

Merry Christmas and a Happy New Year !



E-newsletter December 2011

Welcome word



Dear **trESS** friends,

With delight I present you this last **trESS** E-newsletter of the very fruitful year 2012. It is at the same time the 20th issue of our newsletter, which is already sent to 3500 readers all over Europe. This is typically the time of year of looking and evaluating what has been, but also looking forward to what will come.

With regard to the 2011 activities of the project, the last seminar was held in the beginning of November. With 10 seminars behind us, the new formula for seminar organisation – according to which we left the idea of organising yearly seminars in every Member State – has stood the first test very well.

As already announced in the previous newsletter, different reports have been finalised under the reporting and analytical branch of the project. You will now find them all (i.e. European Report 2011, Think Tank Report 2011 and Analytical report 2011) on the **trESS** website. Also as promised, we are happy to inform you that the website has undergone the announced adaptations in the well-known 'Regulations Database', as we have fully integrated the new Implementing Regulation and the decisions of the Administrative Commission into this practical online tool. You will also find that 60 'historical leading 1408/71-cases' are flagged.

We are now intensively preparing the following year, which will be the second working year of "**trESS** III". In that regard, we are now working on the planning for the next seminar round in 2012. The national experts of several Member States have already applied to organise a seminar in 2012 and all the proposals are being investigated. We will of course immediately inform you as soon as the new seminar calendar is finalised. This information can be expected in our next newsletter. Furthermore, the already very broad group of experts will engage in analysing new hot topics in the field of EU social security coordination. Finally, the **trESS** website will be further elaborated and will step into the 21st Century by integrating **trESS** into the new social media.

This newsletter also contains news from the Commission, which has also produced important reports itself and has remained active in its efforts to request Member States to end allegedly free movement restricting national measures. We can also present you one new case from the European Court of Justice on social security coordination, notably with regard to the coordination of family benefits in an EU-Switzerland context.

Finally, we also included a short outlook on what we can expect at EU level in the new year.

I wish you a very inspiring read, but of course first and foremost a Merry Christmas and a Happy 2012.

Kind regards,
Yves Jorens

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I. News from trESS

> Several trESS reports finalised and published

Several **trESS** reports are now published on the **trESS** website. They are the result of the work of a pool of experts. Next to the national experts involved in the project throughout the EEA, we also appeal to other analytical experts for our reporting, statistical and analytical activities. As soon as the work of several reflection groups is finalised, we publish their reports on the website.

The [Analytical report 2011](#) related to the social security coverage of non-active persons moving between Member States was already presented in the November e-Newsletter. You will now find it on the website.

Also the [Think Tank report 2011](#) on the coordination of long-term care benefits was handed over to the European Commission and was already presented at the December meeting of the Administrative Commission. As is well-known, the coordination of these benefits under the Regulation's chapter for the coordination of sickness benefits is far from unproblematic. This report provides an extensive overview of the relevant national schemes and the current challenges in this area, but also proposes several options for solutions.

Finally, the [European report 2011](#), the result of the rather traditional reporting task of the **trESS** group to the European Commission, can also be found online. The report contains an elucidating overview of the status quaestiones regarding the implementation of Regulation 883/2004 and Regulation 987/2009 at the national level. Besides reporting on implementation issues, the report also detects possible trends or future challenges in the domain. Worth the read if you want to be up-to-date with regard to the burning issues in EU social security coordination.

You will find all the reports on the website by clicking "European resources" on the homepage of the website.

> Preparing for trESS 2012

As the year 2011 is almost at its end, the plans for the following working year are already on the table. We are proud to briefly present you some of the **trESS** activities you may expect in 2012.

First of all, you can already look forward to a new load of inspiring reports concerning the coordination of social security in the EU. In 2012, the previously yearly recurring 'European report' will be replaced by a Thematic report, which will deal with the relationship between national activation measures and the

coordination of social security in the EU. Besides this, the **trESS** Think Tank will reflect on the coordination of unemployment benefits. Finally, the previous Think Tank study on the coordination of long-term care benefits will find a specific continuation in a new Analytical Study on the same topic in 2012.

As to the **trESS** website, the recurring activities such as the updating of the national case law and the national bibliographies will of course be continued. The webteam will also evaluate the usability of the website thoroughly, to even better serve the needs of the visitors. The same team will also introduce **trESS** into the world of social media by joining Facebook and LinkedIn. This will give you extra ways of staying in touch with the latest developments and with other interested persons.

II. News from the Commission

> Report shows overall positive impact of mobility of Bulgarian and Romanian workers on EU economy

A new [report](#) published by the European Commission highlights the overall positive role that mobile workers from Bulgaria and Romania (EU-2) have played in receiving countries' economies.

These workers have contributed to the skills mix as well as filling vacancies in sectors and jobs with labour shortages such as in construction and the domestic and food services sectors. Estimates also show a positive impact of the free movement of Romanian and Bulgarian workers on the EU's long-term GDP with an increase by about 0.3% for EU-27 (0.4% for eu-15). Studies show too that there has been no significant impact on unemployment or wages of local workers in receiving countries: in the EU-15 studies show wages are on average only 0.28% lower they would have been without mobility of the EU-2.

The report also highlights that there is no evidence of a disproportionate use of benefits by intra-EU mobile EU citizens and that the impact of recent flows on national public finances is negligible or positive. The Commission report will serve as the basis on which the Council will carry out a review of how the transitional arrangements on free movement of Bulgarian and Romanian workers have worked in practice.

> Commission requests Spain to end refusal of European Health Insurance Cards to non-Spanish EU nationals

The European Commission has requested Spain to end its refusal to issue European Health Insurance Cards (EHICs) to non-Spanish EU nationals who are neither employed, self-employed nor state pensioners, but who are entitled to healthcare on the basis of their residence in the Spanish Autonomous Communities of Andalusia and Valencia. Since Spanish law permits this group of non-economically active persons to have access to the public healthcare systems in Andalusia and Valencia, they are "insured persons" under the EU social security coordination rules and should therefore benefit from the rights given by the EHIC.

Spain however denies that these citizens are 'insured persons' under EU social security coordination rules and, therefore, refuses to issue EHICs to them. The EHIC proves that a person is insured under a public healthcare system and entitles the holder to access necessary healthcare services during temporary visits abroad. The refusal by Spain to issue EHICs to the citizens in question means they are in principle personally liable for the cost of their healthcare when staying in other European countries. Under the EU social security coordination rules, an 'insured person' is a person satisfying the conditions in an EU country, Iceland, Liechtenstein, Norway or Switzerland to have the right to social security benefits. Insured persons have the right under the EU rules to receive all necessary health care while staying in other Member States. The EHIC certifies this right.

The request to Spain takes the form of a 'reasoned opinion' under EU infringement procedures. Spain now has two months to inform the Commission of measures it has taken to comply with EU law. Otherwise, the Commission may decide to refer Spain to the EU's Court of Justice.

> New analysis shows employment and social policies key to Europe's job-rich recovery

The [first annual review of Employment and Social Developments in Europe \(ESDE\)](#) published by the European Commission underlines that a mix of employment and social policies is necessary to ensure a long-term job-rich recovery in the current climate of fiscal consolidation and bleak economic outlook. Its findings show how the economic crisis has aggravated Europe's structural weaknesses like income inequality and the disappearance of medium-paid jobs, especially in manufacturing and construction. Poverty remains high with 115 million Europeans (23 % of the EU population) at risk of poverty or social exclusion in 2010.

The review shows in particular that, while inequality has decreased or grown only slightly in historically more unequal countries (like Italy or Greece), it has increased in many traditionally egalitarian Member States, such as Nordic countries and the general trend remains upwards. Raising participation in employment, better social spending and fairer taxation of top incomes and wealth can contribute to mitigating inequalities. In terms of poverty, the review stresses that while Eastern Europeans are more often facing severe material deprivation, in the Northern and Western Member States, exclusion from the labour market prevails. Elderly, lone parents and low-work intensity households are at particular risk of poverty and social exclusion. Over 8 % of people with a job are at risk of poverty – so called "working poor". Improving the employability of older workers and encouraging active ageing are set out as essential for reaching the EU employment rate target of 75 % by 2020. Active ageing policies will help to discourage early retirement, stimulate lifelong learning, adapt working conditions to the needs of older workers and provide care for the elderly.

Workers' mobility is also highlighted as an important way to address unemployment and imbalances across labour markets. Figures show how for most receiving countries, no significant impact on local unemployment or wages has been found, while the risks of brain drain for countries of origin seem limited overall. Experience is showing that free movement brings benefits to both individuals as well as receiving countries and contributes to reducing undeclared work.

> Event: European Year 2012 Opening Conference: "Stay active - what does it take?"

The Danish Presidency of the Council of the European Union in 2012 is holding a [high level Conference on Active Ageing and Solidarity between Generations](#) on 18th and 19th January. The conference will inaugurate the European Year 2012. The event is organised by the Danish Ministry of Employment, the Ministry of Social Affairs and Integration and the Ministry of Health in close cooperation with the European Commission. The main theme is innovation and how innovation can bring new solutions to the pending challenges of an ageing society in Europe within the fields of employment, social affairs and health.

III. News from the ECJ

> [\(Case C-257/10\) Försäkringskassan v Elisabeth Bergström](#)

This reference for a preliminary ruling concerns the interpretation of Article 3(1) and Article 72 of Regulation 1408/71 and has been made in proceedings between Ms. Bergström, a Swedish national, and the Försäkringskassan ('the National Social Insurance Office') concerning the Försäkringskassan's refusal to take into account the period of employment completed by Ms. Bergström in Switzerland, for the purposes of calculating the amount of family benefit provided for child rearing.

Ms. Bergström, a Swedish national, was employed in Switzerland until the birth of her daughter. She then returned to Sweden with her family. Her husband immediately took up employment in Sweden, while Ms. Bergström remained unemployed in order to care for her daughter. She applied for parental benefit at the daily sick leave benefit level ('PBDBL'), calculated on the basis of the income she had had from her employment in Switzerland. The Swedish National Social Insurance Office however decided to grant Ms Bergström the lower basic parental benefit ('BPB'), on the ground that she was not entitled to

claim PBDBL because she had not been employed in Sweden for the 240 days before the birth, which would have entitled her to sick leave benefit above the basic level.

Her case made it to the Swedish Supreme Administrative Court, which referred two questions to the ECJ. The referring court asked whether, under the EU-Switzerland Agreement ('the Agreement') and Regulation 1408/71, where the legislation of a Member State makes the award of a family benefit conditional upon completion of periods of insurance, employment or self-employment, the competent institution of that Member State must take into account for those purposes periods completed in their entirety in the Swiss Confederation. Secondly, it wanted to know whether – in the event that the first question was answered in the affirmative – the Agreement and Regulation No 1408/71 have the effect of assimilating income received in Switzerland with the domestic income which, in Sweden, serves as a basis for calculating the amount of the family benefit sought.

As a preliminary observation, the ECJ made clear that the referred questions fell within the scope of the Agreement, mainly pointing at the goal of free movement of persons, the equal treatment principle and the necessity of the application of the aggregation rule under the Agreement.

With regard to the basis for calculating the amount of the family benefit, it was submitted to the Court that this family benefit was equal in value to daily benefits which were fixed in accordance with the rules governing sickness insurance. Consequently, the ECJ referred to the relevant coordination rules for sickness cash benefits in Article 23 of Regulation 1408/71. Irrespective of whether the qualifying income for calculating cash benefits is determined by applying Article 23(1) or Article 23(2), that income is established either by reference to earnings during periods completed under the legislation of the competent institution, or by reference to standard earnings or, where appropriate, the average of standard earnings for the periods completed under that legislation, that is to say, in the present case, under Swedish law. However, Ms. Bergström was not in receipt of any income in Sweden during the 240-day qualifying period.

In such circumstances, the Court decided that, in order for Article 8(c) of the Agreement and Article 72 of Regulation 1408/71 to be effective, and in order to satisfy the equal treatment requirement in both instruments, Ms. Bergström's qualifying income had to be calculated by taking into account the income of a person who is employed, in Sweden, in a situation comparable to her situation and who also has professional experience and qualifications comparable to her professional experience and qualifications.

See www.curia.europa.eu

IV. EU social security coordination in 2012: what to expect?

It seems that the upcoming year will be a promising year for people working with or interested in EU social security coordination. Allow us to sum up some developments that are probable and foreseeable in the future.

- The adoption of the new Regulation concerning Miscellaneous amendments 2010, the result of the Commission's proposal [COM\(2010\)94](#) (cf. [trESS e-Newsletter of April 2011](#)). It will amend the provisions regarding simultaneous employment in two or more Member States, by extending the requirement of "substantial part of the activities in the Member State of residence" to persons who normally pursue an activity for various undertakings or employers in two or more Member States. This Regulation will also provide a solution for formerly self-employed frontier workers who were insured in the Member State of last activity, but whose Member State of residence does not have any unemployment benefits scheme for self-employed persons. Finally, it will introduce the "home base" concept for air crew members.
- A Communication from the European Commission on the external dimension of the coordination of social security in the EU. This will bring legal clarifications on the relationship between a bilateral agreement between a Member State and a third country on the one hand and the EU coordination rules on the other hand. The Commission will also present the strategy concerning the follow-up given to the social security dimension of the Association Agreements and suggest a reinforced cooperation between the Member States in this field.
- Regulations 883/2004 and 987/2009 will be further evaluated in the years 2012 and 2013. Discussions will probably focus on long-term care, international transport and unemployment

benefits. This way, needs for revision may be detected.

- In the Administrative Commission for the coordination of social security systems, discussion will mainly focus on cross-border health care, the coordination of long-term care benefits, social security coverage of non-active persons, coordination of social security in the international transport sector and the further development of EESSI.
- Further development of the EESSI preparation process for the electronic exchange of information between the Member States.

We will of course keep you informed on further developments, via the e-Newsletter, on the **trESS** website or, in the near future, via Facebook or LinkedIn.

This e-newsletter has been produced under the responsibility of **Yves Jorens**.

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