Reply from DG Employment, Social Affairs and Inclusion (with input from DG Justice and Consumers) on a request for information from the European Ombudsman: query from the Croatian Ombudswoman of the Republic concerning Croatian health insurance for Croatian students studying in another EU country

Query ref. Q2/2025/AML

We refer to your request of 12 January 2026 for the Commission services to reply to the Croatian Ombudswoman's query concerning health insurance for citizens and permanent residents of Croatia studying in other EU countries.

The Commission services would like to thank the Croatian Ombudswoman for requesting our opinion on the application of EU law to the matter of health insurance for citizens who temporarily leave Croatia to study in another EU country. We value very much the opportunity to contribute in this way to the national enforcement of EU rules. Please find below our reply to the issues raised.

The issues

The Croatian Ombudswoman explains that since July 2023 she has been receiving complaints from students studying in other EU countries concerning the loss of their health insurance in Croatia. This is as a result of a Croatian legislative requirement that any citizen leaving Croatia for more than a year (and with less than three months of annual presence in Croatia) must register temporary leave from Croatia. Since 2023, the registration of such temporary leave has automatically resulted in the loss of Croatian health insurance and this apparently independently of personal circumstances.

In practical terms, this means that students have been unable to rely on their Croatian-issued European Health Insurance Card for necessary healthcare when studying abroad. Croatian students have as a result been obliged to pay for their health insurance in the country where they study. This has caused an administrative as well as a financial burden for them. The Croatian Ombudswoman sets out that Croatian students are therefore dissuaded from studying in other EU countries and exercising their free movement rights.

The Croatian Ombudswoman asks the Commission services therefore to give their opinion on the Croatian practice of generally not providing health insurance to all citizens who have temporarily left the country to study in another EU country, without determining the centre of interest in each particular case.

In this context, the European Ombudsman asks the Commission services to address the following issues and questions:

A. The concerns, and the legal considerations raised in the query (and legal opinion) sent by the Croatian Ombudswoman.

B. In what circumstances and under what conditions can a Member State change its rules on residency, including temporary leave, for the purposes of Directive 2004/38/EC and Regulations 883/2004 and 987/2009?

C. Are Member States required to ensure that one or more of the indicative factors laid down in Article 11 of Regulation 987/2009 are taken into account before determining the residency of one of its nationals or those with the right to permanent residency within its territory?

D. Could the amendment to the Croatian Mandatory Health Insurance Act introduced in 2023 amount to a restriction on the right to free movement by placing at a disadvantage some students simply because they have exercised their right to free movement, in line with the case-law of the EU Courts?

***Question A:* The concerns and legal considerations raised in the Croatian Ombudswoman's query**

The application of the EU social security coordination rules

The EU social security coordination rules ([1]) were established to support the EU right of free movement ([2]). The rules are intended not only to ensure that a person is not left without social security (including healthcare) cover when they exercise their right of free movement because no legislation is applicable to them, but also to ensure that a citizen is subject to the social insurance system of one country only. The concept of "residence" established for the purposes of the EU social security coordination rules plays an important role in determining the applicable legislation.

Article 1(j) of Regulation (EC) No 883/2004 on the coordination of social security systems defines the term, "residence", as meaning, "the place where a person habitually resides". That term has an autonomous meaning specific to EU law, which refers to the State where a person's habitual centre of interests can be found ([3]). In that context, a decision-maker should take into account the family situation of the person concerned, the reasons that led them to move, the length and continuity of residence; the fact (where this is the case) that they are in stable employment; and their overall intention as it appears from all the circumstances. The list of factors to be taken into account in determining a person's place of residence, as developed by the case-law of the Court of Justice of the EU (CJEU), is now codified in Article 11 of Regulation (EC) No 987/2009, which lays down rules for implementing Regulation (EC) No 883/2004.[4] Article 11(1)(iv) provides an additional factor to consider in the case of students, namely "the source of their income": although this factor alone may not be determinative.

([1]) Regulation (EC) No 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems.

([2]) The original EU social security coordination rules were adopted in 1958 as an adjunct to the free movement of workers: - Règlement n° 3 concernant la sécurité sociale des travailleurs migrants, OJ 30, 16.12.58. On the connection between the free movement of persons and the social security coordination rules, see C-589/10 *Wencel,* EU:C:2013:303, para. 39.

([3]) Case C-255/13 *I*, EU:C:2014:1291, paras. 43-44.

([4]) Case C-589/10 *Wencel*, para. 50.

The CJEU has stated clearly that the simple fact that a person has remained in a Member State continuously over a long period, does not necessarily mean that they habitually reside in that Member State within the meaning of Regulation (EC) No 883/2004 ([5]). In this regard, the Regulation distinguishes between the concept of "residence" and "stay, defining a "stay" in Article 1(k) of Regulation (EC) No 883/2004 as meaning "temporary residence". In view of this distinction between "residence" and "stay", a social security institution should take account of all the relevant criteria when assessing where a person is habitually resident, including as indicated in Article 11(2) of Regulation (EC) No 987/2009 the intention of the person concerned as regards their place of residence.

The distinction between a temporary "stay" and habitual residence is fundamental in determining whether a citizen may use their European Health Insurance Card in the Member State other than where they hold their healthcare insurance ([6]). That is, if the stay in the host Member State is temporary, then the holder is entitled to use the EHIC issued by their home State. The European Commission's guidance on when students are entitled to rely on their European Health Insurance Card for healthcare when studying in another Member State underlines this approach, providing that:

> "…persons who move only temporarily to another Member State remain habitually resident in their Member State of origin and are thus covered by the social security system of the Member State of origin (e.g. a student who moved temporarily from his or her Member State of origin to pursue studies in another Member State will be covered by the Member State of origin, not the Member State where he or she studies)([7]).

In view of the above, the mere fact that students register their temporary leave from Croatia as they will be absent from its territory for three months or more is not in itself an indication that the students have changed their habitual residence within the meaning of Regulation (EC) No 883/2004. An automatic decision by the social security/healthcare institution to remove the right of the person concerned to use the EHIC because they have registered their temporary leave (namely a notification that they will be absent from Croatia for three months or more) is not compliant with the EU social security coordination rules. Instead, the institution should assess the habitual residence of the student, taking account of all the factors listed in Article 11(1) of Regulation (EC) no 987/2009 and having regard to their intention as regards their place of residence.

Question B: **In what circumstances and under what conditions can a Member State change its rules on residency, including temporary leave, for the purposes of Directive 2004/38/EC and Regulations 883/2004 and 987/2009?**

"**Residence**" within the meaning of Directive 2004/38/EC is an autonomous EU-law concept specific to the Directive and **must be distinguished from national residence registration** (population register/"registered residence"), which remains within Member States' competence.

([5]) Case C-255/13 *I*, ibid, paras 49-50; C-90/97 *Swaddling*, EU:C:1999:96, paras. 29-30.

([6]) Article 19 of Regulation (EC) No 883/2004.

([7]) Commission Notice, Guidance on the right of free movement of EU citizens and their families, C(2023) 8500 final, point 11.3 (see also points 5.2.2. and 11.4.)

EU law does not harmonise national registration systems as such; it regulates the conditions under which Union citizens enjoy a right of residence in another Member State and the attached right to equal treatment with nationals of the Member State of residence pursuant to Article 24 of Directive 2004/38/EC.

It must also be noted that the Directive does not apply to the residence of EU citizens residing in the Member State of which they hold nationality. Obligations to register and de-register residence in one's own Member State of nationality is thus a matter for national law.

As far as a Member States' rules regarding residence of mobile EU citizens are concerned, Member States are free to amend those rules, provided that they remain within the margin of discretion Member States enjoy under EU law, notably Directive 2004/38/EC, as interpreted by the CJEU.

The meaning of "residence" within the meaning of Directive 2004/38/EC is also notably different from the meaning of "habitual residence" under Regulation (EC) No 883/2004 on social security coordination.

Regulation (EC) No 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009, which lays down the implementing rules, provide for the coordination and not the harmonisation of Member States' national social security systems. In principle, Member States are free to determine, or change, the details of their own social security systems, including which benefits are provided, the conditions for eligibility, how these benefits are calculated and what contributions should be paid. At the same time, the Regulations are directly applicable and establish common rules and principles, sometimes referred to by the CJEU as "a system of conflict rules" which must be observed by all national authorities when applying national law in the context of cross-border movement of citizens ([8]). The principle of habitual residence as defined in Article 1(j) of Regulation (EC) No 883/2004 is part of this system of conflict rules and Member States (and their institutions and authorities) cannot alter its meaning, nor should they confuse the principle of habitual residence with other types of residence. The Commission is always available to support Member States and their institutions with guidance on how EU rules should be applied. Guidance for institutions on how to apply the habitual residence principle (including practical examples) is provided in Part III of the Commission's Practical Guide to applicable legislation in the EU, the EEA and in Switzerland ([9]).

***Question C*: Are Member States required to ensure that one or more of the indicative factors laid down in Article 11 of Regulation 987/2009 are taken into account before determining the residency of one of its nationals or those with the right to permanent residency within its territory?**

Yes, for the purposes of determining "habitual residence" – see the discussion of this issue under the reply to Question A above.

([8]) C-345/09 *van Delft*, ECLI:EU:C:2010:610, para. 51.

([9]) Published by the European Commission in 2013 and available at this link: Official documents - Employment, Social Affairs and Inclusion The Administrative Commission for the Coordination of Social Security systems is working on an updated version.

Question D: **Could the amendment to the Croatian Mandatory Health Insurance Act introduced in 2023 amount to a restriction on the right to free movement?**

The fact that Croatian nationals may lose access to national health insurance coverage in Croatia as a consequence of moving to another Member State does **not**, as such, constitute a restriction on the right to free movement under **Article 21 TFEU**.

According to settled case-law of the CJEU, the exercise of free movement does not entail a guarantee that a Union citizen will retain **all advantages previously enjoyed in the Member State of origin**. In case **D'Hoop (C-224/98)**[10], the Court clarified that only measures which place Union citizens at a disadvantage **specifically because they have exercised free movement**, in a discriminatory manner, may amount to a restriction. By contrast, disadvantages resulting from the application of **general and nationality-neutral rules** fall outside the scope of prohibited restrictions.

However, as mentioned above, in view of the distinction between "residence" and "stay", a social security institution should take account of all the relevant criteria when assessing where a person is habitually resident, including as indicated in Article 11(2) of Regulation (EC) No 987/2009 the intention of the person concerned as regards their place of residence.

[10] EU:C:2002:432.