

PREFACE

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Under the Juncker Commission, renewed attention was directed to Europe's social dimension.¹ Nevertheless, 'social Europe' has always been a reality, not least for people who are mobile within Europe. From 1958 onwards, the Treaty included a strong legal basis for legislation in the field of social security coordination. This legal basis is now contained in Article 48 of the Treaty on the Functioning of the European Union (TFEU). It obliges the legislature – the Council and the European Parliament – to take measures in order to provide, in the field of social security, protection to people who make use of their right to free movement. Social security was one of the first domains in which the European Union (EU) was active: Regulations 3 and 4 both coordinated national social security systems at European Union level. The Regulations currently in place are 'Basic' Regulation 883/2004 and 'Implementing' Regulation 987/2009 (hereinafter jointly referred to as the "Coordination Regulations").

In May 2019, a conference on *60 years of social security coordination from a workers' perspective* was organised by HIVA – Research Institute for Work and Society.² This conference offered the opportunity to discuss the historical context, the current social and political context as well as the challenges ahead. This volume of *Belgisch Tijdschrift voor Sociale Zekerheid/Revue belge de sécurité sociale* includes a number of papers prepared for this conference.³ These contributions give an insight into the importance and development of the coordination rules. They show that Europe has been trying to fulfil its duty to protect the social rights of movers within the European Union/European Free Trade Association (EU/EFTA) to the best of its ability for the past 60 years. Of course, there is always room for improvement. From that point of view, in 2016 the Commission proposed a revision of the Coordination Regulations (COM (2016) 815 final).⁴ Despite the fact that on 19 March 2019 a provisional agreement was reached in the trilogue meeting,⁵ the agreement was rejected at the Coreper meeting

(1) For a comprehensive overview of initiatives, see: *Putting social matters at the heart of Europe. How the European Commission supported employment, social affairs, skills and labour mobility (2014-2019)*, European Commission, 2019.

(2) See <https://hiva.kuleuven.be/en/news/newsitems/HIVA-EZA-Conference-60years-european-social-security-coordination-presentations>.

(3) My sincere thanks go to the Federal Public Service Social Security and more specifically to Mr Roland Van Laere. In the past, the FPS Social Security has regularly brought this issue to the attention of the public via *Belgisch Tijdschrift voor Sociale Zekerheid/Revue belge de sécurité sociale*. In the last volume of 2004, for example, the revision of the Coordination Regulations was discussed in various articles.

(4) The proposal mainly focused on four areas of coordination where, according to the European Commission, improvements were required: economically inactive citizens' access to social benefits, long-term care benefits, unemployment benefits and family benefits.

(5) <https://data.consilium.europa.eu/doc/document/ST-7698-2019-ADD-1-REV-1/en/pdf>.

on 29 March 2019. This is a disappointment for several reasons, not least because this was actually a balanced proposal. Nonetheless, this also creates new opportunities. In that respect, the conference came at a good time. The momentum was there to discuss a number of challenges and possible solutions. After all, scholars remained relatively absent from the discussions, both during the preparation of the proposal and during the negotiations. Although it is true that the European Commission had issued a well-elaborated Impact Assessment in preparation for the proposal,⁶ scholars could certainly have played their part as well. In the 1990s, during the negotiations on the revision of Regulation 1408/71, this was in my view much more the case.⁷ Therefore, the ambition of the conference was partly to make up for this absence in the debate. After all, scholars, preferably from an interdisciplinary perspective, may/must, on the basis of their academic freedom, think about how things could be improved. Of course, they are only one voice in the debate.

In her opening speech, European Commissioner for Employment and Social Affairs Marianne Thyssen stressed the importance of the coordination rules to protect the social rights of millions of people who are mobile in Europe. She also pointed to the fact that both labour mobility and the EU rules on the coordination of social security systems are under pressure. In this context, the Commission has in recent years taken several initiatives to strengthen the fairness of the rules on labour mobility. Examples are, in particular, the Commission's proposals to revise the Posting of Workers Directive and the Regulations for the Coordination of Social Security Systems, as well as the proposal to set up a so-called 'European Labour Authority' (ELA).⁸ Two of the three initiatives have been brought to a successful conclusion. Directive (EU) 2018/957 amending Directive 96/71/EC concerning the posting of workers must be transposed into national legislation by 30 July 2020 and steps are currently being taken to make the ELA operational as soon as possible.⁹ The future will show how successful both initiatives will be. Unfortunately, no agreement was reached on the revision of the Regulations on the coordination of social security systems. However, at the time of writing (September 2019) there is hope that the discussion will be resumed. At the same time, the Commission has also taken steps to support the development of social protection at national level, mainly through the introduction of the European Pillar of Social Rights. Above initiatives show that the Commission has certainly put the social dimension back on the European agenda, also for the benefit of intra-EU/EFTA movers.

(6) SWD(2016) 52 final. Largely based on preparatory studies from the FreScco network (network of legal experts) and the Network Statistics FMSSFE.

(7) See for instance, Schoukens, P. (ed.), *Prospects of Social Security Co-ordination*, Acco, Leuven/Amersfoort.

(8) Moreover, some provisions of the new Directive 2019/1152 on Transparent and Predictable Working Conditions are also very important for mobile workers (see Article 7 'Additional information for workers sent to another Member State or to a third country').

(9) Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344. See also: <https://ela.europa.eu/>.

Rob Cornelissen states that in spite of the modest objective of the Regulation, as it only coordinates the various social security systems instead of opting for harmonisation, there have been many achievements over a period of 60 years. Consequently, EU rules have improved the protection of social rights when EU/EFTA citizens are mobile in the EU/EFTA. This is largely due to the four pillars of the coordination of social security systems: (1) prohibition of discrimination, reinforced by the equal treatment of cross-border facts and events (i.e. principle of assimilation), (2) aggregation of periods, (3) the exportability of benefits and (4) the determination of a single applicable law.¹⁰ In addition, the gradual expansion of the personal and material scope had a significant positive impact on the protection of mobile EU/EFTA citizens. Furthermore, Prof Cornelissen is certainly not blind to the current controversies and challenges.

Elena Fries-Tersch points out that the group of people protected by the European coordination system is not small and cannot be narrowed down to intra-EU migrants. In fact, the Coordination Regulations nowadays protect, in the field of social security, all EU/EFTA citizens moving between Member States, be it for reasons linked to work or for other reasons (holiday, planned healthcare, moving abroad as a retired person, etc.). Some figures serve to illustrate the numerical importance of the scope of the European coordination system. According to Eurostat population statistics, in 2017 there were 19 million EU/EFTA movers in the EU/EFTA, including 14 million persons of working age (20-64 years). They made up 3.6% of the total population in the EU/EFTA and 4.5% of the total working age population in the EU/EFTA. These figures give us an idea on the 'stock' of EU/EFTA movers, but do not say anything about the annual flow of this group of people. For instance, some 2.1 million persons who migrated to the EU/EFTA in 2017 were previously living in another EU/EFTA country. In addition, there were some 1.9 million cross-border workers in the EU/EFTA in 2017, around 1.8 million postings, and finally some 1 million persons who normally worked in two or more Member States. Furthermore, roughly 1.8 million EU/EFTA citizens aged 65 or over were living in an EU/EFTA country other than their country of citizenship, making up 1.8% of the population aged 65 or over in the EU/EFTA. Finally, EU/EFTA residents also made around 229 million trips with overnight stays in another EU/EFTA country – some 204 million tourism trips and around 25 million trips for professional purposes (e.g. business trips).

Article 91 of Regulation 987/2009 is one of the 'hidden' improvements of the current Implementing Regulation in comparison with the past. It requires the competent authorities to compile statistics on the application of the Coordination Regulations and to forward them to the Administrative Commission. The reports on the various statistical data certainly help to assess the functioning of the current Regulations and

(10) Cooperation between public authorities is actually another important pillar (see also: Morsa, this volume).

to underpin proposals for possible improvements.¹¹¹² That many mobile persons benefit from the Coordination Regulations is illustrated by Frederic De Wispelaere, Jozef Pacolet and Lynn De Smedt. The reported figures visualise the well-developed European social protection system that people enjoy when they are mobile in Europe, based on high-quality level coordination techniques. The figures also provide answers to some key political questions/discussions on ‘welfare tourism’ and ‘social dumping’. After all, it is important to ensure that such concerns are based on facts and figures and not on myths.

The fact that EU legislation has been coordinating national social security legislation for 60 years is an achievement in itself. However, we cannot turn a blind eye to some deficiencies in social protection coordination. Several papers in this volume elaborate on this. These challenges arise, for example, in the field of cross-border healthcare, atypical employment, posting of workers etc. Moreover, there are also various administrative challenges.

The overall effect of cross-border patient mobility in the EU, in terms of persons involved or budgetary cost, is rather marginal. Nonetheless, the use of cross-border patient mobility is very important for certain pathologies, geographical areas and groups. Gabriella Berki argues that after 60 years of healthcare coordination, European patients are still left with restricted cross-border mobility rights and impediments of free movement both from legal and non-legal points of view. She defines a number of solutions, often by thinking out of the box.

Paul Schoukens elaborates on the question to what extent the Coordination Regulations are still able to accommodate the growing complexity of work forms present in the current labour market. In this respect, the traditional characteristics of work are probably mostly challenged by (online) platform work, which raises questions about the application of the Coordination Regulations. In this chapter, possible pathways are defined to modernise coordination which could facilitate a better integration of non-standard work forms in the Coordination Regulations.

The most sensitive issue when talking about the application of the Coordination Regulations is probably the posting of workers. In this context, suggestions are regularly made/requested by the stakeholders to amend the applicable legislation, by some stakeholders for the sake of the fight against ‘social dumping’, by other stakeholders to take further steps in the liberalisation of the internal market, and more specifically of the free movement of services. The question is, however, whether it is really necessary to constantly pursue adjustments to the European rules applicable to posting. In that respect, Yves Jorens and Frederic De Wispelaere discuss further steps that could be taken by Member States but also at EU level in the area of information,

(11) See: <https://ec.europa.eu/social/main.jsp?catId=1154&langId=en> or <https://hiva.kuleuven.be/en/news/newsitems/HIVA-EZA-Conferentie-60years-of-social-security-coordination-from-a-workers-perspective>.

(12) Data collection will also be an important task for the ELA. See: Article 10(4) of Regulation (EU) 2019/1149 “The Authority shall, where appropriate, collect statistical data compiled and provided by Member States in the areas of Union law within the Authority’s competence.”.

registration, enforcement and monitoring based on a better implementation of the existing EU legislation on posting. They argue that by focusing on these four areas, improving the functioning of posting in the internal market may become a Herculean task instead of a Sisyphean one. Their analysis shows that Member States can and must do better in all these areas.

Marc Morsa argues that the objectives of the Coordination Regulations have been achieved for 60 years through loyal and intense cooperation between Member States. He highlights the crucial role of the Administrative Commission in this respect. Finally, he also discusses the possible role of the European Labour Authority in this area.

Finally, in his concluding remarks, Frederic De Wispelaere briefly evaluates the Coordination Regulations on the basis of a number of objectives that could be achieved. These objectives are (1) individual fairness, (2) financial fairness, (3) administrative ease, and finally (4) competitive fairness. He argues that the European provisions seem to be under pressure, mainly due to fears about 'welfare tourism' and 'social dumping'. A solution lies in having better awareness of the financial consequences of the Coordination Regulations. At the same time, the analysis shows that the 2016 Commission proposal to revise the coordination rules is only an episode of a never-ending story of adaptations to the Coordination Regulations in order to keep up with the times.
