Your latest update on European Social Security

Editorial

Dear **trESS** friends,

It is with great pleasure that I present to you our October **trESS** e-Newsletter, which will give you an insight in the latest developments in our project as well as in the most recent developments in the broad field of EU social security coordination.

As to the activities of the project, all but one of the **trESS** 2013 seminars have taken place. To our great delight, these seminars were all considered a success, with interesting topics on the agenda and lively debates between the participants. I would hereby like to thank everyone who has contributed this year. At the same time, I would like to warmly invite our Croatian (and other) readers to participate in the first Croatian **trESS** seminar in Opatija on 8 November 2013.

As usual, different **trESS** reports will be finalised in the coming weeks as part of the reporting and analytical branch of the project. You will find the end results of this work on our website at the end of this working year. In general, we would also like to remind you to take a look at our website and to keep inviting your colleagues to join our social media platforms if they are interested in EU social security coordination. In the meantime, the **trESS** LinkedIn Group has grown to a community of around 500 people, with varying professional backgrounds, from all over the world.

This newsletter also features news from the European Commission. We would like to draw your attention to the publication of a recent fact-finding study on the impact of mobile EU citizens on national social security systems, as the topic of the study is directly related to our 2011 **trESS** Analytical Report.

As to the activities of the European Court of Justice, we offer you a summary of five recent ECJ cases. One case touches upon the sensitive relationship between Regulation 883/2004 and Residence Directive 2004/38, trying to shed some light on the concept of social assistance in different areas of EU free movement legislation. Another case deals with the choice of the correct legal basis for the extension of the coordination system to the EEA states. Two 'Luxembourg cases' are less controversial, but nonetheless very useful in practice, as they give clearance with regard to the classification of the Luxembourg parental leave allowance and the tax-related child bonus as family benefits within the meaning of the Coordination Regulations. A last case gives the long-expected clarification on the coordination provisions for sickness benefits for pensioners.

Liaising with the European Commission, Mr Lukasz Wardyn was prepared to share some reflections on the posting of workers within the European Union. In that regard, he talks about the value of the current provisions, but also about their possible flaws and their comparison with the rules on the posting of workers in other domains of law.

Finally, we present you an EU-wide selection of academic publications on EU social security coordination in our 'SSC Literature Corner'. I wish you a very pleasant read and I'm looking forward to addressing you again in our next and last Newsletter of 2013.

Kind regards,
Yves Jorens
Project Director

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News from trESS > trESS analytical work

At this stage, the different analytical reports to be delivered to the European Commission are being finalised. As already announced in the March newsletter, two reports will deal with the development of EU social security coordination in the near future and with an analysis of several specific proposals for amendments. A third report will be the two-yearly European report providing you with the most recent overview of implementation issues in the field of social security coordination.

Recently, earlier **trESS** reports on the coordination of long-term care benefits and of unemployment benefits were again hot topics, as they were presented at the working party of the Administrative Commission dealing with the potential revision of the Regulation in those domains.

As usual, the texts of the new reports will be published on the **trESS** website at the end of the year. We will further inform you on the above in our December 2013 newsletter.

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News from trESS > Hot topics on trESS LinkedIn

The **trESS** LinkedIn Group already brings around 500 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:

New study: the impact of mobile EU citizens on national social security systems **New ECJ case: Regulation 883/2004 vs Directive 2004/38 (residence)** New ECJ case on family benefits (Luxembourg parental leave allowance) **A practical question with relation to maternity benefits** Non frontier worker residing in a MS other than the competent State: unemployment benefit option? Sickness benefits in kind for frontier workers **Simultaneous work in two countries -loss of job in the non-competent country** Case C-20/12, 20 June: study grant to frontier workers, potential side impact on social security coordination? Good video on the coordination of unemployment benefits Successive posting: what is forbidden?

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News from the ECJ > (Case C-140/12) Pensionsversicherungsanstalt v Brey

Mr Brey and his wife, who are both of German nationality, left Germany and moved to Austria. In Germany, Mr Brey receives an invalidity pension of EUR 862.74 per month before tax, and a care allowance of EUR 225 per month. The couple has no other income or assets. The Pensionsversicherungsanstalt refused Mr Brey's application for a compensatory supplement on the ground that, owing to his low retirement pension, Mr Brey does not have sufficient resources to establish his lawful residence in Austria. The Bezirkshauptmannschaft Deutschlandberg (first-level Deutschlandberg administrative authority) (Austria) issued Mr Brey and his wife with an EEA citizen registration certificate.

When this case reached the Austrian Supreme Court, it decided to stay proceedings and ask the ECJ to ascertain whether EU law – in particular, Directive 2004/38 – should be interpreted as precluding national legislation, which does not allow the grant of a benefit, such as the compensatory supplement, to a national of another Member State who is not economically active, on the grounds that, despite having been issued with a certificate of residence, he does not meet the necessary requirements for obtaining the legal right to reside on the territory of the first Member State for a period of longer than three months, since such a right of residence is conditional upon that national having sufficient resources not to apply for the benefit.

As a preliminary point, it should be borne in mind that, in Skalka, the Court ruled that the compensatory supplement falls within the scope of Regulation 1408/71 and therefore constitutes a 'special non-contributory benefit'.

It cannot be inferred from Article 70(4) of Regulation 883/2004, read in conjunction with Article 1(j) thereof, that EU law precludes national legislation, under which the right to a special non-contributory cash benefit is conditional upon meeting the necessary requirements for obtaining a legal right of residence in the Member State concerned. Regulation 883/2004 does not set up a common scheme of social security, but allows different national social security schemes to exist and its sole objective is to ensure the coordination of those schemes.

Moreover, the Court has consistently held that there is nothing to prevent, in principle, the granting of social security benefits to Union citizens who are not economically active being made conditional upon those citizens meeting the necessary requirements for obtaining a legal right of residence in the host Member State.

A benefit such as the compensatory supplement does indeed fall within the scope of Regulation 883/2004. However, that fact cannot, in and of itself, be decisive for the purposes of interpreting Directive 2004/38. The objectives pursued by Regulation 883/2004 are different to the objectives pursued by that directive. In that regard, it should be borne in mind that Regulation 883/2004 seeks to achieve the objective set out in Article 48 TFEU by preventing the possible negative effects that the exercise of the freedom of movement for workers could have on the enjoyment, by workers and their families, of social security benefits. By contrast, although the aim of Directive 2004/38 is to facilitate and strengthen the exercise of the primary and individual right to move and reside freely within the territory of the Member States, it is also intended to set out the conditions governing the exercise of that right, which include, where residence is desired for a period of longer than three months, the condition laid down in Article 7(1)(b) of the directive that Union citizens who do not or no longer have worker status must have sufficient resources.

While Regulation 883/2004 is intended to ensure that Union citizens who have made use of the right to freedom of movement for workers retain the right to certain social security benefits granted by their Member State of origin, Directive 2004/38 allows the host Member State to impose legitimate restrictions in connection with the grant of such benefits to Union citizens who do not or no longer have worker status, so that those citizens do not become an unreasonable burden on the social assistance system of that Member State.

The concept of social assistance must be interpreted as covering all assistance introduced by the public authorities, whether at national, regional or local level, that can be claimed by an individual who does not have resources sufficient to meet his own basic needs and the needs of his family and who, by reason of that fact, may become a burden on the public finances of the host Member State during his period of residence which could have consequences for the overall level of assistance which may be granted by that State.

As regards the compensatory supplement, it is clear that that benefit may be regarded as coming under the 'social assistance system' of the Member State concerned. Consequently, the fact that a national of another Member State who is not economically active may be eligible, in light of his low pension, to receive that benefit could be an indication that that national does not have sufficient resources to avoid becoming an unreasonable burden on the social assistance system of the host Member State for the purposes of Article 7(1)(b) of Directive 2004/38.

However, the competent national authorities cannot draw such conclusions without first carrying out an overall assessment of the specific burden which granting that benefit would place on the national social assistance system as a whole, by reference to the personal circumstances characterising the individual situation of the person concerned. The mere fact that a national of a Member State receives social assistance is not sufficient to show that he constitutes an unreasonable burden on the social assistance system of the host Member State.

In particular, in a case such as that before the referring court, it is important that the competent authorities of the host Member State are able, when examining the application of a Union citizen who is not economically active and is in Mr Brey's position, to take into account, inter alia, the following: the amount and the regularity of the income which he receives; the fact that those factors have led those authorities to issue him with a certificate of residence; and the period during which the benefit applied for is likely to be granted to him. In addition, in order to ascertain more precisely the extent of the burden which that grant would place on the national social assistance system, it may be relevant, as the Commission argued at the hearing, to determine the proportion of the beneficiaries of that benefit who are Union citizens in receipt of a retirement pension in another Member State.

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News from the ECJ > (Case C-216/12 and C-217/12) CNFP v Hliddal and Bornand

Ms Hliddal and Mr Bornand, both Swiss nationals, reside in Switzerland with their respective families and work as airline captains for an airline in Luxembourg. The CNPF refused to grant either of them a parental leave allowance on the ground that they did not satisfy the conditions in Luxembourg legislation, pursuant to which a person claiming parental leave must have an official address and reside continuously in Luxembourg or be covered by the Community regulations.

Having taken this case to the Luxembourg Supreme Court, it decided to stay proceedings and ask the ECJ whether Articles 1(u)(i) and 4(1)(h) of Regulation 1408/71 should be interpreted as meaning that a parental leave allowance, such as the allowance provided for under Luxembourg legislation, constitutes a 'family benefit' within the meaning of that regulation.

It must first be determined whether a parental leave allowance falls to be regarded as 'pay' within the meaning of Article 157 TFEU or as a 'social security benefit' within the meaning of Regulation 1408/71. Under Article 157(2) TFEU, 'pay' means 'the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer'. It is settled case-law that that concept covers any consideration, whether immediate or future, provided that the worker receives it, albeit indirectly, in respect of his employment, from his employer, and irrespective of whether it is received under a contract of employment, by virtue of legislative provisions or on a voluntary basis.

Next to that, as such leave is characterised by the suspension of the employment contract and as it is not apparent that the allowance at issue in the main proceedings is paid, even indirectly, by the employer, it follows that the parental leave allowance does not constitute 'pay' within the meaning of Article 157 TFEU.

Secondly, it must be determined whether a parental leave allowance meets the criteria enabling a benefit to be classified as a 'social security benefit' within the meaning of Regulation 1408/71.

It should be stressed at the outset that the fact that the Luxembourg Government has not made a declaration under Article 5 of Regulation 1408/71 specifying the parental leave allowance as being a scheme as referred to in Article 4(1) and (2) of Regulation 1408/71 is not proof in itself that the allowance does not fall within the scope of that regulation. Furthermore, the way in which a benefit is classified under domestic law is not decisive for the purposes of determining whether or not that benefit falls within the material scope of Regulation 1408/71. According to settled case-law, a benefit may be regarded as a social security benefit in so far as it is granted to the recipients, without any individual and discretionary assessment of personal needs, on the basis of a legally defined position and relates to one of the risks expressly listed in Article 4(1) of Regulation 1408/71.

Although the CNPF claims that the legal situation giving rise to the right to the parental leave allowance ultimately stems from the employer's decision to grant – or not to grant – parental leave, the fact remains that the allowance itself is granted on the basis of a legally defined position, without any individual and discretionary assessment of personal needs.

A benefit such as the parental leave allowance does not constitute an unemployment benefit. An unemployment benefit covers the risk associated with the loss of revenue suffered by a worker following the loss of his employment although he is still able to work. A benefit granted if that risk, namely loss of employment, materialises and which is no longer payable if that situation ceases to exist as a result of the claimant's engaging in paid employment must be regarded as constituting an unemployment benefit. However, that is not the position in the case of a person receiving a parental leave allowance such as the allowance at issue. That person has not lost his employment, but has merely decided to suspend the employment relationship.

It should also be borne in mind that, under Article 1(u)(i) of Regulation 1408/71, 'the term family benefits means all benefits in kind or in cash intended to meet family expenses'. The Court has held that the purpose underlying a parenting allowance which is designed to enable one of the parents to devote himself or herself to the raising of a young child and which is intended, specifically, as remuneration for bringing up that child, and to meet other costs involved in caring for and raising a child and, as the case may be, to mitigate the financial disadvantages entailed in giving up income from full-time employment is 'to meet family expenses' within the meaning of Article 1(u)(i) of Regulation 1408/71. Specifically, in relation to a career break allowance granted, subject to certain conditions, to a worker taking a break from his or her career using parental leave, the Court has held that that type of benefit, which is similar to the parental leave allowance at issue in the main proceedings, must be treated as a family benefit.

It follows from all the foregoing that the parental leave allowance at issue in the main proceedings may not be classified as 'pay' within the meaning of Article 157 TFEU and that it constitutes a social security benefit with the characteristics of a 'family benefit' within the meaning of Regulation 1408/71.

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News from the ECJ > (Case C-431/11) UK v Council of the European Union

On 9 September 2010, the European Commission submitted a proposal for a Council Decision on the position to be taken by the European Union concerning an amendment to Annex VI (Social Security) and Protocol 37 to the EEA Agreement. That proposal cited Articles 48 TFEU, 218(9) TFEU and 352 TFEU as constituting the legal basis. On 10 March 2011, the Commission submitted an amended proposal in order to change the legal basis cited. According to the explanatory memorandum to that proposal, as the Lisbon Treaty had extended the competence set out in Article 48 TFEU to self-employed migrant workers, Article 352 TFEU was no longer necessary as a legal basis. On 6 June 2011, the Council accordingly adopted the contested decision on the basis of Articles 48 TFEU and 218(9) TFEU. Taking the view that the contested decision had been adopted on an incorrect legal basis and that it ought to have been adopted on the basis of Article 79(2)(b) TFEU, the United Kingdom brought the present action.

The United Kingdom challenges the use of Article 48 TFEU as the substantive legal basis for the adoption of that decision. In that regard, it should be borne in mind that the choice of the legal basis for an act of the European Union must rest on objective factors amenable to judicial review, which include the aim and content of that measure.

As the Court has already had occasion to state, one of the principal aims of the EEA Agreement, to which the United Kingdom and Ireland are also parties, is to provide for the fullest possible realisation of the free movement of goods, persons, services and capital within the whole EEA, so that the internal market established within the European Union is extended to the EFTA States.

In so far as the contested decision seeks to replace the reference to Regulation 1408/71 with a reference to Regulation 883/2004, the latter having repealed the former, it should be noted that, from a substantive point of view, that decision makes it possible, in compliance with the commitments entered into by the parties to the EEA Agreement and with the level of integration already attained since its entry into force, to retain the extension of social rights to nationals of the States concerned as already intended and given effect to by the EEA Agreement since 1992.

The contested decision is thus precisely one of the measures by which the law governing the EU internal market is to be extended as far as possible to the EEA, with the result that nationals of the EEA States concerned benefit from the free movement of persons under the same social conditions as EU citizens. Were it not for the amendment contemplated by the contested decision, free movement of persons could not be exercised within the EEA under the same social conditions as within the European Union, which would undoubtedly undermine the development of the association and the realisation of the objectives pursued by the EEA Agreement.

It follows that it is necessary to replicate the modernisation and simplification of the rules on the coordination of social security systems which apply within the European Union, specifically referred to by the contested decision when replacing Regulation 1408/71 with Regulation 883/2004, also at the level of the EEA.

In those circumstances, it must be held that, taking into account the context of which it forms part, it was possible for the contested decision to be legitimately adopted on the basis of Article 48 TFEU.

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News from the ECJ > (Case C-321/12) van der Helder and Farrington v CVZ

Mr van der Helder is a retired Netherlands national who has resided in France. Over the course of his career he resided and worked in a number of Member States. Mr van der Helder has received a pension from the Netherlands under the AOW. That pension is based on 43 completed years of insurance in that Member State. Those rights were acquired partly on the basis of residence, and partly on voluntary insurance. In addition to that pension, Mr van der Helder also receives a statutory old-age pension from the Republic of Finland, where he was insured from 1980 to 1987. Furthermore, he also receives a statutory old-age pension from the United Kingdom of Great Britain and Northern Ireland. Mr Farrington is a retired British national who has resided in Spain since May 2004. Over the course of his career he resided and worked in a number of Member States, namely in the United Kingdom and in the Netherlands. As of April 2006, he has received an AOW pension, in accordance with Netherlands law. That pension is based on 35 completed years of insurance in that Member State. In addition to that pension, Mr Farrington also receives a statutory old-age pension from the United Kingdom, where he worked from 1957 to 1972.

Both individuals contested the lawfulness of decisions of the Netherlands authorities to make deductions, from pensions provided to both who receive pensions in accordance with the legislation of several Member States other than the French Republic and the Kingdom of Spain where they are resident, in respect of the sickness benefits in kind provided, under Article 28 of Regulation 1408/71, in their Member State of residence in which they are not entitled to those benefits. Those decisions follow the entry into force in the Netherlands, on 1 January 2006, of the new compulsory sickness insurance scheme put in place by the ZVW which, in replacing the system planned prior to that date by the ZFW for only salaried workers with incomes below certain thresholds, now applies to all persons resident or working in that Member State.

In that dispute, the Dutch referring court decided to stay the proceedings and ask the ECJ whether Article 28(2)(b) of Regulation 1408/71 must be interpreted as meaning that the 'legislation' to which the pensioner has been subject for the longest period of time, referred to in the provision, is that relating to sickness and maternity benefits, that relating to pensions, or all legislation relating to the branches of social security listed in Article 4 of that regulation which were applicable.

The Court notes, in this regard, that Article 28 of Regulation 1408/71 lays down a 'conflict rule' enabling the determination, particularly in relation to pensioners entitled to draw pensions in accordance with the legislation of several Member States and who reside in another Member State in which they are not entitled to sickness and maternity benefits, of the institution which is responsible for payment of those benefits and which legislation is.

In those circumstances, in determining the scope of the concept of 'legislation' to which the pensioner has been subject for the longest period of time, for the purposes of Article 28(2)(b) of Regulation 1408/71, it is necessary to refer to the context and aim of the provision itself.

Under the system thus established by Articles 27, 28 and 28a, the institution which has to bear the cost of the benefits in kind in respect of sickness and maternity will always be an institution of a Member State competent in respect of pensions, since the pensioner would have a right to those benefits under the legislation of that Member State if he resided in its territory. In that regard, Article 28a of Regulation 1408/71, which concerns the situation in which the State of residence of the pensioner does not make entitlement to benefits in kind subject to conditions of insurance or employment, also provides explicitly that 'the cost of [those] benefits shall be borne by the institution of one of the Member States competent in respect of pensions', in order that their cost should not be borne by the Member State in which the person concerned resides, merely by virtue of the fact that he resides there.

The result is that the system put in place by Articles 27, 28 and 28a of Regulation 1408/71 establishes a connection between the jurisdiction to provide pensions and the obligation to bear the cost of benefits in kind in respect of sickness and maternity, since that obligation is incidental to actual jurisdiction in respect of pensions.

Thus, the 'legislation' to which the pensioner has been subject for the longest period of time, referred to in Article 28(2)(b) of Regulation 1408/71, is that relating to pensions. Consequently, where the persons concerned are, as in the case in the main proceedings, entitled to draw pensions in accordance with the legislation of several Member States and they reside in another Member State in which they have no entitlement to benefits in kind in respect of sickness and maternity, the responsibility for payment of those benefits falls, in accordance with that provision, on the Member State with jurisdiction in respect of pensions to whose legislation those persons have been subject for the longest period of time.

News from the ECJ > (Case C-177/12) CNPF v Lachheb

Mr and Mrs Lachheb reside with their children in France. Mr Lachheb is employed in Luxembourg, while his wife works in France, and Mr and Mrs Lachheb are entitled, under Luxembourg legislation, to the payment of a 'differential supplement' by the CNPF, the amount of which corresponds to the difference between the family benefits to which they are entitled from the State in which Mr Lachheb is employed, namely the Grand Duchy of Luxembourg, and those benefits which they can claim from the State in which they reside, namely the French Republic. Following an objection lodged by Mr and Mrs Lachheb, the Steering Committee of the CNPF upheld a decision of the president of the CNPF, which had taken into account the child bonus, owed to Mr and Mrs Lachheb under Luxembourg legislation, in the calculation of the differential supplement.

As, in the course of the further proceedings, it was uncertain whether a benefit such as the child bonus provided for under the Luxembourg legislation can be classified as a family benefit within the meaning of Articles 1(u)(i) and 4(1)(h) of Regulation 1408/71, the Luxembourg Cour de cassation decided to stay the proceedings and to ask the ECJ whether Articles 1(u)(i) and 4(1)(h) of Regulation 1408/71 must be interpreted as meaning that a benefit such as the child bonus is a family benefit within the meaning of that regulation.

The Court has repeatedly held that the distinction between benefits excluded from the scope of Regulation 1408/71 and those which fall within its scope is based essentially on the constituent elements of each particular benefit, in particular its purposes and the conditions on which it is granted, and not on whether a benefit is classified as a social security benefit by national legislation. Further, the Court has made it clear that characteristics which are purely formal must not be considered relevant criteria for the classification of benefits. Consequently, the fact that a benefit is governed by national tax law is not conclusive for the purpose of evaluating its constituent elements.

According to settled case-law, a benefit may be regarded as a social security benefit in so far as it is granted to the recipients, without any individual and discretionary assessment of personal needs, on the basis of a legally defined position and relates to one of the risks expressly listed in Article 4(1) of Regulation 1408/71. As the CNPF and the Commission contend, the benefit at issue in the main proceedings is, first, automatically granted in the case where there is a dependent child in order to compensate for the maintenance of that child, and, second, it corresponds to a set amount, granted automatically, without any link to the income or the tax owed by the applicant.

Consequently, a benefit such as that at issue in the main proceedings is indeed a social security benefit.

In the second place, it is necessary to determine the precise nature of the measure at issue in the main proceedings. In order to distinguish between different categories of social security benefit, the risk covered by each benefit must be taken into consideration. Specifically, Article 1(u)(i) of Regulation 1408/71 provides that 'the term family benefits means all benefits in kind or in cash intended to meet family expenses'. In this regard, the Court has held that family benefits are intended to provide social assistance for workers with dependent families in the form of a contribution by society towards their expenses.

It must be observed that the child bonus, which is paid for each dependent child, represents a public contribution to a family's budget to alleviate the financial burdens involved in the maintenance of children and therefore constitutes a family benefit within the meaning of Article 1(u)(i) of Regulation 1408/71. In that regard, the fact that the public contribution to a family's budget takes the form of a cash benefit payable under the national tax law regime and that the child bonus has its origin in a tax reduction for children has no bearing on the classification of that benefit as a 'family benefit'.

It follows from all of the foregoing that a benefit such as the child bonus is a family benefit within the meaning of Article 1(u)(i) of Regulation 1408/71.

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

Mr Łukasz Wardyn is legal officer in the Unit 'Free movement of workers and coordination of social security systems' of DG Employment, Social Affairs and Inclusion. He took up this responsibility in April. We found him prepared to give us some background information about the EU coordination rules with regard to the posting of workers.

trESS: Mr Wardyn, thanks a lot for your time. How would you assess the importance of the posting of workers within the broad field of EU social security coordination.

Łukasz Wardyn (ŁW): Freedom of movement of workers and services are the founding principles of the European Union. One possible form of this fundamental rights' application is the concept of "posting". This term applies to those who, employed in one EU Member State, are sent by their employer to carry out work on a temporary basis in another Member State. The guiding principle is that persons to whom the Regulations apply are subject to the legislation of a single Member State only. In the case of employed and self-employed persons the legislation of the Member State where the activity is carried out normally applies, even if they reside on the territory of another Member State. This principle is referred to as "lex loci laboris". However, in some very specific situations, criteria other than the actual place of employment are justified. Such exception from this general rule is provided for a person who is temporarily required to pursuit his activity in another country, i.e. a "posted worker". The aim of Article 12 of Regulation 883/2004, which regulates "posting", was to assure that a short working period, not exceeding 24 months, will not result in frequent changes of applicable legislation. Thus, it also helps to reduce red tape by avoiding unnecessary and costly administrative procedures and other complications.

trESS: How has the phenomenon of the posting of workers developed over the last decades? Do you see specific trends?

ŁW: According to the main findings emerging from the 2010-2011 data collection on Portable Documents A1 in 2011, a total of 1.51 million documents were recorded across the EU-27 and Iceland, Liechtenstein and Norway. Of these, around 1.21 million related to postings to specific countries. The remainder of almost 300,000 cases fell into the categories international transport, persons active in two or more Member States or other cases. This represents an increase compared to 2010 (1.33 million, among which 1.06 million related to postings to specific countries) and 2009 (1.27 million and 1 million respectively).

It is worthwhile to mention that in 2011, around 60% of all postings (compared to 63% in 2010) originated in the EU-15 Member States and almost 40% (compared to 37% in 2010) in the EU-12 Member States. Postings originating in EEA-EFTA countries accounted for only 0.2% of all postings. In addition, in 2011 the main sending countries of posted workers were Poland, Germany and France followed by Romania, Hungary, Belgium and Portugal. The main receiving countries were Germany and France followed by the Netherlands, Belgium, Spain, Italy and Austria.

trESS: Would you assess the Regulations' provisions on the posting of workers as the accurate framework for the accommodation and promotion of the free movement of services or do you still see room for improvement?

ŁW: The new Regulations entered into force only three years ago. There are still, from time to time, challenging aspects to be clarified, also in the field of posting, such as: the relation between the posting provisions and the rules on working in several Member States (what is the applicable legislation for a posted worker who, while being posted, decides to start additional employment in the country to which he or she was posted). However, it has to be underlined that in general terms the posting provisions, from the social security coordination point of view, have so far not caused major difficulties during their implementation, especially looking at the amount of issued A1 documents.

I would like to recall that with the implementation of the new legislation a revised Practical Guide has been prepared and adopted by the Administrative Commission. The Guide is intended to provide, at the various practical and administrative levels involved in implementing specific Community provisions, a valid working instrument to assist institutions, employers and citizens in the area of determining which Member State's legislation should apply in given circumstances. The first part is devoted only to the posting of workers with many practical examples. Therefore, I warmly recommend to get acquainted with it.

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

trESS: Next to EU social security coordination law, the posting of workers can also be found in the domains of labour law and tax law. How do you see the relation and interdependence of those – in principle – separate rules? And what about the different concepts of duration of posting in those three areas?

ŁW: It is true that 'posting' does not refer only to the social security coordination and the determination of the applicable legislation. It is a very complex concept, which in each of the domains can be applied differently. Just to give you one example: according to the Practical Guide, there are situations in which it is absolutely impossible to apply the provisions on posting such as replacement of posted workers. However, this provision does not limit the free movement of workers or services, as it refers only to e.g. the expiration of the 24-month period, during which a posted worker can still be paying his or her social security contributions to the posting state. Thus, a posted worker can still be immediately replaced by another posted worker as defined by Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. The only difference will be that the newly posted worker will be attached to the social security legislation of the state of work, because the exception of Article 12 of Regulation 883/2004 does not apply to him or her any more.

trESS: Do you see any value in more convergence of the posting concept in those three areas of law?

ŁW: It has to be underlined that as European Union law stands at present, the rules e.g. governing taxation are matters coming within the competence of the Member States. On the other hand, the posting concept is understood differently in each of the areas. The posting provisions of Article 12 of Regulation 883/2004, as already mentioned, determine which legislation is applicable from the social security point of view and avoid frequent changes of applicable legislation. The aim of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services is to guarantee that the rights and working conditions of a posted worker are protected throughout the European Union. Therefore, even if these rules are all dealing with posting, they are related to different concepts, such as the freedom of movement and the freedom to provide service, which have different aims. This also explains the reasons behind these differences in posting concepts.

trESS: Do you experience that there are specific implementation challenges related to Article 16?

ŁW: As just mentioned we are still in the 'learning and adaptation process' of the new legal framework. Member States have indicated a need to discuss some challenges related to the process of issuing the Portable Document A1 based on the procedure of Article 16 of Regulation 987/2009. One of the challenges is the verification of facts and documents which are outside of the competent Member State. In addition, it has been reported that employers do not provide sufficient information to employees in order to make sure that the correct legislation will be applicable. Especially, as the employer has other, e.g. economical, interests than the employee. Thus, there could be cases where an employee discovers the applicable legislation only when applying for a benefit. Consequently, even recovery of contributions or benefits can occur.

trESS: To conclude, where does the posting of workers figure in the Commission's recent reflection process on highly mobile workers?

ŁW: It is true that the Commission is now preparing a paper which will address the social security coverage of highly mobile workers moving within the EU as regards determining the Member States whose social security legislation is applicable. Those concerned in particular are highly mobile workers (such as artists and researchers) for whom geographical mobility is an intrinsic aspect of their work in so far as they work frequently and for short periods in different Member States.

The posting of workers, from the social security point of view, falls outside the scope of the paper on highly mobile workers. The same applies for the proposal for a Directive on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, currently discussed in the Council and the European Parliament.

trESS: Thank you for your time.

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News from the Commission > Impact of mobile EU citizens on national social security systems

According to a study just published by the European Commission in most EU countries, EU citizens from other Member States use welfare benefits no more intensively than the host country's nationals. Mobile EU citizens are less likely to receive disability and unemployment benefits in most countries studied.

In the specific case of cash benefits such as social pensions, disability allowances and non-contributory job-seekers allowances financed by general taxation rather than contributions by the individual concerned (so-called special non-contributory cash benefits - SNCBs), the study shows that economically non-active EU mobile citizens account for a very small share of beneficiaries and that the budgetary impact of such claims on national welfare budgets is very low. They represent less than 1% of all such beneficiaries (of EU nationality) in six countries studied (Austria, Bulgaria, Estonia, Greece, Malta and Portugal) and between 1% and 5% in five other countries (Germany, Finland, France, The Netherlands and Sweden).

László Andor, Commissioner for Employment, Social Affairs and Inclusion, said:

"The study makes clear that the majority of mobile EU citizens move to another Member State to work and puts into perspective the dimension of the so called benefit tourism which is neither widespread nor systematic. The Commission remains committed to ensuring that EU citizens that would like to work in another EU country can do so without facing discrimination or obstacles. The Commission is also working with Member States to help them to further improve implementation of existing EU rules that coordinate social security. The Commission recognises that there can be regional or local problems created by a large, sudden influx of people from other EU countries into a particular geographical area. For example, they can put a strain on education, housing and infrastructure. It therefore stands ready to engage with Member States and, in particular, to help municipal authorities and others use the European Social Fund to its full extent."

The study also found that:

- the vast majority of EU nationals moving to another EU country do so to work
- activity rates among such mobile EU citizens have increased over the last seven years
- on average EU mobile citizens are more likely to be in employment than nationals of the host country (partly because more EU mobile citizens than nationals fall in the 15-64 age bracket)
- the majority of currently non-active EU citizens who move have previously worked in their current country of residence (64%)
- non-active EU mobile citizens represent a very small share of the total population in each Member State and between 0.7% and 1.0% of the overall EU population.
- on average, the expenditures associated with healthcare provided to non-active EU mobile citizens are very small relative to the size of total health spending (0.2% on average) or the size of the economy of the host countries (0.01% of GDP on average).

Other studies

The latest study's results complement those of other studies that consistently show that workers from other Member States are net contributors to the public finances of the host country. Migrant workers from other Member States usually pay more into host country budgets in taxes and social security than they receive in benefits because they tend to be younger and more economically-active than host countries' own workforce. These studies include the OECD's International Migration Outlook 2013, the Centre for Research and Analysis of Migration study on Assessing the Fiscal Costs and Benefits of A8 Migration to the UK and the recent study by the Centre for European Reform.

News from the Commission > Commission refers Cyprus to Court for discriminating against former Cypriot civil servants working in other Member States

The European Commission has decided to refer Cyprus to the EU's Court of Justice for applying discriminatory conditions to the pension rights and unpaid leave rights of former Cypriot civil servants working in another Member State.

The Commission considers that these discriminatory conditions breach EU rules on the free movement of workers. The first problem concerns the way in which an age criteria is applied to determine pension rights. Under the current law in Cyprus, civil servants with at least five years of service and over the age of 45 receive a lump sum payment on departure as well as a consolidated pension when they reach 55.

However, for those who leave the public service before the age of 45, the situation depends on where they work after their resignation. While former civil servants working in Cyprus are entitled to receive the lump sum payment and a consolidated pension at 55, those who leave the public administration to work in another Member State receive only the lump sum, and lose their pension entitlement, even if they have completed the minimum of five years of service.

The second problem is that Cypriot civil servants moving to work to another Member State are only allowed nine months of unpaid leave until they are forced to resign or face disciplinary measures. However, those who wish to change jobs in Cyprus are usually entitled to several years of unpaid leave before being forced to resign.

Both the age criteria and the risk of facing disciplinary measures linked to moving to another Member State dissuade civil servants from exercising their right to free movement and therefore breach EU law.

After the Commission sent Cyprus a 'reasoned opinion' under EU infringement procedures in March 2012, Cyprus did amend the law in question. However, the change was only partial and the age criteria and disciplinary measures still apply.

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News from the Commission > Social Agenda explains how to overcome obstacles to working in another EU country

Although it is against the law since 1968, discrimination of EU workers working in another EU country on the basis of nationality is still not properly addressed in practice.

It deters many Europeans from working and looking for a job within the Single Market which is particularly worrying in times of crisis, as data shows that free movement of workers is good both for the mobile workers and for workers and employers of the host country.

In April 2013, the European Commission proposed concrete ways of overcoming these obstacles. The August edition of Social Agenda explains how in its special feature. Social Agenda also puts the spotlight on the employment and social affairs aspects of the EU's new budgetary framework for 2014-2020 and of the 2013 European Semester process of economic policy coordination: when European politics meet up with national politics. Did you know that the Social Europe page on Facebook was the most popular of all specialised European Commission social media platforms? And check out the European Health Insurance Card application!

Statistics contained in Social Agenda n°34

- The 2013 EU strategic report on cohesion documents a significant increase in the number of people supported in the area of employment, from around 10 million annually before 2010 to some 15 million since then, as well as a significant acceleration of results since 2010 in the area of support for small and medium-sized enterprises (SMEs): almost 400 000 new jobs were created, half of which in 2010-2011.
- From 2007 to the end of 2011, there were 12.5 million participants in ESF actions to support access to employment through training or other forms of assistance. Two thirds of all participants were inactive or unemployed. As a result, 2.4 million found a job within six months of completing the intervention.
- In the area of lifelong learning, the ESF supported around 5 million young people. 5.5 million participants had low skills. In the area of social inclusion, so far over 14.5 million final recipients were covered and a broad range of target groups reached.
- At the beginning of July 2013, 43 760 people "liked" Social-Europe-Facebook (and the Social Europe Twitter account had 13 536 followers at the beginning of July).
- In the third quarter of 2012, only 3.1% of EU labour force lived in another EU country than their own. And 15% would not consider working in another Member State because they felt there were too many obstacles.
- Only 0.25% of workers move between EU Member States each year.
- In 2012, 15.2 million foreign citizens worked in the EU27, accounting for 7% of total employment. Among these foreign citizens, 6.6 million were citizens of another EU Member State and 8.6 million were citizens of a country outside the EU.

News from the Commission > European Health Insurance Card: two out of five Europeans carry one

Latest figures show that over 190 million people hold a European Health Insurance Card (EHIC), allowing them to get emergency healthcare and so enjoy worry-free holidays when travelling within the European Union, Switzerland, Liechtenstein, Norway and Iceland.

The number of EHIC holders has been steadily increasing, with 15 million more citizens carrying an EHIC in 2012 compared to the previous year.

The EHIC confirms that a person is entitled to receive emergency treatment in the host country's public healthcare system on the same terms and at the same cost as nationals of that country.

The card is issued for free by the national health insurance provider in the home country and cannot be used to cover planned treatment in another country.

In the vast majority of cases, patients presenting the EHIC receive the necessary healthcare and are reimbursed without any problems. In case the EHIC is not accepted, patients should contact the relevant health authority in the country they are visiting. In case of further refusal, patients should request support from their home country's health authorities. If they still encounter problems, patients should contact the European Commission, who can investigate the claims and raise the issue with the authorities of the country concerned, as it recently did with Spain.

Download the app!

The European Health Card application gives information about the card, emergency phone numbers, treatments that are covered and costs, how to claim reimbursement and who to contact in case you have lost your card.

The app covers 27 EU countries, Iceland, Lichtenstein, Norway and Switzerland. It is available in 24 languages, with the option to switch from one language to another.

The app does not replace the card.

See www.ec.europa.eu/social

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SSC literature corner

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

BOKELOH, A., "Das Petroni-Prinzip des Europäischen Gerichtshofes (The 'Petroni-Principle' of the European Court of Justice)", *Zeitschrift für europäisches Sozial- und Arbeitsrecht*, 2012, 121.

CRNJAC-PAUKOVIĆ, V. and BALOKOVIĆ, S., "Sloboda kretanja radnika u EU - koordinacija sustava socijalne sigurnosti (Free movement of workers in the EU: social security coordination)", *Radno pravo*, Zagreb, 2011.

CRNJAC-PAUKOVIĆ, V. and BALOKOVIĆ, S. (eds), "Propisi EU za koordinaciju sustava socijalne sigurnosti (EU social security coordination rules)", Radno pravo, Zagreb, 2012.

PAUL, P. (2013) 'Strategic contextualisation: free movement, labour migration policies and the governance of foreign workers in Europe' Policy Studies, Volume 34, Issue 2, 2013, Special Issue: Migration, Mobility and Rights Regulation in the EU.

ROWLAND, M. and WHITE, R., Social Security Legislation 2013. Volume III: Administration, Adjudication and the European Dimension, 14th edition, Sweet & Maxwell, London, 2013.

SANCHEZ-RODAS NAVARRO, C., "Ha simplificado el Reglamento 883/2004 la coordinación de las prestaciones familiares?: Análisis crítico del capítulo 8 del Reglamento 883/2004 (Has Regulation 883/2004 simplified the coordination of family benefits? A critical approach to chapter 8 of Regulation 883/2004)", *Revista General de Derecho del Trabajo y Seguridad Social*, nº 32/2012.

SPIEGEL, B., "trESS-Arbeiten betreffend die Koordination von Pflegeleistungen. 3 Jahre intensiver Analysen und viele Vorschläge für Besserungen (trESS-activities with regard to the coordination of long-term benefits. 3 years of intensive analyses and proposals for improvements)", *Zeitschrift für europäisches Sozial- und Arbeitsrecht*, 2013, 209.

Τσοτσορού Θ. / Σκλήκας Ν., Εναρξη ισχύος της απόφασης Η6 της Διοικητικής Επιτροπής για το διευρυμένο δικαίωμα στο συνυπολογισμό περιόδων, δυνάμει του άρθρου 6 του Καν. 883/2004 (Entry into force of the Decision H6 of the Administrative Committee, regarding the extended right in the accumulation of insurance periods, according to article 6 of the Regulation 883/2004), *Επιθεώρηση Δικαίου Κοινωνικής Ασφάλειας*, 2012, σελ. 282.

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