

MENGXUAN CHEN\*

## Two Types of Coordination of LTC Benefits in the European Union

### *Introduction*

The Open Method of Coordination (hereinafter: OMC) fundamentally differs from the traditional forms of EU law—regulations, directives, and decisions.<sup>1</sup> It does not result in EU legislation, but is a method of soft governance that aims to spread best practice and achieve convergence toward EU goals in those policy areas which fall under the partial or full competence of Member States.

The OMC, a tool that was formalized at the beginning of the 21st century, has attracted the interest of researchers and practitioners in the new EU governance context.<sup>2</sup> In 2005, the three coordination processes of social inclusion, adequate and sustainable pensions, and high-quality and sustainable health care and long-term care were combined into a single social OMC. This is a relatively new intergovernmental means of governance in the European Union, based on the voluntary cooperation of its member states. The open method rests on soft law mechanisms such as guidelines and indicators, benchmarking and sharing of best practices.<sup>3</sup>

Social security coordination is shaped by international more precisely, supranational agreements and treaties. The coordination mechanism is necessarily aimed at protecting the social security rights of cross-border (migrant) persons who leave their original social security guarantees when they leave the territory of their country of origin.

---

\* PhD Student, University of Szeged, Faculty of Law and Political Sciences

<sup>1</sup> PAUL CRAIG: *EU Administration Law, Open Method of Coordination*. Accessed on 27.09.2022: <https://doi.org/10.1093/acprof:oso/9780199568628.002.0006> Pages vii-viii

<sup>2</sup> ANI MATEI, ADRIAN STELIAN DUMITRU and CORINA GEORGIANA ANTONOVICI: *The EU Health Technology Assessment and the Open Method of Coordination: A Relation with Potential in the Context of Network Governance*. *Sustainability* 2021, 13, 3582. Accessed on 27.09.2022: <https://www.mdpi.com/2071-1050/13/6/3582>

<sup>3</sup> *Working together, working better - A new framework for the open coordination of social protection and inclusion policies in the European Union* / COM/2005/0706 final / Accessed on 27.09.2022: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52005DC0706>

There are three hypotheses of this article, the first is that the discourses produced in the framework of OMC in the areas of employment and social inclusion are broad enough to cater to the different welfare models, but that the changes to be made by the Member States to be in line with the European discourses differ considerably, depending on their welfare state family and their initial situation. The second is that the form of OMC is variable, depending on the policy area. The third is that the two types of EU-level coordination have no relation with each other. They both are genuine tectonics of social protection. The conclusions confirm every of these hypotheses.

The aim of this paper is to introduce both types of coordination, with special regard to Long-term Care (LTC) systems.

### *1. The Concept of the OMC*

The OMC was originally created in the 1990s as part of the employment policy and Luxembourg process and was defined as an instrument of the Lisbon Strategy (2000). At the time, EU economic integration was progressing rapidly, but EU countries were reluctant to give more powers to European institutions.<sup>4</sup>

At the Lisbon European summit in 2000, the Union set itself an ambitious goal for the next decade<sup>5</sup>: ‘to become the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion’. With a view to realising this socio-economic agenda, ‘a [new] open method of coordination’ (OMC) was introduced ‘as the means of spreading best practice and achieving greater convergence towards the main EU goals’.<sup>6</sup>

The Lisbon strategy built upon previous coordination processes in the economic (Broad Economic Policy Guidelines, 1992) and employment (European Employment Strategy, 1997) fields so that the OMC was new only to the extent that it provided a new legitimising discourse around which past and novel practices could crystallise.<sup>7</sup>

#### 1.1 The Mechanisms of OMC

The OMC allows the European Union (EU) to develop policies in areas where it has no competence to legislate. In 2000 the EU decided to use the OMC to advance policies in the area of social inclusion. Since 2000 the EU has developed a range of instruments to make the Inclusion OMC work effectively. The national action plans (NAPs) –

---

<sup>4</sup> *Open Method of Coordination*. Accessed on 27.09.2022: <https://www.europarl.europa.eu/EPRS/EPRS-AaG-542142-Open-Method-of-Coordination-FINAL.pdf>

<sup>5</sup> *Lisbon European Council 23 And 24 March 2000 Presidency Conclusions*. Accessed on 27.09.2022 : [https://www.europarl.europa.eu/summits/lis1\\_en.htm](https://www.europarl.europa.eu/summits/lis1_en.htm)

<sup>6</sup> RADAELLI, CLAUDIO M. *The Open Method of Coordination: A new governance architecture for the European Union?*. Swedish Institute for European Policy Studies, 2003. p.14

<sup>7</sup> GAUTIER BUSSCHAERT: *Participatory Democracy, Civil Society and Social Europe A Legal and Political Perspective*. Intersentia, 2018, p.129 - 152. Accessed on 27.09.2022: <https://doi.org/10.1017/9781780687438>

renamed national strategy reports in 2006 – are the inclusion of OMC's central and most visible instrument.<sup>8</sup>

However, The OMC is not allowed to use the procedure for policy areas that fall within the bounds of the European treaties. Nor are proposals allowed to nullify achievements of the European Union or try to change goals laid down in European treaties. As binding EU rules cannot be used to achieve convergence between member states in this context, the OMC relies on other mechanisms. These mechanisms establish guidelines, quantitative and qualitative indicators and benchmarks, and national and regional targets, backed by periodic evaluations and peer reviews. The evaluation aims to help the Member States learn from each other and thus improve their domestic policies. However, 'peer pressure' and 'naming and shaming' are terms often used to describe this learning and improvement process. These may hint at processes of greater weight than the apparently 'soft' nature of the governance implies.<sup>9</sup>

Since 2000, the OMC has become 'the central tool of EU social policymaking in the new millennium', for the social inclusion process. It was established in 2000 with a view 'to make a decisive impact on the eradication of poverty', and would later be complemented by a pensions process (2001) and a health care and long-term care process (2004). As of 2006, the three processes were streamlined into a single social OMC with the following elements: 1. Common objectives were endorsed by the European Council in March 2006, with both overarching and specific objectives for each strand of the social OMC; 2. Common indicators were also agreed by the Social Protection Committee (SPC) with a view to measure Member States' progress towards the common objectives; 3. Every three years, Member States would translate common objectives into National Strategies for Social Protection and Social Inclusion, with a common section presenting their overall strategic approach and three thematic plans covering social inclusion, pensions, and healthcare and long-term care; 4. The strategies would then be sent to the Commission to monitor progress in a Joint Social Protection and Social Inclusion Report to be drafted annually for Council/Commission adoption before each Spring European Council; 5. The different elements of the social OMC were supported by Progress, a programme that financed the implementation of the objectives of the European Union in the fields of employment and social affairs for the period 2007–2013.<sup>10</sup>

Since 2006, the three above mentioned policy areas have been jointly addressed through this process, now known as the streamlined "Open Method of Coordination on social protection and social inclusion". The general objective of this process is to promote social cohesion and equal opportunities for all through adequate, accessible, financially sustainable, adaptable, and efficient social protection systems and social inclusion policies. Interact closely with the Lisbon objectives of achieving greater economic growth and more and better jobs and with the EU's sustainable development strategy, improve

<sup>8</sup> FREEK SPINNEWIJN: *How to Use the Open Method of Coordination to Deliver Policy Progress at European Level: The Example of Homelessness*. European Journal of Homelessness \_ Volume 3, December 2009 p.301

<sup>9</sup> *Open Method of Coordination*. Accessed on 27.09.2022: <https://www.europarl.europa.eu/EPRS/EPRS-AaG-542142-Open-Method-of-Coordination-FINAL.pdf>

<sup>10</sup> GAUTIER BUSSCHAERT: *Participatory Democracy, Civil Society and Social Europe A Legal and Political Perspective*. Intersentia, 2018, p.129 - 152. Accessed on 27.09.2022: <https://doi.org/10.1017/9781780687438>

governance and transparency, and involve stakeholders in the design, implementation, and monitoring of policies.<sup>11</sup>

These objectives apply to the different fields of operation: 1. *The fight against poverty and social exclusion*. Ensuring active inclusion for all by promoting labor market participation and combating poverty and exclusion of the most marginalised groups, opposing all forms of discrimination that lead to exclusion, and Integrate the fight against poverty and social exclusion into all relevant public policies, including economic and budgetary policies and structural fund programmes. 2. *Adequate and sustainable pensions*. Ensuring adequate retirement income and pensions for all, ensuring the financial sustainability of public and private pension schemes, in particular by supporting longer working lives and active aging, guaranteeing an appropriate and fair balance between contributions and benefits, and maintaining the security of both funded and private schemes, while ensuring that pension schemes are transparent and that people have the information they need to prepare for retirement. 3. *Accessible, high quality, and sustainable health and long-term care*. To ensure that all people have access to adequate health care and long-term health care and that the need for health care does not lead to poverty and economic dependency; to promote quality of care and rational use of resources.<sup>12</sup>

## 1. 2 The Procedures of OMC

The Open Method of Coordination involves: Agreeing on EU-level Common Objectives (revised in 2006 to reflect streamlining). Developing common indicators to measure progress towards these objectives and ensure comparability. Developing National Reports on Strategies for Social Protection and Social Inclusion translates these objectives into national policies. The National Action Plans on Social Inclusion (NAP/incl) remain self-standing Plans and make up one of the sections within these reports. Establishing a Community Action Programme, promoting policy cooperation, exchange of good practice, and European level mobilisation. This program was replaced in 2007 by the PROGRESS Programme which aims to financially support the implementation of EU objectives in employment, social affairs and equal opportunities as set out in the Social Agenda. Promoting mutual learning and exchange through Peer Reviews, Studies and conferences. Publishing European reports (Joint Reports by the Council and the Commission) documenting the outcomes of the process and highlighting good practices and the key challenges ahead.<sup>13</sup>

The OMC has provided a new framework for cooperation between the EU countries, whose national policies can thus be directed towards certain common objectives. Under this intergovernmental method, the EU countries are evaluated by one another (peer

---

<sup>11</sup> *A new framework for the open coordination of social protection and inclusion policies*. Accessed on 27.09.2022: <https://eur-lex.europa.eu/legal-content/ET/TXT/?uri=LEGISUM%3Ac10140>.

<sup>12</sup> AOIFE KENNEDY: *The Fight Against Poverty, Social Exclusion And Discrimination*. Accessed on 27.09.2022: [https://www.europarl.europa.eu/ftu/pdf/en/FTU\\_2.3.9.pdf](https://www.europarl.europa.eu/ftu/pdf/en/FTU_2.3.9.pdf).

<sup>13</sup> GAUTIER BUSSCHAERT: *Participatory Democracy, Civil Society and Social Europe A Legal and Political Perspective*. Intersentia, 2018, p.129 - 152. Accessed on 27.09.2022: <https://doi.org/10.1017/9781780687438>

pressure), with the Commission's role being limited to surveillance. The European Parliament and the Court of Justice play virtually no part in the OMC process.<sup>14</sup>

The OMC takes place in areas that fall within the competence of EU countries, such as employment, social protection, education, youth and vocational training. It is principally based on: 1. jointly identifying and defining objectives to be achieved (adopted by the Council); 2. jointly established measuring instruments (statistics, indicators, guidelines); 3. benchmarking, i.e. comparison of EU countries' performance and the exchange of best practices (monitored by the Commission).<sup>15</sup>

This procedure is one of the special legislative procedures used in the European Union. The OMC is applied to policy areas where member states are in full control but where they also wish to coordinate their policies on a particular subject. Decisions that are based on the open coordination method are non-binding; member states are not held accountable for whether or not they implement decisions. The procedure is not part of the European treaties.<sup>16</sup>

There are some details of OMC's procedure: Step 1: *initiative*. A member state, a group of member states, or the European Commission submits a proposal to the Council of Ministers.

Step 2: *agreeing on commitments*. The European Parliament is an advisory body. The Member States, with the support of the European Commission and existing European policies, negotiate the objectives, the steps necessary to achieve them, and the methods for assessing progress in their implementation. The Council of Ministers confirms the agreements made between the member states. Step 3: *implementation and control of the agreements*. With the OMC, the implementation is part of the procedure. Member states develop national action plans that are based upon the agreements. Member states to exchange information about the best ways to achieve the set objectives. With help from the member states the Commission monitors the progress in complementing the agreements. The general idea is that member states are motivated to achieve objectives and avoid lagging behind compared to the progress made by other member states. There is also a Voting procedure of the OMC; Since the open method of coordination is not part of the European treaties and no set agreement on the procedure has been formally agreed upon, no specific voting method has been determined. In practice, the member states try to reach a consensus.<sup>17</sup>

### 1. 3. The Criticism of OMC

After initial enthusiasm in the late 1990s, analysts of the OMC have become increasingly critical, with doubts emerging about its effectiveness due to its political irrelevance at

<sup>14</sup> Accessed on 27.09.2022: <https://www.eapn.eu/news-and-publications/other-resources/eu-jargon-explained/>

<sup>15</sup> *Open method of coordination*. Accessed on 27.09.2022: <https://eur-lex.europa.eu/EN/legal-content/glossary/open-method-of-coordination.html>

<sup>16</sup> *Decision-making procedures in the European Union*. Accessed on 27.09.2022: <https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vg9tssega1vj>

<sup>17</sup> *Open Method of coordination (OMC)*. Accessed on 27.09.2022: <https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vh7eg8ym3xy5>

national level and a lack of control mechanisms. For example, experts<sup>18</sup> claim that OMC has become an important part of the policy making process in social inclusion issues in only a quarter of the countries examined. In 2004, the European Council set up a High-Level Group, chaired by Wim Kok to carry out an independent mid-term review of the outcomes of the Lisbon Strategy. The results showed that the Lisbon Strategy was not sufficiently focused.<sup>19</sup>

The OMC is also criticised at the EU level, where it can be perceived as a threat to the Community method. Another common criticism of OMC is aimed at its problematic relationship with those policy areas which are the competence of Member States and where EU involvement via OMC is sometimes perceived as a covert intrusion. Some experts also claim that the way OMC is currently implemented hardly constitutes an excellent political compromise between hard law and total non-cooperation by member states. Hard law can be more intrusive than soft law under the legal constraints posed by the EU treaties.<sup>20</sup>

The European Parliament in particular has been concerned about the democratic legitimacy of the OMC. As the EU institution that EU citizens directly elect, it has become more involved in the OMC to make it more democratic. Its 2003 resolution on the application of the Open Method of Coordination called for the OMC to be introduced into even more areas. However, it warned against the OMC becoming a non-transparent and subversive parallel procedure in the EU.<sup>21</sup>

The 2007 resolution on soft law calls OMC 'legally dubious' because of insufficient parliamentary and judicial involvement. It warns against using it in lieu of Community legislation where the Treaties do not allow this. In the 2010 resolution on economic governance, the European Parliament even called for an end to reliance on OMC in economic policy. The European Economic and Social Committee (EESC) has also been critical of the OMC. According to its 2011 Opinion on 'The Open Method of Coordination and the Social Clause in the Context of Europe 2020', OMC is ineffective and invisible at national level. In spite of that, the EESC has been interested in expanding the method into other policy areas (e.g. health, demographic challenges, youth policy), as well as strengthening it in existing areas, in order to make sure that these policy areas do not lose their importance, with regard, for example, to social inclusion and protection.<sup>22</sup>

However, the Parliament has not opposed the OMC where its use does not undermine the EU competences and thus the community method. Many experts have affirmed the important role of the OMC in terms of social inclusion policy, with some arguing that the introduction of a new concept (social inclusion) into national debates has changed policy

---

<sup>18</sup> *Building a stronger EU Social Inclusion Process: Analysis and recommendations of the EU Network of independent national experts on social inclusion*. 2008. Accessed on 27.09.2022: <https://ec.europa.eu/social/main.jsp?catId=89&langId=en&newsId=1410&furtherNews=yes>

<sup>19</sup> KOK, W. *Facing the Challenge: The Lisbon Strategy for Growth and Employment*. European Communities, November 2004.

<sup>20</sup> SUORSA H, VAN OOIK R. *The OMC and Democratic Legitimacy: Legal Limits of EU Employment Regulation*. University of Amsterdam. 2019.p.6

<sup>21</sup> *The Open Method of Coordination*. Accessed on 27.09.2022:<https://epthinktank.eu/2014/11/05/the-open-method-of-coordination/>

<sup>22</sup> *Open method of coordination*. Accessed on 27.09.2022: <https://eur-lex.europa.eu/EN/legal-content/glossary/open-method-of-coordination.html>

thinking and created a more "consensus-oriented decision-making process."<sup>23</sup> in the field of social policy and supported policy change through mutual learning across Member States.<sup>24</sup> In the 2011 resolution on social services of general interest, it views positively the application of OMC in the European Voluntary Quality Framework. Likewise, the 2013 Regulation on common fisheries policy, adopted in codecision with the Council, relies on the use of OMC in the exchange of information and best practice among the Member States in aquaculture.<sup>25</sup>

Even after many critics of the OMC – which is not legally constraining and therefore has a questionable reputation among academics in terms of actual delivery<sup>26</sup> – that the method is still alive and well (amongst others in the form of the European Semester) twenty years after its formal launch, even though open coordination is now far less visible in the European Commission's key documents. Since 2005, the Commission has indeed given precedence to the EU's consecutive overarching socio-economic coordination processes – the Lisbon Strategy, the Europe 2020 Strategy and the European Semester – rather than to 'competing' sectoral strategies such as the OMC.<sup>27</sup>

Some OMC supporters claim that the OMC has shown the potential to influence and achieve convergence in national systems, although not necessarily quantitative convergence. Under the Ljubljana process, the OMC has been identified as a central method of governance for the further development of the European research field.<sup>28</sup>

The official proclamation by the European Parliament, the EU leaders and the Commission<sup>29</sup> Juncker's flagship initiative, the European Pillar of Social Rights, can be seen as a true game-changer in that it effectively revamped the EU social policy agenda and further institutionalised the OMC as a policy instrument.<sup>30</sup>

Although the debate and evaluation of the OMC has never ceased, this article claims that under the context of a community of values in EU, We can easily find that the main value of the OMC lies in the participation of all in decision-making: the EU institutions, civil society, interest groups, the media, etc. play a role through the OMC in the drafting of public policies and in the monitoring and evaluation of their implementation. It may not improve the policies of advanced welfare states, but it may have a very important role

<sup>23</sup> JACOBSSON, K. and VIFEL, Å. "Integration by deliberation? On the Role of Committees in the Open Method of Coordination", 2003, Florence, p. 32.

<sup>24</sup> DE LA PORTE, C. and POCHET, P. *The European Employment Strategy: Existing Research and Remaining Questions*, Journal of European Social Policy, 2004, p. 71–78.

<sup>25</sup> *Open method of coordination*. Accessed on 27.09.2022: <https://eur-lex.europa.eu/EN/legal-content/glossary/open-method-of-coordination.html>

<sup>26</sup> The initial praise for the OMC, both by politicians and scientists, quickly turned into skepticism. For a literature overview of the four categories of the early OMC literature – theoretical, normative, empirical, and critical – see CTTI MAND RHODES M: *New Modes of Governance in the EU: Common Objectives versus National Preferences*, 2007.

<sup>27</sup> VANHERCKE, BART: *From the Lisbon strategy to the European Pillar of Social Rights: the many lives of the Social Open Method of Coordination*. Social policy in the European Union 2019 (1999): p. 99-123.

<sup>28</sup> MC GUINNESS N, O'CARROLL C. *Benchmarking Europe's lab benches: How successful has the OMC been in research policy?*. JCMS: Journal of Common Market Studies, 2010, 48(2): 293-318.

<sup>29</sup> During the European Council's first-ever Social Summit, which took place in Gothenburg in November 2017.

<sup>30</sup> VANHERCKE B., SABATO S. and GHAILANI D. (eds.): *Conclusions: The European Pillar of Social Rights as a game changer, Social policy in the European Union: State of play 2018*, Brussels, ETUI and European Social Observatory (OSE), p.165-186.

for member states with less developed welfare policies. But the impact of the OMC on policy implementation depends to a large extent on the policy instruments and strategies chosen, and on the process of implementation at the national level. There is no guarantee that the target itself will be achieved.

#### 1. 4. The Concept of Long-term Care (LTC)

At the EU level, the following definition was provided by the Social Protection Committee (SPC), which consists of representatives of national ministries of social affairs and the European Commission's Directorate General for Employment, Social Affairs, and Inclusion: " Long-Term Care (LTC) encompasses a range of services and support for people who are dependent over a long period of time on help with their daily living. This need is usually the result of disability caused by frailty and various health problems and, therefore may affect people of all ages. But the great majority of long-term care recipients are older people."<sup>31</sup>

The European Pillar of Social Rights (hereinafter: 'Pillar'), jointly announced by the European Parliament, the Council of the EU, and the European Commission on 17 November 2017, establishes key principles and rights for a new process of upward integration toward better working and living conditions between the Member States. Principle 18 of the Pillar states that everyone has the right to affordable long-term care services of good quality, in particular home-care and community-based services. It thus establishes the right to care at the EU level for the first time, making long-term care a social policy area. The implementation pillar is an effort that the EU, Member States, social partners, and other stakeholders are taking forward together in accordance with their respective responsibilities.<sup>32</sup>

Member States face four common challenges in long-term care: 1. The challenge of providing affordable and adequate long-term care services to all those who need them; 2. the challenge of providing quality long-term care services; 3. the challenge of ensuring an adequate long-term care workforce and good working conditions and supporting informal caregivers; and 4. the challenge of providing long-term care in the context of growing demand for care.<sup>33</sup>

#### 1. 5. LTC Benefits Coordination in the OMC

Over the next five decades, the number of Europeans aged 80+ requiring long-term care (LTC) is expected to triple. This factor, with a declining working population, changing

<sup>31</sup> ALFOSO LARA MOTERO, RONAN MANGAN, MARTIN LICHTER: *Putting Quality First Contracting for Long-Term Care*. Brussels: The European Social Network. 2021, p.10. Accessed on 27.09.2022: <https://www.euro.centre.org/publications/detail/3958>

<sup>32</sup> *The European Pillar of Social Rights in 20 principles* | European Commission (europa.eu) Accessed on 27.09.2022: [https://ec.europa.eu/info/strategy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/european-pillar-social-rights/european-pillar-social-rights-20-principles\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/european-pillar-social-rights/european-pillar-social-rights-20-principles_en)

<sup>33</sup> *2021 Annual Report of the Social Protection Committee*. 2021, Accessed on 27.09.2022: <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8432&furtherPubs=yes>



family structures, and rising expectations in care services, are the main challenges outlined in the report of 'Adequate social protection for long-term care needs in an aging society'.<sup>34</sup>

There are vast differences between the Member States of the European Union (EU) regarding demography, economy, traditions and the development of systems for Long Term Care (LTC). The common objectives agreed by the Member States on long-term care in terms of accessibility, quality and sustainability form the backdrop for the Social Protection Committee (SPC)'s long-term care cooperation. As part of its task of monitoring the social situation in the EU and developing social protection policies, the SPC produces annual reports<sup>35</sup>. In its 2021 report, the SPC emphasises the need to maintain or expand investments in the social, long-term care, and health sectors and in human capital, where necessary, and the need for Member States to significantly increase their efforts to address the structural challenges related to long-term care.<sup>36</sup>

There is no one-size-fits-all solution to cope with the increasing demands caused by the aging of European societies. However, there is much value in mutual learning between the Member States. That existing evidence about innovative approaches for social protection against the long-term care risks. It demonstrates that it is possible to contain the growth in needs, make care more efficient and ensure dignity in care, if action is taken based on best available knowledge. Several approaches may have to be taken simultaneously and with different emphases in the different Member States.<sup>37</sup>

## 2. LTC in the European Social Security Coordination System

By way of introduction, it shall be underlined that there is no any link or similarity between the open method of coordination (OMC) and the EU social security coordination. The OMC does not result in EU legislation, it is an EU policy-making process, or regulatory instrument. But the EU social security coordination is formed by international agreements and treaties, it is a part of international supranational law.

### 2. 1. The Concept of Coordination on Social Security

The original concept of EU social security coordination is part of international supranational law. It has been shaped by international agreements and treaties. This chapter focuses on the EU's supranational social security coordination system. The corollary purpose of the coordination mechanism is to protect the social security rights of

---

<sup>34</sup> *Adequate social protection for long-term care needs in an aging society Report jointly prepared by the Social Protection Committee and the European Commission services* (2014) Accessed on 27.09.2022: <https://op.europa.eu/en/publication-detail/-/publication/71532344-ddf1-4d34-a7aa-f65c701a22a2>

<sup>35</sup> *2021 Annual Report of the Social Protection Committee*. 2021, Accessed on 27.09.2022: <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8432&furtherPubs=yes>

<sup>36</sup> Commission Communication (COM/2008/418 final), Brussels, 2.7.2008. Accessed on 27.09.2022: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52008DC0418>

<sup>37</sup> *Long-term care: Closing the gap between need and supply*. (2014) Accessed on 27.09.2022: <https://www.esn-eu.org/news/long-term-care-closing-gap-between-need-and-supply>

cross-border (migrant) persons who leave his/her original social security protection behind when they leave the territory of their country of origin.<sup>38</sup>

The European Union social security coordination law, is predominantly enshrined in the Treaty on the Functioning of the EU (hereafter “the TFEU”), especially in its Article 48, and the Regulations 883/2004, 987/2009 and 988/2009,<sup>39</sup> as interpreted and amended by the judgments of the Court of Justice of the EU (hereafter “the ECJ”), should enable the greatest possible freedom of movement for migrant workers<sup>40</sup> and citizens of the EU in general.<sup>41</sup>

The EU coordination regulation on social security concerns the provisions provided within the framework of the statutory social security system. It aims to ensure equal treatment of workers and persons moving to different parts of Europe under different national social security systems. In essence, the purpose of EU social security coordination is to abolish the territorialization of the application of national social security systems and thus provide the necessary preconditions for the free movement of persons within the EU.<sup>42</sup>

## 2. 2. The Goals of the European Union in the EU Social Security Coordination

Since the start of the European Economic Community (EEC) in 1957, the free movement of persons has been considered to be one of the basic principles of the Treaty of Rome.<sup>43</sup> Together with the free movement of capital, goods, and services, it still constitutes the cornerstone of the European Union.<sup>44</sup>

Free movement of persons implies that within an internal European market each citizen has the right to travel to another Member State of the EU to work, to look for work, to study or to go on holiday. However, the free movement of persons faces some restrictions. Apart from some “natural” limitations, such as cultural problems, linguistic barriers or differences in standard of living, people can also be confronted with obstacles which are the result of differences in national legislations, in particular in the field of social security.<sup>45</sup>

<sup>38</sup> JÓZSEF HAJDÚ, MENGXUAN CHEN, *EU Social Security Coordination of Old-age Pensions*, Scientific Journal Of Humanities and Social Sciences, 2022,4(7): p.536-546

<sup>39</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 200/1, 7.6.2004. Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, OJ L 284/1, 30.10.2009.

<sup>40</sup> Emphasised by the ECJ in Jauch (C-215/99), Para. 20, and recently in da Silva Martins (C-388/09), Para. 70.

<sup>41</sup> Stressed also in judgements of the ECJ in the case Stewart (C-503/09), Para. 78 ff. The restrictions to the free movement of the EU nationals (in the host, but also in the home State) should not go beyond what is necessary to attain the objective pursued (principle of proportionality).

<sup>42</sup> *Directorate General for Internal Policies Policy Department: Economic and Scientific Policy, Coordination of Social Security Systems in Europe* 2017. p.10. Accessed on 27.09.2022: <https://www.pubaffairsbruxelles.eu/opinion-analysis/coordination-of-social-security-systems-in-europe/>.

<sup>43</sup> *Treaty establishing the European Economic Community (EEC) in Italy*, 25 March 1957. treaty of Roma Accessed on 27.09.2022: <https://www.europarl.europa.eu/about-parliament/en/in-the-past/the-parliament-and-the-treaties/treaty-of-rome>

<sup>44</sup> ROB CORNELISSEN, FREDERIC DE WISPELAERE: *Sixty years of European social security coordination: achievements, controversies and challenges* Accessed on 27.09.2022: [https://www.etui.org/sites/default/files/Chapter%207\\_13.pdf](https://www.etui.org/sites/default/files/Chapter%207_13.pdf)

<sup>45</sup> *Tress-Network Short introduction to the European Coordination of social security schemes*; Accessed on 27.09.2022: <http://www.tress-network.org/TRESSNEW/PUBLIC/ELEARN/intro%20text%20e-learning.pdf>

The drafters of the Treaty of Rome were well aware that not only the social security systems in the Member States of the EU are different, but also the social security rules governing were applicable only on the territory of each Member State that this situation was liable to create impediments for the free movement of persons. Mobility of persons would remain an illusion when workers leave their country to work in another EU country, would lose – completely or partly – their social security rights of the State they are leaving, or when they would not be able to obtain benefits in the State where they go to.<sup>46</sup>

In addition, one has to consider the developments regarding EU citizenship, according to which every EU citizen has the right to move and reside freely, subject to certain conditions and limitations, on the territory of the Member States of the European Union.<sup>47</sup>

The legal instruments available: the European coordination of social security rules. For the reasons set out above, the European Treaty provides since its origin in 1958 that the Council of Ministers, the legislative body of the Community (later joined by the European Parliament), with unanimity of votes, must take those measures that are necessary in the field of social security for improvements of the free movement of persons. The Council of Ministers did so as one of the first measures ever taken by the European Economic Community; already on 1 January 1959, Regulations Nrs. 3 and 4 on social security for migrant workers entered into force.<sup>48</sup>

On 1 October 1972, these regulations were completely revised and replaced by Regulation Nrs. 1408/71 and its implementing Regulation 574/72. Since 1971 these Regulations were the subject of several amendments in order to accommodate trends in national legislation and progress resulting from the rulings of the Court of Justice. On 1 May 2010, a new set of regulations, Regulation 883/2004 and its implementing Regulation 987/2009 became applicable. Without changing it dramatically, the new regulations modernise and in some cases also simplify the EU framework for social security coordination.<sup>49</sup>

The overall objective of these Regulations is to install coordination of the various social security systems in the European Union. Rather than to harmonise the different national regulations - which would mean creating a common European system of social security – these Regulations build bridges between the national social security schemes; the national schemes are linked together so as to prevent people moving within Europe from losing out on social security rights on account of their moving.<sup>50</sup>

These coordinating instruments only apply in situations where there is some cross-border element. Coordination is aimed at guaranteeing that someone who wants to go to

---

<sup>46</sup> YVES JORENS: *50 years of Social Security Coordination Past – Present – Future Report of the conference celebrating the 50th Anniversary of the European Coordination of Social Security* Prague, 2009. Accessed on 27.09.2022: [http://aei.pitt.edu/42168/1/social\\_security\\_coordination.pdf](http://aei.pitt.edu/42168/1/social_security_coordination.pdf)

<sup>47</sup> *EU social security coordination*; Accessed on 27.09.2022: <https://ec.europa.eu/social/main.jsp?catId=849>

<sup>48</sup> JÓZSEF HAJDÚ, MENGXUAN CHEN, *EU Social Security Coordination of Old-age Pensions*, Scientific Journal Of Humanities and Social Sciences, 2022,4(7): p.536-546

<sup>49</sup> ROB CORNELISSEN: *50 Years of European Social Security Coordination European*; Journal of Social Security, Volume 11 (2009), Nos.1–2

<sup>50</sup> *Tress-Network Short introduction to the European Coordination of social security schemes*; Accessed on 27.09.2022: <http://www.tress-network.org/TRESSNEW/PUBLIC/ELEARN/intro%20text%20e-learning.pdf>

work in another Member State does not lose his/her social security rights due to provisions applying in other social security systems. In addition, its goal is to prevent migrant workers from being treated unfairly in the field of social security in comparison with persons who have worked all their lives in one and the same Member State. Conversely, coordination, and European internal market law in general, do not apply in situations that are wholly confined within a single Member State.<sup>51</sup>

### 2. 3. Principles of Social Security Coordination

Five coordination principles are used in order to protect the social security rights of migrant persons and to remedy the problems created by the territoriality and diversity of national social security systems:

1st principle: *Determination of the applicable legislation*. In general, an employed or self-employed person is subject to the country of employment, even if he/she lives in another country. It is in this country that he/she has to pay contributions, and it will be this country's institutions that in principle, will pay the benefits. As with any rule, some exceptions are provided for.<sup>52</sup>

2nd principle: *Equal treatment or non-discrimination*. The Regulation provides that all persons to whom it applies enjoy the same rights and have the same obligations under the social security legislation of any Member State as the nationals thereof.<sup>53</sup>

3rd principle: *Aggregation of periods*. Through this principle, migrant workers can obtain certain benefits, regardless of changes or even interruptions in their international career.<sup>54</sup>

4th principle: *It is the right to preserve social security rights that one has acquired within the European Union*. The Regulation provides that “cash benefits payable under the legislation of one or more Member States or under this regulation shall not be subject to any reduction, amendment, suspension, withdrawal or confiscation on account of the fact that the beneficiary or the members of his/her family reside in a Member State other than that in which the institution responsible for providing benefits is situated”.<sup>55</sup>

---

<sup>51</sup> NICOLAS RENNUIY *The emergence of a parallel system of social security coordination* *Common Market Law Review* Volume 50, Issue 5 (2013) p. 1221 – 1266

<sup>52</sup> STEFANO GIUBBONI – FELICIANO IUDICONE – MANUELITA MANCINI – MICHELE FAIOLI: *Coordination of Social Security Systems in Europe, Study for the EMPL Committee* (2017) Accessed on 27.09.2022: [https://www.mobilelabour.eu/wp-content/uploads/2017/12/report-EMPL-Comm\\_Social-sec.-in-Europe\\_Nov.-2017.pdf](https://www.mobilelabour.eu/wp-content/uploads/2017/12/report-EMPL-Comm_Social-sec.-in-Europe_Nov.-2017.pdf).

<sup>53</sup> FRANS PENNING and GIJSBERT VONK: *Research Handbook on European Social Security Law* 2015. Accessed on 27.09.2022: <https://www.elgaronline.com/view/edcoll/9781782547327/9781782547327.00025.xml>

<sup>54</sup> YVES JORENS, FILIP VAN OVERNMEIREN: *General Principles of Coordination in Regulation 883/2004* *European Journal of Social Security*. 2009. Accessed on 27.09.2022: <https://journals.sagepub.com/doi/abs/10.1177/138826270901100103>

<sup>55</sup> JÓZSEF HAJDÚ: *Social Protection of (Im)Migrants by the EU Social Security Coordination Scheme* .. *Pravne teme*, 2017, 5(09): p.8-26

5th principle: *Good Administrative Cooperation*: It promotes good administrative cooperation among Member States' social security institutions to smooth the effective exercise of rights (and duties) conferred upon individuals by the regulations.<sup>56</sup>

#### 2. 4. LTC benefits coordination

Social security coordination is bound to build a supranational scheme upon the national systems, whatever benefits they provide. Naturally, coordination is much easier and far less complex if national social security schemes are similar and clearly structured. However, this could not be argued for LTC benefits. The risk of "dependency", or the "need for long-term care", or "reliance on care"<sup>57</sup> is among the new(er) social risks. As such, it still lacks a clear definition and clearly defined benefits on the national level.<sup>58</sup>

Long-term care benefits are not currently defined by Regulation 883 or by the Administrative Commission, which are currently covered by the coordination rules in the "Sickness benefits", but will be clearly defined and included in a new, separate part. However, the same coordination rules that are used for sickness benefits will continue to apply. Such a change could lead to significant disadvantages. The separation between sickness benefits and long-term care benefits would in fact, paradoxically, exclude certain situations that are currently covered by the rules on sickness benefits. Lead to a loss of rights and entitlements and create unnecessary obstacles to the free movement of persons. Create unnecessary obstacles to the free movement of persons within the EU.<sup>59</sup>

The LTC has three heavy obstacles to managing social security coordination: One of the great problems of LTC benefits is often their dispersion and location among benefits under traditional branches of social security. It is true that in some countries (DE, LU, ES) a particular branch for LTC benefits has already been created and defined. However, even in these countries and in many others, benefits may exist that hold some elements of LTCs, but at the same time share the goals or objectives of other benefits. The second significant issue for social security coordination is to categorize the LTC benefits under social security benefits or social assistance benefits. The core problem here is that the EU social security coordination system predominantly excludes social assistance and covers only social security type LTC benefits. The third problem which is important to mention is the differentiation of LTC benefits in cash and in kind.<sup>60</sup> In domestic legislations, the

---

<sup>56</sup> STEFANO GIUBBONI – FELICIANO IUDICONE – MANUELITA MANCINI – MICHELE FAIOLI: *Coordination of Social Security Systems in Europe, Study for the EMPL Committee* (2017) Accessed on 27.09.2022: [https://www.mobilelabour.eu/wp-content/uploads/2017/12/report-EMPL-Comm\\_Social-sec.-in-Europe\\_Nov.-2017.pdf](https://www.mobilelabour.eu/wp-content/uploads/2017/12/report-EMPL-Comm_Social-sec.-in-Europe_Nov.-2017.pdf).

<sup>57</sup> ECJ decisions in Molenaar (C-160/96), Para 3, or recently da Silva Martins (C-388/09), Para. 40.

<sup>58</sup> JORENS Y – SPIEGEL B – DE CORTAZAR C G, et al. *Coordination of Long-term Care Benefits-current situation and future prospects*. Think Tank Report, 2011.p. 9

<sup>59</sup> *Directorate General for Internal Policies Policy Department: Economic and Scientific Policy, Coordination of Social Security Systems in Europe* 2017. p.10. Accessed on 27.09.2022: <https://www.pubaffairsbruxelles.eu/opinion-analysis/coordination-of-social-security-systems-in-europe/>.

<sup>60</sup> Welfare policies, in general, are based on access to two types of services addressing social needs and termed 'in kind' or 'in cash'. Services in kind were first introduced in the Scandinavian countries to support working parents of small children with specific care needs, and access to services was considered universal as a citizen's right. At least since

same or similar LTC benefits are considered in kind in one country and in cash in others. In this sense, ECJ case law must be applied with regard to the distinction between benefits in kind and in cash, regardless of how these benefits are considered or recognised in domestic legislations (most recently case C-466/04, *Acereda Herrera*).<sup>61</sup>

### 3. Summary

The European Council has introduced the OMC procedure to facilitate the coordination of economic policy between member states, a principle agreed on in the European Treaties. Following its introduction, the Commission has set rules for using the OMC. This procedure is used mostly in policy areas such as education, employment, social policy, and medical care. Most of these are policy areas where the member states retain full national authority. The great differences between the EU Member States in terms of culture, history, welfare systems, and the development of long-term care (LTC) systems will inevitably cause some difficulties in implementing OMC. Several different approaches may have to be taken simultaneously in the different Member States. However, mutual learning between the Member States is valuable and can greatly assist in developing LTC, especially in countries with relatively poor welfare systems.

The main purpose of the European social security coordination system is to ensure that people who move within EU countries do not lose their social security rights as a result of eliminating the disadvantages that may arise from differences in the systems of member states. The coverage level and definition of the concept of long-term care are different among the EU Member States, and the protection of the rights of formal and informal caregivers (majority are women) in long-term care has not been well addressed so far, and when it comes to the free movement of long-term care workers, the identity and rights of workers are difficult to recognise and guarantee due to the differences in policies, regulations, and the perception of long-term care between the Member States. There are three main dilemmas that LTC benefit coordination has faced so far. Firstly, the definition of LTC is not always clear in the welfare states and may even be classified as part of health insurance or pension insurance. Secondly, the EU social security coordination system does not cover social assistance but only the social security type. Thirdly, the LTC benefit model is not uniform from country to country, with some countries providing benefits in kind and others in cash.

---

the 1970s, the rationale for supporting family members caring for disabled older people seemed similar. However, carers of older people most often belong to the 45/65-generation (sandwich generation) rather than to the 25/45-generation, and there is also a large group of older carers (65/80) retired from the labor market. As they face different problems, both groups need specifically designed policies and thus specific measures – cash benefits being one of them. (Source: JUDY TRIANTAFILLOU et. al.: *Informal care in the long-term care system, European Overview Paper*. Accessed on 27.09.2022: <https://www.euro.centre.org/downloads/detail/768>)

<sup>61</sup> YVES JORENS, BERNHARD SPIEGEL, CARLOS GARCIA DE CORTAZAR, JEAN CLAUDE FILLON, MAXIMILIAN FUCHS, GREGA STRBAN: *Coordination of Long-term Care Benefits - current situation and future prospects*. 2011 Accessed on 27.09.2022: [http://www.tress-network.org/EUROPEAN%20RESOURCES/EUROPEANREPORT/trESSIII\\_ThinkTankReport-LTC\\_20111026FINAL\\_amendmentsEC-FINAL.pdf](http://www.tress-network.org/EUROPEAN%20RESOURCES/EUROPEANREPORT/trESSIII_ThinkTankReport-LTC_20111026FINAL_amendmentsEC-FINAL.pdf)

CHEN MENGXUAN

## A TARTÓS ÁPOLÁSI ELLÁTÁSOK KÉTFÉLE KOORDINÁCIÓJA AZ EURÓPAI UNIÓBAN

(Összefoglalás)

Az Európai Unióban (EU) kétféle koordinációs mechanizmus létezik: az egyik a nyitott koordinációs mechanizmus (OMC), a másik pedig az EU szociális biztonsági koordinációs rendszere. A két rendszer között nincs kapcsolat vagy hasonlóság.

Egyrészt a nyitott koordináció módszere (OMC) az Európai Unió (EU) nem kötelező erejű (soft law) hagyományaiban gyökerezik, amit az Európai Tanács 2000. évi lisszaboni ülésén alakították át független kormányzási eszközzé, amelynek célja, hogy eszközként szolgáljon a tagállami szociális vonatkozású jó gyakorlatok megismerésére, terjesztésére és az EU fő célkitűzéseinek nagyobb fokú integrációjára.

A nyílt koordinációs mechanizmussal összefüggésben a tagállamok közötti kölcsönös tanulás (jó gyakorlatok megismerése) nagyon fontos a tartós ápolási rendszerek (LTC) fejlesztése során. A tagállamok eltérő gazdasági fejlettsége, történelme, kultúrája és jóléti rendszerei közötti különbségek országspecifikus megközelítéseket tesznek szükségessé az LTC-re vonatkozó szakpolitikák kidolgozásához és végrehajtásához.

Másrészt az EU szociális biztonsági koordinációs rendszere nem a különböző nemzeti szabályozások harmonizálására, hanem egy közös (szupranacionális szintű) európai szociális biztonsági rendszer létrehozására irányul. Alapvető célja, hogy az Európán belül szabadon mozgó személyek ne veszítsék el szociális biztonsági jogaikat a migráció következtében.

A tartós ápolási ellátások szociális biztonsági koordinációja három alapvető dilemmával szembesül: 1. az LTC tisztázatlan meghatározása, 2. nem megfelelő védelmi rendszer és 3. tagállamonként eltérő, nem konzisztens ellátási modellek.

A tanulmány a két koordinációs rendszer sajátosságainak bemutatásán túl a tartós ápolásra vonatkozó speciális normatív és néhány esetjogi szabályozás alapjait tekinti át.