



training and reporting on **European Social Security**

trESS e-newsletter March 2008

Dear trESS Friends,

It is with pleasure that we present you our first trESS newsletter of 2008, which is at the same time also the first newsletter of the second trESS project.



Indeed, the current trESS network has recently concluded a new three-year contract with the European Commission for the continued training, reporting and networking on European social security. In this newsletter you will find an overview of some of the modifications in the structure of our trESS network. This second three-year period will be more than just an update and continuation of the former trESS project. New elements have been inserted in our work plan. A Think Tank has been established, which will analyse problems dealing with applicable legislation and short-term mobility on the one hand and the relation between

Regulation 1408/71 and the Residence Directive 2004/38 on the other. We will keep you informed about further evolutions.

Our team is currently developing a comprehensive communication strategy, where some new initiatives will be further developed. It is our intention to also actively involve you in this process, amongst others by means of a user survey, which you will find in our next newsletter. All this comes in addition to the regular tasks of trESS, i.e. the training, reporting and networking on European social security. At our website, you can find the new European Report 2007, which gives you an overview of the problems encountered in the application of the coordination Regulations in the different Member States. In addition, you can also find the completely developed e-learning module, with an easy understandable description of the most important concepts of European social security law, as well as a detailed explanation of the Regulations through Questions and Answers.

Apart from the reporting, there is of course also the training aspect. At our website, you can already find the dates of the different national seminars in 2008.

As in the past, our newsletter highlights the important recent case law and gives an overview of the recent legislative developments in the field of coordination.

We are looking forward to meeting you at one of our events.

Kind regards,  
Yves Jorens  
Project Director

#### Content of this newsletter

- I. trESS II: the new project structure
- II. New legislation
- III. Legislative proposals
- IV. Case Law
- V. Seminar Dates 2008

#### I. trESS II: the new project structure

trESS has embarked on a new, three-year contract term. The new project sees some important changes in the project structure which will be briefly explained to you in the following lines.

The trESS network will have to assume new tasks in the years to come. On top of the familiar components (training, information-sharing, networking and reporting) comes a new challenge: **analysis**. The Commission has asked trESS to examine where the coordination rules need to be adapted in order for them to continue to be able to fulfil their objective, i.e. to promote freedom of movement of persons. In the first year of trESS, this analysis will focus on two topics: the rules determining applicable legislation and new patterns of mobility, on the one hand, and the relationship between the coordination rules and the residence directive, on the other.

This new challenge is reflected in the project structure, which now hosts a *Think Tank*, divided into two groups, each group examining one of the topics mentioned above. Within each group, a tandem of two persons takes the lead of the activities.

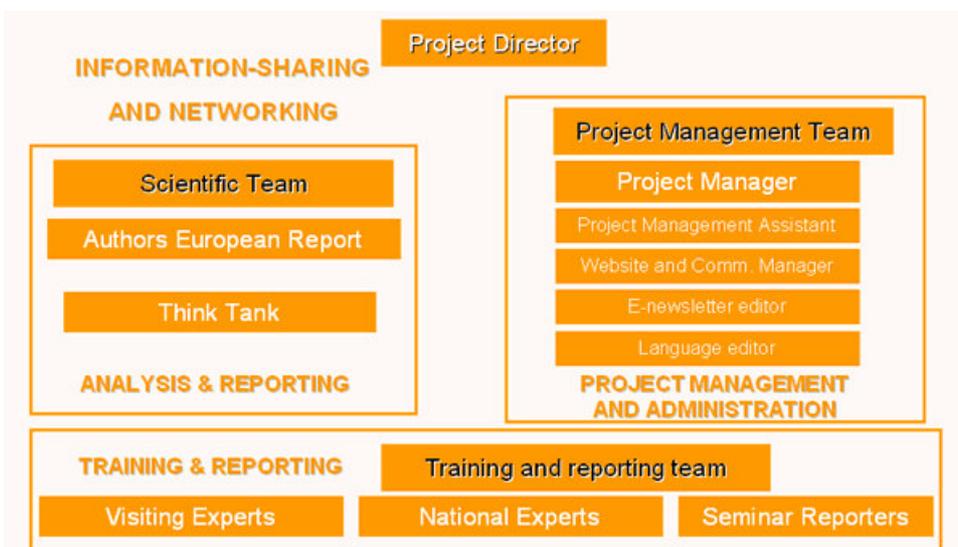
In the larger project structure, which is visualised in the chart below, the Think Tank is part of the **Scientific Team**, as are the *co-authors* of the *European Report*. The European Report will be written also in the future by Yves Jorens and Jozsef Hajdu. Together, the Scientific Team ensures the reporting (to the Commission) and the analysis.

Next to the Scientific Team, there is the **Training and Reporting Team**. This team hosts the *Visiting Experts*, a group of renowned experts in the field of social security coordination who provide training at the national seminars. We take this opportunity to welcome in the Visiting Experts team Simon Roberts, Herwig Verschueren, Jean-Philippe Lhernould and Bernd Schulte. They will join Carlos Garcia de Cortazar, Bernhard Spiegel, Jean-Claude Fillon, Majja Sakslin, Jozsef Hajdu and Yves Jorens.

The organisers of the seminars, our network of *National Experts* in each Member State, also belong to the Training and Reporting Team. Due to other commitments or retirement, the national experts of the Netherlands, Italy, Ireland and Slovenia have left the project. We wish them good luck in their further activities and thank them for the fruitful collaboration over the past three years. At the same time, we wish to present to you Saskia Klose and Gianluca Contaldi, our new Dutch and Italian experts respectively. The names of our new Slovenian and Irish experts will be announced shortly.

Next to organising seminars, the National Experts are responsible for writing a report on the implementation of the coordination regulations in their country. These reports, together with the seminar reports drafted by the *Seminar Reporters*, feed into the European Report.

Last but not least, there is the **Project Management Team**, which accommodates the different management and administrative responsibilities. This Team is headed by the newly appointed *Project Manager*, Michael Coucheir, who will ascertain the overall coordination of the project (project planning and reporting, financial management and liaison with the EC). He will receive logistical and secretarial support of the *Project Management Assistant*, Ann Wardenier. The Project Management Team further hosts the website and communication manager, the e-newsletter editor and the linguistic editor. The overall leadership of the new trESS project rests with Yves Jorens, who remains the **Project Director**.



## II. New legislation

**COMMISSION REGULATION (EC) No 101/2008 of 4 February 2008 amending Council Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, Official Journal of the European Union L 31, 5 February 2008, 15.**

The amendments derive from decisions taken by some of the Member States or their competent authorities designating the authorities which are responsible for the application of social security legislation in accordance with Community law.

Amendments concern Austria (Annexes 1, 4, 10); Belgium (Annex 5); Bulgaria (Annexes 5-7, 9-10); Germany (Annexes 5, 10); Denmark (Annex 5); Luxembourg (Annex 5); the Netherlands (Annexes 2-3, 5); Poland (Annexes 2-3, 5-6) and Slovakia (Annex 5).

## III. Legislative proposals

**Proposal for a Regulation of the European Parliament and of the Council amending the annexes to Regulation 883/2004 on the coordination of social security systems** [[COM\(2007\) 376 final of 3 July 2007](#)]

Regulation 883/2004, which modernises and simplifies the coordination of social security systems within the EU, entered into force in May 2004 but is not yet applicable. Each Annex of the Regulation contains provisions in respect of individual Member States.

Regulation 883/2004 provides that the content of Annexes II (provisions of conventions which remain in force) and X (special non-contributory cash benefits) must be determined before the date of application of the Regulation. Annexes I, III, IV, VI, VIII, IX and XI must be adapted to take into account the requirements of the Member States that acceded to the European Union after 29 April 2004. Further minor amendments are required to some Annexes to take into account recent developments in other Member States.

**Proposal for a Regulation extending the provisions of Regulation 883/2004 to third-country nationals not already covered by these provisions solely on the ground of their nationality** [\[COM\(2007\) 439 of 23 July 2007\]](#)

Regulation 859/2003 extended the application of the provisions of Regulation 1408/71 and Regulation 574/72 to nationals of third countries. Regulation 1408/71 was simplified and updated by Regulation 883/2004. The proposal pursues the same objectives as Regulation 859/2003, which is to extend the scope of the Community provisions in force in the field of coordinating social security schemes to nationals of third countries who are not already covered by these provisions solely on the ground of their nationality. This proposal thus aims to ensure that the same rules for coordinating social security schemes are applied to nationals of third countries as those which apply to European citizens since the entry into force of Regulation 883/2004 and its implementing Regulation. It is consistent with the Union's policy on immigration and the integration of third-country nationals.

**Amended proposal for a Directive of the European Parliament and of the Council on minimum requirements for enhancing worker mobility by improving the acquisition and preservation of supplementary pension rights** [\[COM\(2007\) 603 final of 9 October 2007\]](#)

The European Commission presented on 9 October 2007 an amended proposal for a Directive on improving the portability of supplementary pension rights.

The aim of the Directive is ensure that the rules governing supplementary pension schemes do not hamper the freedom of movement of workers within the EU or mobility within any Member State by reducing the opportunities for migrant workers to acquire sufficient pension rights by the end of their careers.

According to Explanatory Memorandum, the amended proposal directly addresses those obstacles found within some supplementary pension schemes in order to foster worker mobility. The potential barriers to freedom of movement of workers relate to, in particular, the conditions for acquiring pension rights as well as the conditions in which those pension rights are treated after a switch of jobs. Moreover, the amended proposal tackles the issue of workers' right to information on how mobility will affect the acquisition and preservation of supplementary pension rights.

The proposal alters the conditions regarding the acquisition of supplementary pension rights and the preservation of dormant pension rights. The new proposal incorporates the amendments proposed by the European Parliament at its first reading on 20 June 2007 which were acceptable to the Commission, along with technical improvements resulting from discussions with experts within Council working groups. The Commission acknowledges the shift of focus, advocated by the Parliament, onto the acquisition and preservation of dormant pension rights and away from provisions for transfers.

**A package of proposals for Council Decisions on the position to be taken by the Community within the (Stabilisation and) Association Councils established by the Stabilisation and Association Agreements with third countries, with regard to the adoption of provisions on the coordination of the social security systems**

The (Stabilisation and) Association Agreements with third countries contain principles on the coordination of social security systems. In order for these principles to take effect, all these Agreements require the Association Council concerned to adopt a Decision. Council Decisions are necessary in order to establish the position to be taken by the Community in these Association Councils.

The package of proposals concerns the Agreements with Algeria, Morocco, the former Yugoslav Republic of Macedonia, Tunisia, Croatia and Israel.

The proposed Association Council Decisions contain implementing provisions regarding, *inter alia*, the non-discrimination clause as well as provisions in respect of Denmark on the aggregation of insurance periods acquired by workers of the third countries concerned and the export of certain benefits to these countries.

#### IV. Case Law

**[Case C-287/05 Hendrix, 11 September 2007](#)**

This reference for a preliminary ruling concerns the interpretation of Article 4(2a) of Regulation 1408/71. The reference was made in the course of proceedings brought by Mr Hendrix against the Management Board of the body entrusted with implementation of employee insurance contributions, the UWV. Mr Hendrix, a Dutch national, challenged the refusal by the UWV to allocate to him the benefit payable under the Law on provision of incapacity

benefit to disabled young people of 24 April 1997 ('the Wajong'), on the ground that he is not resident in the Netherlands.

Mr Hendrix was born in 1975. He has a slight mental disability. In 1993, a benefit under the AAW (general insurance scheme against incapacity for work) was awarded to him. Upon replacement of that scheme, in 1998, Mr Hendrix was granted a benefit under the Wajong. Mr Hendrix moved to Belgium in 1999 while continuing to work in the Netherlands. By a decision of 28 June 1999, the UWV decided to end the benefit.

The *Centrale Raad van Beroep* decided to refer the following question to the ECJ for a preliminary ruling: is the fact that the Wajong benefit cannot be paid if the recipient is not resident in the Netherlands compatible with EU legislation?

The ECJ stated that the Wajong benefit is a special non-contributory benefit within the meaning of Article 4(2a) of Regulation 1408/71, with the result that the coordinating provision introduced by Article 10a of the Regulation is applicable. Payment of the Wajong may thus be reserved to persons who reside in the territory of the Member State which provides the benefit.

The ECJ went on to state, however, that the provisions of Regulation 1408/71 must be interpreted in the light of the objective of Article 42 EC, which is to contribute to the establishment of the greatest possible freedom of movement for migrant workers. Having found that Mr Hendrix is a migrant worker for the purposes of Article 39 EC and Regulation 1612/68, and that the Wajong benefit is a social advantage within the meaning of Article 7 of that Regulation, the ECJ ruled that the residence condition can be applied in the situation of Mr Hendrix only if it is objectively justified and proportionate to the objective pursued.

The ECJ concluded that Article 39 EC and Article 7 of Regulation 1612/68 do not preclude national legislation which provides that a special non-contributory benefit listed in Annex IIa may be granted only to persons who are resident in the national territory. However, such legislation must not entail an infringement of the rights of a person in a situation such as that of Mr Hendrix which goes beyond what is required to achieve the legitimate objective pursued by the national legislation. It is for the national court, which must, so far as possible, interpret the national legislation in conformity with Community law, to take account, in particular, of the fact that the worker in question has maintained all of his economic and social links to the State of origin.

#### **Case C-299/05 Commission of the European Communities v. European Parliament and Council of the European Union, 18 October 2007**

Annex IIa to Regulation 1408/71 lists the special non-contributory benefits which the persons to whom that Regulation applies can be granted only in the territory of the Member State in which they reside, pursuant to Article 10a of that Regulation.

The aim of the action under Article 230 EC brought on 26 July 2005 by the Commission was the annulment of the provisions of point 2 of Annex I to Regulation 647/2005 of 13 April 2005 amending Regulations 1408/71 and 574/72, under the headings "FINLAND", (b), "SWEDEN", (c), and "UNITED KINGDOM", (d) to (f), which refer to following benefits in Annex IIa to Regulation 1408/71 (as amended):

- as regards Finland: child care allowance;
- as regards Sweden: disability allowance and care allowance for disabled children;
- as regards the United Kingdom: disability living allowance (DLA), attendance allowance (AA), and carer's allowance (CA).

The Commission submitted that those benefits do not meet the conditions allowing their grant to be restricted only to those persons who reside in the territory of each of those Member States.

According to Article 4(2a)(a)(ii) of Regulation 1408/71, a benefit can be deemed to be special only if its purpose is solely that of specific protection for the disabled, closely linked to the social environment of those persons in the Member State concerned.

The ECJ judged that the above-listed benefits do not have that sole function. Although they promote the independence of the persons who receive them and protect the disabled in their national social context, they are also intended to ensure the necessary care and the supervision of those persons, where it is essential, in their family or a specialised institution.

Pursuant to Article 4(2a)(a)(i), a special benefit for the purpose of that provision is also defined by its purpose. It must either replace or supplement a social security benefit, while being distinguishable from it, and be by its nature social assistance justified on economic and social grounds and fixed by legislation setting objective criteria.

According to the ECJ, the purpose of the Finnish and Swedish care allowances for children is to enable the parents of disabled children to provide for the care, supervision and possibly rehabilitation of those children. As their main purpose is medical, and they fulfill the condition to be qualified as a social security benefit, the ECJ considered that the Finnish and Swedish care allowances for children must be classified as sickness benefits.

Insofar as the Swedish disability allowance is concerned, it is granted to disabled people for whom a reduction in their mobility occurred between the ages of 19 and 65. It is intended to finance the care of a third person or to allow the disabled person to bear the costs caused by his or her disability and to improve that person's state of health and quality of life, as a person reliant on care. The ECJ classified also this benefit as a sickness benefit.

As regards the UK allowances, those benefits are all by nature – although only partially so in the case of the DLA – care allowances. The AA and CA have a single purpose which is akin to that of the Swedish disability allowance, namely to help the disabled person to overcome, as far as possible, his or her disability in everyday activities. Only the DLA can be considered to include a social assistance component. Accordingly, the ECJ ruled that the three UK allowances are to be regarded as sickness benefits, even though the DLA includes a distinct part relating to mobility. The ECJ confirmed that the "mobility" component of the DLA, which might be regarded as

a special non-contributory benefit, is severable, so that that component alone could be included on the list in Annex IIa as amended if the UK decided to create an allowance which concerned that component alone.

Based on these arguments, the ECJ annulled the provisions of point 2 of Annex I to Regulation 647/2005 amending Regulations 1408/71 and 574/72 under the headings "FINLAND", (b), "SWEDEN", (c), and "UNITED KINGDOM", (d) to (f). However, the ECJ maintained the effects of the inclusion of the DLA under the heading "UNITED KINGDOM", (d), as regards solely the "mobility" part of that allowance so that, within a reasonable period, appropriate measures can be taken to include it in Annex IIa to Regulation 1408/71.

**[Joined Cases C-396/05 Doris Habelt, C-419/05 Martha Möser, C-450/05 Peter Wachter, 18 December 2007](#)**

The references for preliminary ruling concern the validity of Annexes III and VI to Regulation 1408/71 and were made in the course of actions brought by pensioners against the *Deutsche Rentenversicherung Bund* in Germany over the latter's refusal to take account, for the purposes of the payment of old-age benefits, of periods of contribution completed outside the territory of the present Germany, on the grounds that the claimants had established their residence in a Member State other than Germany.

***Cases C-396/05 and C-419/05***

Mrs Habelt, a German national, completed in the Sudetenland between January 1939 and 30 April 1945 periods of old-age pension insurance under the legislation of the German Reich. Since 1 February 1988 Mrs Habelt has received an old-age pension from the *Bundesversicherungsanstalt für Angestellte*. After Mrs Habelt moved to Belgium on 1 August 2001 the institution decided to reduce her pension. Her periods of insurance in the Sudetenland between January 1939 and 30 April 1945 (contribution periods completed on the part of the territory where the social security legislation of the German Reich was applicable) were no longer taken into account for the payment.

Mrs Möser, a German national, was born on 2 January 1923 in Pniewo in Pomerania. She fled from the former Russian occupation zone in 1946 and settled in the territory of the present Germany, where, since 1 February 1988, she has received an old-age pension from the *Bundesversicherungsanstalt*. Initially, that pension was calculated on the basis of, among other things, compulsory contribution periods completed by the person concerned for the period from 1 April 1937 to 1 February 1945 for work in Pomerania in a part of the territory where the social security legislation of the German Reich was applicable and which is now in the Republic of Poland. After Mrs Möser moved to Spain on 1 July 2001, the pension was reassessed. The reason given for the reduction in the monthly pension was that periods completed outside Germany could not be taken into account because the person concerned resided abroad.

The ECJ was asked to rule on the compatibility of the possibility, provided for by Annex VI to Regulation 1408/71 (Part C, headed 'Germany', point 1) of excluding contribution periods completed in the territory where the legislation of the German Reich applied for payment of old-age pensions. Having found that the situation of Mrs Habelt and Mrs Möser comes within the scope of Regulation 1408/71, the ECJ considered that the refusal to take account, for the purposes of calculating the old-age benefits paid to recipients not residing in Germany, of contributions paid between 1937 and 1945 constitutes an obstacle to their right to freedom of movement. In the absence of any objective justification, the ECJ concluded that the relevant provisions of Annex VI are incompatible with freedom of movement for persons, and, in particular, with Article 42 EC.

***Case C-450/05***

*Mr Wachter* was born in Romania in 1936. He possesses Austrian nationality and is recognised as a displaced person (expellee) within the meaning of the German law on displaced persons and refugees ('BVG'). In 1970 he left Romania to live and work in Austria, where he has lived since. In November 1995 the *Bundesversicherungsanstalt* recognised the contribution and employment periods completed by Mr Wachter in Romania between September 1953 and October 1970 as compulsory contribution periods under the German pension insurance scheme, given that the person concerned was recognised as a displaced person under the BVG. In June 1999 Mr Wachter applied for an old-age pension to be paid from 1 August 1999, his 63rd birthday. The application was refused on the ground that no contribution periods completed with a foreign organisation conferring entitlement to a pension under the *Fremdrentengesetz* (FRG, Law on pension rights acquired by contribution abroad) could give rise to the payment of a pension abroad.

Before 1994, pensions based on contribution periods abroad could, under the 1966 German-Austrian Convention, be paid in Austria. Following the entry into force in Austria of Regulation 1408/71, however, the Regulation allows such pensions to be paid only to recipients residing in Germany.

The ECJ was asked whether the relevant provisions of Regulation 1408/71 [Annex III, Parts A and B, point 35, headed 'Germany-Austria', under (e); and Annex VI, Part C, headed 'Germany', point 1] were compatible with the right to freedom of movement guaranteed by Articles 39 and 42 EC. It replied in the negative, in that these provisions enable, in circumstances such as those in the main proceedings, where the recipient resides in Austria, to make the inclusion, for the purposes of the payment of old-age benefits, of periods completed under the FRG between 1953 and 1970 in Romania subject to the condition that the recipient reside in Germany.

To reach that conclusion, the ECJ found that the situation of Mr Wachter was governed by Community law. Although, at the time, the insurance bodies to which Mr Wachter paid his contributions belonged to a third State (i.e. Romania), those contributions were nonetheless recognised for the purposes of obtaining a German pension.

In those circumstances, the loss of the right to old-age benefits following the entry into force, in Austria, of the provisions of Regulation 1408/71 infringes the right to freedom of movement for workers.

**[Case C-507/06 Klöppel, 21 February 2008](#)**

This reference for a preliminary ruling concerns the duration of the period during which a person is entitled to receive childcare allowance in Austria.

Following the birth of their daughter, Ms Klöppel and Mr Kraler, who were at that time residing in Germany, received the German child-raising allowance. On 18 August 2004, they established themselves in Austria. They were denied an Austrian family benefit due to the fact that local institutions refused to take into account family benefits drawn in Germany.

The national court in Austria asked whether Article 72 of Regulation 1408/71, in conjunction with Article 3 of that Regulation and Article 10a of Regulation 574/72, must be interpreted to the effect that periods of drawing family benefits in one Member State (in this case the national child-raising allowance in Germany) must be treated equally for the purposes of founding an entitlement to draw a comparable benefit in another Member State (in this case childcare allowance in Austria) and, accordingly, must be treated in the same way as domestic periods of drawing for the purposes of entitlement in that second Member State, if, during those periods of drawing, both parents are to be regarded as employed persons under Article 1(a)(i) of Regulation 1408/71.

The ECJ stated that Article 3(1) of Regulation 1408/71 precludes a Member State from refusing to take into account, for the purposes of granting a family benefit such as the Austrian childcare allowance, the period during which a comparable benefit was drawn in another Member State as if that period had been completed in its own territory.

In particular, the ECJ noted that the refusal to take into account, for the purposes of granting the Austrian childcare allowance, the period during which a comparable benefit was received in Germany is likely to lead to indirect discrimination based on nationality, given that, as a general rule, it is workers who are nationals of other Member States who, prior to their establishment in Austria, would have received family benefits paid in those other States.

#### V. Seminar Calendar 2008

### Seminar calendar 2008

> MARCH		> JUNE	
Finland	14/3	Bilateral Czech Rep/Slovakia	2/6
Romania	17/3	Malta	4/6
Portugal	28 /3	Spain	6/6
Poland	31/3	Italy	13/6
> APRIL		Luxembourg	20/6
Slovenia	7/4	Hungary	24/6
Bilateral Sweden/Denmark	23/4	The Netherlands	26/6
Lithuania	25/4	United Kingdom	27/6
Belgium	30/4	Bilateral Austria/Germany	30/6 - 1/7
> MAY		> JULY	
Estonia	15/5	France	1/7
Ireland	tbd.	Cyprus	7/7
Greece	28/5	Latvia	11/7
Bulgaria	29/5		

#### EU PRESIDENCY 2008-2010

**Slovenia** January - June 2008  
**France** July - December 2008  
**Czech Republic** January - June 2009  
**Sweden** July - December 2009  
**Spain** January - June 2010

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

If you wish to unsubscribe from the **trESS** newsletter [click here](#).