trESS Your latest update on European Social Security

Editorial

Dear **trESS** friends,

It is with great delight that I present to you this **trESS** E-newsletter. In this summer period, we are happy to inform you that the trESS project is running smoothly.

As to the activities of the project, already four national seminars have been organised and each of these seminars were called very successful. Simultaneously, different reflective and analytical reports are in preparation under the "reporting and analysing" activities of **trESS**. The main topics of this year are activation measures, long-term care and unemployment. You will find the result of these efforts on the **trESS**-website at the end of the year and we will keep you in the loop via this newsletter. The **trESS** website has undergone a restyling and we would like to invite you to take a look at its new dress. At the same time, our social media initiatives are becoming very popular, with lots of professionals joining and contributing.

This newsletter also features some news items stemming from the Commission and the programme of the Cypriot Presidency (July 2012 - December 2012) in the field of social security coordination. The political agenda promises to bring about a very dynamic period in the near future, especially with relation to the topics of 'applicable legislation', 'habitual residence' and 'patient mobility'.

Also the ECJ has been quite active in the social security field over the past quarter, as we can offer you a summary of three recent ECJ cases not only dealing with Regulation 1408/71, as usual until now, but also with Regulations 883/2004 and 987/2009.

Finally, we are proud to present you a new section in the **trESS** e-newsletter, called "Inside the Commission". This part of the newsletter will be dedicated to an interview with someone working in the Unit "Free movement of workers and coordination of social security" of DG Employment, Social Affairs and Inclusion of the European Commission. As people dealing with coordination issues on a daily basis, they will exclusively provide you the latest news, general policy plans or interesting concrete files in the broad field of social security coordination. I wish you a very pleasant read and I hope you have enjoyed or will enjoy your summer holiday.

Kind regards,

Yves Jorens
Project Director

News from trESS > trESS analytical work

Reporting on the implementation of the coordination regulations at national level continues to be one of the most important activities of **trESS**. Three big reports are currently being worked on.

In December 2012, **trESS** will publish a Thematic Report on a topic that is under debate in every Member State: the coordination of benefits with activation measures.

The **trESS** Think Tank in its turn carries out legal strategic long-term analysis and examines whether and where the coordination rules need to be adapted in order to meet the goal of facilitating the free movement of persons. For 2012, the Think Tank will analyse current challenges with regard to the coordination of unemployment benefits, in particular insofar as Articles 61, 64 and 65 of Regulation 883/2004 are concerned, and will identify possible solutions for a simplified and more efficient coordination of unemployment benefits. Finally,**trESS** is contributing to an impact assessment with regard to the coordination of long-term care benefits. Of course, we will keep you in the loop on the result of all these activities via our various – traditional and new – communication channels.

News from trESS > trESS social media and website

We have already informed you that a Facebook and a LinkedIn page have been set up. The content basically includes the materials from our E-newsletter and the website's news section, but goes further as well and encompasses any information related to social security coordination. Especially the **trESS** LinkedIn page has become very popular amongst social security professionals, as it guarantees fast updates and interesting discussions on developments in the field.

That is why we want to warmly invite you to become a member of Facebook and/or LinkedIn and to contribute to the **trESS** pages by sharing any relevant national or European information with respect to social security coordination with the **trESS** network. The social media pages will enable you to post messages and comments on cases or news items and to read the opinions of others. More importantly, you will always be the first to know if something new happens in this domain.

You can find the **trESS** social media pages via the Facebook and LinkedIn buttons on the homepage of our website www.tress-network.org. Take a look and see how our website has been restyled to make it even more user-friendly and informative. One of the new information tools to check out is our rich database of national seminar presentations, which consists of all PowerPoint presentations that we have collected from the national trESS seminars since 2008.

News from trESS > trESS seminar calendar 2nd half of 2012

Date: 04/09/12 - Countries: Estonia-Finland

Date: 24/09/12 - Country: Cyprus

Date: 27/09/12 - Country: Spain

Date: 09/10/12 - Country: Slovakia

These are the seminars that will take place in the second half of 2012. The seminar calendar can also be found at the seminar section of our website. The agenda of the different seminars will be posted ca. four weeks prior to the seminar date. Soon after the seminar, the PowerPoint presentations used at the seminar will be linked in the agenda.

You can register for participation in a seminar until three weeks before its date by completing an online subscription form available on the website.

Participation in **trESS** seminars is free of charge. Any travel and accommodation expenses cannot be borne by **trESS**.

Inside the Commission: update on the coordination of family benefits

Mr Radek Časta is a Legal Officer of the Unit "Free movement of workers and coordination of social security" of DG Employment, Social Affairs and Inclusion. He took up this responsibility in December 2006. Before that, he worked as a lawyer in the private and public sector in the Czech Republic and in Germany from 1996. We found him prepared to enlighten us on the status questiones with regard to the coordination of family benefits.

trESS: Mr. Časta, thank you for your time. Could you first explain to us whether the coordination of family benefits is a topic of major importance in your unit or whether it is "less present" than topics like applicable legislation or the coordination of old age pension or sickness benefits?

R. Časta (RC) : As any other area of social security coordination, family benefits represent an important part of our work. It is for sure less present than cases on applicable legislation. However, the Commission is receiving a significant number of questions and complaints concerning family benefits and also the ECJ is confronted regularly with preliminary questions submitted by the national courts concerning this field and its coordination at the EU level.

trESS: Have you seen major changes or new burning issues since the introduction of the new Regulations on 1 May 2010?

RC: The new Regulations consolidated the provisions on family benefits in only one Chapter in each Regulation. The text is much more readable now than it was before. Also the removal of the distinction between family benefits and allowances is remarkable. In that respect, we can see a real simplification. The new Regulations also stress the need to provide the family benefits without delay, if necessary on a provisional basis. Nevertheless, the text of the new provisions and their interpretation and EU wide application are two different matters. There are some burning issues in this field, but I would not call them new. For example, with regard to the definition of family members, there were divorced parents, step-parents or extramarital children 40 years ago as well. However, such factual situations still inspire many questions and discussions today, sometimes based on misunderstandings among the national experts and competent institutions.

Inside the Commission: update on the coordination of family benefits

trESS: What are, from your experience within the European Commission, the most common problems in the domain of the coordination of family benefits?

RC: The national systems in this field are very diverse and a child's parents might often fall under the legislations of different Member States. The determination of entitlements in different Member States and the anti-overlapping provisions ensuring that the family shall receive in total the highest sum, but not be paid twice for the same family member, are complex and can get fairly complicated. The most common problem in this field is, from my point of view, the lack of proper and swift administrative cooperation between the competent institutions of the Member States. The composition and factual situation of the family must be clarified and it takes sometimes ages until a decision is delivered to the applicant and the benefits are paid.

trESS: Does the Commission plan to counter these problems in some way, e.g. by adapting the current rules?

RC: At the moment, the Commission does not foresee substantive legislative changes in this field. One must not forget that the new rules were negotiated in the Council and the Parliament for almost ten years and have applied for only two years since May 2010. I think we should first focus on the common interpretation of the current rules. The interpretation should find a broad consensus and must be in line with the rules of the EU Treaty on the free movement of workers and with the case law of the ECJ. The interpretation is the task of the Administrative Commission but also for the national institutions and courts when dealing with the cases on a daily basis and applying the EU provisions. As I said, one of the main challenges is to speed up the exchange of information. On this front, the developments are ongoing. We should have new paper forms for the exchange of information by the end of year and in a few years' time also a full electronic exchange of information in the whole EU. This should considerably speed up the processes, not only in the family benefits field.

trESS: Do you see certain trends in the social security legislation of the Member States which could have an impact on the family benefits chapters of the coordination Regulations?

RC: Yes, definitely. The Member States modernise and adapt their national systems and policies on a constant basis. There are, for example, flexible income-base calculated parental benefits in some Member States. I can also see a tendency towards the "regionalisation" of family benefits. Some regions or even municipalities of a Member State provide additional family benefits but usually linked to a long-standing residence in the appropriate region. This is of course a problem for migrant workers and contrary to EU law if they are denied the benefit.

trESS: The coordination system provides for clear priority rules in cases where several Member States are liable to grant family benefits. Could you explain them briefly? Is it always crystal-clear which Member State is responsible?

RC: I think that the conflict rules were very much improved in comparison to the old Regulations. There is now a clear cascade of priorities. In the case of benefits due in more Member States for the same period and for the same family members, you will firstly receive the benefit from the State where you are employed or self-employed (even if you and your family members do not reside in this State), secondly the benefits from the State paying a pension and lastly from the State of residence. If the right to benefits is based on the same grounds, for example both parents are employed but in different Member States, there are additional criteria how to determine the primary and secondary competent State based on the child's residence or the length of the insurance period. The objective of these provisions is to ensure that the family receives in total the highest sum available from all countries involved, but it is not necessarily the State with the highest benefits which pays first as a primary competent State. This makes the coordination in this field so complex.

trESS: An important basic rule in the coordination of family benefits is indeed that citizens are always entitled to the highest amount. If the benefits they receive from the competent Member State turn out to be lower than what they would have received from another Member State where they had rights, the latter will have to pay a supplement corresponding to the difference between the two benefits. Does this process of comparison run smoothly at all times or do people in practice sometimes loose the supplement?

RC: People cannot lose their right and I am convinced that in the vast majority of cases, it runs smoothly. As I said before, the information exchange can take some time. Eventually, people will receive the benefits. There are also individual cases where this is not the case. Mostly this is due to the lack of proper administrative cooperation. Occasionally, there are also different views with regard to which State is primarily competent and which secondarily. And finally, there are also some interpretative issues and open questions concerning EU law and the case law of the ECJ from the perspective of national law. In any case, if any of your readers is of the opinion that he or she is not receiving what is due to him or her under the national legislation, I invite them to take recourse to the national institutions or courts. They are obliged to apply not only national law but also EU law and the European case law.

trESS: A brainteaser to conclude. What are your expectations as to the future developments following the judgement in Joint Cases C-611/10 and C-612/10 Hudzinski and Wawrzyniak, in which the EU Court obliged a non-competent Member State according to Title II of Regulation No 883/2004 to grant the difference up to the level of its family benefits anyway? This certainly came as a surprise to everyone who is working in the field of social security coordination. Do you see this as a Union citizenship-driven move from the EU Court and how will this influence the coordination of family benefits or even the coordination of all social security benefits as a whole?

RC: We will see. The tendency in providing the maximum possible social standard to migrant workers in this field is clear in the case law of the ECJ and was already obvious in the famous Bosmann case (C-352/06). We need to analyse the consequences of the current case law, discuss with the national experts in the Administrative Commission and wait for possible additional judgements and clarifications. In any way, it seems that the coordination of family benefits is becoming even more complex than it was the case before.

As it is a holiday period now, I would like to conclude with a summer brainteaser for your readers:

A mother resides in Member State (MS) A. She is receiving an old age pension from MS B and is employed in MS C (where she will reach the pensionable age in two years' time). Her daughter is residing and studying in MS D. The father resides in MS E and works in MS F. The daughter is "mainly dependent" on both parents who provide her with regular payments covering the majority of her living costs. All Member States (A-F) provide family benefits only on the basis of the residence in the respective MS in the amount of: MS A – 100 €, MS B – 70 €, MS C – 60 €, MS D – 150 €, MS E – 120 €, MS F – 50 €. Which MS shall pay how much family benefits according to Regulations 883/2004 and 987/2009?

I would be pleased to receive a reply from your advanced readers with their legal justification by the end of August at radek.casta@ec.europa.eu

trESS: Thank you very much!

News from the ECJ > (Case C-106/11) M.J. Bakker v Minister van Financiën

> View Case

The reference has been made in proceedings between Mr Bakker and the Staatssecretaris van Financiën (State Secretary for Finance) concerning his compulsory affiliation to the Dutch social insurance scheme for 2004.

During 2004, Mr Bakker, who has Dutch nationality, resided in Spain and was employed on board dredgers flying the Dutch flag for an undertaking established in Rotterdam (the Netherlands). He carried out his activities mainly in the territorial seas of China and of the United Arab Emirates. The dredgers were recorded in the Dutch maritime shipping register. Mr Bakker challenged the assessment sent to him in respect of income tax and national insurance contributions for 2004 in the Netherlands and was convinced he should not be affiliated to the Dutch compulsory social security scheme.

The dispute having reached the Dutch Supreme Court, it asked the ECJ whether Article 13(2)(c) of Regulation No 1408/71 must be interpreted as precluding a legislative measure of a Member State from excluding from affiliation to the social security scheme of that Member State a person in the position of the applicant in the main proceedings, who holds that Member State's nationality but does not reside in it and is employed on board a dredger flying the flag of that Member State but operating outside European Union territory. It also wanted to know to what extent is it important in that regard that in the implementation of the Dutch employed persons' insurance scheme a policy is followed by virtue of which seafarers in a case such as the present are considered by the implementing body to be insured persons on the basis of EU law.

The answer from the Court was quite straightforward. It held that it must be borne in mind that Article 13(2)(c) of Regulation 1408/71 expressly provides that a person employed on board a vessel flying the flag of a Member State is to be subject to the legislation of the State. Thus, pursuant to that provision, a person in Mr Bakker's situation is, in principle, subject to the Dutch social security legislation, in view of the professional activity which that person carries out on board a vessel flying the Dutch flag.

Mr Bakker's arguments with relation to a dredger not fitting under the concept of 'vessel' and to the sovereignty of coastal states could not alter that conclusion. The first argument could not be accepted, inasmuch as there is no condition laid down in that provision as to the type of 'vessel' covered. Furthermore, neither respect for the sovereignty of the coastal State nor the United Nations Convention on the Law of the Sea requires that a worker in Mr Bakker's situation be deprived of the benefit of the social insurance provided for, in accordance with Regulation 1408/71, by the Member State whose flag the vessel flies, when that vessel is located in the territorial waters of a State other than that Member State.

Also the residence requirement for compulsory general social insurance in the Netherlands could not change the conclusion. The effect of Article 13(2)(c) of Regulation 1408/71 is that a provision of the applicable national legislation pursuant to which cover by the social security scheme established by that legislation is conditional on residence in the Member State concerned may not be relied on against the persons referred to in Article 13(2)(c) of that regulation.

Article 13(2)(c) of Regulation No 1408/71 must thus be interpreted as precluding a legislative measure of a Member State from excluding, from affiliation to the social security scheme of that Member State, a person in the position of the applicant in the main proceedings, who holds that Member State's nationality but does not reside in it and is employed on board a dredger flying the flag of that Member State and operating outside the territory of the European Union. Having regard to the answer given to the first question, it was not necessary to answer the second question.

News from the ECJ > (Case C-611/10) Waldemar Hudzinski v Agentur für Arbeit Wesel - Familienkasse and Jaroslaw Wawrzyniak v Agentur für Arbeit Mönchengladbach - Familienkasse

> View Case

The references have been made in disputes between, first, Mr Hudziński and the Agentur für Arbeit Wesel – Familienkasse (Employment Agency Wesel – Department for family allowances) and, second, Mr Wawrzyniak and the Agentur für Arbeit Mönchengladbach – Familienkasse (Employment Agency Mönchengladbach – Department for family allowances) concerning the refusal to grant child benefit in Germany.

Mr Hudziński and Mr Wawrzyniak, both Polish nationals, living and working in Poland, had respectively worked as a seasonal worker and as a posted worker in Germany. Both were treated as being subject to unlimited income tax liability in Germany for that period. When they applied for the payment of child benefit (pursuant to German legislation basing entitlement to child benefits on unlimited income tax liability), the German Familienkasse rejected that application and the administrative challenge brought against that negative decision. In their respective appeals before the German Federal Finance Court, they submitted that it follows from the judgement in Case C 352/06 Bosmann the German child benefits legislation remains applicable even where, pursuant to Regulation 1408/71, the Federal Republic of Germany is not the competent Member State under Article 14a(1)(a) of that regulation, in the case of Mr Hudziński, or under Article 14(1)(a) of that regulation, in the case of Mr Wawrzyniak.

The German Federal Finance Court decided to stay the proceedings and to refer several question to the ECJ. In essence, it was asked whether Articles 14(1)(a) and 14a(1)(a) of Regulation No 1408/71 must be interpreted as precluding a Member State, which is not designated under those provisions as the competent Member State, from granting child benefits in accordance with its national law to a migrant worker engaged in carrying out temporary work within its territory in circumstances such as those at issue in the main proceedings. The referring court also asked whether EU law, in particular the rules against overlapping set out in Article 76 of Regulation 1408/71 and Article 10 of Regulation 547/72, the Treaty rules on the free movement of workers and the principle of non-discrimination, must be interpreted as precluding, in a situation such as that at issue in the main proceedings, the application of a rule of national law, which excludes entitlement to child benefits in the case where a comparable benefit must be paid in another State or would have to be paid if a claim to that effect were to be made.

As to the possibility of the granting of child benefits by a non-competent Member State, the Court first stated that it must be held that the legislation applicable to the circumstances of the appellants, as regards their entitlement to family benefits, is determined, respectively, by Articles 14(1)(a) and 14a(1)(a) of Regulation 1408/71. That is to say, Polish legislation is applicable. That being so, it should be recalled that, according to settled case-law, the objective of the provisions of Title II of Regulation No 1408/71, which determine the legislation applicable to workers moving within the European Union, is to ensure, in particular, that the persons concerned are, in principle, subject to the social security scheme of only one Member State. Moreover, primary law of the European Union cannot guarantee to an insured person that moving to another Member State will be neutral in terms of social security.

However, it immediately added that as the Court stated in paragraph 29 of Bosmann, the provisions of Regulation No 1408/71 must be interpreted in the light of Article 48 TFEU, which aims to facilitate freedom of movement for workers and entails, in particular, that migrant workers must not lose their right to social security benefits or have the amount of those benefits reduced because they have exercised the right to freedom of movement conferred on them by the Treaty. Therefore, an interpretation of Articles 14(1)(a) and 14a(1)(a) of Regulation 1408/71 permitting a Member State to grant family benefits in a situation such as that in the main proceedings, cannot be excluded because it is liable to contribute to the improvement of living standards and conditions of employment of migrant workers by affording them greater social protection than that resulting from application of that regulation, and thereby contributes to the objective of those provisions, which is to facilitate the free movement of workers.

The fact that neither the worker nor his family members are resident in the non-competent state (like this was the case in Bosmann) is irrelevant, as the connection of the situations at issue with the territory of the Member State which lacks competence and from which family benefits are claimed is the fact of subjection to unlimited income tax liability in respect of the income earned from the temporary work in that Member State. Such a connection is based on a precise criterion and may be regarded as being sufficiently close, when account is also taken of the fact that the family benefit claimed is financed by tax revenue.

As to German rules excluding entitlement to child benefits where a comparable benefit must be paid or would have to be paid if it was claimed, the Court first cleared out that the situation at issue in the main proceedings is not covered by that rule against overlapping or, moreover, by that laid down by Article 76 of Regulation 1408/71 since it does not concern a hypothetical overlapping of entitlements laid down by the legislation of the Member State of residence of the child concerned and of those resulting from the legislation of the Member State of employment designated as the competent State under that regulation. In the main proceedings, the Republic of Poland is both the Member State of residence of the child concerned and the competent Member State of employment of the posted worker. The Regulation does consequently not preclude the exclusion of entitlement.

However, the application of such a rule of national law against overlapping in a case such as that in the main proceedings, in so far as it appears to require, not a reduction in the amount of the benefit by the amount of that of a comparable benefit received in another State, but exclusion from that benefit, is such as to constitute a substantial disadvantage affecting in reality a greater number of migrant workers than settled workers who have worked exclusively in the Member State concerned, this being a matter for the referring court to ascertain. Therefore, even if it can be explained by the disparities in the social security legislation of the Member States which subsist, the mentioned disadvantage is contrary to the requirements of the primary law of the European Union on the free movement of workers.

News from the ECJ > (Case C-522/10) Doris Reichel-Albert v Deutsche Rentenversicherung Nordbayern

> View Case

The reference was made in the context of proceedings between Mrs Reichel-Albert and the Deutsche Rentenversicherung Nordbayern ('the DRN') concerning the refusal by the latter to take into account and credit, for the purposes of calculating Mrs Reichel-Albert's future old age pension, 'child-raising periods' and 'periods to be taken into consideration' completed by her in Belgium.

Mrs Reichel-Albert, a German national, pursued an activity as an employed person in Germany and lived there until 30 June 1980. She then received unemployment benefit paid by that Member State until 10 October 1980. From July 1980 to June 1986, she was resident in Belgium with her spouse, who pursued an activity as an employed person there. The couple has two children, who were born in Belgium on in 1981 and 1984. On 1 July 1986, Mrs Reichel-Albert, her spouse and their children were officially returned to reside in Germany. By decisions in 2008, the DRN rejected Mrs Reichel-Albert's request to have the child-raising periods and 'periods to be taken into consideration' completed during her stay in Belgium taken into account and credited, on the ground that, during that period, the child-raising took place abroad.

When the Sozialgericht Würzburg was confronted with this case, it decided to stay the proceeding and ask the ECJ, in essence, whether, in a situation such as that at issue in the main proceedings, Article 21 TFEU must be interpreted as requiring the competent institution of a first Member State, for the purposes of granting an old age pension, to take account of child-raising periods completed in a second Member State as though those periods had been completed on its national territory by a person who, at the time of the birth of his of her child, had ceased being in employment in that first Member State and had temporarily established his or her residence in the territory of the second Member State, although without being employed as an employee or self-employed person.

Article 21 TFEU was decisive in this case, as the ECJ held that it is t is apparent from Article 87(1) of Regulation 883/2004, which applies to situations governed by Regulation 987/2009 pursuant to Article 93 of that regulation, that it does not give rise to any entitlement for the period prior to the date of its application, namely 1 May 2010. Consequently, Article 44 of Regulation No 987/2009 is not applicable ratione temporis to the facts at issue in the main proceedings. As Regulation 1408/71 does not lay down specific rules for child-raising periods either, the ECJ only referred to the Treaty.

As to the applicable legislation to the situation of Mrs Reichel-Albert, the Court decided German legislation was applicable and, as regards the crediting of those periods of child-rearing for the purposes of old age insurance, Mrs Reichel-Albert cannot be regarded as coming under the jurisdiction of her Member State of residence during the periods concerned. The fact that she worked and contributed in only one Member State, both before and after temporarily transferring her place of residence, solely on family-related grounds, to another Member State where she never worked or contributed, allows a sufficiently close link to be established between those child-raising periods and the periods of insurance completed by virtue of the pursuit of a gainful occupation in the first Member State under consideration.

As to the German procedure for taking into account the child-raising periods, the Court assessed its compatibility in the light of Article 21 TFEU. According to German law, for the purposes of the granting of an old age pension by the competent institution of a Member State, child-raising periods completed outside the territory of that Member State, unlike those completed in the national territory, are not taken into account unless, inter alia, the child-raising parent has habitually resided abroad with his or her child and during the period devoted to child-raising or immediately before the birth of the child has completed periods of contribution by virtue of an activity carried on there as an employed or self-employed person.

In a situation such as Mrs Reichel-Albert's, the provisions in question lead to a result where child-raising persons who have not completed periods of compulsory contribution by virtue of an activity carried on as an employed or self-employed person during the raising or immediately before the birth of the child is not entitled to have taken into account, for the purpose of determining the amount of their pension, their child-raising periods solely because they temporarily established their residence in the territory of another Member State, even though they were not employed as an employee or self-employed person in that second Member State.

National legislation which places some of its nationals at a disadvantage simply because they have exercised their freedom to move and to reside in another Member State thereby gives rise to inequality of treatment, contrary to the principles which underpin the status of citizen of the Union, that is, the guarantee of the same treatment in law in the exercise of the citizen's freedom to move. As no justification was put forward, it must be held that, in a context such as that at issue in the main proceedings, the fact of precluding child-raising periods completed outside the national territory from being taken into account, is contrary to Article 21 TFEU.

News from the Commission > Communication on the External Dimension of EU Social Security Coordination and four proposals for Council Decisions

On 30 March 2012, the European Commission put forward a package including a policy Communication on the External Dimension of EU Social Security Coordination, together with 4 proposals for Council Decisions on the EU position concerning social security coordination with Albania, Montenegro, San Marino and Turkey.

Social security coordination with countries outside the EU is dealt with by means of bilateral social security agreements made between Member States and third countries. Such agreements often contain provisions that allow a worker from a third country to work in the EU country concerned but remain subject to the social security legislation of the sending state for a limited period of time. In addition, they can cover equal treatment in the system of the host state and payment of state pensions on the territory of the other state. Older agreements sometimes deal with reciprocal healthcare provision. Member States have only a limited number of such bilateral agreements;the contents of the agreements vary from country to country; and there are many third countries with whom no agreements exist.

The Communication makes the point that, although there is an internal system of EU social security coordination rules, there is no real cooperation in respect of third countries (other than in respect of the EEA countries and Switzerland). This creates external "fragmentation", which causes barriers for businesses coming from third countries and a lack of transparency as to what migrants' rights are, both for EU workers working outside the EU and for migrants from third countries working in the EU.

The Communication therefore suggests a number of ideas to encourage cooperation between the Member States in the field of social security coordination with third countries. The Communication proposes a two-pronged approach. It underlines the need for better cooperation on national bilateral agreements and it promotes the development of a common EU approach. In general terms, it emphasises the need – consistent with the Europe 2020 strategy – for the EU to look outwards and to strengthen its external profile on social security issues.

News from the Commission > Smartphone app to ensure stress-free travel this summer

Just in time for the summer holidays, the EURO 2012 Football Championship and the London 2012 Olympics, the European Commission launched an application for smartphones explaining how to use the European Health Insurance Card.

Differences among healthcare systems may make it difficult to figure out how to use the Card in various countries and what the local rules are. This handy guide on how to use the Card in the 27 EU countries, Iceland, Lichtenstein, Norway and Switzerland is now available as an application for smartphones on three platforms: iOS, Android and Windows 7 mobile. It includes general information about the card, emergency phone numbers, treatments that are covered and costs, how to claim reimbursement and who to contact in case you have lost your card. The app is available in 24 languages, with the option to switch from one language to another.

Download "European Health Insurance Card" app for your smartphone

The European Health Insurance Card itself cannot be generated or downloaded by the application. The Card is available – free of charge – from national health insurance providers. The Card gives people access to state-provided healthcare in case of illness or an accident during travel and temporary stays in 31 European countries. It guarantees access to urgent treatment under the same conditions and at the same cost (free in some countries) as people insured in that country.

News from the Commission > Commission requests The Netherlands to end discrimination against pensioners living abroad

The European Commission has requested the Netherlands to stop discriminating against pensioners who live abroad when paying out an allowance for elderly taxpayers. This results from a discriminatory condition under Dutch law for entitlement to the 'koopkrachttegemoetkoming oudere belastingplichtigen' (purchasing power allowance for elderly taxpayers).

New national legislation which entered into force on 1 June 2011 provides that the allowance is paid to persons aged 65 years and above who can show that at least 90 % of their world income is taxable in the Netherlands. This condition means that the allowance is not granted to people living outside the Netherlands. The Commission has received a large number of complaints from citizens. Under EU law, entitlement to an old age benefit cannot be conditional on the pensioner living in the Member State where he or she claims the benefit. This rule enables pensioners to move to another Member State when they retire whilst retaining their pension.

The Commission's request takes the form of a 'reasoned opinion' under EU infringement procedures. The Netherlands now has two months to inform the Commission of measures taken to bring its legislation into line with EU law. Otherwise the Commission may decide to refer the Netherlands to the Court of Justice of the EU.

News from the Commission > Commission launches 'Your First EURES job' pilot project to help young people find jobs

A pilot project to help young people find a job in another EU country has been launched by the European Commission. In its initial phase 'Your first EURES job' will aim to improve cross-border mobility for 5000 people. It will also serve as a testing ground for transforming EURES – the network of Member States' employment services – towards a pan-European employment service.

As announced in the Commission's April 2012 Employment Package, the Commission intends to improve EURES so as to provide more transparency on the European labour market and direct jobseekers and job changers to where the jobs are. It will also provide easier and real-time access to vacancies available in the EU, while presenting employers with a pool of candidates with the right skills.

Under the 'Your first EURES job' scheme, four selected employment services from Germany, Spain, Denmark and Italy will help young people look for work in Member States other than their own. As part of the scheme, young EU nationals between the ages of 18-30 will be provided with information and help for their recruitment, as well as the possibility of financial support for their application or training. Small and medium businesses, i.e. companies with up to 250 employees, may apply for financial support to cover part of the cost of training newly recruited workers and helping them settle in.

News from the Commission > Public consultation on the implementation of the Smart Regulation

The Commission wants to raise the attention to the public consultation on the implementation of Smart Regulation. The consultation aims to collect views and suggestions from citizens and external stakeholders on how to improve the quality, relevance and implementation of EU legislation, and to take account of the views of those affected by such legislation.

In its 2010 Communication on "Smart Regulation in the EU", the Commission set out a strategy to improve the way it designs, enforces, evaluates and revises European policies and regulations to ensure they benefit citizens and businesses. Nearly two years later, the Commission is taking stock of the progress made and drawing lessons from its experience. This stakeholder consultation aims to collect views and proposals to inform a Commission Communication reporting on Smart Regulation implementation. The target groups are public authorities, enterprises, business organisations, social partners, non-governmental organisations and the general public.

The period of consultation runs from 27 June 2012 to 21 September 2012.

Click here for more information on this consultation and how to submit your contribution.

See www.ec.europa.eu/social

News from the Council and the European Parliament > New Regulation 465/2012 published in all EU languages

On 8 June 2012, the new Regulation 465/2012 was published in the Official Journal of the European Union. The new instrument makes amendments to the modernised social security coordination regulations 883/2004 and 987/2009. They include changes affecting aircrew and self-employed workers and amend the general rules for simultaneous employment.

Before the amendment, the general rules that apply to all persons working in two or more EU countries applied to aircrew. These general rules do not fully fit the way in which airlines are organised. Many airlines provide their services from so-called "home bases", the place where the personnel normally starts or ends a duty period or a series of duty periods and where, under normal conditions, the operator is not responsible for the accommodation of the aircrew member. This is also the location with which the worker has the greatest connection during his/her employment.

The new rules now recognise this close connection with the inclusion of the concept of 'home base", which means that the person will be subject to the social security legislation of the country of the "home base". Let's for example imagine the situation of a pilot who is working for an airline which has his registered office in France, but who is residing in Italy and whose 'home base' is in Italy. According to the new rules, he will be subject to the Italian social security legislation and no longer to the French legislation. This means contributions will be paid in Italy, for example.

The modernised regulations extended the unemployment provisions to self-employed workers. The new regulation introduces practical provisions for self-employed frontier workers. These will apply in case the country of residence has no unemployment benefits scheme for self-employed unemployed persons. In this case, the country of last activity will pay the unemployment benefits if the person registers with the unemployment services and fulfils job-seeking activities there. Of the 27 EU countries, 18 have an unemployment benefits scheme for self-employed persons and 9 don't.

Finally, the criterion of “substantial activities” has been extended to simultaneous employment situations in which a worker is employed by two or more employers having their registered office in different Member States. As a result, when working for different employers established in two Member States, of which one is their country of residence, employees will have to perform substantial activities in their home Member State for its legislation to apply. If this is not the case, they will be subject to the legislation of the Member State where the other employer is located. However, if a person works for different employers scattered across two or more Member States, which are not the country of residence, he/she will still be subject to the legislation of the Member State in which he/she resides.

A transitory period of maximum 10 years will guarantee a smooth landing of the new rules, which have entered into force on 28 June 2012. Persons who are impacted will be able to maintain the currently applicable legislation, unless their situation changes or if they explicitly choose for the application of the new rules.

News from the Council and the European Parliament > The plans of the Cypriot Presidency of July-December 2012

The Work Programme of the Cypriot Presidency for the second half of 2012 has been presented to the delegations of the Member States in the Administrative Commission. As applicable legislation is the backbone of the Regulations, Cyprus, during its presidency would like to pay particular attention to issues related to this area. In particular, the Presidency would like to explore any issues institutions are facing with regard to the application of Articles 12 and 13 of Regulation 883/2004. In essence, the aim of the Cypriot Presidency is to cover the scope of the posting guide, whilst also taking the recent changes in applicable legislation into consideration, as well as any recent relevant cases of the Court of Justice.

It will examine the elements of any further work, needed to review the Practical Guide. To this extent the Cypriot Presidency will launch a questionnaire covering the scope of the posting guide at the beginning of July. The results of this survey will be presented for discussion in October.

Priority will also be given to the monitoring of the progress of the Ad-hoc Group on the habitual residence test in an effort to clarify the rules applying to non-active persons moving to another Member State.

The Cypriot Presidency will also follow up on the trESS report on the revision of the unemployment sector, an issue which will be presented in the December meeting. The lively discussions in Council as well as in the Administrative Commission reflect the importance that all Member States and the Commission attach to this part of the Regulation acknowledging that there is room for improvement. The work done in December will facilitate the next steps in the process and the work to be done in 2013.

The Presidency also anticipates addressing the on-going dossiers in the Administrative Commission, and continuing the discussions on important issues. One of them is the external dimension of social security coordination and in particular the follow up on the work of the informal network on negotiating a social security agreement with China for the Administrative Commission to adopt a common approach on the issue. Another will be to continue with the discussions on the definition of the Member State responsible for paying family benefits in cases where the parents are divorced. Finally, it will focus on cross-border healthcare and in particular the relationship between Regulation 883/2004 and Directive 2011/24. The intention is to follow up the work done on this issue. The same goes for the annual discussion on fraud and error in social security coordination.

In respect of EESSI, priority will be given to the validation of the roadmap.

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