



Fraud and error in the field of social security coordination



Written by Yves Jorens, Dirk Gillis and Joyce De Coninck
November 2015



EUROPEAN COMMISSION

Directorate-General for Employment, Social Affairs and Inclusion

Unit D/2

*European Commission
B-1049 Brussels*

Fraud and error in the field of social security coordination

Network Statistics FMSSFE

This report has been prepared in the framework of Contract No VC/2013/0301 'Network of Experts on intra-EU mobility – social security coordination and free movement of workers / Lot 2: Statistics and compilation of national data'. This contract was awarded to Network Statistics FMSSFE, an independent research network composed of expert teams from HIVA (KU Leuven), Milieu Ltd, IRIS (UGent), Szeged University and Eftheia. Network Statistics FMSSFE is coordinated by HIVA.

Authors:

Prof Dr Yves Jorens, professor of social security law and European social law, Director of IRIS|international research institute on social fraud, Ghent University

Dirk Gillis, academic assistant, Coordinator of IRIS|international research institute on social fraud, Ghent University

Joyce De Coninck, researcher, Ghent University

***Europe Direct is a service to help you find answers
to your questions about the European Union.***

Freephone number (*):

00 800 6 7 8 9 10 11

http://europa.eu.int/citizensrights/signpost/about/index_en.htm

The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

LEGAL NOTICE

This document has been prepared for the European Commission however it reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

More information on the European Union is available on the Internet (<http://www.europa.eu>).

ISBN: 978-92-79-69762-3

doi: 10.2767/585086

Catalogue number: KE-02-17-739-EN-N

© European Union, 2015

Reproduction is authorised provided the source is acknowledged.

TABLE OF CONTENTS

EXECUTIVE SUMMARY.....	7
1. INTRODUCTION.....	9
2. IDENTIFYING FRAUD AND ERROR ACROSS MEMBER STATES.....	11
2.1. Defining fraud and error in the field of social security coordination	11
2.2. Treatment of fraud.....	14
2.3. The prevalence of fraud in social security coordination	15
2.3.1. General observations	15
2.3.2. Limited data available.....	16
2.3.3. Data available	17
2.3.4. Findings.....	19
2.4. Data concerning cases of fraud and recoverable amounts	19
2.5. Undetected fraud	21
2.6. The prevalence of error in social security coordination.....	22
2.6.1. Lacking data concerning the prevalence of error	22
2.6.2. Available data concerning the prevalence of error	23
2.6.3. Findings.....	25
2.7. Data concerning cases of error and recoverable amounts.....	25
2.8. Undetected error	26
2.8.1. No available estimations	26
2.8.2. Available estimations.....	26
2.9. Preventing and curbing fraud.....	27
2.9.1. Generalised findings	28
2.9.2. Overview of additional Member State initiatives.....	31
3. IMPLEMENTING THE COORDINATION PROVISIONS	36
3.1. Issues pursuant to the implementation of the coordination provisions.....	36
3.1.1. Prevalent issues.....	36
3.1.2. Overview of Member State-specific issues.....	37
3.2. Measures directed at preventing and curbing fraud and error pursuant to the coordination provisions.....	40
3.2.1. Prevalent initiatives	40
3.2.2. Overview of Member State-specific initiatives	41
3.3. Promoting compliance by institutions and healthcare providers in the field of benefits in kind and awareness-raising amongst citizens.....	43
3.3.1. Awareness-raising directed at claimants	43
3.3.2. Awareness-raising directed at providers	44
3.4. Remaining issues	45
3.5. Recommendations	47
4. DATA EXCHANGE IN THE FIELD OF FRAUD AND ERROR.....	47
4.1. Actions taken and measures implemented to enhance cross-border cooperation and information exchange.....	47
4.2. Cross-border social security cooperation and privacy concerns.....	52
4.2.1. General Findings	52
4.2.2. Overview of Member State-specific action	53
4.3. Assessing potential conflicts vis-à-vis privacy legislation	55

5. CONCLUSION	58
ANNEX	60
Czech Republic	60
Denmark	63
Estonia	67
Germany	69
Hungary	71
Lithuania	75
The Netherlands	77
Norway	80
Poland.....	82
Spain	84
ANNEX 2	86
Overview Sanctioning Fraud: Austria	86
Overview Sanctioning Fraud: Belgium	87
Overview Sanctioning Fraud: Portugal.....	90

EXECUTIVE SUMMARY¹

This study summarises the information provided by Member States in their annual voluntary reports on their experiences 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. The Member States' reports have been analysed with the aim of identifying several elements. First, particular attention goes to the definition of fraud and error in the field of social security coordination in the respective Member States. Secondly, the aim of the country reports was to determine the prevalence of fraud and error as two conceptually distinct phenomena in the Member States concerned. Next, insight was sought into the remaining issues associated to the implementation of the European coordination provisions, as a result of which fraud and error may arise, and the steps taken in this respect to prevent and combat fraud and error. Lastly, an overview was requested of the measures taken both internally and externally by means of bilateral agreements with other Member States, in handling fraud and error, as well as data protection concerns associated thereto. The report at hand provides an overview of these findings, allowing several conclusions to be drawn concerning fraud and error in the Member States in the past year.

The report summarises the responses of 26 Member States for 2015: Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Spain, Sweden and the United Kingdom. It attempts to distil some general practices, particular difficulties and remaining problems. These insights might subsequently be used to strengthen the prevention and tackling of fraud and error even more in the future. Decision H5 suggests four matters to be covered in these annual reports: *first*, the steps taken throughout the year by the Member States to combat fraud and error; *second*, the specific problems connected to the implementation of the coordination rules which increase the risk of fraud and error; *third*, the agreements and cooperation agreements Member States conclude among each other for the purposes of combating fraud and error; and *finally*, the steps taken to motivate institutions and health care providers to comply with the coordination rules as well as the steps taken to provide information to citizens. These four issues are – as previously indicated – covered below. The Member States' accounts reveal that it has proven somewhat difficult to detect and provide all-encompassing data concerning fraud and error within the realm of social security coordination. What's more – 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 prevalence of affiliation to benefit schemes in more than one Member State for matters concerning unemployment benefits as well as healthcare benefits.

Furthermore – concerning steps taken in dealing with fraud and error – the reports reveal that Member States focus on prevention of fraud and error as well as tackling it. Information dissemination towards the general public, in order to raise awareness to limit the occurrence of fraud and error, is vital in this respect, as demonstrated by the focus thereupon by Member States. In addition, information exchange with other relevant actors is just as important. This goes for information exchange both intrastate and interstate between institutions, as well as with other actors such as but not limited to insurance companies. Other efforts include strengthening the teams dealing with fraud

¹ The executive summary and the introduction were inspired by last year's report - JORENS, Y., GILLIS, D. and PLASSCHAERT, I., *Fraud and Error in the Field of Social Security Coordination*, Network Statistics FMSSFE, European Commission, December 2014, 55 p.

and error cases, providing comprehensive training for the personnel, and putting in place bilateral meetings between institutions. Cooperation in this respect can be formalised, for example by concluding a Memorandum of Understanding (MoU), or non-formalised, for example by engaging in ad hoc meetings.

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 Member States. Secondly, one of the predominant concerns amongst all Member States concerned relates to the delayed or absence of cooperation between the competent institutions of the respective Member States. In turn this results in scenarios – amongst others - where illegitimate double affiliation occurs and/or undue payments. 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*”.² Error on the other hand is, according to Decision No H5,³ “*an unintentional mistake or omission by officials or citizens*”. 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 tackle 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 systems⁴ has provided for the establishment of several mechanisms. 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 307th 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 combat of social security fraud and error. This Ad Hoc Group produced two reports on this type of fraud and error issues and identified some major problem areas. The conclusions and recommendations then 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. 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 combating fraud and error;
- Finally, 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.

² Resolution of the Council of 22 April 1999 on a Code of Conduct for improved cooperation between authorities of the Member States concerning the combating of transnational social security benefit and contribution fraud and undeclared work, and concerning the transnational hiring-out of workers (OJ C 125, 6.5.1999, p. 1).

³ Decision No H5 of the Administrative Commission for the coordination of social security systems of 18 March 2010 concerning cooperation on combating fraud and error within the framework of Council Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council on the coordination of social security systems (OJ L 149, 8.6.2010, p. 5).

⁴ 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).

This report was drawn up by firstly identifying how the various Member States have approached and defined fraud and error in their respective territories. In addition, an overview is given as to the prevalence of both fraud and error as two conceptually distinct phenomena; both concerning detected and undetected cases. The foregoing is subsequently complemented by an overview of the steps taken by the individual Member States in order to provide solutions to the respective problems pertaining to fraud and error. Subsequently, the problems associated to the implementation of the coordination provisions are addressed as well as the measures taken to address these issues. To conclude, an overview is given of additional measures taken by Member States to enhance cross-border cooperation and issues that may arise in this respect with privacy regulations.

2. IDENTIFYING FRAUD AND ERROR ACROSS MEMBER STATES

2.1. *Defining fraud and error in the field of social security coordination*

Any assessment of fraud and error in the field of social security coordination requires an assessment of these notions from a national Member State perspective. An initial step in this respect is ascertaining to what extent the concepts of fraud and error are effectively defined in national legislation in view of social security coordination – if at all – and how these definitions are understood in a national context. Within this context it appears that a number of Member States (**AT, BE, BG, HR, CZ, DK, EE, FI, DE, EL, HU, IS, IE, IT, LV, LT, MT, NL, NO, PL, PT, SK, ES, SE** and **UK**) have not defined fraud and error in the field of social security *coordination* in legislative instruments concerning social security. Rather, it appears that the definitions of these concepts are derived from other sources, including amongst others case law, administrative practice, other legislative instruments or a combination of the foregoing. In the **Netherlands, Slovakia, Sweden** and the **United Kingdom** the notions of fraud and error are defined in the respective legislative instruments governing social security, albeit not specifically concerning social security *coordination*.

In **Austria, Bulgaria, Denmark, Estonia, Iceland, Ireland, Italy, Lithuania** and **Spain** *case law and administrative practice* have served as an invaluable source for defining what constitutes fraud and error. In **Denmark** in particular the different social benefits in the Danish social security system are to a significant extent administered by different competent institutions. Moreover, the specific conditions for each type of benefit are largely defined by private legislation. The conditions of recovery, which are general principles in Danish practice, however, guide the definition of fraud and error.⁵ Pursuant to Article 12 (b) in the Consolidated Act on Legal Protection and Administration in Social Matters, which states the conditions for punishment in severe cases. Moreover, fraud is defined as a deliberate misrepresentation of the authority by the claimant that consequently inflicts loss of capital onto the authority. Generally, errors in Denmark are thus defined as benefit payments transferred accidentally due to an error made by the competent institution or by the beneficiary. Fraud is defined as benefits received by the beneficiary against better judgment. In **Ireland** fraud is understood as a deliberate false representation of facts whether by words or by conduct, by concealment of what should have been disclosed – in order to obtain or receive social security payments or to avoid obligations to pay contributions. Error on the other hand may be understood as either customer error or departmental error. Customer error occurs where incorrect information is provided without fraudulent intentions, whereas departmental error occurs due to a mistake by an act or omission by staff, which a customer did not cause or materially contribute to and which the customer could not at the time they received payment or paid contributions reasonably have been expected to be aware of. Similarly, in **Lithuania**, the concepts of fraud and error are understood to occur, amongst others, when incorrect information or documents are provided, or when an individual does not inform the competent authorities about a pertinent change of circumstances. Examples of fraud and error include the non-reporting of employment, income or social security benefits in other Member States, the non-reporting of death, claiming unemployment benefits whilst employed in another Member State or claiming the same benefit in more than one Member State, the non-reporting of the posting of workers or presenting incorrect documents, and lastly, fictitious employment contracts.

⁵ Specifically the conditions for recovery prescribe that both the social benefit has to have been wrongly received and the beneficiary has to have been acting in bad faith by, for instance, deliberately withholding information, in order for the competent institution to demand recovery of paid benefits.

The main difference between fraud and error in Lithuania subsequently hinges upon the fraudulent intent of the act concerned. A similar approach is employed in **Austria, Bulgaria, Estonia, Iceland, Italy** and **Spain**.

In **Croatia, Finland, Latvia, Norway** and **Portugal**, the notions of fraud and error in social security coordination are defined by reference to *other legislative instruments*, not necessarily specifically governing social security. Fraud and error in **Croatia** are defined by criminal law as well as the Act on the System of Internal Financial Control. As a result, fraud and error in the realm of social security coordination is for a large part dependent upon a case-to-case assessment where due regard is given to the types of benefits tainted by fraud and/or error. In **Finland** reference is made to the Finnish Criminal Code in determining what type of behaviour and/or actions constitute fraud, aggravated fraud and forgery. As concerns the notion of error in Finnish legislation, reference is made to the Administrative Procedure Act, which regulates the concepts of material error and typographical errors. This approach is also applied in **Latvia** where fraud is defined by reference to the Administrative Procedure Law as well as the Criminal Code. Similarly to the aforementioned definitions, fraud is distinguished from error due to the fraudulent intent, as confirmed by the Administrative Procedure Law. The latter explains that error occurs due to clerical and mathematical calculation errors in an administrative act; or in situations where norms of law, which determine the procedure for issue of the relevant administrative act, have not been observed in the course of the administrative procedure (procedural error); or when the institution has incorrectly applied the norms of law (or has relied upon erroneous facts), or when it has not observed the hierarchy of the legal force of norms of law or has erred regarding considerations of usefulness (mistakes regarding substance). In **Norway** the Penal Code describes fraud as wilful or gross negligent action taken in order to obtain a benefit while the user must have realised he or she was not entitled to that benefit. Error, on the other hand, is described as occurring when payments are not completed correctly as the result of flaws in casework, negligent misinformation or omission of information by the users. Finally, in **Portugal** the notions of fraud and error are defined by the Basic Social Security Act, the General Tax Infringement Rules, the Code of Contributory Schemes and Law No 133/88 concerning the reimbursement of unduly paid benefits.

As aforementioned, a number of Member States (**MT, NL, SK, SE, UK**) have adopted *definitions of fraud and error in the realm of social security*; moreover, the same definitions apply with respect to social security *coordination*. **Slovakia** defines fraud and error in its legislation concerning social security, i.e. *Part Four of Act No 461/2003 on social insurance*. However, it solely refers in general terms to non-compliance with or violation of an obligation laid down by the act or other legislation, including coordination regulations, i.e. committing an offence without distinction of the degree of fault. The exact definition of fraud and error will thus in part and somewhat similarly to the practice in Belgium and Poland, be determined on a case-by-case basis and with due reference to the benefit concerned. In **Sweden** fraud and error in social security are defined, albeit generally and not specifically related to social security coordination. Benefit fraud is subsequently defined as occurring when a person provides false information or does not report changed circumstances, thereby causing a risk that financial compensations are being wrongly paid or payable by a high amount. 'Error' on the other hand refers to all errors regardless of who discovered the error, if they are caused by administrators or recipients or whether they are accidental or unintentional. Similarly, legislation in **Malta**, the **Netherlands** and the **United Kingdom** define fraud and error within the realm of social security. These definitions also apply to social security coordination. In the **Netherlands** in particular, fraud is distinguished from error by reference to intent. Moreover, two types of error exist – claimant error and official error. In the **United Kingdom** on the other hand, fraud includes all cases where the following three conditions apply: the basic conditions for receipt of the benefit, or the rate of the benefit in payment, are not being met; the claimant can reasonably be expected to be aware of the effect on entitlement; the benefit stops or reduces as a result of a review. Similarly to the notion of error in the Netherlands, it is defined as being one of two types. Firstly, claimant error is defined as occurring when the claimant has provided inaccurate or

incomplete information, or failed to report a change in their circumstances, but there is no fraudulent intent on the claimant's part. Official error on the other hand occurs when the benefit has been paid incorrectly due to inaction, delay or a mistaken assessment by the *DWP*, a local Authority or Her Majesty's Revenue and Customs (HMRC).

Belgian, Czech and Polish legislation employ a similar yet specific technique whereby distinct definitions are given to fraud and error in particular circumstances and scenarios and by *reference to particular benefits*. In **Belgium** for example, the notions of fraud and error differ depending on whether the substance of the matter concerns family benefits, unemployment benefits or healthcare benefits. Fraud concerning family benefits is defined by reference to fictitious residences and fictitious employers. These types of fraud are divided into seven types of fraud concerning family benefits: type A - the make-up of the household which is indicated in the National Register of Natural Persons does not tally with the real situation (false declaration); type B - false declaration of household income; type C - intentional non-disclosure of a situation in order to unduly obtain social advantages; type D - usurping the identity of another person with or without his or her consent; type E - fictitious activity as an employee; type F - fictitious employers; and type G - others. Similarly, three types of errors can be observed: type A - errors occasioned by the family benefit fund itself to the advantage of a recipient in good faith when the fund pays a sum which is different from that to which the insured person would normally be entitled under family benefit legislation; type B - error due to fraud, negligence or omission by the socially insured (undue payment is occasioned by this type of error); type C - errors referring to a period prior to 1 July 2014 between family benefit bodies that were not included in the financial envelope for global management or national distribution. However, fraud and error in the field of unemployment benefits are determined by more generalised definitions instead of by specific circumstances and situations. This is also the case for fraud and error concerning health care. As indicated, a similar approach is also applied in **Polish** legislation. In addition to distinct definitions of fraud and error encompassed in criminal and civil law, specific scenarios with respect to specific benefits have been identified as amounting to fraud and error. For example, in the field of pension benefits, fraud and error is described as occurring when benefits are paid despite circumstances that cause the cessation or suspension of the entitlement to benefits, or the withholding of benefits in whole or in part if the beneficiary was informed about no entitlement to benefits; when benefits are granted or paid on the basis of a false testimony or documents or in any other case of intentional misleading by the beneficiary; or when benefits are paid for reasons beyond reasonable control of the pension institution to a person other than the one stated in the decision delivered by such authority. Within this same vein, the **Hungarian** approach to defining fraud and error with respect to social security matters is two-fold. Firstly, the definitions will depend in part upon the particular benefits concerned - fraud in the realm of family benefits for example differs from the definition of fraud given in the field of old-age benefits. In addition however, the notions of fraud and error with respect to these particular benefits also have differing legal bases. For example, fraud related to old-age benefits is determined by criminal law unless it fails to meet a given threshold. Furthermore, fraud concerning old-age benefits is also defined in the Taxation act, whilst error is described by the Act IV of 1991 on the promotion of employment and on unemployment benefits. This approach thus combines the technique employed in Belgium and Poland as well as the technique employed by the Member States discussed below.

In **Denmark, Greece and Romania** the definition(s) of fraud and error are subject to a predominantly mixed regime, whereby these terms are interchangeably defined by reference to case law and practice, as well as other general legislative instruments. In **Denmark** for example, fraud is defined by reference to criminal law, the Consolidated Act on Legal Protection and Administration in Social Matters and general principles of law, whilst the definition of error is the product of case law and practice (see *supra* p. 10). The foregoing approach is also used in **Greece** and **Romania** where fraud is also defined by reference to the criminal code, whilst error is defined by case law and practice.

Sources of the Definition of Fraud and Error	Member States
Case law and administrative practice	AT, BG, DK, EE, IS, IE, IT, LT, ES
General legislative instruments (Administrative law, criminal law etc.)	HR, FI, LV, NO, PT
Social security legislation	SK, SE, MT, NL, UK
Per social security branch (via practice and/or legislation)	BE, CZ, PL
Mixed Regime	DK, EL, RO

2.2. Treatment of fraud

In the large majority of Member States (**AT, BE, BG, HR, CZ, DK, EE, DE, HU, IS, IE, IT, LV, MT, NL, NO, PL, PT, RO, SK, ES, SE, UK**) fraud in the field of social security coordination may be subject to both criminal prosecution and administrative sanctions, albeit subject to varying intensity. Conversely thereto, **Greek** legislation and practice solely allows for administrative sanctions, including recovery with interest in case of fraud in the field of social security coordination.

In **Austria, Belgium** and **Portugal**, the applicability of criminal law as opposed to administrative law, is *determined by legislation, which sets forth a number of scenarios and/or conditions signifying whether a particular act is to be considered as administrative or criminal*. In **Austria** in particular, the level of sanction from both an administrative and criminal perspective, will be determined by the severity of the fraud (see *infra* Annex 2 - Austria). Within this context the most severe cases of fraud may lead up to imprisonment of 1 to 10 years. Similarly, in **Belgium** the type of consequences accorded to fraud in the field of social security coordination on the severity of act and is distinctly defined in the applicable legislation (see *infra* Annex 2 – Belgium). Within this context four levels of penalties can be identified, including both administrative and criminal sanctioning, of which the most severe fraud can lead to imprisonment of 6 months to three years, a criminal maximum fee of € 33,000, and/or a maximum administrative fine of € 16,500.⁶ Also, in **Portugal** a number of scenarios have been described in various pieces of legislation, which define certain acts and omissions as giving rise to either criminal and/or administrative sanctioning, with a maximum fine for the most severe cases of fraud resulting in a fine between €5,000 and €25,000 (see *infra* Annex 2: Portugal).

Somewhat similar to the foregoing, in **Croatia** and the **Czech Republic**, the criminal or administrative nature of the consequences associated to fraud are *determined by the type of benefit concerned*. In the **Czech Republic** the determination of criminal sanctioning as opposed to administrative sanctioning depends primarily upon the type of benefit concerned and/or whether the fraud concerns the determination of applicable legislation. For matters concerning the determination of applicable legislation for example, fraud will result in criminal consequences, whereas for residence-based benefits (family benefits, death grants, care allowance) no use is made of criminal law provisions. Rather, fraud in concerning these benefits will solely result in administrative offences. This is also the case in **Croatia**, where criminal sanction is possible for matters concerning pensions, family benefits and health insurance, whilst only administrative sanction is available for matters concerning unemployment insurance.

In a number of other Member States (**EE, HU, IS, MT, NL, UK**) the *predominant focus in combating fraud in social security coordination is on administrative law* as opposed to

⁶ For the levels of administrative and criminal sanctions, cfr. AnnexII, p. 87. For a translation of the applicable legislation, cfr. De Coninck M., Gillis D. & Jorens Y., *The Belgian Social Criminal Code. An English Translation by IRIS/international research institute on social fraud*, Die Keure, Brugge, 2013.

criminal law. In **Estonia** criminal prosecution and administrative sanctions may be administered in case of fraud in the field of social security coordination. However, for criminal sanctions to be administered, fraudulent intent must be explicitly demonstrated. Similarly, in **Iceland**, the **Netherlands** and the **United Kingdom** criminal sanctioning of fraud is predominantly reserved for the more severe cases, whilst criminal sanctioning of fraud occurs extremely rarely. Furthermore, **Dutch** legislation in particular prescribes that criminal prosecution is envisaged for cases if the contested amount exceeds €50,000 or if it concerns a matter of recidivism or criminal behaviour. **Hungarian** legislation provides for both possibilities, albeit necessary to note that criminal cases pertaining to family benefits have yet to occur. In **Malta** both approaches are also possible, but the predominant focus remains upon the recovery of the amounts as opposed to criminal and (other) administrative sanctioning.

In **Germany** on the other hand, in case of social security fraud the predominant focus is on criminal law. This is also the case in **Sweden**, where fraud is subject to criminal prosecution, albeit that no distinction is made with respect to social security coordination. This entails that all cases are sent to the police although not all – not inconceivably – go to trial.

Interestingly, in **Ireland** a matrix with reference to nine characteristics is used in order to determine whether fraud in the field of social security coordination is to be addressed with criminal or administrative sanctions. These characteristics include, amongst others, the duration of the fraud, the amount of the overpayment, a false declaration at the time of the claim and failure to notify a change in circumstances affecting entitlements, and previous history of defrauding the Department of Social Protection. The matrix is used predominantly by social welfare inspectors for vetting cases and making recommendations for criminal prosecution.

Treatment of Fraud	Member States
Defined (general) scenarios and distinctions in legislation	AT, BE, PT
Defined per social security branch	HR, CZ
Predominant focus on administrative sanctions	EE, HU, IS, MT, NL, UK
Predominant focus on criminal sanctions	DE, SE
Other	IE

2.3. The prevalence of fraud in social security coordination

2.3.1. General observations

In a number of Member States (**AT, FI, DE, EL, IE, IT, LV, LT, MT, NO, PL, RO, SK**) significant statistics concerning cases of detected fraud in the field of social security (coordination) are not available. In particular, **Greece, Ireland** and **Norway** provide *general* statistics concerning fraud, which renders it impossible to distil statistics concerning fraud in the field of social security coordination. Despite the lack of statistics it appears that in **Finland**⁷ and **Lithuania**⁸ fraud in the field of social security coordination is extremely limited.

⁷ Cases concerning fraud in the field of social security coordination amount to around 0.03 % of all benefits paid and 2/3 of these cases concern unemployment benefits. The number of cases has been stable during the last years.

⁸ The Lithuanian report addresses an interesting phenomenon concerning possible posting fraud: The Lithuanian competent institution received applications to issue PD A1 documents for Polish nationals, residing in Poland and employed in several companies established in Lithuania. All these employees were also self-employed in Poland. The mentioned persons were employed in Lithuania only for a few hours a week and according to the

Conversely to the foregoing, statistics concerning social security fraud in the field of social security coordination are available in **Belgium, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Hungary, Iceland, the Netherlands, Portugal, Spain, Sweden** and the **United Kingdom**. It need be noted, however, that even with respect to those Member States, which have such data available, the data concerned may be fairly limited and oftentimes solely pertains to a single benefit. In addition thereto, it need be noted that even with respect to the Member States, which have significant data available, this may be somewhat tainted as in certain examples the distinction between fraud and error is not made.

2.3.2. Limited data available

As indicated, in a number of Member States (**BG, HR, DK, EE, PT, HU, IS, SE, UK**), data is available, albeit subject to the nuance that it is limited to a certain extent. The limited nature of the available data can be attributed to, amongst others, the lack of distinction made concerning fraud in the field of social security *coordination* vis-à-vis fraud in social security generally, or alternatively the seemingly lacking prevalence of fraud in said Member States. Moreover, in certain Member States the determination of fraud has been limited to certain specific social security benefits, which in turn may be attributed to different authorities being competent for different types of benefits. As a result however, the availability of relevant data is not all encompassing.

In particular, in **Bulgaria** an approximated 469 cases of fraud concerning family benefits have been identified, without further indications as to the types and intensity of the fraud.

Concerning pensions in **Croatia** 13 criminal cases were identified as being potentially fraudulent. Other forms of fraud concerning other benefits have not been documented.

labour contracts their salary was usually less than 100 euros. These employees also applied for documents proving their health insurance in Lithuania. The THIF in Vilnius received 78 applications from Polish residents to issue E104 forms confirming that people were covered by the compulsory health insurance in Lithuania during the year 2014. In 2015 the THIF has turned to the Ministry of Social Security and Labour, the Labour Inspection and the State Tax Inspectorate with the request to investigate these cases because it considered the labour contracts were possibly faked) and to the Polish authorities with the request to provide information about the labour activities of the Polish residents concerned. Till now several investigations by labour inspectors were conducted, however, no infringement of labour law was established as Lithuanian Labour Code does not forbid employing a person only for few hours per month and there is no minimum working hours per month or per week established by law. Nevertheless, Lithuanian authorities suspect the main purpose of employment in Lithuania is to avoid payment of social security contributions in Poland. The Lithuanian competent institution refuses to issue the PD A1 documents for the mentioned Polish residents on the grounds the activities in Lithuania being only marginal. The persons applying for the PDA1s usually appeal against the decision refusing the issuance of the PDA1. They argue that there is more than only marginal activity in Lithuania and that Lithuanian legislation is applicable. The employees do not provide information about their self-employment activity in Poland or state that they receive no income in Poland. Lithuanian competent institution faces difficulties to verify this information: on the one hand, Polish tax authorities refuse to provide information to the Lithuanian competent institution about the activities as self-employed by the Polish residents applying for the PDA1 in Lithuania and about the income of said Polish residents as there is no respective bilateral agreement. On the other hand, the Polish competent institution in the field of social security does not have any information about the activity of said Polish residents since said residents - are not registered as socially insured persons in Poland ! The Lithuanian competent institution has contacted the Polish competent institution regarding these cases and the institutions of both Member States are trying to solve this problem bilaterally. The main difficulty in the above mentioned situation is how to establish and prove the marginal activity in a Member State. The Practical guide defines marginal activities as activities that are permanent but insignificant in terms of time and economic return. It is suggested that, as an indicator, activities accounting for less than 5 per cent of the worker's regular working time and/or less than 5 per cent of his/her overall remuneration should be regarded as marginal activities. The question is how to compare employment activities in one Member State and self-employment activities in other Member State when no exhaustive information about the activities as a self-employed can be provided. Furthermore, it is not always clear how to measure e.g. working time of a self-employed person or the 'evaluation of the activity', since the 5 per cent mentioned in the Practical guide can only be considered an indicative criterion.

In **Denmark**, the National Board of Industrial Injuries receives an estimated two to three reported cases of fraud or punishable offences in relation to the workers' compensation per year. Not inconceivably, it is assumed that the total number is higher, albeit that, here also, no account of the total number is available. This is so, as the compensation amounts are paid out by the insurance companies, who, independently of the National Board of Industrial Injuries, are able to report punishable offences to the police and take steps to recover the money on their own. Concerning pensions for former civil servants under the Civil Servants' Pensions Act, fraud is extremely rare because of the extensive registration of pension rights by the former state employer throughout the duration of the employment. There have been no cases of fraud detected, reported or prosecuted by the Agency for Governmental Administration. Relating specifically to claimants of old-age pensions and anticipatory pensions from Denmark who reside outside of Denmark, a control unit has focused specifically on claimants of Danish pensions residing in Spain. In 2014, the control unit reported 56 cases of recovery. It need be noted, however, that no distinction between fraud and error was made in this respect. The main types of fraud and error relate to income, residence and marital status. Finally, the Danish Labour Market Supplementary Pension Scheme has an estimated 20,000 pensioners abroad and rarely discloses cases of fraud regarding the life certificate. Moreover, the very few cases per year where the Danish Labour Market Supplementary Pension Fund (ATP) suspected fraud concerned countries outside the EU.

Within this same vein, **Estonia** seems to be confronted with cases of fraud in the field of social security coordination only to a limited extent. However, whilst no cases were reported concerning unemployment insurance and social insurance generally, an approximated 42 cases were detected concerning inappropriate use of a valid European Health Insurance Card (EHIC) by a person who was no longer insured.

In **Hungary** limited data is available, primarily due to the fact that actions with respect to family benefits have remained limited to repayment procedures. In the field of old-age benefits, however, 353 cases were reported, of which 157 concerned forgery; the majority of the remaining 196 concerned misuse of payment cards or failure to comply with notification obligations.

In **Iceland** the Social Insurance Administration investigated 501 cases, in 226 of which payments were made. It need be noted, however, that in these cases no real distinction is made between fraud and error.

Limited data is available in **Portugal**, where the Institute of Social Security investigated an approximated 360 cases of fraud.

In **Sweden**, as aforementioned, all types of suspected cases of fraud are reported to the police. However, not all police reports go to trial. Throughout the past year, the Social Insurance Agency drew up 1,061 police reports. Most of these were terminated by the police, but in other cases police reports resulted in some form of sanction. Again, it need be recalled that no distinction is made in this respect allowing for data to be identified regarding fraud in social security coordination only.

In the **United Kingdom** the following preliminary data has been gathered concerning the prevalence of data on cases of detected fraud. For the period 2014-2015, estimates of fraud and error amount to 1.9% of total expenditure, of which an approximated 0.7% is assumed to be attributable to fraud. This percentage, in turn, amounts to approximately £1.1 billion.

2.3.3. Data available

For **Belgium**, the various competent administrations provided the following information concerning the applicable legislation. In 2014, the National Social Security Office (NSSO) initiated 233 investigations in order to establish the applicable legislation. In addition, the Directorate-General of the Federal Public Service Social Security indicated that the social

inspectorate invoked Decision A1 in 150 cases (requests for information or requests with a view to withdraw PDs A1) between 1 January 2014 and 31 December 2014 with regard to the applicable legislation. Concerning family benefits, 258 cases were initiated for a total amount involved of € 977.144, 53. With respect to unemployment insurance, the competent institution (*National Employment Office or NEO*) noted that it keeps figures and statistics on 'non-compliant situations and findings'. These are exclusively non-compliant situations occasioned by beneficiaries. Within this context it need be noted that no distinction is made between non-compliant situations resulting from 'fraud or wilful misconduct' or non-compliant situations resulting from a purely material error or an anomaly. Mindful of the foregoing, 29, 402 cases were found to be non-compliant out of 120, 601 effectuated investigations. Finally, with respect to healthcare insurance, the statistics by *SECM* (*Service d'évaluation et de contrôle médicaux – Medical Assessment and Monitoring Service*) do not allow for a distinction to be made between cross-border healthcare within healthcare as a whole, entailing that there are no figures as such.

Overview Belgium

Types of fraud	Results
Applicable Legislation	233 cases
PDs A1	150 cases
Family Benefits	258 cases
Unemployment Insurance	29,402 cases
Healthcare	No available data

Concerning the determination of applicable legislation and sickness benefits in cash, no conclusive data exists on the detected and/or prosecuted cases of fraud in the **Czech Republic**. However, in the field of pensions limited data is available. Pensions are exported abroad retroactively upon presentation of a certificate. As a result there cannot be any overpayments with the exception of payments to Slovakia, where pensions are paid out on a monthly basis upon quarterly presentation of a living certificate. In the latter case, overpayments occur as a result of the death of beneficiaries. See the table below. In addition to the foregoing, an approximated 956 cases were registered concerning sickness benefits in kind.

Overview Czech Republic

Types of Fraud	2014	
	CZK	Number of Cases
Total payments Slovakia	1,592,842,627	288,841
<ul style="list-style-type: none"> • Overpayments total • Reimbursed • Outstanding • Out of the abovementioned reimbursed from the survivors' pensions • Write-offs 	1,405,770	205
	771,706	118
	629,238	86
	206,362	33
	4,781	1
Sickness Benefits	N/A	956

Whilst statistics are available in the **Netherlands**, it is crucial to note that the data below only concern social security fraud, not health care fraud (see *infra* Annex – the Netherlands).

Overview the Netherlands

Types of fraud	Results
Applicable Legislation	698 cases
Determination of Residence	172 cases
Sickness Benefits in cash	1,170 cases
Invalidity Benefits	9,499 cases
Old-age Benefits	899 cases
Survivors’ Benefits	127 cases

The cases of fraud detected or pursued by the **Spanish** National Social Security Institute (INSS) under EU rules are shown in the table below. Within this context, the General Treasury for Social Security (*Tesorería General de la Seguridad Social*) took action against two types of fraud in financial year 2014: businesses that are enrolled in the Spanish social security system, but post their workers to another country and should be subject to the legislation of the country in which they operate; and conduct detected involving fictitious businesses and fraudulent worker enrolments.

Overview Spain

Types of fraud	Results
Fictitious businesses	1,320
Worker enrolments declared fraudulent on account of being fictitious	25,182
Businesses declared fraudulent on account of the posting of workers	32 businesses
Enrolments of posted workers declared fraudulent	335 workers

2.3.4. Findings

Clearly, as can be derived from the foregoing, the data available is somewhat unsystematic. As indicated, this is, in part, due to the fact that Member States approach the data collection of cases concerning fraud in social security (coordination) – if done at all – in various different manners.

Furthermore, whilst some Member States do make a distinction between the concepts of fraud and error, others do not, which furthermore may taint the perception of the data collected. In addition, as can be derived from the Member States that do provide a substantial amount of data in this respect, discrepancies nevertheless persist as various authorities in various Member States do or don’t gather relevant data per social security branch. Within this vein, it appears that currently, in the Netherlands, the most extensive approach to data collection in this field can be identified. However, due to lacking uniformity in data collection in this context – insofar it is undertaken at all -, it is extremely difficult to decipher general tendencies with respect to fraud in social security coordination, as well as to determine differences and similarities in this respect, between Member States. Finally, a comparison with respect to previous years is, equally so, difficult to make, as data as such was not asked for previous reports.

2.4. Data concerning cases of fraud and recoverable amounts

As a preliminary observation, it need be noted that a majority of Member States (**AT, BG, DK, FI, DE, EL, IS, IT, LV, LT, MT, NO, PL, PT, RO, SK**) simply do not have specific data with respect to fraud in the area of social security (coordination).

In **Belgium**, with regard to family benefits, the information requested is not available, as the competent institution does not break it down per period. With regard to unemployment insurance on the other hand, the competent institution notes the following:

The type of check	Amounts to be recovered (ascertained in 2014)
Declarations and conditions for granting	-
Unauthorised combination of income	€ 11,897,572.28
Employment situation – checks on paid workers	-
Temporary unemployment – checks on paid workers	-
Family situation	€ 36,786,331.57

In 2014, the *NEO* provided findings accounting for €139,735,910.35. This represents the sum of new claims and the increases in claims already ascertained. This includes a sum of €23,948,363 to be recovered from service voucher enterprises. After deducting this, it is calculated that €116,787,547 are to be recovered from recipients of unemployment benefits. In 2014, €34,550,416 was reimbursed voluntarily by beneficiaries. Finally, as regards healthcare insurance, the competent institution specifies that *SECM* statistics cannot be broken down to identify cases of cross-border health care.

In **Croatia** and concerning pension benefits in particular – as no other data is available – the recoverable amount was estimated at HRK 4,535,447,82. Data concerning recoverable amounts due to fraud in the **Czech Republic** is limited to data concerning pension benefits and sickness benefits in kind. Concerning the sickness benefits in kind, the 956 cases resulted in a recoverable amount of €1,060,620. In **Estonia**, as aforementioned, no cases were detected concerning unemployment insurance and social insurance. With respect to health insurance on the other hand, the total amount was €16,663,61, of which five cases were brought to court. Furthermore, in some of the cases concerned, the Estonian Health Insurance Fund entered into extrajudicial voluntary agreements to facilitate payment by instalments. Recalling that the number of cases concerning old-age benefits amounted to 353, the recoverable amount associated thereto amounted to HUF 242,676,243. It need be noted, however, that this figure cannot be broken down by reference to various categories of fraud related to old-age benefits. Concerning sickness benefits, invalidity benefits and unemployment benefits in the **Netherlands** the objective is to recover 80% of the wrongfully accorded amounts within a timeframe of three years. Moreover, concerning family benefits the focus is on prevention.

In order to facilitate the compilation of data in this respect, **Spain** is currently developing a model to combat social security fraud. The model takes a comprehensive approach aimed at improving the monitoring of the principal sources of fraud, prevention of fraud throughout the administration of social security relationships, contributions and their collection, early detection to avoid and correct wrongful access to social security benefits, and strategic planning of all of these actions, together with their constant follow-up and the monitoring of the results.

Over the course of the past year, the **Swedish** Social Insurance Agency recovered SEK 285 million, which generated savings of SEK 680 million. However, here also, this amount is not limited to coordination only.

In the **United Kingdom**, the competent authority recovered £387 million of administered benefit overpayments in 2014-15, of which £61.9 million was estimated to be due to fraud.

2.5. Undetected fraud

Again, in a predominant number of Member States (**AT, BE, BG, HR, CZ, EE, DE, EL, HU, IS, IT, LV, LT, MT, PL, PT, RO, SK**) no estimations have been established as to the cases of fraud not detected. Lastly, methodological and practical issues hinder the capacity to collect such data. Despite the overwhelming lack of statistics in this respect however, it needs to be noted that in the **Czech Republic** it is nevertheless estimated that a significant number of cases concerning intentional double health insurance exist. Conversely to the foregoing, in **Denmark, Ireland, Norway** and to a certain extent in **Sweden**, estimations have been made as concerns undetected fraud.

An analysis performed by an external consulting company in **Denmark** in 2015 extrapolated existing data on detected cases of fraud and error in order to indicate the economic potential for enhanced efforts of control in the area of social security coordination. The analysis was limited to sickness benefits in cash, which are subject to coordination under Regulation (EC) No 883/2004, and welfare benefits in cash, which are not subject to the aforementioned social security coordination rules. Moreover, the estimate of undetected cases was limited to include an estimate as regards EEA citizens (not including Danish citizens living abroad). The analysis indicates that there are 445 cases of fraud and error to be found concerning sickness benefits and welfare benefits each year. It is, however, not possible to provide data on the number of *detected* cases within the context of these 445 cases, entailing that it is also not possible to provide a clear estimate of the number of *undetected* cases. Nevertheless, the number of detected cases is expected to be lower than 445.

In **Ireland** the Department of Social Protection has a broad-ranging and comprehensive control strategy, which aims to keep fraud and abuse to a minimum. A key objective of the Department's control strategy is to ensure that the right person is paid the right amount of money at the right time. The emphasis is to minimise risks of fraud and eliminate incorrect payments. Where fraud is discovered appropriate sanctions apply. However, to prove fraud requires a careful investigation of the case, the establishment of the facts (often under a cautioned interview), often resulting in a disallowance of payment by the deciding officer and the setting up of the recovery of any overpayment in respect of the historical period (whenever this is possible; sometimes the evidence only allows the payment to be stopped from a certain date, making a full recovery of unduly paid amounts impossible). According to the Department, the level of overpayments recorded in the social welfare system is the only true measure of fraud. In 2013, the total overpayments recorded amounted to €127.2 million in respect of just over 84,702 overpayments. €70.7 million was the amount recovered in 2013. The 2014 figures are subject to audit and are not available. Total overpayments in 2013 accounted for 0.61% of Departmental expenditure. Overpayments recorded as suspected fraud account for 0.3% of total expenditure.

As concerns **Norway**, an independent research institution has estimated the amount of undetected fraud to be an average 5% of gross payments across the six cash benefits most subject to fraud. The figures are encumbered with considerable uncertainty, as they are based on qualitative methods and analysis.

The latest overall assessment of the extent of irregular payments within the welfare system in **Sweden** was made in 2010. As estimated, incorrect payments in total amounted to approximately 16.5 billion. The uncertainty in the estimate is however large. Moreover, as aforementioned, these estimations are not limited to social security coordination only. The method used to generate such estimations is called the "Expert Elicitation". Experts analyse the existing checks, audits and investigations that are

available and complement its expertise in the field. Experts' individual assessments are then weighed together resulting in a final assessment.

Estimations Undetected Fraud	Member States
No available estimations	AT, BE, BG, HR, CZ, EE, DE, EL, HU, IS, IT, LV, LT, MT, PL, PT, RO, SK
(Limited) available estimations	DK, IE, NO, SE, NL

2.6. The prevalence of error in social security coordination

Whilst fraud – as aforementioned (see *supra* 2.1) – presupposes a fraudulent intent, error is distinguished therefrom by reference to the *absence* of fraudulent intent. In a number of Member States (**AT, DK, EE, DE, EL, HU, IS, IE, IT, LV, MT, NL, PT, SK, SE**) there is no or extremely limited data available concerning the number of cases of error detected in the field of social security coordination per respective branch. Again, this is due to various reasons. In **Denmark, Iceland, Lithuania** and **Sweden** (see *supra*) this is to be attributed to the fact that the distinction between fraud and error is not made in data collection. In **Estonia, Germany, Greece, Ireland, Italy, Latvia, Malta, the Netherlands, Portugal** and **Slovakia** on the other hand, reliable data as such is simply not collected. Unlike the foregoing, data is available in **Belgium, Bulgaria, Croatia, Czech Republic, Finland, Norway, Poland** and the **United Kingdom**.

2.6.1. Lacking data concerning the prevalence of error

Despite the lacking data in a large number of Member States (**AT, DK, EE, DE, EL, HU, IS, IE, IT, LV, MT, NL, PT, SK, SE**), a number of observations need nevertheless be made. In **Hungary** data with respect to error in social security coordination is not available. However, it need be noted that undue payments are estimated to represent less than 1% of all cases concerning family benefits.

The **German** statutory pensions body, the *Deutsche Rentenversicherung*, is unable to provide reliable data for reporting year 2014. Nevertheless, it is assumed that cases of error caused by employees or benefit recipients in cross-border situations are significantly more relevant than cases of fraud. In the area of insurance, the main problem in cross-border situations is failure to communicate multiple employments to the authorities in the place of residence, which leads to individuals being wrongly insured and to contributions not being paid. The difference compared to fraud can be seen, for example, in the case of seasonal workers, who are often completely unaware of their duty to report their multiple employments to their country of residence in order to receive an A1 certificate. On the benefits side, the main problems are a lack of information about deaths of people entitled to pensions, failure to communicate employment, erroneous statements about the level of any income to be taken into account, and – in relation to orphan pensions – failure to communicate that an education or training has ended prematurely. Likewise, there is no reliable data for accident insurance, though it is assumed that there are a significant number of people in multiple employments who are unknown and will not become known to the social security institutions. The reasons for this are usually that the individuals concerned and their employers are unaware of the legal provisions of the coordination Regulations, or that employers deliberately fail to report the situation, in order to avoid the administrative effort connected with a registration in the social security system of another Member State, when that State is responsible for the multiple employment. Lastly, no statistical data can be given for the area of family benefits. A frequent source of error by competent institutions in this respect, is the application of Article 60(3) of Regulation (EC) No 987/2009. The current benefit rates applicable in the Member State which has priority are frequently not known. As a result, incorrect benefit amounts are paid (sometimes to the advantage and sometimes to the disadvantage of the recipient),

calculated for the purpose of the provisional decision as the difference between the German child benefit and the expected benefit entitlement in the other Member State.

Despite the lacking statistics on the number of cases of error in **Latvia** in the field of social security coordination per branch of social security, a number of prevalent sources of error have nevertheless been identified. The main types of error on the side of the competent institution are – similarly to Germany – the determination of a person’s death in the case of long-term services, errors concerning the contributions to be paid, and decisions taken based upon incorrect information and thus incorrectly executed. On the claimant’s side the main types of error are due to a lack of understanding of the situation and legislation and errors due to lacking attention.

In **Slovakia**, the Social Insurance Agency has not recorded overall statistical data on the number of detected errors for calendar year 2014. Checks carried out in the period covering 2014 included the granting of invalidity pensions pursuant to the coordination Regulation (32 errors were found in 201 checked cases; i.e. 16 % or 1 in 6!) and entitlements to a Christmas allowance in relation to foreign countries (no errors were found). However, the Social Insurance Agency does not keep statistics with respect to such cases.

2.6.2. Available data concerning the prevalence of error

Contrary to the foregoing, a number of Member States do have some data available concerning the number of cases of error detected in the field of social security coordination.

On the one hand, in **Belgium**, with respect to the applicable legislation, the emphasis is placed on the correct application of the legislation in the field of social security without deciding whether the case in question constitutes fraud or error. Often a choice is made in favour of rectifying the situation by invoking (or imposing) the applicable national legislation, which results in (retroactive) payments of social security contributions complying with the rules on social security. Concerning family benefits on the other hand, the competent authority provides that 161, 275 cases of error have been detected. Furthermore, regarding unemployment insurance, it need be recalled that the available data does not distinguish between fraud and error, which thus also renders the compilation of data concerning error difficult (see *supra* 2.3).

Types of Error	Cases
Applicable Legislation	N/A
Family Benefits	161, 275 cases
Unemployment Insurance	N/A

The National Health Insurance Fund in **Bulgaria** disputed an approximated 105 claims by other Member States for reimbursement of costs on the ground that the individuals concerned were not insured in Bulgaria or that duplicate claims had surfaced. Data pertaining to error in other fields of social security is not available.

Types of Error	Cases
Health Insurance	105

In **Croatia** 276 cases concerning error were detected in the realm of pension benefits. However, within this number of cases no distinction has been made between error resulting on behalf of the claimant or, alternatively, error resulting on behalf of the

competent authority. Data concerning error in other fields of social security coordination is not available.

Types of Error	Cases
Pension Benefits	276

Error in the **Czech Republic** as indicated (see *infra* Annex – Czech Republic), is solely limited to error on the claimant side and does not take into consideration error on behalf of the competent authorities.

Types of Error	Cases
Survivors' Benefits	1 case
Unemployment Benefits	17 cases

In **Finland** during 2014, approximately 800 cases were detected where a person had been simultaneously insured by the respective social security legislation of two States. The employees concerned had typically worked in two States for two different employers, and were covered by the *lex loci laboris* principle in both States. The employees concerned had not, however, received double benefits nor had they acted on purpose. Furthermore, to minimise error on behalf of Kela, the decision-making by the administration is regularly monitored based on risk evaluations. Based on the results from such monitoring, case handlers are trained and processes are improved if needed.

Types of Error	Cases
Simultaneous Insurance	+/- 800 cases

As concerns the available data for **Norway** (see *infra* Annex – Norway) the figures on recovered amounts are encumbered with uncertainty due to shortcomings in the accounting systems. Figures, which specify whether the error was on the side of the competent institution or on the side of the claimant, are not available.

Types of Error	Cases
Sickness Benefits	3,912 cases
Maternity and Paternity Benefits	1,839 cases
Invalidity Benefits	13,410 cases
Unemployment Benefits	10,190 cases
Family Benefits	14,157 cases

Concerning social insurance in **Poland** generally, no data is available on the number of cases of error detected in the field of social security coordination. However, as regards *KRUS* – the agricultural social insurance – there have been a number of cases of overpayment, which were caused by simultaneous insurance in Poland and in the other Member State. In particular there have been 17 cases concerning invalidity benefits, 20 cases concerning old-age benefits and 2 cases concerning survivors' benefits.

Types of Error	Cases
Invalidity Benefits	17 cases

Old-age Benefits	20 cases
Survivors' Benefits	2 cases

In the **United Kingdom** preliminary data, as previously indicated, estimates that an approximated 1.9% of benefit overpayments is to be attributed to fraud and error, of which an approximated 0.7% is due to claimant error and 0.4% due to official error. Despite the available percentages however, it is unclear how many cases in particular these figures relate to.

2.6.3. Findings

As was the case with respect to the prevalence of fraud, the data available is somewhat unmethodical. As aforementioned, this is, in part, due to the fact that Member States approach the data collection of cases concerning error in social security coordination – if done at all – in various different manners. Whereas certain Member States do attempt to undertake data collection in this respect, others are less focused thereupon. Again, this is attributable to a number of factors. Whereas some Member States do make a distinction between the concepts of fraud and error, others do not, which furthermore may taint the perception of the data collected. In addition, as can be derived from the Member States that do provide a substantial amount of data in this respect, discrepancies nevertheless persist, as various authorities in various Member States do or don't gather relevant data per social security branch. Within the context of error, it appears that **Norway** provides the most extensive and thorough overview data concerning cases of error per social security branch. However, it is crucial to reiterate that it is extremely difficult to decipher general tendencies with respect to fraud in social security in view of the absent comparable approach by Member States to data collection in this particular field.

2.7. Data concerning cases of error and recoverable amounts

In view of the extremely limited number of Member States which effectively gather data on the cases of error detected in the field of social security coordination, it is not surprising that data concerning the amounts awarded in error and the amounts recovered are not easily ascertainable. In particular, only **Belgium, Bulgaria, Denmark** and **Poland** report to have such data available, whilst a number of Member States (**AT, HR, CZ, EE, DE, EL, HU, IS, IT, LT, MT, NO, PT, RO, SK**) do not or do but to a limited extent (e.g. **NL**). In **Lithuania** in particular this is due to the fact that there is no possibility to determine which of the amounts claimed for recovery are related to claims in 2014. Moreover, it is not possible within this context to determine whether the amounts are to be recovered due to error or fraudulent behaviour.

In **Belgium**, concerning applicable legislation, the competent social inspection services note that for the period between 1 January 2014 and 15 December 2014, the amount recorded is € 17,364,965.50, according to the investigations conducted by the social inspection services and the withdrawal of PDs A1, for Belgian social security contributions payable on a voluntary basis. It need be recalled, however, that for what concerns the applicable legislation it is uncertain whether this amount is to be attributed to fraud or error, as the distinction was not made in the compilation of this data. Between 1 January 2014 and 15 December 2014, the amount recorded by the NSSO following investigations conducted by the social inspection services was €7,784,002.88 (*ex officio*: €5,793,721.60). With respect to family benefits, the competent institution *FAMIFED* specifies that it distinguishes between error and fraud. As a result no fraud due to an 'error' by the socially insured (which is actually an attempt at fraud) is included in unduly paid amounts resulting from error. Finally, with respect to the unemployment insurance the recoverable amounts are indicated (see *supra* 2.4) albeit subject to the nuance that no explicit distinction has been made between fraud and error.

Types of Error	Recoverable Amounts
Applicable Legislation	€ 17,364,965.50

Similarly to Belgium, it need be noted that **Danish** authorities rarely distinguish between fraud and error when registering detected cases (see *infra* Annex – Denmark).

Types of Error	Recovered Amounts
Unemployment Benefits	9,5 million
Pre-retirement Benefits	3,9 million

In **Bulgaria**, with respect to the amounts requested to be refunded by other Member States for health services, an amount of €2,264,288.17 was effectively refunded. Of this amount, €2,197,237.47 (97.04%) concerned benefits in kind provided to persons with a valid EHIC and €67,050.70 (2.96%) concerned benefits provided against valid certificates for registration in the Member State of residence. The persons not entitled to health insurance coverage due to interrupted health insurance rights did not reimburse these amounts to NHIF.

Types of Error	Recovered Amounts
Health Services	€2,264,288.17

Polish statistics concerning social insurance have generally not been collected. However, concerning *KRUS*, the following amounts have been recovered.

Benefits	Recovered Amounts
Invalidity benefits	€ 1113.38
Old-age benefits	€ 2487.15
Survivor's benefits	€ 149.55

In **Sweden** over the course of the past year the Swedish Social Insurance Agency recovered 285 million SEK, which generated savings of 680 million SEK. However, it need be recalled – as aforementioned – that within this context no distinctions are made between fraud and error, and the foregoing amount is not limited to social security coordination.

Finally, the competent authority in the **United Kingdom** recovered £1.334 billion of debt in 2014-2015, of which £61.9 million was due to fraud and £265.5 due to claimant error, a slight increase vis-à-vis 2013-2014.

2.8. Undetected error

2.8.1. No available estimations

Similarly to the estimation of undetected cases of fraud, the large majority of Member States (**AT, BG, HR, CZ, EE, DE, EL, HU, IS, IT, LV, LT, MT, NL, NO, PL, PT, RO**) do not have estimations concerning the number of cases of error in the field of social security coordination. Furthermore, in view of the fact that no distinctions are made between fraud and error, and relevant data is not confined to social security coordination, no reliable data can be given with respect to error in **Sweden**.

2.8.2. Available estimations

In **Belgium, Denmark** and **Ireland** such estimations are available, although this is subject to nuance. As indicated above, in **Belgium** for example, certain estimations are available for family benefits, whereas no reliable estimations are available concerning cases of error with respect to the applicable legislation and unemployment insurance. Nevertheless, concerning family benefits the competent institution (*FAMIFED*) specifies that it detects errors by monitoring the correct and uniform application of the relevant legislation. It therefore verifies whether the quality standards recommended are complied with. Via this approach, *FAMIFED* guarantees the efficiency and effectiveness of the family benefits system whilst helping to prevent error. In 2013, a certain number of errors were detected in a random sample of files audited at 14 family benefit funds (in 2013). It emerged that 1.62% of undue payments which had not been accounted for were detected in this sample.

As concerns **Denmark** a nuanced approach is also requisite. Recalling that estimations have been made by an external consulting company claiming that there are 445 cases of fraud and error to be found within sickness benefits and welfare benefits each year, it need be noted that this estimation does not distinguish between fraud and error. Yet again, this entails that no definitive data can be provided for concerning cases of error specifically.

The competent **Irish** department carries out detailed fraud and error surveys on individual schemes, which provide evidence-based indicators for levels of fraud and error for those schemes at that particular time. 'Fraud and Error Surveys' have not been used to identify the total cost of amounts lost through fraud or error in schemes. The purpose and value of fraud and error surveys is to identify the exposure to risk of irregular payments to enable necessary improvements to be implemented. Fraud and Error Surveys have been used as an indicator of the level of fraud and error in schemes and fraud on most schemes examined is very low. Under the Compliance & Anti-Fraud Strategy 2014-2018, the Department of Social Protection is furthermore committed to undertaking at least two fraud and error surveys each year up to the end of 2017. Results are presented in terms of the '*net rate of fraud and error*'. The net rate refers to the position after account is taken of decreases in weekly rate, increases in weekly rate, terminations of payment, transfers to other payments and the position following appeal of any cases affected. The following are the results of the most recent fraud and error survey:

Benefit	Total cost of fraud and error	Cost related to fraud	Cost related to error
Child benefit - Published 2013	The net cost of fraud and error was found to be 0.5% of expenditure	0.5% related to suspected fraud	0% related to error
Jobseekers allowance - Published 2014	The net cost of fraud and error was found to be 3.1% of expenditure	1.4% related to suspected fraud	1.7% related to error
Widow(er)'s/survivors and civil partners contributory pension - Published 2014	The net cost of fraud and error was found to be 0.7% of expenditure	0.2% related to suspected fraud	0.5% related to error
SWA - (rent supplement) - Published 2014	The net cost of fraud and error was found to be 5.0% of expenditure	2.9% related to suspected fraud	2.1% related to error

2.9. Preventing and curbing fraud

Not inconceivably, Member States have various different ways of preventing fraud and error in a national context not exclusively limited to social security coordination.

Nevertheless, certain techniques are particularly predominant across various Member States. In a number of Member States (**BE, DK, FI, DE, IS, IE, IT, LV, NL, SE, UK**) the techniques of data exchange, data matching and data mining are frequently used. **Croatia, Denmark, Estonia, Finland, Malta, the Netherlands and Sweden** also make frequent use of bilateral agreements with other Member States in order to limit fraud and error in the field of social security coordination.

2.9.1. Generalised findings

As indicated above, data exchange, data matching and data mining are particularly popular tools in combating fraud and error. In **Belgium** for example, these techniques are used in a purely national as well as international context and serve the purpose of isolating inconsistencies or irregularities in social security. These methods are frequently adopted in combating social dumping and seek to put an end to the fraudulent posting of workers. To that end data matching and data mining techniques (especially in the *Limosa* database but also other databases) are to be increased. This involves making a selection on the basis of a risk assessment with scenarios developed and tested by multidisciplinary teams. Feedback from these activities will be managed in a structured manner so that data mining activities can be refined in an iterative process. Data matching is furthermore also used in the field of unemployment insurance. *In casu*, the competent institution (*NEO*) states that databases are cross-referenced with others including with other social security databases such as the databases of the *NSSO*, the *National Institute for the Social Security of the Self-employed* and the *National Institute for Health and Disability Insurance (INAMI/RIZIV)*. Data matching is conducted in compliance with the principles concerning the protection of privacy and the provisions, which govern the electronic exchanges of personal data in the field of social law. Via the means of the cross-referencing of relevant databases, the *NEO* conducts both preventative checks and *a posteriori* checks.

In the fields of unemployment insurance and a range of other benefits, **Denmark** is also particularly keen on the use of data matching techniques. In the field of unemployment benefits, members are informed that the information, which they provide to the Unemployment Insurance Fund, will be subject to control, amongst others by means of data matching. In addition, several Unemployment Insurance Funds have carried out information campaigns to raise awareness amongst members that the Fund concerned will conduct data matching through the income register in order to check the correctness of their respective information. Data matching is carried out in relation to data on income, the amount of working hours, independent business and holiday payment. Moreover, related specifically to claimants of old-age pensions and anticipatory pension from Denmark but for individuals who reside outside of Denmark, a control unit has been established, which focuses particularly on claimants of a Danish pension residing in Spain. In addition to this initiative, Denmark engages in information exchange with, among others, Norway and Sweden. Within this context one of the main strategies for the control of fraud and error in this respect is – equally so – the increased use of data matching.

At a national level the **Estonian** authorities have developed a better exchange of data between different databases and are enhancing the cooperation with other national competent institutions. Similarly thereto, in **Finland** Kela envisages an increased use of data matching amongst various competent authorities in order to detect fraud and error at a far earlier stage.

In **Germany**, data matching and data mining is carried out pursuant to § 119(3)(1) of Volume VI of the German Social Security Code (*SGB VI*), allowing the pensions service of Deutsche Post AG to regularly conduct automated cross-checking of data on deaths with various EU Member States and third-party countries on behalf of the *Deutsche Rentenversicherung*. In reporting period 2014, numerous comparisons took place of data on deaths. These covered approximately 845,700 pensions paid to various Member States (**AT, BE, CH, ES, FI, IT, LU, NL, SE**). In 2014, the sending of 820,000 life

certificates was rendered unnecessary because of the automated crosschecking of this data in place for these people. As stressed in reports in earlier years, the *Deutsche Rentenversicherung* is much in favour of, and is working hard towards, enhancing this cooperation. In accordance with its statutory duty under § 150(3) *SGB VI*, the Data Centre of the Pensions Institutions (*Datenstelle der Träger der Rentenversicherung*) maintains the so-called 'A1 database'. Saved in this database is data on all posting certificates (A1 forms) to which German regulations do not apply. Routine checks performed at the time the data is captured reveal errors in the certificates, which are then returned to the issuing authority for correction. This database is used by the audit authorities principally to expose cases of abuse of the posting process and to combat undeclared work. Under § 150(5) *SGB VI*, an automated data retrieval process is available for these purposes. The accident insurance institutions in Germany have in the past made efforts to agree on procedures with the liaison bodies of other Member States, to ensure that pension payments are made to recipients in those countries only where an entitlement exists. Regrettably, nearly all these procedures have come to a standstill. Accident insurance institutions which make payments abroad via the pensions service of Deutsche Post AG are going to endeavour to become included in the automatic cross-checking of data on deaths. The remarks on the *Deutsche Rentenversicherung* and the A1 database apply equally for accident insurance. In the area of family insurance, a yearly comparison with data from the residence registration authorities is used to check whether minors still exist and are living in the household of the person drawing a child benefit.

Lastly, the **Irish** Department of Social Protection's emphasis is to minimise risks of fraud and eliminate incorrect payments, which is achieved amongst others, by means of data matching and mining techniques. This involves appropriate checks at the point of claiming, strengthened by systematic reviews of claims in payment and verification that the conditions for entitlement continue to be met, including means, residency and medical reviews. The Department of Social Protection has an extensive legal structure to support the sharing of data for the purpose of controlling the entitlement and payment of benefits. The legislative provisions that allow for the specific sharing of data are contained in section 261(1) of the Social Welfare Consolidation Act 2005. Information held by the Department (Minister) for the purposes of the Act (including the purpose of collection by the Revenue Commissioners of employment and self-employment contributions) may be transferred by the Department to the Revenue Commissioners. Similarly, information held by the Revenue Commissioners for the purposes of this Act or the Income Tax Acts, relating to employers, the reckonable earnings of employed contributors or reckonable income or reckonable emoluments of self-employed contributors or of any payments made under this Act may be transferred by the Revenue Commissioners to the Minister. Under the provisions of section 261(2) information held by the Department (Minister) for the purposes of this Act or the control of schemes administered by or on behalf of the Minister or the Department of Social Protection may be transferred by the Minister to a Department or a specified body. The inverse also applies. The Department undertakes a number of existing data matches with other Government Departments and Agencies on a systematic basis, including with the Irish Prison Service, Third Level Institutions, the General Register Office, the Commission on Taxi Regulation, Revenue Commissioners, the Department of Work and Pensions (UK) and the Probate Office. The Department recognises that fraud investigation and control can be assisted through the application of a range of new technologies. Within this context, the Department recently commenced a project utilising analytics technology to predict which claims are more likely to be fraudulent. When this technology is in place, it is hoped that this will enable the Department to target higher risk cases for investigation and to do so faster. Existing customer information will be used to build analytics models which will enhance fraud and error detection.

Finally, as concerns cooperation techniques regarding data at a national level seeking to combat fraud and error, mentioned need be made of the plethora of national data exchange agreements that have been enacted in **Latvia** with this exact purpose, as indicated below.

Data exchange agreements in Latvia

- *Agreement on cooperation between the State Social Insurance Agency (SSIA) and the State Medical Commission for the Assessment of Health Condition and Working Ability (16.04.2007).*
- *Agreement on cooperation between the SSIA and the State Medical Commission for the Assessment of Health Condition and Working Ability on the exchange of information via the state portal <http://www.Latvija.lv> e-services (15.12.2014).*
- *Agreement between the SSIA and the Constitution Protection Bureau on the exchange of information (the CPB) (15.04.2008).*
- *Agreement between the SSIA and the Ministry of Defence on the exchange of information (09.06.2008).*
- *Agreement between the SSIA and the Office of Citizenship and Migration Affairs on supplying of information to the SSIA in online data transmission regime (27.02.2009).*
- *Agreement between the SSIA and the Office of Citizenship and Migration Affairs on the use of the software package "Personal Data Database" of the Office of Citizenship and Migration Affairs (14.04.2009).*
- *Agreement between the SSIA and the Ministry of Education and Science (28.10.2009).*
- *Agreement between the SSIA and the Information Centre of the Ministry of the Interior (07.07. 2010).*
- *Agreement between the SSIA and the State Revenue Service (02.08.2011).*
- *Agreement between on cooperation between the SSIA and the State Employment Agency (18.01.2012).*
- *Agreement on cooperation between the SSIA and the State Labour Inspectorate on data exchange of the act of accident at work (05.08.2013).*
- *Agreement between the SSIA and the Administration of the Maintenance Guarantee Fund on exchange of data using the state information system (13.10.2013).*
- *Agreement between the SSIA and the National Health Service on supplying of information (08.04.2015).*

In addition to the frequent use of data matching and data mining, **life certificates** are often used to facilitate the fight against fraud and error in the particular field of social security coordination. In particular **Denmark, Finland, Sweden** and **Norway** make use of such certificates.⁹ Regarding the **Danish** Labour Market Supplementary Pension Scheme specifically, pensioners residing abroad have to fill in a life certificate once a year in order to continue receiving supplementary pension. Furthermore, the **Finnish** Centre for Pensions exchanges life certificates electronically with **Sweden** and **Norway**. Changes to the living conditions deduced from life certificates are forwarded to the Finnish pension providers in order to save costs in pension handling and to avoid long-term excess payments of pension. Exchanges of information concerning deaths with Germany and Spain are also under negotiations. Not entirely like the foregoing, yet nevertheless noteworthy – in **Hungary** steps have been taken to automate the transfer of mortality data on a national level and steps have been taken to conclude bilateral agreements in this respect.

As previously indicated, **bilateral agreements** covering various topics such as life certificates and data exchange, have furthermore proven to be very fruitful in combating fraud and error. In **Croatia** a number of data exchange (bilateral) agreements have either been established or are being prepared. Such bilateral agreements have already been concluded with Slovenia and Montenegro and negotiations are underway with Germany, Bosnia and Herzegovina and Serbia. In **Malta** a data exchange agreement was negotiated with the **United Kingdom**, as a large share of the Maltese pensions are paid in the UK.

Furthermore, in addition to the bilateral agreements between **Finland, Norway** and **Sweden** concerning the use of life certificates, mention need be made of the joint information campaign between **Estonia** and **Finland**. In 2014 Finland and Estonia organised a joint campaign called "You should not pay double". The objective of the latter was to inform workers moving between the two countries of their respective social rights and obligations with an emphasis on the applicable legislation and the avoidance of double insurance.

A particularly noteworthy initiative in the context of bilateral and multilateral cooperation concerns a **Danish** initiative. **Denmark** has enhanced its efforts of combatting fraud and

⁹ Recall in this respect that the use of data matching and data mining have rendered the use of life certificates in Germany unnecessary.

error under the Regulation (EC) No 883/2004 coordination rules by establishing a central unit for international administrative cooperation in 2014 under the auspices of *Udbetaling Danmark*, which is the competent institution for a range of social benefits, such as family benefits, maternity benefits and old-age pensions. The central unit works to establish close relations with other Member States as well as with countries outside the EEA area, aiming at enhancing cooperation and information exchange. A central task of the unit is to examine the possibilities of concluding bilateral agreements with other Member States, aiming at information exchange on a larger scale. In addition, the unit facilitates information exchange between the Danish municipalities and other Member States in concrete cases under the administration of the municipalities. These initiatives relate to a range of different social benefits – e.g. family benefits and sickness benefits – administered by different central and local national authorities. Hence, the unit also contributes to strengthening cooperation and coordination across different national authorities. The central unit is closely connected to a newly established section dedicated to working with data and data matching (see *supra*) as part of the strengthened efforts of combatting fraud and error. By matching data from various public registers, the data section is able to identify patterns of fraud and is therefore able to identify possible cases of fraud and error, which are forwarded to the competent institutions for further inspection. This section, hence, also contributes to strengthening cooperation and coordination across different national authorities. In the initial phase, the data section focused on data matching on the basis of Danish public registers, which has accordingly resulted in a focus on national cases of fraud and error. However, there have been examples of cross-border cases that have been detected using the data-matching tool. In order for the data-matching tool to be effective in detecting cross-border cases of fraud and error, the data unit is, nevertheless, dependent on access to data from other Member States' registers. In the long term, it is therefore the ambition, in cooperation with the central unit for international administrative cooperation, to conclude bilateral agreements on information exchange with other Member States' competent institutions. The current data matching system is based on experience with patterns of fraud, but for the purpose of the stepped up efforts, it is the ambition to increase the use of statistical data analyses.

2.9.2. Overview of additional Member State initiatives

Clearly, as can be derived from the foregoing, the varying initiatives taken by the various competent authorities in the respective Member States are not to be regarded as conceptually distinct and isolated from each other. The establishment of the **Danish** central unit (see *supra* p. 30) for administrative cooperation for example, serves as an umbrella facilitating cooperation from a bilateral perspective with varying other (Member) States, as well as the effective and enhanced use of data matching and data mining on a national scale, but equally so on an international scale. Mindful of the foregoing, an overview follows of the various *additional* and individual initiatives taken by the Member States.

In 2014, **Austrian** Social Security began building up specialised competence in combating fraud at both national and international levels. The current fact-finding exercise was taken as the basis for laying the foundations of a common anti-fraud strategy and standard guidelines for fraud monitoring. Furthermore, there was an increased focus on the possibilities of computer-assisted risk analysis, particularly on the employer side, to enable suspicious cases to be identified early on and targeted verification systems introduced.

In addition to the use of data matching and mining, since 2014 **Belgium** provides for the *Checkin@work* application at construction sites. It registers all persons working on sites (Act of 08 December 2013 amending Article 30bis of the Act of 27 June 1969 and the Act of 04 April 1996) in order to prevent fraud and to make other data available for data mining. Also in the construction sector, QR codes are provided for in compulsory LIMOSA documents in order to make it easier to register foreign employees and self-employed workers at construction sites and the two sides of the construction industry have agreed

upon photo identification for all construction workers (albeit that the latter was accomplished without a distinct legal basis). In addition, the new State Secretary for the Fight against Social Fraud has set up (round table) meetings with all the stakeholders in the construction and transport sector to discuss possible measures and possible cooperation in order to combat fraud more effectively. Concerning family benefits a number of initiatives have been taken, including amongst others, the establishment of an electronic flow system for authentic sources coordinated by the Crossroads Bank for Social Security was developed so that each of these *IPSSs* which grant social benefits depending on the socio-professional situation of the socially insured may automatically have the information they require to manage the file correctly. Each *IPSS* may thus be authorised by the Social Security Sectoral Committee to benefit from access, free of charge, to the data, which are relevant to it and are legally justified. In addition, with respect to family benefits, for the purpose of preventing error and fraud, *FAMIFED* developed and introduced the Register of Family Benefits (*Cadastre des allocations familiales / Kadaster van de kinderbijslag*) in July 2004. This tool registers all family benefit files with all the beneficiary children, the recipients of family benefits and the contributors whom the rights to the benefits stem from. This register permits a flow of electronic data and is a tool, which streamlines administration and helps to combat family benefit fraud. It rejects any attempt to encode a double payment for the same beneficiary child for the same period and is therefore a tool for preventing a certain number of errors and (attempts at) fraud.

In **Bulgaria** the National Revenue Agency undertakes measures to prevent and combat fraud by strict verification of the conditions for the issuance of A1 certificates, by use of electronic means and the statistical data available, by providing forms for applications online and by incorporating relevant changes and adaptations in national insurance legislation.

Croatia has implemented a plethora of measures to combat and prevent fraud and error in the field of social security coordination. In particular use is made of regularly updated databases in the field of pensions. Moreover, such databases are used to facilitate cooperation between the competent Croatian authorities. The foregoing has been complemented with data exchange agreements between said authorities. Furthermore, and in addition to the aforementioned bilateral agreements (see *supra*), since March 2014 an agreement on electronic data exchange on the occurrence of death has been concluded and a three-year obligatory medical check-up has been imposed with respect to pension benefits and fraud within the respective field.

In the **Czech Republic** focus has been on the composition and conclusion of internal regulations for the competent authorities and their respective staff members, in conjunction with vocational training of said employees and a system of controls. Furthermore, use is made of regularly updated databases as well as a centralised system for the purpose of determining the applicable legislation. In order to handle the difficulties arising in the determination of residence, a questionnaire has been established which may facilitate an easier determination thereof.

In addition to the initiatives in **Denmark** concerning data matching and mining as well as the use of life certificates and bilateral agreements, an additional initiative intended to curb fraud and error need be mentioned. Regarding lump sums paid to spouses/cohabitants and children under 21 upon a member's death under the Danish Labour Market Supplementary Pension Scheme, the relatives must make a claim for the lump sum, if the deceased member resided outside Denmark or if the surviving relatives reside outside Denmark. Within this context, a surviving spouse must send a marriage certificate, and confirm that they have not divorced.

In **Estonia** the data of electronically transmitted invoices from health care providers are automatically verified (electronic invoices must meet the size/format of the shipment, which is approved in contract for financing medical treatment between the health care providers and *EHIF*).

Complementing the **Finnish** use of data matching and mining as well as bilateral agreements, insurance numbers are exchanged electronically with **Sweden, Norway and Germany**. The Finnish Centre for Pensions also has access to the German *EAO* service, which includes German insurance history periods and the amounts of pensions. Secure e-mail connections with Estonia and Sweden are established (Finnish Centre for Pensions) and negotiations for establishing secure e-mail connections with other Nordic pension institutions are on-going. The Finnish Centre for Pensions also registers all of the PDs A1 received from the other Member States. The Employees Pensions Act entitles the authorities to gain access to information which can be used in the fight against fraudulent behaviour as well as erroneous situations. This access to information functions between for example the tax authorities and the authorities in charge of social security coordination in Finland. The act also enables the authorities to grant access to information in order to solve offences or irregularities (Sections 198, 199 and 200).

A number of initiatives to prevent fraud and error have also been taken in **Greece**. Firstly, fraud related issues may be reported, anonymously or otherwise, to the Financial Police Directorate, by telephoning 11012 or sending an email to 11012@hellenicpolice.gr. In addition to the foregoing and by virtue of the ARIADNE programme (Law No 4144/13), information is shared between the databases of all the Greek social security bodies, under the responsibility of IDIKA A.E. (eGovernment Social Security), and the TAXIS database (the electronic system used by the tax offices – DOY), so that changes in pensioners' personal situations (marriages, deaths, divorces) are detected in good time so they can be immediately deleted from the social security bodies' files where appropriate. Based on the data from ARIADNE, a whole series of actions are carried out to prevent infringements. Specifically, upon notification of a death, payment of pensions and other benefits and allowances by the social security body or bodies is immediately suspended. Furthermore, these benefits can no longer be collected by non-beneficiaries, the use of the deceased's insurance booklets is cancelled, ensuring that they cannot be used by third parties, and significant financial losses to the EOPYY (National Organisation for Healthcare Provision) are avoided. The DOY (tax offices) are immediately informed of the death and assess the new situation from a tax point of view and also in terms of the assets register. Similarly, upon notification of a marriage (or registered partnership), insurance benefits to those who were considered as dependants are suspended, assistance to persons who are no longer beneficiaries is suspended, and widow's/widower's benefits are suspended following remarriage. Finally, upon notification of divorce, insurance cover of non-dependants and payment of family benefits are suspended. Complementing the foregoing initiatives, the ILIOS (Integrated Control System for Payment of Pensions) was established, electronically connecting 93 different pension payment systems, which support the disbursement of 4,407,288 (main, supplementary and other) pensions to 2,714,034 pensioners. ARIADNE interconnects with ILIOS, to enable greater use of computerised cross-referencing. Finally, a National Register of Pensions and Pensioners was established through the ILIOS system, the database of which is already being used by social security bodies to address and detect abuse. In the field of tackling contribution evasion and contribution avoidance, the Social Security Debt Collection Centre (KEAO) was created within IKA-ETAM (Law No 4172/2013). The purpose of the KEAO is to establish uniform procedures and mechanisms for the timely collection of debts and arrears owed to social security organisations, with the aim of improving the sustainability of the social security system. It is the first step within a broader reform that aims to integrate the revenue collected by the social security bodies into the tax administration system and merge the procedures for collecting taxes and social insurance debt by 1 July 2017. Setting up this Centre is expected to resolve problems, which, in the past, rendered the recovery procedure and enforced recovery measures complex and time-consuming, preventing the social security bodies from collecting their projected revenues. Lastly, the Sample-based Audit Department has been established within the Directorate for Incomes Policy of the State General Accounting Office, which is the pension institution for former civil servants. The main purpose of this department is to carry out external audits on interdepartmental discrepancies, but also to carry out sample-based audits on acts issued by the

Directorate for Regulation and the Directorate for Pension Payment Orders (Article 5 of Law No 4002/2011).

In **Ireland**, the Public Services Card (PSC) is furthermore provided for to enable citizens to gain access to public services more efficiently and with a minimum of duplication of effort, while at the same time preserving their privacy to the maximum extent possible. The PSC is designed to replace other cards used by the Department of Social Protection such as the free travel pass and the Department's social services card, and to make it easy for providers of public services to verify the identity of persons. Towards the end of April 2015, a total of 1.34 million cards were produced, including just below 700,000 PSCs produced in 2014. The PSC also provides a higher and enhanced level of assurance as to identity and it therefore acts as a key tool in the prevention and detection of identity fraud. Taken in conjunction with the face-to-face registration process, the new PSC seeks to offer significant new protection against welfare fraud. To strengthen the PSC registration process, the Department uses facial image matching software to help detect and deter duplicate registrations. During the course of the registration process, the software performs a search of the captured or imported customer photograph against existing photographs on the Department's database to ensure that the individual has not already been registered for a PSC using a different PPS number, or a different identity dataset. Where a match or a potential match is found, it is referred for further investigation.

In addition to the use of data matching and data mining, **Italy** has established a specific procedure in order to manage the phenomenon of fraud, to archive cases of fraud and to analyse said data for the purpose of conducting risk analyses. Furthermore, a memorandum of understanding has been established with the Finance Guard for the prosecution of offences in social assistance, pensions and social security contributions.

In tackling fraud and error in **Lithuania**, information about social security coordination rules and about the use of the EHIC is published on the web pages of the competent institutions. This information is updated on a regular basis. In addition, information concerning social security coordination is consistently disseminated by means of different mass communication measures, information pamphlets and brochures. Upon the granting of benefits in accordance with the coordination Regulations, experts of the competent institutions verify the information provided in SEDs, PDs, E forms or other documents. The documents are consistently verified to ensure that they are properly filled out and signed. In the event of suspicion concerning the credibility of the information presented, the relevant EU Member State competent institution is contacted. Lithuanian competent institutions also verify information about the employer made available by different registers and other institution databases (e.g. tax authorities information, the register of Lithuanian residents). Lastly, meetings are organised with competent institutions and experts to discuss individual cases and to share best practises.

Complementing the **Maltese** agreement with the UK concerning data exchange, IT infrastructure in the field of social security has become interconnected with that of other entities allowing for enhanced cooperation between the various national authorities and institutions. In addition, verification of the identification of foreign nationals has been enhanced, entailing that original pieces of identification are now required.

In the **Netherlands** a plethora of measures have been taken to prevent fraud and error on a national level. In particular – concerning sickness benefits, invalidity benefits and unemployment benefits, preventative measures have been taken, as well as control and compliance measures and corrections and sanctions. The preventative measures include promoting and maintaining risk and fraud awareness of employees by organising training programmes and protocols for staff, verification of the identity of clients, administrative keys (Civil Service Number) and DigID (pin-code for services provided by the whole of the public sector), and informing clients properly on their rights and obligations, including mass media campaigns in cooperation with the Department of Social Affairs and other organisations. The control and compliance measures include administrative and electronic

controls, entailing data comparisons and exchange when applying for a benefit as well as electronic payment controls. In addition thereto, such control and compliance measures encompass statistical means of risk profiling, risk management and risk targeting in combination with checklists for front-office officials such as work-coaches, doctors and intermediaries. Lastly, as concerns corrections and sanction measures, recovery of unjustly claimed benefits is employed as well as the use of fines and possibly criminal prosecution.

Prevention of fraud and error in **Norway** is currently ascertained by manual measures established as compulsory checks, which are instituted in key operations by case handlers before the benefits are paid out. These measures are undertaken in the processing of the cash benefits most subject to fraud and error, such as sick leave benefits and single parent benefits. In addition, red flag documents have been identified for some of the most fraud-prone benefits as a means to support case officers in their daily handling of cases.

It is noteworthy to mention the legislative amendments made in **Portugal** in order to promote the coordination of various databases and the promotion thereof vis-à-vis various competent authorities. In addition, Law No 15/2012 established an Information System for Death Certificates.

In **Poland** a number of initiatives have been taken to prevent fraud and error, albeit limited to pensions. These measures include identity verification allowed by access to the PESEL register (the Polish PIN), the adjustment of the insurance database and benefits database, the adjustment of data from various benefits databases and enhanced verification of the correctness of cases by the regional offices (concerning KRUS).

In **Romania** the following initiatives have been taken as part of the fight against fraud and error:

Prevention of fraud and error in Romania

- Efficient cooperation with national institutions responsible for combating fraud and error in the field of social security.
- Efficient cooperation with institutions from other Member States responsible for combating frauds and error in the field of social security, and with other competent institutions in the enforcement of the European coordination Regulations of social security systems (especially with those from Belgium, Germany, France and the Netherlands).
- Regular exchange of databases between the national institutions responsible for combating fraud and error in the field of social security: the National Pension Office, the National Health Insurance Office, the National Agency for Employment, the Labour Inspection, the National Tax Administration Agency/Territorial Tax Agencies and the Ministry of the Interior).
- Provision of databases related to PDs A 1 issued by the *CNPP* to *CLEISS*.

Equally so, a number of initiatives have been taken in **Slovakia**. As a measure to prevent fraud and error in the field of pensions, two specific employees deal with cases which have a cross-border dimension. Firstly – an officer (*referent*) and secondly, an individual who approves the work completed by the former (*aprobant*). These are subsequently checked – on an interim basis – by the competent managers and the methodology unit for pension insurance. The amount of the pension is determined automatically by software wherever possible. Furthermore, in proceedings concerning pensions, the Social Insurance Agency cooperates with the institutions of other States that are parties to the EEA Agreement and with Switzerland, and with other Slovak national authorities. It also cooperates in the reporting of the death of pension recipients, changes of address and other income. During 2014, the Social Insurance Agency carried out checks in accordance with Section 242 of Act No 461/2003 and was obliged to remedy the deficiencies identified by these checks and the causes of such deficiencies, and to take disciplinary action against the responsible employees. With respect to

sickness and maternity benefits, the Social Insurance Agency accepts – for the purpose of claims for certain sickness benefits – domestic certificates of a treating physician issued in another EU Member State. In order to prevent fraud and error, the competent institutions of the Member States have been asked to provide the domestic documents used for verification of sickness and maternity cash benefits. Unfortunately, not all Member States responded to the Social Insurance Agency’s request. It need be noted that the most effective cooperation with the Social Insurance Agency has been with its partner institution in the Czech Republic. If an insured person files a claim using documents for which the Social Insurance Agency does not have a sample, the Social Insurance Agency asks the competent institution in the Member State in which the treating physician issued the submitted certificate to verify whether the submitted documents are admissible for a claim for sickness and maternity cash benefits. The Social Insurance Agency assesses the claim for a sickness benefit only after receiving a positive response from the competent institution. Lastly, concerning family benefits, databases have been installed which seek to warn for potential errors and pair data to avoid errors in the payment of benefits and facilitate cooperation between institutions. As a result, a single officer can now manage the registration and assessment of all social benefits for an individual family.

3. IMPLEMENTING THE COORDINATION PROVISIONS

3.1. Issues pursuant to the implementation of the coordination provisions

3.1.1. Prevalent issues

A number of issues can be identified as a result of the implementation of the coordination rules in the field of social security amongst the various Member States. *Grosso modo* three issues in particular can be identified which are directly related to the implementation of the aforementioned rules. Firstly, lacking and/or delayed exchange of information between the competent institutions has proven to be a significant obstacle in the implementation of said rules and may lead to an increase of fraud and error in a large number of Member States (**BE, BG, HR, DK, EE, FI, EL, IS, IE, LV, NL, PL, PT, RO, SK, ES**). As a result thereof, issues arise such as intentional double health insurance, as well as scenarios whereby individuals are receiving unemployment benefits in one State whilst being gainfully engaged in a second Member State. This can also result in incorrect payments being made and/or social insurance contributions being paid to the wrong institutions as indicated by **Ireland**, as well as the payment of pensions despite the claimant already being deceased as noted by **Croatia**. In **Iceland** the lacking or difficult cooperation is considered as particularly cumbersome in case of changes in circumstances, which are not or not in a timely fashion notified to the competent authority.

Secondly, lacking individual awareness with respect to the applicable rules in a cross-border context and the rights and obligations associated thereto, has also proven to significantly hinder the effective implementation of the coordination rules in certain Member States (**FI, DE, ES**) thereby increasing the risk of fraud and error. As has been indicated, however, and as will be elaborated upon below (see *infra*), a large majority of Member States have acknowledged the necessity of updated information dissemination via a number of platforms.

Lastly, the identification of an individual’s residence has proven to be an arduous task (**CZ, EL, HU, IT, LV, MT, NO, PL, PT**). This can in part be attributed to the fact that free movement has increased as a result of the steps taken to facilitate this. For now, however, the difficulty in determining a place of residence may ultimately negatively affect the prevalence of fraud and error. In **Lithuania** and **Slovakia** it appears that, respectively, no issues and limited issues (see *supra* Section 2.3) have arisen or detected.

Prevalent Issues	Member States
Lacking/delayed information exchange	BE, BG, HR, DK, EE, FI, EL, IS, IE, LV, NL, PL, PT, RO, SK, ES
Lacking awareness of rights and obligations	FI, DE, ES
Identification of Residence	CZ, EL, HU, IT, LV, MT, NO, PL, PT
No Significant Issues	LT, SK

3.1.2. Overview of Member State-specific issues

In addition to the foregoing overarching issues observed in a number of Member States, a number of issues have been noted which are specific to a particular Member State. In what follows, an overview will be given of these issues.

The competent **Belgian** institutions specify that in some cases it remains difficult to rapidly verify findings/doubts as to the applicable legislation (conditions) in the host Member State with the data available to the posting Member State. Moreover, employers acting in bad faith exploit this weakness and/or lack of transparency (e.g. by organising insolvency). As regards family benefits, the competent institution (*FAMIFED*) specifies that the problems it encounters with the European coordination rules arise in the exchange of information with European institutions with which it has not signed an agreement on combatting social fraud in general and which have very restrictive standards governing private data. Lastly, concerning unemployment insurance in Belgium, it need be noted that the U1 form is not always completed with sufficient accuracy or does not offer any response to all the questions raised by the National Employment Office (*NEO*) in order to establish the right to unemployment allowances. It is important, for example, for the *NEO* to know whether a specific person has been working full-time or part-time, exactly how many hours were worked, how much the person was paid, what the type of employment contract was and under what circumstances it was terminated. Dismayingly, a substantial amount of time may pass before the competent foreign body replies to the questions raised in order to verify or authenticate certain forms, or to certain requests for information.

A particular issue arising in the **Czech Republic** is the lacking uniformity in the interpretation of certain terms within the context of the coordination provisions. It suffices for example to refer to the notion of parental leave, which is subject to some discussion as to the exact meaning. As a result of the lacking homogeneity in the definition concerned, uncertainty may potentially lead to fraud and/or error.

In **Denmark** the degree of registered problems specifically related to the implementation of the coordination rules remains limited. The National Board of Industrial Injuries nevertheless reports that the most frequently occurring problem in respect of the application of the coordination rules is when work in Denmark is performed under the pretence of posting or self-employment. This may result in erroneous decisions to the effect that an injured person is not covered by social protection in Denmark and is thus not entitled to compensation. *Udbetaling Danmark* reports that limitations on information sharing – as is the case in Belgium – constitute the primary barrier in combatting fraud and error.

Generally, it can be held that the problems associated to the implementation of the coordination rules have - thus far - remained rather limited in **Estonia**. It appears that double entitlement remains an issue in that individuals apply for unemployment benefits whilst still being employed in another Member State. As previously indicated this is in part attributable to the delay and/or absent cooperation between the Member States' competent institutions.

Similarly to Belgium, Denmark and Estonia, the Social Insurance Institution of **Finland** (Kela) notes that the main problems are associated to the difficulties in obtaining necessary information for determining whether there is entitlement to a given benefit, which again, is attributable to the aforementioned lacking or delayed cooperation between the requisite authorities.

Pursuant to **German** practice, it appears that the rules on the determination of which legislation is applicable (Article 11 *et seq* of Regulation (EC) No 883/2004) are prone to error. Working out which legislation applies concerning an individual in a cross-border setting depends on a multitude of factors. The different possible scenarios are described in the regulations; however, statements of circumstances can be manipulated or relevant facts covered up. It appears that the options available to control these factors effectively, are limited. If, for example, statements concerning the substantial business activity of a self-employed person who pursues several business activities in different Member States need to be checked in the Member State of residence, the question arises as to what means are available to the institution for doing so. Whether a business activity is still being carried out is often relatively simple to establish or prove via the registered trade. However, the question whether this activity is substantial, within the meaning of Article 14(8) of Regulation (EC) No 987/2009, in the country of residence at the time of posting requires more extensive examination. The need for a sophisticated examination as such, inherently carries a greater risk of manipulation and error. Another example concerns the prohibition to replace another posted person (Article 12(1) of Regulation (EC) No 883/2004), which can scarcely be effectively monitored in large businesses. It need also be noted that the rules governing the applicable legislation inevitably lag behind new forms of employment that surface, thus entailing that there is a discrepancy between legislative provisions and factual reality. It tends to take too long to make amendments reflecting such new developments due to time-consuming coordination processes. In the area of family benefits, sources of error and risk arise particularly in cases of subordinate competence under the coordination rules, in particular due to a lack of knowledge of the conditions for and levels of family benefits in the Member State whose legislation has priority. Lastly, in the Administrative Commission's last EHC questionnaire the DVKA (German liaison body for health insurance abroad), attached to the GKV-Spitzenverband (German national association of statutory health insurance funds), pointed out the non-acceptance of the EHC in some regions of the EU when individuals avail themselves to services in another EU country – of which certain 'tourist centres' are typical examples.

In **Hungary** mention is made of difficulties surrounding the determination of the applicable legislation in addition to the aforementioned issue concerning the determination of residence concerning pension benefits.

As indicated, delayed and/or lacking cooperation between Member State authorities render it difficult to adequately implement the coordination provisions and facilitate fraud and error. In **Italy** a particular result of this issue is the fact that unemployment benefits are paid whilst the person concerned is nevertheless gainfully employed elsewhere. This is further aggravated due to the fact that there is no structured system which counters this tendency. In addition to the foregoing, Italy notes that lacking or incomplete information with respect to family benefits renders it extremely difficult to determine entitlement thereto, which is not inconceivably to the detriment of the claimant.

The difficulties encountered in **Latvia** with the implementation of the coordination rules are numerous. In addition to the aforementioned issues pertaining to Member State cooperation and the determination of residence, particular issues arise with respect to double contributions, linguistic discrepancies, paid social services to deceased persons and problems to recover them from the foreign banks, and lastly, the lack of information on a person's employment in another Member State in order to determine the rights to the social service payments. However, the issues concerning double contributions, and double insurance as well as incorrect and/or delayed mortality information are in part to be attributed to the earlier mentioned overarching issues (see *supra* Prevalent Issues).

As previously indicated, the **Netherlands** report that it often proves to be difficult to fully understand the organisational structure and competence of the partner institutions in other Member States and to find the right contact person at the competent institution. In addition, linguistic issues have been noted as detrimentally affecting the implementation of the coordination rules as well as diverging data protection legislation in the respective Member States. Concerning family benefits in particular, artificial agreements within the context of posting have been noted as being detrimental, whilst inappropriate use of the EHIC in border regions has been noted as troublesome concerning cross-border healthcare.

In addition to the issues concerning the determination of residence particularly in the field of atypical employment, the **Norwegian** Health Economics Administration has noted that in the field of benefits in kind, issues have arisen as well. It appears that technical challenges have arisen in relation to the issuing of healthcare rights determined under the EU social security coordination provisions. The challenges are mainly linked to the EHIC and the fact that the EHIC can at present only be issued for a period of three years, regardless of the expected period of insurance. This may increase the risk of fraud and error. However, thus far no cases of fraud and error in this field have been detected.

Polish practice, in line with the foregoing, has illuminated a number of irregularities and issues in the implementation of the coordination rules as well. Concerning *pension benefits*, it appears that there is a failure to provide the requisite data for the identification of individuals, a lack of contact information in social insurance institutions, a lack of information about the death of persons entitled to benefits, resulting in overpayment of benefits, a lack of information about changes of address/place of residence (also of tax service and health insurance contributions), a lack of information about circumstances that determine the entitlement to and the amount of the benefit (e.g. foreign income, continuation of employment, non-exhaustion of the benefit period), national regulations or practice preventing the return of benefits transferred to the bank account of individuals entitled to benefits after their death, 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 – most of which are attributable to lacking or delayed cooperation between the aforementioned institutions. It appears that – concerning health insurance – there have been cases where individuals received benefits on grounds of a valid EHIC, but were then subsequently excluded from the insurance retroactively. Furthermore, there seemingly is a problem associated with the use of Decision S6 and in particular the cancellation of the entitlement. Lastly, certain incidents have erroneously been recognised as accidents at work in the territory of Germany. From May 2004 until the end of the first quarter of 2015, out of 33,827 forms E125 DE containing recognised claims of the German institution in the scope of accidents at work (DGUV), 21,481 claims did not relate to benefits in kind unrelated to an accident at work or an occupational disease. In these cases the benefits related to an accident at work were granted on the basis of forms E111, the EHIC or certificates replacing the EHIC issued by the Polish institution at the request of the German institution. Examples provided by the Polish competent institutions indicate that the main reason for the expenses were patients' visits to clinics or hospitals due to illness, injuries sustained in a place of residence or accidents during time off work and non-working life of the person whose form E125 was concerned. In 80 cases, the Polish institutions did not issue an authorisation document requested by the German side for individuals receiving the benefits within the territory of Germany. These were, in fact, people uninsured in Poland, mostly working in Germany.

Slovakian practice has not encountered any significant issues. In the field of sickness and maternity, the main problem felt by the Social Insurance Agency is the prevalent lacking effective communication with other institutions and the lack of familiarity with national documents. As regards the applicable legislation, the Social Insurance Agency has encountered a problem within the field of posting of workers, whereby atypical forms

of employment and bogus self-employment are used as a means to circumvent the rules on the prohibition of replacing posted workers. Lastly, in the field of family benefits, the aforementioned lack of effective cooperation and data sharing with other (Member State) institutions, as well as the lacking support for institutions from courts and police forces in connection with benefit fraud are significant issues.

In **Spain**, the administration of the right to benefits in kind continues to be problematic due to the aforementioned significant delays in communication with other institutions, which gives rise to fraud and error. Such anomalies are also caused by non-compliance by the insured individuals themselves, when they fail to communicate changes in their personal and/or family circumstances, for example a change of residence, in a timely manner, as required by paragraph 3 of Article 76(4) of Regulation (EC) No 883/2004. This practice is further aggravated by the fact that no financial repercussions are applicable to individuals not complying with the aforementioned obligations, whereas this is the case for both the competent institutions and the authorities in the place of residence. In addition, it appears that there are some issues concerning U1 forms issued in France, which has subsequently resulted in individuals being able to draw unemployment benefits in more than one State.

Unlike other Member States, **Austria** additionally notes problems and issues related to the application of the relevant legislation, and misuse of the EHIC. In **Sweden** on the other hand, it appears that the main concern is related to the fact that individuals are negligent in notifying relevant changes of circumstances.

Finally, in **Lithuania** it appears that no issues have arisen.

3.2. Measures directed at preventing and curbing fraud and error pursuant to the coordination provisions

3.2.1. Prevalent initiatives

As can be derived from the foregoing, numerous issues persist in the application of the coordination rules enshrined in the EU social security coordination Regulations. Consequently, it need not surprise that a myriad of initiatives have been taken in order to combat fraud and error as a result thereof.

In particular, a number of Member States have *increased and enhanced training of employees* in the respective competent authorities and communication concerning fraud and error in the field of social security coordination (**BE, CZ, FI, LV, NL, PL, PT**). Complementing the foregoing, a number of Member States (**BG, DK, EE, FI, EL, IE, LV, NO, RO, ES**) (see *infra*) have invested in greater *awareness-raising and information dissemination not only amongst their employees but equally so with respect to their claimants*. In **Portugal** such training sessions are particularly noteworthy. Three sessions were organised in 2014, each of a duration of two days, which covered the 18 institute of Social Security district centres and involved a total of 255 staff members.

In conjunction therewith, Member States are increasingly making use of *bilateral agreements* between each other or have taken steps to facilitate such bilateral agreements (**BE, DK, IE, IT, LV, MT, NL, NO, PL, PT, RO, UK**).

Initiatives Concerning Coordination-related Issues	Member States
Training and awareness-raising of employees	BE, CZ, FI, LV, NL, PL, PT
Training and awareness-raising of claimants	BG, DK, EE, FI, EL, IE, LV, NO, RO, ES
Bilateral Agreements	BE, DK, IE, IT, LV, MT, NL, NO, PL, PT, RO, UK

3.2.2. Overview of Member State-specific initiatives

In addition to the foregoing, a number of Member State-specific initiatives are noteworthy as indicated in what follows.

Special measures have been taken in **Austria** to prevent fraudulent claiming of the Austrian compensatory pension supplement, which is a special non-contributory benefit listed in Annex X to Regulation (EC) No 883/2004 and thus payable only to persons resident in Austria. Presenting a registration certificate is insufficient to prove permanent, regular residence in Austria. The pension insurance institutions apply strict checks both with regard to applications and to continued payment of the compensatory supplement. In suspect cases, i.e. where there is reason to believe that the pensioner does not permanently reside in Austria, a questionnaire must be completed routinely; income is verified via the competent authorities; the applicants are summoned to the pension insurance establishment and questioned about the income they declared to the residence authorities; and the authorities check whether sickness insurance benefits have been claimed in Austria (if they have not been for an extended period, this could indicate that the person is not resident in Austria). Also, if a telephone call is received from the applicant, the dialling code is checked to ascertain whether the call was made from abroad and if the suspicion that the pensioner does not live in Austria increases, payments are discontinued immediately. Furthermore, measures have been introduced by the 4th Social Law Amendment Act 2009, entailing that persons with pension entitlement are responsible for proving that their usual place of residence is in Austria and insurance institutions are authorised to switch to cash payment of benefits. Furthermore, in such cases the pension insurance institution must request re-notification of the essential information pertaining to the claim for compensatory supplement at least once a year (instead of every three years). Lastly, the pension insurance institutions were also called upon by the Federal Ministry for Labour, Social Affairs and Consumer Protection, as the supervisory authority, to monitor trends among these categories of persons. Any apparent irregularities are to be reported to the Ministry to enable further measures to be taken against abuse.

In **Belgium** – in addition to the foregoing – in 2014 an operational plan was established to fight cross-border fraud by the competent institution for unemployment insurance. Also within the field of unemployment insurance, it need be noted that the presidency of the Benelux Working Group on 'Benefit Fraud' has been entrusted to the NEO, the competent institution in Belgium for unemployment insurance.

In **Croatia** new legislative provisions have been implemented by the new Pension Insurance Act, which are intended to reduce the risk of fraud and error, including amongst others mandatory re-examination in case of disability entitlement.

As previously indicated, in **Denmark** a unit for international administrative cooperation has been established with the aim, amongst others, to ameliorate and facilitate enhanced cooperation with institutions in other Member States and support the forging of bilateral agreements.

Awareness-raising with respect to the rights and obligations associated with social security coordination has become a focal point in **Finland**. This is attained in part via dissemination of relevant information on the respective and pertinent websites. This awareness-raising initiative was furthermore complemented by a joint awareness-raising campaign – via television channels, newspapers etc – in Finland *and* Estonia, which required cooperation between the social security authorities in both States, as well as the labour unions and the pension insurance companies.

In **Germany** the initiatives taken to curb fraud and error have resulted in the recording of A1 documents in an A1 database to which audit authorities have access for matters concerning statutory pensions and accident insurance. In addition, as concerns family

benefits in the realm of social security coordination, specialised case handlers will be responsible for handling such claims.

Greek practice has resulted in the obligation to provide annual life certificates to avoid erroneous payment of pensions to individuals who have deceased.

In **Ireland**, efforts are continuously made to establish contact points with Member States and the anonymous reporting of cases of fraud has been facilitated.

A number of initiatives have been identified in **Latvia**. The main steps to combat fraud and error in 2014 were the attempt to enhance the effective exchange of information between competent institutions, the use of data techniques to fill out e-documents, the use of annual life certificates (similarly to Greece) and an increased use of bilateral agreements with other Member States. Furthermore, Latvia has focused on, as aforementioned, training individuals with respect to the EU coordination Regulations and has - via the Internet - raised citizens' awareness concerning their rights and obligations.

A notable measure in **Malta** is the establishment of a fully-fledged inspectorate branch within the Ministry for the Family and Social Solidarity for the purpose of identifying cases of fraud and performing necessary investigations in this respect.

In the **Netherlands**, as aforementioned, a plethora of initiatives and measures have been taken aimed at the prevention, control and detection as well as the correction and sanctioning of fraud and error in the field of social security coordination (see *supra* p. 34-35)

The focus in **Norway** has predominantly been on the increased exchange of data with the Nordic states concerning registered deaths on a regular basis.

In **Poland** in the area of pensions, action has been taken to introduce electronic exchange of information about deaths in order to ensure that pensions are no longer paid to individuals who have deceased. Within this context cooperation is underway with Germany and Australia as well as with the Netherlands, the UK, Spain, Italy and Croatia. Furthermore information has been obtained with respect to, amongst others, the national legislation concerning the recovery of benefits from foreign bank accounts following a beneficiary's death, on entities authorised to verify signatures and certificates of life in a given Member State and on bilateral agreements executed by EU/EFTA Member States, providing for aggregation of the insurance periods completed in third countries by persons concerned. In addition, several cross-area initiatives have been taken, including direct meetings with representatives of liaison bodies and appropriate EU/EFTA Member States in the scope of social security, exchange of information concerning changes in Polish legislation, changes in institutional structure, procedural questions as well as the appointment of contact persons in each institution for the purpose of making enquiries as to the coordination of social security systems, and inspections conducted by a liaison body in competent institutions in order to eliminate errors and fraud in the field of social security.

In addition to the bilateral agreements in posting, as well as the training sessions generally, **Portuguese** practice has come to include inspections carried out by a given national authority in association and in collaboration with different authorities. This has effectively led to criminal investigations, which thus serve to limit and reduce the cases of fraud and error in social security coordination.

In **Romania**, a network of experts has been established responsible for the combating of fraud and error in the field of social security. In addition, attempts have been made to enhance cooperation with national institutions responsible for combating fraud and error in the field of social security, as well as cooperation with institutions from other Member States responsible for combating fraud and errors in the field of the social security Regulations - in particular Belgium, Germany, France and the Netherlands. Lastly,

regular exchange of database information between the national institutions responsible for combating fraud and error in the field of social security has been facilitated.

In **Spain**, meetings are held with liaison bodies of various States (CH, BE, NL, SE, NO, DK, FI and PL) to establish and draft agreements for the exchange of information to help in the monitoring of deaths, top-up benefits and health cover.

In **Estonia, Iceland** and **Sweden** no specific steps have been taken over the course of the past year.

3.3. Promoting compliance by institutions and healthcare providers in the field of benefits in kind and awareness-raising amongst citizens

In **Belgium, Hungary, Iceland, Italy, Poland, Slovakia** and **Sweden** no noteworthy steps have been taken to promote compliance with the coordination provisions by healthcare providers nor have measures been taken to provide information to citizens concerning benefits in kind. Conversely, a number of Member States (**BG, HR, CZ, DK, EE, FI, DE, EL, IE, LV, LT, MT, NL, NO, PT, RO, ES, UK**) have indeed taken measures to promote compliance in the field of benefits in kind by institutions and healthcare providers with the EU social security coordination rules and to provide information to citizens, and this via the means of extensive awareness raising (see *supra* "Measures directed at preventing and curbing fraud and error pursuant to the coordination provisions"). Within this context, various Member States (**AT, BG, DK, EE, FI, EL, IE, LV, NL, NO, RO, ES, UK**) have directed measures at the users of the social security coordination rules, or in other words, the EU citizens to whom the rules apply. On the other hand, various Member States (**BG, HR, CZ, FI, DE, IE, LV, LT, MT, NO, PT, RO, UK**) have taken steps specifically directed at the provider of benefits.

3.3.1. Awareness-raising directed at claimants

Concerning the former category of initiatives directed specifically at the *users*, the following initiatives have been taken. The National Health Insurance Fund in **Bulgaria** organises periodic media campaigns for the particular purpose of further elaborating upon the rights and obligations inherent to the health insurance services. Regarding information to citizens concerning the EHIC and the coverage of cost under the EHIC, an intensive information campaign was launched in **Denmark** in 2014. The reasoning for this was the repeal of the Danish public tourist health insurance as of 1 August 2014. The campaign was conducted by use of different platforms such as a campaign website, television spots, street events, posters in streetscape, leaflets and information on social media. Similarly, in **Greece** the dissemination of pertinent information for users of the coordination rules and in particular healthcare in a cross-border context, is posted on the websites of the main social security bodies and of the EOPYY. Also in **Latvia** awareness raising is accomplished in a similar manner. Information for citizens is available on the official Internet website of the competent institution. Furthermore, information can be obtained by calling the customer call centre. Informative campaigns specifically related to cross-border health care issues have not been performed during 2014. However, in some informative activities on health care issues, information has been provided about cross-border health care (type of activities: participation in seminars concerning health care; publications in newspapers; television news; usually such activities are initiated by other interested parties (journalists, other governmental institutions, associations, NGOs etc.)). Lastly, in **Austria, the Netherlands, Norway, Romania** and **Spain** use is also made of the Internet, mass media and leaflets/brochures in order to provide citizens with up to date and correct information regarding their rights and obligations under the social security coordination rules. In both Member States information regarding rights is provided to citizens through different channels such as the Internet, social media as well as the national contact point.

In **Estonia** the Unemployment Insurance Fund raises awareness amongst the public mostly by means of the internet and the relevant websites. With respect to the transposition of the Directive on Patients' Rights and previous legislation, a questionnaire to hospitals was furthermore prepared, which is to be completed by foreign patients in order to clarify which rules apply to the patient concerned.

The **Finnish** Kela provides information for public health care providers on its webpages concerning healthcare for foreigners. Kela also provides information for health care providers in the private sector, pharmacies and insurance companies. Furthermore, in 2014 Kela trained its personnel as well as the health care sector within the context of social security coordination. Within this same vein, several internal instructions have been improved. In addition, Kela has been preparing a new data system concerning rights to health care in cross-border situations. The system will comprise for example information about the forms issued to a person and his or her entitlements to health care. The system will also promote compliance with the rules as well as offering accurate information for customers. The estimated launch of the new system will be in March 2016. Kela's Centre for International Affairs was established on 1 January 2014. Most international affairs are centralised there, which also promotes compliance with the rules. Lastly, the national contact point for cross-border healthcare within Kela provides information on issues related to situations where people go from Finland to another country or come to Finland from another country in order to obtain healthcare. This contact point is preparing a new website together with other authorities to provide information in Finnish, Swedish and English about the use of healthcare services in Finland and abroad. The estimated launch of the website will be in September 2015.

Citizens granted entitlement from **Ireland** are forwarded information when they are issued the EHIC. This information advises them on their responsibility if they are no longer resident or insured in Ireland. The processing of reimbursement claims from other Member States promptly leads to withdrawal of entitlement documents where a person is no longer insured in Ireland. This ensures that the Irish Health Service Executive does not have to meet additional costs insofar Ireland is not competent.

3.3.2. Awareness-raising directed at providers

In addition to the foregoing initiatives directed at the citizens, a number of Member States (**HR, CZ, FI, DE, IE, LV, LT, MT, NO, RO**) have (also) implemented measures to ensure greater compliance from the perspective of the *providers* of social security benefits. As aforementioned, **Croatia** and **Finland** provide information directed at healthcare providers and the private sector via their respective websites. The foregoing is also done by the biggest health insurance company in the **Czech Republic**. Identically, in **Germany** compliance is promoted via the means of online information targeted specifically at service providers for the purpose, amongst others, of preventing fraud and error. In addition, case handlers at the statutory accident insurance institutions regularly attend professional training seminars where they receive expert advice on the prevention of fraud and error.

The **Irish** Health Service Executive, which is the competent institution for benefits in kind, has greater interaction with institutions in other Member States. This cooperation greatly assists in resolving issues in determining matters such as, amongst others, eligibility and residency. The Health Service Executive has a central contact for institutions in other Member States to facilitate the issuing of temporary replacement certificates. This is where a person requires an entitlement document urgently. This ensures the person has not to meet the cost, but is provided with care under regulations. This email contact also gives the opportunity for institutions in other Member States to correspond electronically with local health offices in Ireland. Not only does this provide a central contact point for citizens; it also leads to uniformity in the application process and in responding to other Member States on outcomes. The Health Service Executive, in its obligation to confirm and record information on entitlement documents, has updated all healthcare providers on what is required to facilitate the reimbursement from other

Member States. This ensures that all relevant information is available to claim from the institution in the competent State.

In order to strengthen proper application of the EU social security cooperation rules, in **Latvia** the competent institution – responsible for the provision of state-funded health care services – provides daily support to healthcare providers by means of, amongst others, consulting health care providers on specific issues and distributing informative leaflets.

In **Lithuania**, the contract between a healthcare provider and the *THIF* simply obliges the healthcare provider to comply with the provisions of the coordination Regulations when providing healthcare services. As is done to provide pertinent information to citizens, the Norwegian Health Economics Administration provides information, in addition to arranged meetings and guidelines, to institutions and healthcare providers via different channels such the internet, social media and the national contact point, in order to promote compliance with the coordination rules.

Maltese practice provides for regular in-house training and online and/or telephone support concerning the interpretation and application of the coordination provisions.

Initiatives in the **Netherlands** aimed at the service providers include, amongst others, dissemination of relevant information directed at the providers concerned via the internet. Similarly to the practice in the Netherlands, the dissemination of updated information in **Portugal** is achieved via the internet in conjunction with circulars disseminated by the Ministry of Health.

Regarding the benefits in kind, the National Health Insurance Office in **Romania**, as a liaison body, has submitted through its competent bodies, namely the health insurance offices, information necessary for the implementation of EU regulations, directed at both the insured persons as well the healthcare providers. Similarly to the practice in Norway, the dissemination of relevant information is achieved by means of, amongst others, the Internet, meetings at the level of competent institutions and mass media.

3.4. Remaining issues

In a large number of Member States (**AT, BE, BG, FI, DE, IE, LV, NO, PL, ES**) certain matters that have not been discussed do remain unresolved, despite the laudable steps taken to prevent issues as such.

Austrian Social Security finds the incidence of and potential for circumvention under the applicable legislation particularly problematic. The problems in this area have been raised in numerous notes and expert reports within the Administrative Commission over the past few years, and are currently being discussed in more detail in the 'Posting' Working Group.

As regards applicable legislation in **Belgium**, the competent institutions note that the conditional withdrawal of PDs A1 by the competent foreign institutions remains problematic as well as the final payment of social security contributions in the correct social security scheme and cross-border recovery. Additionally, the implementation of direct recovery between the competent social security bodies of undue social security contributions (in the posting Member State) also remains problematic. Lastly, discrepancies between what constitutes fraud and error in the Member States concerned render cooperation more difficult.

In **Bulgaria** a practical problem has been observed. It appears that there is a lacking willingness to treat patients that are insured outside of Bulgaria. This is further aggravated by the fact that there is no efficient means to verify this observed reluctance to treat patients as such.

The **Finnish** Centre for Pensions finds the payment of contributions to different Member States particularly difficult. Some employees have lost their jobs or are simply not hired due to the fact that the employers do not want to bother with foreign payments. This is considered as an impediment to the free movement of workers. Furthermore, the retroactive cases that need correction consistently cause problems and despite the initiatives taken to curb long handling times per case, this nevertheless persists as a distinct issue.

Accident insurance institutions in **Germany** have limited competence in performing controls and checks in companies with the aim of preventing abuse of the system in the form of illegal employment, improper application of the provisions on which legislation is applicable, and undeclared work.

Notwithstanding that it has been mentioned repeatedly, in **Ireland**, note is made of the fact that more immediate and electronic transfers of case-by-case information requests from and to all organisations is necessary. The existing systems are constrained by time delays and an inefficient use of resources. Moreover, clarification from social security organisations on what investigations and enquiries can legitimately be undertaken by them for social security organisations having regard to their national and EU legislation would help. Lastly, there is a need to ensure that all cross-jurisdictional outcomes are collated and recorded to measure the effectiveness of ongoing co-operation.

With an increasing move towards electronic service delivery, e-fraud is an emergent risk variable that will require consideration by all organisations.

In **Latvia** three distinct remaining issues can be identified. Firstly, the Office of Citizenship and Migration Affairs does not maintain data on persons' departure outside of Latvia, and therefore the competent institution of Latvia (the State Social Insurance Agency) does not have this information. As a result, it is not possible to apply the bilateral agreement between pension institutions of Latvia and Lithuania on the exchange of information on the death of pension receivers or their departure to another country as effectively as it should. Secondly, an agreement between pension institutions of Latvia and Estonia on the exchange of information on pension receivers in electronic form has still not been concluded. Lastly, the pension receivers living abroad are not satisfied with the situation that they annually have to submit life certificates for further pension payment.

Norway has experienced problematic cases in the field of benefits in kind whereby an individual sent a Norwegian healthcare provider a copy of the EHIC *after* the treatment has taken place, whereas the EHIC (and the insurance period of the person) subsequently turned out to have started after the treatment took place. In such cases the individual concerned should have paid for the benefits in kind and not been given rights following the rules in the EU social security coordination.

In **Poland** issues persist in the field of pensions. Specific sources of concern are inconsistent rules concerning the recovery of pensions from a bank account following a beneficiary's death, and problems with the retrieval of benefits from some EU/EFTA Member States. In addition, the lack of access to pertinent registers renders it impossible to get assistance from certain Member States with respect to the deaths of unshared customers. As a result, use need still be made of hard-copy life certificates.

In **Spain**, the difficulties persist of determining the habitual residence of pensioners in a State other than the competent State. Within this context and in view of the many tourists and residents, pensioners and/or their relatives frequently stay in Spain for long periods of time, claiming that they are staying only temporarily and with no interest in formally becoming habitual residents. Furthermore, Article 11 of Regulation (EC) No 987/2009 stipulates that once an overall assessment has been made of an individual's circumstances, if there is disagreement between the institutions, it is the individual's intention that always prevails for the purpose of determining the habitual residence in a

State other than the competent State. *In casu*, this can thus lead to or increase the risk of defrauding the presumed competent State and also has serious implications for the country where these individuals are staying, theoretically, on a temporary basis. The country the individual is 'visiting' is subject to an excessive demand for benefits in kind, often related to chronic and pre-existing illnesses, which it is obliged under the current provisions of Decision S3 to provide, but which would in practice be more in keeping with habitual residence, given the regularity with which insured individuals require them. This all has significant repercussions for the planning of health services, as these individuals – oftentimes pensioners – cannot be included as actual residents, even though in practice the frequency and type of health care they require is more in keeping with a supposition of habitual residence.

Conversely to the foregoing, in **Croatia, the Czech Republic, Denmark, Estonia, Greece, Hungary, Iceland, Italy, Lithuania, Malta, the Netherlands, Portugal, Romania and Slovakia** no (significant) new issues have been identified.

3.5. Recommendations

For the purpose of resolving issues concerning the applicable legislation, **Belgium** proposes to make increased use of Decision A1. Concerning family benefits, the competent institution notes that meetings between counterpart European institutions are required to draw up agreements on combatting social security fraud and errors. The aim of these agreements should be to define a legal framework for transparent cooperation and effective information processing.

Estonia notes that increased use of electronic data exchange would facilitate enhanced and more effective cooperation, thereby minimising the potential for fraud and error.

From the **Finnish** perspective, it is noted that a key proactive resolution could be to reach employers and employees and give them adequate information as early as possible, allowing for their respective social security matters to be dealt with in advance. As a suggestion to resolve this issue, easy access to information on how to pay contributions should be provided. For example, a joint website could be created which has information on all the Member States and their contribution collection practices or EU webpages on practical guidelines. Concerning the cases that need correction afterwards, the Regulations could for example provide means to reimburse social security contributions between the Member States' competent institutions, as the coordination rules require Member States to determine the applicable legislation as well. Lastly, regarding the avoidance of long handling times, it is noted that a workable solution could be to consider time limits for providing answers to requests for information.

In addition to the foregoing, **Greece** notes the possibility of converting the personal identification number (PIN) provided for in Article 52(3) of Regulation (EC) No 987/2009 into a pan-European number, with integrated use and recognition by all EU social security bodies and, of course, registration in a single computerised database.

4. DATA EXCHANGE IN THE FIELD OF FRAUD AND ERROR

4.1. Actions taken and measures implemented to enhance cross-border cooperation and information exchange

In what follows a schematic overview is provided, elaborating, per Member State, upon measures taken to enhance cross-border cooperation which have not already been elaborated upon in addition to the bilateral agreements that have been concluded in the context of data exchange.

Member States	Initiatives
---------------	-------------

<p>Austria</p>	<p>Actions</p> <ul style="list-style-type: none"> • Establishment of a national 'fraud and error' contact point: the Austrian contact point was set up in consultation with the Federal Ministry for Labour, Social Affairs and Consumer Protection at the Central Association of Austrian Social Insurance Institutions (<i>Hauptverband der österreichischen Sozialversicherungsträger</i>). The insurance institutions and other public authority stakeholders were given comprehensive information about the tasks and possibilities of the H5NCP network and encouraged to make active use of it. • Active participation by Austrian Social Security in the following working groups and projects: <ul style="list-style-type: none"> ○ The Administrative Commission Ad-Hoc Group on 'Combating Fraud and Error through the Exchange of Personal Data', Brussels; ○ The Conference on 'International exchange of data on deaths', Cologne; ○ Participation in Ghent University's project 'Red Flags! Prevention, Detection and Cooperation in the Fight Against Cross-Border Social Fraud'; • Participation in the 'European Working Group on Benefit Fraud', Dublin. <p>Bilateral agreements</p> <ul style="list-style-type: none"> • Agreement with Germany on combating undeclared work: In 2012, at the initiative of the Finance Administration, Austria and Germany entered into an agreement on cooperation in combating cross-border undeclared work and illegal cross-border hiring of labour. The agreement provides for better bilateral cooperation. • Electronic exchange of data on deaths via Deutsche Post's pensions service: on the basis of an agreement with Deutsche Post's <i>Rentenservice</i>, data on deaths is exchanged between the Austrian pensions insurance institute and the German <i>DRV Bund</i> (pension fund). • Electronic exchange of data on pension amounts with the German statutory pension insurance scheme (<i>Deutsche Rentenversicherung</i>) via the Worldwide Exchange of Social Security Information (WESSI) system developed by the Austrian social security institutions. The basis is an agreement between the Austrian pension insurance institution and the German <i>DRV Bund</i>.
<p>Belgium</p>	<p>Actions</p> <ul style="list-style-type: none"> • As regards applicable legislation, the competent institutions list the following activities and measures: annual informal trilateral meetings with representatives of the social inspection services of the Netherlands, Belgium and Germany and informal meetings, at their request, with the German financial police (<i>Finanzpolizei</i>), who are competent for undeclared work, with the aim of exchanging information and possibly concluding an agreement on cooperation. • In general, Belgium promotes optimum use of the network of national contact points under Decision H5 and particularly the e-platform, which was set up at the request of the Administrative Commission. <p>Bilateral agreements</p> <ul style="list-style-type: none"> • With respect to family benefits, the competent institution (<i>FAMIFED</i>) notes that, in cases of fraud, the Brussels agreement on cross-border cooperation between local authorities and public bodies of 16 September 2002 specifies the legal framework for such cooperation between France and Belgium for the purposes of cross-border cooperation on the family benefits system. The institutional organisation of the Kingdom of Belgium delegates its responsibilities to federated bodies, municipalities and regions, whilst in France they are shared between the State and the various levels of local authorities. However, it should be noted that, as far as the family benefit system is concerned, the exchange of information under the agreements for cross-border cooperation is virtually non-existent. The exchange of information with European public institutions does not function because of the communication difficulties encountered by our services when fraud is identified in files for social beneficiaries residing in Europe outside the Belgian territory or receiving various social allowances in Europe outside the Belgian territory.
<p>Bulgaria</p>	<p>Actions: N/A</p> <p>Bilateral agreements:</p> <ul style="list-style-type: none"> • Agreement concerning data exchange with Germany • Agreement concerning data exchange with the United Kingdom • Agreement concerning data exchange with the Netherlands
<p>Croatia</p>	<p>Actions: N/A</p>

	<p>Bilateral agreements:</p> <ul style="list-style-type: none"> • Bilateral agreement with Slovenia concerning electronic data exchange with respect to mortality information, rendering the use of life certificates redundant.
Czech Republic	<p>Actions: N/A</p> <p>Bilateral agreements:</p> <ul style="list-style-type: none"> • Agreements with Germany, France and the Netherlands concerning illegal work and the combating of misuse of social security benefits. These are rarely applied, however.
Denmark	<p>Actions</p> <ul style="list-style-type: none"> • Denmark is actively represented on the H5NCP Platform. • Denmark is represented in several working groups, such as the Nordic working group on Benefit Fraud and the Working Group on European Benefit Fraud. • Denmark has, as mentioned above, established a central unit for international administrative cooperation as well as a section on data and data matching under the auspices of <i>Udbetaling Danmark</i>. Moreover, Denmark is in the process of further strengthening the former initiative by establishing an international control unit focusing specifically on cooperation and control within the EU/EEA area. <p>Bilateral agreements</p> <ul style="list-style-type: none"> • <i>Udbetaling Danmark</i> has concluded a Memorandum of Understanding between <i>Udbetaling Danmark</i> and the Department for Work and Pensions and the Department for Social Development of Great Britain and Northern Ireland concerning cooperation and mutual assistance in the administration of social security and social assistance programmes in October 2014. The declaration awaits implementation while the technical platform for exchange of data is decided. The agreement is intended to enhance cooperation on information exchange and is hence not intended solely to fight fraud and error. The agreement is in its current form limited to cooperation on administration of pension, but it is the mutual intention to extend the agreement to other areas. • Denmark is in the process of drawing up an agreement between Nordic institutions in Finland, Iceland, Norway, Sweden and Denmark on cooperation and exchange of information via secure e-mail on social security and payment of benefits. The agreement is expected to be concluded in 2015. • A new Nordic Convention on social security entered into force on 1 May 2014. The agreement contains among other things commitment to enhanced cooperation on electronic information exchange.
Estonia	<p>Actions: N/A</p> <p>Bilateral agreements</p> <ul style="list-style-type: none"> • No <i>de iure</i> bilateral agreements have been established. • <i>De facto</i> cooperation meetings are held with the Finnish competent institutions every autumn where issues concerning fraud and error are discussed.
Finland	<p>Actions: N/A</p> <p>Bilateral agreements</p> <ul style="list-style-type: none"> • Cooperation with Estonia; meetings and negotiations in different branches of social security. • Secure e-mail connections with Estonia and Sweden. Negotiations for establishing secure e-mail connections with other Nordic pension institutions are ongoing. • Electronic exchange of insurance number data (E501) between Finland (the Finnish Centre for Pensions, <i>ETK</i>) and Sweden, Norway and Germany. The <i>ETK</i> submits the insurance numbers also to Kela, the social insurance institution of Finland. • Online access to German insurance history data (E505) and information on pension amounts from the <i>ETK</i>, employment pension institutions and Kela. • Unilateral exchange of insurance history (E505) from Norway and Sweden to Kela. • Based on bilateral agreements, Finland electronically exchanges: <ul style="list-style-type: none"> ◦ life certificates between Finland (both <i>ETK</i> and Kela) and Sweden and Norway. • life certificates between Kela and Germany (Deutsche Post). The exchange of information on deaths with Germany and Spain are under negotiations.
Germany	<p>Actions: N/A</p> <p>Bilateral agreements</p>

	<ul style="list-style-type: none"> Further progress in the testing of and preparation for the introduction of procedures for automated cross-checking of data on deaths with Belgium, Bulgaria, France, Greece, Croatia, Poland and the United Kingdom.
Greece	<p>Actions: N/A</p> <p>Bilateral agreements</p> <ul style="list-style-type: none"> The electronic exchange of data on deceased pensioners has been put into effect between social security bodies in Germany and Greece (IKA-ETAM and OGA). <p>The German pension institution and the Greek social security bodies (IKA-ETAM, OGA and OAEE) share the possibility of automated access to the German E505 certificate concerning the insurance history of a worker and to information on pension amounts.</p>
Hungary	<p>Actions</p> <ul style="list-style-type: none"> Data exchanges with competent authorities. Legal assistance and awareness raising amongst stakeholders. Contacts with Member State representatives. <p>Bilateral agreements:</p> <ul style="list-style-type: none"> Bilateral agreement with Austria and Slovakia (although these have not proven to be sustainable).
Iceland	<p>Actions:</p> <ul style="list-style-type: none"> Establishment of the National Contact Point Platform based upon decision H5NCP. <p>Bilateral/multilateral agreements</p> <ul style="list-style-type: none"> Nordic working group on benefit fraud, which holds yearly meetings.
Ireland	<p>Actions: N/A</p> <p>Bilateral agreements</p> <ul style="list-style-type: none"> A Memorandum of Understanding (MOU) between the Government of Ireland and the Government of the United Kingdom and Northern Ireland concerning co-operation and mutual assistance in the administration of social security schemes was signed on 9 October 2000. Under the MOU, procedures have been implemented to ensure that all information requests and data exchanges are made through a single point of contact in each jurisdiction. A Cross Border Operational Forum operates under the MOU. The Cross-Border Operational Forum comprises of senior fraud managers from the Department of Social Protection, the Department for Work and Pensions (UK) and the Northern Ireland Social Security Agency of the Department for Social Development. The Forum's remit is to liaise at operational level and ensure that measures are in place to ensure effective cooperation, prevention and detection of fraud. <p>The forum continues to look at areas and opportunities for data exchanges.</p>
Italy	<p>Actions: N/A</p> <p>Bilateral agreements:</p> <ul style="list-style-type: none"> Agreement with Austria, Germany and Switzerland concerning data exchange
Latvia	<p>Actions: N/A</p> <p>Bilateral agreements</p> <ul style="list-style-type: none"> Agreement between the State Social Insurance Fund Board of the Republic of Lithuania and the State Social Insurance Agency of the Republic of Latvia on electronic exchange of information on pension receivers (05.08.2011). Parties electronically exchange information on change of residence or the death of mutual pension receivers. Arrangements have been made for the conclusion of an agreement between the National Social Insurance Board of the Republic of Estonia and the State Social Insurance Agency of the Republic of Latvia on the electronic exchange of information on pension receivers. It is planned that parties will electronically exchange information on change of residence or the death of mutual pension receivers.
Lithuania	<ul style="list-style-type: none"> No new measures were taken in 2014.
Malta	<p>Actions: N/A</p> <p>Bilateral agreements:</p> <ul style="list-style-type: none"> Data exchange agreement with the United Kingdom concluded in 2011.
The Netherlands	<p>Actions:</p> <ul style="list-style-type: none"> . Health care: participation in the International Association of Mutual Benefits and the European Healthcare Fraud and Corruption Network.

	<p>EHFCN's activities aim to support members and associate entities in their work of prevention, detection, investigation, prosecution and redress of healthcare fraud, corruption and waste.</p> <ul style="list-style-type: none"> • A national contact point for social security has been established. <p>Bilateral agreements</p> <ul style="list-style-type: none"> • Concerning posting, agreements have been concluded with Romania, Bulgaria and Poland. • Concerning the exchange of information with respect to deaths, agreements have been concluded with Belgium, Germany and France.
Norway	<p>Actions</p> <ul style="list-style-type: none"> • Establishment of a national contact point, operative since 2014. <p>Bilateral agreements</p> <ul style="list-style-type: none"> • Yearly meetings are held between the Nordic countries assessing the mutual adherence to the Nordic and European treaties in the field and addressing mutual challenges in combating fraud and error.
Poland	<p>Actions (by the NCP network):</p> <ul style="list-style-type: none"> • Obtaining information on entities entitled to verify a signature and life certificate in a given Member State. • Obtaining information on bilateral agreements entered into by EU/EFTA Member States, which provide for the aggregation of insurance periods completed in third countries. • Obtaining information included in agreements on the electronic exchange of information on beneficiaries' deaths. • Obtaining and the exchange of information on contact persons/institutions competent to handle a particular case. • Obtaining information on national legislation concerning the retrieval of benefits from foreign bank accounts following the beneficiary's death. <p>Bilateral agreements</p> <ul style="list-style-type: none"> • As regards <i>ZUS</i>: In order to avoid overpayment of benefits following the beneficiary's death, actions have been taken in order to effect the electronic exchange of information on deaths. Currently, agreements have been signed with Germany, Australia (a project has been implemented) and Sweden. Currently, work is under way to facilitate electronic exchange of information with the Netherlands, the UK, Spain, Italy and Croatia. • As regards <i>KRUS</i>: In order to avoid overpayment of benefits following the beneficiary's death, steps have been taken to implement the electronic exchange of information on the death of pensioners between KRUS and the German institution.
Portugal	<p>Actions: N/A</p> <p>Bilateral agreements:</p> <ul style="list-style-type: none"> • Bilateral agreement with Switzerland concerning disability and pension insurance. • Bilateral agreement with Ireland concerning marriages of convenience. • Bilateral agreement with the Netherlands concerning information-sharing with respect to fraud and error.
Romania	<p>Actions</p> <ul style="list-style-type: none"> • According to the duties under the application of Decision H5, the CNPP, as a national contact point in combating fraud and error in the field of social security, via the Directorate for International Relations, has assigned two employees for solving the related requests. <p>• Bilateral agreements: N/A</p>
Slovakia	<p>Actions: N/A</p> <p>Bilateral agreements</p> <ul style="list-style-type: none"> • Information is exchanged with the Czech Republic concerning the administration of pensions. • A bilingual form has been developed in cooperation with the HMRC in the United Kingdom to facilitate information exchange. To prevent and detect fraud, bilateral working meetings are held with the institutions in neighbouring States (the Czech Republic, Hungary and Austria) to improve cooperation and information exchange in order to prevent fraud and error and to deal with cases of fraud and error.
Spain	<p>Actions: N/A</p> <p>Bilateral agreements:</p> <ul style="list-style-type: none"> • Bilateral negotiations are underway concerning collaboration agreements with liaison bodies of other Member States, in order to obtain information relating to pensioners of one State who reside in the other, with the objective of monitoring the proper implementation of the priority rules for benefits in kind set out in Article 25 of Regulation

	<p>(EC) No 883/04.</p> <ul style="list-style-type: none"> Spain and the United Kingdom have continued to make progress in the exchange of information relating to British citizens who are recognised as UK pensioners, but who are eligible for health care under Spanish legislation only because they are resident in Spain. A collaboration agreement also exists between Spain and Germany for the electronic exchange of information on pensioners of both states. With the information provided by Germany, a process of cleaning this data has been initiated, with the aim of verifying cases of people whose health care should, under the priority rules, be funded by the country paying their pension, as they are currently eligible for health care under Spanish law only because they are resident in Spain.
Sweden	<p>Actions</p> <ul style="list-style-type: none"> The Social Insurance Agency actively participates in seminars and other activities organised by the European Commission in this area. <p>Bilateral agreements</p> <ul style="list-style-type: none"> An exchange of information between countries in the form of requests between them is therefore necessary to minimise the risk that the payment is made from two countries simultaneously. Cooperation with the relevant authorities in other Member States takes place primarily through the exchange of information on individual cases. For example, if a child lives abroad, the Social Insurance Agency sends a request to another Member State once a year to ensure that the right to the family benefit still exists.
United Kingdom	<p>Actions: N/A</p> <p>Bilateral agreements</p> <ul style="list-style-type: none"> Ireland – Continued participation in the Cross Border Operational Forum with Ireland and Northern Ireland. Data matching continues on unreported deaths in the state pension caseload. Spain – Data matching continues on unreported deaths in the state pension caseload. Officials from the UK visited Spain and held productive talks with Spanish officials on how to tackle cross-border fraud. A Memorandum of Understanding is currently being worked on which will allow greater data sharing on working age cases. Germany – Talks have been held on progressing data matching on unreported deaths in the state pension caseload. Initial testing took place in spring 2015 with a view to full live running in autumn 2015. Poland – Hosted a visit in London for Polish officials on progressing data matching on unreported deaths in the state pension caseload. Testing is to take place during 2015 with a view to full live running in early 2016. The Netherlands – Work continues to get data matching on state pension caseload live. Malta – Data matching for unreported deaths was tested and became live in December 2014. Denmark – Memorandum of Understanding signed in 2014. Work on-going to get data matching live, target date autumn 2015. Negotiations with France, Italy and Switzerland have been on-going during 2014 to agree and sign Memorandums of Understanding.

4.2. Cross-border social security cooperation and privacy concerns

4.2.1. General Findings

In the large majority of Member States (**AT, BE, BG, HR, CZ, DK, EE, FI, DE, IS, IT, LV, MT, NL, NO, PL, PT, RO, SK, SE**) privacy and the protection and security of personal data is guaranteed by both international as well as national legal provisions. In particular the foregoing refers to the applicable EU provisions pertaining to the protection of data, but equally so national safeguards that have been implemented in this respect.

In addition and noteworthy, **Belgium, Finland** and **Latvia** have concluded bilateral and/or multilateral agreements with other States concerning the protection of such data and privacy. Furthermore, a measure worth mentioning is the encryption of data as done by the **Czech Republic, Germany, Ireland** and **Latvia** as a means to safeguard privacy and data whilst nevertheless complying with the coordination provisions.

4.2.2. Overview of Member State-specific action

In what follows a short overview is provided of the noteworthy individual Member State initiatives as concerns the protection of data and privacy in the field of social security coordination.

In **Belgium**, as regards family benefits, the competent institution (*FAMIFED*) notes that information is exchanged in compliance with Article 76 (4) of Regulation (EC) No 883/2004. This Article stipulates that the institutions and persons covered by the Regulation have a duty of mutual information and cooperation to ensure the correct implementation thereof. Article 77 refers to compliance with the legislation on data protection in the Member State, which provided the data and in the Member State receiving the data in compliance with EU rules on the protection of natural persons with regard to the processing and free movement of personal data. Concerning unemployment insurance, the competent institution indicates that the Belgian legislation covering *ONEM* applies to the members of its staff. The Belgian legislation concerned is: the Royal Decree of 2 October 1937 on the status of officials of the state amended by Royal Decree of 26 September 1994 reforming various regulatory provisions applicable to state officials; the Act of 15 January 1990 on the institution and organisation of the Crossroads Bank for Social Security (CBSS),¹⁰ hereinafter the *CBSS Act*; the Act of 8 December 1992 on the protection of privacy with regard to processing personal data,¹¹ hereinafter the *Act on privacy*; and the Act of 11 April 1994 on government information.¹² In addition, Belgium has concluded a treaty with the Netherlands on the development of cooperation and administrative assistance on social security (28 February 2013) as well as an agreement with the French Republic for the development of cooperation and administrative assistance on social security (17 November 2008). Finally, there have been authorisations by the Sectoral Committee on Social Security and Health with respect to the exchange of personal data. In particular, this concerns the authorisation of the Sectoral Committee on Social Security and Health, 'social security' section, on the exchange of personal data between the *NEO* and the *UWV (Uitvoeringsinstituut Werknemersverzekeringen - Netherlands)* obtained on 7 May 2013, and the authorisation of the Sectoral Committee on Social Security and Health, 'social security' section, on the exchange of personal data between the *NEO* and *Pôle Emploi (France)*, obtained on 7 July 2013.¹³

In **Denmark**, in cases of cross-border cooperation and information exchange, the privacy and protection of personal data is guaranteed by adhering to relevant national legislative provisions in both countries as well as relevant EU provisions, e.g. Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data. Additionally, personal data protection is guaranteed by securing the technical platform for information exchange, which the data protection provisions prescribe.

Similarly, whilst implementing Regulation (EC) No 883/2004, the insured person's personal data is processed in accordance with the **Estonian** Data Protection Act. There are certain restrictions concerning access to and the processing of personal data in *EHIF*.

¹⁰ *Belgian Official Journal* of 22 February 1990.

¹¹ *Belgian Official Journal* of 18 March 1993.

¹² *Belgian Official Journal* of 30 July 1994.

¹³ In the light of the recent *BARA* judgment, the legal status of such bilateral cooperation agreements, which even before said judgement according to some was unclear, has now become even more uncertain. The same goes for many other types of cooperation involving the exchange of personal information discussed in the national reports, all of which were drafted before the Court of Justice's judgement in the *BARA* case. The impact of said judgement should be subject to research and must be considered as a new item for next year's questionnaire.

Access to the information concerned is limited to specialists who are engaged in dealing with e-forms and the implementation of Regulation (EC) No 883/2004 and only insofar the data is effectively required in order to complete their tasks.

To safeguard the protection of personal data, **Finland** – as has been done in Belgium – has concluded a bilateral agreement with Norway and Sweden on data exchange management according to Decision 117/82. Insofar the exchange of information is possible according to both countries' legislation on data protection, an agreement can be made on it between two or more countries. The provisions in Regulation (EC) No 883/2004 (especially Article 76) also support the exchange of this information on a case-by-case basis if the information is needed when implementing the Regulations in practise. Furthermore, data matching in the pensions sector concerning the exchange of PINs and insurance periods is directly derived from Regulation (EC) No 987/2009. Additional provisions concerning the exchange have been agreed upon in the agreements with Sweden, Norway and Germany.

In **Germany**, for social security purposes, §77 SGB X in conjunction with Regulations (EC) No 883/2004 and No 987/2009 (or their respective predecessors) forms the general legal basis for the transmission of social security data to foreign bodies. Data may be transmitted only to the extent necessary to enable German social security institutions or foreign authorities to perform their statutory tasks, and provided that doing so does not contravene the principles in Article 6 TEU. The IT security objectives of the German Social Security Code are very closely aligned with the security objectives of the EU Data Protection Directive (Article 17 of Data Protection Directive 95/46/EC). In particular, electronic data transfer occurs using SSL encryption and – provided the foreign institution has the technological capabilities – via the sTesta network. Wherever possible, data to be exchanged is, additionally, pgp or pkcs#7-encrypted. It need be noted, however, that the data protection rules under national law vary widely from one Member State to another. Lastly, for the purposes of the German child benefit under the Income Tax Act, §30 of the Fiscal Code (Tax secrecy) in conjunction with the Regulations forms the legal basis for the transmission of child benefit data to foreign institutions responsible for family benefits. Under this provision, child benefit data may only be disclosed if this serves the implementation of child benefit tax procedures/proceedings, if it is expressly permitted by law, in cases of compelling public interest, or if the person concerned gives his or her consent.

In **Iceland** data processing is protected by Act No 77/2000 on the Protection of Privacy.

As is the case in Germany, in **Ireland** robust procedures and practices are in place for the secure transmission of sensitive data to other bodies. One of the methods employed to safeguard the protection of personal data is via the encryption thereof.

Italy also guarantees privacy rights and protects data by reference to national and international legislation. Claimants are informed on how their respective data will be handled. Furthermore, data exchange is solely permitted insofar the parties have given consent for such exchange. Lastly, timely notifications are obliged in case of malfunctions, defects, or other irregularities pertaining to the confidentiality of data.

In **Latvia**, privacy and the protection and security of personal data on a national level is guaranteed according to the Personal Data Protection Law. Furthermore, there are various provisions as such in all international agreements on social security between Latvia and third countries (Australia, Belarus, Canada, the Russian Federation and Ukraine). Lastly, in the exchange of data between Latvia and Lithuania, it need be noted that the data is also encrypted – as is the case in Germany and Ireland.

In **Lithuania**, the protection and security of personal data within the context of social security coordination is ensured by the Law on Legal Protection of Personal Data. In addition, data exchanges are subject to the privacy provisions in the relevant European instruments. Again, these same forms of protection are accorded in **Norway**, by the Act

of 14 April 2000 No 31 relating to the processing of personal data (Personal Data Act), which implemented Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.¹⁴ In addition, section 7 of the Act of the Norwegian Labour and Welfare Administration regulates the duty of confidentiality. In **Poland**, data processing is also protected by detailed provisions, including the Personal Data Protection Act of 29 August 1997 (Journal of Laws of 2014, item 1182 as amended) and the Classified Information Protection Act of 5 August 2010 (Journal of Laws of 2010, No 182, item 1228 as amended), as well as the European relevant provisions.

In **Malta** reference is made to the bilateral agreement between Malta and the United Kingdom, which was drafted in conformity with EU Directive 95/46/EC and the Data Protection Act.

Data processing and privacy concerns in **Portugal** are dealt with by the National Personal Data Protection Act (Act No 67/98), which lays down the basic and general regulations in this respect.

In **Croatia, Romania** and **Slovakia** reference is made to the national acts and instruments that govern the protection of data processing. Similarly, as concerns **Spain** two national acts are worth mentioning which govern the protection of data pursuant to data processing. Firstly, Article 66(1) of the General Law on Social Security provides that data obtained in connection with social security administration must be confidential and must not be given or communicated to third parties, except as permitted by the Law. Secondly, Organic Law 15/1999 of 13 December 1999 on the Protection of Personal Data is designed to guarantee and protect – in the area of the handling of personal data – public freedoms and the fundamental rights of natural persons, and especially their honour and personal and family privacy.

4.3. Assessing potential conflicts vis-à-vis privacy legislation¹⁵

Mindful of the foregoing, a number of Member States (**AT, BG, HR, CZ, EE, DE, HU, IS, IT, LV, LT, MT, NL, NO, PT, RO, SK, SE**) have noted that no conflict is considered to exist in view of the coordination rules vis-à-vis the EU privacy and data protection legislation. As noted by **Italy**, however, the necessary cooperation required to combat fraud and error in the realm of social security coordination does flirt with potential privacy concerns. Consequently, it is not inconceivable that several other Member States (**BE, DK, FI, EL, IE, PL, ES**) make note of the fact that issues as such may in fact arise due to the discrepancies between the two fields of legislation. **Iceland** notes that privacy legislation hinders the cooperation between competent authorities, thus taking into consideration the opposing perspective not focused on the privacy concerns of the claimant.

In **Belgium** for example, the competent institutions in the field of unemployment insurance consider it to be a concern. If, depending on the administrative and judicial/criminal nature of the investigation, various European provisions on privacy and data protection apply to the inspection services and the competent institutions/authorities, the investigators in the field find themselves in a difficult position. Whilst the investigation may be criminal in nature (but only in the requesting Member State), a request for cooperation is frequently confined to an administrative request to the competent administration in the Member State to which the request is directed. The competent foreign administrations may also be forced to comply with stricter national regulations on privacy because they do not have investigatory powers

¹⁴ OJ L 281, 23.11.1995, p. 31–50.

¹⁵ As mentioned before, the national reports were received before the BARA judgement and said judgement has not been taken into account during the writing of this report.

and, most of the time, depend on sincere cooperation on the part of the public and employers. Concerning family benefits, the competent institution (*FAMIFED*) emphasises that when domestic Belgian legislation on privacy is so strict as to make it necessary to obtain an explicit authorisation for the communication of personal data to a third party, there is in fact a conflict.

Denmark considers the need for a system of safe communication between the Member States to be the most substantial challenge in relation to EU privacy and data protection provisions and cross-border cooperation and information exchange. It is hoped that this problem will be solved with the implementation of the EESSI system. Within this context, **Finland** and **Greece** note that one of the problems with cross-border cooperation and information exchange is that the Regulations on the coordination of social security do not contain provisions on data matching. **Ireland**, **Poland** and **Spain** echo these concerns.

Within this context, the majority of Member States (**DK, EE, DE, EL, LV, LT, NO, PL, RO, SK, ES**) have yet to put forward suggestions to resolve said issues. **Belgium** on the other hand notes that concerning unemployment insurance, the social inspection services indicate that a system enabling cross-border information exchange between inspection services could be set up to cover all cross-border exchange of information relating to the rules on coordination and in particular those on determining the applicable legislation. As regards family benefits, the competent institution (*FAMIFED*) notes that it might be a solution to clarify the authorisation system. **Finland** furthermore specifies that specific provisions taking account of the importance of cross-border cooperation and information exchange could provide a sound legal basis for the institutions in questions to rely on. In addition, attempts should be made to draft provisions on a European level to govern data matching. Lastly, **Ireland** notes that financial service providers and public sector investigative agencies who are currently working to prevent fraud and reduce fraud losses could jointly share specific data from a financial and crime prevention perspective, which is currently restricted under the existing data protection legislation.

Belgium notes that regarding the applicable legislation the social inspection services indicate that a system enabling cross-border information exchange between inspection services could be set up to cover all cross-border exchanges of information relating to the rules on coordination and in particular those on determining the applicable legislation. As regards family benefits, the competent institution (*FAMIFED*) notes that it might be a solution to clarify the authorisation system. **Finland** notes that specific provisions that would take into account the importance of cross-border cooperation and information exchange would provide a sound legal basis for the institutions in questions to rely on. Moreover, Finland notes that the provisions on a European level for data matching would prove beneficial in combating fraud and error. **Ireland** notes that financial service providers and public sector investigative agencies who are currently working to prevent fraud and reduce fraud losses should jointly share specific data from a financial and crime prevention perspective, which is currently restricted under the existing data protection legislation, in an attempt to enhance the fight against fraud and error in the field of social security coordination. Finally, the **Netherlands** notes that any issues that may arise with respect to data protection whilst implementing the coordination rules may be prevented or resolved by (increased) use of bilateral agreements.¹⁶

Data exchange and Data Protection	Member States
Not perceived as conflicting	AT, BG, HR, CZ, EE, DE, HU, IS, IT, LV, LT, MT, NL, NO, PT, RO, SK, SE

¹⁶ Whether or not this is correct remains subject of debate for various reasons. It is clear from this report that the number and variety of bilateral agreements regarding the exchange of personal data in the field of social security pose problems in the light of ground principles of the applicable rules and regulations regarding privacy and data protection (e.g. the principle of foreseeability and more specifically the criterion of purpose limitation).

Perceived as conflicting

BE, DK, FI, EL, IS, IE, PL, ES

5. CONCLUSION

Similarly to last years' findings, the Member States have reported a diverse plethora of measures undertaken – with varying intensity - in order to combat fraud and error within the respective territories. Notwithstanding these discrepancies and differences amongst Member States as concerns fraud and error however, these measures are nevertheless demonstrative of the continued willingness of the respective States to combat these practices, as was the case in 2014.¹⁷ Mindful of the foregoing, the following conclusions can be drawn.

The different approaches undertaken by various Member States in combating fraud and error may – in part – be attributed to the fact that the sources delineating what constitutes fraud and error in social security coordination vary significantly across Member States. Whilst in some Member States such definitions are tailored to specific social security branches, other Member States make use of generally applicable administrative and criminal law for the determination thereof. Not inconceivably, this entails that certain Member States are more focused and aware of the specificity of fraud and error in social security coordination, whilst others are possibly less confronted with such issues, as a result of which less focus is given thereto. Consequently, this could also affect the intensity with which fraud and error are dealt with.

As concerns the prevalence of fraud and error as two conceptually distinct phenomena a number of observations are in order. The entirety of the Member State reports were telling in this respect – the data concerning the prevalence of fraud and error is extremely fragmented and inconclusive. Due to the unsystematic approach to data collection amongst Member States, no pertinent and conclusive comparisons can be made. It suffices to note in this respect, that certain Member States have collected substantial data in the field of family benefits, whilst others have collected data with respect to unemployment benefits. As previously indicated, the unsystematic approach to data collection in this field may be attributed to a number of factors. This includes, amongst others, the fact that various authorities are competent for varying social security branches – whilst some of such authorities may find it useful to collect such data, others simply do not. Moreover, as indicated on a number of occasions, certain Member States simply do not make the distinction between fraud and error as two distinct concepts, whilst others do not collect data with respect to social security fraud and error exclusively in relation to coordination matters. Due to these obstacles in the field of data collection, it is extremely difficult to make telling comparisons concerning the prevalence fraud and error in this particular field across Member States, which furthermore renders it difficult to assess the magnitude of the phenomena.

Notwithstanding the ambiguity as to the prevalence of fraud and error in social security coordination, Member States have nevertheless become increasingly aware of the potential thereof and thus have taken to initiatives – similarly to last year - aimed at both *preventing* and *curbing* fraud and error in social security. It need be noted however, that these initiatives are not limited to a national context only, and thus are also aimed at fraud and error in a cross-border context. Within this context, three large trends are ascertainable in conjunction with Member State-specific initiatives. Firstly, an increased use of data exchange, data matching and data mining is noticeable. In addition thereto, much focus has been shifted to the combatting of fraud and particularly error in the field of pensions and the exchange of mortality information. Finally, increased use is being made of bilateral agreements – indicated as a recommendation in last years' findings.

¹⁷ 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.

Notwithstanding the undertaken national initiatives however, the application of the coordination provisions remains somewhat problematic. In particular, a number of overarching and persistent issues have been identified by the national Member State reports. These issues include, amongst others, and not in the least, the lack of information exchange between authorities on a national and on an international scale. This is further aggravated by the lacking awareness of rights and obligations in a cross-border context from the perspective of employers as well as benefit claimants. Lastly, note has been made of the increasing difficulty concerning the determination of residence, which has been facilitated by increasingly mobile citizens. In countering these particular issues, three types of initiatives have been identified, in addition to other Member State specific arrangements: awareness raising of the claimant, awareness raising of the providers and bilateral agreements.

Finally, as concerns the recourse to increased data exchange as a requisite means to combat fraud and error, mention need be made of the data protection concerns that may arise as a result thereof. The majority of Member States concerned are of the opinion that the current frameworks governing the exchange of information as a means to combat fraud and error in the field of social security coordination, are sufficiently protective and in conformity with applicable data protection legislation. However, if this is correct remains subject of debate and further research on this topic is highly recommended since more and more personal information is exchanged between different actors in different Member States and more and more cases depend on said cross-border and often interdisciplinary exchange of information.¹⁸

In view of the foregoing, it appears that one of the most fundamental steps that needs to be taken, concerns the facilitating of inter and intra-state information exchange with due regard for data protection concerns. As indicated at the beginning of the report, 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, including amongst others, double insurance, erroneous payments of pensions and lacking certainty as concerns residency. Consequently, this appears to be a requisite first step in any further action concerning fraud and error in the context of social security coordination. In this respect, the United Kingdom is of the opinion that "EESSI has the potential to significantly improve the flow of data exchanges, to the great advantage of the fight against fraud and error".

¹⁸ The foregoing is even more pertinent after the recent judgement of the Court of Justice on a case of national multidisciplinary exchange of information (cfr. C-201/14, Bara and Others, 1 October 2015, not yet published).

ANNEX

Czech Republic

	Fraud					Error				
	Define main types of fraud	No of cases	Amount involved (in €)	Result	Amount recovered (in €)	Define main types of error	No of cases*	Amount involved** (in €****)	Result	Amount recovered (in €)****
Determination of the applicable legislation (e.g. posting of workers)										
Determination of the country of residence										
Sickness benefits in kind	Providing of health care by the foreign health care provider on the basis of officially valid EHIC although the person is no longer insured in the MS which issued such EHIC (non-returning of EHIC after termination of health insurance)	956	1,060,620							
Invalidity benefits	falsification of medical examination results by invalidity benefits claimants or beneficiaries									

Old-age benefits	cases of undue pension payments as a result of death of the pensioner, not necessarily fraudulent act								
Survivors' benefits	Occasional cases of overpayments on widow's or widower's pensions as a result of failure to report new marriage. Results in reimbursement, recovery of the overpayment, more grave cases may lead to criminal prosecution. Overpayments on survivors' pensions may be connected to a failure to report end of studies.	1	3,432.24	pending		1 case, where a widow's pension was granted on grounds of erroneous information in E203 UK for a period from 25.7.2010 until 24.7.2011 instead of from 25.7.2011 until 24.7.2012	1	The overpayment may be set off against due pension payments	
Benefits in respect of accidents at work and occupational diseases									
Death grants									
Unemployment benefits	a client did not inform on the beginning of employment					overpayment	16	8,641	
Unemployment benefits	a foreign institution confirmed by mistake continuing of registration of a client with exported benefits from CZ					overpayment	1	51	

Pre-retirement benefits										
	Non-declaration of the change in MS of residence	34	146,907.14		62,756.83					
	Non declaration of gainful activity in another MS	104								
Family benefits	Another fraud without statistical data: non-declaration of termination of gainful activity in the Czech Republic; gainful activity of family members in another MS (non-declaration)									

Denmark¹⁹

	Fraud					Error				
	Define main types of fraud	No of cases	Amount involved (in €)	Result	Amount recovered (in €)	Define main types of error	No of cases*	Amount involved** (in €***)	Result	Amount recovered (in €)****
Determination of the applicable legislation (e.g. posting of workers)										
Determination of the country of residence										
Sickness benefits in cash	Omission to give information about work / holiday					Misconduct on the part of the citizen or the authority to give information about work / holiday				
Maternity benefits	Income / residence/ marital status	42			184,122					
Invalidity benefits:										
- Anticipatory pension		481			3507148					

¹⁹ Please note that the data does not specifically and exclusively illustrate cases of fraud and error in relation to coordination of social security under Regulation (EC) No 883/2004, as these cases are not registered separately. Note, moreover, that cases of fraud and cases of error are generally not registered separately. The requested data is registered in the appendix under "fraud", but may constitute cases of error as well. It is, lastly, not possible to provide data on each type of error specifically.

- Pension for civil servants						Late notification of deceased claimants	2-5 cases each year (*note that these numbers also includes cases of survivors' benefits and death grants, but that distinction is not possible)			
Old-age benefits:										
- Old-age pension	Income / residence/ marital status	607			6,078,144					
- Pension for claimants residing outside of Denmark	Income / residence/ marital status	56			369,850					
- Danish Labour Market supplementary pension (ATP)						Late notification of deceased claimants				
- Pension for civil servants										
Survivors' benefits:										
- Danish Labour Market supplementary pension (ATP)										
- Pension for civil servants										

Benefits in respect of accidents at work and occupational diseases:										
- Workers' Compensation	Applicable law	3								
Death grants:										
- Danish Labour Market supplementary pension (ATP)										
- Pension for civil servants										
Unemployment benefits:										
- Unemployment insurance benefits	Omission to give information about work / holiday / availability		Total amount Unemployment benefits: 2.361,1 mill		3,7 mill	Misconduct on the part of the citizen or the authority to give information about work / holiday / availability +		Total amount Unemployment benefits: 2.361,1 mill		9,5 mill
Pre-retirement benefits										
- Voluntary early retirement pay scheme	Omission to give information about work / holiday / availability		Total amount Pre-retirement benefit: 2.160,0 mill		0,4 mill	Misconduct on the part of the citizen or the authority to give information about work / holiday / availability	NA	Total amount Pre-retirement benefit: 2.160,0 mill		3,9 mill
Family benefits:										

- Family benefits	Residence/ marital status	856			877,447					
- Children benefits for single parents	Income / residence/ marital status	241			543,697					

Estonia

	Fraud					Error				
	Define main types of fraud	No of cases	Amount involved (in €)	Result	Amount recovered (in €)	Define main types of error	No of cases*	Amount involved** (in €***)	Result	Amount recovered
Determination of the applicable legislation (e.g. posting of workers)										
Determination of the country of residence										
Sickness benefits	inappropriate use of a valid EHIC	42	€ 16,663.61	5 cases are brought to court	In some cases EHIF has entered into extrajudicial voluntary agreements for payment by instalments					
Maternity and equivalent paternity benefits										
Invalidity benefits										
Old-age benefits										
Survivors' benefits										
Benefits in respect of accidents at work										

and occupational diseases										
Death grants										
Unemployment benefits										
Pre-retirement benefits										
Family benefits										

Germany

	Fraud					Error				
	Define main types of fraud	No of cases	Amount involved (in €)	Result	Amount recovered (in €)	Define main types of error	No of cases*	Amount involved** (in €***)	Result	Amount recovered
Determination of the applicable legislation (e.g. posting of workers)	contract of employment concluded under the wrong legislation (Maltese-Cyprian)	1	n/a	invalid contract with regard to Social Security provisions	n/a					
Determination of the country of residence										
Sickness benefits										
Maternity and equivalent paternity benefits										
Invalidity benefits										
Old-age benefits										
Survivors' benefits										
Benefits in respect of accidents at work and occupational diseases	Decline of request on reimbursement of medical treatment costs paid by the German Social Accident Insurance Scheme in the event of A1 form issued retroactively by	1	35.998,23 EUR	No reimbursement whatsoever by the Polish scheme	0 EUR	not enough and/or proper awareness on the side of the competent Cyprian social security authorities concerned	n/a (several)	more tens of thousands of EUR		

	the Polish competent authority									
Death grants										
Unemployment benefits										
Pre-retirement benefits										
Family benefits										

Hungary

	Fraud					Error				
	Define main types of fraud	No of cases	Amount involved (in €)	Result	Amount recovered (in €)	Define main types of error	No of cases*	Amount involved ** (in €***)	Result	Amount recovered
Determination of the applicable legislation (e.g. posting of workers)	false declaration on substantial activity; no substantial activity during posting; difference in working hours of the posted person in the State of activity and in Hungary;	approximately 100	No data.	withdrawal of A1 certificates	No data.					
Determination of the country of residence						lack of application of Article 11 of Regulation 987/2009 - residence is determined according to national law in proceedings initiated for issuing S1 document	No data.	No data.	Decision is annulled and residence is determined according to coordination regulations	No data.
Sickness benefits	Use of invalid EHIC									
Maternity and equivalent paternity benefits						certificates of incapacity for work are not accepted			Certificate will be accepted and the cash benefit will be disbursed	
Invalidity benefits										
Old-age benefits	The concept of criminal fraud is	In 2014, the National	The total amount of	Unfortunately we have	Unfortunately we have	In the case of error, one				

	<p>defined in the Criminal Code in the following terms: 'Any person who, for the purpose of unlawful gain, deliberately induces another person to hold or continue to hold a false belief and thereby causes damage, is guilty of fraud.' Below a certain legally stipulated threshold, this is not classed as a criminal offence, but as a misdemeanour. The provisions governing default or delay attributable to the claimant are laid down in the Taxation Act. In this case the institution presumes negligence, and objective grounds for exemption and deadlines have been included in the social security legislation. Fines, compensation for damages and imprisonment are all possible consequences of criminal fraud. In the case of error, one possibility is to make good omissions, but fines may also be imposed for negligence, or procedural costs</p>	<p>Pensions Directorate reported 353 cases concerning the benefits under its jurisdiction. 157 of these involved forgery of official documents, while the majority of the remaining 196 comprised misuse of payment cards, fraud or failure to comply with notification obligations.</p>	<p>damage arising from the old-age benefit cases reported was HUF 242 676 243.</p>	<p>no means of breaking down this figure.</p>	<p>no means of breaking down this figure.</p>	<p>possibility is to make good omissions, but fines may also be imposed for negligence, or procedural costs recovered. Another legal consequence may be an order to reinstate the lawful situation existing before the error was committed.</p>				
--	---	--	--	---	---	---	--	--	--	--

	recovered. Another legal consequence may be an order to reinstate the lawful situation existing before the error was committed.									
Survivors' benefits										
Benefits in respect of accidents at work and occupational diseases										
Death grants										
Unemployment benefits	The national definition of fraud is laid down in Act C of 2012 on the Criminal Code. In 2014, no criminal charges were brought under that definition in the counties in respect of unemployment benefit received without entitlement.	In 2014, no criminal charges were brought in the counties in respect of unemployment benefit received without entitlement.				"failure to notify a gainful activity	The national definition of fraud is laid down in Act C of 2012 on the Criminal Code. In 2014, no criminal charges were brought under that definition in the counties in respect of unemployment benefit received without entitlement.	In 2014, no criminal charges were brought in the counties in respect of unemployment benefit received without entitlement.		
Pre-retirement benefits										

<p>Family benefits</p>	<p>Acquiring family benefit unlawfully through deliberately misleading, or keeping under a false apprehension, the body evaluating the claim.</p>	<p>"There have been no actual or suspected cases of criminal fraud as defined in the Criminal Code, so no prosecutions have been brought. The number of undue payments made due to failure to comply with notification obligations did not exceed 1% of all cases. A number of administrative procedures for repayment have been initiated due to failure to meet notification obligations. The most frequent reasons for these are:</p>				<p>Acquiring family benefit unlawfully through deliberately misleading, or keeping under a false apprehension, the body evaluating the claim.</p>				
-------------------------------	---	--	--	--	--	---	--	--	--	--

Lithuania

	Fraud					Error				
	Define main types of fraud	No of cases	Amount involved (in €)	Result	Amount recovered (in €)	Define main types of error	No of cases*	Amount involved** (in €***)	Result	Amount recovered
Determination of the applicable legislation (e.g. posting of workers)										
Determination of the country of residence										
Sickness benefits						Inappropriate use of a valid EHIC by a person who was no longer insured as well as cases when care was provided on the basis of the EHIC before the holder`s entitlement to the health insurance.	195	72885	The part of the amount has been recovered	No information
Maternity and equivalent paternity benefits										
Invalidity benefits										
Old-age benefits	False IDC	1								
	Concealed info about pension	1	76.37							

Survivors' benefits	False certificate	1								
Benefits in respect of accidents at work and occupational diseases										
Death grants										
Unemployment benefits										
Pre-retirement benefits										
Family benefits										

The Netherlands

	Fraud					Error				
	Define main types of fraud	No of cases	Amount involved (in €)	Result	Amount recovered (in €)	Define main types of error	No of cases*	Amount involved** (in €***)	Result	Amount recovered (in €)****
Determination of the applicable legislation (e.g. posting of workers)	Lack of substantial activities of posting company	698								
	Lack of previous insurance of posted worker									
	Exceeding maximum posting period									
	Posting certificate not authentic									
Determination of the country of residence										
Sickness benefits in cash	warnings or no financial loss ('error')						172			
	administrative fines	1,113	1,008,000 (= fines)		3,504,000 (= total loss)					
	criminal prosecution	57								
Maternity and equivalent paternity benefits										
Invalidity benefits	warnings or no financial loss ('error')						3,654			

	administrative fines (incl. TW (allowance))	5,734	9,664,000 (= fines)		21,608,000 (= total loss)					
	criminal prosecution	111								
Old-age benefits	Withholding information on income	212	892,547							
	Withholding information on living together	591	1,447,813							
	Beneficiary deceased	42	25,753							
	Other	54	254,667							
	<i>Total</i>	<i>899</i>	<i>2,620,780</i>							
Survivors' benefits	Withholding information on income	38	107,553							
	Withholding information on living together	69	824,251							
	Being alive	2	24							
	Other	18	74,467							
	<i>Total</i>	<i>127</i>	<i>1,006,296</i>							
Benefits in respect of accidents at work and occupational diseases										
Death grants										
Unemployment benefits										

Pre-retirement benefits	warnings or no financial loss ('error')						5,339			
	administrative fines	43,385	44,612,000 (= fines)		63,088,000 (= total loss)					
	criminal prosecution	108								
Family benefits	Withholding information on income child	529	215,696							
	Insufficient financial support of child	92	74,732							
	Lack of qualifying education condition of child	284	87,323							
	Beneficiary deceased	2	1,424							
	Withholding information on living situation	210	166,922							
	Withholding information on change of address	177	142,839							
	Not insured	534	417,608							
	Lack of guardianship of child	1	233							
	Self disadvantage	3	2,213							
	Other	26	22,312							
	<i>Total</i>	<i>1,858</i>	<i>1,131,303</i>							

Norway

	Fraud					Error				
	Define main types of fraud	No of cases	Amount involved (in €)	Result	Amount recovered (in €)	Define main types of error	No of cases*	Amount involved** (in €***)	Result	Amount recovered (in €)****
Determination of the applicable legislation (e.g. posting of workers)										
Determination of the country of residence	Due to recipients residing abroad contradicting the terms for receiving benefits	No data	No data				No data	No data	No data	No data
Sickness benefits	Claiming benefit and earning an income incompatible with the terms, illegitimate residence abroad, the basis of benefit incompatible with previous income	109	2,778.481				3,912	12,705.386		11,596.835
Maternity and equivalent paternity benefits	Claiming benefit and earning an income incompatible with the terms, the basis of benefit incompatible with previous income	11	240,492				1,839	5,597.825		4,102.880

Invalidity benefits	Claiming benefit and earning an income incompatible with the terms, illegitimate residence abroad, the basis of benefit incompatible with previous income	36	2,673.234				13,410	56,727.730		28,347.260
Old-age benefits										
Survivors' benefits										
Benefits in respect of accidents at work and occupational diseases								81,165		17,119
Death grants										
Unemployment benefits	Claiming benefit and earning an income incompatible with the terms, illegitimate residence abroad, the basis of benefit incompatible with previous income	991	24,023.877				10,190	67,098.786		58,058.395
Pre-retirement benefits										
Family benefits	Illegitimate residence abroad, living with the other parent, not meeting legal conditions for activity	114	2,473.544				14,157	30,976.379		23,905.476

Poland

	Fraud					Error				
	Define main types of fraud	No of cases	Amount involved (in €)	Result	Amount recovered (in €)	Define main types of error	No of cases*	Amount involved(in €)	Result	Amount recovered
Determination of the applicable legislation (e.g. posting of workers)										
Determination of the country of residence			748044,96					26310,37		
Sickness benefits										
Maternity and equivalent paternity benefits										
Invalidity benefits										
Old-age benefits										
Survivors' benefits										
Benefits in respect of accidents at work and occupational diseases										
Death grants										

Unemployment benefits	Lack of/wrong information about employment in another Member State ; SED's on Export	28	3475		1185	The person informed the competent institution about wrong dates of employment in another MS ; the assisting institution informed the competent institution too late (via SED U010) about taking up employment in another MS	16	1100		715
Pre-retirement benefits										
Family benefits	Lack of/wrong information about family situation	8947	2.703.071							

Spain

	Fraud					Error				
	Define main types of fraud	No of cases	Amount involved (in €)	Result	Amount recovered (in €)	Define main types of error	No of cases*	Amount involved(in €)	Result	Amount recovered
Determination of the applicable legislation (e.g. posting of workers)										
Determination of the country of residence	Art. 58 Reg. 883/2004	More than 2000								
Sickness benefits		More than 5000								
Maternity and equivalent paternity benefits										
Invalidity benefits										
Old-age benefits										
Survivors' benefits										
Benefits in respect of accidents at work and occupational diseases										

Death grants										
Unemployment benefits										
Pre-retirement benefits										
Family benefits										

ANNEX 2

Overview Sanctioning Fraud: Austria

Legal provision	Title	Penalty	Scope of practical application
§ 153c <i>StGB</i> ²⁰	Non-payment of employees' social security contributions	Imprisonment of up to 2 years	Evasion of employees' social security contributions by an employer
§ 153c <i>StGB</i>	Fraudulent non-payment of social security contributions and supplements pursuant to the Act on leave and severance pay for construction workers	Basic penalty of up to 3 years; qualified penalty of 6 months to 5 years	Evasion of social security contributions, if the employees are registered with social security and the intention at the date of registration was to underpay the contributions; in practice usually applies to the registration of employees of a front company
§ 153e <i>StGB</i>	Organised undeclared work	Imprisonment of up to two years	Placing, providing, recruiting or employing illegal workers (i.e. employed workers not registered with social security or self-employed workers without the necessary business licence); active involvement in the operation of a large group of illegal workers
§ 146 <i>StGB</i>	Fraud	Imprisonment of up to 6 months or a fine of up to 360 daily amounts	Causing financial loss through deception; applicable to contribution evasion through deception and to intentionally fraudulent claiming of social security benefits
§ 147 <i>StGB</i>	Serious fraud	Imprisonment of up to 3 years; qualified penalty: imprisonment of 1 to 10 years	As above under § 146 <i>StGB</i> ; mainly applicable to cases of falsification or if the damage exceeds €3,000; application of the maximum penalty if the damage exceeds €50,000.

²⁰ Austrian Criminal Code (*Strafgesetzbuch*).

Overview Sanctioning Fraud: Belgium²¹

	Imprisonment	Criminal fine*	Administrative fine*
Level 1 penalty			€55 to €550
Level 2 penalty		either a criminal fine between €275 and €2,750	or an administrative fine between €137.50 and €1,375
Level 3 penalty		either a criminal fine between €550 and €5,550	or an administrative fine between €275 and €2,750
Level 4 penalty	either imprisonment between six months and three years	and/or a criminal fine between €3,300 and €33,000	or an administrative fine between €1,650 and €16,500

²¹ The introduction of the Social Criminal Code in Belgian legislation can be called a best practice. Before its introduction, sanctions were scattered throughout the various acts and regulations that constitute Belgian social law. Moreover, as a result of various legislative initiatives throughout the years and the lack of any coordination whatsoever, the levels of sanctions varied without any meaningful logic. The Belgian Social Criminal Code coordinates all infringements, harmonizes the levels of sanctions and decriminalises the infringements punished by a level 1 sanction, which is since then purely administrative. Furthermore, the Belgian Social Criminal Code clarifies the relation between the criminal and administrative enforcement of infringements as well as the relations between and the competences of the different actors involved. The original text of article 101 on the sanction levels read:

"Art. 101 The sanction levels

The infringements as provided for in Book 2 shall be punished with a level 1, a level 2, a level 3 or a level 4 sanction.

The level 1 sanction shall be an administrative fine between 10 and 100euros.

The level 2 sanction shall either be a criminal fine between 50 and 500euros, or an administrative fine between 25 and 250 euros.

The level 3 sanction shall either be a criminal fine between 100 and 1000euros, or an administrative fine between 50 and 500 euros.

The level 4 sanction shall either be a prison sentence between six months and three years and a criminal fine between 600 and 6000euros, or only one of these sanctions, or an administrative fine between 300 and 3000euros".

(cfr. De Coninck M., Gillis D. & Jorens Y., *The Belgian Social Criminal Code. An English Translation by IRIS|international research institute on social fraud*, Die Keure, Brugge, 2013)

Criminal penalties (Social Criminal Code)	
Unjustified affiliation with a foreign social security system (with, as the case may be, a fictitious registered office abroad)	<p><u>Article 223.</u> Forwarding of documents to institutions by employers § 1. Level 2 penalties are imposed on:</p> <ol style="list-style-type: none"> 1. employers, their deputies or their authorised representatives who do not forward to the National Social Security Office a declaration providing evidence of the amount of social security contributions due under the Law of 27 June 1969 revising the Decree-Law of 28 December 1944 concerning social security for workers; <p>[...]</p> <p>When acts are committed knowingly and deliberately a level 3 penalty is imposed.</p> <p>For infringements under paragraph 1, the fine is multiplied by the number of workers concerned.</p>
Fictitious affiliation in Belgium (affiliation in order to obtain benefits without services actually being provided)	<p><u>Article 221.</u> Fraudulent affiliation</p> <p>A level 4 penalty is imposed on employers, their deputies or authorised representatives who:</p> <ol style="list-style-type: none"> 1. fraudulently subject one or more persons to application of the Law of 27 June 1969 revising the Decree-Law of 28 December 1944 concerning social security for workers; 2. fraudulently subject one or more persons to application of the Decree-Law of 7 February 1945 concerning the social security of sailors in the merchant navy. <p>For the infringements under paragraph 1, the fine is multiplied by the number of workers concerned.</p> <p>The judge may also impose the penalties provided for by Articles 106 and 107.</p>
Fraud, forgery and deception (false declarations, use of false identity cards or false A1 documents, etc.)	<p><u>Article 232.</u> Fraud and the use of forgery under social criminal law</p> <p>A level 4 penalty is imposed on anybody who, in order to obtain or have obtained, or to keep or have kept an undue social advantage, or not to pay contributions or not to have them paid, or to pay less or to have less paid than is required by that person or the other party:</p> <ol style="list-style-type: none"> 1. a) has committed a forgery, either by false signatures or by counterfeiting or alteration of the written word or signatures or by fabricating agreements, provisions, obligations or discharges or by inserting them in a document either by adding or altering clauses, declarations or facts which that document was intended to incorporate or record; b) has committed forgery or falsified a document; <p>[...]</p> <p><u>Article 233.</u> Inaccurate or incomplete declarations concerning social advantages</p> <p>§ 1. A level 4 penalty is imposed on anybody who knowingly and deliberately:</p> <ol style="list-style-type: none"> 1. makes an inaccurate or incomplete declaration to obtain or have obtained, keep or have kept an undue social advantage; 2. has omitted or refused to make a declaration which they are obliged to make or to provide information they are obliged to supply, to obtain or have obtained, keep or have kept an undue social advantage; 3. received a social advantage to which they were not entitled or were only partially entitled following a declaration referred to in paragraph 1.1, an omission or a refusal to make a declaration or to provide information referred to in paragraph 1.2 or an action referred to in Articles 232 and 235. <p>When the infringements referred to in paragraph 1 are committed by employers, their</p>

deputies or their authorised representatives to obtain or have obtained a social advantage to which the worker is not entitled, the fine is multiplied by the number of workers concerned.

§ 2. A level 3 penalty is imposed on anybody who knowingly and deliberately fails to declare that they are no longer entitled to a social advantage, if only in part, in order to keep an undue social advantage.

Article 234. Inaccurate or incomplete declarations concerning contributions

§ 1. A level 4 penalty is imposed on anyone who knowingly and deliberately:

1. makes an inaccurate or incomplete declaration in order not to pay or have paid contributions, to pay less or have paid less than those they or other parties are required to pay;

2. fails or refuses to make a declaration which they are obliged to make or to provide information they are obliged to give in order not to pay or have paid contributions, or to pay less or have less paid than those which they or the other party are required to pay;

3. pays fewer contributions than those they are required to pay or does not pay them following a declaration referred to in 1, failure or refusal to make a declaration or to provide information referred to under 2 or an act covered by Articles 232 and 235.

Where the infringements referred to in paragraph 1 are committed by employers, their deputies or their authorised representatives the fine is multiplied by the number of workers concerned.

§ 2. A level 3 penalty is imposed on anybody who knowingly and deliberately fails to declare that they are no longer entitled to a dispensation from or reduction of contributions, even if only in part, in order not to pay contributions or to pay less than they are required to pay.

Article 235. Deception under social criminal law

A level 4 penalty is imposed on anyone who, in order to obtain or have obtained, keep or have kept an undue social advantage or not to pay contributions or not have them paid, to pay less or have less paid than those which they or the third party is required to pay, has made use of false names, false titles or false addresses or has used any other fraudulent act to mislead people into believing in the existence of a false person, a false enterprise, a fictitious accident or any other fictitious event or to abuse trust in any other manner.

Where the infringement referred to in paragraph 1 is committed by employers, their deputies or authorised representatives to have obtained or have kept a social advantage to which the workers are not entitled, the fine is multiplied by the number of workers concerned.

Civil penalties (Royal Decree of 28/11/1969)	
Unjustified affiliation with a foreign social security system (with, as the case may be, a fictitious registered office abroad)	<p><u>Article 54ter.</u></p> <p>§ 1. Without prejudice to the civil penalties provided for under Articles 54 and 54bis, in the absence of a declaration or in the case of an incomplete or inaccurate declaration, employers or trustees are debited a flat rate of 50 euros and a rate of 4 euros per line or missing occupation for which the remuneration to be considered is amended, if the civil servants referred to in Article 31 of the Law or the internal departments of the Office have to draw up or rectify the three-monthly declaration. [...]</p> <p>§ 2. Failure to submit to the National Social Security Office, by the deadline laid down in Article 33 or Article 35bis, the three monthly declaration and the annexes required will result in employers or the trustees being debited a flat rate of 495.79 euros and 247.89 euros for each tranche of 24 789.35 euros of contributions over and above 49 578.70 euros.</p>
Fictitious affiliation in Belgium (affiliation in order to obtain benefits without services actually being provided)	Deregistration without any civil penalties involving the <i>NSSO</i> (but intervention of other <i>IPSS</i> (<i>Institutions publiques de sécurité sociale</i> – Public social security institutions) for the unduly paid allowances)
Unjustified affiliation in Belgium	Deregistration without any civil penalties involving the <i>NSSO</i> (but intervention of other <i>IPSS</i> for the unduly paid allowances)

Overview Sanctioning Fraud: Portugal

Administrative Offences	Minor	Serious	Very Serious
False declarations			X
Failure to declare the termination or suspension of and changes to the nature of the work contract	X		
Failure to report or delay in reporting recruitment of workers	X	X	X
Omission of mandatory communications concerning the employer – changes to identifying details, including those relative to the establishment, start, suspension or termination of activity	X	X	
Failure to deliver or delay in delivering declaration of remuneration	X	X	
Failure to include the worker in the declaration of remuneration			X
Omission of any other element that should be included in the declaration of remuneration pursuant to the regulation	X		
Failure to provide evidence of elements requested from self-employed workers	X	X	
Failure to declare total value of sales made and the value of the services provided within the prescribed time	X	X	
Failure to pay or delay in paying contributions by employers, self-employed persons or contracting bodies	X	X	
Drawing benefits while engaging in paid activity in breach of the specific legal provisions			X
Failure to submit declaration or other legally required documents where no specific punishment is provided for	X		

Classification of the administrative offence	Type of infringement	Amount of the fines		
		Natural person	Legal person with:	
			Fewer than 50 employees	50 employees or more
Minor	Negligence	€ 50 to 250	€ 75 to 375	€ 100 to 500
	Fraud	€ 100 to 500	€ 150 to 750	€ 200 to 1 000
Serious	Negligence	€ 300 to 1 200	€ 450 to 1 800	€ 600 to 2 400
	Fraud	€ 600 to 2 400	€ 900 to 3 600	€ 1 200 to 4 800
Very serious	Negligence	€ 1 250 to 6 250	€ 1 875 to 9 375	€ 2 500 to 12 500
	Fraud	€ 2 500 to 12 500	€ 3 750 to 18 750	€ 5 000 to 25 000

HOW TO OBTAIN EU PUBLICATIONS

Free publications:

- one copy:
via EU Bookshop (<http://bookshop.europa.eu>);
- more than one copy or posters/maps:
from the European Union's representations (http://ec.europa.eu/represent_en.htm);
from the delegations in non-EU countries
(http://eeas.europa.eu/delegations/index_en.htm);
by contacting the Europe Direct service (http://europa.eu/europedirect/index_en.htm)
or calling 00 800 6 7 8 9 10 11 (freephone number from anywhere in the EU) (*).

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

Priced publications:

- via EU Bookshop (<http://bookshop.europa.eu>).

Priced subscriptions:

- via one of the sales agents of the Publications Office of the European Union
(http://publications.europa.eu/others/agents/index_en.htm).

