

E-newsletter July 2009

Welcome word



Dear **trESS** friends,

It is my pleasure to present to you this year's second issue of the **trESS** e-newsletter, our quarterly brief which keeps you up-to-date on developments at Community level in the field of social security coordination as well as on **trESS** project matters.

In this newsletter you will find, in addition to our regular overview of recent developments as regards social security coordination and related domains, an interview with Ms. Lena Malmberg, who is currently president of the Administrative Commission on Social Security for Migrant Workers.

Ms. Malmberg talks about the plans of the Swedish presidency in this field, which evidently centre around the preparations for the application of Regulation 883/2004 and its implementing Regulation. Incidentally, as you might know, the new implementing Regulation and the amendments to Regulation 883/2004 are scheduled to be formally adopted by the Council at its meeting of 27 July 2009.

Moreover, this newsletter features a contribution by Rob Cornelissen on the Prague Conference of 7 and 8 May 2009. This Commission Conference was held to celebrate the 50th anniversary of social security coordination. The people of the trESS management have been very closely involved in the organisation of this Conference; they were responsible for the implementation of the programme and the scientific coordination of the Conference. Its outputs will be published in the form of a book. We hope to give you more information on this topic in the next issue of this newsletter.

trESS has been very busy these past months organising training seminars all over Europe. As many as 23 seminars have taken place, of which 2 bilateral seminars and one "regional", Baltic seminar. The materials of these seminars are put on our website. In the months to come, focus will lie on reporting about coordination, with the 2009 European Report and Think Tank Reports being published in November 2009.

I hope you will find this e-newsletter informative and interesting, and wish you a wonderful holiday season.

Best regards,
Yves Jorens
Project Director

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I. Legislative Developments at EU Level

Last steps towards the adoption of the amended Regulation 883/2004 and the new Implementing Regulation

On 22 April 2009, the European Parliament adopted a [legislative resolution](#) modifying, in its second reading in the context of the co-decision procedure, the Council's common position for adopting a regulation laying down the procedure for implementing Regulation 883/2004.

During the first reading, the Council adopted the majority of Parliament's amendments concerning the principles underlying the cooperation for implementation and the strengthening of data protection when data are exchanged through electronic means.

During second reading, Parliament made amendments aimed at clarifying the rights of citizens to information. The amendments intend in particular to ensure that the persons covered receive from the competent institution a timely answer to their requests, as well as appropriate information on the changes introduced by the new Regulations so as to enable them to assert their rights.

In its Opinion of 5 June 2009 [[COM\(2009\) 264 final](#)], the Commission accepted all amendments adopted by Parliament.

In parallel, the legislative procedure of the proposal for a Regulation amending Regulation 883/2004 and determining the content of its annexes is also coming towards its end.

In its [legislative resolution](#), Parliament made four amendments to the relevant Common Position – all of which concern Annex III, containing a list of Member States which apply "restriction of rights to benefits in kind for members of the family of a frontier worker". As you could read in our [March newsletter](#), Parliament had urged for a complete repeal of this amendment in first reading, but this was against the will of Council. The amendment in second reading provides that the list of Member States in Annex III is reviewed 5 years from the date of entry into force of the Regulation. Then, a report by the Administrative Commission on Social Security for Migrant Workers will assess the significance, frequency, scale and costs of the application of Annex III. The Annex should be repealed unless, in its report, the Administrative Commission provides compelling reasons not to do so.

In this case as well, all amendments adopted by Parliament were accepted by the Commission [[COM\(2009 265 final\)](#)].

Meanwhile, the Administrative Commission has adopted in June 2009 a complete revision of the series of Decisions to take into account the requirements of the new Regulations. In the next issue of the e-newsletter, some more details will be provided on that.

The new Community legal framework – the amended Regulation 883/2004 with all the annexes and the new Implementing Regulation – are scheduled to be adopted at the end of July 2009. Publication will follow in September 2009. The new framework will become applicable as of 1 March 2010.

Blue Card Directive

On 25 May, the Council adopted a directive aimed at facilitating conditions of entry and residence in the EU of third-country citizens for the purpose of highly qualified employment ("Blue card directive"). Following its publication in the Official Journal of the EU, the Member States will have two years to transpose the provisions of the directive into national law.

[Council Directive 2009/50/EC](#) establishes more attractive conditions for third-country workers to take up highly qualified employment in EU Member States, by creating a fast-track procedure for issuing a special residence and work permit. The directive does not, however, replace Member States' own schemes for attracting high-skilled workers, or prevent them from offering more advantageous terms of entry on a national basis.

To qualify for a Blue Card, applicants must have a job offer (for at least one year), professional/educational qualifications (a three-year course or five-year professional experience), and meet minimum salary thresholds in the Member State they want to work in. This "Blue Card" will be valid up to 4 years and will entitle their holders to a series of rights and favorable conditions for family reunification and movement across the EU. Blue Card holders will also enjoy equal treatment as regards social security, as defined in Regulation 1408/71.

II. Report of the Commission Conference on 50 years of social security coordination (Prague, 7-8 May 2009), by Rob CORNELISSEN, Advisor to DG EMPL Director Jérôme Vignon

On 7 and 8 May a conference was held in Prague to mark the 50th anniversary of European social security coordination. On 25 September 1958, Regulation 3 was adopted by the Council. Its implementing regulation - Regulation 4 - was adopted a couple of months later. These regulations were indeed the third and the fourth regulations adopted by the European legislature. Both regulations came into effect on 1 January 1959. In 1972 these Regulations were replaced by the current Regulations 1408/71 and its implementing Regulation 574/72.

The Prague conference not only marked the 50th anniversary of European coordination of social security, it also celebrated the rebirth of the coordination system. At the end of April this year the European Parliament adopted with an overwhelming majority the Commission proposals which will make the new simplified and modernised coordination Regulation - Regulation 883/2004 - applicable as from 2010.

The conference was financed by the European Commission. It was opened by Mrs. Lenia Samuel, Deputy Director-General of DG EMPL of the European Commission and was closed by Mr. Jiri Kral, Director General for Social and Family Policy of the Czech Ministry of Employment and Social Affairs. The University of Ghent was, on the basis of a contract with the Commission, in charge of the scientific content and implementation of the programme (speakers, respondents, etc). Another contractor was responsible for the practical organisation (invitations, registrations, conference room, etc). The smooth collaboration between the contractors and with the Commission has certainly contributed to the success of the conference.

The Prague conference focussed on the fundamental questions concerning the coordination system itself, its limits, its problems, its challenges. For this reason, the majority of the 100 participants of the conference were academics and legal experts, but also government representatives and social partners. 30% of the participants were judges, mostly from the highest national courts. The huge interest from the judiciary is not surprising given the crucial role the European Court of justice has played and continues to play in the development of the coordination system. In his presentation, Sean Van Raepenbusch - Judge at the European Civil Service Tribunal - indicated that more than 10% of all judgements of the European Court of Justice delivered in the framework of preliminary proceedings concern the Regulations coordinating Member States' social security schemes.

Seldom have I attended a conference where the presentations of all speakers were of such a high quality. They gave the participants a very clear picture not only of the achievements of the coordination system but also of its shortcomings and the challenges ahead of us. The discussions on the presentations were structured on the basis of a round table of different stakeholders who had to respond to a particular presentation followed by a discussion with the participants. This way of organising the discussions was highly appreciated by the participants of the conference.

What are the conclusions to be drawn from this conference? First of all, there was a consensus of all speakers and participants that the achievements of 50 years European coordination of social security are impressive, in spite of its limits. However, we have to cope with a number of challenges. These challenges concern in particular the material scope of the Regulations, the impact of various Treaty provisions on the coordination system, the impact of new forms of mobility on the coordination system, the importance of correct and understandable information as well as the importance of a smooth and correct application of the rules. Several speakers and participants have expressed high expectations of the new implementing regulation as a tool to achieve a smooth application of the rules.

The organisation of the conference was, in all aspects, perfect.

The presentations of the conference will be published at the end of the year in English, French and German.

III. Interview with Ms. Lena MALMBERG, Deputy Director, Social Insurance Division, Ministry of Health and Social Affairs of Sweden, Acting president of the Administrative Commission on Social Security for Migrant Workers



trESS: *Since July 1st, Sweden holds the presidency of the Council of the European Union. What are the main goals of the Swedish presidency in the field of employment and social affairs? Could you share with us which are your expectations in this regard?*

Lena MALMBERG: A main task in the field of employment and social affairs for the Swedish Presidency will be jobs, growth and competitiveness. This theme should be seen in light of the financial crisis which strengthens the need for Member States to work towards full employment. Another issue is to promote a more inclusive labour market. The background to this topic is the fact that Europe will have difficulties to afford that such a high rate of the working age population is outside the labour market.

So an effort to endorse an inclusive labour market for all is a high priority for the Swedish Presidency. A High Level Conference on Labour Market Inclusion will be held for this purpose 26-27 October in Stockholm.

One of the most important ways to promote full employment in Member States is to support the free movement for workers. This is the objective of the Regulations on coordination of social security for people who move inside the EU. Two modernised Regulations will enter into force from March 2010. To fulfill the plans of the Administrative Commission, the Swedish Presidency's priority is to finalise the work that is needed to prepare for the implementation of the new Regulations.

trESS: *The Swedish presidency will be the last (full) presidency under the application of Regulation 1408/71. How does Sweden prepare for the application of Regulation 883/2004 and the new Implementing Regulation?*

Lena MALMBERG: The national preparations in Sweden are to a large extent made by the Social Security Agency and the Unemployment Insurance Board. These two bodies have the responsibility for the application of the legislation on social security including unemployment benefits. The preparation includes information and training of the staff and practical recommendations for the application. A project has also started for the application of EESSI (Electronic Exchange of Social Security Information) and this constitutes also a very important work which has to be prepared. A core theme in the new Regulations is closer cooperation between institutions in the Member States. In order to make the cooperation more efficient between the Nordic States a new revised Nordic Convention is under way which will put emphasis on practical cooperation between institutions. One situation which we try to clarify in the new Nordic Convention is how situations of rehabilitation and vocational training could be dealt with for person who work and reside in different states.

trESS: *You are currently the president of the Administrative Commission on Social Security for Migrant Workers (ACSSMW). This body plays an important role in the preparation for the application of the new legal framework, including the electronic exchange of social security information. Could you tell us what the ACSSMW will be dealing with in the months ahead?*

Lena MALMBERG: It will certainly be a busy time until the Regulations will enter into force on 1 March 2010. The priorities for the Swedish Presidency are to keep to the timetable so that institutions will be well prepared for the implementation at the day of entry into force of the new rules. Necessary decisions and recommendations must be in place. Much work has already been done under the French and Czech presidencies but still there are some left to be decided. During summer and early autumn there will be thematic seminars on five of the insurance branches. These seminars will feed into the Stockholm Conference in November. This Conference will prepare the institutions for the implementation as regards the material scope as well as concerning practical issues for the transitional period and information on the EESSI system.

A new Work Program for the coming period 2010-2012 will also have to be worked out. There are also reports to be discussed and taken care of for further considerations, one of which is the trESS report on the relationship between the Residence Directive and the coordination Regulations, a report on fraud and error and a report on New Patterns of mobility.

Another interesting topic is to discuss the difference between Articles 5 and 6 in the Regulation 883/2004 on aggregation of insurance periods and assimilation of facts. This will probably be something to put some extra effort on also for the future presidencies. For the EESSI system there will be important decisions to be taken during this semester, notably the so-called SEDs (Structured Electronic Documents), business flows and Portable Documents. The Master Directory is also important to decide on.

trESS: Will the ACSSMW have a bigger role under Regulation 883/2004 than it has now?

Lena MALMBERG: I believe it will. The cooperation between institutions should be intensified in order to secure individuals rights. This will probably mean that more questions will have to be discussed and solved between Member States and as such affect the work in the ACSSMW. The maintenance of the common EESSI system and additional tasks will also need some closer cooperation between the Technical Commission and the Administrative Commission work. There will certainly be a need to decide on new working methods, discussed already under former presidencies, so that all the different responsibilities in the new Regulations could be handled in an effective and satisfactory way.

trESS: Thank you very much. We wish you the best of luck.

IV. Other News

Exportable of United Kingdom's Disability Living Allowance, Attendance Allowance and Carer's Allowance – written parliamentary question to the European Commission

The European Commission has received from British citizens a number of complaints concerning the non-payment of Disability Living Allowance (DLA), Attendance Allowance (AA) and Carer's Allowance (CA) and is presently considering whether the way the UK applies those benefits is in compliance with Community law and Regulation 1408/71.

The European Court of Justice ruling in [Case C 299/05](#) (Commission v. European Parliament and Council) reclassified the three UK benefits, which are included in Annex IIa as (non-exportable) special non-contributory benefits, as (exportable) sickness benefits for the purposes of Regulation 1408/71. However, according to Richard James ASHWORTH MEP (PPE-DE) in his parliamentary question of 3 April 2009, British citizens have encountered many problems in this respect and the offices of MEPs and MPs are inundated with complaints from British citizens unable to claim their benefits simply because they choose to live abroad. The MEP goes on to say that the British Government has been decidedly unhelpful in assisting these citizens. Having noted that Regulation 1408/71 has not been updated since the date of the ECJ ruling (18 October 2007), Mr. Ashworth MEP asked the Commission if Regulation 1408/71 is going to be revised and if so when such a revision will take place.

On 26 May 2009, Mr. ŠPIDLA on behalf of the Commission answered that the effect of the ruling in Case C-299/05 is that the DLA, AA and CA payable in the United Kingdom have to be awarded in accordance with the Regulations' provisions concerning the coordination of sickness benefits in cash. This means that the UK's national conditions for the award of those benefits must not be directly or indirectly discriminatory with regard to people who have used their right to free movement. It also means that where such persons are living abroad, they must remain affiliated on a statutory basis to the social security system in the UK in order to be able to claim those UK benefits. In principle, this would mean that persons claiming those benefits or their family members must be employed or self-employed in the UK or receive a statutory UK invalidity or old-age pension.

The Commissioner went on to say that Regulation 1408/71 will be replaced by Regulation 883/2004 in 2010. However, the latter regulation will not alter the situation described above as regards the UK's

obligation to pay the benefits in question to persons resident in another Member State.

Bilateral Agreement EU-Switzerland – Continuation and extension to Romania and Bulgaria

On 1 June 2009, the Bilateral Agreement on the Free Movement of Persons between Switzerland and the EU was extended to the two most recently acceded countries, i.e. Romania and Bulgaria. As of this date, Regulations 1408/71 and 574/72 apply to cases between Romania and Bulgaria on the one hand, and Switzerland on the other.

This is the result of a referendum held on 8 February 2009, in which the Swiss electorate approved the continuation of the Agreement after 2009 – the initial agreement was concluded for a period of 7 years – and at the same time its extension to the said countries, which was part of the same federal decree.

The pre-existing social security convention between Switzerland and Bulgaria is suspended where it applies to matters already regulated by the aforementioned Regulations.

It must be remembered that Regulation 859/2003 on the extension of Regulation 1408/71 to third-country nationals does not apply in relation to Switzerland.

This e-newsletter has been produced by Malgosia Rusewicz, under the responsibility of Yves Jorens and Michael Coucheir.

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