



E-newsletter March 2009

Welcome word



Dear trESS friends,

It is my pleasure to present to you the first trESS e-newsletter of 2009.

As already announced in the previous issue, 2009 will be the year in which the Regulation implementing Regulation 883/2004 will be adopted, thus paving the way for the applicability of the new Community coordination framework in 2010. It goes without saying that trESS will pay attention to this important event and that the new Regulations will play an important role in our work plan for 2009 and beyond.

Around this period the yearly trESS seminar round begins. You will find the seminar calendar further on in this issue. By the start of the summer holidays, trESS will have organised 23 seminars. In addition to two bilateral seminars, there will be "regional", Baltic seminar, organised jointly by our Lithuanian, Latvian and Estonian experts. You can subscribe to one of these seminars via our website www.tress-network.org.

We look forward to meeting you at one of our events!

Best regards,
Yves Jorens
Project Director

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I. Legislative Developments at EU Level

[Communication from the Commission to the European Parliament concerning the Council common position on the adoption of a Regulation implementing Regulation 883/2004](#)

On 7 January 2009 the European Commission published its communication concerning the common position of the Council on the adoption of a Regulation laying down the procedure for implementing Regulation 883/2004.

The objective of the proposal was to complete the process of modernising the existing rules in this field, thus replacing current implementing Regulation 574/72. It aims, in particular, to define for all the parties involved (insured persons, their employers, social security institutions and the competent authorities of the Member States) the procedures for implementing the rules set out in the basic Regulation 883/2004.

The Commission underlined that the Council common position improves some of the measures contained in the Commission's proposal. In particular, it clarifies certain criteria with the result that some of the key concepts set out in the basic Regulation will be implemented in a more homogenous

way, such as determination of the legislation applicable or posting of workers. The Commission also noted that the Council common position largely took account of the position of the European Parliament and that it was based on a close monitoring of the provisions in the light of the four underlying principles of the Commission's proposal:

- organising more effective and closer cooperation between social security institutions to enable all stakeholders to benefit from the modernisation of Regulation 883/2004;
- simplifying the implementing Regulation; - improving the transparency of the financial procedures between the institutions and in respect of persons covered by the Regulation;
- flexibility and effectiveness in setting the rules.

In the light of these considerations, the Commission gives overall support to the Council common position. The common position is transmitted to the European Parliament for second reading.

[Communication from the Commission to the European Parliament concerning the Council common position on the adoption of a Regulation amending Regulation 883/2004 and determining the context of its annexes](#)

The contents of certain annexes to Regulation 883/2004 had not yet been determined when the Regulation was adopted. Regulation 883/2004 therefore provides that the contents of its Annexes II (provisions of conventions which remain in force), X (special non-contributory cash benefits) and XI (special provisions for the application of the legislation of the Member States) should be determined before the date of application of the Regulation.

Furthermore, some of the Annexes to Regulation 883/2004 had to be adapted to take into account the requirements of the 12 Member States that acceded to the EU since the adoption of the Regulation, as well as recent developments in other Member States.

Against this background, the Commission adopted two proposals for Regulations, in January 2006 and in July 2007. Following the European Parliament's first reading, the Commission presented its amended proposal in October 2008 taking on board the amendment of the EP to merge the two proposals into a single text.

On 7 January 2009 the European Commission presented its communication concerning the common position of the Council on the adoption of a proposal for a Regulation amending Regulation 883/2004 and determining the context of its annexes.

The Commission gives overall support to the Council common position.

One remaining issue is Annex III that contains a list of Member States which apply a "restriction of rights to benefits in kind for members of the family of a frontier worker" in the competent Member State. This annex already represents progress for many of the persons concerned compared to their situation under Regulation 1408/71, as it will allow family members of frontier workers in 8 Member States to benefit from a new right. However, the EP had urged for a complete repeal in an amendment. The Council is unwilling to repeal the Annex III but instead has proposed a review of the Annex five years after its application and the insertion of a provision to the effect that the period of validity of some Member States' entries in Annex III would be limited to four years. The Commission, following a pragmatic approach, accepts the compromise.

Other changes made by the Council to the Commission's proposal include a change to Article 87(8) of Regulation 883/2004, providing for a maximum period of 10 years during which a person can remain subject to the legislation of a Member State determined in accordance with Title II of Regulation 1408/71, in cases where the application of the corresponding Title of Regulation 883/2004 designates another legislation applicable. The Commission accepts this change, as it considers that fixing a maximum period is intrinsically linked to the idea of a transitional measure.

The common position is transmitted to the European Parliament for second reading.

[Commission Regulation \(EC\) No 120/2009 of 9 February 2009 amending Regulation 574/72.](#)

Regulation 120/2009 was published in the Official Journal of the European Union on 10 February 2009. It

amends Annexes 2 to 5 to Regulation 574/72. The reason for these changes relates to the fact that some Member States or their competent authorities have taken decisions designating the authorities which are responsible for ensuring that social security legislation is implemented in accordance with Community law. The unanimous opinion of the Administrative Commission on Social Security for Migrant Workers has been obtained. The bilateral arrangements for the implementation of the provisions of Regulation 574/72 are listed in Annex 5 to that Regulation.

[Commission Decision of 19 December 2008 setting up the Committee of Experts on Posting of Workers](#)

On 19 December 2008, the Commission adopted Decision 2009/17/EC setting up the Committee of Experts on Posting of Workers.

Following on from the mandate by the Council of 9 June 2008, the Decision institutionalises the informal group of government experts on posting. The Committee will be composed of experts representing the national authorities, which in each Member State, are responsible for, in charge of, or involved in the implementation, application and monitoring of the rules applicable to the posting of workers in the framework of the provision of services. It should also formally and regularly involve the social partners at European level, in particular those representing sectors with a higher incidence of recourse to posted workers, such as construction, temporary agency work, catering, agriculture and transport.

The Committee of experts will, inter alia, support and assist Member States in identifying and exchanging experience and good practice, promote the exchange of relevant information, examine any questions and difficulties which might arise in the practical application of the posting of workers legislation, as well as its enforcement in practice, and closely follow the progress achieved in improving both access to information and administrative cooperation, including the development of a possible electronic information exchange system.

II. Case Law

[Opinion](#) of Advocate General Poiares Maduro in Case C 3/08 (Leyman)

The reference for a preliminary ruling was sent to the ECJ in the context of proceedings between Ms Leyman and the Belgian Institut national d'assurance maladie (INAMI). Ms Leyman, a Belgian national, worked in Belgium as an employee between 1971 and 2003. In August 2003, she moved to Luxembourg and, since then, she has been subject to the Luxembourg social security scheme. On July 2005, the Luxembourg authorities found her to be incapable of work for the period from 8 July 2005 until 29 February 2012, when she is due to retire. Therefore, the Luxembourg authorities awarded her an invalidity pension with immediate effect and calculated in accordance with the ratio of the length of the periods of insurance completed under the legislation administered by them. Ms Leyman also submitted an application to the Belgian INAMI for invalidity benefits. The INAMI granted her such benefits, but only with effect from 8 July 2006, having regard to a provision of Belgian legislation under which the right to invalidity allowance is acquired only after a year of incapacity for work (after a prior period called indemnité d'incapacité primaire).

As Ms Leyman has been successively subject to type A legislation (Belgium – amount of invalidity benefit does not depend on insurance period) and to type B legislation (Luxembourg – amount varies with length of insurance period), her situation is governed by Article 40 of Regulation 1408/71, which refers to the coordination provisions for old-age pensions.

The question is raised whether this provision of the Regulation as well as the relevant Belgian legislation is compatible with Article 18 EC.

The AG commences by stating that the situation falls within the scope of Article 39 EC and that, hence, it is not necessary to rule on the interpretation of Article 18 EC. He continues by holding that Community law – which has only provided for a coordination system, to the exclusion of compulsory harmonisation – cannot impose immediate payment of a benefit which, in national law, is granted only after a waiting period of one year. As such, the national provision, authorised by Article 40 of the Regulation, does not infringe Article 39 EC.

The AG goes on to say that, at the same time, Belgian legislation would put workers having made use of their right to freedom of movement at a disadvantage, in comparison to those who remained within

Belgian territory, if they are not allowed to claim an indemnité d'incapacité primaire. He finds that the question at issue is concerned with the compatibility with Community law of the inability of a Belgian worker who, having moved to the Grand Duchy of Luxembourg and, while working there, having become incapable of working, to obtain, during the first year of his or her incapacity, any allowance taking into account the contributions previously paid to the INAMI, whereas he or she would have been eligible to receive an indemnité d'incapacité primaire as from the first day of incapacity for work, if he or she had remained in Belgium.

The AG concludes that, interpreted in the light of Article 42 EC, Article 40(3)(a) of Regulation 1408/71 must be understood as requiring from a Member State, such as Belgium, not only to take into account, for the purposes of the payment of an invalidity allowance, any period during which the person concerned received invalidity benefits under Luxembourg legislation but also to take into account for the purposes of the payment and the calculation of the indemnité d'incapacité primaire all the insurance periods completed under the Luxembourg legislation, as if they were periods completed under its own legislation.

III. Other News

On 19 February 2009, the European Commission has sent a reasoned opinion to Spain for failing to comply with Regulation 1408/71. The Commission takes the view that Spain discriminates against EU pensioners by refusing them access to free medication when they stay temporarily in Spain.

In accordance with Article 31 of Regulation 1408/71, pensioners who are staying temporarily in another Member State can make use of their European Health Insurance Card (EHIC) to receive necessary healthcare under the same conditions as pensioners insured in that country. Spanish legislation allows pensioners insured in Spain to get medication for free. However, EU pensioners are required to show an additional document issued by their national social security services, in Spanish, to certify that they are in receipt of a State pension.

The Commission argues that this is contrary to European law and discriminates against EU pensioners on holiday in Spain. Moreover, the requirement to present a supplementary document is not consistent with the principles of the European Health Insurance Card, which aims to simplify procedures and reduce red tape for people when travelling in Europe.

If the Spanish government fails to reply in a satisfactory fashion within two months, the Commission can refer the matter to the European Court of Justice.

IV. Seminar Calendar 2009

trESS Training and reporting on European Social Security

Seminar calendar 2009



MARCH		Spain	15/5	France	16/6
Poland	27/3	DK/SE	19/5	UK	19/6
APRIL		Italy	20/5	Portugal	23/6
Belgium	3/4	Greece	26/5	Luxembourg	26/6
Romania	8/4	Ireland	27/5	Netherlands	30/6
Slovenia	20/4	JUNE		JULY	
Finland	24/4	CZ/SK	3/6	LT/LV/EE	2/7
Cyprus	27/4	Germany	5/6	Austria	6/7
MAY		Hungary	8/6		
Malta	13/5	Bulgaria	9/6		

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