



training and reporting on **European Social Security**

E-Newsletter - Issue 2 - March 2006

Dear,



2006 is promising to become an important year for the European co-ordination of social security. On 31 January the European Commission delivered its proposal for the implementing Regulation of Regulation 883/2004. This issue will definitely be tackled during the Austrian presidency. In the interview taken by Mr Francis Kessler, member of our Project Directorate, with Mr Bernhard Spiegel, president of the Administrative Commission during the first half of 2006, you will read more on the objectives of the Austrian presidency.

This month, we start again with the annual series of national seminars on the co-ordination in each of the member states. Finland will host the first seminar on 17 March. During the forthcoming months, every week, one or two seminar will take place somewhere in Europe. The list of dates and a link to the electronic registration form have been included in the present newsletter.

We would also like to draw your special attention to our contact database. This unique contact database gathers the contact details of people all over Europe, who are in some way or another involved with the Regulation. Until now, more than hundred people have registered. Registration provides you with access to the contact details of fellow people dealing with the Regulation all over Europe. We invite those of you, who have not registered yet, to do so.. Click [here if you wish to join our contact network](#).

Finally, we would also like to invite you to visit our website at www.tress-network.org and to read the European report on implementing problems of Regulation 1408/71 and 574/72, which has been published there. Take a look also at our database on 1408 which contains relevant ECJ case law and Administrative Commission Decisions.

We are looking forward to meeting you at one of our seminars!

Yours sincerely

Yves Jorens
Project Director

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> The New Implementation Regulation: text of the proposal

On January 31 st 2006, the Commission has submitted a Proposal for Regulation, laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems.

Download the text of the proposal [here](#) .

This text will be discussed within the council in the forthcoming months. **trESS** will keep you updated.

> Interview with Mr. Bernhard Spiegel

(Head of the international division, Federal Ministry for social security, Generations and Consumer protection, Austria)

Regulation 1408/71, 883 and implementation regulation: an Austrian point of view



For the second issue of our e-newsletter, we present you an interview with Dr. Iur. Bernhard Spiegel. Bernhard Spiegel is working since 1982 in the Austrian Social Ministry.

In 1997, he became head of the division responsible for European social security aspects

At European level Bernhard Spiegel is member of both Administrative Commission and of the European Social Protection Committee. Bernhard Spiegel is also the author and co-author of several books and articles on issues related to European coordination of social security. For the **trESS** project Bernhard Spiegel acts as member of the Advisory Board and has participated in some of the national seminars as Visiting Trainer.

trESS: What are the goals of the Austrian Presidency with regards to migrants legislation in general and especially on the implementation of the accompanying Regulation to the Regulation 883/2004 ?

BS: Social security for migrant workers will be a major topic during the coming Austrian presidency. Reg. 883/2004 which will replace Reg. 1408/71 is already ready to enter into force since mid 2004. Missing are 3 Annexes and the new Implementing Reg. The Commission has indicated that the relevant proposals will be published in winter so that Austria can start work on Council level. This work will be very time consuming as not only a lot of technical questions (procedures to apply Reg. 883/2004, replacement of the up until now data exchange on paper by an electronic exchange, new ways of reimbursement of health care costs, new procedures for recovery and enforcement of decisions concerning contributions and overpayments etc.) but also very political questions (esp. new Annex XI to Reg. 883/2004 where Member States might seek for deviations from the principles laid down in the new Reg. but also questions left over like e.g. the limits of the overarching principle of equalization of facts) are concerned.

The coming Austrian presidency will look for ways to discuss all the different texts which will be on Council's table and prepare the way for the coming presidencies to conclude on that work. Besides that also the work in the Administrative Commission and its working groups has to be guided. Our plan is that the Administrative Commission helps and supports the Council in all technical questions (esp. concerning the electronic data exchange) and to deal with all other questions which are of common interest to all the Member States. So the first half of 2006 will be a big task for us and we do hope that also a smaller country like Austria can manage this task in a satisfactory way.

trESS: Austria has borders with Hungary, Czech- Republic, Slovak-Republic Slovenia, all new Member states. How did the Austrian social security administration prepare and face the new situation. Are there some lessons from your experience that could be already mentioned?

BS: Our experiences with the 10 new Member States are very good. Already before 1.5.2004 Austria has been bound by bilateral agreements with most of the countries. So the transition from these bilateral agreements to Reg. 1408/71 has been very smooth. As we have borders to 4 of the 10 new Member States we really do have a lot of bilateral cases in relation to these countries. So the first task we had to settle was the question of applicable legislation (posting which has begun before the 1.5.2004 under a bilateral agreement but which endured after this date etc.). Due to very quick replies of the competent authorities of these Member States perfect solutions have been achieved which help especially the migrant workers concerned as they were not left in legal uncertainty.

trESS: Can Austria mention particular experiences with social security of migrant workers ? Bilateral agreements?

BS: Austria has a long tradition in international social security agreements. Already after the break down of the Austro-Hungarian Monarchy after the end of the 1st world war the first bilateral agreements have been concluded with the emerging new states. The bilateral agreements concluded by Austria as a rule where based on the same principles as Reg. 1408/71, so the transition from them to the EC legislation was not a real problem for us.

Nevertheless the "density" of EC-legislation was something new for Austria. Especially the role of the ECJ as "engine" behind the integration process was something we had to learn. Some of the decisions of the ECJ really meant problems for us. As an example I want to cite the "Kauer-case" ([C-28/00](#)). The case itself, that means that Austria remains competent for the taking into account of child care periods in pension insurance if the woman concerned has only worked in Austria and transfers her residence to another Member State after having given birth

Also another thing has to be mentioned: The addition of 9 new languages has not really brought a problem in the bilateral relations. Information is very often exchanged in English or even in German, I really would like to thank our colleagues for this un-bureaucratic attitude. For the Austrian administration esp. the possibility of recalculation of pensions under Art. 94 of Reg. 1408/71 means a tremendous administrative burden. Many pensioners have claimed such a recalculation of their pensions (which have been calculated under the relevant bilateral agreement or under national legislation) immediately after 1.5.2004. This administrative burden usually also does not result in higher entitlements for the persons concerned taking into account the parallelism of calculation in all the instruments concerned.

trESS: Medical doctors, dentists and thermal institutions in new members states are advertising there services also in Austrian medias. How did the different administrations face that new situation especially with regard to article 22 and the Kohll/ Decker rulings?

BS: Patient mobility of persons insured in Austria has never been a real problem for Austria. Under national Austrian legislation every person insured in Austria and his/her members of the family are entitled to reimbursement of costs incurred during a treatment in any other state (this concerns also states outside the EU). This reimbursement is limited to the amount a contracting partner (e.g. doctor) of the health care institution would get minus 20 % for administration costs and corresponds entirely to the amount which would have to be reimbursed in case a service provider resident in Austria without a contract with the relevant health care institution would be consulted. Investigations have shown that there are many cases in which such refund is claimed but usually only in case of small amounts which had been paid. In the past Austrian insured persons took advantage of this legislations and after the fall of the iron curtain esp. dental treatment in Hungary was one of the most favored fields of application of this procedure. Indirectly this led also to the possibility for cheaper treatment inside Austria. The E 112 procedure to the contrary is not very often used as the whole costs under the foreign health care system have to be reimbursed. Usually this procedure is applied in cases of very expensive and complicated treatment which cannot be granted inside Austria.

Talking about patient mobility another phenomenon should be mentioned. It has also been noticeable that some Member States might decide not to build up medical infrastructure by themselves (e.g. because this could be very expensive) but to send their patients via the E 112 procedure to other Member States. This could directly affect the local health care system of these Member States (e.g. building up of waiting lists). From my point of view this is a field for more efforts at European level.

To sum it up I have to say that social security for migrant workers has always been an important part of social policy in Austria. The coming Austrian presidency will highlight this, taking into account the lot of work we have to do on community level in this field. But as this work is always in the interest of the persons concerned, the mobile citizens, all these efforts are necessary and useful.

services granted only the amount to him of the difference between the German education and the - higher - Luxemburg allowance for education.

6. Two conceptions of the rule of the rule of priority clashed before the Court. According to the so called "family approach" proposed by the court in the cases *McMenamin*⁴ and *Hoever and Zachow*⁵ the place of the principal center of the interests of the family has to be decisive in order to determine on which Member State it falls in priority to serve the family allowances. According to the soc called "individual approach" the State of employment is initially qualified in measurement or the services of education of child are for object to ensure an income a relative for the period when its occupation is suspended.

³ CJCE 23 April 1986 case [153/84](#), *Ferraioli*, : Rec. 1401 Nr 19

⁴ ECJ 9 December 1992 case [119/91](#), *McMenamin*,: Rec. I-6393.

⁵ ECJ 10 October 1996, cases [245/94](#) and [312/94](#), *Hoever and Zachow* : Rec. I-4895

persons of the Commission of the EU or to the administrative Commission on the social security of migrant worker But, these steps suppose a good knowledge of the rules governing the benefits of the different States.

10. It has to be quoted that a "mutual obligation of information and co-operation to ensure the good application of the payment" in laid down in regulation 883/2004. Such an obligation will not be useless in the field of the family allowances.

> Forthcoming ECJ Cases

Reference for a preliminary ruling from the Bundessozialgericht by order of that court of 5 July 2005 in Aldo Celozzi v Innungskrankenkasse Baden-Württemberg (Case [C-332/05](#)).

Reference has been made to the Court of Justice of the European Communities by order of the Bundessozialgericht of 5 July 2005, received at the Court Registry on 12 September 2005, for a preliminary ruling in the proceedings between Aldo Celozzi and Innungskrankenkasse Baden-Württemberg on the following question: Is it compatible with the primary and/or secondary law of the European Community (in particular Article 39 EC (formerly Article 48 of the EC Treaty), Articles 3(1) and 23(3) of Regulation (EEC) No 1408/71, and Article 7(2) of Regulation (EEC) No 1612/68) for a married migrant worker employed in Germany, whose spouse resides in another Member State, to receive sick pay always linked to net remuneration established on the basis of the wage tax class stated on his wage tax card without account being taken of a subsequent retroactive amendment, which is favourable to him, of the tax classification relating to his marital status?

> Recent ECJ Case Law

ECJ (Fourth Chamber) 26 January 2006 Case [C-2/05](#), *Rijksdienst voor Sociale Zekerheid v Herbosch Kiere NV*,

In a Belgian case concerning the legal value to be accorded to an E 101 certificate the court ruled as follows *As long as it has not been withdrawn or declared invalid by the authorities of the Member State which issued it, an E 101 certificate [...], binds the competent institution and the courts of the Member State in which the workers are posted. Consequently, a court of the host Member State of such workers is not entitled to scrutinise the validity of an E 101 certificate as regards the certification of the matters on the basis of which such a certificate was issued, in particular the existence of a direct relationship, within the meaning of Article 14(1)(a) of Regulation (EEC) No 1408/71 [...], read in conjunction with paragraph 1 of Decision No 128 of the Administrative Commission on Social Security for Migrant Workers of 17 October 1985 concerning the application of Articles 14(1)(a) and 14b(1) of Regulation No 1408/71, between the undertaking established in a Member State and the workers which it has posted to another Member State, during the period of their posting.*

> Seminar Dates 2006

> March		 Spain	12/5	 Hungary	29/6
 Finland	17/3	 Estonia	17/5	 Germany	30/6
 United Kingdom	24/3	 Lithuania	23/5	> July	
 Poland	31/3	 Luxembourg	24/5	 Slovakia	04/7
> April		> June		 France	06/7
 The Netherlands	07/4	 Latvia	02/6	 Austria	07/7
 Slovenia	13/4	 Italy	09/6	 Cyprus	14/7
 Czech Republic	27/4	 Denmark	12/6	> September	
 Sweden	28/4	 Greece	15/6	 Poland (II)	15/09
> May		 Italy	09/6	 France (II)	21/09
 Belgium	03/5	 Denmark	12/6		
 Malta	05/5	 Greece	15/6		
 Ireland	09/05	 Portugal	23/6		

For more details about each seminar, [click here](#) . If you wish to attend a seminar please fill out the [application form](#).

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