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Dear Mr Crutzen,

Thank you for your letter dated 20 October 2016 and for sharing with us your concerns.

EU countries are free to establish their own rules on entitlement to healthcare benefits and services. Article 168 of the Treaty on the Functioning of the European Union (TFEU) notes that Member States have responsibility for "*the definition of their health policy and for the organisation and delivery of health services and medical care*". Moreover, the same article states that "*the responsibilities of the Member States shall include the management of health services and medical care and the allocation of the resources assigned to them*".

In the European Union access to healthcare for EU citizens is regulated mainly through two legal instruments: Regulation (EC) No 883/2004¹, hereinafter "the Regulation" and Directive 2011/24/EU², hereinafter "the Directive". Citizens may need to access healthcare in a Member State that is not their own for a variety of reasons. Workers who reside in another Member State or pensioners who retire in another Member State are examples. Likewise, those who travel for holiday or for business may need unexpected necessary care. Lastly, some citizens may travel outside their Member State with the only objective of receiving medical care in the Member State of destination. The Regulation was enacted to provide healthcare coverage, while the Directive complements and expands the coverage of the Regulation. Together they provide access to healthcare in a variety of situations. The Directive applies to persons covered by Regulation (EC) No 883/2004 as well as, generally speaking, to the third

¹ 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 166, 30.4.2004, p. 1).

² Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (OJ L 88, 4.4.2011, p. 45).

country nationals and their family members who are legally resident in the territory of a Member State. However, please note that the Directive follows by and large the personal scope of the Regulation and hence beneficiaries of the JSIS scheme, a non-nationally affiliated health insurance scheme, are outside of this remit. Therefore, former and current EU officials and other persons covered by the JSIS cannot exercise their rights under the Directive, as the personal scope of the Directive impedes them from doing so, unless they are in parallel "insured" in an EU Member State, within the meaning of Article 1(c) of Regulation (EC) No 883/2004.

I wish to refer you therefore on this matter to jurisprudence on the case *Angelo Ferlini v Centre hospitalier de Luxembourg* (Case C-411/98)³ in which the Court of Justice ruled:

"The application, on a unilateral basis, by a group of healthcare providers of a Member State to EC officials of scales of fees for medical and hospital maternity care which are higher than those applicable to residents affiliated to the national social security scheme of that State constitutes discrimination on the ground of nationality prohibited under the first paragraph of Article 6 of the EC Treaty, in the absence of objective justification in this respect".

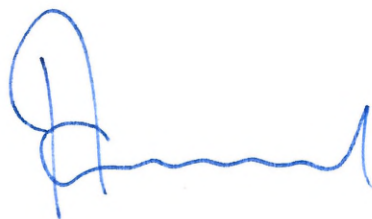
Of note that the first paragraph of Article 6 of the EC Treaty referred to in the paragraph above now corresponds to the first paragraph of Article 18 of the TFEU, which is essentially a non-discrimination provision and reads as follows:

"Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited."

The European Court of Justice ruled therefore that the question relating to the alleged discrimination must be examined in the light of the first paragraph of Article 18 of the Treaty on the Functioning of the EU. I trust this jurisprudence is helpful to you.

Let me conclude by saying that I intend to share your letter and raise this issue with the Commissioner in charge of budget and human resources.

Yours sincerely,

A handwritten signature in blue ink, consisting of a large initial 'A' followed by a long, wavy horizontal line.

³ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1478868869340&uri=CELEX:61998CJ0411>.