



## Your latest update on European Social Security

### Editorial

Dear **trESS** friends,



It is with great pleasure that I present to you our final **trESS** e-Newsletter of the year 2013. At the same time, I present this newsletter with a mixed feeling of great pride and some sadness, as it also announces the end of an era. Indeed, this newsletter will be the last one labelled under the '**trESS** network'. As our project comes to an end in 2013 after an interesting and inspiring journey of as much as nine years, the **trESS** newsletter will as such disappear. However, as of January 2014, **trESS** will be replaced by a broader project called 'FreSsco'. FreSsco will be a completely 'fresh' project, merging content-wise the [trESS network on EU social security coordination](#) with the [Free Movement of Workers network](#). According to a common saying, one plus one often equals three. This new project therefore promises to bring us very challenging and stimulating times. We already warmly invite you to continue following our activities.

As to the last activities of the **trESS** project, we can announce that our analytical work will be available on the **trESS** website within the coming days. It is our pleasure to publish our European report (on the implementation of Regulations 883/2004 and 987/2009 in the Member States), our Think Tank report (on the future of social security coordination) and our Analytical study (an assessment of specific proposals for amendment of the Regulations) for your information. In addition, we considered it the appropriate time to present to you some of the network's achievements from the very beginning in 2005 until now. This newsletter also features news from the European Commission. We would like to draw your attention to the publication of a policy paper from the Commission on the free movement of persons within the EU and the actions that need to be taken going forward. As to the activities of the European Court of Justice, no new cases on EU social security coordination were decided since our last newsletter. Interacting with the European Commission, Mr Albrecht Otting and Mr Andrea Pontiroli were prepared to share some thoughts on the impact of mobile economically non-active EU citizens on the Member States' social security systems. They have been enthused by recent case law and by the latest public debate on this politically sensitive topic, which led them to a thought-provoking interview with **trESS**. Finally, we present to you an EU wide selection of academic publications on EU social security coordination in our 'SSC Literature Corner'.

I wish you a very pleasant read and I'm looking forward to addressing you again under the new FreSsco project.

Merry Christmas and a Happy New Year! Kind regards, Yves Jorens Project Director



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### News from trESS > some trESS 2005-2013 achievements

<b>Information Sharing</b>	<ul style="list-style-type: none"><li>• 28 trESS e-Newsletters for 3.781 subscribers</li><li>• 5 website versions</li><li>• Regulations 1408/71 and 883/2004 Database (+ related CJEU case law and AC decisions)</li><li>• E-learning module (with 70 keywords and 190 questions and answers)</li><li>• Database of national case law and bibliographies</li><li>• Website news section on new EU legislation and case law</li><li>• Ca 10.600 pages of trESS reports published on the website</li><li>• 554 subscribers to the trESS LinkedIn Group</li></ul>
<b>Reporting</b>	<ul style="list-style-type: none"><li>• 8.908 pages of National reports</li><li>• 913 pages of European reports</li><li>• 521 pages of Think Tank reports (since 2008)</li><li>• 258 pages of Analytical study (since 2011)</li><li>• An increasing reliance on trESS for ad hoc analytical support to the EC</li></ul>
<b>Networking</b>	<ul style="list-style-type: none"><li>• From 25 to 32 countries involved</li><li>• Ca 200 trESS seminars</li><li>• National, bilateral and multilateral seminars</li><li>• 2.225 subscribers to the trESS website contact database</li></ul>

### News from trESS > Hot topics on trESS LinkedIn

As announced, the different analytical reports to be delivered to the European Commission will be published on the trESS website. Two reports deal with the development of EU social security coordination towards 2020 and with an analysis of several specific proposals for amendments. A third report is the two-yearly European report providing you with the most recent overview of implementation issues in the field of social security coordination.

### News from trESS > from trESS to FreSsco

At this stage, we are not able to share a lot on how the new project FreSsco and its activities will look like, as we are preparing to get everything on track and roll it out. What we can confirm, is that the trESS newsletter will be replaced by a brand new FreSsco newsletter, which will deal with both social security coordination and the free movement of workers. The current trESS website will be kept online during a transition period. The information tools such as the Regulations database and the A-Z to coordination will gradually be moved to the European Commission's website and/or a new FreSsco platform. Anyhow, the trESS homepage will keep you informed on these developments and guide you to the tools' new location(s).



## Inside the European Commission > some reflections on the posting of workers in the EU



Mr Albrecht Otting works as a legal officer in the Unit B.4 'Free movement of workers and coordination of social security systems' of DG Employment, Social Affairs and Inclusion. Mr Andrea Pontiroli is a policy officer in charge of communication in the Unit. We found them prepared to give us some background information about the recent public debate with regard to the impact of mobile economically non-active European citizens and their families on the social security systems of the Member States.

**trESS: Gentlemen, thanks a lot for your time. We are talking about the free movement of EU citizens, which is broader than the free movement of workers. Regulation 883/2004 serves to support the free movement of all mobile EU citizens and their families. Who's included besides workers and what is the difference with the personal scope of the former Regulation 1408/71?**

**Albrecht Otting (AO):** Free movement of persons is one of the four fundamental principles of European Union. Originally, in the founding Treaty of Rome, free movement related only to workers. But since the Treaty of Maastricht, i.e. since 1993, this right has been extended to all EU citizens irrespective of their economic status.

The same applies to the EU Regulations on the Coordination of Social Security Systems. Originally, they covered only workers and the members of their family, but their personal scope has gradually been extended to cover all self-employed persons, civil servants, and students. Since June 2003, their scope was even extended by a separate Regulation to third-country nationals moving within the European Union.



As of 1 May 2010, the new Regulations 883/2004 and 987/2009 entered into force. They cover all insured persons irrespective of whether they are economically active or not. This is only a logic consequence of the gradual extension of the right to free movement to all EU citizens. The Regulations ensure that all EU citizens have a right to work, study, travel and retire in any EU Member State without missing out on their social security rights.

**trESS: When talking about mobile economically non-active EU citizens and their families, one should first know who these 'economically non-active EU citizens' are. Is there a definition or further explanation of this concept?**

**(AO):** As already explained, the new Regulations no longer refer to workers or self-employed persons, but only to insured persons. However, their economic status still plays a role – not in terms of coverage, but in terms of applicable legislation, which is determined either by reference to the country of employment or the country of residence. The Regulations are built on the basic principle that employed and self-employed persons are covered by the legislation of the country of employment, i.e. *the lex loci laboris*, while inactive persons are covered by the legislation of the country of residence which is commonly referred to as *lex domicilii*.

**Andrea Pontiroli (AP):** I would like to underline that the term 'economically non-active EU citizens' can be understood in different ways. For instance, some people distinguish between inactive and non-active persons, the latter term being understood as comprising persons who did not exercise an activity before they became inactive. There is some confusion on these terms in the political debate. Allow me to give you a recent example: when the Commission published an independent report about the impact of non-active mobile EU citizens on the welfare system of host Member States, the term was used in a very broad sense including students, retired persons, jobseekers and inactive family members. Some media reported, however, that all 'non-active' mobile EU citizens were unemployed and benefiting from unemployment benefits. This was false, of course. In fact, non-active persons not only include students, retired persons and inactive family members in addition to jobseekers, but also most non-active persons are living in a household with at least one member in employment.

**trESS: Let's immediately touch upon a very sensitive point in this discussion. In several Member States, the fear for 'benefit tourism' or 'social tourism' within the EU has grown the past few years. Is there any evidence that this fear is justified? Are there any figures or statistics?**

**(AO):** That is indeed a very sensitive issue. To be clear from the start: the Regulations also cover tourists, for instance when they need health care while travelling in another Member State....

**(AP – with a laugh):** Indeed Albrecht. However, the 'benefit tourism' referred to in the media and in political debates concerns the idea that mobile EU citizens move to another state to benefit from more generous welfare systems. This is contradicted by independent studies, which confirm, on the contrary, that the main reason by far for EU citizens to move to another state is work related, and that mobile EU citizens are generally more likely to be economically active, and less likely to benefit from social benefits, than nationals of host states. **trESS:** The concerns in the Member States do not only relate to the social security systems, but to the welfare systems in general, including social assistance. How can one distinguish social security from social assistance?

**(AO):** The Regulations only coordinate social security schemes. Social and medical assistance are not covered. However, the distinction is not always very clear and there is a large grey zone of mixed-type benefits which are hybrid in nature. Many benefits are tax-financed and means-tested, like classic social assistance benefits, but they are also linked to one of the specific risks dealt with by the Coordination Regulation. For instance, some countries pay social pensions in case of old-age or invalidity, special jobseekers' allowances in case of unemployment, special benefits for disabled people etc. Those benefits provide for supplementary, substitute or ancillary coverage against one of the risks covered by a branch of social security, but at the same time they are also intended to guarantee the persons concerned a minimum subsistence income. Those special non-contributory benefits are also covered by the Coordination Regulations, but they are not subject to exportation, which means they do not have to be paid to persons who no longer reside in the competent State.



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**trESS:** OK, so you are telling us that social assistance is not covered by Regulation 883/2004, unless it specifically relates to one of the social security risks which the Regulations are dealing with. However, also Residence Directive 2004/38 contains a notion of 'social assistance', e.g. where it provides that a host country is not obliged to grant social assistance to economically non-active persons during the first three months of residence. Is it identical to what we understand as social assistance that is excluded from the material scope of Regulation 883/2004? And what is the status of the mixed-type benefits you just mentioned?

**(AO):** This is indeed a very controversial issue. The amazing fact is that both instruments, i.e. Regulation 883/2004 and Residence Directive 2004/38, were adopted on the same date in April 2004, but were discussed separately because they pursue a different purpose. The main objective of Regulation 883/2004 is to ensure that insured persons do not lose their social security rights and their social security protection when moving to another Member State. The main purpose of Directive 2004/38 is to strengthen and simplify the exercise of the right to free movement. In a nutshell: the Regulation deals with the right to social security, the Directive with the right to residence in another Member State. However, the Directive confers a right to reside after three months only to those EU citizens who are either workers or self-employed persons or have sufficient resources including comprehensive sickness insurance cover for themselves and their family members, so that they do not become a burden on the social assistance system of the host Member State.

**(AP):** Well, and this is exactly where the problem starts. What applies if an inactive person moves to another Member State and relies on the principle of equal treatment contained in the Regulation in order to claim welfare benefits? Under the Regulation, everybody is entitled to equal treatment also with regard to access to the special non-contributory benefits once they have moved to another Member State. Can he or she do so under European law or can such a grant be made conditional on a legal right to reside? In other words: can a non-active EU migrant move his or her residence to another Member State and immediately claim welfare benefits in the host country?

**(AO):** Indeed, when an EU citizen moves his or her residence – being understood as factual residence, not legal residence – to another Member State, he or she can rely on the provisions of the Regulation which stipulates that in such a situation, the *lex domicilii*, that is the legislation of the place of residence, should apply.

**trESS:** Residence is clearly a crucial concept for the coordination of social security systems within the EU. What exactly does that mean?

**(AO):** We have to distinguish between temporary residence and habitual residence. You establish your temporary residence in another country as soon as you travel to another country only temporarily. Such a temporary stay does not change the applicable legislation. But if you move your centre of interest – that is your habitual residence – to another Member State, then the legislation of the new host State becomes applicable.

**trESS:** We understand that welfare benefits can only be claimed from the country where a person habitually resides. What is the Commission doing in order to clarify this important concept of habitual residence?

**(AO):** We already have a definition in implementing Regulation 987/2009, which lists some elements in order to determine the centre of interest of a person in case of doubt. This not only depends on the duration and continuity of presence in a Member State, but also on the housing and family situation. To give you an example: when I started to work with the Commission, I originally stayed with a colleague and commuted to my family home every weekend. During this initial period, my habitual residence was clearly still in Germany. In August, however, we sold our house and my wife moved with me to Belgium. It was only from this moment on that we also moved our habitual residence, i.e. our centre of interest to Belgium. We now have our home in a rented house near Brussels and I no longer commute to Germany.

**(AP):** Albrecht, I think your situation is rather clear, but this is not always the case. For this reason, an Ad-hoc group has been established by the Administrative Commission for the Coordination of Social Security Systems, which submitted its report this spring.

**(AO):** Indeed, the report also contains some practical examples, although, of course, it cannot solve all critical cases. There is simply no quick and dirty criterion. In case of doubt, the habitual residence has to be established by an overall assessment of all (emphasis) relevant facts. However, the report highlights some important principles, such as: there can only be one place of residence under the Regulation, and this has to be determined by using only the criteria contained in the Regulation. This unique European concept of residence applies to all chapters of the Regulation. However, the Member States may in principle include in their national legislation additional conditions for entitlement to a specific benefit or cover in a particular social security scheme as long as these criteria are compatible with EU law.



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**trESS:** With regard to the entitlement to both social assistance and social security benefits, the CJEU has referred on many occasions requirement for an EU citizen to have a 'sufficiently close link' with a Member State. How does this influence the debate on economic non-active EU citizens' access to the Member States' welfare systems?

**(AO):** This is a highly interesting idea which had been put forward in the 2008 trESS Think Tank Report on the relationship and interplay between the Coordination Regulations and Residence Directive 2004/38. This idea also came up in this year's Think Tank report on Coordination Regulations in the perspective of 2020. However, we are not in 2020 yet, and I have to admit that the ad-Hoc group could discuss this new concept. I think, however, that this idea is worth being developed further. The Secretariat of the Administrative Commission intends to put it on the agenda for further discussion in the course of next year.

**trESS:** The Commission recently published a Communication named 'Free movement of EU citizens and their families: five actions to reduce the difference'. Can you briefly explain which actions will be taken?

**(AP):** The communication adopted by the Commission on 25 November provides first of all an analysis of the right to free movement and the legal situation concerning the rights of mobile EU citizens. It also deals with the impact that the right of free movement has on the welfare systems of host Member States. Amongst other things, the communication confirms that most EU citizens moving to a Member State do so to work, that they are likely to be more economically active than nationals and less likely to claim social benefits; that, in general, EU mobile citizens tend to be net contributors to the costs of public services they use in the host Member State. The communication then announces five concrete actions to help national and local authorities to effectively apply EU free movement rules on the ground. These actions are: helping national authorities in fighting marriages of convenience; clarifying the habitual residence test (as explained before by Albrecht); addressing social inclusion challenges; promoting the exchange of best practices amongst local authorities; and ensuring the application of EU free movement rules on the ground.

**trESS:** How exactly will the Commission help national and local authorities in this area?

**(AP):** The five actions foresee a number of initiatives designed to support national and local authorities. For instance, in addition to those done by the Commission together with Member States to clarify the 'habitual residence test' mentioned above, when it comes to addressing social inclusion challenges, the Commission will help Member States to use more the European Social Fund (ESF) in order to tackle social inclusion, by allocating at least 20% of the ESF funds to promoting social inclusion and combating poverty. Also, to promote the exchange of best practices amongst local authorities, the Commission is finalising a study evaluating the impact of free movement in six major cities. It will invite mayors in February next year to discuss challenges and identify and exchange best practices. Finally, to ensure that EU free movement rules are applied on the ground, an online training module will be set up next year to help staff in local authorities in understanding and applying these rules – in fact, today, 47% of EU citizens say that the problems they encounter when they go to another EU country are due to the fact that officials in local administrations are not sufficiently familiar with EU citizens' free movement rights.

**trESS:** Thank you, gentlemen!

**(AO):** My pleasure. Talking to trESS is always entertaining.

**(AP):** Thank you for those very interesting questions, which also offer an opportunity for us to clarify a number of complicated issues.



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### News from the Commission > Pensions: Commission welcomes OECD report on value of recent reforms to face future challenges



Recent reforms of pension systems have helped to contain the rise in future cost resulting from ageing populations and increasing life expectancy. These are the findings of the new OECD report Pensions at a Glance 2013. The [study](#) presented in Brussels confirms the European Commission's recommendations set out in the February 2012 [White Paper on adequate, safe and sustainable pensions](#).

Governments now need to do more to encourage people to work longer and save more for their retirement to ensure that benefits are adequate enough to prevent poverty and maintain living standards in old age. Policy action is also needed to limit rises in inequality among retirees and to avoid pensioner poverty.

#### Working longer

According to the report, most OECD countries will have **pensionable ages** for both women and men of **at least 67 years by 2050**. From current levels this implies an average increase of 3.5 years for men and 4.5 years for women.

#### Lower earnings

When looking to the effects of reforms on replacement rates after a full career:

- **low earners** would receive **around 70%** of their former earnings in pension benefits;
- **middle earners** would receive **about 54%** and thus face a larger drop in their living standards;
- **high earners** would receive only **about 48%** but many of these would be less vulnerable due to higher personal savings, including in the form of owner occupier housing.

#### Inequalities

The report shows how unequally the wealth of retirees is distributed. Differences in homeownership and financial wealth exacerbate the inequality in the distribution of income from pensions. Beyond the **social divide** there is a marked **gender divide** in pension income, housing and financial wealth.

### News from the Commission > Free movement of people: five actions to benefit citizens, growth and employment in the EU

The joint responsibility of Member States and the EU institutions to uphold EU citizens' rights to live and work in another EU country is underlined in a policy paper just adopted by the European Commission.

The Commission's paper outlines five concrete actions to help national and local authorities to:

- **Fight marriages of convenience:** the Commission will help national authorities implement EU rules which allow them to fight potential abuses of the right to free movement by preparing a Handbook on addressing marriages of convenience.
- **Apply EU social security coordination rules:** the Commission is working closely with the Member States to clarify the 'habitual residence test' used in the EU rules on social security coordination (Regulation 883/2004/EC) in a practical guide that will be produced by the end of 2013.
- **Address social inclusion challenges:** help Member States further use the [European Social Fund](#) to tackle social inclusion.
- Promote the **exchange of best practices** amongst local authorities.
- **Ensure the application of EU free movement rules on the ground:** the Commission will also set up by the end of 2014, in cooperation with Member States, an online training module to help staff in local authorities fully understand and apply free movement rights of EU citizens.



The Communication analyses the impact of mobile EU citizens on the welfare systems of host Member States. The factual evidence overwhelmingly suggests that most EU citizens moving to another Member State do so to work. They are **more likely to be economically active** than nationals and less likely to claim social benefits.

In fact, the percentage of **mobile EU citizens who receive benefits is relatively low**, compared to Member States' own nationals and non-EU nationals. In most Member States mobile EU citizens are net contributors to the host country's welfare system.

With over **14 million EU citizens resident in another Member State**, free movement – or the ability to live, work and study anywhere in the Union – is the EU right most cherished by Europeans. EU workers have been benefitting from this right since the dawn of the European Union, with the principle enshrined in the first European Treaty of Rome in 1957.



### News from the Commission > Commission refers Finland to Court for restricting rights of workers from other EU countries



The European Commission has decided to refer Finland to the EU's Court of Justice for requiring workers applying for unemployment benefits to have worked in Finland for at least four weeks (or four months of self-employment) as a condition to take into account periods of unemployment insurance paid in another EU country. This requirement discriminates against workers from other EU countries and is in breach of EU law to ensure [free movement of workers](#).

Under EU rules on the coordination of social security schemes to facilitate the free movement of workers, EU countries have to take into account periods of social security insurance paid in other EU countries as though they were periods completed under their own legislation. This principle ensures that workers exercising their right to free movement are not deprived of social security advantages to which they would have been entitled if they had spent their working life in only one EU country.

These rules are laid down in Article 48(a) of the Treaty on the Functioning of the European Union and specified for the purpose of unemployment insurance in Article 61 of Regulation (EC) No 883/2004.

Under the Regulation, EU countries are obliged to apply this principle for unemployment benefits as soon as the worker concerned joins the unemployment insurance scheme of the competent EU country. However, in Finland it is only applied if the worker has worked in Finland, immediately before becoming unemployed, for four weeks as an employee or four months as self-employed.

This additional requirement affects essentially workers from other EU countries, because workers with the same employment record who have completed their periods of insurance in Finland do not have to fulfil this additional condition in order to get their employment and insurance record recognised by the Finnish unemployment insurance scheme.

The Commission requested Finland to end this discrimination against workers from other Member States in its [reasoned opinion of 30 May 2013](#), but the Finnish authorities have refused to take appropriate measures to comply.

See [www.ec.europa.eu/social](http://www.ec.europa.eu/social)

### SSC literature corner

Please find a selection of recent publications in the field of EU social security coordination below:

CHILD POVERTY ACTION GROUP, *Benefits for Migrants Handbook: A guide to financial support for people from abroad*, 6th edition, London: CPAG, 2013.

EICHENHOFER, E., "Soziale Sicherung nicht erwerbstätiger EU-Bürger (Social security for economically non-active union citizens)", *Zeitschrift für europäisches Sozial- und Arbeitsrecht (ZESAR)* 2012, 357.

HAUSCHILD, M., "Die aktuellen Herausforderungen der europäischen Sozialrechtskoordination (Actual challenges of European social security coordination)", *Deutsche Rentenversicherung (DRV)* 2012, 176.

MARTINSEN, D., "Welfare States and Social Policy" in NEERGAARD, U., SZYSZCZAK, E, van de GRONDEN, J.W. and KRAJEWSKI, M. (eds), *Social Services of General Interest in the EU*, The Hague, TMC Asser Press, 2013.

PEREZ-BENEYTO ABAD, J.J., "Prestaciones familiares y cláusulas de residencia: de cómo la norma va contra la jurisprudencia o el olvido de Europa (Family benefits and terms of residence: how the standard goes against the case-law standard or Europe's oblivion)", *Revista General de Derecho del Trabajo y Seguridad Social*, nº 32/2012.

SAMARTZIS, G., „Aufrechterhaltung eines nationalen Arbeitslosengeld-Anspruchs bei Arbeitsuche im EU-Ausland gemäß den Verordnungen (EG) Nr. 883/2004 und 987/2009 (Export of unemployment benefit under Regulations (EC) nos 883/2004 and 987/2009)", *ZFSH SGB. Zeitschrift für die sozialrechtliche Praxis* 2012, 321.

STRBAN, G., „Social security coordination for non-EU countries in South and Eastern Europe: a legal analysis", in *Decent Work Technical Support Team and Country Office for Central and Eastern Europe*, ILO, Budapest 2012, 1-44, annexes prepared by PERMINOVA, O.

TRILLO GARCIA, A., "Prestaciones familiares en derecho comparado y coordinación de prestaciones familiares no contributivas en los Reglamentos 883/2004 y 987/2009 (Family benefits in comparative law and coordination of non-contributory family benefits in Regulations 883/2004 and 987/2009)", *Revista General de Derecho del Trabajo y Seguridad Social*, nº 32/2012.

ŽIC, I., "Rad stranaca u Republici Hrvatskoj od 1. srpnja 2013. tj. od ulaska Republike Hrvatske u Europsku Uniju (The work of foreigners in the Republic of Croatia from 1 July 2013, i.e. from the Croatian accession to the EU)", *Radno pravo* No. 3/2013.