Editorial

Dear **trESS** friends,

It is with great pleasure that I present to you this summer 2013 **trESS** E-newsletter, which will give you an insight in the latest developments in our project as well as in the ever developing field of EU social security coordination.

Currently, our new working year of the third **trESS** project is well up and running. The analytical branch of the project will again produce several reports at the end of the year. We will of course keep you informed on the outcome. We are also eager to remind you of our round of **trESS** seminars. As of July 2013, five more seminars will be organised in the framework of the project. You can find them in the seminar calendar included in this newsletter.

As is the case for the members of the **trESS** network, also the Commission and the ECJ have been very active in the field of EU social security coordination. You will notice that there is a lot of news from the Commission in the field, including the announcement of several reasoned opinions sent to different Member States. We can also present you three new ECJ cases, one of which relates to the coordination of unemployment benefits – answering the pending question whether the old Miethe case is still valid under Regulation 883/2004 – and two that deal with the coordination of pensions.

On top of that, we can already present you the programme in relation to social security coordination of the 2013 Lithuanian Presidency, running from 1 July until 31 December 2013.

We are also happy to have had the opportunity to interview Mr Felix Schatz, a former legal officer in the Unit "Free movement of workers and coordination of social security systems" of DG Employment, Social Affairs and Inclusion who is currently working in the Commission's Legal Service. He took the time to talk to our **trESS** reporter on the role and organisation of this specific Commission service and its place in the domain of social security coordination.

Please also check out the most recent EU-wide publications in our SSC literature corner.

I wish you a very pleasant read, and I hope you will find this new newsletter both informative and pleasurable.

Kind regards,

Yves Jorens
Project Director

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News from trESS > trESS 2013 seminar calendar

	COUNTRY	DATE	CITY
	Bilateral Luxembourg/France	2/Jul	Luxembourg
	Bilateral Denmark/Germany	13/Sep	Padborg (DK)
	Trilateral Austria/Czech Republic/Slovenia	26/Sep	Salzburg (AT)
	Ireland	2/Oct	Dublin
	Croatia	8/Nov	Opatija

This 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**.

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News from the ECJ > (Case C-443/11) Jeltes e.a. v UWV

This request for a preliminary ruling concerns the interpretation of Articles 65 and 87(8) of Regulation 883/2004 and of Article 45 TFEU and Article 7(2) of Regulation 1612/68 on freedom of movement for workers within the Community. The request has been made in proceedings between Mr Jeltes, Ms Peeters and Mr Arnold, on the one hand, and the Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen, on the other hand, concerning its rejection of their applications to obtain or maintain benefits under the Law on unemployment (Werkloosheidswet; 'the WW').

Mr Jeltes and Ms Peeters are frontier workers of Netherlands nationality who worked in the Netherlands while resident in Belgium and Mr Arnold is a frontier worker of Netherlands nationality who worked in the Netherlands while resident in Germany. All three had submitted a claim for unemployment benefits in the Netherlands, which was refused. The Netherlands authorities based their refusal on Article 65 of Regulation No 883/2004, under which the Member State of residence, that is to say the Kingdom of Belgium for the first two applicants and the Federal Republic of Germany for the third applicant, is the Member State responsible for paying unemployment benefit. It is not contested that those persons are atypical frontier workers, within the meaning of Case 1/85 Miethe, in so far as they have retained particularly close personal and business links in the Member State in which they were last employed.

Given that it still has doubts, following the entry into force of Regulation No 883/2004, as to the continuing relevance of *Miethe*, the Rechtbank Amsterdam decided to stay the proceedings and to refer some questions to the Court for a preliminary ruling.

By its first question, the referring court wishes to ascertain, in essence, whether the judgment in *Miethe* remains relevant, following the entry into force of Regulation 883/2004, for the purposes of the interpretation of Article 65(2) of that regulation, with the result that a worker who has maintained personal and business links with the State where he was last employed, may choose to make himself available to the employment services of that Member State, not only in order to receive assistance from that Member State in seeking new employment, but also to obtain unemployment benefit.

Article 65 of Regulation 883/2004 replaced Article 71 of Regulation 1408/71 by partially amending its content. The possibility, provided for in Article 65(2) of Regulation 883/2004, for the wholly unemployed frontier worker to make himself available, as a supplementary step, to the employment services of the Member State where he was last employed, is new compared to the content of Article 71(1)(a)(ii) of Regulation 1408/71. In making such provision, the legislature partially took the judgment in *Miethe* into account. However, in accordance with Article 56(1) of the Implementing Regulation, which refers to Article 65(2) of Regulation 883/2004, that registration concerns only the seeking of employment.

In those circumstances, it must be held that the absence of express mention, in Article 65(2) of Regulation No 883/2004, of a right to obtain unemployment benefit from the Member State of last employment indicates that the legislature deliberately intended to restrict the taking into account of *Miethe*, by providing only a supplementary possibility for the worker concerned to register as a person seeking employment with the services of that Member State in order to obtain additional assistance in finding new employment. The answer to the first question is therefore that, after the entry into force of Regulation 883/2004, the provisions of Article 65 of that regulation are not to be interpreted in the light of the judgment in *Miethe*.

By its second question, the referring court asks, in essence, whether the rules on the freedom of movement for workers, in particular those in Article 45 TFEU, must be interpreted as precluding the Member State where the person was last employed from refusing, under its national law, to award unemployment benefit to a wholly unemployed frontier worker who has the best prospects of reintegration into working life in that Member State, on the ground that that worker does not reside in its territory.

The finding that the application, in a specific case, of a national measure may be consistent with a provision of secondary legislation, in the present case Regulation No 883/2004, does not necessarily have the effect of removing the application of that measure from the scope of the FEU Treaty's provisions. However, the Treaty rules on freedom of movement cannot guarantee to an insured person that a move to another Member State will be neutral as regards social security. In view of the disparities existing between the schemes and legislation of the Member States in this field, such a move may, depending on the case, be more or less financially advantageous or disadvantageous for the person concerned. A difference between the benefit provided for in the legislation of the Member State of last employment and that granted pursuant to the legislation of the Member State of residence cannot, in those circumstances, be considered as a restriction on the freedom of movement for workers, since it results from the lack of harmonisation of European Union law in the matter.

The third and fourth questions relate to the situation of persons such as Ms Peeters and Mr Arnold who, in view of the proximity of the two periods of unemployment they experienced, requested, on the basis of national law, resumption of payment of the benefit which they initially received, but whose requests for such resumption were rejected on the ground of the entry into force, in the meantime, of Regulation No 883/2004. The referring court asks whether, in such a situation, in order to avoid a restriction on the freedom of movement for workers, the transitional provisions of Article 87(8) of Regulation No 883/2004, Article 17 of the Charter of Fundamental Rights of the European Union concerning the right of property and the principles of legal certainty or of the protection of legitimate expectations must be interpreted as meaning that the workers concerned may continue to receive unemployment benefit from the State where they were last employed.

In that regard, it should be recalled that Article 87(8) of Regulation No 883/2004 provides, in favour of a person who, as a result of that regulation, is subject to the legislation of a Member State other than that to whose legislation he was subject under Title II of Regulation No 1408/71, for the continued application of the latter legislation for a certain period, provided that the relevant situation remains unchanged.. However, Article 71 of Regulation 1408/7 does not fall under Title II of that regulation, concerning the general rules for the determining the legislation applicable, but under Title III of that regulation, concerning the specific provisions for determining that legislation with regard, inter alia, to unemployment benefit. In that regard, the lack of any reference, in Regulation No 883/2004, to a transitional provision applicable to the situation of the workers concerned can be regarded as attributable to a lacuna which arose during the legislative process leading to the adoption of Regulation No 883/2004 and does not reflect the legislature's deliberate intention to make those workers directly subject to other legislation. In those circumstances, the transitional provision laid down in Article 87(8) of Regulation No 883/2004 must be interpreted as applying, by analogy, to wholly unemployed frontier workers who, taking into account the links they have maintained in the Member State where they were last employed, receive unemployment benefit from it on the basis of the legislation of that Member State, pursuant to Article 71 of Regulation No 1408/71.

The concept of 'unchanged situation' within the meaning of Article 87(8) of Regulation 883/2004 must be interpreted by reference to the definition given by national social security legislation.

News from the ECJ > (Case C-458/11) Mulders v RvP

This request for a preliminary ruling concerns the interpretation of Articles 1(r) and 46 of Regulation 1408/71. The request was made in proceedings between Mr Mulders and the Rijksdienst voor Pensionen (National Belgian Pensions Office) ('the RVP') concerning the failure to take into account, for the purpose of calculating his retirement pension in Belgium, a period of incapacity for work in respect of which he received sickness insurance benefit in another Member State, namely the Netherlands.

Mr Mulders, a Belgian national resident in Belgium, worked in that Member State. As a result of an accident at work, a permanent invalidity rate of 10% was applied to Mr Mulders. The Belgian Fund for Accidents at Work awarded him a benefit on the basis of his permanent invalidity. Afterwards, Mr Mulders was employed as a frontier worker in Maastricht (the Netherlands). After a certain amount of time, Mr Mulders was also declared incapable of work in the Netherlands and therefore received, by way of sickness insurance benefit, the benefit provided for by the Netherlands WAO, equivalent to a rate of incapacity for work of 80% to 100% ('the WAO benefit'). Contributions were deducted from that benefit, including pension contributions paid under the Netherlands AOW into the Netherlands social security scheme. Mr Mulders applied for his pension, both in the Netherlands, to the Sociale Verzekeringsbank van Amstelveen (Social Insurance Office, Amstelveen) ('the Netherlands SV') and in Belgium, to the RVP. The RVP granted Mr Mulders a retirement pension. However, for the purpose of calculating the pension, account was not taken of the period from 10 February 1982, the date on which he was recognized as being incapable of work in the Netherlands, to 25 October 1997.

The RVP based its decision on the statement provided by the Netherlands SV. It took the view that, during the period referred to above, Mr Mulders had not been insured under the Netherlands AOW because, at the same time as he had been in receipt of the WAO benefit, he had also been in receipt of a benefit in Belgium on the basis of accident at-work insurance. Such benefits could not be combined under Netherlands legislation and precluded any entitlement to the insurance cover provided by the Netherlands AOW.

The case was eventually brought before the Labour Court of Antwerp, which stayed proceedings and referred a question for preliminary ruling to the ECJ. By its question, the referring court asks, in essence, whether Articles 1(r) and 46 of Regulation 1408/71 are to be interpreted, for the purpose of calculating a retirement pension in one Member State, as precluding the legislation of another Member State under which a period of incapacity for work during which sickness insurance benefit – from which contributions were deducted by way of old age insurance – was paid in that other Member State to a migrant worker is not regarded as a 'period of insurance' within the meaning of those provisions, on the ground that the person concerned is not resident in the latter State and/or was in receipt of a similar benefit under the legislation of the first Member State, which could not be cumulated with the sickness insurance benefit.

It is true that, at the time when Mr Mulders definitively ceased working, Article 13(2)(f) of Regulation 1408/71, which determines inter alia the legislation applicable to persons who have definitively ceased all activity, was not yet in force. However, before, the Court had already held that even though Article 13(2)(a) of Regulation 1408/71 did not expressly refer to the case of a worker who was not employed when he applied for sickness insurance benefit, that provision referred, where necessary, to the legislation of the State in whose territory the worker was last employed. It follows that a person such as Mr Mulders, who, definitively ceased work and did not take up employment subsequently, falls within the scope of the provisions of Article 13(2)(a) of Regulation 1408/71, which, as the last employment position held by Mr Mulders was in the Netherlands, designate Netherlands legislation as the legislation applicable.

It should also be recalled that Article 1(r) of Regulation 1408/71 provides that the conditions governing the constitution of periods of insurance are defined exclusively by the legislation of the Member State under which the periods in question were completed. However, it is established case-law that, in establishing those conditions, Member States are required to comply with European Union law. It follows that the conditions to which Member States subject the constitution of periods of insurance may not in any case have the effect of excluding from the scope of national legislation persons to whom that legislation applies under Regulation No 1408/71.

At the date on which the person concerned ceased to work, Article 13(2)(a) of Regulation 1408/71 imposed the rule that such a person continued to be subject to the legislation of the Member State in which he was last employed, even though he resided in the territory of another Member State. That provision would not be complied with if the residence condition laid down by the legislation of the Member State on whose territory the person concerned ceased all employment for affiliation to the retirement pension insurance scheme provided for by that legislation could be relied on against the persons referred to in Article 13(2)(a) of Regulation 1408/71. With regard to those persons, the effect of that provision is to replace the residence condition with a condition based on employment in the territory of the Member State concerned.

As the Court has repeatedly held, the aim of Articles 45 TFEU and 48 TFEU would not be achieved if, as a consequence of the exercise of their right to freedom of movement, migrant workers were to lose the social security advantages afforded them by the legislation of one Member State, especially where those advantages represent the counterpart of contributions which they have paid. It is clear that those requirements are not met if, for the purpose of calculating the retirement pension of a migrant worker, the legislation of a Member State precludes as a period of insurance an entire period during which contributions were paid by the worker by way of old age insurance, where it is common ground that account would have been taken of that period if the person concerned had resided in that Member State.

News from the ECJ > (Case C-589/10) Wencel v ZUS w Bialymstoku

This request for a preliminary ruling concerns the interpretation of Articles 20(2) TFEU and 21 TFEU and certain provisions of Regulation 1408/71. It has been made in proceedings between Mrs Wencel and the Zakład Ubezpieczeń Społecznych w Białymstoku (the Białystok section of the national social security institution) ('the ZUS') concerning her entitlement to a retirement pension.

Mrs Wencel, a Polish national, has been registered as resident in the city of Białystok (Poland). Her husband, also of Polish nationality, settled, after their marriage, in Frankfurt am Main (Germany), where he was registered as resident and had an established employment relationship entailing the payment of social security contributions. As from a certain date, he received an incapacity pension in Germany. Mrs Wencel frequently went to Germany to see her husband, who spent all his holidays, including public holidays, in Poland. According to a residence registration certificate issued by the municipality of Frankfurt am Main, Mrs Wencel was also permanently resident in Germany as from a certain date. She obtained a residence permit in Germany but never worked there. On the other hand, she was employed as a childminder in Poland. By decision of the ZUS, she acquired the right to a Polish retirement pension, by virtue of the insurance periods completed in Poland. Following the death of her husband in 2008, the German insurance institution granted Mrs Wencel a survivor's pension on the basis, inter alia, of her residence in Germany.

In 2009, the ZUS was informed that Mrs Wencel was registered as resident in both Poland and Germany. This lead the ZUS to two decisions. In its first decision, the ZUS reversed the decision to grant a retirement pension and suspended payment of that pension. According to the ZUS, under Article 4 of the Convention PL-DE of 9 October 1975, an application for a retirement pension may be considered solely by the insurance institution of the State in which the applicant is resident. By its second decision, the ZUS required Mrs Wencel to repay the sums received over the previous three years, to which it claimed she was not entitled. Mrs Wencel went to Court and the case was referred to the ECJ for a preliminary ruling.

By its questions, the referring court asks, in essence, whether EU law must be interpreted as meaning that a social security institution is entitled to withdraw, retroactively, the pension right of an insured person who, for many years, has had two habitual residences simultaneously in two different Member States, and to demand repayment of any pension to which, it is alleged, the person concerned is not entitled, on the ground that the insured person receives a survivor's pension in another Member State in the territory of which he has also been resident.

The ECJ first made some preliminary observations as to the applicability of Regulation 1408/71.

As regards, first, the applicability *ratione temporis* of Regulation 1408/71, it should be noted that that regulation entered into force in Poland upon its accession to the European Union, namely on 1 May 2004. It is the abovementioned two negative decisions, issued after the accession of the Republic of Poland to the European Union, which are the subject of the dispute in the main proceedings. Accordingly, the legality of the decisions must be assessed in the light of Regulation 1408/71, in so far as the provisions of the conventions on social security are not applicable.

With regard, second, to the applicability *ratione materiae* of Regulation 1408/71, it should be recalled that, under Article 7(2)(c) of that regulation, the provisions of social security conventions set out in Annex III to the regulation continue to apply, notwithstanding the provisions of Article 6 of the regulation, which provides that the regulation is to replace the provisions of any social security convention binding two or more Member States as regards persons and matters which it covers. Regulation 1408/71 continues to apply only to the extent that the bilateral conventions concluded before its entry into force do not impede its application.

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However, an EU law provision which, like Article 7(2) of that regulation, gives precedence to the application of a bilateral convention, cannot have a purport that conflicts with the principles underlying the legislation of which it is part. It follows that EU law may be applied not only to all situations which, in accordance with the requirements set out in Article 7(2) of Regulation 1408/71, do not fall within the scope of the Convention of 9 October 1975 but also where the provisions of that convention are inconsistent with the principles on which the regulation is based. It must therefore be concluded that Mrs Wencel's situation must be assessed on the basis of Regulation No 1408/71.

After these observations, the Court investigated the questions referred.

First, it is necessary to determine whether a person may legitimately, for the purposes of the application of Regulation 1408/71, in particular Article 10 thereof, claim to have simultaneously two habitual residences in two different Member States. Since it is not possible, however, to ascertain on the basis of the wording of Article 10 of Regulation 1408/71 whether it is permissible under the regulation to have two habitual residences in two different Member States, it must be borne in mind that the regulation establishes a system for the coordination of national social security schemes and lays down, in Title II, rules governing the determination of the legislation to be applied.

The principle that the person concerned is to be subject to the social security scheme of only one Member State finds expression in particular in Article 13(1) and Article 13(2)(f) of Regulation 1408/71. Since the system introduced by Regulation 1408/71 uses the residence of the person concerned as the connecting factor for the determination of the legislation applicable, it cannot be accepted, without depriving the provisions referred to in the preceding paragraph of all practical effectiveness, that a person may have, for the purposes of Regulation 1408/71, a number of habitual residences in different Member States. Consequently, it must be concluded that Article 10 of Regulation 1408/71 must be interpreted as meaning that, for the purposes of the application of that regulation, a person cannot have simultaneously two habitual residences in two different Member States.

Second, in order to establish the competent institution for the purpose of calculating the pension rights of a person in a situation such as that of Mrs Wencel, it is for the national court to determine, in the light of all the relevant evidence before it, the Member State in which the habitual residence of the person concerned is situated, within the meaning of the case law cited above.

On the assumption that the competent institution is located in that Member State on account of the fact that the person concerned is resident there, it is necessary, thirdly, to ascertain whether that institution may legitimately withdraw, retroactively, her pension entitlement and require her to repay any pension to which it is alleged she was not entitled, on the ground that she receives a survivor's pension in another Member State in whose territory she had also been resident.

It is apparent from Article 12(2) of Regulation 1408/71 that provisions on reduction laid down in the legislation of a Member State may, unless that regulation provides otherwise, be invoked against persons who receive a benefit from that Member State if they can claim other social security benefits, even when those benefits are acquired under the legislation of another Member State, provided the limits imposed by Regulation No 1408/71 are observed. Those limits are imposed, inter alia, by Article 46a(3)(d) of Regulation No 1408/71, which provides that the benefit payable under the legislation of the first Member State may be reduced only within the limit of the amount of the benefits payable under the legislation of the other Member State.

It follows from the foregoing that Mrs Wencel's Polish old age pension cannot be withdrawn retroactively on the ground that she receives a German survivor's benefit. However, that pension may be reduced, up to the limit of the amount of the German benefits, on the basis of any Polish rule precluding the cumulation of benefits. It is for the referring court to ascertain whether such a rule exists in the present case.

However, the finding that a national measure may be consistent with a provision of a secondary law measure, in this case Regulation No 1408/71, does not necessarily have the effect of removing that measure from the scope of the Treaty's provisions. European Union law militates against any national measure which, even though applicable without discrimination on grounds of nationality, is capable of hindering or rendering less attractive the exercise by Member State nationals of the fundamental freedoms guaranteed by the Treaty. National measures of that kind may be allowed only if they pursue a legitimate objective in the public interest, are appropriate for the purpose of ensuring the attainment of that objective, and do not go beyond what is necessary to attain the objective pursued. it is for the national court to assess the compatibility of the rules of national legislation at issue with the requirements of European Union law by determining whether the rule requiring the withdrawal of a pension entitlement and the repayment of sums to which, it is claimed, the person concerned was not entitled, which applies without distinction to Polish nationals and to nationals of other Member States, does not in fact lead, in respect of the person concerned, to an unfavourable situation in comparison with that of a person whose situation has no cross-border element, and, if such a disadvantage is established in the present case, whether the national rule at issue is justified by objective considerations and is proportionate to the legitimate objective pursued by national law.

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News from the Commission > Commission refers Malta to Court for cutting pensions of people receiving public service pensions from other Member States

The European Commission has decided to refer Malta to the EU's Court of Justice for reducing Maltese old-age pensions if the beneficiary receives a pension from another Member State as a result of having worked in the public service of that State.

Maltese legislation provides that Maltese statutory old-age pensions are partly decreased by the sum of service pensions paid in Malta or abroad. Such a practice breaches the social security coordination rules of the European Union. All pensions based on national legislation, such as civil or military service pensions, fall under the protection of the EU rules on social security coordination and those rules prohibit the application of national rules on suspension and reduction of these types of benefits.

EU social security coordination rules (Regulation 883/2004 and formerly Regulation 1408/71) give EU citizens the same rights and obligations as nationals of the country where they are covered. All pensions based on national legislation, such as civil or military service pensions, fall under the protection of these rules. The Commission became aware of the infringement in Malta through several petitions submitted to the European Parliament. The Commission requested Malta to take measures to stop cutting civil service pensions from other Member States but no such measures have been notified to the Commission.

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News from the Commission > Commission asks Cyprus to take into account periods spent by Cypriot teachers working in Greece

The European Commission has asked Cyprus to take into account periods spent by Cypriot teachers working in Greece when granting and calculating pensions in Cyprus.

The Cypriot authorities currently refuse to take into account periods spent working in Greece when granting and calculating pension entitlements, and do not grant partial pensions to teachers who have worked in Greece and Cyprus. According to the authorities, the reason for this refusal is that the special Cypriot pension scheme for public officials does not fall under the provisions of Regulation 883/2004 on the coordination of social security systems.

While the Treaty requires all periods of work to be aggregated, and for any migrant worker to have a single career in terms of social security, the application of the Cypriot legislation has precisely the opposite effect, because it leads to a loss of rights and to a worker's career being interrupted. However, according to the case-law of the Court of Justice of the European Union, the coordination of national systems applies to all legislation relating to the eight traditional branches of social security: it applies to general and special schemes (both contributory and non-contributory), and also to systems concerning employers' obligations relating to the branches of social security.

The Commission's request takes the form of a reasoned opinion. Cyprus has two months to notify the Commission of the measures taken to apply the rules in full, otherwise the Commission may decide to refer the case to the Court of Justice of the European Union.

News from the Commission > Commission refers Slovakia to Court for refusing to pay an old-age benefit to pensioners abroad

The European Commission has referred Slovakia to the EU's Court of Justice for refusing to pay an old-age benefit, a so called Christmas allowance, to pensioners living in other EU Member States, Iceland, Liechtenstein, Norway or Switzerland in breach of its obligations under EU law on social security coordination. Under EU law, entitlement to an old-age benefit cannot be conditional on a pensioner living in another 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. Slovak legislation provides that all persons who receive a statutory pension, or pensions below 60 % of average wages in Slovakia, are entitled to a Christmas allowance ('vianočný príspevok'). However, this benefit is not provided to pensioners living outside Slovakia. As a consequence, pensioners receiving Slovak statutory pensions who live in another Member State are at a disadvantage compared to pensioners who have not left Slovakia. As the purpose of the Christmas bonus is to compensate for increased living costs incurred by pensioners, the allowance qualifies as an old-age benefit under EU social security coordination rules as interpreted by the EU's Court of Justice.

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News from the Commission > Commission proposes to improve application of workers' rights to free movement

The European Commission has proposed measures to ensure the better application of EU law on the right of EU citizens to work in another Member State.

The proposal, if approved by the European Parliament and Council, would help to ensure real and effective application of existing legislation. Member States would be required to:

• create national contact points providing information, assistance and advice so that EU migrant workers, and employers, are better informed about their rights

• provide appropriate means of redress at national level

• allow labour unions, NGOs and other organisations to launch administrative or judicial procedures on behalf of individual workers in cases of discrimination

• give better information for EU migrant workers and employers in general.

The rationale behind the proposal was demonstrated in an October 2010 public opinion survey conducted by the Commission that found that 67% of respondents felt "not well-informed" or not informed at all regarding their rights as EU citizens. This lack of awareness is event not only among individuals, but also among private as well as public employers.

While EU rules on free movement of workers are long-established, the way in which they are applied in practice can give rise to barriers and discriminatory practices (perceived or real) for EU migrant workers when working or looking for work in another Member State. In 2012, 6.6 million EU citizens lived and worked in a EU country other than their own. They represent 3.1 % of workers in the EU. An additional 1.2 million people live in one EU country but work in another.

News from the Commission > EU-funded project: Transnational Exchanges on Social Security in Europe (TESSE)

INCA CGIL in Brussels carried out TESSE, a transnational pilot project aiming at bolstering the exchange of best practices in the field of free movement, taking into account the entry into force of new EU Regulations 883/2004 and 987/20089. The main objective of the project was to protect workers' rights and promote the European integration through the monitoring of social policies in the Member States.

The project ran from February 2011 until November 2012. Its activities involved trade unions and organisations willing to raise awareness of the services provided to EU citizens by competent institutions. Its purpose was to pave the way for a better dissemination of information among citizens moving within the EU labour market. In order to improve the coordination of social security systems between EU Member States, the INCA CGIL called on local authorities to take responsibility in supporting migrant workers and making them aware of European provisions in the field of social protection.

More information

- Interview with Stefano Tricoli, Patronato INCA CGIL, Brussels
- Passport of rights: Coordination of social security for the use of people who live, work and migrate across Europe

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News from the Commission > Commission asks Finland to remove restrictions on migrant workers' entitlement to unemployment benefits

The European Commission has asked Finland to remove a discriminatory condition affecting migrant workers' entitlement to unemployment benefits.

Like most EU Member States, Finland has a general condition requiring workers to have a minimum period of employment or self-employment to qualify for unemployment benefit. However in Finland migrant workers applying for unemployment benefit must in addition have worked in Finland for at least four weeks as an employee, or four months in self-employment. If this requirement is not met, the applicant's insurance for employment or self-employment periods completed in another Member State are not taken into account and he or she is thus not entitled to unemployment benefits.

The Commission considers that the requirement of minimum employment or self-employment periods in Finland in order for previous periods completed in another Member State to be taken into consideration is in contradiction with EU legislation. The Treaty on the Functioning of the European Union (Article 45) and Regulation 883/2004 (Article 6) require Member States to take into account periods of insurance, residence and employment periods completed under the legislation of any other Member State as though they were periods completed under their own legislation. This requirement constitutes one of the basic principles for the coordination of social security schemes in the European Union. It ensures that by exercising the right to free movement, migrant workers are not deprived of social security advantages to which they would have been entitled if they had spent their working life in only one Member State.

The Commission's request takes the form of a "reasoned opinion" under EU infringement procedures. Finland has now two months to notify the Commission of the measures taken to comply with EU rules. Otherwise, the Commission may decide to refer Finland to the EU's Court of Justice.

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News from the Commission > Commission expresses concerns about refusals by Spanish public hospitals to recognise European Health Insurance Card

The European Commission has requested information from Spain about complaints that Spanish hospitals providing public healthcare are refusing to recognise the European Health Insurance Card (EHIC). The Commission is concerned that Spain might be failing to fulfil its obligations under EU law to provide emergency healthcare to temporary visitors from other Member States on the same terms and conditions as are available to Spanish nationals under the public healthcare scheme.

The Commission's request for information follows an increasing number of complaints it has received concerning hospitals providing public healthcare services, mainly in tourist areas of Spain, which refuse to treat citizens on the basis of their European Health Insurance Card and instead request a travel insurance policy and credit card details.

Public healthcare is generally free of charge in Spain and the European Health Insurance Card entitles its holder to be treated on the same terms as Spanish nationals. However, in some cases, citizens have been erroneously informed that their European Health Insurance Card is not valid if they have travel insurance. Other patients believed they were being treated on the basis of their European Health Insurance Card, but later found out that their travel insurance company had been sent a bill for treatment.

The actions of the hospitals concerned means that European Health Insurance Card holders are being denied access to public healthcare on the same terms as Spanish nationals, and are being offered only private treatment. The much higher cost of such private treatment is being passed on to the travel insurance companies or, increasingly, is being billed to the citizens directly. The travel insurance industry has underlined to the European Commission that in most cases travel insurance will not cover private healthcare.

The European Commission has been in contact with the Spanish authorities about this issue since 2010. The Spanish authorities have indicated to the Commission that they have taken certain actions to tackle the issue. Nonetheless, the Commission continues to receive complaints about this practice by hospitals providing public healthcare services in tourist areas.

The Commission's request for information takes the form of a letter of formal notice, the first step in EU infringement procedures. Spain has now two months to respond to the concerns expressed by the Commission.

News from the Commission > Commission refers UK to Court for incorrect application of EU social security safeguards

After several formal and informal contacts between the European Commission and the UK authorities, the Commission has decided to refer the United Kingdom to the EU's Court of Justice because, in breach of EU law, it fails to apply the 'habitual residence' test to EU nationals who reside in the UK and claim social security benefits. Instead, the UK applies a so-called “right to reside” test, as a result of which EU citizens cannot receive specific social security benefits to which they are entitled under EU law such as child benefit.

Under EU law, the scial security benefits in question have to be granted to people from other EU Member States on condition that their place of habitual residence is in the UK. This condition, and the criteria for the determination of habitual residence, were unanimously reaffirmed by Member States at EU level in 2009 as part of an update of EU rules on social security coordination. According to these criteria, in order to be considered genuinely habitually resident in a Member State, a person has to show that his or her habitual centre of interest is located there.

The Commission considers that these criteria laid down by EU law are strict enough and thus ensure that only those people who have actually moved their centre of interest to a Member State are considered habitually resident there and no longer resident in the Member State where they previously lived. A thorough and strict application of these criteria for determining habitual residence constitutes a powerful tool for Member States to make sure that these social security benefits are only granted to those genuinely residing habitually within their territory.

The “right to reside” test is an additional condition for entitlement to the benefits in question which has been imposed unilaterally by the UK. UK nationals have a “right to reside” in the UK solely on the basis of their UK citizenship, whereas other EU nationals have to meet additional conditions in order to pass this “right to reside” test. This means that the UK discriminates unfairly against nationals from other Member States. This contravenes EU rules on the coordination of social security systems which outlaw direct and indirect discrimination in the field of access to social security benefits.

The UK social security benefits concerned are:

- Child benefit
- Child tax credit
- Jobseeker’s allowance (income-based)
- State pension credit
- Employment and support allowance (income-related)

News from the Commission > Commission refers Slovakia to Court of Justice for discriminating against severely disabled people living abroad

The European Commission has referred the Slovak Republic to the EU's Court of Justice for not paying disability benefits to severely disabled persons living in other Member States, Iceland, Liechtenstein, Norway or Switzerland, in breach of EU law on social security coordination.

Under Slovak law, three Slovak care benefits for the severely disabled, namely the carer's allowance ('*peňažný príspevok na opatrovanie*'), disability allowance ('*peňažný príspevok na osobnú asistenciu*') and cash allowance for compensation of increased costs for severely disabled persons ('*peňažný príspevok na kompenzáciu zvýšených výdavkov*') are provided only to those who live in Slovakia.

According to the case-law of the EU's Court of Justice, cash benefits for long-term care which improve the standard of living of persons in need of care and compensate for the additional expense brought about by their condition, must be regarded as a sickness benefit within the meaning of Regulation 883/2004 on the coordination of social security systems. The entitlement to these cash benefits cannot be conditional on the person living in the Member State where he or she claims the benefit. This rule enables persons who are dependent on care to move to another Member State whilst retaining their right to cash benefits for long-term care from their country of insurance.

The Commission considers that the three Slovak benefits (carer's allowance, disability allowance and cash allowance for compensation of increased costs for severely disabled persons) should, in view of their purpose and legally defined entitlement criteria, be provided also to persons who are insured in Slovakia and who live in another EU Member State, Iceland, Liechtenstein, Norway or Switzerland. The restriction on export of these benefits is contrary to EU law. The Commission became aware of the infringement at issue through the many complaints it has received from Slovak pensioners and their family members living abroad.

News from the Commission > EU-funded project - The future of social security in Europe: shared knowledge and responsibilities

Between 2011 and 2012, the All-Poland Alliance of Trade Unions (OPZZ) carried out an EU-funded project comparing social security legislation in Poland, Bulgaria and Portugal. The project, entitled "The future of social security in Europe: shared knowledge and responsibilities", focused on the application of EU Regulations on the rights of mobile workers and pensioners. It dealt in particular with the coordination of social security systems as put in place by Member States, as well as with the role and participation of trade unions in the process.

The project partners were:

• Confederação Geral dos Trabalhadores Portugueses – Intersindical Nacional (CGTP-IN) from Portugal

• Confederation of Independent Trade Unions in Bulgaria (CITUB – KNSB)

The comparison of national legislations in Poland, Bulgaria and Portugal allowed project partners to:

• improve their knowledge of the social security schemes in their own country;

• become aware of the country differences; • comprehend the coordination of social protection laws throughout Europe.

More information

• Interview with OPZZ President Jan Guz

• Publication - The future of social security in Europe: shared knowledge and responsibilities

See www.ec.europa.eu/social

trESS is an EC funded project implemented by Ghent University

Inside the European Commission: a view on the Commission's Legal Service

Mr Felix Schatz was Legal Officer in the Unit "Free movement of workers and coordination of social security schemes" of DG Employment, Social Affairs and Inclusion and Secretary-General of the Administrative Commission. However, Felix moved to the Legal Service of the European Commission in mid-April to take up new responsibilities there. He was prepared to give us some background information about the organisation and role of this Commission service, specifically with regard to EU social security coordination.

trESS: Mr Schatz, thanks a lot for your time. You moved from the Commission's Unit dealing with social security coordination to the Legal Service of the Commission. How has this changed your daily business?

Felix Schatz (FS): The most important change is probably that I am no longer in direct contact with citizens and national administrations. The colleagues in the social security coordination unit deal with a lot of correspondence and complaints from citizens. They are also in direct contact with the national administrations, most importantly at the meetings of the Administrative Commission. In the Legal Service, our "clients" are the other services of the Commission. Normally, the only occasion on which the Legal Service interacts with the outside world is in court.

trESS: Can you tell us how the Legal Service of the European Commission is organised?

FS: The core business of the Legal Service is handled by twelve thematic teams of lawyers which are headed by a Principal Legal Adviser – in the Legal Service the equivalent of a Director. Social security coordination for example falls within the competence of the team for employment, social affairs, education and culture and health and consumer protection. The Members of the Legal Service all have a number of areas of law for which they are competent. In this area, they are responsible for replying to consultations received from other Commission services. However, they also act in other areas of law when their linguistic knowledge is required: the Commission – just like the other institutions of the Union – have to use the language of procedure in proceedings before the Court of Justice of the European Union. That is why the Members of the Legal Service also handle court proceedings concerning other areas of law in their mother tongue.

There are also some fifty Legal Revisers in a quality of legislation team. Their task is to revise legislative proposals linguistically and as regards the legislative technique. The coherence of the Legal Service's actions is ensured by the Director-General and his two assistants, together with a Deputy Director-General who is responsible for infringements, information and quality of legislation. The Legal Service falls within the portfolio of the President of the Commission.

trESS: What is the exact role of the Legal Service, particularly in the field of social security coordination?

FS: The role of the Legal Service in the field of social security coordination is not very different from most other areas of law. The Legal Service must be consulted on every legislative proposal and on every question that has legal implications. In practice, the Legal Service's agreement is required for every proposal for procedural steps in infringement proceedings (letters of formal notice, reasoned opinions, referrals to the Court of Justice and closure), for replies to written questions from Members of the European Parliament and for the Commission's observations on petitions from citizens to the European Parliament. The Legal Service must also be consulted on every new question of law, for example when this arises in the course of handling a complaint from a citizen. The Legal Service is the only body which is competent to represent the Commission in legal proceedings, be it at European or national level. Therefore, the Legal Service drafts applications to the Court of Justice in infringement proceedings and – with the input from the colleagues in the DG – the Commission's observations on references for a preliminary ruling to the Court of Justice.

trESS: The Legal Service cannot give legal advice to citizens. How would you describe the importance and added value of this department within the broader framework of the free movement of citizens?

FS: I do not think that the Commission's actions in this field cannot really be attributed either to the colleagues in the social security coordination unit or to the Legal Service. It is true that it is the Legal Service which acts in court proceedings and that the colleagues in the DG primarily deal with citizens and the national administrations. But all of this happens in close collaboration. For example, observations submitted by the Legal Service on references for a preliminary ruling are always based on an agreement in line with the colleagues in the DG. At the end of the day, it is the Commission as a whole that is acting in this framework.

trESS: As the Legal Service plays the role of the Commission's in-house counsel for ECJ cases, there should be an intensive cooperation with the Unit dealing with social security coordination. How does this cooperation work in practice?

FS: There are indeed very good working relationships with the colleagues in the social security coordination unit. Whenever problems arise, we just pick up the phone and discuss them openly. As I already said, the Legal Service usually acts on the basis of drafts prepared by the colleagues in the DG. Colleagues are closely associated when final drafts for applications to the Court of Justice in infringement proceedings and for observations on references for a preliminary ruling are prepared. They come along to Luxembourg as experts to support the Legal Service if there is a hearing.

Inside the European Commission: a view on the Commission's Legal Service

trESS: One of the key prospects of the European Union, and the Commission in particular, is "better lawmaking". How is this achieved?

FS: Over the last decade, the Commission has continuously stepped up its efforts to ensure that regulation at EU level is of the highest quality possible. The Commission's 2002 Communication with an Action plan "Simplifying and improving the regulatory environment" led to the conclusion of the Inter-institutional Agreement on better law-making in 2003. In 2005, the Commission created a follow-up to the Action plan in its Communication on Better Regulation for Growth and Jobs in the European Union. The Better Regulation programme included a mix of different actions, most importantly the introduction of a system of impact assessment for Commission proposals, the consultation of citizens and stakeholders in the process and the implementation of a programme of simplification of existing legislation. Stakeholder consultations and impact assessments have increased transparency and accountability, and have promoted evidence-based policy making. As you will know, stakeholder consultations and an impact assessment for a revision of the rules on unemployment and long-term care benefits have just been completed or are currently on-going.

The Commission's 2010 Communication on Smart Regulation in the European Union takes it a step further and looks at the whole policy cycle, from the design of a piece of legislation to its implementation, enforcement and evaluation, to its revision. A central element of Smart Regulation is the evaluation of benefits and costs of existing legislation. A number of "fitness checks" are currently on-going for selected policy areas. They are not limited to one single piece of legislation but look at the whole policy area. Next to the reinforcement of impact assessments and stakeholder consultations in the design phase, the Commission puts particular focus on facilitating the implementation of EU law. Late 2012, the Commission adopted a Communication on EU Regulatory Fitness, which generalises the "fitness checks" that were initiated in selected pilot areas. The Regulatory Fitness and Performance Programme (REFIT) will identify burdens, inconsistencies, gaps and ineffective measures.

trESS: As regards social security coordination and the legal instruments involved, can you explain us why there is a basic regulation (Regulation 883/2004) and an implementing regulation (Regulation 987/2009)? In other words, why can the provisions of both regulations not be combined in one single instrument?

FS: There is in fact no compelling legal reason for having two separate regulations with basic and implementing rules on social security coordination. From a legal point of view, they could very well be combined into one single instrument. There is no clear hierarchical relationship between them. The basic regulation does not as such trump the implementing regulation.

I think there are two reasons why this seemingly obvious simplification was not done. First, there is the history of social security coordination. Since 1958, when Regulations 3 and 4 were adopted, we have had two regulations. Regulation 3 was adopted by the Council of the European Economic Community in 1958 but was in fact very closely based on the European Convention on Social Security for Migrant Workers signed in Rome on 9 December 1957 by the then six Member States under Article 69(4) of the ECSC Treaty. That Convention needed implementing rules – that is why Regulation 3 also needed such implementing rules.

The second reason is a political one: it seems easier to first focus on principles and then look at the details – certainly at the time before the entry into force of the Treaty of Lisbon when unanimity in Council was still required for social security coordination. Just think about the famous "parameters" which de-blocked negotiations on what later became Regulation 883/2004. Postponing the discussions on a number of issues to a second legal instrument on implementing rules probably allowed advancing more quickly on the basic rules.

trESS: To conclude, is there a past ECJ judgement – and you can go back to 1958 – you would have really liked to deal with as a lawyer in the Legal Service?

FS: That is a difficult one! If I had to choose a case which I would be proud of having achieved the outcome, then maybe a great classic like the Cassis de Dijon case could be my choice. What I like about that judgement is how it shows that EU law often serves to discard irrational arguments used in national law-making. But if you are hinting at a case where I would have liked to argue for a different outcome, I would go with the appeal in Unión de Pequeños Agricultores. On a very much personal level, I think that Advocate General Jacobs was right and that the line of reasoning pioneered by the Court of First Instance in Jégo-Quéré should have been followed.

trESS: That is clear. Thank you, Mr Schatz!

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The SSC Programme of the Lithuanian Presidency 2013

Lithuania will hold the Presidency in the Council of the European Union from 1 July to 31 December 2013. In line with the previous Presidencies, and in accordance with the Rules, the Lithuanian Presidency will take the following actions in the field of social security coordination.

In the Administrative Commission

In respect of the issues arising at the Administrative Commission meetings, during the Lithuanian Presidency much attention will be devoted to the rules on unemployment and long-term care benefits. The October Working Party meeting will focus on more in-depth discussions on the revision of Regulations 883/2004 and 987/2009 (unemployment benefits chapter and long-term care benefits). The Lithuanian Presidency considers discussing the impact of possible changes to the Regulations on the basis of the Impact Assessment carried out by the Commission.

Priority will be given to the monitoring of the progress of the Ad Hoc Group on the habitual residence test. The Ad Hoc Group is continuing with its current mandate and will prepare an additional report before the December AC meeting.

The coming Presidency is looking forward to the discussion on challenges related to taxation, recognition of mobility experience, social security coverage and protection of highly mobile workers. Such challenges are to be presented in the Commission staff working paper on highly mobile workers after the summer of 2013.

The Presidency will consider how to advance the discussions on the issues raised in a number of reports to be presented in the next six months, including the final report on child raising, the final report on the collection of statistical data concerning the application of the Regulation and a report on the exchange of medical information.

The Lithuanian Presidency is also planning to continue the work on other topics, i.e.:

• Healthcare in third countries on the basis of bilateral agreements for family members of frontier workers;

• Applicable legislation in the case of parental Leave;

• Communications on maximum amounts pursuant to Article 70 of Regulation 987/2009 (calculation methods for unemployment benefits);

• The External dimension of social security coordination;

• Annual discussion on Fraud and Error.

Turning now to the issues related to EESSI, the main effort will focus on what was recognised during the Irish Presidency, i.e. that the transitional period deadline of 1 May 2014 is not feasible, and on recommendations to propose a new implementation date. Recognising the importance of the EESSI governance framework, the Lithuanian Presidency will seek approval of the Executive Board (EB) mandates, approval of terms of reference for the EB, the EB nominations and the decision to transition to the newly formed EB in order to ensure that the EESSI project moves ahead. The decision on the extension of the deadline should be taken at the Administrative Commission meeting after discussing it at the Technical Commission meeting during the Lithuanian Presidency.

In the Council

The Lithuanian Presidency will aim to reach a general approach in the Council towards the Proposal for the Directive on enforcement of rights of EU migrant workers, which aims at eliminating discrimination on the grounds of nationality. Other discussions in the field are related to the Proposal for the Directive concerning the portability of supplementary pension rights. The Lithuanian Presidency will seek to achieve agreement with the European Parliament on this Proposal.

SSC literature corner

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

Carmel, E., "Mobility, migration and rights in the European Union: critical reflections on policy and practice", *Policy Studies*, Volume 34, Issue 2, 2013.

Carrascosa Bermejo, D., "Coordinacion de las prestaciones familiares: determinación de la ley nacional aplicable en los reglamentos CE/883/2004 y CE/987/2009 (Coordination of family benefits: Determination of the national law applicable in the EC Regulations 987/2009 and 883/2004)", *Revista General de Derecho del Trabajo y Seguridad Social* nº 32/2012.

Devetzi, S., "Von "Bosmann" zu "Hudzinski" und "Wawrzyniak" – Deutsches Kindergeld in Europa (From "Bosmann" to "Hudzinski" and "Wawrzyniak" – German child benefits in Europe, annotated)", *Zeitschrift für europäisches Sozial- und Arbeitsrecht (ZESAR)* 2012, 447.

Frings, D., "Grundsicherungsleistungen für Unionsbürger unter dem Einfluss der VO (EG) Nr. 883/2004 (Basic security benefits for union citizens and Regulation (EC) no 883/2004)", *Zeitschrift für Ausländerrecht und Ausländerpolitik (ZAR)* 2012, 317.

Merkel, G., Vießmann, T., "Familienleistungen unter dem Regime der Verordnung (EG) Nr. 883/2004 – Leistungen für Rentner und Waisen im Fokus (Family benefits under Regulation 883/2004 – benefits for pensioners and orphans)", *Vierteljahresschrift für Sozialrecht (VSSR)* 2012, 249 – 278.

Pennings, F., "Non-Discrimination on the Ground of Nationality in Social Security: What are the Consequences of the Accession of the EU to the ECHR?", *Utrecht Law Review*, Volume 9, Issue 1, 2013.

UČUR, M., "Propisi o stažu osiguranja s uvećenim trajanjem - potreba osuvremenjivanja i usklađivanja s pravnom stečevinom Europske Unije" (Insurance with extended duration: a need for modernisation and coordination with the EU acquis), *Radno pravo* No. 10/12.

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