



## Editorial

Dear trESS friends,



It is with pleasure that I present to you our October trESS e-newsletter. Approaching the end of 2012, we are happy to inform you about our project and about the latest developments in the field of EU social security coordination.

As to the activities of the project, all the planned trESS 2012 seminars have already taken place and, to our great delight, these seminars were all considered very instructive and fruitful. At the same time and as usual, different reports will be finalised in the coming weeks under the reporting and analytical branch of the project. Two of these reports ('The coordination of unemployment benefits' and 'The coordination of benefits with activation measures') will be presented at the coming December meeting of the Administrative Commission. You will find the fruit of this work on our website.

New topics for reports in 2013 are already on the radar. We would also like to remind you to take a look at our renewed [website](#) and to keep inviting your colleagues to join our social media platforms if they are interested in EU social security coordination.

This newsletter also features a lot of news from the Commission, predominantly with regard to several seminars and conferences related to the topic of social security coordination. As to the activities of the European Court of Justice, we can offer you a summary of two recent ECJ cases. Both cases deal with the determination of the applicable legislation and in both of them the ECJ gives preference to the real factual situation of the migrant workers concerned as opposed to legislative or contractual fictions.

Taking a look inside the walls of the European Commission, Ms Marzena Matyja was prepared to talk to us about the most recent developments with regard to the coordination of health care. It is striking how many collateral topics have to be dealt with in that domain, for instance the implementation of the Patient Mobility Directive or the coordination of long-term care.

Finally, we are proud to present to you our new Social Security Coordination Literature Corner, the 'SSC Literature Corner', as a new section in the trESS e-newsletter. In this section, we will provide you a selection of recent publications in the field of social security coordination. This will ensure you are always up to date on academia's view on several related topics.

I wish you a very pleasant read and I am looking forward to addressing you again in our next and last newsletter of 2012.

Kind regards,

**Yves Jorens**  
Project Director



## Your latest update on European Social Security

### News from trESS > trESS analytical work

At this stage, the different reports (on long-term care, on activation measures and on unemployment benefits) to be delivered to the



European Commission are in their finalising phase. The reports on long-term care and unemployment are part of the agenda of the Commission as they will open the debate on the potential amendment of the Regulations in these areas. Both will be presented at the December meeting of the Administrative Commission and will inspire the discussions there as well as in Council. As usual, the texts will be published on the [trESS website](#) by the end of the year.

We will further inform you on the above in our December 2012 newsletter. In that edition, we will also be able to present to you the new analytical topics for 2013. As under this third edition of the **trESS** project, we switch between thematic reports and European reports every year, 2013 certainly promises to bring a new European report. The European report takes stock of the problems and issues that arise in the Member

States with regard to the application of the coordination regulations as a whole. The topics for the other analytical branches of the project are to be fixed very soon.

### News from trESS > trESS social media and website

The **trESS** LinkedIn Group already brings over 300 people together, producing a lot of interesting discussion on the coordination of social security in the EU. To give you an idea of the topics discussed, please take a look at this overview:

Migrant Access to payments and Habitual Residency **Partena case** Sliding pension-age New CJEU case C-75/11 **883/2004** better synergies between national and EU information **ECJ decision C-522/10 regarding the child raising periods** how to improve the quality, relevance and implementation of EU legislation **Reg. 465/2012** Report of international conference on the transposition the directive on cross-border care Recommendation S1 regarding organ donations **ECJ decision in the Format case** What do frontier workers know about regulation 883/2004? **Frontier workers losing their job or on sickness leave: impact on family benefits**



## Your latest update on European Social Security

### Inside the Commission: the state of affairs in cross-border health care



Ms Marzena Matyja is a Legal Officer in the Unit 'Free movement of workers and coordination of social security systems' of DG Employment, Social Affairs and Inclusion. She took up this responsibility a year ago. Before, she dealt with migration matters in DG Home Affairs of the Commission and in the public sector in Poland. She was prepared to provide us with insight into current questions regarding cross-border health care.

**trESS: Marzena, thank you for your time. Health is a policy subject that always ranks very high on the political agenda as it literally touches upon everyone's life. Can you first clarify why the coordination of sickness benefits is an important topic for the daily life of every mobile citizen?**

**Marzena Matyja (MM):** This area is particularly sensitive as any person can face health problems at any time. With an increasing number of EU citizens moving around Europe frequently, whether for work, study, holidays, retirement, or purely with a purpose of receiving medical treatment in another country, they have to be confident that they are not left without health care coverage. EU rules on coordination of sickness benefits enable these mobile citizens to access medical care abroad, whether it's planned or occasional, and to ensure the financial coverage of this health care. Since the health care systems differ significantly from one Member State to another, a lack of coordination rules could result in obstacles for those citizens in exercising their fundamental right to free movement within the EU.

**trESS: Could you briefly explain which were the most important changes in this field with the introduction of the new Regulations on 1 May 2010?**

**MM:** The main rules of the sickness chapter in the modernised Regulations remain similar to those contained in the previous Regulation, but they were well reorganised and simplified. There is no longer a distinction between the different categories of beneficiaries, but common provisions of the chapter apply to all the concerned persons insured in the EU Member States and their family members, except for pensioners and their family members for whom a separate system was maintained. Regarding the latter, the administration of health care for pensioners residing abroad was improved, which implied for instance a possibility to receive planned treatment in the competent Member State and a change of the competent country issuing the European Health Insurance Card. Improvements were also introduced regarding the reimbursement of health care provided abroad, notably by including in the text of the Regulations the so called Vanbraekel principle derived from the case law of the Court of Justice as well as clearer financial rules for reimbursement between the Member States.

The modernised Regulations also brought about horizontal changes which have had an impact on the sickness field. Since the major aim of the modernised Regulations was to further facilitate the mobility of Europeans, more people can now benefit from the coordination rules including those relating to health care. Another important horizontal change with a certain impact on the sickness area is the electronic information network that is currently being developed, the 'EESSI system', which in the future will allow national institutions to exchange cross-border social security related information by electronic means and thus improve access to social security benefits for citizens and reduce the administrative burden at the national level.

**trESS: What are, from your experience within the European Commission, the most recurring coordination problems in the field of sickness benefits?**

**MM:** The Commission receives a number of questions from pensioners residing abroad. This might be for several reasons – firstly, this group of people is probably the most concerned as regards their health care coverage and secondly, the specific coordination rules on health care for pensioners seem to be quite complex. Also, because health care systems are different in each Member State, the scope of benefits and the rules governing access to them might change while becoming a pensioner or while moving from one country to another. To avoid misunderstandings and keep encouraging mobility, we put a lot of effort into providing correct information to citizens, including pensioners, about their rights under the coordination rules. Soon we will add a video to the series of videos published on our [website](#) on rights of pensioners who worked in several countries in Europe or who decide to move to another country upon retirement, through which we try to explain the rules on social security coordination in a user-friendly way.



## Your latest update on European Social Security

### Inside the Commission: the state of affairs in cross-border health care

**trESS:** Since, as you say, the specific provisions of the Regulation with regard to cross-border health care for pensioners are rather complicated, does the Commission strive for further simplification in this area?

**MM:** This system of provisions currently laid down in Articles 23-30 of the Regulation is indeed quite complex, but that is because it takes into account the different scenarios pensioners might find themselves in, intending to offer the utmost rights to all mobile pensioners. The provisions concerned were subject to an analysis a few years ago, which confirmed the usefulness of the present system. As part of this analysis, in 2009 trESS delivered a [Think Tank report on health care for pensioners](#). This report recommended to retain the provisions, as otherwise the existing rights of pensioners would risk to be reduced. The report has also underlined once again the need for cooperation between the national institutions and for effective information and assistance to mobile pensioners. Taking the results of this analysis into account, the Commission does not intend to change these articles on health care for pensioners in the near future. It is rather going to make efforts to better inform the pensioners about their rights and to closely follow the implementation of these provisions by the Member States.

**trESS:** As most people know, the coordination of sickness benefits is not restricted to the relevant provisions in Regulation 883/2004. Since the famous ECJ judgements in the cases [Kohll](#) and [Decker](#), the landscape has totally changed for planned health care. Could you enlighten the reader on what this has brought along for EU citizens?

**MM:** Indeed these judgements have brought remarkable changes in addition to the existing arrangements under the Regulation. On the one hand, they have made it possible for patients seeking treatment abroad to get it without prior authorisation and to claim reimbursement of costs of this treatment from their home health care systems under the Treaty provisions on the free movement of services. On the other hand, if doing so, patients would always have to pay the costs of the treatment upfront and would be reimbursed back home according to the national rates there. This means that the amount of possible reimbursement might in some situations be lower than the actual expenses incurred.

**trESS:** The 'patient mobility' case law has only partially been integrated in the coordination Regulations. The hard nucleus of this series of judgements has been codified in a '[Patient Mobility Directive](#)', adopted in 2011 and to be transposed by the Member States by 25 October 2013. What is this codification about and what will be its consequence?

**MM:** The judgements of the Court on patient mobility, based on the free movement of services provision of the Treaty, were not applied in the same way by all Member States, which led to inconsistent practices. That's why the Directive has codified these judgements into one instrument and introduced a number of measures facilitating their implementation, amongst which the provisions on the social security aspects. As a consequence, this codification has resulted in the existence of two EU legislative instruments covering, to a certain extent, very similar matters: one based on the free movement of persons and the other on free movement of services. The Regulations on the one hand and the coordination Directive on the other, have to be regarded as two independent instruments and should apply within their own designated scopes.

**trESS:** The adoption of the Patient Mobility Directive has thus confirmed the already existing 'two-way' system for cross-border health care. How does the Regulation interrelate in concreto with this new Directive and are there any conflict zones?

**MM:** The Directive itself clarifies this relationship. Its provisions specify that it shall apply without prejudice to the Regulation. It also safeguards that patients are not deprived of the more beneficial rights guaranteed by the Regulation when the conditions of this Regulation are met. This means that the coordination rules in place will continue to apply, however patients, well informed about their rights, will be offered a possibility to request the application of the Directive. It should be noted however, that in some spheres the application of either one or another of these instruments might bring different consequences for a patient, particularly regarding the procedures and the reimbursement rates of health care received by the patients abroad and yet more specifically, in case of persons residing outside their competent Member State. The Commission is therefore assisting Member States in an adequate transposition of the Directive. In my view, it is very important that all stakeholders also undertake the necessary efforts to ensure appropriate information of patients so that they can fully use their rights under both legal instruments.



## Your latest update on European Social Security

### Inside the Commission: the state of affairs in cross-border health care

**trESS:** A practical example of the coordination of sickness benefits that is visible to every citizen is the European Health Insurance Card or “**EHIC**”. Is this system running smoothly or are citizens sometimes still confronted with problems at the national level, as reported after the introduction of the card? Where should people inform themselves about the issuing and the procedures of the EHIC?

**MM:** In general the EHIC system is well established and operates without major reported difficulties. Of course, from time to time, we receive complaints, mostly about the EHIC not being accepted by a health care provider in a Member State. We also receive requests for information on rights of the EHIC holders, especially if they are in less typical situations, like for instance students or pregnant women. To still improve the correct functioning of the system, it is constantly needed to inform the citizens but also the national institutions and the health care providers about the possibilities offered by the card. This is primarily a duty of the Member States, but the Commission in parallel makes efforts to encourage the insured persons to make the best use of their EHIC.

Apart from the section on the EHIC on our website, we have produced a [video on the EHIC](#) which was very well received by the public and most recently, we have introduced a [smartphone application](#) including extensive information on the EHIC and how to use it in each of the 31 countries where it is recognised. To obtain their EHIC, insured persons should turn to their local health insurance institution which will also be the first instance to inform them about their rights and applicable procedures. The card is always issued free of charge.

**trESS:** One final question, Marzena. Next to the classical insurance systems for sickness benefits, most Member States have introduced schemes which are specifically oriented towards the needs of dependent people who need help to cope with daily life tasks. This is better known as ‘long-term care’. Such benefits are currently coordinated under the chapter for classical sickness benefits. As the [trESS Think Tank report of 2011](#) already pinpointed, this results in several implementation problems. What will the near future bring in this area?

**MM:** Long-term care is a matter often discussed at the moment as its importance in the legislation of the Member States is constantly increasing. Over the last decades, Member States have started to develop various types of benefits for persons in need of care and this trend will continue, especially when looking at the ongoing demographic and socio-economic changes in European societies. Since the EU legislator has not yet created a specific coordination regime for these benefits, based on the case law of the Court of Justice, the long-term care benefits in cash should be coordinated under the Sickness Chapter. As the **trESS** Think Tank indeed pointed out in its 2011 report, we can see that the diversity of the long-term care benefits is by far larger than in the case of classical sickness benefits. At national level, these benefits are sometimes considered as sickness, family, old-age or non-contributory benefits or even as social assistance. We see that some Member States tend to apply the EU coordination rules for different social security branches (family benefits chapter, sickness benefits chapter, old-age benefits chapter) to these benefits, depending on their own national classification. This creates problems in the implementation of EU rules.

Being aware of these challenges, the Commission considers it of the utmost importance to reflect on the possible options for the EU coordination framework for long-term care benefits. The **trESS** Think Tank report of 2011 certainly contributed to this reflection. Currently, we are about to launch a public questionnaire on the matter which is part of a wider process of an Impact Assessment work that started earlier this year and that is due to be finalised by the end of 2013. As a result, the Commission intends to present a proposal on how these benefits could be best coordinated at the EU level and potentially included in the future revision of the Regulation. The subject is thus highly probable to be on our agenda in the years to come.

**trESS:** We are looking forward to that. Thank you very much!

**MM:** Thank you!



## Your latest update on European Social Security

### News from the Commission > 2nd Social Security Coordination Communication Network Workshop: better synergies between national and EU information



The social security coordination communication network brings together communication and social security experts from national ministries and institutions and the European Commission. After a first fruitful workshop in May 2012, this second workshop focuses on how to better coordinate information provided at the EU and national level; in particular it addresses the provision of information on national social security rules for mobile citizens. The objective is to put forward proposals on how to improve the [existing guides on national systems](#) and their accessibility to the advantage of all users. The workshop is also a platform for participants to present recent developments in their communication activities.

### News from the Commission > Your pension rights if you have lived or worked in more than one EU country



The EC wants to draw your attention to its [leaflet on pension rights](#). Which country will pay your pension? How will it be calculated? Find out about your pension rights if you have worked in more than one country of the European Union, Iceland, Liechtenstein, Norway and Switzerland. This leaflet is available in printed format in all EU official languages.

### News from the Commission > Conference on the European Quality Framework for Long Term Care



On 14 November 2012, AGE Platform Europe will be hosting a conference at the European Parliament in Brussels to present the European Quality Framework for Long-Term Care, Principles and guidelines for the well-being and dignity of older people in need of care and assistance, developed by the Well-being and Dignity of Older people (WeDO) partnership.

WeDO is a European project (2010-2012) co-financed by the European Commission, Directorate General for Employment and Social affairs involving 18 partners from 12 countries. It is coordinated by both AGE Platform Europe and the European Association for Directors and Providers of Long-Term Care Services for the Elderly (EDE). Its objective is to develop a lasting and growing partnership of public authorities, organisations and service providers at all levels interested to promote the well-being and dignity of vulnerable and disabled older people, and to prevent elderly abuse through the promotion of quality long-term care.

The European Quality Framework for Long Term Care conference will be hosted and chaired by Heinz K. Becker, Member the European Parliament and Co-chair of the Intergroup on Ageing and Intergenerational Solidarity. The WeDO Principles and guidelines for the well-being and dignity of older people in need of care and assistance will be discussed with representatives of the European commission, the European Parliament, the Council, care homes, older people's organisations, carer's organisations, service providers, researchers, and policy makers at national level.



## Your latest update on European Social Security

### News from the Commission > European Social Network seminar: Retaining and regaining independence and inclusion in later life - the role of social services



The European Social Network (ESN) will celebrate an Autumn Seminar entitled “Retaining and regaining independence and inclusion in later life: the role of social services” on October 24-25 in Stuttgart (Germany). With this seminar, ESN members want to look at prevention and rehabilitation, and ask how to prevent loss of independence and social/family links among older people – and how to support older people to regain independence and social/family links as quickly as possible (e.g. following illness, health problems or bereavement).

The seminar will be organised around four main sessions, where EU and international policy initiatives focused on older people will be presented, as well as several European good practice cases:

- Prevention & rehabilitation in the context of long-term care in Europe
- Prevention through non-formal care and support
- Designing social and health services for prevention & rehabilitation
- Retaining and regaining independence and inclusion in later life

The event will conclude with a panel debate with representatives from AGE Platform Europe, Eurocarers, DART project, European Commission DG Health and Consumers and ESN.

### News from the Commission > Thematic seminar of the Network on free movement of workers: EU migrants in Italy and their fundamental rights



The aim of this seminar is to understand whether the fundamental rights of free movement and citizenship are properly implemented and whether EU nationals receive the treatment they are entitled to by the Treaty of Lisbon and the Charter of Fundamental Rights of the European Union. Even though EU and non-EU nationals come within the scope of different sets of rules, it is worthy to inquire how EU nationals are treated in day-to-day life in Italy.

Italy has become a receiving country of immigrants: the number of foreigners coming to Italy has grown steadily reaching 4,500,000 in 2011, while only 350,000 in 1991. For a long time, non-EU foreigners greatly outnumbered EU nationals. Non-Italian simply meant non-EU foreigner. But since the last enlargement, things have changed and nowadays one non-Italian out of four is an EU national. Therefore, Italy has become aware of EU nationals and workers, who since then were not a source of concern for Italian authorities.

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



## Your latest update on European Social Security

### News from the ECJ > [\(Case C-137/11\) Partena ASBL v Les Tartes de Chaumont-Gistoux SA](#)

This reference has been made in proceedings between Partena, the social insurance office for self-employed persons in Belgium, and Les Tartes de Chaumont-Gistoux, concerning the recovery by Partena from that company of social security contributions and surcharges. It relates directly to Belgian social security legislation holding an irrebuttable presumption of self-employed activities in Belgium in respect of persons managing from abroad companies whose registered office is in Belgium, with the result that, irrespective of whether such activity is actually pursued, those persons are covered by the social security scheme for self-employed persons in Belgium.

Les Tartes de Chaumont-Gistoux has its registered office in Belgium and is a company subject to Belgian corporation tax. Mr. Rombouts owned half of the company's capital and was appointed as a director. Mr Rombouts was resident in Portugal. He has been employed there, or has been in receipt of unemployment benefit there. Afterwards, he has been self-employed in Portugal. Partena served on Mr Rombouts and on Les Tartes de Chaumont-Gistoux an order requiring payment of EUR 125 696.50 corresponding to contributions and surcharges owed by Mr Rombouts. Les Tartes de Chaumont-Gistoux disputed all claims that Mr Rombouts was subject to the social security scheme for self-employed persons in Belgium. It claimed that the application of Belgian legislation, is contrary to EU law, in particular Article 18 EC.

In those circumstances the Higher Labour Court of Brussels decided to stay proceedings and to ask the ECJ whether EU law, in particular Articles 13(2)(b) and 14c(b) of Regulation 1408/71 and its Annex VII, precludes national legislation which allows a Member State to presume irrebuttably that management from another Member State of a company subject to tax in the first Member State has taken place in that first Member State.

In that regard, the ECJ reiterated that the objective of the provisions of Title II of Regulation 1408/71, which determine the legislation applicable to workers moving within the European Union, is to ensure that the persons concerned are, in principle, subject to the social security scheme of only one Member State in order to prevent more than one system of national legislation from being applicable and to avoid the complications which may result from that situation.

According to the tenth recital in the preamble of Regulation 1408/71, the appropriate criterion for determining the legislation applicable is, as a general rule, the location where the employed or self-employed activity takes place. The concepts of 'employed' and 'self-employed' activity refer to activities which are regarded as such for the purposes of the social security legislation of the Member State in whose territory those activities are pursued. Accordingly, for the purposes of Article 13 et seq. of Regulation 1408/71, the determining of the location of the person's professional activity precedes qualifying that activity as an employed or a self-employed activity.

Unlike the concepts of 'employed' and 'self-employed' activity, the concept of the 'location' of an activity must be considered to be a matter, not for the legislation of the Member States, but for EU law and, consequently, for interpretation by the Court. In that regard, the concept of the 'location' of an activity must be understood, in accordance with the primary meaning of the words used, as referring to the place where, in practical terms, the person concerned carries out the actions connected with that activity.

By irrebuttably presuming that persons designated as agents of a company or association which is liable to pay Belgian corporation tax or the Belgian tax on non-residents pursue in Belgium a professional activity as self-employed persons, the Belgian provisions are thus liable to lead to a definition of the location of an activity which does not correspond to the abovementioned definition and are thus liable to be contrary to EU law.

It is true that the presumption may prevent social security fraud consisting of eluding the otherwise obligatory social security scheme for self-employed persons by artificially relocating the activity of agents of companies established in Belgium. However, by making that presumption an irrebuttable one, the national legislation at issue goes further than is strictly necessary for attaining that legitimate objective of combating fraud since it thereby acts as a general impediment to those persons' ability to prove, before the national court, that the location of their activity is actually in another Member State where they carry out, in fact, the actions connected with that activity.



## News from the ECJ > [\(Case C-115/11\) Format Urządzenia v ZUS I Oddział w Warszawie](#)

The reference has been made in proceedings between Format and one of its employees, Mr Kita, on the one hand, and the Polish Social Security Institution ZUS, on the other, concerning the determination of the legislation applicable to Mr Kita under Regulation 1408/71.

Format employed staff recruited in Poland, but posted them to building projects under way in the various Member States, depending upon the requirements of the company and the nature of the work to be carried out. Mr Kita's place of 'residence', within the meaning of Article 1(h) of Regulation 1408/71, was and remained in Poland. On three occasions, Mr Kita was employed full-time by Format on the basis of fixed-term contracts of employment. Each contract defined the place of employment as being 'operations and building sites in Poland and within the territory of the European Union (Ireland, France, Great Britain, Germany, Finland), as instructed by the employer'. However, under the first two contracts, Mr Kita worked solely in France and under the third in Finland. After having issued an E101 in application of Article 14(2)(b) of Regulation 1408/71, the ZUS later refused to issue an E 101 certificate regarding the legislation applicable confirming that Mr Kita came within the Polish social security regime, mainly holding Mr Kita could not be considered as 'a person normally employed in the territory of two or more Member States'.

Confronted with this contested decision, the referring Polish Court decided to stay the proceedings and asked the ECJ whether Article 14(2)(b) of Regulation No 1408/71 must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, a person who, under successive employment contracts stating the place of employment to be the territory of several Member States, in fact works during the term of each of those contracts only on the territory of one of those States at a time, can fall within the concept of 'a person normally employed in the territory of two or more Member States', within the meaning of that provision, and if, in the event of that question being answered in the affirmative, the situation of such a person falls within Article 14 (2)(b)(i) or (ii).

Also in this case, the ECJ repeated that the provisions of Title II of Regulation 1408/71, which includes Article 14(2), constitute a complete and uniform system of conflict rules the aim of which is to ensure that workers moving within the European Union are subject to the social security scheme of only one Member State. In order to achieve that aim, Article 13(2)(a) of Regulation 1408/71 lays down the principle that an employed person is to be subject, with regard to social security matters, to the legislation of the Member State in which he works.

Following the Commission's point on this issue, the Court held that, in any event, to fall within Article 14(2) of Regulation 1408/71, a person must 'normally' be employed in the territory of two or more Member States. It follows that, if employment in the territory of a single Member State constitutes the normal arrangement for the person concerned, such employment cannot fall within the scope of Article 14(2). In those circumstances, it is necessary to take account of the existence of a divergence between, on one hand, the employment contracts and the places of employment which they stipulate – on the basis of which Format requested an E 101 certificate to be issued – and, on the other, the way in which the obligations were performed in practice under those contracts.

In that regard, the Court added some instructions for the assessment performed by the institutions. It is necessary to have regard, in particular, to the nature of the work as defined in the contractual documents, in order to determine whether the foreseeable activities amount to employed activities covering, on more than a merely once-off basis, the territory of several Member States, provided, however, that the terms of those documents are consistent with the foreseeable activities concerned at the time of the request for the E 101 certificate, or, as the case may be, with the actual work performed before or after such a request.

When assessing the facts with a view to determining the social security legislation applicable for the purposes of issuing an E 101 certificate, the institution concerned may where appropriate take account not only of the wording of contractual documents, but also of factors such as the way in which employment contracts between the employer and the worker concerned had previously been implemented in practice, the circumstances surrounding the conclusion of those contracts and, more generally, the characteristics and conditions of the work performed by the company concerned, in so far as those factors may throw light on the actual nature of the work in question.

Mr Kita performed work continuously for several months or more than 10 months in the territory of a single Member State, namely, France. Moreover, under the next employment contract, Mr Kita worked in Finland only. It is apparent that, under each of the three contracts, when the work was finished, Mr Kita obtained unpaid leave and that, by agreement of the parties, the contract concerned was then terminated early.

In such circumstances, it cannot validly be maintained that an employed person in a situation such as Mr Kita's can fall within the concept of 'a person normally employed in the territory of two or more Member States' within the meaning of Article 14(2) of Regulation 1408/71. On the other hand, in such circumstances, the principle set out in Article 13(2)(a) of Regulation 1408/71 could apply, as well as, where necessary, during the periods of interruption between the employment contracts, the principle set out in Article 13(2)(f).



### News from the Council and the European Parliament > Political agreement on the coordination of social security systems with Albania, Montenegro, San Marino and Turkey

The Council reached a political agreement on the position to be taken by the EU on provisions for the coordination of social security systems provided for by the association agreements or similar agreements between the EU and Albania, Montenegro, San Marino and Turkey. These provisions, which are to be adopted by the joint association bodies (Association Council, Stabilisation and Association Council or Cooperation Committee) with the four third countries, will give effect to the principles of limited coordination of social security systems contained in the agreements. The aim is to ensure that workers from the partner countries can receive certain social security benefits granted under the legislation of the Member State where they are working or have worked. By way of reciprocity, this also applies to EU nationals working in those countries.

In response to the misgivings of a number of Member States about the legal basis proposed for the decision regarding Turkey, the Council issued a statement making it clear that no final decision can be adopted by the EU-Turkey Association Council until the European Court of Justice has given its rulings in two cases concerning the same legal basis for similar decisions in the framework of the agreements with other third countries. Ireland and the United Kingdom made a statement on this issue, pointing out that in their opinion the legal basis chosen for Turkey only applies to workers of the Member States. Moreover, Bulgaria, while supporting the political agreement, expressed its doubts about the clause on aggregation of insurance periods concerning Turkey and made a statement on this issue. Malta abstained, indicating in a statement that it has concerns about the equal treatment clause with regard to Albania and Montenegro.

By adopting its position, the EU seeks to agree with the partner countries in particular on the export of certain specific benefits to the four partner countries as well as the granting of equal treatment to third country workers legally employed in the EU and to their family members legally residing with them in the EU. Reciprocal rights will apply to EU workers legally employed in one of the partner countries and to their family members.

These are issues not dealt with by regulation 1231/2010, which extended the EU legislation on the coordination of social security systems within the EU to nationals of third countries who were not already covered by the relevant EU provisions solely on the grounds of their nationality. The 2010 regulation includes the principle of aggregation of insurance periods acquired by third country workers in the various Member States regarding entitlement to certain benefits, as set out in the agreements. A first package of decisions with almost identical provisions, concerning six other third countries (Algeria, Croatia, Israel, the Former Yugoslav Republic of Macedonia, Morocco and Tunisia), was adopted by the Council in October 2010.

### News from the Council and the European Parliament > Recommendation of the Administrative Commission on organ donation published

[Recommendation S1](#) of 15 March 2012 concerning financial aspects of cross-border living organ donations has been published in the Official Journal of the European Union.

In this document, the Administrative Commission recommends the competent authorities of an organ recipient, when they prepare or authorise the living organ donation with an organ coming from a living donor insured in another Member State, to consider the access of the living donor to the health care system for problems related to the procedure of donation. The competent authorities of an organ recipient shall find a humanitarian solution and reimburse the benefits in kind necessitated by cross-border living donation for the donor, if the legislation covering the donor does not provide entitlement to sickness benefits in kind for the donor. Finally, it recommends that the competent authority of the donor shall provide sickness cash benefits in accordance with the legislation it applies, regardless in which Member State the organ donation took place or who the organ recipient was. Possible loss of income by the donor linked to the donation should be treated like any other incapacity for work by the donor's applicable legislation as there is no reason to treat the incapacity for work related to the organ donation differently from other incapacities based on medical grounds.

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



## SSC literature corner



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

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