

EUROPEAN SOCIAL SECURITY LAW

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Frans PENNINGS

7th edition

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SERIES PREFACE

The role of European law is becoming more and more central in comparative law, in the law of Member States and beyond and as an outstanding model for legal policy. It has been common practice for quite a number of years now that in almost all core areas of law, the important spurs to reform have been coming from Europe and that European law dominates the cornerstones of our legal systems. Therefore, a discussion of European law involves addressing the main problems and guiding principles but, in practical terms, it also increasingly entails raising questions that are challenging national legal traditions and rendering entire libraries obsolete.

Since 2002, the year marking the introduction of the Euro, a new law of obligations has been in place in Germany, with the old codifications in France and Austria following later on. The next years were characterised by unrestricted cross-border mobility of court decisions; the re-writing of core areas of company law such as accounting, cross-border mobility, as well as the promulgation of supranational types of company, with some of the largest German enterprises becoming 'European Companies' (SE); and cross-border crediting of contributions to social security systems becoming a reality. Corporate governance and shareholder rights, alongside corporate social responsibility have developed as core areas of Europeanisation, giving company law an imprint of sustainability and broad representation. The law on competition and subsidies has been primarily European for a long time and its mighty implementing mechanisms – overriding Heads of State – fill title pages. For almost a decade now, the private advocate general can file (follow-on) suits and strengthen a European Competition Union. The same applies to intellectual property law, foreign exchange law, banking and insurance law and environmental law. These have become genuinely European subjects. The European Banking Union (for the Eurozone) and the European Capital Market Union have forged a genuinely European architecture for the whole of capital and finance – on which financing responses to individual crises such as the Covid-19 aid packages could build as well. They strengthened and broadened financial stability schemes at the EU level, from banking law to capital market law and collaboration with respect to systemic risk. The cross-border arrest warrant fundamentally changed European Criminal Law; while antidiscrimination law is all encompassing. Not all endeavours have been successful.

The European Optional Contract Law (Code) – even though interesting and novel as an idea – failed; it was perceived as a cartelising endeavour that

only a few actors in the EU partook in. More importantly, initiatives of more general acceptance and more urgent practical need supplanted it. The Lisbon Treaty – though formally not a constitution – installed a new institutional setting strengthening the democratic legitimacy and powers of the European Union. In parallel, fundamental rights have become a focus of European positive law with the EU Charter, an overarching set of values – no longer only derived from comparative law. Besides the financial stability scheme and the political awakening, the digitalisation agenda is the broadest general endeavour of the last decade – in company law, capital market law, electronic registers, digital content contracts, platform law, a proposed AI Act, seen as a forerunner across the globe, and – in principle human rights law based – a general, directly applicable data protection scheme. The future will show whether Europe will really need an institutionalised economic collaboration for its political economy ('true economic government') in some way, reflecting the now global importance of the Euro and the responsibility attached to it! The future will also show how much work will be needed on these values and how much proactive protection of them will be required. There are certain signs of crises, but the overall development in the EU remains considerably dynamic.

European law – in all legal areas – has long since assumed dimensions that make it absolutely necessary to refer to more than a single book. This series, now beginning its second and in part third, or further, edition, is structured so as to provide the relevant European complement to a traditional legal area. It offers the internal market package organised in this way, with those areas being chosen for users that have a significant internal market dimension. In comparison with a multi-volume loose-leaf work, it has advantages not only in terms of price, but also in that it puts a greater emphasis on classification and limits the material to the essential, which is important in an overflowing area such as European law, of which only very few people manage to preserve an overview. Structuring the architecture, as opposed to information overkill, is the aim.

The dynamic nature of European law is impressive, as its development hurtles along, gathering momentum. There is a need for direction. A serious application of law can no longer focus solely on national transposition. The original, the European guideline, which in an increasing number of cases already *de jure*, but in almost all other cases at least *de facto* has to be directly applied (even in national legal processes), must be considered. Such direction can best be provided by presenting the contents of European law in context and in the necessary detail – in the present case, up to twelve individual volumes. Some of the volumes have already had considerable success in one national market and are now presented to a pan-European public.

The volumes cover the most important topics in the 'Europeanisation' of law. For practitioners – solicitors and barristers, corporate lawyers, judges or lawyers in state authorities or ministries – who do not wish to turn a blind eye to European law, these volumes provide a reliable treatment of the important

problems, with sufficiently detailed references. They provide practitioners with all that they need on the EU level and, moreover, give comparative law and legal policy insights. As a series, they give an overview of those areas most affected by European law. Likewise, they provide advanced students with material for excellent examination results. Students must study European law seriously as part of their main subject if they really wish to specialise in this in the future and do more than pass their examination with an average result. Works with comparative law and interdisciplinary aspects also prepare students for a possible period of study abroad, help them to analyse law in terms of function and also support studies in related subjects. Thus, IUS COMMUNITATIS makes European substantive law accessible in the form of the classic systematic textbook and specialist work. Even for the UK after Brexit, this still holds true to a considerable extent.

All volumes on the applicable law of the Union begin by presenting the necessary tools: in each case, the EU law and the instruments whereby this law enters into the national legal systems are introduced. In all volumes, a thorough description of the EU law rules forms the core of the discussion. However, economic or other interdisciplinary references of significance to the legislation in question are also explained, i.e. what the rules are intended to achieve and, where there are lacunae, the various models that exist and are discussed throughout Europe. European law is, indeed, still a law in the making – even though it is so dominant already. Each legal area is presented in a logical order, as an organic whole; which implies that the approximated or harmonised law forms only the skeleton or hard nucleus and is supplemented by comparative law explanations where harmonisation is not advanced. In this way, the relationship to national law becomes clearer and the ability of readers to deal with European law will improve, as they are given a coherent picture rather than the fragmentary one often complained of. These are textbooks, discussion books and, above all, practical books – sufficiently condensed to contain all the necessary details and yet clear in their outlines. This is the objective we strive for and the challenge. The authors, editors and the series editor (Stefan.Grundmann@rewi.hu-berlin.de) thank those who have criticised and inspired us and who may do so in the future.

The entire IUS COMMUNITATIS series owes much to the Thyssen Foundation, which considered the European aspect and, in particular, the connection with comparative law so important that it generously supported a good number of the volumes. As the series editor, I would like to express my deepest thanks.

Berlin/Florence, Spring 2022

Stefan Grundmann

PREFACE

Since the previous edition of this book there have been numerous developments in the area of EU social security law that have made a new edition desirable.

Part I of this book is dedicated to the coordination regulation, Regulation 883/2004, on social security and discusses the main principles of the regulation and examines the judgments of the European Court of Justice. In December 2016 the European Commission proposed a radical revision of several of the chapters of the regulation. To date, this proposal has not been adopted yet and the prospects for its adoption are grim. In view of the continuous stream of judgments of the Court of Justice an up-to-date overview of the regulation and the case law could no longer be postponed. This book describes the proposed revisions carefully, including their background and effects.

Part II is dedicated to EU social policy. First, the instruments requiring non-discrimination and the judgments of the Court of Justice are examined. Secondly, EU policy instruments, such as the Open Method of Coordination, the Social Pillar and the EU Charter of Fundamental Rights are addressed.

The text of this edition has been revised completely and is up to date to 1 January 2022. I am grateful for the comments on the earlier editions. An important contribution to the quality of this book was made by Rebecca Moffat, who meticulously inspected the whole manuscript several times on its readability, remaining errors and conformity with the house style, and the language editor, Jo Choulerton, who did much more than language editing, by checking many of the sources and by suggesting alternative wording of texts where appropriate. I am very grateful for their boost to the quality of the book.

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CONTENTS

<i>Series Preface</i>	v
<i>Preface</i>	ix
<i>List of Abbreviations</i>	xxiii

PART I. COORDINATION OF SOCIAL SECURITY

Chapter 1. Introduction to the Concept of Coordination 3

1.1. General	3
1.2. The Territoriality Principle	4
1.3. Coordination and Harmonisation	6
1.4. Tasks of a Coordination Instrument	8
1.4.1. Solving Conflicts of Law	8
1.4.2. Prohibition of Discrimination on the Basis of Nationality	10
1.4.3. Territorial Requirements for Acquiring Benefit Rights	11
1.4.4. Territorial Requirements for Payment of a Benefit	11

Chapter 2. The Legal Basis and Context of Regulation 883/2004 13

2.1. The Decision-Making Procedure for a Coordination Regulation	13
2.2. The Court of Justice	14
2.3. The Legal Basis for the Coordination Regulation	15
2.4. Is Direct Application of Article 48 TFEU Possible?	19
2.5. A Short History of the Coordination Regulations	20
2.6. The Revision of Regulation 883/2004 Proposed in 2016	22
2.7. The Structure of Regulation 883/2004	23
2.8. Coordination Regulations of Non-EU Organisations	26
2.8.1. Coordination Conventions of the International Labour Organization	26
2.8.2. Conventions of the Council of Europe	27

Chapter 3. Applicability Conditions: Cross-Border Situation and Within Territorial Scope 29

3.1. Introduction	29
3.2. The Facts of the Case Must not be Limited to One Member State	29

3.3.	The Territorial Scope of Regulation 883/2004	31
3.4.	Applicability to National Schemes Applicable Outside the EU	32
3.5.	Applicability of the Regulation to the Continental Shelf	33
3.6.	The Application of Rules for Determining the Legislation Applicable Outside the EU	34
Chapter 4. The Personal Scope of Regulation 883/2004		35
4.1.	Introduction	35
4.2.	An Historical Overview of the Personal Scope of Regulations 3 and 1408/71	36
4.3.	The Personal Scope of Regulation 883/2004	38
4.3.1.	Introduction	38
4.3.2.	The Requirement of Being Subject to the Legislation of a Member State	39
4.3.3.	The Nationality Condition	40
4.3.4.	Stateless Persons and Refugees	41
4.4.	Third Country Nationals and Coordination	42
4.4.1.	Introduction	42
4.4.2.	The Situation Must not be Confined in All Respects to a Single Member State	45
4.4.3.	Legally Resident in a Member State	46
4.4.4.	The Relevance of Other Bilateral and Multilateral Treaties	48
4.5.	Members of the Family and Survivors	48
Chapter 5. The Material Scope of Regulation 883/2004		53
5.1.	Introduction	53
5.2.	The Term ‘Legislation’ and the Exclusion of Contractual Schemes	54
5.3.	The Classification of Benefits	57
5.3.1.	Introduction: A Limited Material Scope	57
5.3.2.	The Criteria for Classifying Benefits	58
5.3.3.	The Relationship Between a Benefit and the Scheme of which it is Part	61
5.3.4.	Taxes and the Coordination Regulation	62
5.3.5.	Employers’ Obligations and the Scope of the Regulation	64
5.4.	Benefits Compensating Damage	65
5.5.	Social and Medical Assistance	66
5.6.	Special Non-Contributory Cash Benefits	69
5.6.1.	The Provisions Relevant to Special Non-Contributory Cash Benefits	69

5.6.2.	The Interpretation of the Term ‘Reside’	71
5.6.3.	The Qualification as a Special Non-Contributory Cash Benefit . . .	72
5.6.4.	Revision of the Annex as a Result of the <i>Leclere</i> Case	75
5.6.5.	The Effect of Claiming a Non-Contributory Cash Benefit and the Right to Residence	77
5.6.6.	Non-Exportability of Special Non-Contributory Cash Benefits and Free Movement	77
Chapter 6. The Rules for Determining the Legislation Applicable		81
6.1.	Introduction	81
6.2.	The Main Characteristics of the Rules Determining the Applicable Legislation	82
6.2.1.	The State-of-Employment Principle	82
6.2.2.	The Exclusive Effect of the Conflict Rules	83
6.2.3.	Conflict Rules and Access to the Applicable System	85
6.2.4.	The Freedom or Obligation of the Non-Competent State to Provide Benefits	89
6.2.5.	Conflict Rules and Levying Contributions	90
6.2.6.	The Inescapability of the Conflict Rules	91
6.2.7.	Special Conflict Rules for Specific Benefits	92
6.3.	The Conflict Rules for Persons Working in One Member State Only . . .	92
6.4.	The Conflict Rules for Benefit Recipients	94
6.5.	The Conflict Rules for Unemployed Persons Receiving Benefit Under Article 65	95
6.6.	The Conflict Rules for Other Categories	95
6.6.1.	General	95
6.6.2.	Economically Inactive Persons	96
6.6.3.	Persons Working Outside the Territory of the EU	97
6.7.	The Conflict Rules when Working Simultaneously in Two or More Member States	98
6.7.1.	Working as an Employee in Two or More Member States	99
6.7.2.	Working Self-Employed in Two or More Member States	109
6.7.3.	Working in One State as an Employed Person and in the Other as Self-Employed	110
6.7.4.	Provision of Information	112
6.8.	The Conflict Rules for Civil Servants Working in Two Member States	113
6.9.	The Conflict Rules for Special Non-Contributory Benefits	114
6.10.	The Coordination System for Compulsory and Voluntary Insurance . . .	114

6.11. Procedure in Case of a Dispute	116
6.12. Agreements on the Basis of Article 16	117
Chapter 7. Posting and Social Security	119
7.1. General	119
7.2. Posting of Employees	120
7.2.1. Conditions for Posting	120
7.2.1.1. General	120
7.2.1.2. Proposal for Revision	121
7.2.1.3. The Employee is Sent to Work on His or Her Employer's Behalf	121
7.2.1.4. The Employer Normally Carries Out His or Her Activities in the Sending State.	122
7.2.1.5. The Employee is Subject to the Legislation of the Sending State	125
7.2.1.6. The Employee is not Sent to Replace Another Person	126
7.2.1.7. The Employee is not Sent for More than 24 Months	127
7.2.1.8. Temporary Work Agencies	128
7.2.1.9. Provision of Information	128
7.2.2. The Relevance of a Posting Certificate and the Approach to Fraud	129
7.2.2.1. The Procedure to be Followed when a Certificate is Disputed	129
7.2.2.2. Posting Certificates are Binding Even if an Apparent Mistake is Made.	130
7.2.2.3. When a Certificate is Presumed to be Fraudulently Obtained.	131
7.2.2.4. The Procedure in Case of Incomplete or Wrong A-1 Certificates.	134
7.2.2.5. The Proposed Revision of the Implementing Regulation	134
7.3. Posting of Self-Employed Persons.	135
7.3.1. The Condition for Posting of Self-Employed Persons	135
7.3.2. The Proposal for Revision of the Regulation	137
7.4. Posting of Third Country Nationals	138
7.5. The Thin Line Between Posting and Working Simultaneously in Two Countries	139
7.6. Agreements on the Basis of Article 16	140

Chapter 8. The General Non-Discrimination, Assimilation, Aggregation and Removal of Residence Conditions in Regulation 883/2004.	143
8.1. Introduction	143
8.2. Equal Treatment (Article 4 of Regulation 883/2004)	144
8.3. Assimilation of Receipt of Benefit, Events and Facts (Article 5)	148
8.3.1. Assimilation of Social Security Benefits	150
8.3.2. Assimilation of Facts and Events	151
8.4. Waiving of Residence Conditions (Article 7)	152
8.5. Aggregation of Periods (Article 6)	153
8.6. The General Rules Against Overlapping	155
Chapter 9. Article 45 TFEU and Regulation 492/2011	157
9.1. Introduction	157
9.2. Article 45 TFEU: Prohibiting Discrimination on the Ground of Nationality	158
9.2.1. The Coordination Regulation Must be Consistent with Article 45 TFEU	158
9.2.2. Invoking Article 45 when the Coordination Regulation is Inapplicable.	160
9.2.3. National Law, Even if Consistent with the Regulation, Must Comply with the TFEU.	161
9.3. Article 45 TFEU: Obstacles to Free Movement are not Allowed	162
9.4. Regulation 492/2011: The Free Movement of Workers Regulation	163
9.4.1. General	163
9.4.2. The Personal Scope	164
9.4.2.1. The Meaning of the Term ‘Worker’	164
9.4.2.2. First-Time Jobseekers	167
9.4.2.3. Former Workers	168
9.4.2.4. Members of the Family	170
9.4.3. The Material Scope	173
9.4.4. The Non-Discrimination Provision of Article 7(2).	174
9.4.4.1. General	174
9.4.4.2. Objective Justification	175
9.5. The Relationship Between Regulations 883/2004 and 492/2011.	180
9.6. Article 49 TFEU and Equal Treatment of the Self-Employed	181
Chapter 10. EU Citizenship, Free Movement and Discrimination	183
10.1. General	183
10.2. The Case Law on the Citizenship Provisions Before Directive 2004/38	185
10.2.1. General	185

10.2.2.	Older Case Law on Access to Social Assistance and the Effects on Residence Rights	186
10.2.3.	Objective Justifications for Discrimination on the Ground of Nationality	188
10.3.	Directive 2004/38	189
10.4.	Persons During the First Three Months of their Stay (Article 6)	194
10.5.	Equal Treatment of Former Workers and the Self-Employed (Article 7)	194
10.6.	Equal Treatment and Access to Social Assistance.	196
10.6.1.	Special Non-Contributive Cash Benefits are Social Assistance for Directive 2004/38	196
10.6.2.	An Individual or Collective Test on ‘Unreasonable Burden’ for the Social Assistance System?	199
10.6.3.	The Relevance of Directive 2004/38 to Other Benefits Falling Under Regulation 883/2004.	202
10.7.	The Condition of Comprehensive Health Insurance	203
10.8.	Persons Deriving the Right to Residence Other than From Directive 2004/38	204
10.9.	Persons Deriving their Right to Residence from National Law	205
10.10.	The Proposal for Revising Regulation 883/2004.	207
10.11.	Discussion of the Impact of the Citizenship Directive.	208
10.12.	EU Citizenship and Free Movement.	211
10.12.1.	The Test of Residence Conditions Against Article 21 TFEU.	211
10.12.2.	Unemployment Benefits and Free Movement	215
10.13.	Can Article 21 Remove the Negative Effects of Exercising the Right to Free Movement?.	216
10.14.	Overview of the Relationship Between Regulations 883/2004 and 492/2011 and Article 18 TFEU	216
Chapter 11. Sickness Benefits		219
11.1.	The Meaning of the Term ‘Sickness Benefit’	219
11.1.1.	The Distinction Between Sickness Benefits and Other Benefits	219
11.1.2.	Long-Term Care Benefits	220
11.1.3.	The Distinction Between Benefits in Cash and Benefits in Kind	223
11.1.4.	Compulsory Payments by Employers in Case of Sickness.	224
11.1.5.	Reimbursement Rules Between Member States	224
11.2.	Benefits in Cash.	225
11.2.1.	Aggregation Rules	225
11.2.2.	Benefits in Cash are Exportable.	225
11.2.3.	Claiming and Supervision Procedures	226

11.3.	Benefits in Kind for Persons not Residing in the Competent State	229
11.3.1.	Benefits in Kind are Provided by the State of Residence	229
11.3.2.	Persons not Residing in the Competent State	230
11.3.3.	Members of the Family of Frontier Workers	231
11.3.4.	Retired Frontier Workers	232
11.3.5.	The Relationship Between Independent and Derivative Rights.	233
11.3.6.	Benefits in Kind for Pensioners and Members of their Family	233
11.3.6.1.	The Priority Rules	233
11.3.6.2.	The Inescapability of the Provisions on Sickness Benefit for Pensioners.	236
11.3.6.3.	The Applicable Legislation if the Right to Benefits in Kind is not Subject to Conditions of Insurance or Employment	237
11.3.6.4.	Pensioners Living Abroad who go for Planned Care to the State from which they Receive a Pension	238
11.3.6.5.	Family Members who do not Reside in the Same State as the Pensioner	238
11.3.6.6.	Levying Contributions on Pensioners	238
11.4.	Long-Term Care Benefits	239
11.4.1.	Overlapping of Long-Term Care Benefits in Kind and in Cash.	239
11.4.2.	The Specific Character of Care Benefits	240
11.4.3.	The Proposed Revision of the Regulation	242
11.5.	Medical Care Becomes Necessary During a Stay Outside the Competent State	244
11.6.	Planned Care Outside the Competent State	245
11.6.1.	Planned Care and Authorisation by the Competent Institution	245
11.6.2.	The Test of Refusal of Authorisation.	247
11.7.	Obtaining Planned Care without Authorisation on the Basis of the Treaty	254
11.7.1.	The <i>Kohll</i> and <i>Decker</i> Case Law.	254
11.7.2.	Applicability to Hospitals	256
11.7.3.	Non-Hospital Care	258
11.7.4.	The Level of Reimbursement and Travelling Costs.	260
11.8.	The Directive on the Application of Patients' Rights in Cross-Border Health Care.	263
11.8.1.	Introduction	263
11.8.2.	Reimbursement Under the Directive	264
11.8.3.	The System of Authorisation Conditions	265

Chapter 12. Old-Age and Survivors' Pensions	269
12.1. Introduction	269
12.2. Aggregation of Periods	270
12.3. Calculation of the Amount of Benefits	272
12.3.1. Calculation of the Independent Benefit	272
12.3.2. Calculation of the Pro-Rata Benefit	273
12.3.3. Comparison of the Independent and Pro-Rata Benefits	275
12.4. The History of the Community Rules to Prevent Overlapping: The <i>Petroni</i> Case Law	276
12.5. The Present Rules to Prevent Overlapping	277
12.5.1. Introduction	277
12.5.2. General Principles	278
12.5.3. Overlapping of Benefits of the Same Kind	279
12.5.4. Overlapping of Benefits of a Different Kind	279
12.6. Minimum Pensions	281
12.7. Recalculation of Benefits	281
12.8. Periods Completed Before the Coming into Force of the Regulation	282
12.9. The Relationship Between International Conventions and the Regulation	283
12.10. The Coordination of Non-Statutory Pensions	284
12.10.1. General	284
12.10.2. Directive 98/49 on Safeguarding Supplementary Pension Rights	284
12.10.3. The Portability Directive	285
12.10.4. Application of Article 45 to Waiting Periods for Non-Statutory Pensions	287
12.10.5. Conclusion	288
 Chapter 13. Invalidity Pensions	 289
13.1. Introduction	289
13.2. Aggregation Rules	291
13.3. A Person has been Exclusively Subject to Type A Schemes	292
13.4. A Person has been Subject to at Least One Type B Scheme	293
13.4.1. Determining Incapacity for Work	293
13.4.2. The Supervision Measures	294
13.4.3. The Insurance Fiction	294
13.4.4. Calculation of the Amount	295
13.5. Recalculation of Benefits	299
13.6. Transition of Invalidity Benefits to Old-Age Benefits	300

13.7.	The Problem of Differences in Waiting Periods	300
13.8.	Benefits for Accidents at Work and Occupational Diseases	302
13.9.	Special Non-Contributory Cash Benefits for Invalidity.	304
Chapter 14. Family Benefits.		305
14.1.	Introduction	305
14.2.	Aggregation of Periods	307
14.3.	Export Rules	308
14.3.1.	General	308
14.3.2.	The Level of the Exportable Family Benefit: State of Employment or Residence?	310
14.4.	Priority Rules if Both Parents are Entitled to Family Benefits.	312
14.4.1.	Introduction	312
14.4.2.	Differential Supplements After Application of the Priority Rules	316
14.4.3.	The Proposal for Revision of the Regulation	319
14.5.	Parental Benefits	319
Chapter 15. Unemployment Benefits.		323
15.1.	The Term ‘Unemployment Benefits’	323
15.2.	Coordination Rules for Unemployment Benefits Deviating from the General Rules	325
15.3.	The Aggregation Rules	325
15.3.1.	Which Periods are to be Aggregated?	326
15.3.1.1.	The General Rules	326
15.3.1.2.	The Proposal for Revision	328
15.3.2.	Conditions for Application of the Aggregation Rules	329
15.3.2.1.	The Conditions Under Regulation 883/2004.	329
15.3.2.2.	Some Figures on the Application of the Aggregation Rules	330
15.3.2.3.	The Proposal for Revision	331
15.4.	Unemployed Persons who Reside in a State Other than the Competent One	333
15.4.1.	Frontier Workers	333
15.4.2.	Persons not Residing in the Competent State who are not Frontier Workers.	335
15.4.3.	The <i>Miethe</i> Case Law.	336
15.4.4.	The Proposal for Revision.	337
15.4.5.	Partially Unemployed Frontier Workers	340

15.5.	The Calculation of Unemployment Benefits	342
15.6.	Export of Unemployment Benefits	343
15.6.1.	The Conditions for Export	343
15.6.2.	Data on the Use of Export	345
15.6.3.	The Maximum Export Period	346
15.6.3.1.	General	346
15.6.3.2.	The Proposal for Revision of the Regulation	347
15.6.3.3.	Extension of the Export Period	347
15.6.3.4.	Exceptional Reasons for Extension in Case of Late Return	348
15.6.3.5.	The Loss of Remaining Benefit Rights in Case of Late Return	349
Chapter 16. Disparities that are not Removed by Coordination Rules		353
16.1.	Introduction	353
16.2.	Non-Matching National Systems	353
16.2.1.	The <i>Leyman</i> Judgment	353
16.2.2.	The <i>Vester</i> Judgment	355
16.3.	When Mistakes are Made by Persons Covered by the Regulation	356
16.4.	Coordination Rules and the Difference Between Classical and New Benefits	358
16.5.	Persons not Protected in the State of Employment and Deprived of a Residence-Based System	360
16.6.	Conclusions on the Case Law on Disadvantageous Effects of Coordination	365
16.7.	Social Security and Tax Coordination	367
16.7.1.	Introduction	367
16.7.2.	Persons Working in a State Other than their State of Residence	368
16.7.3.	Frontier Workers	369
16.7.4.	Posting	370
16.7.5.	Persons Working in Two States Simultaneously	372
16.7.6.	Summary	373
Chapter 17. The Relationship Between Regulation 883/2004 and Bilateral Treaties		375
17.1.	Introduction	375
17.2.	Infringement on Social Security Advantages Acquired on the Basis of International Treaties	376

Chapter 18. Agreements with Third Countries and the Position of EU Civil Servants	381
18.1. Introduction	381
18.2. The Euro-Mediterranean Association Agreements	382
18.3. Decision 3/80 of the EEC–Turkey Association Council	385
18.4. The United Kingdom.	389
18.5. Persons Working or Having Worked at an EU Institution	392
PART II. SOCIAL POLICY	
Chapter 19. Equal Treatment and Social Security	397
19.1. Introduction	397
19.2. Non-Statutory Occupational Social Security.	397
19.2.1. Background and Scope of Article 157 TFEU.	397
19.2.2. Part-Timers’ Pensions and Article 157 TFEU	399
19.2.3. Part-Timers’ Pensions and Directive 97/81	401
19.2.4. Differences in Pension Age and Article 157 TFEU.	401
19.2.5. Change of Sex and Article 157 TFEU	402
19.2.6. Directive 2006/54.	403
19.2.7. Directive 2000/78: Prohibition of Discrimination on Other Grounds	405
19.2.8. Horizontal Effect of the Equal Treatment Provisions	408
19.3. Statutory Social Security.	409
19.3.1. Background and Scope of Directive 79/7.	409
19.3.2. The Personal Scope of Directive 79/7	410
19.3.3. The Material Scope of Directive 79/7	412
19.3.4. The Equal Treatment Rule of Directive 79/7	414
19.3.4.1. Introduction	414
19.3.4.2. The Direct Effect of Directive 79/7	416
19.3.4.3. Change of Sex and Directive 79/7	417
19.3.4.4. Prohibition of the Effects of a Former Discriminatory Rule	418
19.3.4.5. Indirect Discrimination and Directive 79/7	418
19.3.4.6. Directive 97/81 and Unequal Treatment of Part-Time Workers	426
19.3.4.7. The Article 7 Exception	426
19.4. Equal Treatment of the Self-Employed.	430
19.5. The Impact of the Charter on Fundamental Rights	431

Chapter 20. Social Policy Instruments of the European Union	433
20.1. Sources of EU Social Policy Instruments	433
20.2. The Powers to Adopt Legislation on Social Policy	435
20.3. The Open Method of Coordination	436
20.4. The EU Charter of Fundamental Rights.	440
20.4.1. General	440
20.4.2. Conditions for Applicability of the Charter.	442
20.4.3. An Example of the Application of the Charter	444
20.4.4. The Effect of the Charter in Private Disputes	448
20.5. The European Pillar of Social Rights.	449
<i>Bibliography</i>	453
<i>List of ECJ Cases</i>	463
<i>Case Law Index</i>	473
<i>Subject Index</i>	481

LIST OF ABBREVIATIONS

AAW	Algemene Arbeidsongeschiktheidswet [General Invalidity Benefits Act]
ABP	Algemene Burgerlijke Pensioenwet [Public Servants' Superannuation Act]
AG	Advocate-General
AKW	Algemene Kinderbijslagwet [General Child Benefits Act]
Anw	Algemene nabestaandenwet [General Survivors' Benefits Act]
AOW	Algemene Ouderdomswet [Old-age Pension Act]
AWW	Algemene Weduwen- en Wezenwet [Widows and Orphans' Benefits Act]
BTSZ	Belgisch Tijdschrift voor Sociale Zekerheid [Belgian journal]
CMLR	Common Market Law Reports
CMLREV	Common Market Law Review
COM	Proposal of the European Commission
CRvB	Centrale Raad van Beroep [Netherlands Central Appeals Court]
CSG	Cotisation sociale généralisée [Generalised Social Levy]
CSV	Coördinatiewet sociale verzekeringen [Social Security (Coordination) Act]
DLA	Disability living allowance
EC	European Community
ECR	European Court Reports
ECU	European currency unit
EEA	European Economic Area
EEC	European Economic Community
EFTA	European Free Trade Association
EJSS	European Journal of Social Security
ELR	European Law Review
EP	European Parliament
ESC	European Social Charter
EU	European Union
ILJ	Industrial Law Journal
ILO	International Labour Organization
ILR	International Labour Review
KB	Koninklijk Besluit [Royal Decree]
LIEI	Legal Issues of European Integration

MR	Migrantenrecht [Dutch journal]
NCIP	Non-contributory invalidity pension
NJB	Nederlands Juristenblad [Dutch journal]
NJCM	Magazine of the Netherlands Committee for Human Rights
NLG	Dutch guilders
NTER	Nederlands Tijdschrift voor Europees Recht [Dutch journal]
NYIL	Netherlands Yearbook of International Law
OJ C	Official Journal of the European Communities, Information and Notices
OJ L	Official Journal of the European Communities, Legislation
OMC	Open Method of Coordination
PS	Periodiek voor sociale verzekering, sociale voorzieningen en arbeidsrecht [Dutch journal]
RMC	Revue du Marché Commun
RSV	Rechtspraak Sociale Verzekering [Dutch journal with law reports]
RTDE	Revue Trimestrielle de Droit Européen
RV	Rechtspraak Vreemdelingenrecht [Dutch journal]
RvB	Social Security Appeals Tribunal [former Netherlands social security court]
SDA	Severe Disablement Allowance
SEW	Tijdschrift voor Europees en economisch recht [Dutch journal]
SGB	Sozialgesetzbuch [German Social security code]
SMA	Sociaal Maandblad Arbeid [Dutch journal]
SR	Nederlands tijdschrift voor sociaal recht [Dutch journal]
Stb	Staatsblad [Netherlands Official Journal]
SVB	Sociale Verzekeringsbank [Netherlands administration of national insurances]
TFEU	Treaty on the Functioning of the European Union
Trb.	Tractatenblad [Netherlands official journal of treaties]
Wajong	Wet Arbeidsongeschiktheidsvoorziening Jonggehandicapten [Invalidity Provision (Young Disabled Persons) Act]
WAO	Wet op de Arbeidsongeschiktheidsverzekering [Act relating to insurance against incapacity for work]
WW	Werkloosheidswet [Unemployment Insurance Act]
WWV	Wet Werkloosheidsvoorziening [Unemployment Benefits Act]
YEL	Yearbook of European Law