

E-newsletter April 2010

Welcome word



Dear **trESS** friends,

It is my pleasure to present to you the first newsletter of yet another busy year of **trESS** activities.

2010 is a special year in several respects. First of all, as has already been announced in previous issues of this e-newsletter, Regulations 883/2004 and 987/2009 will enter into force in less than one month from now. It goes without saying that this important event thoroughly impacts on our 2010 work plan. Further on in this newsletter, you will find more information about our activities in 2010, which – I can tell you already right now – are wholly centred around the modernised social security coordination.

This year is also special in that it is the last year of **trESS**' three-year contract term. For us, this will be the opportunity to take stock of the past three years (six years if you also take into account the previous contract term) and see what we have achieved so far. We will come back to this in one of our next issues.

In addition to an overview of the highlights of the 2010 work plan, this newsletter features a summary of the programme of the Spanish presidency in the field which is of concern to us, i.e. social security. It also sheds a light on some pending social-security-coordination cases on which the ECJ will have to pronounce in the future. Further contents include details on recent infringement proceedings and, last but not least, the **trESS** seminar calendar 2010. As in previous years, you can subscribe to participate in one of the **trESS** seminars online, via our website www.tress-network.org.

I wish you a pleasant read and look forward to meeting you at one of our events.

Best regards,
Yves Jorens
Project Director

Contents

- I. trESS work plan 2010**
- II. Programme of the Spanish Presidency in the field of social security**
- III. ECJ case law: overview of some interesting pending cases**
- IV. Other News**
- V. Seminar Calendar 2010**

I. trESS work plan 2010

The forthcoming entry into force of the new Regulations on social security coordination obviously is reflected in the work plan of **trESS** in 2010. This is the case not only when it comes to our training and reporting activities, but also insofar as our information-sharing activities are concerned.

To start with the latter, we are currently developing a **completely renewed e-learning module**. This e-learning tool builds on the current version, which is brought up-to-date according to the latest provisions (Regulations 883/2004 and 987/2009) and ECJ rulings and which, moreover, is significantly

extended. It is built around 70 keywords, corresponding to the most important concepts of social security coordination. Several new keywords have been added, such as assimilation of facts, long-term care, structured electronic document and pre-retirement benefits. In total, it includes approx. 190 questions and answers (compared to 150 at present), covering the whole area of social security coordination in an accurate and easily understandable way.

The text of the new Regulations – both Regulation 883/2004, as amended by Regulation 988/2009, and Regulation 987/2009 – has already been put online in all available languages. In the very near future, we will **extend the Regulations database by adding a linkage between the articles of Regulation 883/2004 and the corresponding articles of Regulation 1408/71**, in addition to the reverse conversion table between Regulation 1408/71 and Regulation 883/2004 which is already available since 2008. In the same vein, the Regulations database will be adapted to accommodate the changes to the new basic regulation brought about by Regulation 988/2009.

These new features will be put on the public access section of www.tress-network.org in the weeks to come.

In the field of training, the structure of the 2010 seminars will be somewhat different from previous years' events. In this year's seminar round, special attention will be paid to **informing and raising awareness regarding Regulations 883/2004 and 987/2009**, as well as to fostering **discussion and interaction** with participants regarding these Regulations.

The seminars will be generally conceived in such a way that the morning session is rather informative whereas in the afternoon session focus is more on discussion. Each seminar will schedule a presentation on the preparations, expectations and where applicable the experiences in the relevant country regarding the new regulatory framework. Together with a presentation of the Commission representative on the state of affairs at EU level and on the main changes to the coordination framework in one or more selected fields, this will provide participants with a national and a European perspective on the issues concerned.

To boost the interactivity of the seminars, special case studies have been developed by the **trESS** management, making reference to new provisions of the coordination regulations whose implementation might raise issues of interpretation.

Changes also occur in the reporting exercise of **trESS**. Unlike its predecessors, which gave a comprehensive overview of the issues and problems regarding the application of all sections of Regulations 1408/71 and 574/72 in the Member States, the **European Report 2010** will focus on the **first months of implementation of two specific aspects of the new regulatory framework, i.e. information provision to the citizens and transitional provisions**.

As in previous years, a **trESS Think Tank** will examine whether and where the coordination rules need to be adapted in order to meet the goal of facilitating the free movement of persons. The topics and the composition of the Think Tank are subject to change from year to year. In 2010, the Commission has asked the **trESS** Think Tank to focus its analysis on two themes. The first one is "**Health care provided during a temporary stay in another Member State to persons who do not fulfil conditions for statutory health insurance coverage**". The second theme refers to an "**analysis of selected concepts of the regulatory framework and practical consequences on the social security coordination**". These concepts are: assimilation of facts; residence; long-term care; member of the family; child-raising periods.

Both the European Report and the Think Tank reports will be available by December 2010.

II. Programme of the Spanish Presidency in the field of social security

From 1 January to 30 June 2010, for the fourth time since its joining the EU, Spain holds the Presidency of the Council of the European Union.

The objectives of the Spanish Presidency are the following:

- > to strengthen and continue making progress on the European social dimension,
- > promoting the creation of an area with more quality jobs for everyone and with more social cohesion,

- > applying the principle of equality in all its activities, and
- > bringing new innovative initiatives to the European debate.

In the area of social security, with the new Regulations on the coordination of national social security schemes having been adopted, Spain believes that it is necessary to proceed to their implementation and effective application in the Member States, so that there are no prejudices for beneficiaries who change location under their right to freedom of movement.

The Spanish presidency will continue the work on the proposal for a regulation extending the scope of Regulation 883/2004 to third-country nationals. The Spanish Presidency acknowledges the close ties of this dossier with the proposed directive establishing a single application procedure for the issuance of a single permit - in the scope of the JAI Council.

Also, in relation to the application of the principle of equality between men and women, the Spanish Presidency will take on the proposal for a directive on the application of the principle of equal treatment between men and women engaged in a self-employed activity, to the extent that its contents refer to social protection and social security.

From the perspective of the external relations of the EU, the Spanish Presidency undertakes to work on the proposals for a Council Decision on the inclusion in the Association Agreements with neighbouring Mediterranean countries (Algeria, Morocco, Tunisia, Croatia, Former Yugoslav Republic of Macedonia (FYROM) and Israel) of provisions relating to the coordination of social security systems in order to enable the export of benefits outside EU territory, under the reciprocity principle, beyond the scope of the EU Regulations on social security coordination.

Among the initiatives that the Spanish presidency plans in the area of social security, in the context of activities relating to the Lisbon Strategy and, more specifically, with the aim to making progress as regards social cohesion through the fight against social exclusion and poverty, a Ministerial Conference tackling minimum pensions, the maturing of the social security systems and their contribution to social inclusion will be held, and the result could take the form – if there is enough consensus – of Council Conclusions which highlight how minimum pensions act as a tool for the policies of redistribution and fighting against poverty, as well as the importance of reinforcing the contribution of the systems in the context of the social security system reform processes.

III. ECJ Case law: overview of some interesting pending cases

Pending Case C-503/09: Lucy Stewart v. Secretary of State for Work and Pensions

On 4 December 2009, the Upper Tribunal (Administrative Appeals Chamber, UK) submitted a reference for a preliminary ruling to the ECJ, asking whether a benefit with the characteristics of short-term incapacity benefit in youth should be treated as a sickness benefit or an invalidity benefit for the purposes of Regulation 1408/71.

If the answer to this question is that such a benefit is to be treated as a sickness benefit, the following questions should be additionally answered:

(a) Is a person, such as the claimant's mother, who has definitively ceased all employed or self-employed activity by virtue of retirement, nevertheless an 'employed person' for the purposes of Article 19 by reason of their former employed or self-employed activity, or do Articles 27 to 34 (pensioners) contain the applicable rules?

(b) Is a person, such as the claimant's father, who has not undertaken an employed or self-employed activity since 2001, nevertheless an 'employed person' for the purposes of Article 19 by reason of their former employed or self-employed activity?

(c) Is a claimant to be treated as a 'pensioner' for the purposes of Article 28 by virtue of the award of a benefit acquired pursuant to Article 95b of Regulation 1408/71, notwithstanding the facts that:

- > the claimant in question has never been an employed person under Article 1(a) of Regulation 1408/71;
- > the claimant has not reached State retirement age; and
- > the claimant only comes within the personal scope of

Regulation 1408/71 as a family member?

(d) Where a pensioner falls within the scope of Article 28 of Regulation 1408/71, can a family member of that pensioner who has at all times resided with and in the same State as the pensioner claim, pursuant to Article 28(1), as read with Article 29, a cash sickness benefit from the competent institution determined by Article 28(2) where such benefit is (if due) payable to the family member (and not payable to the pensioner)?

(e) If applicable (by reason of the answers to (a) to (d) above), is the application of a condition of national social security law limiting the initial acquisition of entitlement to a sickness benefit to those having completed a requisite period of past presence within the competent Member State within a defined prior period compatible with the provisions of Articles 19 and/or 28 of Regulation 1408/71?

If the answer to the first question is that such a benefit is to be treated as an invalidity benefit, the Upper Tribunal wants to ascertain whether the wording in Article 10 of Regulation 1408/71 referring to benefits “acquired under the legislation of one or more Member States” mean that Member States remain entitled under Regulation 1408/71 to set conditions of initial acquisition to such invalidity benefits that are based upon residence in the Member State or upon demonstration of requisite periods of past presence in the Member State, such that a claimant cannot first claim entitlement to such benefit from another Member State.

Pending Case C-516/09: Tanja Borger v. Tiroler Gebietskrankenkasse

The case was submitted by the *Oberster Gerichtshof* (Austria) on 11 December 2009 and concerns the interpretation of Article 1(a) of Regulation 1408/71.

The ECJ is asked whether this Article is to be interpreted as meaning that it also covers - for a period of six months - a person who, following the end of the two-year statutory suspension of her employment relationship following the birth of a child, agrees a further six-month period of unpaid leave with her employer in order to draw childcare allowance or a corresponding compensatory benefit for the maximum statutory period, and then terminates the employment relationship.

If the ECJ would reply in the negative, the *Oberster Gerichtshof* wants to know whether Article 1(a) is to be interpreted as meaning that it also covers - for a period of six months - a person who, following the end of the two-year statutory suspension of her employment relationship, agrees a further six-month period of unpaid leave with her employer, if she draws childcare allowance or a corresponding compensatory benefit during that period.

Pending Case C-537/09: Ralph James Bartlett, Natalio Gonzalez Ramos, Jason Michael Taylor v. Secretary of State for Work and Pensions

On 21 December 2009 the Upper Tribunal approached the ECJ with a view to obtain a preliminary ruling regarding several questions of interpretation of European law. In essence, the national court seeks to clarify the exact implications of the ECJ’s ruling in Case C-299/05 (see discussion of this case in the [March 2008](#) issue of the **trESS** e-newsletter). In particular, the Upper Tribunal referred to the ECJ the following questions:

1. In relation to periods to which the form of Regulation 1408/71 in force immediately before 5 May 2005 (date of entry into force of Regulation 647/2005) applies, is the mobility component of disability living allowance under sections 71 to 76 of the Social Security Contributions and Benefits Act 1992 capable of being categorised separately from disability living allowance as a whole as either a social security benefit within Article 4(1) of the Regulation or a special non-contributory benefit within Article 4(2a) or otherwise?

a. If the answer to (a) is yes, what is the proper category?

b. If the answer to (a) is no, what is the proper category for disability living allowance?

c. If the answer to (b) or (c) is categorisation as a social security benefit, is the benefit in question an sickness benefit within Article 4(1)(a) or an invalidity benefit within Article 4(1)(b)?

d. are the answers to any of the above questions affected by the temporal limitation in point 2 of the Court's ruling in *Commission of the European Communities v European Parliament and Council of the*

European Union (Case C-299/05)?

2. In relation to periods to which the form of Council Regulation 1408/71 in force from 5 May 2005 by virtue of amending Regulation 647/2005 applies, is the mobility component of disability living allowance under sections 71 to 76 of the Social Security Contributions and Benefits Act 1992 capable of being

categorised separately from disability living allowance as a whole as either a social security benefit within Article 4(1) of the Regulation or a special non-contributory benefit within Article 4(2a) or otherwise?

- a. If the answer to (a) is yes, what is the proper category?
- b. If the answer to (a) is no, what is the proper category for disability living allowance?
- c. If the answer to (b) or (c) is categorisation as a social security benefit, is the benefit in question an sickness benefit within Article 4(1)(a) or an invalidity benefit within Article 4(1)(b)?

If the answers to the previous questions produce the outcome that the mobility component is properly to be categorised as a special non-contributory benefit, the Upper Tribunal would like to know whether there is any other rule or principle of EC law relevant to the question of whether the United Kingdom is entitled to rely on any of the residence and presence conditions in regulation 2(1)(a) of the Social Security (Disability Living Allowance) Regulations 1991 in circumstances like those of the present cases.

III. Other news

The Commission takes Germany to the European Court of Justice on social security rights for migrant workers with disabilities

Although on 1 December 2008 the European Commission sent Germany an additional reasoned opinion inviting Germany to fulfil its obligations, the German *Länder* (regions) continue to apply the residence or "habitual stay" clause to their benefits for disabled, blind or deaf people. According to the European Commission, this requirement discriminates against frontier and migrant workers who pay social security contributions in Germany but are unable to enjoy the same benefits as nationals.

Legislation in all 16 *Länder* currently applies a residence or "habitual stay" clause to their benefits for disabled, blind or deaf people. The Commission argues that, based on ECJ case law, these benefits should be considered as sickness benefits and therefore fall under EU provisions on coordination of national social security systems. This means that where Germany is competent for the social security coverage of a worker, these benefits must be exported even when the worker or a member of his/her family lives abroad.

Frontier workers (people employed or self-employed in one Member state, residing in another Member State to which they return, as a rule, daily or at least once a week) are insured in the State where they work even though they reside elsewhere. A frontier worker employed in Germany will therefore pay his/her social security contributions in this country and, according to EU law, should enjoy the same social advantages as nationals. Making access to benefits for disabled, blind or deaf people conditional upon residence would therefore amount to discrimination against migrant and frontier workers and their families.

Based also on the most recent ECJ judgement of 18 October 2007 in case C-299/05 (see discussion in the [March 2008 issue](#) of the trESS e-newsletter), the Commission has decided to refer the case to the ECJ.

III. Seminar Calendar 2010



MARCH		Malta	12/5	JULY	
Spain	25/3	Bulgaria	18/5	UK	2/7
APRIL		Ireland	26/5	SEPTEMBER	
Cyprus	7/4	Germany	28/5	CZ/ZK	14/9
Poland	16/4	JUNE		Luxembourg	22/9
Slovenia	19/4	Lithuania	10/6	Estonia	24/9
Romania	27/4	BE/NL	11/6	Latvia	28/9
Greece	28/4	Portugal	18/6	OCTOBER	
MAY		France	22/6	Finland	12/10
Denmark	4/5	Hungary	28/6	Sweden	14/10
Italy	7/5	Austria	29/6		

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