

## E-newsletter July 2010

### Welcome word



Dear **trESS** friends,

It is my pleasure to present to you the second newsletter of 2010 – the first one after the entry into force of the new social security coordination regulations!

As announced in previous issues of this E-newsletter, the **trESS** website incorporates several new features to reflect the applicability of the legal framework. For more details, I refer you to the first news item of the present issue.

Since the beginning of spring, **trESS** has been organising training seminars all over Europe. 19 seminars have taken place, 7 are still to come in the second half of the year. You can find the PowerPoint presentations of past seminars on our website, under the seminar section.

Further in this E-newsletter, you will find a number of news items, pertaining amongst others to the updated Administrative Commission decisions and recommendations, the Green Paper on pensions and to several significant EU legal instruments relevant to social security that have been adopted or are in the process of being adopted. In addition, there is a summary of a recent ECJ judgement dealing with the application of the free movement of services to occasional medical care during a temporary stay abroad. The items are conveniently grouped together according to the EU institution concerned.

You may expect the third **trESS** E-newsletter (the last one of our contract term) in autumn.

Meanwhile, I wish you a pleasant read and relaxing summer holidays!

Best regards,  
Yves Jorens  
Project Director

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## I. trESS website developments

The new coordination Regulations (EC) Nos 883/2004 and 987/2009 entered into force on 1 May 2010. This important event also marked **a significant update and extension of the resource base** available on the trESS website [www.tress-network.org](http://www.tress-network.org).

The full text of the new Regulations, in all languages, was already available at the European resources section for some time. Since May 2010, this section also features **an upgraded version of the Regulations database**. The changes to Regulation 883/2004 brought about by Regulation 988/2009 have been incorporated. In addition, it is now also possible to link the Articles of the new basic Regulation with the corresponding articles of its predecessor, Regulation 1408/71.

Furthermore, **a new version of the E-learning module** is available, reflecting the new coordination regulatory framework, and including **ca. 190 questions & answers for 70 keywords**. Several new keywords have been added, such as “EESSI”, “portable documents”, “child-raising periods”, “long-term care”, “territorial scope”, “dialogue and conciliation procedure” etc. What’s more, the questions and answers relating to the existing keywords have been reworked and adapted to be in line with the new Regulations.

You are very welcome to go [online](#) and check out these new tools!

## II. News from the Commission

### > New website and updated Administrative Commission documents

Along with the applicability of Regulations (EC) Nos 883/2004 and 987/2009, the DG Employment, Social Affairs and Equal Opportunities of the Commission has introduced a new website (<http://ec.europa.eu/social-security-coordination>), an updated citizens' guide and access to a new online directory of social security institutions in Europe (EESSI directory) at <http://ec.europa.eu/social-security-directory>.

Among other things, the site aims to explain how EU social security coordination benefits citizens. It includes citizen-friendly information on basic principles and the different branches, including frequently asked questions and country-specific information.

The new website provides also more specialised information, with links to the EU legislation, funding opportunities and the EESSI section. It also features links to **official documents**, notably:

#### - updated Administrative Commission decisions and recommendations

[Download the updated list of decisions and recommendations](#)

#### - Paper structured electronic documents (Paper SEDs)

- [Applicable legislation \(A series\)](#)
- [Pensions \(P series\)](#)
- [Sickness \(S series\)](#)
- [Family benefits \(F series\)](#)
- [Accidents at work and occupational diseases \(DA series\)](#)
- [Unemployment \(U series\)](#)
- [Horizontal issues \(H series\)](#)

#### Portable documents (PDs)

[Download the official versions of the PDs](#)

#### Posting Guide

[Download the Posting guide](#)

### > Green paper: Towards adequate, sustainable and safe European pension systems

The European Commission has launched on 7 July 2010 a Europe-wide public debate on how to ensure adequate, sustainable and safe pensions and how the EU can best support the national efforts.

Ageing populations in all Member States have put existing retirement systems under massive strain and the financial and economic crisis has only increased this pressure. The consultation document, a Green paper, poses a series of questions inviting all interested parties to contribute views, opinions and ideas on confronting the pension challenge - one of the biggest facing Europe and most parts of the world today – and how the EU can contribute to the solutions.

The Green Paper reviews the European pension framework in a holistic and integrated manner, benefiting from synergies across economic and social policy and financial market regulation which is why so many different topics are covered, such as: longer working lives, the internal market for pensions, mobility of pensions across the EU, gaps in EU regulation, the future solvency regime for pension funds, the risk of employer insolvency, informed decision-making and governance at EU level. In particular, it aims to address the following issues:

- > Ensuring adequate incomes in retirement and making sure pension systems are sustainable in the long term
- > Achieving the right balance between work and retirement and facilitating a longer active life
- > Removing obstacles to people who work in different EU countries and to the internal market for retirement products
- > Making pensions safer in the wake of the recent economic crisis, both now and in the longer term
- > Making sure pensions are more transparent so that people can take informed decisions about their own retirement income

The consultation is a joint initiative from Commissioners Andor, Barnier (Internal market and services) and Rehn (Economic and monetary affairs), covering economic and social policies as well as financial market regulation. It does not make specific policy proposals but seeks views on possible future actions at European level.

The consultation period will run for four months (ending 15 November 2010) during which anyone with an interest in the subject can submit their views via a dedicated [website](#). The European Commission will then analyse all responses and consider the best course for future actions to address these issues at EU level.

### > **Infringement proceedings**

The European Commission has sent a formal request to the United Kingdom to pay care benefits to Britons – often pensioners – residing abroad in accordance with its obligations under EU law.

Under EU rules, Disability Living Allowance, Attendance Allowance and Carer's Allowance are considered 'sickness cash benefits', which UK citizens resident in another EU country are also entitled to receive. The UK authorities now have two months to respond to the request, which takes the form of a 'reasoned opinion' under EU infringement procedures. In the absence of a satisfactory response from the UK authorities, the Commission may refer the matter to the Court of Justice.

The right to live and work in any other European country is a fundamental right of the EU. As part of this, the EU guarantees people the right to social security coverage if they move elsewhere in Europe. In the UK system, Disability Living Allowance, Attendance Allowance and Career's Allowance are benefits which provide protection for people in need of personal care and people who look after them. Under EU rules on coordination of social security, UK citizens are entitled to receive these benefits when they are resident in another EU country.

However, in some cases, the UK applies conditions on residence for the three benefits. In particular, among other requirements, the benefits can be conditional on the claimant having spent 26 of the previous 52 weeks in the UK (past presence test). According to the Commission, this effectively contravenes the provisions of the EU system for coordinating social security systems.

See [www.ec.europa.eu/social](http://www.ec.europa.eu/social)

### **III. News from the ECJ: [Case C-211/08 Commission v. Spain](#)**

Following a complaint from a person insured under the Spanish national health system who had to be admitted to a hospital unexpectedly during a stay in France and who, on his return to Spain, was refused reimbursement of the portion of the hospital costs which, in accordance with French legislation, s/he had been left to pay, the Commission decided to bring the present action against Spain for failure to fulfil obligations. The Commission maintains that the Spanish legislation is in breach of the principle of freedom to provide services, since it refuses persons insured under the national health system reimbursement for that portion of the costs of care which is not covered by the institution of the Member State of stay. In that way, the effect of the legislation in question is to restrict not only the provision of hospital care, but also the provision of tourist or educational services, the obtaining of which can be the reason for a temporary stay in another Member State.

In its judgment, delivered on 15 June 2010, the Court of Justice holds that the freedom to provide services encompasses the freedom of an insured person established in a Member State to travel – as a tourist or student, for example – to another Member State for a temporary stay and to receive hospital care there from a provider established in that Member State, where the need for such care during that stay arises because of his/her state of health. Nevertheless, the Court considers that, viewed globally, the Spanish legislation cannot be regarded as restricting the freedom to provide hospital care services,

tourist services or educational services.

In that regard, the Court takes care to distinguish the case of unscheduled treatment in another Member State from that of scheduled treatment in another Member State, for which the insured person has received authorisation.

The Court considers that, in the case of an insured person whose travel to another Member State is for reasons relating to tourism or education, for example, and not – as in the case of scheduled treatment – to any inadequacy in the health service to which s/he is affiliated, the conditions attached to a hospital stay in another Member State may, according to circumstance, be to the insured person's advantage or disadvantage. That situation is explained by the disparities between the various Member States in matters of social security cover and the fact that the objective of Regulation (EEC) No 1408/71 is to coordinate the national laws but not to harmonise them.

On the other hand, the Court points out that, where unscheduled hospital care is necessary because of circumstances relating, *inter alia*, to the urgency of the situation, the seriousness of the illness or the accident, or even the fact that a return to the Member State of affiliation is ruled out for medical reasons, the Spanish legislation cannot be regarded as having any restrictive effect on the provision of hospital services by providers established in another Member State. In such cases, it is not open to the person concerned to choose between hospitalisation in the Member State of temporary stay and an early return to Spain.

Moreover, as regards cases where the unscheduled treatment takes place in situations in which the insured person was not deprived by force of circumstance of the choice between going to hospital in the Member State of temporary stay or making an early return to Spain, the Court points out that any decision by the insured person to make an early return to Spain or to cancel a journey to another Member State would depend on (i) the possibility that, in the course of his/her temporary stay, his/her state of health makes it necessary for him/her to receive hospital treatment and (ii) the level of cover applicable in the Member State of temporary stay for the hospital treatment in question, the overall cost of which is, at that time, not known. The Court therefore concludes that, in such cases, the possibility that persons insured under the Spanish national health system might be induced to return early to Spain in order to receive hospital treatment there which has been made necessary by a deterioration in their health, or to cancel a trip to another Member State, because they cannot count on the competent institution making a complementary contribution, appears too uncertain and indirect.

Furthermore, the Court points out that, by contrast with scheduled treatment, the number of cases of unscheduled treatment is unpredictable and uncontrollable. In that context, the Court holds that the application of Regulation 1408/71 is based on the principle of overall compensation of risk. Thus, the mechanism established by that regulation for unscheduled treatment operates in such a way as to create a general counterbalancing of costs. Cases in which unscheduled hospital treatment in another

Member State bring about – as a consequence of the application of the Member State of stay – a heavier financial burden for the Member State of affiliation than if that treatment had been provided in one of its own establishments are counterbalanced by cases in which, on the contrary, application of the legislation of the Member State of stay leads the Member State of affiliation to incur lower financial costs than those which would have resulted from the application of its own legislation.

Accordingly, the fact of imposing on a Member State the obligation to guarantee to persons insured under the national system that the competent institution will provide complementary reimbursement whenever the level of cover applicable in the Member State of stay in respect of the unscheduled hospital treatment in question proves to be lower than that applicable under its own legislation would ultimately undermine the very fabric of the system which Regulation 1408/71 sought to establish. In every such case, the competent institution of the Member State of affiliation would be systematically exposed to the highest financial burden, whether through the application of the legislation of a Member State of stay under which the level of cover is higher than that provided for under its own or through the application of its own legislation in the contrary situation.

The Court therefore dismisses the action brought by the Commission.

See [www.curia.europa.eu](http://www.curia.europa.eu)

#### **IV. News from the Council**

##### **> Political agreement on a draft Council regulation extending the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these provisions solely on the ground of their nationality**

On 7 June, the Employment, Social Policy, Health and Consumer Affairs Council gathered in Luxembourg agreed on a draft regulation extending the EU rules on the coordination of social security entitlements to nationals of third countries. The draft regulation is designed to ensure that third-country nationals who are legally resident in the EU and who are in a cross-border situation are subject to the same rules for coordinating social security entitlements as European citizens, i.e. the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009. The preparatory bodies of the Council reached earlier a very broad measure of agreement on a compromise proposal of the Spanish Presidency.

##### **> Coordination of social security systems with six third countries**

The Council also reached a political agreement on six draft decisions on the EU position to be taken within the respective (Stabilisation and) Association Council between the European Union and six third countries (Algeria, Croatia, the Former Yugoslav Republic of Macedonia, Israel, Morocco and Tunisia), based on presidency compromise proposals and presidency suggestions on the verification of the entitlements to benefits.

The Euro-Mediterranean Agreements between the EU on the one hand and Algeria, Israel, Morocco and Tunisia on the other and the Stabilisation and Association Agreements between the EU and Croatia as well as the Former Yugoslav Republic of Macedonia contain provisions for limited coordination between the social security systems of member states and the six third countries. In order that these provisions can take effect a decision of the Association Councils and the Stabilisation and Association Councils established with the different countries is necessary.

Council Regulation 859/2003 extends the provisions of Regulation 1408/71 (on the application of social security schemes to employed persons and their families moving within the Community) and its implementing Regulation 574/72 to nationals of third countries who are not already covered by those provisions solely on the grounds of their nationality. This Regulation already covers the principle of aggregation of insurance periods acquired by third country workers in the various Member States regarding entitlement to certain benefits, as set out in the agreements.

The draft decisions submitted to the Council contain implementing provisions which are not already covered by Regulation 859/2003. This concerns, in particular, the export of certain benefits to one of the six partner countries as well as the granting of equal treatment to third-country workers legally employed in the EU and to their family members. Moreover, the draft decisions ensure that the provisions on the export of benefits and the granting of equal treatment also apply, by way of reciprocity, to EU workers legally employed in one of the six partner countries and to their family members.

### **> Directive on social protection of self-employed workers and “assisting spouses”**

The Council adopted on 24 June a directive strengthening the social protection of self-employed workers and of "assisting spouses", thereby aiming to strengthen the principle of equal treatment between men and women who want to establish or extend a self-employed activity. The adoption of the Directive follows an agreement with the European Parliament at second reading.

The new Directive entitles self-employed women and assisting female spouses of self-employed workers for the first time to maternity benefits and creates autonomous social protection rights for assisting spouses of self-employed workers. Under one of the key provisions of the Directive, self-employed

women, female assisting spouses and life partners (recognised under national law) of self-employed workers such as farmers' wives are granted a maternity allowance enabling them to interrupt their occupational activity for at least 14 weeks.

### > Interim Joint Report on Pensions

The Council also took note of the [interim joint report on pensions](#) by the Economic Policy Committee (EPC) and the SPC. The EPC/SPC interim report aims to reassess the pension reforms in the EU in the light of the aggravated challenges and to develop an updated agenda for delivering adequate and sustainable pensions. More specifically, it seeks to take stock of progress in pension reform over the last 10-15 years and to reassess these advances in the light of crisis setbacks. The interim report was also presented to the ECOFIN Council on 8 June 2010 and will be finalised by the two committees with a view to its submission to the ECOFIN and EPSCO Council configurations under the Belgian presidency in the autumn.

See [www.consilium.europa.eu](http://www.consilium.europa.eu)

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