New Forms of Organising Work and Challenges for Coordinating National Social Security Systems in the EU

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I. Introduction

One of the most challenging questions, socially and legally, is to which country and to which legal system a cross-border (employed and self-employed) worker belongs.[1] More specifically, which social security system is called upon to collect social security contributions[2] and to provide social security benefits? When social security systems were developing after the Second World War, the standard beneficiary was perceived as a man in full time, open-ended employment with family responsibility towards a wife and two children.[3] When such a person moved to another country, it was usually for a longer period of time.

Therefore, deciding on a *lex loci laboris* rule, according to which a person is subject to the social security system in the country of work, regardless of where such person or family members reside[4] or where the employer is based, was only logical, legally and practically.[5] The idea was that the social

1 Verschueren, Herwig (ed.), Residence, Employment and Social Rights of Mobile Persons, On How EU Law Defines Where they Belong, Intersentia 2016; see Art. 48 TFEU mentioning "employed and self-employed migrant workers".

2 Concerning the not always easy task of distinguishing between social security contributions and taxes cf. *Rennuy, Nicolas/Weerepas, Marjon*, in: Spiegel, Bernhard (ed.), Social Security and Tax Law in Cross-Border Cases, MoveS Legal Report 2022, https://op.europa.eu/en/publication-detail/-/publication/f9a7f369-ed21-11ec-a534-01aa75ed71a1/language-en (accessed on 1 September 2024).

3 Art. 67 ILO Convention No. 102 on Minimum Standards of Social Security, 1952.

4 The place of work is still recognised as a decisive factor and workers in the Member State of work, rather than children in the residence state, have to be treated equally. See, e.g. decision in case C-328/20 – Commission v. Austria (Indexation of family benefits), EU:C:2022:468.

5 *Jorens, Yves*, Cross-Border EU Employment and its Enforcement: An Analysis of the Labour and Social Security Law Aspects and a Quest for Solutions, Springer 2022, p. 230.

security system with the closest and most genuine link[6] to a worker shall apply. Hence, the work-based centre of interest, rather than residence shall form the legal basis for social security coverage. Under such perception, labour and social security are clearly interrelated.[7]

The *lex loci laboris* rule became subject to criticism already when more residence-based social security Member States joined the EU, such as the UK, Ireland and Denmark in 1973. Later on, also countries not fully basing their social security on social insurance joined, such as Spain and Portugal in 1986, as well as Sweden and Finland in 1995.

The question of the present paper is whether the physical place of work[8] is still the most appropriate connecting factor between a person and a social security system in today's times of modified living and working conditions. It is not so much that cross-border mobility occurs more often and is of shorter duration than in the past, but it has become more and more unpredictable,[9] which undermines the *lex loci laboris* rule. It seems that the *lex loci domicilii* rule, favouring the place of residence as a connective factor for social security, is applicable not only for economically non-active persons[10] but also as a subsidiary principle for residence-based benefits.[11] More importantly, are *lex loci laboris* and *lex loci domicilii* the only choices to determine the closest link between a person and a national social security system or do other possibilities exist?

Furthermore, persons in more flexible, non-standard forms of employment (e.g. fixed-term, part-time, agency employment) and self-employment (e.g. part-time, involuntary, sole trader, dependent self-employment) living in various kinds of partnerships (e.g. with reconstituted families,

6 The CJEU has used the notion of a "genuine link", e.g. in case C-138/02 – Collins, EU:C:2004:172.

7 Although the social security law of one Member State and the labour law of another may apply to a migrant worker, cf. *Jorens, Yves*, Cross-Border EU Employment and its Enforcement: An Analysis of the Labour and Social Security Law Aspects and a Quest for Solutions (fn. 5), p. 231.

8 See e.g. case C-137/11 – Partena, EU:C:2012:593.

9 *Strban, Grega (coord.)/Carrascosa Bermejo, Dolores/Schoukens, Paul/Vukorepa, Ivana*, Social Security Coordination and Non-Standard Forms of Employment and Self-Employment: Interrelation, Challenges and Prospects, MoveS Analytical Report 2018, Brussels 2020, p. 10, https://op.europa.eu/en/publication-detail/-/publication/d5ae78c2-c578-11ea-b3a4-01aa75ed71a1/language-en (accessed on 1 September 2024).

10 Art. 11 of Regulation (EC) 883/2004.

11 See e.g. case C-352/06 – Bosmann, EU:C:2008:290.

living together apart, or other arrangements)[12] may be more vulnerable in the labour market and may be dependent on social assistance in order to live a life in dignity. However, is the right to free movement still guaranteed to social assistance recipients?

Therefore, recent developments in social security coordination are explored. They refer mainly to the (repeated) failure to reform the Social Security Coordination Regulations, the need for better identification of the competent Member State – also by introducing a multilateral framework agreement on cross-border telework – and the application of the EU Charter of Fundamental Rights by the Court of Justice of the EU.

II. Determining the Applicable Social Security Legislation

The Social Security Coordination Regulations[13] determine the applicable legislation for standard workers. A distinction is made between activities as an employed and, respectively, self-employed person. What is relevant is employment and self-employment for the purposes of legislative affiliation with social security, but not with other fields such as labour or tax law. Moreover, "activity" is defined by the Member State in which such activity exists and it is not always very clear when an activity is recognised as that of an employed or self-employed person (e.g. with doctoral researchers/students, whose legal status may vary from country to country).[14] Hence, definitions might differ also due to social security law not recognising (in full) certain activities for unemployment insurance, such as mini-jobs or self-employment.[15]

12 *Strban, Grega (coord.)/Spiegel, Bernhard/Schoukens, Paul,* The Application of the Social Security Coordination Rules on Modern Forms of Family, European Commission, MoveS Analytical Legal Report, Brussels 2019, 2020, https://op.europa.eu/en/publication-detail/-/publication/aa8476cd-c4af-11ea-b3a4-01aa75ed71a1/language-en (accessed on 1 September 2024).

13 Regulation (EC) 883/2004 on the Coordination of Social Security Systems, OJ L 166 of 30 April 2004 as amended, and Regulation (EC) 987/2009 (so-called Implementing Regulation), OJ L 284 of 30 October 2009 as amended.

14 Berghman, Jos/Schoukens, Paul (eds.), The Social Security of Moving Researchers, Leuven: Acco 2010.

15 *Strban, Grega*, Social Law 4.0 and the Future of Social Security Coordination, in: Becker, Ulrich/Chesalina, Olga (eds.), Social Law 4.0: New Approaches for Ensuring and Financing Social Security in the Digital Age, Baden-Baden: Nomos 2021, p. 335.

Varying definitions might result in uncertainty for the workers, since they might not be aware as to which element will be decisive for their social security coverage. It might be the (habitual or actual) place of work, the place of habitual residence (related to the substantive part of the activity performed there, while defining "residence" may not always be easy as such),[16] the seat of the employer, or other elements that are relevant for establishing the closest or most genuine link to the legislation of a certain Member State.

Matters can become even more complicated in relation to the application process for the A1 form confirming the legislation applicable. Employers might not be certain when and for which purpose the A1 has to be requested, e.g. for posting or for simultaneous activities. The distinction also depends on the time frame which is used for an assessment. It might not be a case of consecutive posting or a weekly pattern of pluriactivity, but workers might be assessed on a yearly basis, which may actually allow forum (or better: applicable legislation) shopping on the part of employers.

1. Centre of Professional or Business Activities

There might be several solutions to the problem of determining the legislation applicable for highly mobile workers. One is to reconsider and modernise the *lex loci laboris* rule. If the place where one effectively works is what governs the determination of a competent Member State, why not keep track of these places in a systematic (e.g. yearly) manner. The work of the majority of people might still be mostly performed on the territory of a certain Member State. This Member State could remain competent for the days of work performed in another Member State. It is open for discussion what should be the minimum amount of work performed in a Member State in order to make the latter a competent state. It might be the minimum of, e.g. 80%, 75% or 66% of a person's overall work. Instead of work, income earned could also be a criterion for determining the closest and most genuine link with a certain Member State. The percentage might be lower if habitual residence is taken into account (as currently a proportion of 25% of work in the Member State of residence is required, although employment has precedence over self-employment). Otherwise,

16 See e.g. case C-255/13 – I, ECLI:EU:C:2014:1291, where a person residing for over a decade in another Member State did not establish residence there. *Corpus manendi* was present, but *animus manendi* was missing.

the closest and most genuine link might be established in the Member State of residence, regardless of the economic activity.

However, it might not always be easy to distinguish from other, already existing rules for determining the applicable legislation. Posting provisions, for example, seem rather difficult to apply to the group of highly mobile workers, who most of the time travel to specific Member States for a shorter period of time in an irregular pattern. The solution might be to specify a minimum working period (or income gained) in another Member State in order to apply the posting rules – which were, after all, designed for a more stable working period abroad (up to 24 months).[17]

Such a designation rule with focus on a centre of professional activities was proposed as a "click" system for mobile researchers. A highly mobile researcher would, by "clicking" a competent Member State that is established according to a person's research centre, remain under that social security legislation also during future activities in other Member States. This proposal was introduced especially for third-country nationals who come to the EU (the European Research Area) to work for a university and/or research institution, but it could also be applicable to researchers moving within the EU.[18]

Moreover, a special designation rule has already been established for flight crew or cabin crew members performing air passenger or freight services.[19] The so-called home base rule stemming from Regulation (EC) No. 1008/2008[20] is a welcome novelty. The purpose of the new rule was to have a clear and stable criterion to determine the applicable social security legislation for pilots and cabin crew without too many changes. Nevertheless, it has not alleviated all the issues of unclarity regarding the implications of some social security coordination rules. Stability of the home base rule is undermined by setting no limit on the number of home bases an individual pilot or cabin crew member may be assigned to over time, and it does not rule out the possibility of having home bases in several

17 Art. 12 of Regulation (EC) 883/2004.

18 *Schoukens, Paul/Pieters, Danny/Berghman, Jos et al.*, Social Security, Supplementary Pensions and New Patterns of Work and Mobility: Researchers' Profiles. Brussels: European Commission, DG Research, 2010, https://cdn5.euraxess.org/sites/default/files/policy_library/final_report_september2010_0.pdf (accessed on 1 September 2024).

19 Art. 11(5) of Regulation (EC) 883/2004.

20 Regulation (EC) 1008/2008 of 31 October 2008 on Common Rules for the Operation of Air Services in the Community, OJ L 293.

Member States. Neither does the legislative framework foresee a procedure for changing the home base or the number of times it can be changed.[21] Moreover, the concept of the operator, who assigns the home base to the worker, is still unclear. The majority of low-cost airlines are not hub-based, but provide point-to-point connections, operating from different points ("bases") in distinctive Member States.[22] Additionally, in several Member States, there is a view that in this context, the Posting of Workers Directive[23] is not applicable as a consequence of the designation rules for pilots and aircrew members.[24]

2. A Genuine EU Social Security Scheme

Another option, instead of a stable centre of professional activities, could be a genuinely EU-wide social security system. Such a solution has already been proposed in the form of a Thirteenth State (today it could be the Twenty-Eighth State or Thirty-Second State, taking also EFTA States, if participating in social security coordination, into account). It was envisaged as a single European social security system which would operate as an alternative to the current Social Security Coordination Regulations.[25]

Such a system could be open to all intra-EU migrants. They would have the option of joining such system and not make use of the coordination rules and underlying national social security systems that are coordinated on the basis of the Social Security Coordination Regulations. The European

21 European Transport Workers Federation, Fair Aviation for All: A Discussion on Some Legal Issues, 2019, pp. 12-17, https://www.etf-europe.org/resource/fair-aviation-for-all-the-legal-issues-jan-2019/ (accessed on 1 September 2024).

22 *Jorens, Yves*, Cross-Border EU Employment and its Enforcement: An Analysis of the Labour and Social Security Law Aspects and a Quest for Solutions (fn. 5), p. 272.

23 Directive 96/71/EC of 21 January 1997 concerning the Posting of Workers in the Framework of the Provision of Services, OJ L 018 and Directive 2014/67/EU on the Enforcement of Directive 96/71/EC concerning the Posting of Workers in the Framework of the Provision of Services and Amending Regulation (EU) 1024/2012 of 28 April 2014 on Administrative Cooperation through the Internal Market Information System ("IMI Regulation"), OJ L 159.

24 *Busschaert, Gautier/Pecinovsky, Pieter*, The Application of the EU Posting Rules to Aircrew, EU Project Research Report for Support for Social Dialogue in the Civil Aviation Sector, Brussels, 2019, p. 58.

25 *Pieters, Danny/Vansteenkiste, Steven*, The Thirteenth State. Towards a European Community Social Insurance Scheme for Intra-Community Migrants, Leuven: Acco 1993; *Pieters, Danny/Schoukens, Paul*, The Thirteenth State Revisited, Festschrift Franz Marhold, Wien: Manz Verlag 2020, p. 807.

system would offer a complete system of social insurance, covering all traditional social risks. The method applied is not completely new in EU law, since there are special schemes adopted under the Staff Regulations (such as the Sickness Insurance Scheme common to the institutions of the European Communities – JSIS). There were also lively discussions on introducing either a genuine or a top-up European Unemployment Benefits Scheme (EUBS).[26]

The objectives of such an EU scheme would be to present an alternative to the mere (but complex) coordination of national social security law, to provide an incentive for a voluntary harmonisation of social security systems and to make sure that a public law alternative exists in addition to the emerging initiatives of private insurance cover of the social protection needs of intra-community cross-border workers.

However, as the ideas of a genuine EU social security system are still alive, it might be difficult for the Member States to reach an agreement on the matter. Instead of legislative solutions, a more administrative one has been applied.

3. Multilateral Administrative Agreement

During the COVID-19 sanitary crisis, where many were obliged to stay at home and work from there, a practical solution has been found in order to avoid having to change the applicable social security legislation. If only the physical workplace had been taken into account, the applicable legislation might have switched from *lex loci laboris* to *lex loci domicilii* (if a substantial part of activities is pursued in the Member State of residence, as it is a rule for simultaneous activities).[27] Therefore, the link between a worker and his workplace has been broken.

Telework (not necessarily from home)[28] was not known, or at least not so widespread, when the Coordination Regulations were passed. It was boosted during the pandemic and is likely to stay, be it in the form of

26 *Strban, Grega/Hauben, Harald*, The Legal and Operational Feasibility of a European Unemployment Benefits Scheme at the National Level, in: Coucheir, Michael (ed.), CEPS Special Report No. 145, September 2016.

27 Art.13 of Regulation (EC) 883/2004 and Art. 14 of Regulation (EC) 987/2009.

28 On different, but (to a certain extent) overlapping notions, cf. *Schoukens, Paul/Everaet, Gerard*, A Reflection on Telework in Social Security Coordination, Zbornik PFZ, 73 (2023) 2-3, p. 375.

combining office work with working from home, or combining work with leisure (so-called workation). The special regime, which retained the applicable legislation and disregarded the physical place of work, was advocated during the pandemic and justified with *force majeure*. It was enshrined in the Guidance Note on Telework, yet ceased to be applicable by 30 June 2023.[29]

Although the Member States followed this guidance, many legal questions were raised. The competencies of the Administrative Commission for the Coordination of Social Security Systems are not endless. It has no competences for making or modifying EU law, not even in cases of *force majeure*.[30] The question is whether the special Guidance Note was at all necessary. Some argue that the place of work (*locus laboris*) has a legal meaning. It is not necessarily the place where a person physically works, but the place where the outcome of work is effective, i.e. for which work is performed (place of employment). In this way, continuity of a legal relation can be upheld also during telework periods. Otherwise, migrant workers may be discriminated against, since resident workers in the Member State of employment could be preferred by employers.[31] This might be true if a person works for one (and the same) employer from another Member State.[32] However, it might also be possible that a person teleworks for more employers (customers) in (and from) several Member States. In such cases, a special rule or a special agreement might be required.

In order not to change the applicable legislation too often and secure stable inclusion in a given social security system, the Member States have concluded bilateral agreements valid during the pandemic and beyond it.[33] This practice has been followed by a multilateral Framework Agreement on the application of Art. 16(1) of Regulation (EC) No. 883/2004 in cases of

29 Administrative Commission for the Coordination of Social Security Systems, Guidance Note on Telework, EMPL/1053-01/22, AC 125/22REV3.

30 *Eichenhofer, Eberhard*, Sozialer Schutz bei Arbeit vom Homeoffice im Binnenmarkt, Zeitschrift für europäisches Sozial- und Arbeitsrecht (ZESAR) 2 (2003) 9, p. 355; *Schoukens, Paul/Everaet Gerard*, A Reflection on Telework in Social Security Coordination, Zbornik PFZ, 73 (2023) 2-3, p. 380.

31 *Verschueren*, *Herwig,* The Application of the Conflict Rules of the European Social Security Coordination to Telework During and After the COVID-19 Pandemic, European Journal of Social Security (EJSS) 24 (2022) 2, p. 92.

32 *Eichenhofer* ZESAR 2 (2003) (fn. 30), p. 356.

33 Cf. ibid., where a bilateral agreement between Germany and Slovakia from 6 April 2023 is mentioned. Home office work does not affect applicable legislation if it remains below 40% of the overall work duties.

habitual cross-border telework (hereafter the Framework Agreement), for which the depositary state is Belgium.[34] It has been applicable as of 1 July 2023, when it was signed by 18 EU and EFTA Member States.[35] One more state (Slovenia) has joined as of 1 September 2023, and another one (Italy) as of 2024. However, it seems that not all Member States have an intention to sign it. For instance, Denmark has decided not to sign it, at least for the moment, since the Regulation Rules are there considered to be effective and as the country already has a similar special agreement with Sweden.[36]

Such Framework Agreement raises several legal questions. For instance, can the principle of unicity of applicable legislation with strong and overriding effect be upheld, if not all Member States sign the Framework Agreement on cross-border telework? Does it enable a circumvention of applicable legislation rules by leaving the Member States an option to elect distinctive rules based on the "interest of certain persons or categories of persons"? And if so, a concrete interest of such person(s) has to exist. The question is whether Art. 16 of Regulation (EC) 883/2004 covers such a general Framework Agreement on cross-border telework or whether it is outside its scope.[37] Namely, the Agreement applies generally to "all persons to whom Art. 16(1) of the Basic Regulation can be applied", but excludes specific categories of persons, i.e. self-employed workers. Moreover, a worker has to make a request to be able to telework and teleworking from a residence Member State shall proportionally amount to less than half of the overall working time (under 50%, hence a maximum of 49% of telework). It also excludes teleworking during one's holidays in cases where a person stays outside the residence Member State for his holidays. The Agreement on applicable legislation may last for three years, but may be renewed without any time limit, as long as a new request is presented. Hence, it may

34 See also Cross-Border Telework in the EU, the EEA and Switzerland, https://socialsecurity.belgium.be/en/internationally-active/cross-border-telework-eu-eea-and-switzerland (accessed on 1 September 2024).

35 Initial signatories are Austria, Belgium, Croatia, Czech Republic, Finland, France, Germany, Liechtenstein, Luxembourg, Malta, Norway, Poland, Portugal, Spain, Sweden, Switzerland, the Netherlands and the Slovak Republic, see ibid.

36 *Pihl, Maria Louise/Brink, Christina*, Denmark – EU Social Security Framework Agreement on Telework Declined, GMS Flash Alert 2023-210, https://kpmg.com/xx/en/home/insights/2023/11/flash-alert-2023-210.html (accessed on 1 September 2024).

37 *Eichenhofer, Eberhard*, Sozialer Schutz bei Arbeit vom Homeoffice im Binnenmarkt (fn. 30), p. 358.

become a timeless new social security coordination rule, at least for the signature Member States.

The question is: if general framework agreements are possible under Art. 16 of Regulation (EC) 883/2004, why not conclude them for more specific groups of persons, such as highly mobile workers, cross-border platform workers and others? Would such action not contravene the main principle of democracy, i.e. the separation of powers – in this case the separation between legislative and administrative power? It will be for the third branch, i.e. judicial power to decide whether a case shall be brought before the courts of law and the Court of Justice of the EU (CJEU) would be called upon to construe EU law. However, in order to contribute to legal certainty and predictability, a new conflict rule would have to be introduced[38] (similar to the already existing home base rule, or rules for civil servants, and activities pursued on a board a vessel).

III. Providing Access to Social Assistance

The Social Security Coordination Regulations shall be designed to enable free movement of not only employed and self-employed workers and members of their families, but all Union citizens in general.[39] Especially with platform or teleworkers, the distinction between economic activity and economic inactivity may be difficult. Such persons might or might not be paid well and in the latter case they might have to rely on social assistance. However, they might have limited or no access to social assistance during the initial period of their stay in the host Member State. For a residence of three months to five years, sufficient resources and comprehensive sickness insurance cover are required.[40]

38 *Cornelissen, Rob/Van Limberghen, Guido*, A Plea for an Adaptation of the Conflict Rules in the EU Social Security Regulations, in: Ane Aranguiz et al. (eds.), Pioneering Social Europe, Liber Amicorum Herwig Verschueren, Bruges: die Keure 2023, p. 72.

39 *Lenaerts, Koen/Adam, Stanislas/Van de Velde-Van Rumst, Paulien*, The European Court of Justice and the Two Lighthouse Functions of Social Law in the European Legal Space, in: Jorens, Yves (ed.), The Lighthouse Function of Social Law, Springer 2023, p. 11.

40 Art. 7 Directive 2004/38/EC of 30 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ L 158 (so-called Citizens' Rights Directive or Free Movement Directive); on comprehensive sickness insurance cf. also case C-535/19 A – Public health care, EU:C:2021:595.

For more than a decade there has been a debate concerning the determination of unreasonable "burden on the social assistance system of the host Member State"[41] and the deservingness of free movement of Union citizens.[42] Certain conditions have already been set by the CJEU,[43] but there is a twist in a recent judgment of *The Department for Communities in Northern Ireland*.[44] The Court upheld restricted access to social assistance, but invoked the provisions of the Charter of Fundamental Rights of the EU,[45] especially the articles on human dignity, respect for private and family life, and the rights of a child.[46]

The right to reside was granted solely on the basis of national and not EU law, but national social assistance (in the form of a Universal Credit) was refused. Nevertheless, it was done so in the period during which EU law was still applicable in the UK. The CJEU argued that the authorities of a Member State had to assure that the refusal of a benefit did not expose the Union citizen in question as well as her children to an actual and current risk of violation of the fundamental rights. This decision was evaluated critically.[47]

The Court even restricts access to social assistance by seemingly assuming that every application for social assistance by economically inactive migrating Union citizens is "unreasonable".[48] The proportionality test was not considered, although the notion "unreasonable" suggests that there

41 *Verschueren, Herwig*, Free Movement or Benefit Tourism: The Unreasonable Burden of Brey, European Journal of Migration and Law 16 (2014) 2, pp. 147-179.

42 *Mišič, Luka/Strban, Grega*, Social Security and Free Movement: Why EU Mobility Will Always Come at a Price, in: Jorens, Yves (ed.), The Lighthouse Function of Social Law, Springer 2023, p. 421. *Van Oorschot, Wim*, Making the Difference in Social Europe: Deservingness Perceptions among Citizens of European Welfare States, Journal of European Social Policy, 16 (2006) 1, p. 23.

43 C-333/13 – Dano, EU:C:2014:2358, C-67/14 – Alimanovic, EU:C:2015:597, C-299/14 – Garcia-Nieto and Others, ECLI:EU:C:2016:114.

44 Case C-709/20 CG v. The Department for Communities in Northern Ireland, EU:C:2021:602.

45 OJ C 326 of 26 October 2012.

46 *Lenaerts, Koen/Adam, Stanislas/Van de Velde-Van Rumst, Paulien*, The European Court of Justice and the Two Lighthouse Functions of Social Law in the European Legal Space (fn. 39), p. 15.

47 *Verschueren, Herwig*, The Right to Social Assistance for Economically Inactive Migrating Union Citizens: The Court Disregards the Principle of Proportionality and Lets the Charter Appease the Consequences, Maastricht Journal of European and Comparative Law (MJ) 29 (2022) 4, p. 483.

48 Recitals 10 and 16 of Directive 2004/38/EC.

might also be a reasonable burden and that one has to be accepted by the host Member State.[49] The Court did not refer to social assistance in Art. 34 of the EU Charter, nor has it applied the rules on equal treatment and the prohibition of discrimination based on nationality.

At the same time, the Court refers to the EU Charter as a means for the national judge to grant social assistance after all. The Court primarily refers to Art. 1 of the EU Charter, which states that human dignity should be protected and respected. In the Court's view, this means that the host Member State has to ensure that Union citizens who are in a vulnerable position can live in dignified circumstances. The same shall apply to children living with their parent(s). However, the question is whether all previous cases would be decided differently if the EU Charter was invoked in a similar way. Moreover, should general social assistance (and not merely categorical assistance such as special non-contributory cash benefits) be coordinated as well?[50] If this was the case, then also the non-discrimination rules would have to be applied in a similar way to social security benefits.

IV. Conclusion

The landscape of determining the applicable legislation has become more dynamic than it was at the time when the Social Security Coordination Regulations were passed. It might no longer be valid to apply one single social security legislation with strong and overriding effect (at least not in the case of residence-based benefits). Moreover, people are now moving more often and unpredictably, work for more than one employer and combine work and leisure, business with family life. Hence, the *lex loci laboris* rule as it was conceived has now come to be put into question. It is also no longer clear whether the place of physical work or the place where work "produces effects" shall be considered. It gets even more complex when more than one Member State and several employers are involved. Other possibilities might more faithfully reflect the closest and most genuine link of a moving (employed or self-employed) worker with a certain Member State.

49 *Verschueren, Herwig*, The Right to Social Assistance for Economically Inactive Migrating Union Citizens: The Court Disregards the Principle of Proportionality and Lets the Charter Appease the Consequences (fn. 47), p. 492.

50 *Vonk, Gijsbert*, The EU (Non) Co-Ordination of Minimum Subsistence Benefits: What Went Wrong and What Ways Forward?, European Journal of Social Security (EJSS) 22 (2020) 2, p. 138.

The options range from modernising the existing rule on the place of work and extend it to a longer period, to construe new rules, or even a new scheme. Since it is not easy for the Member States to agree on the new Social Security Coordination Rules (and even more so on a new scheme), they sought refuge in administrative practice with the Framework Agreement. Whether this is the best solution that could be applied also to other fields than telework remains questionable.

Furthermore, human dignity shall be provided to all moving (and non-moving) Union citizens. Social assistance is not restricted to economically inactive persons and may be of vital importance for non-standard cross-border employed and self-employed workers. However, it seems that the interpretation of EU law is more restrictive and calls upon each of the Member States to provide social assistance without coordinating it with other Member States.

This might not be the best solution. Modernising EU social security coordination law is required also by the rule of law. Normative action of the EU legislature has to follow the changing societal relations, also due to new forms of organising work, mobility and living conditions. Solutions should not be left (only) to administrative practice, sometimes undermining the coherent mechanism of social security coordination, or to individual Member States or groups thereof.