



Dear All,

It is with pleasure, as it is my honour to present you today the first issue of the quarterly e-newsletter of our **trESS** Network. **trESS** is a unique project that aims to gather all people interested in and working on the European co-ordination regulations on social security for migrant workers and to share European and national information on the implementation of these regulations.

Many of you have been participating in one of the training sessions in each of the Member States. Also next year training sessions on Regulation 1408/71 will be organised in each of the Member States. We are looking forward to meeting you at these occasions.

In the meanwhile however, we would like to recommend you to consult our website (<http://www.tress-network.org>) which has been completely reshaped and updated with a lot of new information. We are particularly proud to announce you the database on Regulation 1408/71 with links between the articles of the Regulation, the case law of the Court of Justice and the decisions of the Administrative Commission. In the near future, this database will be further extended and more training material and training methods will be inserted.

The EU Regulation on social security for migrant workers is one of the most important regulations in European law. With this quarterly e-newsletter we intend to provide you with some updated information on developments in this field: case law from the Court of Justice, developments in the Regulation at both, European and national level and further information on our network. Each newsletter will start with an interview with a European personality. For this first issue, an interview was taken with Mr Rob Cornelissen, head of the unit for social security for migrant workers at the European Commission.

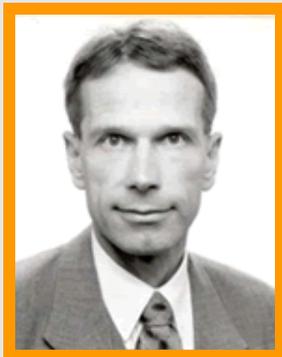
We wish you all a pleasant reading of our first issue.

Yours sincerely

Yves Jorens  
Project Director

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For the first issue of our e-newsletter, we are proud to present you an interview with Rob Cornelissen, who has been working since September 1983 for the Directorate general "Employment and Social Affairs" of the European Commission. (Nowadays known as DG "Employment, Social Affairs and Equal Opportunities")

He became Head of the Unit "social security of migrant workers" in May 1990. From January 1997 until May 1999 he was Head of the Unit "social protection and fight against social exclusion" and from May 1999 until December 2000 he was Head of the Unit " free movement of workers and anti-racism". Since December 2000 he has been Head of the Unit "free movement of workers and coordination of social security schemes ".

Rob Cornelissen is the author and co-author of several books and numerous articles on issues related to European coordination of social security. He is also a guest-professor on European social security law at the Faculty of Law of the University of Gent (Belgium). For the **trESS** project director it has been both, a pleasure and an honour, to be able to interview Mr. Cornelissen.

**trESS : Could you describe the role of your unit within the EC and in particular what the European people could expect from you . What are your tasks ?**

**Rob Cornelissen (RC) :** Our task is really diverse. There are not that many units that are in constant touch with the citizens of Europe. To give an idea, we get 3000 letters every year from citizens complaining about the application of the Regulations on social security. This unit is responsible for almost 1/3 of all outgoing mail of the whole DG EMPL. This allows us to have a fair idea of what is happening in member states. However, we may not forget that there exists a different culture in the various member states. While in some member states people have the habit of writing, others do not. This does however not mean that when we do not receive any complaints, everything is fine in that member state, not at all. We are very happy with **trESS** that we now get a full picture of what is happening in every member state. But the main thing asked of us, is first of all to fulfil our role as guardian of the Treaty, to warrant the correct application of Community law.

Through the complaints of citizens, as well as through press releases etc, we can find out that something is going wrong, which we ought to investigate. We have therefore also launched a high number of infringements and our Unit is within our DG one of the most involved in infringements proceedings. And the second part is to be the motor of Community policy, that is the other role of the Commission.

We try wherever possible to improve Community law, not only in the field of free movement, but also in the field of social security for migrant workers. In this second part, **trESS** plays an important role. Concerning the free movement of workers, we are now dealing with the very particular issue of the transitional arrangements for free movement, but also in the field of social security for migrant workers.

We are preparing, the report which should be presented to the Council in January 2006 and which will be the basis for member states to take decisions, whether they are going to allow free movement or continue to keep transitional measures.

Concerning social security, we have in 1998 presented a proposal for modification of the Regulation 1408/71, which has been adopted last year in the month of April, Regulation 883/2004. Now we have to present a proposal for a Regulation implementing Regulation 883/04, so that this Regulation could become applicable. This is a difficult task and as we did not know exactly how the exchange of information really works in practice, we needed the input and help of experts. The idea is to finalise this proposal within one month, so that after translation, it can hopefully be adopted by the Commission in December this year.

The same is true for a proposal for Annex XI, the purpose of which corresponds to the current Annex VI of Regulation 1408/71. The difficulty there is that we depend also on requests of member states and then we had to filter these requests. The mere fact that entries are already in the current annex XI of Regulation 1408/71, does not mean that we have to take them all automatically over in the new Regulation. So, the second role is to improve and extend Community law in the field for which we are responsible.

And thirdly, we have to take other initiatives for facilitating the coordination or facilitating the free movement of workers, and I think one of the examples is the Health Insurance Card, which is an important symbol to the European Citizens. I think our unit is really important for trying to bring Europe closer to its citizens.

**trESS : You are yearly receiving approximately 3000 letters and complaints. Could you tell us what happens if you receive these complaints ? Can people say that just on the basis of one letter it is even possible that the Commission would take the case to the Court ? And if you believe there is infringement of the EU Law, do you then contact the member states and do you start a procedure or do you wait for more complaints ?**



**RC:** That is a very good issue. Since a number of years there has been a tremendous increase of the number of letters and complaints. It has become so time consuming that it has put a substantial burden on the workload of my Unit. It even caused a risk that we could not fulfil the other roles of the Commission in a sufficient way. We have discussed this with the delegations in the Administrative Commission on social security for migrant workers. Fortunately this commission exists. It is composed of government representatives, the real experts in the field. I think we could not fulfil our role properly if that Administrative Commission did not exist. In that commission we have agreed about a way how to proceed on this issue in order to have an increased cooperation between the experts of the Administrative Commission on the one hand and my Unit on the other. When we get letters, which give us the impression that it is really an individual case of non-correct application of the Regulation at national level, we have arranged that we then send the complaint to the member of the Administrative Commission of the member state concerned and ask him or her to investigate the matter and to report directly to the citizen with a copy to us.

However, when we have the impression that it is not just an individual case of non-correct application, but that it is really a systematic interpretation of the Regulation with which we do not agree, then we have to fulfil our role as guardian of the Treaty and act accordingly.

**trESS : Let us return to Regulation 883/2004. The Regulation was adopted for reasons of simplification and modernisation. Did we reach that aim ? The Council did not accept all proposals from the Commission. What may we still expect in the future ?**

**RC:** The objective of the proposal of 1998 of the Commission was dual: simplification and modernisation whilst improving the rights of the citizens.

Have these objectives been fulfilled ? We have to make a distinction: first, the simplification, I would say, only partially. The structure of the Regulation as a whole has been improved and the wording of several articles are more clear than comparable provisions in Regulation 1408/71.

To give an example: under Regulation 1408, every chapter has its own aggregation provision. Regulation 883 was an aggregation provision valid for the whole regulation. In addition, I think that Regulation 883 is in some aspects more easily readable than Regulation 1408..

On the other hand however, the number of annexes has increased and the pensions chapter –of Regulation 1408- which is one of its most complicated chapters- has hardly been modified (since it was only rather recently modified in 1992)In other words: the aim of simplification has only partially been achieved.

Concerning the second objective, improvement can be found particularly in the following points. First, the extension of the personal scope of the Regulation to include every EU national who is insured under national legislation. Under the current Regulation, only people who are economically active

and their members of the family or survivors are covered. Because of this limitation, we need in Regulation 1408 a definition of who is to be considered as employed, as self-employed for those member states where you are insured on the basis of residence. These definitions are really very complicated. Just have a look at Article 1 (a) of Regulation 1408 as well as Annex I part I. These definitions and annex have now become superfluous. This too is a simplification, of course.

The second important part is that we have now a very important provision - which has also led to a simplification - dealing with the assimilation of facts or events. Facts or events occurred in one Member State and having certain legal effects will have the same consequences in other Member States.

This has made redundant a high number of provisions, currently providing for an assimilation of facts in very specific cases. It has also reinforced the rights of the citizens in Europe, in particular frontier workers. A third point is, I think, the fact that there is now a clear line between which benefits are exportable and which are not. It is clearly said that all cash benefits are exportable, with the exception of special non-contributory benefits. We have now a new definition of which benefits are to be considered as special non-contributory benefits.

Another improvement concerns cross-border health care. There my satisfaction is only very partial, because when we discussed this proposal in the Council, we had hoped that we could integrate fully the case-law of the European Court of Justice concerning the freedom to provide services and the free movement of goods as guaranteed by the Treaty. Unfortunately, this was not possible. So, the case-law of the Court has been taken over, but only very partially, particularly the fact that you still need authorisation for planned health care in another member state.

On very minor points, the rights of frontier workers and of the members of their family concerning cross-border health care, has been improved, not as far as the Commission had hoped for, but at least it is an improvement.

Concerning unemployed people, we also had more ambitious proposals than the outcome of negotiations, but still you can say it has improved in a way the opportunities for unemployed people to find a job. In the current Regulation a person who is unemployed and who receives an unemployment benefit in a member state has the right to go to another member state in order to explore the labour market there without losing entitlement to unemployment benefit; this possibility exists for a maximum period of 3 months. We had proposed to extend this period to 6 months. The outcome of negotiations is that it continues to be 3 months, but this period can be extended to 6 months by the competent institution.



As to unemployed frontier workers, the Commission had presented a proposal to get rid of the special rule of the current Regulation, which stipulates that it is the country of residence which is competent. We wanted the general rule to apply, which would mean that an unemployed frontier worker –like any other unemployed worker– would be entitled to unemployment benefit in the member state where one was lastly insured: the country of last employment. However, the special rule of the current Regulation has not been changed, because the position of the Council was fifty-fifty. The result is that the current special rule continues to apply, but that a new right has been added, i.e. the unemployed frontier worker can also make himself available to labour market of the member state where he were last working.

This has improved his opportunities to find a job: he can look for work, not only in the country of residence, but also in the country of last employment. To this right corresponds, of course, the obligation of the employment service in the country of last employment to assist him in finding a new job.

And finally, the important principle of good administration has been reflected in the Regulation, in particular the rule that when there is problem of application of interpretation of a specific provision of the Regulation to an individual, then the institutions concerned have to contact each other with a view of finding a reasonable solution for the person concerned in a reasonable period of time. It may be an obvious rule, but it is very good that it is now made explicit in the Regulation itself. I may have forgotten a number of other issues, but I wanted to highlight these points.

**trESS : Some people would contempt that the success of 883 will also depend on the Implementing Regulation due to the fact that a couple of controversial issues or difficult issues have to be solved in the Implementing Regulation. Are you hopeful that results can be reached there or do you think that we will encounter particular problems ?**

**RC:** I think that what we need to obtain in the Implementing Regulation is a smooth exchange of information between social security institutions making use of modern technologies. This would obviously be to the benefit of the citizens. Speeding up and improving exchange of information is of utmost importance.

**trESS: What about issues like – which are very difficult, especially in certain countries – the reimbursement of health care costs and which method should be followed, using lump sums or not, is this also going to be an issue to be discussed or is it still the old Regulation that will be followed ?**

**RC:** Indeed we need to improve the transparency of the financial procedures between social security institutions, like the method of calculating the fixed amounts or the refund procedures. They are maybe technical matters but they are, of course, of crucial importance for a smooth functioning of the Regulation.

**trESS: When working on Regulation 883/2004, a very successful way of proceeding was to work with**

**presidencies that took over one part or one chapter, and so different steps could be taken, ..., is the same method going to be followed ?**

**RC:** We are hopeful and confident that under the Austrian presidency a lot of progress will be made. However, give the volume of the challenge it is excluded that the work will be finished during Austrian presidency and then it also has to go to Parliament.

**trESS : A difference between the implementing Regulation and Regulation 883/2004 is that you were only 15 states dealing with that, while now you have 25 states with 10 states who were not actively involved in the simplification process. Do you expect that some countries would make problems, because for them it is a completely new element ?**

**RC:** I am not worried about that. It is true they were not member states during the negotiations in Council, but they participated during the last phase of negotiations as observers in meetings. So they have followed very closely the discussions, they also had as observers the right to express themselves, which some of them did. Another fact is that the rules are agreed upon. Since the 1 May 2004 they are full members. They can influence the negotiations concerning the implementing regulation like all other member states. My impression until now is that it is going rather smoothly and we do not have any signals that there are severe problems in the new member states. So we do not see any particular additional problems.

**trESS: We do now have the whole story about 883, but 1408 still works along, I presume that there is more work than just 883/2004 and the implementing regulations. Are there any modifications to the actual 1408 within the next months or years to be expected ?**

**RC:** As every year, there is a proposal with a series of amendments which will be presented at the end of this year( miscellaneous amendments 2005). In addition, we have to make the yearly Commission regulation amending the annexes of regulation 574/72, which is also foreseen for the end of the year.

Finally, we are going to present a series of proposals for a draft decisions of various Association Councils, implementing in the field of coordination of social security Association agreements concluded with third countries (like Morocco, Tunisia, Israel, FYROM, Croatia).

**trESS: Perhaps one last question: are there already some negotiations on the Regulation taking place or discussions with the forthcoming member states, like Romania, Bulgaria ?**

**RC:** They have already finalised, so for us the job is done and no particular problems were encountered.

**trESS: Thank you**

## > Case law of the Court of Justice on regulations 1408/71 and 574/72

between January 1<sup>st</sup> and October 15<sup>th</sup> 2005

Until now 2005 has been a quite active year for the Court of Justices on cases dealing with Regulation 1408/71. In 2005 the Court has delivered a judgement in 11 cases, explicitly dealing with the Regulations. The judgements cover many issues, such as the applicable legislation, sickness benefits, pensions and family benefits.

In the first case on applicable legislation, [the case \*Effing\* C-302/02 of 20 January 2005](#), the Court judged in line with the *Kuusijärvi* case and article 13 (2)(f) that a prisoner who was ceased carrying on all occupational activity in the state where he started the service sentence and, at his request, was transferred from a prison in that state to a prison in his own member state to serve their the remaining months of this sentence, is subject to the last state.

A couple of months later the court judged in the [Allard case \(C-249/04 of 26 May 2005\)](#) that a person who was simultaneously self-employed in Belgium and in France and is living in Belgium, is exclusively subject to the Belgian legislation under the same conditions as if he was self-employed in Belgium. A social security contribution such as a moderation contribution payable in Belgium, must therefore be calculated taking into account the income received in France.

In its case [Keller \(C-145/03 of 12 April 2005\)](#) on sickness benefits, the Court judged that when a member state has issued a form E 111 or form E 112, the competent institution is bound by the findings and decisions of the doctors of the member state in which it has allowed the insured person to stay for medical purposes even if those doctors have decided to transfer the patient to a hospital establishment in a non-member state. The competent state is obliged to reimburse the costs of that treatment. Strangely enough however, the Court judges that one of the conditions is that the treatment is among the benefits provided for by the legislation of the competent state. This is however irrelevant under the system of Article 22 of Regulation 1408/71. It is not clear why the Court poses this condition in case a person was transferred to a hospital in a non-member country.

On pensions four cases were judged. In its first case [Noteboom \(C-101/04 of 20 January 2005\)](#) the Court judged that according to Article 45, in order to obtain an old-age benefit, the member state of residence has to take account of a period of full unemployment during which the formerly employed person received benefits under Article 71(1)(a)(ii).

In [Salgado Alonso \(C-306/03 of 20 January 2005\)](#) the Court of Justice decided that conditions governing the constitution of periods of employment of insurance are determined by national legislation and not by the Regulation. It is therefore the member state which is entitled to determine the kind of insurance period which may be taken into account for the acquisition for a right to a pension.

In another [case Koschitzki \(C-30/04 of 21 July 2005\)](#) the Court judged that the theoretical amount according to Article 46 of the Regulation must be calculated as if the insured person had worked exclusively in the member state

concerned. In that respect, the member state is not required to take into consideration a supplement intended to bring the pension to the minimum level under national legislation where, on account of the fact that the income limits fixed by the national legislation on that supplement are exceeded, an insured person who has worked exclusively in the member state concerned cannot lay claim to such a supplement.

In its [case \*Dodl\* \(C-543/03 of 7 June 2005\)](#) the Court judged that it is not the status of the employment relationship which determines whether or not a person falls under Regulation 1408/71, but the fact that he or she is covered, even if only in respect of a single risk, on a compulsory or optional basis, by a general or special social security scheme mentioned in Article 1. The mere suspension of the main obligations of an employment relationship for a period of time, can therefore not deprive the employee of his status as employed person. Following the previous case law, the Court decided that Article 10 of the Regulation 574/72 applies, where there is a risk of overlap of family benefits between entitlement under Article 73 of the Regulation and entitlement to receive family benefits under the national legislation of the state of residence, irrespective of any such professional or trade activity. In principle, the allowances payable by the member state of employment take priority. This is however different in case a professional or trade activity is exercised in the member state of residence. The activity which has the effect of reversing the priorities must be exercised by the person entitled to the family benefits or family allowances, or the person to whom they are paid ([Case \*Schwarz\*, C-153/03 of 7 July 2005](#)).

In its [case \*van Pommeren\* \(C-227/03 of 7 July 2005\)](#) the Court judged that the residence requirement set by a legislator as a condition for continuing to qualify for compulsory insurance in respect of some branches of social security is compatible with Article 39 of the EC Treaty, only if the conditions relating to voluntary insurance for non-residents are not less favourable than the conditions relating to compulsory insurance, for the same branches of social security, which residents obtain.

In its [case \*Blanckaert\* \(C-512/03 of 8 September 2005\)](#) the Court, in line with previous case law, determined that in absence of harmonisation, it is for the legislation of the member state concerned to determine the range of insured persons and the level of contributions payable by insured persons to the national social security system and the respective reductions. It is therefore, within the internal process of such a system to allow entitlement to reductions in contributions only to persons insured under that system.

### Other cases:

[Case C-225/02, \*García Blanco\* of 20 January 2005](#)

[Case C-38/03, \*Commission/Belgium\* of 13 January 2005](#)

## > trESS ACTIVITIES

The **trESS** project is in its final term of its first year of operation. 29 seminars have been organized in the 25 member states. An internal project seminar is scheduled on November 24-25<sup>th</sup> in Ghent in order to evaluate this year's activities and to plan ahead for 2006.

The calendar for the 2006 national seminars will be available at [www.tress-network.org](http://www.tress-network.org) the first week of December. People interested in participating will be able to register online.

The screenshot displays the trESS website homepage. At the top left is the trESS logo. The main header reads "training and reporting on European Social Security". Below this are navigation tabs for "Seminars", "Training", "Resources", "Networking", and "HOME". A breadcrumb trail indicates "You are here: Homepage".

The main content area is divided into several sections:

- Welcome:** A brief introduction to the trESS network, mentioning its EU funding and implementation by Ghent University in collaboration with independent experts.
- Focus:** A section titled "AGENDA NOV/DEC 2005" with a sub-section "WHAT'S NEW" listing "24-25 th of November: Project seminar in Ohent" and "n revamped. The launch of the prototype Database on Regulation 140".
- Main Activities:** A central heading for the site's primary focus.
- Seminars:** Announces "One-day training seminars in each of the 25 Member States" and provides a link to an application form.
- Training:** Promotes "E-learning training material on European coordination of social security, to be developed in 2006" and refers to "2005 seminars".
- Resources:** Lists a "Database on Regulation 1408/71 with EC case law and decisions of the Administrative Commission" and a "European report on the implementation problems of European coordination rules in all member states".
- Networking:** Offers an "E-newsletter" for quarterly updates and mentions a "contact database under development".

On the left side, there is a "Members" login section with fields for "Username" and "Password" and a "Log on" button. Below this is a "Project description in your language" section with flags for 25 member states. A search bar is also present.

At the bottom, there is a footer with contact information, a disclaimer, and a link to the project's website.

*illustration : the reshaped trESS website*

## > Subscribe to our e-newsletter

We hope you enjoyed this first issue of the **trESS** e-newsletter.

It was sent to you because you participated in one of the national seminars and/or subscribed to it via our website. Those of you who did not formally subscribe to our e-newsletter via our website and wish to receive our next issues are invited to [subscribe now](#).