

THE SOCIAL SECURITY  
CO-ORDINATION BETWEEN  
THE EU AND NON-EU  
COUNTRIES

*Edited by*

Danny PIETERS

Paul SCHOUKENS

*Contributors*

Rob CORNELISSEN

Klaus KAPUY

Grega STRBAN

Herwig VERSCHUEREN

Bernhard ZAGLMAYER



intersentia

Antwerp – Oxford – Portland

*Distribution for the UK:*  
Hart Publishing Ltd.  
16C Worcester Place  
Oxford OX1 2JW  
UK  
Tel: +44 1865 51 75 30  
Fax: +44 1865 51 07 10

*Distribution for Switzerland and  
Germany:*  
Schulthess Verlag  
Zwingliplatz 2  
CH-8022 Zürich  
Switzerland  
Tel: +41 1 251 93 36  
Fax: +41 1 261 63 94

*Distribution for the USA and Canada:*  
International Specialized Book  
Services  
920 NE 58th Ave Suite 300  
Portland, OR 97213  
USA  
Tel: +1 800 944 6190 (toll free)  
Tel: +1 503 287 3093  
Fax: +1 503 280 8832  
Email: info@isbs.com

*Distribution for other countries:*  
Intersentia Publishers  
Groenstraat 31  
BE-2640 Mortsel  
Belgium  
Tel: +32 3 680 15 50  
Fax: +32 3 658 71 21

The Social Security Co-Ordination Between the EU and Non-EU Countries  
Danny Pieters en Paul Schoukens (eds.)

© 2009 Intersentia  
Antwerp – Oxford – Portland  
[www.intersentia.com](http://www.intersentia.com)

ISBN 978-90-5095-941-4  
D/2009/7849/50  
NUR 825

No part of this book may be reproduced in any form, by print, photoprint, microfilm or any other means, without written permission from the publisher.

# TABLE OF CONTENTS

PREFACE .....	ix
---------------	----

## THE EUROPEAN CO-ORDINATION OF SOCIAL SECURITY AND THIRD COUNTRY NATIONALS

Rob CORNELISSEN .....	1
1. Introduction: What is the Aim of Co-ordination? .....	1
2. Some Third Country Nationals Have Always Been Covered: Members of The Family and Survivors. But this Only Involves a Limited Protection. ....	2
3. Nationality Requirement for Employed and Self-Employed Persons in Order to Be Covered by Regulation 1408/71. ....	4
4. New Political and Legal Context. ....	7
5. Not all Problems Solved. What Does Regulation 859/2003 Mean in Practice?. ....	10
6. Looking Forward. Regulation 1408/71 Will Soon Be Replaced by Regulation 883/2004. What Are the Consequences for Third Country Nationals? .....	14
7. Conclusions. ....	16

## SOCIAL SECURITY CO-ORDINATION IN THE AGREEMENTS BETWEEN THE EU AND MEDITERRANEAN COUNTRIES, IN PARTICULAR TURKEY AND THE MAGHREB COUNTRIES

Herwig VERSCHUEREN .....	19
1. Introduction .....	19
2. The association EEC-Turkey. ....	20
2.1. Context .....	20
2.2. Decision 3/80 of the Association Council .....	22
2.3. The Legal Meaning of Decision 3/80 .....	24
2.4. The Direct Effect of Article 3 of Decision 3/80 .....	25
2.5. Significance of the Principle of Non-Discrimination Contained in Article 3 of Decision 3/80 .....	27
2.6. Significance of Article 9 of the Association Agreement .....	29

2.7.	Possible Direct Effect of Other Provisions of Decision 3/80, in Particular the Principle of Export of Benefits of Its Article 6 . . . . .	31
3.	The Agreements with the Maghreb Countries . . . . .	34
3.1.	Agreements Concluded in 1976 . . . . .	34
3.2.	ECJ's Case Law on These Cooperation Agreements . . . . .	36
3.2.1.	The Direct Effect and the Meaning of the Prohibition of Discrimination on Grounds of Nationality. . . . .	36
3.2.2.	The Concept of Social Security Within the Meaning of the Cooperation Agreements. . . . .	38
3.2.3.	The Concept of Workers and of Members of the Family. . . . .	38
3.2.4.	Persons with Dual Nationality: The Mesbah Judgement. . . . .	42
3.3.	The Euro-Mediterranean Association Agreements Signed in 1995, 1996 and 2002 . . . . .	45
3.3.1.	Their Meaning and Provisions on Social Security . . . . .	45
3.3.2.	The ECJ's Case Law on the Association Agreements With the Maghreb Countries. . . . .	47
3.3.3.	The Commission's Proposals of December 2007 to Implement These Agreements. . . . .	48
4.	Concluding Observations. . . . .	52
	Annex: List of Judgements of the ECJ Referred to . . . . .	53

**THE SOCIAL SECURITY RELATIONS BETWEEN THE EU AND THE EFTA STATES**

	Bernhard ZAGLMAYER . . . . .	57
	Introduction . . . . .	57
1.	A Brief History of EU-EFTA Relations. . . . .	58
2.	The EEA Agreement . . . . .	60
2.1.	Basic Structure and Functioning of the Agreement . . . . .	60
2.2.	The EEA Acquis. . . . .	61
2.3.	A Brief Introduction to the Principle of Homogeneity . . . . .	62
2.4.	Social Security Co-Ordination Under the EEA Agreement. . . . .	63
2.4.1.	Third Country Nationals (TCN) . . . . .	64
2.4.2.	Special Non-Contributory Benefits. . . . .	65
2.4.3.	Reimbursement of Cross-Border Medical Treatment Based on the Provision of Services . . . . .	67
2.4.4.	The Concept of European Citizenship in the EEA. . . . .	69
3.	The EC-Swiss Bilateral Agreement on the Free Movement of Persons (FMA) . . . . .	70
3.1.	Basic Structure of the FMA and Its Scope. . . . .	70
3.2.	The FMA and Its Interpretation . . . . .	71

3.3.	The FMA and Social Security Co-Ordination . . . . .	72
3.3.1.	Particularities for the Co-Ordination of Sickness and Unemployment Benefits . . . . .	73
3.3.2.	Third Country Nationals . . . . .	75
3.3.3.	Special Non-Contributory Benefits. . . . .	75
3.3.4.	Reimbursement of Cross-Border Medical Treatment Based on the Provision of Services . . . . .	77
3.3.5.	The Concept of European Citizenship Under the FMA . . .	80
4.	The EFTA Convention. . . . .	81
5.	Summary and Conclusion . . . . .	82
	Literature. . . . .	82
	Annex: The Two-Pillar Structure Under the EEA Agreement. . . . .	84

## THE EXISTING BILATERAL AND MULTILATERAL SOCIAL SECURITY INSTRUMENTS BINDING EU STATES AND NON-EU STATES

	Grega STRBAN. . . . .	85
1.	Introductory Remarks. . . . .	85
2.	Bilateral Agreements Binding EU and Non-EU States . . . . .	87
2.1.	The Evolution . . . . .	87
2.2.	Existing Bilateral Social Security Agreements . . . . .	88
2.2.1.	Material Scope of Application . . . . .	89
2.2.2.	Personal Scope of Application . . . . .	90
2.2.3.	Equality of Treatment . . . . .	91
2.2.4.	Determining the Applicable Legislation . . . . .	92
2.2.5.	Protection of Rights in Course of Acquisition . . . . .	93
2.2.6.	Protection of Acquired Rights . . . . .	94
2.2.7.	Principle of Good Administration . . . . .	95
2.3.	Promotion of Bilateral Agreements . . . . .	95
3.	Multilateral Instruments Binding EU and Non-EU States . . . . .	97
3.1.	Multilateral Instruments Agreed upon by the States Directly. . . . .	97
3.2.	United Nations. . . . .	98
3.3.	Norms of the International Labour Organisation . . . . .	99
3.3.1.	ILO Social Security Co-ordination Conventions . . . . .	99
3.3.2.	Other ILO Conventions . . . . .	102
3.4.	Multilateral Instruments of the Council of Europe. . . . .	102
3.4.1.	Social Security Co-ordination Instruments . . . . .	103
3.4.2.	Other Social Security Instruments . . . . .	106
3.4.3.	European Social Charter. . . . .	107
3.4.4.	European Convention of Human Rights . . . . .	108

3.5. Stabilisation and Association Agreements .....	109
4. Concluding Thoughts .....	110
Bibliography .....	111

**EUROPEAN AND INTERNATIONAL LAW IN RELATION TO THE  
SOCIAL SECURITY OF IRREGULAR MIGRANT WORKERS**

Klaus KAPUY .....	115
1. Introduction .....	115
2. Human Rights Law .....	117
2.1. Universal Level .....	117
2.1.1. General Human Rights Treaties .....	117
2.1.2. Specific Human Rights Treaties .....	123
2.2. European Level .....	126
3. Treaties on the Legal Status of Migrant Workers .....	132
3.1. Universal Level .....	132
3.2. European Level .....	139
4. Social Security Standard Setting Treaties .....	140
5. European Union Law .....	142
5.1. EC Regulation 1612/68 .....	144
5.2. EC Directive 2004/81 .....	147
5.3. EC Directive 2008/115 .....	148
6. Conclusions .....	150
Bibliography .....	153

## PREFACE

On April 2<sup>nd</sup>, 2009 the Institute of Social Law of the K.U. Leuven and the European Institute of Social Security co-organised a conference on “The social security co-ordination between the EU and non-EU countries”. The conference celebrated the 10<sup>th</sup> anniversary of the Master of European Social Security, organised at Leuven University.

The Master of European Social Security is an advanced one-year master programme organised by the Institute of Social Law of the K.U. Leuven providing a specialised, research based study of social security and this from a legal, social policy, administrative and philosophical perspective based on a strong comparative framework. The programme contains a multinational, multidisciplinary and comparative element as it focuses on social protection across Europe from different disciplinary angles. The content and educational approach of the programme aims at encouraging participants to engage in a profound scientific reflection on social security and to translate these scientific findings into relevant policy conclusions and plans.

Present book brings the various excellent interventions presented at this conference. In doing so this book sheds an innovating light on a topic of major scientific as well as practical interest that has seldom been dealt with in a comprehensive way. Outstanding speakers deal with the various aspects of the relation between EU and non-EU countries and nationals, as far as social security is concerned.

In a first contribution Dr. Rob Cornelissen of the European Commission deals with the internal co-ordination of the European Union in relation with third country nationals.

His former colleague and actual professor of the universities of Antwerp and Brussels, Herwig Verschueren, examines how the social security systems of the EU Member States are being co-ordinated with those of the Mediterranean emigration countries. He focuses in doing so on the Maghreb countries and Turkey.

Another kind of non-Member States of the European Union, are the European Free Trade Association countries. The EU-EFTA social security arrangements are explored by our former collaborator and actual legal counsel at the EFTA Surveillance Authority, Mr. Bernhard Zaglmayer.

Professor at the law faculty of Ljubljana, Grega Strban, gives an overview of the complex landscape of the existing bilateral and multilateral social security instruments binding EU states and non-EU-states.

Last but not least, our collaborator, Mr. Klaus Kapuy, writes about the European and international law and that very specific group of third country nationals, the illegal foreign workers.

The European Union is often inward looking; the same goes for European social security law. In this book we take another approach and we focus on the relations in the social security area between the EU and its Member States, on the one hand, and non-Member States and their nationals, on the other hand. We are very grateful to the various contributors to this book, to share their expertise in this important area of social security law.

Prof. dr. Danny Pieters

Prof. dr. Paul Schoukens