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***EU Social Security Law: A Commentary on EU Regulations
883/2004 and 987/2009***

Maximilian Fuchs and Rob Cornelissen (Eds) (Baden-Baden/München/Oxford: Nomos/C.H. Beck/Hart Publishing; 2015; ISBN 978-3-848717-14-9 (Nomos), 978-3-406684-73-9 (C.H. Beck), 978-1-509903-67-2 (Hart Publishing); 554 pp; €178)

Migration is one of the major challenges currently facing the EU. Understandably most of the focus is on migration from war-torn countries in the Middle East and beyond, especially Syria. However, migration within the EU's twenty-eight member states is also a major challenge, and is currently one of the central issues in the 'Brexit' referendum debate in the UK. Migration has always been a major reality for Ireland, but only in recent decades has it come to involve both inward and outward migration. A recent OECD survey showed that 17.5 per cent of the Irish population over the age of fifteen who were born in Ireland live in other countries. This is the highest such percentage among the thirty-eight member countries of the OECD. Of these, 412,658 live in the UK and 74,662 live in other EU countries. Of the latter, the biggest numbers live in Spain (17,519), Germany (12,000), France (9,664), Poland (8,136), the Netherlands (5,054) and Belgium (4,030). Ireland's relative economic success has also led to significant inward migration. There are currently almost 600,000 non-nationals living in Ireland – one in eight of the total population – and of these over 384,000, or 64 per cent, are EU nationals, representing one in twelve of the total population.

Free movement of workers and their families is one of the four fundamental 'freedoms' of the EU, the other three being free movement of goods, services and capital. These freedoms have always been regarded as fundamental for the effective functioning of the single market, but also contribute significantly to an ever-closer Union. From the beginning it was recognised that failure to protect

the social security entitlements of migrants acquired during their working life would be a major obstacle to freedom of movement. It could mean that, on moving, they would not have protection, at least for a period, against unemployment and sickness, including healthcare, and could lose pension entitlements acquired in different countries during the course of their career. The importance of removing these obstacles is illustrated by the priority given to affording protection to these entitlements in EU social security law. EEC Regulations Nos 3 and 4, providing for this protection, were put in place by the original six member states just a year after adoption of the Treaty of Rome in 1957. Since 2010, revised EC Regulation 883/2004 and its implementing EC Regulation 987/2009 apply. These simplify the previous rules, where possible, and take account of the case law of the European Court of Justice (ECJ) and the particularities of the nineteen member states that have joined since the previous revision in 1972.

Systems of social security have developed organically and are embedded in the social provision of each member state. There has been a strong desire to retain sovereignty over the way systems are organised. This desire has been met through coordination, rather than harmonisation that could have meant major changes to the social security system of each member state. Coordination enables each member state to retain and continue to develop its own system but with their application, in the case of migrants, being coordinated to 'guarantee that persons moving within the Community and their dependants and survivors retain the (social security) rights and the advantages acquired and in the course of being acquired' (Preamble to Regulation 883/2004, 13). This includes removing any negative effects that the application of national legislation alone might create.

The coordinating regulations now cover all persons who are or have been subject to the legislation of one or more member states, including third-country nationals (Regulation 1231/2010/EU). It applies to all traditional branches of social security, irrespective of the way of financing (contributory or not), including healthcare, but only in so far as they are based on legislation. Coordination is based on the following principles. A migrant is subject to the social security legislation of one member state. In most cases this is the legislation of the country of employment or last employment, but there are variations to this in certain cross-border situations. Discrimination on grounds of nationality is forbidden in relation to all benefits covered (Article 4, Regulation 883/2004). Coordination requires the waiving

of residence rules in national legislation in relation to entitlement to and payment of benefits and the provision of healthcare. The one exception is unemployment benefit, where the claimant has to remain available for work in the country paying the benefit, but is allowed to seek work in another member state for a defined period. The coordination system also provides for aggregation of periods of insurance, employment and residence, as appropriate, to establish entitlement to benefits. For example, if workers become sick and incapable of work, their periods of insurance in other member states are added to those paid in the state of claim as if these contributions had been paid in the latter state. On retirement, workers qualify for pensions from each member state where they worked, normally in proportion to the relevant periods (insurance, employment and residence) they completed in these states.

The regulations are directly applicable in member states, unlike directives, which have to be legislated for in each member state. This is mainly due to the nature of coordination, which means they must apply uniformly across all the EU and European Free Trade Association member states. An Administrative Commission, comprising representatives of all the member states and of the Commission, supervises the application of the regulations. It deals with administrative complications that may arise and with questions relating to interpretation of the rules. The authority ultimately responsible for interpreting the rules and ensuring that they are in conformity with the Treaty is the ECJ. For example, although the regulations are directly applicable in each member state, if any question of interpretation arises at national level, it is referred to the ECJ, as it is a matter of EU Law. Again this ensures that uniformity of interpretation and application is achieved across all member states. Over the past almost sixty years there have been over 500 judgments of the ECJ relating to EU social security. These have applied not only to the interpretation of the rules, but also to whether the rules in specific cases are in conformity with the relevant Treaty provisions.

The result of all this is a detailed and complex system of EU law to date, which affects millions of EU citizens both directly and indirectly. It is the product of the work of the Commission, the officials of member states, starting with the original six and progressively increasing to the current number of twenty-eight, and the jurisprudence of the ECJ in over 500 cases.

This book by Fuchs & Cornelissen provides a remarkable overview of the whole EU coordination system as it has evolved over sixty years.

Different chapters are written by top experts in each area. They are mostly from German-speaking countries, and previous editions have been published in the German language. This is the first English language edition. A general introduction contains an outline of the history, scope and basic principles of social security coordination law. It goes on to analyse the relevant articles of the Treaty on the Functioning of the European Union (Articles 45 and 48). The Articles on European citizenship and the free movement of citizens (Articles 20 and 21) and the Citizenship's Directive 2004/38/EC are dealt with indirectly when the specific coordination provisions are discussed. The commentary also deals with related instruments, including the European Economic Area Agreement, the EU–Switzerland Agreement and the Association Agreement with Turkey for social security coordination.

The book contains a detailed analysis of each of the provisions of the main Regulation 883/2004, chapter by chapter, article by article (ninety-one in total), without any exception, and deals with the law as applicable as of 1 June 2015. It begins with the text of the Article itself, which makes for ease of reference when studying the comments which follow. It then includes an overview of the provision, followed by a detailed commentary on the provision's spirit and purposes, with references to all the relevant ECJ judgments to date and the decisions and recommendations of the Administrative Commission. It incorporates comments from other experts in the analyses and has a very helpful index. The commentary is structured in a very user-friendly way, especially for those just looking for a steer on a specific provision. The copious references greatly facilitate more in-depth research into a provision. It therefore constitutes an indispensable source of information for administrators, practitioners and researchers. For lawyers, especially, it provides an excellent introduction to one of the more complex parts of EU law.

A few random examples indicate the type of issues dealt with. What legislation should apply in the case of pilots and other employees of international airlines who regularly fly between destinations in a number of EU countries? Ryanair is one such airline. Workers posted to another EU country for a defined period may remain subject to the social security legislation of their home country. What provision should be made to deal with a situation where a disproportionate number of workers are posted from countries with comparatively low social security contributions to countries with much higher contributions, giving the employer who employs the posted workers a

competitive advantage over employers paying the higher contributions for workers insured in that country? Workers employed in one member state and paying their income tax and social security contributions there are entitled to child benefit for their children resident in another member state. Should the rate of benefit payable be that of the country of employment or of the country of residence of the children, especially in cases where the cost of living in the latter country is much lower than in the country of employment? EU nationals from certain countries may be eligible for social assistance payments for a risk such as unemployment at more favourable rates than those payable in their country of origin. Should it be possible for countries with higher rates to restrict access to these benefits to counter possible 'benefit tourism', even though it may also restrict freedom of movement?

The above cases, among many others, have had direct relevance for Ireland. Given our high levels of migration it is surprising that EU social security law does not figure more prominently in Irish legal studies and in public discourse more generally, compared to many other EU countries. This book will greatly facilitate the study and discourse on EU social security law, which so effectively and comprehensively protects these fundamental rights of our migrants.

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