. Specifically, it has been observed by *Udbetaling Danmark* that none of the SEDs seem appropriate for this task and that the different competent institutions seem not to be familiar specifically with cooperating across borders on fraud and error. This often results in long response time and often leads to no response at all.

It is the view of *Udbetaling Danmark* that this may be due to the fact that in fraud and error cases there most often is a need for information that is normally not necessary for cases regarding the social security benefit in question. This is so, as fraud and error cases quite often concern questions of country of residence and in this regard there may be a need of information that indicates whether or not a person is in one country or the other (such as an address or information on the economic activity). Such information is not necessarily needed in regular cases and for this reason the competent institution is not familiar with providing (and maybe not even able to provide) the requested information.

In order to solve the problem of institutions that are not familiar with providing certain specific information needed to handle a cross-border case, **Denmark** assumes that country SPOCs would be highly relevant, as a SPOC function should be able to facilitate requests to the correct recipients.

In this regard, *Udbetaling Danmark* has had positive experience with working together with the NCP of e.g. Germany, Poland and Switzerland.

**Finland** also raises the lack of well-functioning cross-border cooperation between the institutions of the Member States. It states that some institutions do not answer letters or e-mails and in some cases it has been reported that other States are not informed about decisions as they should be. Recognising the situations where cross-border cooperation should and could be initiated also gives rise to problems. The lack of cooperation and/or the lack of mutual understanding of the rules of the Regulations cause unreasonable situations for individuals, workers and employers. Especially situations concerning retroactive periods are very problematic. The institutions should be able to solve even these, sometimes difficult, cases without unnecessary administrative burden.

**Belgium** suggested a system whereby every socially insured person has a unique identification number that is used by all the Member States, in order to make cross-border investigation and cooperation in general, and data exchange specifically, more fluent.

In **Poland**, the Foreign Pension Department of the Social Insurance Institution (*Zakład Ubezpieczeń Społecznych, Departament Rent Zagranicznych – ZUS DRZ*) finds it problematic that correspondence is often addressed incorrectly due to a lack of updated contact information of the social insurance institutions in the different Member States. *ZUS DRZ* also reported a lack of information on entities entitled in a given Member State to authenticate signatures as well as to authenticate submitted copies of documents as true to the original.

### **3.3. Problems regarding the applicable legislation**

The third specific problem in implementing the EU coordination rules which may lead to fraud and error, mentioned by various Member States (**AT, BG, CZ, DE, DK, ES, LV, MT, NL, PT, RO, SE** and **SK**), relates to the applicable legislation.

The **Czech Republic** stated, first, that problems can occur with respect to the determination of whether or not a particular benefit is subject to the coordination rules. Slovakia for example, does not pay cash care allowances under Slovakian legislation to beneficiaries residing in other Member States. If Slovakia is the competent State in the sense of Article 29 of Regulation (EC) No 883/2004, this can result in purposive behaviour in some cases, because the persons try to get the benefit in the State of residence. Although this is a problem, the Court of Justice of the European Union decided that this benefit is not a benefit under Regulation (EC) No 883/2004.



Secondly, the determination of the applicable legislation itself can be problematic. In **Romania's** view, rules for determining the legislation applicable to mobile workers are too flexible and this flexibility can lead to fraud. In this context, **Finland** mentioned that Article 16 (6) of Regulation (EC) No 987/2009, which compels Member States to sort out these cases, is sometimes almost impossible to apply. An important issue related to this, is the payment of contributions to other Member States, which at the moment does not fully function. The employers can be reluctant to pay contributions to a foreign Member State whose legislation is applicable to the worker concerned, which might cause errors in the rights of the worker as well as in the application of the Regulations.

However, in practice **Latvian** authorities face more situations where persons working in two or more Member States at a time pay social insurance contributions in several Member States, contrary to the Regulation. The individuals do not turn to the competent authority to determine the applicable legislation and do not receive the A1 certificate for the application of legislation of only one Member State. Identifying particular cases, it is difficult to transfer the contributions from one State to another for a past period, the service payment for the persons is delayed, and in some cases the transfer of contributions is impossible due to national law restrictions.

In 2015 there was a case where a person had paid contributions in two countries for ten years: in the competent State Latvia and in the country of employment. The person was entitled to an old-age pension, and thus the transfer of improperly made contributions to Latvia was very significant. Fortunately, in the case described above, the competent authority of the other Member State approved the transfer of contributions, and the rights to the old-age pension of this person were not restricted.

In this regard, **Sweden** denounced the lack of a system whereby a swift assessment of applicable legislation can be done.

**Germany** reported that the establishment of what law is applicable to a person in cross-border situations depends on several different factors. The possible constellations of cases are separately described in legal provisions, yet the reported data on actual conditions may be manipulated or relevant facts may be concealed. The possibilities to assess these effectively are limited. If, for example, the reported data on the main business activity of a self-employed person working on both sides of the border in different jobs is to be checked in the country of residence, the question arises what means are available to the case handler for that purpose. Whether an activity continues to be pursued can often be easily established or confirmed based on trade registrations. Whether this activity was considered to be a main activity in the State of residence at the time of the posting pursuant to Article 14(8) of Regulation (EC) No 987/2009, requires a more detailed assessment. The necessity of such differentiated assessments naturally leads to a higher risk of manipulation and errors. Another example is the ban on replacements in relation to postings (Article 12(1) 1 of Regulation (EC) No 883/2004), which is hardly possible to effectively assess in larger companies.

**Malta** seems to agree with Germany and stated that the applicable legislation chapter carries the highest possible risks, which may lead to possible cases of both fraud and error, because in this area the institutions rely heavily on the information provided by the applicants (employer and employee) which, in some cases, is not easily verifiable.

A practical example, given by **Malta**, of information provided by the applicant that is not easily verifiable is the one-month employment condition prior to posting a worker to work in another Member State. Sometimes the institutions have no means of verifying whether the worker was actually physically present in the country prior to the posting period. Although on paper workers are registered as employees of the company, this could be fictitious in order to conform to the posting conditions.

In general, **Austria** stated that errors are often owed to persons performing paid activities in more than one Member State, being unaware of the rules on coordination. In this respect, **Slovakia** stated that the increase in citizens' awareness of their social security rights can decrease the number of errors.

Two more aspects with regard to the applicable legislation are considered as specific problems when implementing the coordination rules and as possibly leading to fraud and error: the determination of the place of habitual residence and the use of PDs and SEDs.

Starting with the determination of the place of residence, **Austria, Latvia, Spain** and **the Czech Republic** stated that this determination, which is of importance in situations whereby the entitlements are conditioned by residence, is sometimes problematic. In the field of unemployment benefits, for the purpose of Article 65 of Regulation (EC) No 883/2004, notwithstanding the existence of Article 11 of Regulation (EC) No 987/2009, Decision U2 and judgments of the CJEU, there are no specific criteria to assess residence, and this causes one of the biggest problems in the field of coordination of unemployment benefits. This is not only the case on the side of the clients for whom it is difficult to understand it, but also for officers for whom it is difficult to explain it to clients and to deal with the consideration of residence.

The legal norms with respect to the term 'permanent place of residence' cannot be translated unequivocally in all the Member States.

In this respect, the benefit recipients and national courts often refer to Article 16(1) of Directive (EC) No 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, which stipulates that a Union citizen who has resided legally for a continuous period of five years in the host Member State shall have the right of permanent residence there. However, Article 11 of Regulation (EC) No 987/2009 lays down provisions which have to be taken into account to determine residence, such as the duration and continuity of the presence, the family status, the housing situation, the taxation status. According to Article 11(2), the person's intention, as it appears from such facts and circumstances, especially the reasons that led the person to move, shall be considered to be decisive for establishing that person's actual place of residence. In the opinion of **Latvia**, the application of the criterion – legal residence for a continuous period of five years in the host Member State – is not an objective ground to determine the entitlement to a benefit, and in some cases it may even limit a person's right to social protection. A lot of errors occur in this field. It seems that there is no united approach across the Member states to the place of residence.

Additionally, the **Netherlands** elucidated the foregoing by reporting that the rules on the applicable legislation use many generic terms which often leave some leeway as regards their interpretation and application in specific situations.

Continuing with problems arising from the use of PDs and SEDs, various Member States believe that the use of these documents can also lead to fraud and error.

**Estonia** reported that invalid E-forms and E-forms which contain contradictory information can lead to error. The competent institution in **Belgium** in the field of unemployment benefits, the NEO, states that A1 certificates are not always completed sufficiently precise so that some questions which have to be answered in order to be able to establish the right to unemployment benefits remain. For example, it is often unclear whether the applicant has worked full-time or part-time, what the exact amount of hours or days worked is, how much the remuneration contained, what type of employment contract was used, in which circumstances the contract ended etc.

**Bulgaria** stated that some occurring problems are related to requests to issue certificates without grounds; the non-declaration by individuals of a change in circumstances, which would be grounds for revocation or termination of a certificate, is not uncommon, especially when persons work in two countries where they do not want a timely determination of the applicable law, but want this at a later point in time, after the expiry of the period. A practice is noted in some Member States in which Bulgarian citizens who work exclusively in their territory require an A1 certificate without any grounds therefor. This leads to the conclusion that there is a potential for abuse concerning overdue payments for the competent Member State's social insurance.

**Austria** reported the difficulty and even impossibility to withdraw such certificates which are incorrectly issued by foreign institutions or individuals themselves. The A1 form is found insufficiently (if at all) forgery proof. The **Netherlands** agreed with the foregoing and stated that it happens that employers and/or workers have a specific (economic) interest to apply the legislation of a specific Member State, in particular of Member States with low-cost social security schemes, in order to gain a competitive advantage. Special, rather artificial arrangements are sometimes used in order to get this advantage, which are frequently difficult to detect due to the binding character of the PD A1 and the difficulty to obtain the issuing institution's agreement for its withdrawal even in situations of obvious fraud. Any negative reversal of the decision of the institution which had originally agreed to be competent is likely to be challenged in court by the insured persons and/or their employers. In addition, any retroactive change of the applicable legislation is administratively complicated and burdensome for the institutions concerned and may not have the intended result, e.g. when the employer goes bankrupt or simply refuses to apply the negative decision by not registering the workers concerned with the 'correct' institution in another Member State.

**Portugal** exposed the issuing of PDs by employers instead of institutions. Since they are issued in the language of various countries it is not always easy to assess whether the issuer is a company or a social security institution.

**Germany** mentioned that the temporary provision of benefits in kind is made difficult as sometimes no A1 certificate is issued for activities in a foreign country, or as the EHIC is not carried.

Finally, a specific problem in the area of disability pensions, mentioned by **Latvia**, concerns the fact that Member States' categorisation of levels of disability often differs from the categorisation used by another Member State. Where a person is granted a disability pension of 'Group 3 Disability' in Latvia, in other countries the 'Type A' law will be applied.

### ***3.4. Problems regarding the recovery of unduly paid benefits***

In connection with the problems arising with regard to the applicable legislation, a couple of Member States (**BG, CH, FI, HR, LV** and **PL**) stated that the recovery of unduly paid benefits causes huge administrative burden and often is very hard or even impossible.

Not all Member States give the assistance needed in order to recover outstanding contributions or unduly paid benefits from the debtor residing in their State.

The provisions on cross-border assistance in recovery issues have been in force since 2010 but problems remain in applying these provisions in a coherent and uniform manner by the Member States. As long as these provisions do not function properly, a significant amount of money is not collected. This inefficiency can lead to further fraudulent behaviour.

The Foreign Pensions Department of the Social Insurance Institution (*Zakład Ubezpieczeń Społecznych, Departament Rent Zagranicznych – ZUS DRZ*) in **Poland** experienced problems related to, at times inconsistent, national regulations or practices preventing the recovery of benefits transferred to a bank account following a beneficiary's death.

Besides, banks in certain Member States make it impossible to recover benefits which have already been paid into the bank account of the beneficiary.

### **3.5. Other specific problems**

To round up the summary of replies to question 2 of the questionnaire, some other specific problems, individually mentioned by Member States, are listed up hereinafter.

In general, the **Swiss** National Accident Insurance Fund stated that the differences in the national legal systems (e.g. in relation to occupational and other accidents, the period during which benefits are paid) can lead to problematic situations, sometimes resulting in fraud or error.

**Finland** raised the issue about the fact that in several Member States, often reasoned by combatting fraud and error, cross-border payments of the first pension amount or all the amounts are still executed in cheques (even if IBAN and SWIFT/BIC codes are provided on the application). For example, in the Nordic countries cheques are not used as a payment method and therefore it can be very costly to cash cheques. Finnish banks debit approximately €95 to €50 to cover the handling costs of an individual cheque. This leads to situations where the costs overlap the person's monthly pension. **Lithuania** reported that, during 2015, the Lithuanian competent institution for applicable legislation, the Foreign Benefits Office, was facing problems regarding the determination of applicable legislation for Polish citizens who are employed in Lithuania for a few hours and pursuing a self-employment activity in Poland. This issue concerns the definition of marginal activity.<sup>15</sup>

In the area of invalidity benefits, **Sweden** stated that the quality of medical opinions vary considerably between the Member States. This leads to a huge risk that the beneficiary's claim is being denied since the documents received from the other Member State are inadequate or do not contain all the information the Swedish institution needs in order to consider whether the conditions for granting the benefit (e.g. the reduction of work ability) are fulfilled.

**Austria** had a couple of remarks concerning sickness insurance. Regarding the benefits in kind, it is found problematic that the EHIC cannot be read electronically and sometimes does not show the period of validity. Cross-national accounts are sometimes settled after the period of entitlement has ended and the facts of the situation can be ascertained only afterwards.

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<sup>15</sup> The problem mentioned was described in the Lithuanian delegation note to the Administrative Commission AC 686/15.

Contrary to the foregoing, **Poland** reported that taking into consideration that the EHIC does not show a start date, cases were identified in which the EHIC was used to enable an institution to settle the cost of medical benefits provided prior to the validity period of the card. Concerning cash benefits, **Austria** noted that there is a lack of automatic checks during long-term sick leave by the assisting institution.

The **Netherlands** on the other hand reported that since the E 215 form only contains a summary breakdown of the costs and nature of the care provided, the risk of fraud and error when using the EHIC could increase since health insurers have to pay without having an insight in the care provided. For instance, it is difficult to verify properly whether someone, possibly intentionally, has used the EHIC for planned medical care.

An illustration: an insured person has claimed costs for medical care on the basis of the EHIC card with his or her insurer. At the time that the person concerned submitted an additional declaration to the insurer to reimburse the own expenses made, it turned out that the costs were not made to cover urgent medical care, but planned medical care. From the E 125 form only this cannot not be concluded.

As mentioned earlier in this report, various Member States are willing to start, or already started with, a dialogue procedure with other Member States. In this respect, **Austria** mentioned the non-binding nature of decisions taken in such procedures as an obstacle to fully execute these decisions.

### 3.6. Closing remarks

Specific problems in implementing the EU coordination rules	Member States
<b>Regarding the (lack of) exchange of data between the Member States:</b>	AT, BE, BG, CH, CZ, DE, DK, ES, FI, HU, HR, IE, LV, NL, PL, PO, RO, SE and SK
The lack of/unknown/inconsistent legal bases for the international exchange of information	BE, CH and IT
Constraints of the national laws on the protection of personal data	IT
The lack of databases at European level	IT
The lack of/difficult communication between Member States of facts that influence the entitlement to a benefit	IT, NL and PL
Errors made by the national competent institutions	CZ, ES, HU, LV and SK
Problems regarding SEDs and PDs	FI
<b>Regarding cross-border investigation and cooperation in general:</b>	AT, BE, DE, DK, FI, PL and SK
The lack of procedures for investigating cases of suspected fraud and error across borders in the coordination rules	DK
The lack of/difficulties regarding cooperation	BE, FI and PL
<b>Regarding the applicable legislation:</b>	AT, BG, CZ, DE, DK, ES, LV, MT, NL, PT, RO, SE and SK
The determination of whether or not a particular benefit is subject to the coordination rules	CZ
The determination of the applicable legislation itself	AT, DE, FI, LV, MT, RO, SE and SK

The determination of the place of residence	AT, CZ, ES and LV
Problems arising from the use of PDs and SEDs	AT, BE, BG, DE, EE, NL and PT
Problems arising due to the different categorisation of levels of disability per country	LV
<b>Regarding the recovery of unduly paid benefits</b>	BG, CH, FI, HR, LV and PL
<b>Regarding other specific problems:</b>	AT, CH, FI, LT, NL, PL and SE
The differences in the national legal systems	CH
The means used to award social security benefits	FI
The definition of marginal activity	LT
The equality of medical opinions	SE
The paper EHIC	AT, NL and PL
The non-binding nature of decisions taken in dialogue procedures between Member States	AT

Member State who replied to Q 2	Member States who refrained from replying to Q 2
AT, BE, BG, CH, CZ, DE, DK, EE, ES, FI, HR, HU, IE, IT, LT, LV, MT, NL, PL, PT, RO, SE, SK and UK	CY, IS and NO

## 4. AGREEMENTS AND BILATERAL COOPERATION ARRANGEMENTS

Annex II to this report contains (1) a summary of the reported bilateral/multilateral agreements and bilateral/multilateral cooperation arrangements<sup>16</sup> per country and (2) detailed country sheets.

The reported agreements and cooperation arrangements reveal that most of them are bilateral. Only a few agreements and cooperation arrangements have a multilateral character:

- The multilateral **agreement** between the Social Insurance Institution of **Finland** (*Kela*), the Finnish Centre for Pensions (*ETK*), the Social Insurance Administration of **Iceland** (*Tryggingastofnun*), the **Norwegian** Labour and Welfare Administration (*NAV*), the **Swedish** Pensions Agency and the **Danish** *Udbetaling Danmark* (*UDK*) concerning co-operation and exchange of information via secure e-mail on social security and payment of benefits (2015).
- The **Nordic Working Group against Benefit Fraud** (cooperation arrangement).
- The **Working Group European Benefit fraud** (cooperation arrangement).
- Joint Declaration Social Summit **Benelux** of 3 February 2014 (**Belgium, Luxembourg and the Netherlands**):

It has to be noted that the **Czech Republic** reported that the bilateral agreements are very rarely applied and that the cooperation between institutions is generally done within the Regulations' provisions on the exchange of information.

Please see Annex II for a detailed summary of the reported bilateral/multilateral agreements and bilateral/multilateral cooperation arrangements<sup>17</sup> per country and the detailed country sheets.

Member State who replied to Q 3	Member States who refrained from replying to Q 3
AT, BE, BG, CH, CZ, DE, DK, ES, FI, HR, HU, IE, IS, IT, LT, LV, MT, NL, PL, PT, RO, SE and SK.	CY, EE, NO and UK

<sup>16</sup> An update of annex II to the 2016 questionnaire on Fraud & Error in the field of EU social security coordination.

<sup>17</sup> An update of annex II to the 2016 questionnaire on Fraud & Error in the field of EU social security coordination.

## 5. STEPS TAKEN IN THE REFERENCE YEAR (2015) TO PROMOTE COMPLIANCE BY INSTITUTIONS AND HEALTHCARE PROVIDERS WITH THE COORDINATION RULES AND TO PROVIDE INFORMATION TO CITIZENS

The Member States have taken different steps to promote compliance by institutions and healthcare providers with the coordination rules and to provide information to citizens.

### ***5.1. General steps taken to promote compliance by institutions and healthcare providers with the coordination rules and to provide information to citizens***

Steps taken in 2015 to promote compliance with the coordination rules	Member States
<b>by institutions:</b>	
<b>Informing of staff:</b>	
via brochures	AT and UK
via circular letters or on the intranet	DE, HR and UK
via guidelines	FI, PT and SE
via letters by post	HR
via FAQs about handling cross-border situations in the scope of Regulation (EC) No 883/2004	DE
using targeted information	ES
<b>Training of staff</b>	AT, CZ, DE, FI, PL and UK
<b>E-learning modules</b>	UK
<b>Working groups/meetings to discuss and find common solutions to problems relating to the coordination regulations and to share information and good practices</b>	AT, DE, HU, RO and UK
<b>by healthcare providers:</b>	
<b>Informing of healthcare providers:</b>	
via websites	AT, CH, DE, FI, LV, PL, PT, NL, NO, RO, SE and SI
via leaflets/brochures	DE, UK
via letters by post	HR
via email or phone	MT
via guidelines	FI, PT, SE and UK
via personal advice and support	DE, ES, IE, LV, PL and MT
via (in)formal instructions	BE, BG, DE, DK, EL and SI
via consultations/visits/meetings/workshops	DE, HU, LV, NO, PL and RO



<b>Training</b>	AT, CZ, DE, EE, FI, IT, MT, PL and UK
<b>E-learning modules</b>	UK
<b>Encouraging to perform identity checks when the EHIC is presented by asking to see an official ID photo</b>	AT

Steps taken in 2015 to provide information to citizens regarding the coordination rules:	Member States
<b>Informing</b>	
via website(s)	AT, BE, DK, EL, ES, FI, HR, IT, LT, LV, NL, NO, PL, PT, SK, SI and UK
via brochures/flyers/folders/leaflets	AT, BE, DE, DK, ES, HR, LT, NL and UK
via letters	DK, HR
via the press	AT, BE, DE, EE, LV, NO, PL and SI
via radio/television programmes	AT, EE, LV, MT, PL and SI
via mobile application(s)	CZ
via other mass communication measures	CZ, FI, LT, LV, NO, PL and RO
via FAQs about handling cross-border situations in the scope of Regulation (EC) No 883/2004	DE
via talks at local councils	MT
via official centres for providing information	ES and SK
via the annual policy information of health insurance companies	NL
on an individual basis via telephone, in person or via letter/mail	AT, DE, ES, IT, PL, RO and SI
<b>Publication of an annual article in a magazine that is laid out in doctor's surgeries</b>	AT

In the above table, data supplied by the Member States in their replies to the Questionnaire on Fraud and Error of 2015 and data as presented in the EHIQ Report with reference year 2015<sup>18</sup> were combined.

## ***5.2. Specific steps taken to promote compliance by institutions and healthcare providers with the coordination rules and to provide information to citizens***

Besides the abovementioned general steps, a couple of Member States also took some specific measures:

In **Austria**, to promote compliance with the coordination rules by healthcare providers, contracted physicians are asked to give opinions and have transactions rescinded where private fees have been charged owing to an unjustified refusal to accept the EHIC.

<sup>18</sup> Reference to the EHIC Report (not mentioned in the report itself).

In **Denmark**, the Danish Parliament adopted a new legislation which entered into force 1 May 2015.

According to this legislation, the competence to decide whether a person is insured under the Danish health legislation or the health legislation of another Member State, in accordance with the rules of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2004, is centralised in *Udbetaling Danmark*.

The complexity of the rules under the Regulation, which makes it difficult to build the necessary professional knowledge and experience in the area when a municipality only receives a limited number of cases a year, was the immediate cause for this new regulation.

Denmark hopes that the centralisation of the decision authority will help increase legal certainty for citizens. With the same legislation new rules are introduced to decide and register under which health system a person taking up residence in Denmark is insured. The purpose of this is to insure a better compliance of the Danish administration with the abovementioned Regulations in the area of coordination of benefits in kind within health care and care services.

**Ireland** reports steps taken towards an improvement of the interaction with institutions in other Member States, with the aim to promote compliance with the coordination rules by institutions and healthcare providers. Concerning the compliance by institutions, in 2015 the Health Service Executive (HSE), which is the competent institution for benefits in kind, improved its interaction with institutions in other Member States. This enhanced cooperation greatly assists in resolving issues in determining eligibility, residency etc. The HSE has a central contact point for institutions in other Member States to facilitate the issuing of temporary replacement certificates. This is where a person requires an entitlement document urgently and ensures that patients are not required to meet the cost but are provided with care under the Regulations. This email contact also offers the opportunity for institutions in other Member States to correspond electronically with local health offices in Ireland. Persons having entitlement from other Member States and who are resident in Ireland now have a central contact point for decisions on entitlement.

This leads to uniformity in the application process and a more efficient response to other States on the outcome of applications. The swift processing of reimbursement claims from other Member States leads to the withdrawal of entitlement documents when a person is no longer insured in Ireland. This ensures that the HSE does not have to meet additional costs where it is not competent. The HSE is in the process of enhancing its reimbursement claims database which will facilitate a more comprehensive analysis of such claims with a particular emphasis on the identification of fraud and error. Concerning the compliance by healthcare providers, the HSE is obliged to confirm and record information on entitlement documents (EHIC, Temporary Certs). In this remit it has given guidance to healthcare providers on entitlement under EU Regulations, the appropriate use of the EHIC for patients from other Member States and an update of what is required to facilitate the reimbursement from other Member States.

The HSE of **Ireland** has systems in place to promptly identify deficiencies in data collection or inappropriate use of the EHIC, and to provide feedback to healthcare providers, to ensure greater compliance in the future.

However, no cases of inappropriate use of the EHIC or PDs S1, S2 etc have been recorded in Ireland.

Furthermore, the HSE provided information to all new EHIC applicants on the use of the card in other Member States, to ensure compliance with the Regulations. Citizens were also advised on the entitlement criteria for an EHIC and the circumstances in which entitlement is lost. In the **Netherlands** too, health insurance companies provide information to all the new EHIC holders.

The competent (health) institution of **Malta** has increased its validation checks in order to promote compliance with the coordination rules. Both the internal (or in-house) and the external checks (via direct clarification/communications with other EU/EFTA Member States) has substantially increased through an increase of the verification sample.

**Slovakia** notified that in order to promote compliance with the coordination rules, the Health Care Surveillance Authority performs surveillance on health insurance companies providing health insurance and other additional services and that health insurance companies perform the surveillance of health care providers in relation to health care services.

Lastly, in **Poland**, in 2015, with the aim of providing information to citizens regarding the coordination rules, the National Health Fund (*Narodowy Fundusz Zdrowia – NFZ*) has organised an art competition for children titled 'Healthy family travels with EHIC'. The competition was addressed to students in primary schools and junior high schools. It aimed at promoting health and raising awareness, among children and teenagers, of the benefits of taking the EHIC abroad, as well as developing healthy lifestyle habits in the future. On the other hand, with regard to promoting compliance with the coordination rules by institutions and healthcare providers, the *NFZ* carried out a project 'Increasing the quality of health care system management through support of National Contact Point for cross-border healthcare' ('KPK NFZ'). A series of training courses on cross-border healthcare were organised under this project. The issues covered during the courses included a comparison of the health care under the Directive and under the coordination of social security systems. Part of the training was also devoted to the EHIC. A total of 35 training courses were carried out in Poland, 11 of which were carried out in Warsaw and were addressed to employees of the *NFZ* Central Office and all regional branches of the *NFZ*. The participants included management, employees who have direct contact with beneficiaries and provide information on available forms of treatment abroad, and employees involved in the cost-accounting process of health care services. The other 24 training courses were addressed to healthcare providers and employees of healthcare entities. A total of 1367 people were trained, including 921 employees of healthcare entities. As part of the project, the *NFZ* employees also prepared a publication titled "Coordination and the directive – the similarities and differences in cross-border healthcare", a part of which was devoted to the EHIC.

### 5.3. Closing remarks

Member State who replied to Q 4	Member States who refrained from replying to Q 4
AT, BE, DE, DK, ES, FI, HR, HU, IE, IS, IT, LT, MT, NL, NO, PL, PT, RO, SK and UK	BG, CH, CY, CZ, EE, LV and SE

## 6. QUANTITATIVE DATA FOR THE REFERENCE YEAR (2015)

Annex III to this report reveals that most of the Member States are still not able to provide some meaningful quantitative data concerning social fraud and error.

As to the quantitative data received, there is a lack of uniformity. Furthermore, several Member States did not make a distinction between national and international data.

Please see annex III for the detailed country sheets on quantitative data concerning social fraud and error for the reference year 2015.

Member State who replied to Q 5	Member States who refrained from replying to Q 5
AT, BE, BG, CH, CZ, DE, DK, EE, ES, FI, HR, HU, IE, IS, IT, LT, LV, MT, NL, PL, PT, RO, SE and SK	CY, NO and UK

## 7. BEST PRACTICES, LESSONS LEARNED, ISSUES OR CONCERNS (INCLUDING REGARDING PRIVACY AND DATA PROTECTION) WHEN DEALING WITH CROSS-BORDER COOPERATION AND INFORMATION EXCHANGE WITHIN THE FRAMEWORK OF REGULATIONS (EC) NOS 883/2004 AND 987/2009 ON THE COORDINATION OF SOCIAL SECURITY SYSTEMS

Best practices, lessons learned and issues or concerns when dealing with cross-border cooperation and information exchange within the framework of Regulations (EC) No 883/2004 and (EC) No 987/2009 on the coordination of social security systems, as reported by the Member States, are summarised hereinafter. A summary table of these best practices, lessons learned and issues or concerns can be found at the end of this section (p. 69).

### 7.1. *Best practices*

Starting with the reported best practices, a distinction between four categories can be made:

#### 7.1.1. **Best practices regarding the cross-border cooperation between Member States**

A few Member States (**AT**, **BE**, **FI**, **IE**, **IT**, **NL**, **PL** and **RO**) indicated examples of best practices regarding the cross-border cooperation between Member States.

**Austria** for example stated that the Conciliation Board works well, although the scope for effective enforcement of the decisions taken by the board remains an issue.<sup>19</sup>

As mentioned above, in Poland direct meetings were held with the representatives of other Member States in order to exchange information concerning changes in national legislation or institutional structure, to exchange contact details of persons indicated in each institution for the purpose of direct contact in questionable cases, as well as to resolve legal or procedural (bilateral) issues,<sup>20</sup> and 'Counselling Days' were organised.<sup>21</sup> In addition, **Poland** also reported as a best practice the establishment of a cooperation between the employees of the particular competent institutions in Poland and the employees of the competent institutions of the place of residence. The Agricultural Social Insurance Fund (*Kasa Rolniczego Ubezpieczenia Społecznego – KRUS*) noted positive experiences when having the claims for pension benefits considered by the German competent institutions. Over the years, *KRUS* has considerably improved the methods of cooperation with these institutions. A major role was played here by the repeated meetings of representatives of the Polish and German liaison and competent institutions. Joint arrangements and mutual exchange of information, as well as shared experience allowed to eliminate the difficulties as well as improve the flow of information when handling pension cases. Time consumed for considering the claims for pension benefits has significantly shortened. The European Internet Information Procedure System of the German institution *Deutsche Rentenversicherung*, which was made available to *KRUS* on a regular basis, allows to use the information about the German insurance history of the claimants and the amount of German benefits received, which greatly facilitates the processing of claims of the agricultural pension benefits and accelerates issuing decisions in these cases.

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<sup>19</sup> It is remarkable that, contrary to the stated well-functioning of the Conciliation Board, Austria also reported that it considers PD A1 to be problematic since no effective possibility of appealing it is available (cfr. p. 65).

<sup>20</sup> Cfr. p. 25.

<sup>21</sup> Cfr. p. 30.

**Finland** has always considered the cooperation between the neighbouring States and the other Member States to be important. Regular meetings with Estonia and the Nordic countries and annual liaison body meetings with different EU Member States give the opportunity to discuss interesting topics and possible challenges between institutions as well as the opportunity to network with colleagues from different institutions.

Finnish institutions have, for example, met with the institutions from Sweden, Germany and Austria regularly. Also thanks to the good relationships with the neighbouring States, the Finnish Centre for Pensions has been able to meet the Swedish colleagues to discuss ongoing challenging cases and together try to find solutions.

According to the Finnish Centre for Pensions, a useful improvement in the cross-border cooperation and information exchange would be the possibility to use secure email. The Finnish Centre for Pensions already uses secure email with some States and this has had a great impact on, for example, the handling times. A new agreement on the use of secure email between the Nordic countries has recently been prepared and this agreement will make the cooperation between the Nordic countries much easier and faster. The Finnish Centre for Pensions has been benchmarking systems with the Estonian institution and Estonian colleagues have visited the Finnish Centre for Pensions for the same reason. Good cooperation applies as an important best practice in other sectors in Finland as well. From the perspective of the Workers' Compensation Centre, personal connections with institutions in other Member States is indeed the best 'best practice'.

**Belgium** agrees with Finland and reports that a structured system with functional contacts is key in ensuring equal treatment of all (European Union) citizens in an open-border Europe (this is the view particularly in relation to the family benefits branch). Also a list of similar or closely related institutions would be useful. For example, a social inspector in Belgium should know which person or institution, which understands the inspector's needs, can be contacted in the other EU Member States. For both France and Portugal, Belgium has a responding contact. When there is a need to exchange information, this can be done fairly easily upon a simple request. Especially with France Belgium has contact regularly via a "general" email address. The contact with Portugal is one specific person. The H5NCP network (since the beginning of 2016 called the 'European Platform to combat cross-border social security fraud and error'), the electronic platform OSIRIS as well as a tool available for the DG Social Inspection for prioritising investigations based on data analysis are also mentioned as good practices by Belgium. The Belgian FPS Social Security stated that "the OSIRIS Platform is an IT tool developed by the Belgian Federal Public Service of Social Security (DG Strategy & Research) to provide the Social Intelligence and Investigation Service, all the institutions involved and the State Secretary in charge of coordinating social fraud with monitoring and reporting (in terms of quantitative and qualitative data) on all disputed PDs A1 issued by foreign institutions. within the framework of Decision A1 of the Administrative Commission. This platform connects all the Belgian competent institutions involved (stage 1 of the conciliation and dialogue procedure) as well as the competent authority (the DG Strategy & Research of the Belgian FPS of Social Security – stage 2 of the conciliation and dialogue procedure). This platform aims to ensure that the deadlines that are specified within the A1 Decision are respected and identify the main encountered problems to be solved. This platform also provides Belgian competent institutions with guidelines to handle individual cases and a common instruction report in English. The data analysis is a sophisticated data analysis methodology developed by the DG Social Inspection (Belgian FPS Social Security) to identify high risk categories. In this way investigations into the possible incorrect usage of PDs A1 on the part of incoming posted workers can be prioritized."

**Romania** states that in 2015, in order to improve the cross-border cooperation, all the Romanian institutions from the social security system, as liaison bodies/competent institutions, applied every time the principle of sincere cooperation/good administrative cooperation with similar institutions from abroad.

The Irish delegation (**IE**) states as a good practice the fact that it had raised many questions relating to the social security legislation in other Member States, along with raising queries and assisting with queries. A sample of such topics includes:

- debt recovery and the application of Notice of Attachments;
- payment of death grants;
- jobseekers' continued eligibility and presenting in person at social security offices;
- methods of payments employed by Member States regarding social security payments;
- simultaneous employments, Article 13 of Regulation (EC) No 883/2004;
- data sharing and setting up with countries outside of the Member States;
- continued eligibility and life certificates;
- financial incentives for reporting fraud;
- channels for reports of suspected social security fraud.

**Italy** notified that its level of cooperation with institutions abroad is good, albeit with certain institutions closer and more effective than with others. There is mutual assistance in preventing cases of error or fraud through the computerised transmission of applications and information, limiting human intervention and potential interference with the regularity of the production process. One example is collaboration with the German authorities, in the context of which, for more than ten years now, application forms for pensions have been sent electronically and regular technical and procedural meetings are held to deal with any issues and improve cooperation.

Furthermore, the **Netherlands** reported that it welcomed the report from the Ad Hoc Group on Posting Issues, in which measures to reduce the risk of fraud and error in the field of applicable legislation are presented. A roadmap from the European Commission concerning the implementation of the recommendations was expected by October 2016. Lastly, as an example of a good practice concerning cross-border cooperation between Member States, the **Netherlands** reported a bilateral discussion with the Polish institution on Family, Work and Social Policy in May 2016, aimed at clarifying the means of control on the part of the Polish institution concerning the legitimacy of the unemployment benefits and support to jobseekers in Poland, since the number of export cases for unemployment benefits increased from 637 export cases to 5063 in 2015 and most of the export cases concern export to Poland and are applied for shortly before leaving the Netherlands. Future discussions will focus on the enforcement of the control procedures, before and after leaving the Netherlands.

#### **7.1.2. Best practices regarding data-exchange between Member States**

The improvement of the exchange of data between Member States can only be considered a good practice. Various Member States made an active contribution to this amelioration.

It is the view of *Udbetaling Danmark* (**DK**) that an increased use of objective data from registers by means of data exchange will both contribute to identifying cases and patterns of fraud and strengthen the due process to the advantage of the claimants by streamlining to a greater extent the administration of social benefits across branches of social security on the basis of objective data.

**Latvia** puts forward the Agreement concluded by the State Social Insurance Agency (Valsts sociālās apdrošināšanas aģentūra, VSAA) with the Lithuanian authority as a best practice. The agreement helps preventing the payment of unfounded services in cases where the pension recipient has died abroad or has moved to a third country. The VSAA continues to work so as to conclude such agreements with other Member States.

Countries where the largest number of Latvian pension recipients are residing is thereby its priority.

**Malta** reported that during the reference year, it successfully continued to implement the agreement on data exchange with the UK whereby on a periodic basis (annually and every six weeks) data is exchanged in an encrypted manner in order to safeguard data security. The data transmission has been successful and no problems were encountered.

In **Germany**, regarding the activities of the different *Familienkassen*, the fact that employees of German Familienkassen have partial access to the IT process of French Familienkassen is considered a good practice. As a result, in German-French cases determined under the Regulations, double payment of family benefits could be avoided or combatted without delay. The aim is to develop this German-French cooperation further. Furthermore, in the area of activities of the *Deutsche Gesetzliche Unfallversicherung*, accident insurance providers paying pensions to foreign countries through the pension service of the Deutsche Post AG strive to be involved in the automatic death data exchange, which the *Rentenversicherung* has been operating with several countries.

As a result of the automatic death data cross-checks, which replace the elaborate procedure for acquiring life certificates, pension overpayments are reliably and above all promptly avoided. This also relieves pensioners of the burden of having to return life certificates and foreign authorities of the burden of having to confirm these life certificates. As it was already highlighted in the reports from the past years, the *Deutsche Rentenversicherung* expressly welcomes and emphatically pursues the development of this cooperation further.

Lastly, reported as a good practice by **Bulgaria** is the exchange of F 015 SEDs (a reply to a request for an annual check of family benefits) aiming to detect or avoid the payment of social security contributions in two Member States.

### **7.1.3. Best practices regarding data-protection in the context of data-exchange**

In the context of the exchange of data, **Italy** reported that in Italy the processing of personal data is governed by the Code for the Protection of Personal Data (Legislative Decree No 196 of 30 June 2003). As regards income support benefits, at the time of submission of the application for the benefits required, the person concerned is informed about how his or her personal data will be handled by the National Institute of Social Fraud (NISS) and their rights with regard to the processing of such data. In this respect, privacy and the protection of personal data in cases of cooperation between the Member States, in the exchange of information, is guaranteed within the limits set by national legislation.

In general, technical and procedural agreements negotiated by the NISS provide that the parties should share information in compliance with national legislation on the protection of personal data. The parties jointly undertake to adopt the technical and organisational security measures necessary to protect personal data against accidental or unlawful destruction, accidental loss, alteration, distribution or any other form of processing of personal data considered illicit under their legal systems.

The information exchanged should only be used for the purpose agreed and should not be shared with third parties without the consent of the party from whom the information was provided, and within the limits and under the conditions permitted by the respective national laws of the parties. Each party should operate in accordance with its own procedures for the removal of any information received which is irrelevant and excessive with respect to the purpose of this agreement and its primary tasks, in compliance with the data protection legislation of the Member State to which it belongs. In particular, any personal information provided under the agreement which turns out not to be relevant must be destroyed by the institution concerned as soon as possible after the process has



been completed. In any event, the destruction of such information must be confirmed within 90 days.

The parties should provide each other with information on all provisions concerning data protection, the relevant internal provisions and measures taken to ensure data security and commit themselves to mutual assistance so that the rules are observed and implemented. The parties undertake to communicate with each other as soon as possible if any problems, errors or irregularities are found, in particular in cases of suspected infringements of data confidentiality.

**Spain** stated that with regard to the measures adopted to safeguard confidentiality and the protection of personal data, all data sharing generally uses digital encryption methods.

#### 7.1.4. Best practices regarding the dissemination of information

The **Czech Republic**, **Poland**, **Slovakia** and **Spain** reported some best practices regarding the dissemination of information.

For example, in the **Czech Republic** the competent institution in the field of social security – the Czech Social Security Administration (CSSA) and its regional offices, have developed a sophisticated centralised information system and detailed guidelines covering all situations in accordance with the rules on applicable legislation. The CSSA also published on its official website information about simultaneous activities in two or more Member States and obligations according to Article 16(1) of Regulation (EC) No 987/2009. Furthermore, in order to allow employees, employers and self-employed persons to correctly apply for an A1 form, there is detailed information on the webpage of the CSSA, including the application forms.

**Slovakia** mentioned as a good practice that they have added direct links<sup>22</sup> where everybody (insured persons, health care providers etc.) can check the possession of an EHIC based on its number.

Spain and Poland took some steps to promote compliance with the coordination rules by the competent institutions, which can be identified as best practices. The National Social Security Institute (NSSI) of **Spain** gave instructions to its Provincial Directorates on matters where processing and settlement issues, in cases which fall under the European coordination Regulations, give rise to legal uncertainty.<sup>23</sup> In **Poland**, the Agricultural Social Insurance Fund (*Kasa Rolniczego Ubezpieczenia Społecznego – KRUS*) carried out ad hoc inspections in the KRUS regional units, with the purpose to examine whether the pension cases considered under the European Regulations are handled correctly.<sup>24</sup>

#### 7.1.5. Best practices regarding the A1 form

The **Czech Republic** and **Germany** reported examples of best practices regarding the A1 form.

The Czech Social Security Administration (CSSA) has developed special application forms separately for employees and for self-employed persons applying for an assessment of their cross-border situation. Data included on these forms enable, after a check by the administration, an evaluation of the fulfilment of all provisions as regards the Regulation as well as Decision A2 of the Administrative Commission and CJEU case law. Furthermore, any employer or self-employed person applying for an A1 form is

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<sup>22</sup> <http://www.dovera.sk/overenia/overit-ehic>; <http://epobocka.com/ipep-web/#!/kartaEHIC>.

<sup>23</sup> Cfr. 25.

<sup>24</sup> Cfr. 30.

interviewed in order to complete the request. This procedure verifies that the conditions set out in the regulations are met.

In the field of activities of the *Deutsche Rentenversicherung*, **Germany** reported as a good practice the fact that formal errors in the A1 certificates are identified by routine checks already upon uploading, and certificates are then sent back to the issuing case handler with a request for corrections. Supervisory authorities have access to the A1 database by means of an automated retrieval procedure. This enables them to check A1 certificates presented during inspections promptly and on site. This database is mainly used for identifying cases of abuse in the delegation procedure and to combat illegal work. The A1 database of the *Deutsche Rentenversicherung* (see Annex 1) is also used by case handlers of the *Unfallversicherung*.

#### **7.1.6. Best practices regarding preventative measures**

The **Hungarian** delegation made reference to the system of life certificates. While this is a well and widely known technic of avoiding undue payments, the Central Administration of National Pension Insurance (CANPI) has found it effective to put special emphasis on ensuring a good functioning of this system – even though frauds and errors cannot be excluded.

### **7.2. Lessons learned**

Continuing with the lessons learned, **Switzerland's** Liaison Body for accident insurance (*Schweizerische Unfallversicherung, Suva*) is working hard on cooperation with Germany and Austria. Admittedly, this is proving difficult, not least owing to the different social security systems. They are therefore unable to provide further information on cross-border cooperation in the fight against fraud and error. They are, however, still very interested in working together and continuing the dialogue with these countries.

In line with the foregoing, the liaison body in the **Czech Republic**, the Czech Social Security Administration (CSSA), has experienced that overpayments of pension benefits do not arise if the pensions are paid retroactively and based on submission of the life certificate. This concerns most pensions paid by the CSSA.

Lastly, the **Netherlands** reported on a (provisional) breakthrough in the problem that 'foreign' banks do not refund benefit payments that have been paid after the date of the beneficiary's death, with the result that institutions have to reclaim benefits themselves from the beneficiary's heirs. The SVB Social Attaché at the Dutch Embassy in Ankara tackled this problem in Turkey in 2015. The AKbank (like several other Turkish banks) refused to refund benefits that had been overpaid after the beneficiary's death. The AKbank was taken to court and with a court ruling in favour of the Dutch Social Attaché, it would be possible to make all the other Turkish banks cooperate. At the court hearing of 10 October 2015, the court gave a provisional ruling whereby the AKbank was judged to be wrong in not refunding payments that were put into the beneficiary's account after the date of death. Nevertheless, the judge appointed three experts to research the AKbank's objection that the money is no longer on the beneficiaries account. After the technical research by the experts, the court will give a final ruling.

### **7.3. Issues and concerns**

#### **7.3.1. Issues and concerns regarding cross-border cooperation and information exchange**

Most of the reported issues and concerns refer to the remaining problems regarding cross-border cooperation and information exchange:

**Austria**, for example, reported that exchanges are held at irregular intervals between Austrian institutions and institutions from certain Member States with a view to

improving the coordination of rules at operational level. However, some Member States are frequently uncooperative. In some cases, even though insurance periods have been completed, forms are issued only at the request of the insured person and prior circumstances are overlooked, while in other cases a response to queries is provided very late or not at all. Austria noted that linguistic barriers are also problematic in this context and sometimes lead to lengthy processing times.

**Poland** agrees with Austria and expressed its concerns regarding long handling-times of cross-border cases by foreign institutions and delays in the transmission of decisions concerning the approval or refusal of the right to social benefits. According to the Agricultural Social Insurance Fund (*Kasa Rolniczego Ubezpieczenia Społecznego – KRUS*) it is most difficult to cooperate with the institutions of Italy, France, Greece and the United Kingdom. Poland also reported difficulties in determining the competent institution in another Member State to consider the case.

With regard to family benefits, **Belgium** reported the fact that each country has its own system and structures as an issue in the context of cross-border cooperation. There is no list of persons to contact for a specific question. Considerable time and effort is required to find the right contact, if it can be found at all. Even when successful, there is no guarantee that there will be any answer. The Netherlands has a contact address, but it is difficult to obtain a response, and it is not specific for a social inspection.

On the other hand, meetings have taken place, and will continue to take place in the future, with a view to setting up a more structured collaboration via bilateral agreements. Also, a project has been set up with France to reach an agreement on better cooperation between the inspection services. A third project will be set up with Luxembourg at some point in the future.

Belgium also has concerns about privacy. The question is raised when a foreign institution (or official) requests information, how it can be verified whether the contacted institution is even allowed to reply to the request. As the information is requested by post, email or telephone, verification of the identity of the requesting party is not possible.

Furthermore, the competent institution in the field of applicable legislation in Belgium experienced the following issues:

- A lack of cooperation between the Member States:
  - The foreign competent institutions refuse to provide evidence of compliance with the conditions of posting, usually citing their national legislation on privacy. In addition, some of the data made available to the Belgian inspection services are not sufficiently relevant as a basis for assessing fulfilment of the posting conditions.
  - Some States have excessively strict requirements regarding the formal elements that appear in the Belgian request.
  - There is a lack of communication in case of a retroactive shortening of the validity period of an A1 form.
- A lack of recognition of evidence submitted by Belgium.
- Disagreements in the interpretation of certain rules:
  - identification of the country of residence;
  - identification of the employer;

- identification of the existence of a substantial activity in the Member State of origin.
- Failure to comply with the 'rules':
  - Evaluation of the fulfilment of the posting conditions in the Member State of origin is not satisfactory. In fact, the foreign institution very often confines its analysis to the information contained in the application by the employer or self-employed person concerned, without requiring any evidence. Systematic checks are not carried out on the basis of data held by the authorities in the Member State of origin.
  - The deadlines laid down in Decision A1 are often missed. The time required to process Belgian requests is therefore at least six months.
  - The A1 documents issued by a foreign competent institution for self-employed workers often make no reference to the nature of the activity performed by the person concerned. This omission prevents INASTI from verifying whether the professional activity carried out in Belgium is of the same type as that carried out in Poland.
  - The requirement to notify the Belgian competent institutions of A1 documents is not always observed.
  - The investigations performed by the inspection services often reveal the lack of a direct relationship between employers and posted workers originating in Bulgaria.

It should be noted that, to date, Belgium is the only Member State to make regular use of the dialogue and conciliation procedure<sup>25</sup> and to have completed an individual case (completion of the two stages of conciliation/consultation, followed by a legal opinion in favour of Belgium after referral to the Conciliation Board by the Administrative Commission).. It is clear that the procedure is not functioning as efficiently as it could. Conciliation files introduced by Belgium have not yet been satisfactorily addressed. In a number of cases, there is a lack of cooperation on the part of some sending States (non-response to questions from the Belgian institutions, inappropriate answers, delays in submitting the requested information etc.). More importantly, the European conciliation phase managed by the Administrative Commission has so far not provided an adequate solution, not even after completion of that phase. These Belgian remarks make clear that the procedure needs to be further developed and strengthened.

**Germany** stated that in the area of activities of the Headquarters of the *Bundesagentur für Arbeit* no specific problems arose and there are no concerns with the exception of the general difficulties of international cooperation (language barriers, differences in structure, missing data protection requirements for automated international data exchange). In the area of activities of the *Deutsche Gesetzliche Unfallversicherung* on the other hand, it is found that:

- the response behaviour of employers during the clarification of situations needed to determine the applicable social security law leaves a lot to be desired; the Regulations are often not applied, or references to Article 11 et seq of Regulation (EC) No 883/2004 are not commented on;

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<sup>25</sup> Administrative Commission for the coordination of social security systems Decision No A1 of 12 June 2009 concerning the establishment of a dialogue and conciliation procedure concerning the validity of documents, the determination of the applicable legislation and the provision of benefits under Regulation (EC) No 883/2004 (Text of relevance to the EEA and to the EC/Switzerland Agreement).

- the examined employment contracts of Cypriot employers do not comply with the measures under Article 11 et seq of Regulation (EC) No 883/2004;
- the competent authorities are not equally aware of the compliance with the requirements pursuant to Article 11 et seq of Regulation (EC) No 883/2004 in all Member States; cooperation and progress in the clarification of cases is therefore difficult (e.g. with Cyprus).

Finally, it is also the view of *Udbetaling Danmark (DK)* that initiatives aiming at the fight against fraud and error are impeded by a lack of access to data from other Member States – both in relation to data exchange on a larger scale and in relation to concrete cases. *Udbetaling Danmark* considers that the most substantial problem in relation to EU privacy and data protection provisions and cross-border cooperation and information exchange is that there is a need for a system of safe communication between the Member States. This problem will hopefully be solved with the implementation of EESSI. **Estonia** on the other hand reported that no privacy and data protection issues were experienced.

Related to the foregoing, **Germany** reported that the different standards of data protection in the different Member States made the cooperation of the competent case handlers difficult. It remains to be seen if the GDPR, the new regulation on data protection, will change things for the better in that respect.<sup>26</sup>

Lastly, **Poland** expressed some concerns regarding the functioning of the National Contact Points. More precisely, the Foreign Pensions Department of the Social Insurance Institution (*Zakład Ubezpieczeń Społecznych, Departament Rent Zagranicznych, ZUS DRZ*) is concerned about receiving, as the Polish NCP, requests for information in individual cases from foreign institutions or their agencies specialised in detecting fraud and error. *ZUS DRZ* experienced that:

- the sending institution/agency is often not an NCP and the requests are not sent via an NCP located in the sending Member State;
- the sending institution/agency is often not an institution recognised in the Master Directory of EESSI as the competent institution;
- requests cover personal data of an individual person;
- requests are often too general to determine which sector of social security (referred to in Article 3 of Regulation (EC) No 883/2009) they concern, and therefore to determine the institution competent to handle them; and
- requests often cover no legal basis or a general legal basis on exchange of information.

Such requests are sent contrary to binding rules and competencies regarding the cooperation within the H5NCP Network or the cooperation between competent institutions based on the Regulations and bilateral arrangements between respective liaison institutions.

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<sup>26</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1 4.5.2016  
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN>.

### 7.3.2. Other issues and concerns

Some Member States reported some other issues and concerns with an indirect link to the problems regarding the cooperation and information exchange between the Member States. They are listed hereinafter.

In the first place, **Austria** and **Belgium** expressed their concerns regarding the enforcement of the coordination rules, of the derived national legal obligations of employers and workers and of sanctions in case of misconduct in cross-border cases. **Austria** finds it essential for the administration of social security that both employers and employees as well as foreign institutions work together and exchange information. The failure to exchange data may leave the door wide open to social security benefit misuse and fraud. In addition, owing to the lack of cooperation and the resulting shortfall in evidence and information, the institution/authority of the competent State can take only limited action or measures, if any at all. **Belgium** reported that the coordination rules are often circumvented:

- The employers from the Member States concerned often make use of several successive companies in their country of origin in order to circumvent the maximum posting period of 24 months; a change of employer in the same Member State of origin gives rise to a new posting-period.
- Many workers are issued an A1 document under Article 13 of Regulation (EC) No 883/2004 (multiple activities) as a result of a posting in order to circumvent the conditions laid down in Article 12. In this case, it is difficult to verify whether a professional activity is actually being carried out in the Member State of origin. Another practice designed to circumvent the conditions of posting of employees is to organise a posting under Article 12(2) following a posting under Article 12(1).

Secondly, **Austria** considered the PD A1 to be problematic. Firstly because it can be issued retroactively without limitation and secondly because there is no effective possibility of appealing it, since in most cases a 'decision' can only be reached by agreement. The results of the institution's investigation at the place of employment is often ignored by the sending State and sometimes requests for withdrawal of the forms do not even receive a reply. One solution to this could be to modify the dispute settlement procedure by introducing a specific verification obligation on the part of the foreign institution in cases of reasonable doubt. Furthermore, the retroactive cancellation of long-term care is a major problem according to Austria, as no provision is made in Austria for retroactive self-insurance over longer periods.

Furthermore, considered problematic by the **Czech Republic** is the recovery of overpayments of benefits paid to Slovakia monthly, while the life certificate is required quarterly. The CSSA learns about the death too late, often after the pension has been paid. Financial institutions in the place of residence are usually unwilling to provide information about other persons who may be endowed to manage the bank account of the deceased person to the foreign insurance authority, although according to national legislation, they are obliged to provide such information. A meeting of the ministries of both countries is planned. In general, the Czech Republic thinks that European/international legislation on obligations of financial institutions is missing. It concerns the provision of information about persons who receive the benefits on their account from the foreign insurance institution, or about other persons who have access to that account.

Finally, the **United Kingdom** expressed its concerns about the rules concerning the EHIC and the S2 route. The rules around the EHIC have existed since the early 1970s and have been updated and expanded at various intervals in the intervening years. The system is based largely on trust between Member States – that is, billing between States goes largely unquestioned, as does eligibility (as long as individuals present the correct documentation). The UK considers that any system based largely (or wholly) on trust is open to significant abuse. For the S2 route, the main risk of fraud comes from

submission of falsified documents to either prove settled residence or prove UK National Health Service consultant support. Where the documents are unsatisfactory, the administrators ask for more evidence and/or reject the application.

The decision-making body does not specifically collate information on numbers of claims rejected in these circumstances or the potential amounts, although it is recorded with each application. There are underlying concerns which have prompted the UK's attention, which are currently under investigation, relating to several applications with issues about:

- the accurate translation of medical information;
- fraudulent medical support information to assist applicants to access treatment not available under the NHS;
- the ability for applicants to enter a financial arrangement with a provider whereby they pay a lesser fee than the invoice presented to the UK.

Another concern of the UK is the existence of EHIC copycat websites. The government is aware of ongoing problems with third party websites presenting themselves as legitimate government services. Some sites exaggerate the nature of the services they provide, or deliberately underplay the services that people can get free of charge or at a lower cost from official sources. Several organisations have a role to play in preventing such websites making misleading claims and charging individuals for a service that should be free of charge.

The government of the UK is working, and will continue to work, with the Local Trading Standards, the Committee of Advertising Practice, the Advertising Standards Authority, the National Trading Standards Board (NTSB), WHICH? and search engine providers to raise awareness of this issue and to ensure that enforcement action is taken where appropriate. This has resulted in a number of people being arrested under the Fraud Act, based on intelligence received from across the system partners. There is also a current ongoing prosecution which is being taken forward by the National Trading Standards Board against a third party website which could have ramifications for the others once it is concluded. The government has set up a webpage<sup>27</sup> to enable members of the public to report misleading websites and make a complaint to search engines. The UK is also advising members of the public to report their complaints and get additional help and support by visiting the Citizens Advice website.<sup>28</sup>

**Poland** too, has some concerns regarding the EHIC. Firstly, cases were noted of patients who did not have access to benefits in kind on the basis of the EHIC due to health care providers' insufficient knowledge about benefits under the coordination rules. Secondly, the inappropriate use of the EHIC remains a problem. Poland concluded that most of the cases of inappropriate use of a valid EHIC relate to persons who used an EHIC the validity period of which did not expire, although those people were no longer entitled to medical care at the time. There are also cases whereby EHICs are used by people for whom the cards were not issued. As far as entitled persons are concerned, difficulties result from the use documents which do not entitle them to benefits, e.g. Austrian or German EHICs contain asterisks (\*\*\*) instead of patient's data; the use of EHICs to obtain planned treatment; receiving benefits on the basis of a parent's EHIC; or presenting documents other than the EHIC, e.g. a national card from another Member State. The last reported issue by Poland is related to settling costs of post-operative rehabilitation services. Health care providers (mainly German) settle the costs of surgical treatment and hospitalisation on the basis of the EHIC. However, this does not always

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<sup>27</sup> [www.gov.uk/misleadingwebsites](http://www.gov.uk/misleadingwebsites).

<sup>28</sup> <https://www.citizensadvice.org.uk/>.

refer to rehabilitation services. The health care providers make the rehabilitation services subject to obtaining an E112/S2 form, which is used to settle the costs of planned treatment and requires prior authorisation, and is not based on the criteria of the necessary health care concept.

#### **7.4. Closing remarks**

Best Practices	Member States
<b>Regarding the cross-border cooperation between Member States:</b>	AT, BE, BG, FI, IE, IT, NL, PL and RO
The Conciliation Board	AT
Meetings with Member States	FI, NL and PL
The granting of access to national databases to other Member States on a regular basis	DE and PL
The use of secure email	FI
Benchmarking with institutions of other Member States	FI
A structured system with functional contacts in other Member States	BE
The H5NCP network	BE
The electronic platform OSIRIS	BE
Asking questions relating to the social security legislation in other Member States and raising queries	IE
The computerised transmission of applications and information	IT
Ad-Hoc working groups	NL
<b>Regarding data exchange between Member States:</b>	BG, DE, DK, LV and MT
The identification of cases and patterns of fraud by streamlining the administration of social benefits across branches of social security	DK
Concluding bi- or multilateral agreements on data exchange	DE, LV and MT
The exchange of data in an encrypted manner	MT
The (partial) access to IT systems of other Member States	DE
<b>Regarding data protection in the context of data exchange:</b>	IT and ES
The dissemination of information towards citizens about the way personal data will be handled by the competent institutions and about the rights of that citizen with regard to the processing of his or her data	IT
Concluding technical and procedural agreements between Member States concerning the use of provided personal data	IT
The use of digital encryption methods	ES
<b>Regarding the dissemination of information:</b>	CZ and SK
The development of a sophisticated centralised information system and detailed guidelines covering all situations in accordance with the rules	CZ



on applicable legislation	
The dissemination of information through the webpages of the competent authorities	CZ and SK
<b>Regarding the A1 form:</b>	CZ and DE
The development of special application forms separately for employees and for self-employed persons applying for an assessment of their cross-border situation and the interviewing of applicants in order to complete the request.	CZ
The implementation of routine checks upon uploading the A1 certificates	DE
<b>Regarding preventive measures:</b>	
Ensuring a good functioning of the system of life certificates	HU
<b>Lessons learned</b>	<b>Member States</b>
<b>Regarding the cross-border cooperation between Member States:</b>	CH and NL
Difficulties regarding the cross-border cooperation between Member States, not least owing to the different social security schemes	CH
Difficulties regarding the recovery of unduly paid benefits	NL
<b>Regarding preventive measures:</b>	
The retroactive payment of pension benefits overpayments, based on the submission of the life certificate, prevents undue payments	CZ
<b>Issues and concerns</b>	<b>Member States</b>
<b>Regarding cross-border cooperation and information exchange:</b>	AT, BE, DE, DK, EE and PL
The uncooperativeness of some Member States / a lack of cooperation between Member States / long handling times / delays in the transmission of decisions concerning the right to social benefits	AT, BE and PL
Linguistic barriers	AT and DE
The fact that each Member State has its own social security system and structures / difficulties concerning the determination of the competent institution in another Member State	BE, DE and PL
The lack of recognition of evidence	BE
The existence of disagreements in the interpretation of certain rules	BE
The lack of data protection requirements for automated international data exchange and the existence of different standards of data protection at national level	DE
The need for a system of safe communication between Member States	DK
Concerns regarding the functioning of the NCPs	PL
<b>Other issues and concerns:</b>	AT, BE, CZ, PL and UK
Regarding the enforcement of the coordination rules	AT and BE

Regarding the recovery of unduly paid benefits	CZ
Regarding the European Health Insurance Card and S2 route	PL and UK

Member State who replied to Q 6	Member States who refrained from replying to Q 6
AT, BE, BG, CH, CZ, DE, DK, EE, ES, FI, HU, IE, IS, IT, LV, MT, NL, PL, RO, SE, SK and UK	CY, HR, LT, NO and PT

## 8. CONCLUSION

This report reveals that generally, despite the various steps taken by the Member States in order to prevent and combat fraud and error and the obvious constantly growing awareness concerning the necessity to tackle cross-border social security fraud and error, there is still room for improvement. The Member States have reported a diverse range of measures undertaken – with varying intensity – in order to combat fraud and error in general and within the different branches of social security specifically. In spite of these differences amongst Member States as concerns fraud and error, however, the reported measures are demonstrative of the continued willingness of the Member States to tackle these practices, as was the case in 2015.<sup>29</sup> With the foregoing in mind, the following conclusions can be drawn.

Regarding the steps taken throughout the reference year (2015) to combat fraud and error in cases determined under the Regulations<sup>30</sup>, it can primarily be concluded that a distinction between steps taken to combat fraud and steps taken to combat error is rarely made. Often, the reported measures have the dual intent to combat fraud as well as error. The attempts to improve the cross-border cooperation and communication between Member States by means of data exchange or a request-answer formula stand out. But in order to be able to achieve these objectives, structured data collection and storage at the national level needs to function optimally. Some Member States have realised the foregoing and have taken steps towards the improvement of their own IT systems, databases and application forms. From there on, Member States also increased the level of communication between institutions at the national level. IT systems and databases of social security institutions were connected to those of tax authorities etc. Once the data is collected, Member States try to implement structural monitoring of this data in order to be able to verify the information provided by applicants/beneficiaries in application forms, to perform data matching activities and to hold a central screening of suspicious cases.<sup>31</sup> In order to be able to carry out all the foregoing, the Member States often provide information and guidance towards the competent institutions. Besides the improvement of the communication and cooperation between internal competent authorities as well as the competent authorities in other Member States, Member States send a clear message towards applicants/beneficiaries of social benefits concerning their responsibility and the fact that unduly paid benefits will be recovered, in order to combat fraud and error. It is clear that information dissemination towards both citizens and people applying the coordination rules, is still highly needed.

Regarding the steps taken throughout the reference year (2015) to prevent fraud and error in cases determined under the Regulations<sup>32</sup>, the same patterns as in the steps taken to combat fraud and error are present. Again, a difference between steps taken to prevent fraud and steps taken to prevent error is rarely made. Concerning the prevention of fraud and error, Member States also try to improve the communication (including data exchange) and cooperation between internal competent authorities as well as the competent authorities in other Member States and are willing to take the necessary steps to fulfil these intentions (*supra*). It is notable that in the area of prevention of fraud and error, lots of Member States make attempts in order to promote compliance by institutions and healthcare providers with the coordination rules and to provide information to citizens.

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<sup>29</sup> Dismayingly, it need be noted that these findings can, however, only be compared to foregoing studies in a highly limited manner, as the focal points of foregoing studies do not necessarily correspond with the focal point of the current report.

<sup>30</sup> Cfr. p. 13.

<sup>31</sup> In this respect, more than a quarter century after its conception and inception, the Belgian Crossroads Bank for Social Security is still a best practice. For more information, please visit <https://www.ksz-bcss.fgov.be/en>.

<sup>32</sup> Cfr. p. 27.

It has to be noted that, unfortunately, some of the implemented measures by Member States seem to work purely at the national level. However, they can be a good example for the steps that need to be taken at the EU level.

Based on the data provided in the country sheets concerning the national legislation (Annex I), a lack of national legislation specifically dealing with fraud and error under the Regulations must be concluded.<sup>33</sup>

Questioning the Member States about specific problems in implementing the EU coordination rules which may lead to (at least risks of) fraud and error, various kind of problems can be distinguished.

Firstly, almost all the Member States have expressed their concerns about the (absence of) exchange of data between the Member States.<sup>34</sup> The lack of a unified, formalised system of exchange of data is a source of anxiety and the lack of a legal base for the exchange of (bulk) data between Member States to combat fraud is denounced since it can be debated whether the provisions on information exchange provided by the coordination Regulations are a sufficient legal basis in all cases dealing with fraud and error in particular regarding privacy and data protection issues. It seems clear that not all Member States are on the same page on this topic.<sup>35</sup> As the reported steps taken to combat/prevent fraud and error and the reported bilateral/multilateral agreements in annex II reveal, electronic data exchange between the Member States, and the resulting possibility of data matching, is on the rise. Unfortunately, Member States still have to conclude bilateral or multilateral agreements in order to regulate the scope of the data exchange and the rights and duties which have to be respected by performing the exchange, since any European legislation regarding this subject is missing. This often leads to uncertainty and unsolved cases. There is only a minimal level of uniformity between the bilateral agreements and the question of compatibility of the exchange of data with (the national and European rules on) privacy and data protection arises. In some cases agreements are not reached just because of concerns resulting from the constraints of the national laws on the protection of personal data. Some Member States find that it does not seem possible to obtain satisfactory results by means of almost spontaneous initiatives implemented in the framework of administrative cooperation provided for under the current European legislation. On the other hand, none of the Member States especially call for doing something at the European level. Almost all the concluded arrangements on data exchange and cooperation are bilateral; only the Nordic and Benelux countries have made efforts by concluding multilateral agreements.<sup>36</sup> It is clear that there is a need for a uniform system of exchange of data and a legal framework for the international exchange of data.<sup>37</sup>

Secondly, although it is clear that most of the Member States are willing to improve the level of cross-border investigation and cooperation in general, some problems still remain.<sup>38</sup> Member States often experience difficulties regarding the determination of the competent institution in other Member States. Furthermore, the fact that the European coordination rules do not include procedures for cross-border investigation of suspected

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<sup>33</sup> Cfr. p. 42.

<sup>34</sup> Cfr. p. 43.

<sup>35</sup> As in last year's report, we also like to refer to the *Bara* judgment: *Bara and Others*, C-201/14, EU:C:2015:638.

<sup>36</sup> Cfr. p. 52.

<sup>37</sup> In its proposal to modify (EC) Regulations (EC) No 883/2004 and (EC) No 987/2009, published on 13 December 2016, the European Commission proposed to insert a legal basis for data exchange which must be in line with the Data Protection Regulation. Proposal for a Regulation of the European Parliament and of the Council 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, 13 December 2016, COM(2016)815 final – 2016/0397 (COD), <http://ec.europa.eu/social/main.jsp?langId=en&catId=849&newsId=2699&furtherNews=yes>.

<sup>38</sup> Cfr. p. 45.

cases of fraud and error is found problematic. These investigations are often subject to long response times, if a response is received at all. Delays in the transmission of decisions concerning the approval or refusal of the right to social benefits to other Member States were also reported. A regulation on the cross-border cooperation during cross-border investigation would be welcomed by many Member States.

Besides, problems concerning the applicable legislation are still present.<sup>39</sup> Member States report that problems can occur to the determination whether or not a particular benefit is subject to the coordination rules in the first place. Secondly, the determination of the applicable legislation itself can still be problematic: which country's legislation is applicable often remains a difficult question in practice. Some Member States denounce the lack of a system whereby a swift assessment of applicable legislation can be carried out. Two more aspects with regard to the applicable legislation are considered as specific problems when implementing the coordination rules and as possibly leading to fraud and error: the determination of the place of residence and the use of portable documents (PDs) and structured electronic documents (SEDs). Regarding the determination of the place of residence, a unequivocal translation interpretation of the term 'place of residence' in all the Member States is needed. Regarding the problems relating to the use of PDs and SEDs, Member States stated that those documents create a vast opportunity for fraud and error. Often they are not filled out correctly, as a result of which the essential information, in order to determine the applicable legislation, is lacking. Also the difficulty and even impossibility to withdraw documents which are incorrectly issued by foreign institutions or individuals themselves are noted. Further regulations concerning the PDs and SEDs seem appropriate.

Subsequently, the Member States often experience problems regarding the recovery of unduly paid benefits.<sup>40</sup> The recovery causes huge administrative resources and often is very hard or even impossible. Although the provisions on cross-border assistance in recovery issues have been in force since 2010, problems remain in applying these provisions in a coherent and uniform manner by all the Member States. A stringent enforcement of the provisions mentioned is necessary.

Lastly, it is clear that the European Health Insurance Card (EHIC) still causes lots of problems since the Member States reported various difficulties concerning the EHIC throughout the report. The fact that the EHIC still is a paper document which cannot be read electronically and which sometimes does not show the period of validity, is found problematic.<sup>41</sup>

Regarding the steps taken in the reference year (2015) to promote compliance by institutions and healthcare providers with the coordination rules and to provide information to citizens, various measures were reported.<sup>42</sup> It is clear that all the Member States have dedicated themselves to raise as much awareness as possible concerning the coordination rules, as well towards institutions, as to healthcare providers and to citizens. Information was shared, trainings were held, all of this in order to minimise (the risk of) fraud and error in the field of social security.

The reported best practices, lessons learned and issues and concerns reflect the essence of this report.<sup>43</sup> Although the Member States are willing to improve the cross-border cooperation and communication (including data exchange) between them and although the already implemented measures concerning this matter are often quite successful, they still encounter serious problems that have been reported throughout the years. The

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<sup>39</sup> Cfr. p. 46.

<sup>40</sup> Cfr. p. 48.

<sup>41</sup> Cfr. p. 49.

<sup>42</sup> Cfr. p. 53.

<sup>43</sup> Cfr. p. 58.

fact that cross-border cooperation is in practice fully based on the goodwill of the Member States leads to the finding that some Member States are not always cooperative (they do not respond to questions, do not share data etc.) and that other Member States report they cannot do anything about that. Besides the reluctance of some Member States to cooperate with other Member States, some other Member States are simply unable to cooperate since their national infrastructure leaves a lot to be desired.

In view of the foregoing, it appears that two fundamental steps need to be taken. In the first place, the cross-border cooperation between Member States' National Institutions of Social Security is to be facilitated, with due regard to enforcement. Since Member States have been reporting issues with regard to cross-border cooperation and information exchange and in most cases seem unable to resolve these issues themselves, the question whether initiatives at Union level are needed has to be addressed. Secondly, in connection with the first suggested step, the exchange of data between national competent authorities as well as the competent authorities in other Member States has to be regulated, with due regard for data protection concerns. The lack of cooperation in this respect singlehandedly functions as a gateway to a number of issues amongst Member States in the field of social security coordination. Consequently, these steps appear to be the requested first steps in any further action concerning fraud and error in the context of social security coordination.

Although in some cases cross-border cooperation and information exchange does work and does work swiftly, Member States still report issues in both fields. Bilateral agreements cannot always resolve these issues and in many cases the legal value of the agreements is questionable, e.g. in court. Multilateral agreements on an international level, cf. the Benelux and Nordic and Baltic initiatives, are welcomed and – as past experiences in other domains have proven – could prove to be a more steady legal ground for cross-border cooperation and the exchange of information and an inspiration for supranational initiatives. It seems clear that initiatives at the European Union level are called for. Furthermore, it seems necessary to reflect about cross-border competences for inspection services.

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