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***Proposal from the European Commission for a
Directive on
“Services in the Internal Market”
dated 13 January 2004***

Joint Position Paper

***of the Umbrella Organisations
representing the German Social Security System***

submitted April 2004

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Foreword

With the submission of a draft Directive on "Services in the Internal Market [COM/2004/2 final] the Commission has taken a further step towards completion of the internal market. The Directive is primarily aimed at services and activities of economic interest. However, this main thrust does not prevent services of "general non-economic interest" - in particular the social security systems - being affected directly and indirectly by the Directive.

In the opinion of the umbrella organisations representing the German Social Security System, the proposed Directive should be subjected to critical review, so that

- it is more in line with national social systems, whose design is a matter entirely for the member states to decide and
- it fits in better with the fabric of existing EU directives and regulations, particularly the Coordination Regulation No. EEC/1408/71.

Individual comments:

Article 4 no. 10 - Definition "Hospital care"

The definition of "hospital treatment" given in Article 4 no. 10 attempts to introduce criteria to distinguish between "intramural care" and "extramural care", which has previously been left untouched by the case law of the European Court of Justice (ECJ). However, the chosen wording leaves open the question of whose law should be used to assess this type of treatment. So, for example, childbirth is considered in the Netherlands as an outpatient, non-hospital related service, whereas in Belgium and Germany, in principle, it is considered a hospital service. Therefore, it is necessary to clarify which country is authoritative for the decision.

Following the thinking of the Directive, the country of origin (in practice: the country of insurance) of the patient should be chosen. This would have the advantage that both for the patient and for the insurance provider, the framework of benefits is familiar, and the planning certainty that is granted expressly by the ECJ to the national systems - can be maintained.

The article should be supplemented as follows:

"Hospital care" means medical care which can be provided within a medical infrastructure and which normally requires the accommodation therein of the person receiving the care. **The decisive factor in assessing whether this type of treatment is being given is the classification in the country of origin (read: country of insurance) of the patient.** The name, organisation and financing of that infrastructure being irrelevant for the purposes of classifying such care as hospital care;

Article 9, 10, 14 no. 5, 15 no. 2 a - Relationship between freedom of establishment and the quantitative management mechanisms of the social security system

The umbrella organisations representing the German Social Security System assume that the quantitative management mechanisms in authorisation of medical service providers to treat patients at the expense of the social security insurance providers will be unaffected by the planned extensions to freedom to provide services, and will continue to be allowed. Should there be any doubt about this, the Umbrella Organisations representing the German Social Security System consider that an appropriate clarification is urgently required. The aim should be to keep the expenditure side controllable, in order to avoid an additional burden of contributions on the insured and businesses.

Article 17 no. 9 - Precedence of the rules for coordination of the mandatory systems of social security

Precisely for cases of secondment of workers (see Art. 24 and 25 of the draft Directive) a number of relevant rules are not contained in Regulation EEC/1408/71 itself, but in the implementing Regulation EEC/ 574/72. For example, Art. 11 onward lays down the obligation for the seconded worker to carry forms.

Therefore, Art. 17 no. 9 of the draft Directive should be supplemented as follows:

the provisions of Regulation EEC/1408/71, **574/72 and other provisions adopted at European level in this context concerning secondment of workers.**

Article 23 paragraph 1 - Permissibility of management mechanisms

Not only in the field of health insurance, but also in other branches of social security, the necessity may arise, for various reasons, to *restrict free choice of doctor*. For example, in the sphere of competence of the German accident insurance, to ensure early introduction of rehabilitation measures in outpatient cases, a specialist is consulted at the beginning, known as the "transition doctor", who manages the subsequent course of treatment. The provision of optimal care as soon as possible has proven to be a significant curb on costs and has contributed to restricting the burden of contributions to be paid by German businesses. The same applies to other procedures which require management mechanisms and the restriction of the free choice of doctor.

Therefore, the umbrella organisations representing the German Social Security System propose the following amendment to Article 23 para. 1 sentence 2:

The conditions and formalities to which the receipt of non-hospital care in their territory is made subject by Member States, such as **for example** the requirement **consult a specialist accident doctor first, who decides about the subsequent course of treatment** or that a general practitioner be consulted prior to consultation of a specialist, or the terms and conditions relating to the assumption of the costs of certain types of dental care, may be imposed on a patient who has received non-hospital care in another Member State.

Article 23 paragraph 3 - reimbursement of treatment costs

In Article 23, the Directive takes up the case law of the ECJ on cross-border use of health services outside the scope of Regulation EEC/ 1408/71. In the details, it must be ensured that the calculation of the amount of refund is not subject to misleading rules.

The wording used in Article 23 para. 3, "that the level of assumption... of the costs... is **not lower** than that... in respect of similar health care... in their territory", enables patients moving from a high-cost to a low-cost country to make a profit on the treatment. This contravenes the principle of solidarity on which social insurance is based and was never intended in the case law of the ECJ, not even in the Vanbraekel Judgement (C-368/98), which was issued in the special case of a refusal to authorise the costs of treatment.

Therefore, the umbrella organisations representing the German Social Security System urge that Article 23 para. 3 should be supplemented as follows:

Member States shall ensure that the level of assumption by their social security system of the costs of health care provided in another Member State is not lower than that provided for by their social security system in respect of similar health care provided in their territory. **The maximum reimbursement by the social insurance funds shall be not higher than the actual costs of the treatment.**

Article 24 paragraph 1 c - Duty to appoint a representative

The ban on imposing a requirement for the posting service provider to appoint a representative in the host country is in conflict with certain rules of Volume VII of the German Social Security Code, i.e. with § 130 para. 2. This rule is relevant to the work of the accident insurance providers, e.g. with regard to enforcement measures in prevention, including fines, and with regard to enforcement of payment of contributions if, for example, the foreign seconding employer employs local workers in Germany, who are subject to German social security law and for whom German social security contributions should be paid.

For this reason, the umbrella organisations representing the German Social Security System propose that the ban provided for in Article 24 letter 1 c)

on imposing an obligation on the posting service provider to appoint a representative in the territory of the host member state should be deleted and not replaced.

Article 24 paragraph 1 d - Production of social security documents

The exemption of the seconded workers from the obligation to carry social security documents with them (e.g. Form E 101) raises the question of how the applicable legal rules or social security obligation can be determined without any doubt the host member state. In particular, considering Decision No. 181 of the Administration Commission which allows, controls to check the conditions of secondment, the provision in the Directive seems questionable on practical grounds.

The umbrella organisations representing the German Social Security System therefore consider it necessary that the ban

foreseen on requiring posted workers to carry social security documents with them (Article 24 para. 1 d), should be deleted and not replaced.

Article 31 - Quality Assurance measures

The relaxation of the rules on establishment and free provision of services proposed in the Directive not only introduce additional possibilities of choice of provider for the consumer, but also additional risks with regard to the quality of care. In this regard, the idea put forward by the Commission of reducing quality risks through certificates and guidelines is to be welcomed.

The proposed voluntary procedure for the health services field are not adequate, however. Unlike "normal" goods and services, poor quality in services and goods in the health sector lead directly to impaired health or even death. Furthermore, consumer freedom is seriously restricted due to the urgency of treatment and the lack of comparability.

Therefore, it must be possible for the member states, independently of initiatives at Community level, not only to introduce voluntary but also - provided that transparency and freedom from discrimination are guaranteed - mandatory quality criteria for the provision of health-related services.

The umbrella organisations representing the German Social Security System therefore urge that Article 31 should be supplemented as follows:

6. The member states may enact independent, for the purpose of maintaining and protecting public health, mandatory high quality criteria and treatment guidelines with respect to health-related services provided on their territory. The Commission supports the member states in the application of such high quality criteria in health-relevant services in the internal market.

*This position paper has the support of all umbrella organisations
representing the German Social Security System:*

- AOK-Bundesverband**
- Bundesverband der Betriebskrankenkassen**
- Bundesverband der Innungskrankenkassen**
- Bundesverband der landwirtschaftlichen Krankenkassen**
- Verband der Angestellten-Krankenkassen**
- Arbeiter-Ersatzkassen-Verband**
- Bundesknappschaft**
- See-Krankenkasse**
- Hauptverband der gewerblichen Berufsgenossenschaften**
- Bundesverband der landwirtschaftlichen Berufsgenossenschaften**
- Bundesverband der Unfallkassen**
- Gesamtverband der landwirtschaftlichen Alterskassen**
- Verband Deutscher Rentenversicherungsträger**