EU coordination of social security from the point of view of EU integration theory

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Abstract
This article comprises a study of the negotiation of the Commission’s proposal for amending Regulation (EC) No 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 in the context of EU integration theories. This analysis is used to argue that the current integration stage in the coordination of social security is a complex phenomenon which displays elements of intergovernmentalism, neo-functionalism and post-functionalism. The negotiation process highlights the disagreements between the key players which may have important consequences for the future of EU regulation in the area of coordination of social security. The article concludes that the signs of intergovernmentalism are prevalent, as evident in the attention the Commission has given to the concerns of the Member States, the negotiating position of the Council, and the vote of the European Parliament which failed to approve the proposal at the first reading. This prevalence has led to a pause in the reform of the coordination regulations and may eventually lead to compromises that will weaken the progress of integration in the future. At the same time, the article argues that the theory of post-functionalism is important in explaining the phenomenon of Brexit with regard to the UK’s position in the negotiation of the Commission’s proposal and its future relevance for UK and EU citizens affected by the UK’s departure from the EU. The article concludes that disintegration along the lines of post-functionalism should not prevent the reintegration of the UK into the EU coordination of social security schemes, but may reinforce the prevalence of intergovernmentalism.

Keywords
EU coordination of social security, EU integration theory, revision of social security regulations, free movement, social security benefits

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I. Introduction

EU citizens live in a single working-living space where they can move to live, work or retire in a Member State other than their state of origin. EU integration and cross-border coordination of social security are essential so that persons are not disadvantaged with regard to social security entitlements when they move. The process of integration in the regulation of cross-border social security is affected by the need to balance the rights of EU citizens; the objective of facilitating labour mobility; and the legitimate interests of the Member States who have exclusive responsibility for national social security systems. The rules that define this coordination are adopted at EU level and are regularly updated to adapt them to the changing working and living conditions of EU citizens.

In its resolution of 14 January 2014 on social protection for all, including self-employed workers, the European Parliament called on the Commission to review legislation and monitor the implementation and coordination of social security systems in order to safeguard EU migrant workers’ entitlement to benefits. The current revision of EU Regulations on the coordination of social security schemes has been prompted by, among other factors, the need to guarantee a fair sharing of social security costs between Member States.

On 13 December 2016, the European Commission submitted its proposal for amending Regulation (EC) No 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004. The revision sought to clarify the circumstances in which Member States can limit access to social benefits claimed by economically inactive EU mobile EU citizens. It also sought to establish a coherent regime for the coordination of long-term care benefits by introducing a separate chapter for their coordination in Regulation (EC) No 883/2004 and by including a definition and a list of those benefits, proposing new arrangements for the coordination of unemployment benefits in cross-border cases, establishing new provisions for the coordination of family benefits, and clarifying the conflict rules on applicable legislation and the relationship between the Regulations and Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

What does the current reform of coordination regulations mean for the integration process and the future development of EU social security law? This article aims to apply theories of EU integration to the coordination of social security with a particular focus on problems raised in the course of the current revision of EU regulations on the coordination of social security schemes. The objective of this the article is to analyse and explain the negotiation of the Commission’s proposal for amending the regulations on coordination of social security systems from the perspective of EU integration theories. While integration theory has been extensively discussed by EU law scholars, particularly in the studies of the constitutional aspects of the EU, the analysis of integration in the area of social security does not immediately call for the application of grand theories. What can we learn from integration theories that we could not discover by simply following the process of reforming the coordination regulations? Integration in the area of social security is part of the

1. European Parliament resolution of 14 January 2014 on social protection for all (2013/2111(INI)) OJ [2016] C482/48.
2. COM(2016) 815 final.
3. See Curtin (1993: 17), Goebel (2013: 77), Maduro (2017), Majone (2017: 26), Mitrany (1965), Weatherill (2000: 18), Weiler (1981), Weiler (1991), Weiler (2011: 678).
larger EU integration process and EU integration theories should therefore be applied to shape the structure of analysis and interpret integration in the coordination of social security.

Our analysis opens with an outline of the leading EU integration theories (intergovernmentalism, neo-functionalism and post-functionalism) and explains their role as an analytic tool in this investigation. This is followed by a critical discussion of the rationale for, and the process of negotiation of, the Commission’s proposal in the light of integration theories. The final part of the article focuses on the analysis of the disintegration process represented by Brexit with a view to identifying possible pathways for reintegration from the point of view of integration theories.

The fusion with integration theories helps explain the current reform, and the negotiation of the Commission’s proposal in particular, in a systematic way as a complex phenomenon which displays elements of intergovernmentalism, neo-functionalism and post-functionalism. The article concludes that due to the fragmented system of decision making coupled with the absence of a single leading force, the integration process in the area of social security is torn apart by competing key actors in different directions and has a rather unpredictable future.

2. EU integration theories as a tool of analysis

The importance of progressive integration for the EU is reflected in the Treaty on the European Union, which emphasises the resolution of the Member States that signed it in Maastricht on 7 February 1992 to: (1) mark a new stage in the process of European integration undertaken with establishment of the European Communities, (2) continue the process of creating an ever closer union among the peoples of Europe, and (3) take further steps in order to advance European integration. However, the regulation of social security systems in the EU has taken the form of coordination rather than harmonisation since its earliest stages in 1958 when Regulation 3 was created for that purpose. Where does this put the regulation of social security in terms of EU integration theories? Before undertaking an assessment of the current stage of progress in this area, the article sets out the theoretical framework of analysis with reference to the leading EU integration theories: neofunctionalism, intergovernmentalism and post-functionalism.

2.1 Neofunctionalism

Neofunctionalism is deeply influenced by two theories – pluralism and functionalism. From democratic pluralism and the work of Dahl, neofunctionalism developed the idea that government could be disaggregated into its component group actors. Instead of making assumptions about the interests of states, as classical realists had done, neo-functionalists conceptualise the state as an arena in which societal actors operate to realise their interests. Neofunctionalism takes on the functionalist idea of transferring competence from national to supra-national level and Jean Monnet’s ‘spill over’ argument. According to the principal theorist of neofunctionalism Ernst Haas, integration is a process ‘whereby political actors in several distinct national settings are

4. OJ [2012] C326, 13.
5. OJ [1958] 30 of 16 December 1958. A detailed commentary on this matter is presented in Pennings (2015). See also Cornelissen and Wispelaere (2020: 146).
6. Schmitter (2005: 256).
7. Dahl (1961).
8. Hooghe and Marks (2019: 1114). See also Hooghe and Marks (2018).
persuaded to shift their loyalties and activities towards a new centre, whose institutions possess or
demand jurisdiction over the pre-existing national states. As integration thus acquires a dynamics
of its own, more and more national elites (both governmental and non-governmental) re-direct
their energies towards the emerging supranational organisation. At the same time, while function-
alists argue that the only feasible way to bypass state sovereignty is by transferring specific state
functions to specialised international agencies, neo-functionalists emphasise the potential for
deeper and broader governance at the regional level. Neo-functionalism emphasises the role
of non-state actors – especially, the ‘secretariat’ of the regional organisation involved and those
interest associations and social movements that form at the level of the region – in providing the
dynamic for further integration. In democratic and pluralistic representation, national governments
find themselves increasingly entangled in regional pressures and end up resolving their conflicts by
conceding a wider scope and devolving more authority to the regional organisations they have
created. Eventually, their citizens shift more and more of their expectations to the region and
satisfying them increases the likelihood that economic-social integration will ‘spill-over’ into
political integration. Regional bureaucrats, in league with a shifting set of self-organised interests
and passions, seek to exploit the inevitable ‘spill-overs’ and ‘unintended consequences’ that occur
when states agree to assign some degree of supra-national responsibility for accomplishing a
limited task and then discover that satisfying that function has external effects on other of their
interdependent activities.

The EU is a unique form of union in which the Member States remain independent nations
while pooling their sovereignty in many areas of common interest. Very early, the European
Court of Justice established the importance of the principle of supremacy according to which the
European Community:

‘constitutes a new legal order of international law for the benefit of which the states have limited their
sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member
States but also their nationals.’

As a supra-national entity, The European Union takes inter-state relations beyond cooperation into
integration, which involves some loss of national sovereignty. In particular, it involves a
decision-making forum that stands above the nation state, being bound by majority decisions, and
the loss of the right to veto. There used to be a time when neo-functionalism dominated the field of
European integration theory, but the ‘empty chair crisis’ of the 1960s and 1970s demonstrated that
spill over was not automatic, that supranational institutions could be defeated and that loyalties
remained very much with the nation-state. This questioned the credibility of neofunctionalism and
Haas declared his own theory ‘obsolescent.’ However, neofunctionalism made a comeback with
signing the Single European Act in 1986 and the subsequent string of Treaties that broke the
decision-making deadlock. Evidence of this can be seen in the constitutional changes in decision-

9. Haas (1958: 16).
10. Ibid.
11. Schmitter (2003),
12. Weiler (1981). See also Leal-Arcas (2007).
13. Case 26/62 Van Gend en Loos [1963] ECR 1. See also Case 6/64 Costa v ENEL [1964] ECR 585 and Case C-11/70,
Internationale Handelsgesellschaft [1970] ECR 1125.
14. Nugent (2003: 475).
15. See Haas (1975).
making on matters of social security, weakening the power of Member States to block the majority opinion. The Treaty of Amsterdam\(^\text{16}\) extended the co-decision procedure introduced by the Maastricht Treaty\(^\text{17}\) to coordination of social security, which meant that the coordination of social security regulations could not be adopted or amended without the consent of the Parliament, albeit with the caveat that the co-decision procedure under Art. 42 EC (the basis of social security coordination regulations) was combined with a requirement for a unanimous decision in the Council. This was changed by the Treaty of Lisbon\(^\text{18}\) which removed the requirement of unanimity from the legislative acts on coordination of social security that are now adopted under Art. 48 TFEU. Pennings has commented that this development means that the only possibility for a dissenting Member State to influence decision making is to use the negotiating period and appeal to the European Council.\(^\text{19}\) This legislative development suggests that the period of the demise of neo-functionalism is over. Moreover, it should be considered in the wider context of the calls for further integration to prevent disintegration following the economic crisis of 2008.\(^\text{20}\)

At the same time, due to the sensitivity of the area of social security, neo-functionalism with its emphasis on supranationalism can be associated with the drift of European integration towards adoption of policies that are not supported by Union citizens.\(^\text{21}\) Also, supranationalism has been criticised for the inability to explain disintegration trends during crises thereby revealing the dichotomy of legal evolution and political erosion.\(^\text{22}\) These aspects are discussed in this article with regard to the reform of social security coordination. Nevertheless, it is hard to disagree that neo-functionalism offers a causal explanation of the development of EU institutions and the expansion of their authority. Until a new theory can explain the institutional powers and interaction better, it will remain a theoretically viable and empirically productive general theory of European integration.\(^\text{23}\) It will therefore be used in the second part of this article to analyse the position of EU institutions in the negotiation of the Commission’s proposal. At the same time, the central argument of neofunctionalism regarding the consistently strong position of EU institutions \textit{vis-à-vis} Member States will be tested.

2.2 Intergovernmentalism

In contrast to federalism, functionalism and neo-functionalism, intergovernmentalism brings the nation-state to the centre of analysis. It describes a level of integration in which Member States are free to cooperate or refuse to cooperate with each other and are able to set the level of cooperation. Hoffmann argued that integration might work very well in the realm of low politics (i.e. economic integration) but encounters impermeable barriers if it attempts to spill over into questions affecting key national interests.\(^\text{24}\) The same applies to supranational institutions. Member States still consider some (high policy) areas like social security to be theirs. If supranational institutions are seen

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16. Signed in Amsterdam on 2 October 1997.
17. Signed in Maastricht on 7 February 1992.
18. OJ C 115/1 of 9 May 2008.
19. Pennings (2010: 14).
20. See Cooper (2011), Dunn (2012), Sandholtz and Stone Sweet (2012).
21. For the detailed discussion of democratic deficit, see Follesdal and Hix (2005), Hix (2018).
22. Joerges (1994: 3).
23. Sandholtz and Stone Sweet, n. 20 above.
24. Hoffmann (1966).
to infringe on those, they would not hesitate to curtail their competencies. The basic point made by intergovernmentalists is that European integration tends to flourish where positive outcomes for all can be guaranteed, but will stall once the national interests of one or more countries directly contravene those of others.

Intergovernmentalism reached its peak in the 1970s when the failure to get any further with political integration seemed to confirm most of its premises. That phase of integration did not involve a significant transfer of sovereignty to EU institutions and was characterised by the availability of the right to veto the decisions of the majority. Yet, like neo-functionalism, intergovernmentalism was soon confronted by events that did not fit its theoretical framework. How was it possible that, with the creation of the European Monetary Union and the European Common Foreign and Security Policy, states ‘willingly surrendered control over issues of central importance to national sovereignty’?

In response to the new developments in EU integration of the 1990s, Andrew Moravcsik formulated the concept of ‘liberal intergovernmentalism’ which emphasises the complexity of how national interests are formed. First, at the domestic level, various interest groups compete in order to influence national preference formation in integration. Then, the outcomes of these struggles go on to inform the positions taken by governments in interstate bargaining. Finally, if governments fear that the resulting agreement will not be lived up to by the other parties, they will favour the transfer of sovereignty to supranational institutions that are better placed to force compliance. But the position of states vis-à-vis supranational institutions will always remain strong, as interstate bargaining occurs in a situation in which government leaders often know more about each other’s preferences than the out-of-touch supranational institutions. According to Moravcsik, individual governments control the speed of integration within the European Union because any increase in the power of the supranational institutions results from a direct decision of national governments.

In the area of coordination of social security, it is common to find elements of both neofunctionalism and intergovernmentalism. According to Nugent, no structure in the EU is perfectly intergovernmental or supranational and different institutions can be more or less intergovernmental or supranational at different points. This includes the Commission which can lead the Member States or, sometimes, follow the lead of the Member States. This approach is employed in the second part of this paper to analyse the balance of powers between Member States and EU institutions in the revision of the social security coordination.

2.3 Postfunctionalism

The focus on progressive integration led to suggestions that the theoretical arguments of neofunctionalism and liberal intergovernmentalism are ill-equipped to go into reverse and cannot
explain the current disintegration tendencies within the EU. Postfunctionalism takes integration theory one step further to assert that integration encompasses disintegration. Firstly, postfunctionalism emphasises the disruptive potential of a clash between functional pressures and exclusive identity. This approach is rooted in comparative research on identity and domestic contestation, and the reconfiguration of the state to obtain the benefits of providing public goods at various levels ranging from the local to the national and the international level. Secondly, it takes into account the arena in which decision making takes place. This can either take place among government leaders, civil services, EU institutions, and interest groups or enter the arena of mass politics where it is subject to mass media, political parties, social movements and government coalitions. The extent of this depends on the saliency of the issue, and more importantly, on the capacity of contending actors to politicise an issue that would, by default, be negotiated in a conventional elite setting.

Postfunctionalism pays detailed attention to the arena in which an issue is debated because it affects the nature of conflict. Mass politics exemplified in elections, referendums, and party primaries opens the door to the mobilisation of national identity as a constraint on integration. Postfunctionalism focuses on the causes and effects of politicisation. It claims that there is a mismatch between the institutional status quo and the functional pressures for multilevel governance that arise from interdependence. European integration is one aspect of a broader phenomenon. Drawing on the behavioural literature on the strategic interaction of political parties, the dimensionality of party competition, and voter choice, it focuses on how European integration shapes the structure of political conflict. To the extent that European integration activates identity issues relating to the reconfiguration of the state, it disrupts established party systems, gives rise to new radical left and radical nationalist parties, and constrains supranational problem solving. This results in polarising societies on a cultural divide that takes the form of a durable socio-political cleavage that leads to protectionism by Member States and the of weakening integration or even disintegration (Brexit). For the purposes of analysing integration in EU social security regulation, postfunctionalism is an important theory that can be utilised to explain tendencies towards disintegration in regard to the Member States’ concerns over the real and perceived threats to the national welfare state. It can also be used to explain the rationale that informs the Commission’s proposal on the revision of social security coordination regulations and to analyse the disintegration aspect of Brexit with regard to the future of social security regulation.

Although neofunctionalism, intergovernmentalism and postfunctionalism can be seen as competing theories, they emerged at different stages of EU integration as conceptual frameworks of analysis that provided answers to questions arising in a particular political, economic and social context. Hooghe and Marks convincingly argue that they complement each other by offering explanations for different phases and different aspect of EU integration. This approach informs our analysis of integration in the context of the current revision of the social security regulations.

32. Jones (2018: 440).
33. Hooghe and Marks (2009: 12–14).
34. Marks (2012).
35. Hooghe and Marks (2018), Kriesi. Grande, Lachat, Dolezal, Bornscheir and Frey (2006).
36. Hooghe and Marks (2019: 1128).
The next section analyses the negotiation process of the Commission’s proposal for the review of social security coordination regulations with a view to testing the assumption that a combination of neofunctionalism, intergovernmentalism and postfunctionalism may be required to explain the different aspects of interaction between the key actors (the EU institutions, Member States and NGOs). This deconstruction is a necessary stage for understanding the current phase of integration as a whole phenomenon.

3. The revision of coordination of social security regulations in the light of EU integration theories

3.1. Public consultation and the role of non-governmental stakeholders

The theory of liberal intergovernmentalism argues that the EU integration is influenced by the interests formed by different groups at the national level. According to Moravcik, various interest groups compete in order to influence national preference formation in integration by shaping the national governments’ position in the EU bargaining. However, neofunctionalism also emphasises the role of non-state actors and their involvement in shaping policy at the regional level. What can be observed in the preparation of the Commission’s proposal is a neofunctionalist strategy of building a direct bridge between national interest groups and EU institutions bypassing national governments and allowing the Commission to lead the reform.

On 15 July 2015, the Commission launched a public consultation that was open to individuals and organisations and remained open for 12 weeks (until 7 October 2015). Participation in the consultation would allow national interest groups to channel their views directly to the supranational level. Within the consultation, citizens (individuals and organisations) were also able to make general remarks on cross-border coordination and the payment of social security benefits and/or make proposals for future consultations. The consultation consisted of three parts. One was dedicated to the coordination of family benefits, another one to the coordination of unemployment benefits and the last one to the coordination rules on posting. However, the effectiveness of the consultation as a representative forum was undermined by the absence of responses from a large number of Member States. No replies were received from Bulgaria, Croatia, Cyprus, Estonia, Iceland, Ireland, Lithuania, Malta, Norway and Switzerland. Due to the problems of representativeness, the meaningfulness of engagement of national interest groups at the regional level in the public consultation was undermined. Although the combination of elements of neofunctionalism and liberal intergovernmentalism seemed promising and could have brought EU decision making closer to those who would be affected by the review of the coordination regulations, it was not completely successful.

Later contribution to the discussion of the Commission’s proposal was made by the European Economic and Social Committee (EESC), an advisory assembly composed of the ‘social partners’, namely: employers (employers’ organisations), employees (trade unions) and representatives of various other interests. The creation of this committee allowed their voices to be heard by the European Commission, the Council and the European Parliament. It is mandatory for the

37. Moravcsik and Schimmelfennig, n. 29 above.
38. Haas (1958: 16), n. 9 above.
39. Berki (2016).
40. Ibid., 30-34.
Committee to be consulted on issues stipulated in the Treaties and in all cases where the institutions deem it appropriate. On 5 July 2017, EESC delivered its opinion on the Commission’s proposal reflecting the views of employers and employees. Its conclusions reflected a range of stakeholders’ interests, for example, the report insisted that the proposal for a new Regulation on the coordination of social security systems should be aimed at facilitating the movement of jobseekers and workers, not restricting it. At the same time, it claimed that the aim of the revision of the regulations was to achieve a fair balance between home and host countries. In addition, it argued that harmonisation of social security schemes in terms of greater convergence of benefits, aggregation and activation would help to improve and facilitate the coordination of social security systems.

The role of the EESC, as a pathway of integration by engaging participation from citizens, was strengthened by the Lisbon Treaty. The European Parliament’s opinion on the Commission’s proposal was clearly influenced by the EESC’s position. In particular, the Parliament noted the position of EESC, as a stakeholder, on the question whether codification of the European Court of Justice on restrictions of access to social security benefits for economically inactive persons was in line with the right to EU citizenship as well as with the Charter of Fundamental Rights, notably with regard to the right to human dignity (Article 1), the right to social security and social assistance (Article 34), and the right to healthcare (Article 35).

From the point of view of integration theories, due to its design as a bridge between Europe and organised civil society, EESC sits somewhere between neofunctionalism and liberal intergovernmentalism. On the one hand, its composition (representing the social partners) could refer to the influence of NGOs on integration within liberal intergovernmentalism, but on the other hand, its permanent status and EU funding meant that it could be properly defined as an influential EU body. In effect, the EESC allowed the social partners to channel their interests and views on the review of coordination of social security through the EU structures, rather than by putting pressure on the Member States’ governments at the national level.

The public consultation and discussion of the Commission’s proposal by the EESC show that the EU mechanism of decision making leans towards neofunctionalism by concentrating the power of decision making in the hands of strong institutions while acknowledging that the nation state is ‘an arena in which social actors operate to realise their interests.’ The public consultation and the contribution of the EESC are mechanisms through which interest formation at the national level has been linked to interest satisfaction at the supra-national level. If the social partners, citizens and NGOs can satisfy their concerns and interests in social security matters at the EU level and feel a direct connection with the EU institutions, then more social and political integration might become possible. Yet, the weakness of engagement in the public consultation and the sui generis nature of EESC as a permanent advisory assembly does not eliminate the possibility of Member States claiming that protection of the interests of their citizens, NGOs and social partners can be better delivered through the mechanism of intergovernmentalism.

41. SOC/557-EESC-2017-01461-00-00-ac-tra.
42. Art. 304 TFEU. See also https://www.euractiv.com/section/social-europe-jobs/news/eu-advisory-committee-defends-its-role-against-critics/
43. Coordination of Social Security Schemes in Europe IP/A/EMPL/2017-03. (European Parliament, Directorate General for Internal Policies, 2017), available at: http://www.europarl.europa.eu/studies, 29-35.
44. Haas (1958: 16), n 9 above.
3.2. The negotiation process: is there a united vision of integration?

The negotiation process of the Commission’s proposal was dominated by disagreements between the key actors (The Commission, the Council and the European Parliament). Three tendencies can be seen in the negotiation process as discussed below.

3.2.1. The dominance of intergovernmentalism. There was a clear disagreement between the Commission (the executive/neofunctionalist body), the Council (the intergovernmental body) and the European Parliament (a hybrid neofunctionalist/cross-national organisation of political groupings\(^\text{45}\) as to how the reform of the coordination regulation should proceed on a number of points that are discussed in detail in other contributions to this Special Issue. We focus here on the analysis of the development of interaction between the institutions and the current outcome of the negotiation. The European Commission presented its proposal for the reform of the new Regulations on 13 December 2016.\(^\text{46}\) At the European Parliament, the file was assigned to the Committee on Employment and Social Affairs (EMPL). On 10 November 2017, the EMPL Committee published its draft report, which stressed its disagreement with the Commission’s proposal on the export of unemployment benefits and applicable legislation. The European Economic and Social Committee adopted its opinion on 5 July 2017, and the Committee of the Regions on 12 July 2017. The EMPL Committee report was adopted on 20 November 2018.\(^\text{47}\) On 23 November 2018, the report was tabled for plenary. On 11 December 2018, the plenary confirmed the decision to enter into interinstitutional negotiations in which the French MEP Guillaume Balas was given the mandate to negotiate in the name of the Parliament within the tri-institutional meetings.

In the Council, the file was discussed by the Social Questions Working Party on 6 June 2017. The main issues were derogation from the fundamental principle of equal treatment as regards economically inactive mobile citizens on social benefits, as well as the codification of the existing case law. On 11 October 2017, the Committee of Permanent representatives confirmed the general understanding that no codification of CJEU case law was the best way forward. At the EPSCO Council meeting on 7 December 2017, the Council reached a partial agreement on its general approach to the regulation on the coordination of social security systems which covered the chapters on long-term care benefits and family benefits. The topic was discussed at several sessions of the Working Party on Social Questions. On 21 June 2018, the EPSCO Council agreed its negotiating position (general approach).\(^\text{48}\)

On 15 January 2019, the very first trilogue meeting on the revision of Regulations 883/2004 and 987/2009 was held. It was hoped that agreement would be reached by February 2019, however, the this did not materialise. A provisional agreement was reached between the Council Presidency and the European Parliament, but it was rejected at the Coreper meeting on 29 March 2019. This showed that the ministers negotiating on behalf of national governments could effectively block

\(^{45}\) Cygan (2013: 10).

\(^{46}\) COM(2016)815 final.

\(^{47}\) Report on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004(COM(2016)0815 – C8-0521/2016 – 2016/0397(COD)) of 23 November 2018, A8-0386/2018.

\(^{48}\) Council of the European Union General Approach, 2016/0397 (COD), Brussels 26 June 2018.
the legislative progress. Unusual alliances were formed in a display of different social and economic interests of the respective Member States, depending on work and migration patterns. Austria, Belgium, Czech Republic, Denmark, Germany, Luxembourg, the Netherlands and Sweden banded together to block it from reaching the qualified majority needed for approval. Hungary, Malta and Poland abstained.\textsuperscript{49} The Coreper decision emerged as a triumph of intergovernmentalism and Moravcsik’s opinion that individual governments can control the speed of integration within the European Union, because any increase in the power of the supranational institutions comes from a direct decision of the governments.\textsuperscript{50}

National interests also led to the divisions between the MEPs. On Thursday, 18 April 2019 the work on revision of the Social Security Coordination regulations was paused as, on the very last day of its last plenary session, the European Parliament decided that the vote on the revision of the Regulations 883/2004 and 987/2009 would not take place within the term of the 8th Parliament.

The subject of the vote was not meant to be the so-called ‘preliminary agreement’ of the EU institutions because no agreement has been reached among the Member States in the Council as to its final shape. The Parliament therefore decided to vote on a report drawn up by Guillaume Balas, and over a few dozen ‘last minute’ amendments tabled in the week preceding the vote. There were concerns that the text contained certain provisions that were intended to put the protection of insured persons above the interests of the Member States, contrary to the Commission’ proposal, and that what actually mattered was voting the report through at all costs at first reading, just before the May Parliamentary elections, without any in-depth analysis of the consequences of the provisions contained in it.

The Parliament rejected a speedy neofunctionalist approach of the Commission in a short debate before the start of the vote. The Belgian MEP Helga Stevens proposed, on behalf of the ECR faction (European Conservatives and Reformists), a motion based on Art. 190(4) of the Rules of Procedure of the European Parliament to postpone the vote on the report by Balas. According to Stevens, the vote would only highlight the division in the Parliament in the last parliamentary session. A small majority of seven with six abstentions accepted the proposal.\textsuperscript{51}

The neofunctionalist approach returned as, on Tuesday, 3 September 2019, hearings and debates regarding revision of the Regulations on Coordination of Social Security Systems 883/2004 and 987/2009 were held. Two separate meetings took place within the EMPL Committee and, in the presence of two key officials (Joost Korte, the Dutch General Director of EMPL and Commissioner Marianne Thyssen). The exchange of views with Commissioner for Employment, Social Affairs, Skills and Labour Mobility was followed by a gathering of the coordinators of political factions who unofficially decided that work should be continued on the basis of the existing compromise.

There was a certain pressure within the Commission to close the dossier as soon as possible. Commissioner Thyssen recalled that coordination of EU social security systems was a \textit{sine qua non} element for EU labour and service mobility, and without it, the free movement of people and services would not be possible. It was noted that the preliminary agreement reached by the Romanian Presidency in March 2019 meant that only two chapters were still not fully agreed. The first one concerned the applicable legislation and the second one, unemployment benefits for

\textsuperscript{49} See Herszenhorn (2019).

\textsuperscript{50} Moravcsik (2002), n. 30 above.

\textsuperscript{51} See Rios (2019).
migrant and cross-border workers. As both meetings have shown, swift completion of the revision was a priority for the majority of the EMPL Members. However, this pressure was not felt among officials of the Finnish Presidency.

As a result, the balance shifted to intergovernmentalism. During hearings and debates, three options were discussed: first, starting work from scratch in line with the principle of discontinuity of work in the European Parliament – a draft not adopted in a given term of office falls, unless the Conference of Presidents decides otherwise; second, proceeding on the basis of Guillaume Balas’ report of 11 December 2018; and third, working on the basis of the initial agreement of the EU institutions, adopted on 19 March 2019.

Whilst the newly appointed rapporteur Bischoff (Germany, S&D) shared the optimistic assessment of Commissioner Thyssen, shadow rapporteurs Lenaers (EPP, the Netherlands) and Rafalska (ECR, Poland) voiced a more reserved opinion highlighting the differences between Member States.52 After the exchange of views with Commissioner Thyssen, a meeting of coordinators of political factions took place. It was decided that the EMPL Committee would recommend, on behalf of the European Parliament, to work on the revision on the basis of the preliminary agreement of the EU institutions of 19 March 2019, as approved by a decision of Conference of Presidents which represents respective factions in Parliament. Some of the debaters indicated that this solution would be the most advantageous in terms of the quality of legislation, because the text of this agreement contained the highest number of solutions that had already been agreed among the institutions. According to the decision taken at the October Plenary 2019, the text became a part of the unfinished business to be carried over.53

The development of the negotiation of the Commission’s proposal shows an interesting mixture of elements of neofunctionalism and intergovernmentalism. Ultimately, as far as the progress of the proposal is concerned, the disagreements between the institutions can be represented by the opposition between these two approaches to integration. The position of the intergovernmental body, the Council, and especially the decisive impact of Coreper decisions, indicates that, at least at this stage, intergovernmentalism had been dominant. Yet, another implication of the failure to reach an agreement may be that intergovernmentalism can continue to define the speed and the direction of the reform and, without clear single vision of integration between Member States, will lead to compromises. This in turn can mean that achievement of the objectives of the reform of coordination of social security regulations could not be guaranteed.

3.2.2. The EU institutions: the labels and the blurred boundaries between neofunctionalism and intergovernmentalism. Although it would be convenient to put labels on the EU institutions as representing neofunctionalism (the Commission) and intergovernmentalism (the Council) with the European Parliament’s *sui generis* position, the negotiation of the Commission’s proposal shows that the boundaries can be rather blurred.

The Commission was open to, among other objectives, a fair and equitable distribution of the financial burden among the Member States as a central proposition in its proposal.54 Yet, this has

52. *Ibid.*
53. *Ibid.*
54. Explanatory Memorandum, COM(2016) 815 final, 2.
always been one of the benchmarks against which Regulation 883/2004 is assessed. The complexity of how the Member States can influence the EU institutions can be seen in the controversial proposal for the alignment of Regulation 883/2004 with the restrictions on access to social assistance for economically inactive persons, under Art. 24(2) of Directive 2004/38, and codification of CJEU judgments in *Brey*\(^{55}\), *Dano*\(^{56}\), *Alimanovic*\(^{57}\) and *Commission v UK*\(^{58}\) to that effect.

It is a fundamental change that, in its case law, the Court has shifted its focus from the general provisions of the Treaty on EU citizenship, and in particular Art. 21 and 18 TFEU\(^{59}\) to the provisions of Directive 2004/38 which lay down limitations and conditions of the right to free movement and residence, according to Art. 21(1) TFEU. As the Court stated in *Dano*, to accept that persons who do not have a right of residence under Directive 2004/38 may claim entitlement to social assistance under the same conditions as those applying to nationals of the host Member State would run counter to an objective of the directive, set out in recital 10 in its preamble, namely preventing Union citizens who are nationals of other Member States from becoming an unreasonable burden on the social assistance system of the host Member State.\(^{60}\)

Many commentators have criticised the change in the direction in the case law as representing a ‘clearly restrictive judicial approach’,\(^{61}\) a ‘reactionary phase’,\(^{62}\) and a ‘pre-Rome’ stage,\(^{63}\) and have pointed out that the restrictions on access to benefits should be interpreted narrowly.\(^{64}\) At the same time, others have expressed criticism of the previous expansive approach of the court, highlighting the lack of legitimacy of judicial activism and pointing out that the Court’s early jurisprudence on Union citizenship was characterised by the absence of a convincing methodology and the tendency to interpret secondary Community law against its wording and purpose.\(^{65}\) As Dougan has pointed out, over-ambitious or prematurely ambitious articulation of Union citizenship could be mismanaged to the detriment not only of the EU’s quest for greater popular acceptance but also for inherited networks of social solidarity that provide the cornerstone of the national welfare state.\(^{66}\)

Was the Commission’s proposal to align Regulation 883/2004 with the restrictions on access to social assistance for economically inactive persons driven by the Member States in as much as the Court’s approach in *Dano* and *Alimanovic* might have been influenced by political factors? This would indicate a strengthening of the liberal intergovernmentalism model in the direction and the degree of integration.

Research shows that, in the national context, migration became highly politicised as migration flows increased in the early 2000s with EU enlargement, followed by the financial crisis 2008.\(^{67}\)

\(^{55}\) Case C-140/12 *Brey*, Judgment of 19 September 2013, EU:C:2013:565.

\(^{56}\) Case C-333/13 *Dano*, Judgment of 11 November 2014, EU:C:2014:2358.

\(^{57}\) Case C-67/14, *Alimanovic*, Judgment of 15 September 2015, EU:C:2015:597. See also Case C-299/14 *Garcı´a-Nieto*, Judgment of 25 February 2016, EU:C:2016:114.

\(^{58}\) Case C-308/14 *Commission v UK*, Judgment of 14 June 2016, EU:C:2016:436

\(^{59}\) Case C-85/96 *Martı´ nez Sala* [1998] ECR I-2691, Case C-456/02 *Trojani* [2004] ECR I-7573, Case C-184/99 *Grzelczyk* [2001] ECR I-6193.

\(^{60}\) *Dano*, para 50 of the judgment.

\(^{61}\) NicShuibhne (2015), Thym (2015).

\(^{62}\) Spaventa (2017).

\(^{63}\) O’Brien (2016).

\(^{64}\) Verschueren (2015).

\(^{65}\) Golynker (2005), Hailbronner (2005: 1251).

\(^{66}\) Dougan (2009: 187).

\(^{67}\) European Commission (2014), Eurofoundation (2014).
and hostile attitudes grew towards migration, as a real or perceived threat to the welfare state.\textsuperscript{68} There was also a correlation of public attitudes and the media coverage of migration between 2004-2016, with the constantly and predominantly negative statements that peaked in 2013 and 2014.\textsuperscript{69} Blauberger et al claim that the Court’s turnaround in \textit{Dano} was closely paralleled with the public debate and that the Court was being responsive to its environment.\textsuperscript{70} Moreover, before deciding its next case, \textit{Alimanovic}, the Court was informed by the Advocate General in his Opinion about ‘the unusual stir that Court judgment [Dano] had caused in the European media and all the political interpretations that have accompanied it...’\textsuperscript{71}

The above analysis suggests that that the influence of national politics could have been considerable in the drafting of the Commission’s proposal. Yet, this cannot be definitely proven because the Commission justified its approach by the need to codify the case law of the European Court of Justice which aligned Regulation 883/2004 with Art 24(2) of Directive 2004/38, and held that Member States have the right to restrict access to certain benefits for economically inactive migrants.\textsuperscript{72} Only the broader socio-political context indicates the influence of public debate on the case law of the Court and \textit{ipso facto} on the rationale of the Commission’s proposal. Yet, the negotiation of the Commission’s proposal shows that, in the model of intergovernmentalism, when the Member States need to adopt a common approach, they may deliver decisions that differ from those favoured at the national level. Both the Council and the Parliament rejected the Commission’s proposed codification of European Court of Justice case law relating to the right of Member States to restrict access to certain benefits for economically inactive migrants and the additional ‘right of residence’ test to assess unemployed EU nationals’ right to receive certain non-contributory benefits.

While the Commission focused in its proposal on the need to protect Member States against welfare tourism,\textsuperscript{73} the Parliament was concerned with the rights of economically inactive migrants as EU citizens and their enjoyment of human rights.\textsuperscript{74} Moreover, the decision of the Council also showed that Member States also prioritised the rights of EU citizens over welfare tourism concerns. In the light of this analysis, the attribution of intergovernmentalist and neofunctionalist labels to the institutions in terms of their commitment to EU values of protection of human rights and free movement of persons cannot be done mechanistically.

3.3.3. The balance of powers between institutions: weakened neofunctionalism. The balance of power between the executive Commission and the democratically elected Parliament was also a contentious matter which illustrated the difference of views on the institutional mechanisms of integration. Under the Commission’s proposal, the Commission would be given power to adopt \textbf{delegated acts}, using Article 290 TFEU introduced by the Lisbon Treaty to simplify the adoption of non-legislative acts of general application to supplement a legislative act, but not on essential elements:

\textsuperscript{68} Vasilopoulou and Talving (2018), Hooghe and Marks (2019: 1122).
\textsuperscript{69} Blauberger, Heindlmaier, Kramer, Sindbjerg Martinsen, Sampson Thierry, Schenk and Werner (2018).
\textsuperscript{70} \textit{Ibid.}: 1434.
\textsuperscript{71} Case C-67/14, \textit{Alimanovic}. Opinion, para.4.
\textsuperscript{72} Rec 5 of the Commission’s proposal.
\textsuperscript{73} Rec 5 of the Commission’s proposal.
\textsuperscript{74} Rec 5 of the Commission’s proposal.
In order to enable a timely update of this Regulation to the developments at the national level, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the European Commission in respect of amending the Annexes to this Regulation and Regulation (EC) No 987/2009. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and Council receive all documents at the same time as Member States’ experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

Yet, the European Parliament removed the reference to delegated powers:

In order to enable timely updates of this Regulation in line with developments at the national level, the Annexes to this Regulation and to Regulation (EC) No 987/2009 should be amended periodically.

The Commission also attempted to extend its implementing powers:

Implementing powers should be conferred on the European Commission in order to ensure uniform conditions for the implementation of Articles 12 and 13 of Regulation (EC) No 883/2004. Those powers should be exercised in accordance with Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission’s exercise of implementing powers.

However, the Parliament introduced amendments to ensure its own powers of scrutiny of delegated acts:

In order to supplement this Regulation by establishing a standard procedure for the determination of situations in which the documents are to be issued and those in which the document are to be withdrawn because the competent institution of the Member State of employment contests its accuracy or validity, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the implementation of Articles 12 and 13 of Regulation (EC) No 883/2004 as amended by this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States’ experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

This power struggle shows that the neofunctionalist view that strong EU institutions should be the driving force for integration could not be realised in a situation where the EU institutions

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75. Rec. 12 of the Commission’s proposal.
76. Amendment 34.
77. Rec 17 of the Commission’s proposal.
78. Amendment 38.
competed for the control of decision making. The result was a dysfunctional system impeding integration which allowed the Member States to take over control through intergovernmental structures and ultimately strengthened the position of the Council, as the intergovernmental institution.

3.3.4. A lesson for further integration. While the disagreement between the key actors impeded the progress of the review of the coordination regulations, is there a potential for integration in the coordination of social security to advance in other aspects? The review of social security coordination is part of a larger EU project to reform social security regulation in the EU, as emphasised at the Social Summit for Fair Jobs and Growth, held in Gothenburg on 17 November 2017, and by the former Commission President Juncker in his letter of intent of September 2018. The new initiatives in the area of social security broadly follow the logic of neofunctionalism in that their answer to difficulties of integration is more progressive integration led by strong EU institutions. First, the Member States agreed to establish a new mechanism for resolving differences and disputes that arose in the coordination of social security in the form of the European Labour Authority (ELA) under the new Regulation 2019/1149,79 in addition to the Administrative Commission. The ELA was created to facilitate cooperation between Member States and strengthen the capacity of national authorities to improve consistency in the application of EU law by carrying out joint inspections.80 In particular, the ELA was given the power to mediate in disputes between Member States.81 The success of the adoption of this example of ‘soft regulation’ suggests an acceptance of interdependency which leads to more integration, in line with neofunctionalism,82 but at the same time, Member States prefer integration through making use of the supranational level to facilitate cooperation and dispute resolution, rather than harmonisation.

Second, there was a more radical attempt to gradually move to harmonisation of national social security schemes through a general passerelle clause provided in Art. 48(7) TEU. The Commission invited the European Parliament, the European Council, the European Economic and Social Committee, the Committee of the Regions, social partners and all stakeholders to engage in an open debate on the enhanced use of qualified majority voting or the ordinary legislative procedure in social policy83

This would allow for measures in the area or case concerned, subject until then to voting by unanimity, to be adopted subsequently by the European Council by qualified majority, or, in the case of special legislative procedures, to be adopted by the European Parliament and the European Council through the ordinary legislative procedure. To activate this clause, the European Council will have to take the initiative, indicating the scope of the envisaged change in the decision-making procedure, and notify it to national parliaments. If there is no objection from a national parliament within six months, the European Council can, by unanimity and after obtaining the consent of the

79. Regulation 2019/1149 of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344.OJ [2019] L186/21.
80. Rec. 21 of Regulation 2019/1149.
81. Art. 13 of Regulation 2019/1149.
82. See Hooghe and Marks (2019: 1123).
83. Communication from the Commission to the European Parliament, the European Council, the European Economic and Social Committee and the Committee of the Regions ‘More efficient decision-making in social policy: Identification of areas for an enhanced move to qualified majority voting. Strasbourg’, 16.4.2019 COM(2019) 186 final.
European Parliament, adopt a decision authorising the European Council to act by qualified majority or allowing for the adoption of the relevant acts in accordance with the ordinary legislative procedure.

The current requirement for unanimity in this area is linked to the fact that national social security and social protection systems are deeply embedded in national economic, taxation and income redistribution models. Systems differ greatly across the EU, with differences in the size of the budget and the way it is allocated, the source of financing, the degree of coverage of risks in the population and the role of the social partners. Furthermore, Article 153(4) TFEU guarantees the right of Member States to determine the fundamental principles of their social security systems and not to have their financial equilibrium significantly affected. If the European Council uses the passerelle clause in Article 48(7) TEU and makes qualified majority voting applicable in the area or case concerned, then it can act by qualified majority voting and no longer by unanimity when it adopts recommendations in that area or case based on Article 292 TFEU. A move to qualified majority voting would stimulate agreement on such recommendations to guide and help support the process of convergence towards social protection systems fit for the 21st century, at least in the view of those who favour neofunctionalist method of integration.

The Commission is aware of the sensitivity of encroaching on the competences of the Member States and acknowledges that, even then, EU action must respect the subsidiarity principle and take into account the large differences between the social protection systems of the Member States. Therefore, to support the process of modernisation of and promote convergence between social protection systems, the use of the passerelle clause could be limited to adopt recommendations in the area of social security and social protection of workers. However, even such a limited step as recommendations leading to harmonisation is controversial in the light of the difficulties to agree on the coordination of social security schemes. The negotiation of the Commission’s proposal on the review of coordination regulations shows that, by using the Coreper mechanism, national governments can effectively control the direction and the speed of integration, much in line with the arguments of liberal intergovernmentalism.84 It is clear that the ambitions to drive integration using the methods of neofunctionalism may be stopped by the intergovernmentalist nature of the Council. Moreover, the influence of the national political background on the rationale for the reform of coordination regulations and the difference between the national discourse and the position of the institutions may suggest an element of disintegration highlighted by postfunctionalists.85

4. Brexit and the future of EU regulation of social security coordination: disintegration or reintegration?

4.1. From disintegration to reintegration

After the UK referendum in June 2016, in which 52 per cent voted to leave the EU, the British government formally announced the country’s withdrawal in March 2017, beginning the Brexit process. Following the general election in December 2019, UK Parliament ratified the EU

84. See Moravcsik (2002).
85. Hooghe and Marks (2019: 1117).
withdrawal agreement\textsuperscript{86} which was subsequently ratified by the European Parliament, and the UK left the EU at 11 p.m. GMT on 31 January 2020.\textsuperscript{87} This marked the formal point of disintegration after forty-seven years of EU membership. The European Union (Withdrawal) Act 2018 provides for repeal of European Community Act 1972 and ends the supremacy of EU law in the United Kingdom.\textsuperscript{88} It also brings an end to the jurisdiction of the CJEU in the UK.\textsuperscript{89}

The rationale for Brexit is very well explained by postfunctionalism. According to Hooghe and Marks, the range of possible outcomes of EU integration conflicts encompasses not only the status quo or its punctuated reform, but also disintegration.\textsuperscript{90} The UK referendum illustrated a tension between functional pressures for integration and nationalist resistance that is part of a wider divide across Europe.\textsuperscript{91} Furthermore, the name postfunctionalism implies uncertainty as to whether the decision making or its outcome is characterised by functionality. Postfunctionalism is based on the study of mass politics which has its roots in political psychology and is distinct from the rationalist-economic logic that underpins neofunctionalism and intergovernmentalism. Public opinion scholars regard economic preferences as just one possible motivation of human behaviour, and one that is often less powerful than religion, ethnicity, or communal identity.\textsuperscript{92} Thus, in the context of Brexit, one of the main stated objectives of leave vote was to end the free movement of persons, due to concerns over the impact of immigration on the national welfare system and benefit tourism.\textsuperscript{93} Both the solid evidence proving contribution of EU migrating workers and self-employed to the British economy,\textsuperscript{94} and the lenient CJEU case law suggesting that the UK’s restrictions on access to social security benefits by economically inactive migrants are permissible\textsuperscript{95} were disregarded.

Yet, Brexit does not necessarily entail irrelevance of EU social security coordination regulations and their revision for the UK. As much as integration encompasses the possibility of disintegration, in its turn, disintegration encompasses a potential or even a need for reintegration.

Without taking into consideration future migration flows, approximately 4.5 million EU citizens are potentially affected by Brexit. According to the UK Office for National Statistics in 2016, EU citizens currently residing in the UK were about 3,572,000, mainly Poles (1,002,000 million), Irish (335,000), Romanian (328,000) and Italian (233,000).\textsuperscript{96} On the other side, about 900,000 UK citizens live in other EU Member States. A review of currently available statistics from the UK Office for National Statistics suggests Spain, Ireland, France and Germany are the main

\textsuperscript{86} European Union Withdrawal Act 2020 of 23 January 2020.
\textsuperscript{87} Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ [2020] L29/7.
\textsuperscript{88} Art. 5 of The European Union (Withdrawal) Act 2018.
\textsuperscript{89} Art. 6.
\textsuperscript{90} Hooghe and Marks (2019: 1117).
\textsuperscript{91} Ibid: 1123.
\textsuperscript{92} Ibid: 1117.
\textsuperscript{93} For the detailed analysis of how immigration contributed to the outcome of the UK referendum see: Lazowski (2018).
\textsuperscript{94} See House of Lords: Brexit and the Labour Market, HL Paper 11, 2017, available at: https://publications.parliament.uk/pa/ld201719/ldselect/ldeconaf/11/11.pdf.
\textsuperscript{95} Commission v UK, see n.58 above.
\textsuperscript{96} Available at: https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/
destinations. In the year ending June 2019, 3.7 million EU nationals were living in the UK, and 785,000 UK nationals were living in other EU countries, excluding Ireland.

Concerning social security coordination, in the absence of an agreement otherwise, pursuant to Regulation (EU) 1231/2010, the EU would consider UK citizens as TCNs, applying, therefore, the same coordination rules currently granted to EU citizens, upon condition that they are legally residing in the EU and have been subject to the legislation of more than one Member State. At the same time, the UK would be no longer bound by Regulation 883/2004. An example of the cost of disintegration is the acknowledgement of the UK government of the need to provide a potential £500m lifeline to 180,000 British pensioners in EU countries outside the UK who rely on the NHS to pay for their healthcare for twelve months after exit day in the event of no deal. Therefore, the main factor for re-integration is interdependence and the economic and social cost of exit, which is in tune with the central argument for integration, according to neo-functionalism. Similarly, liberal intergovernmentalism can be utilised to explain the choice of the UK government to look for an agreement with the EU on coordination of social security. However, in the phase of disintegration and reintegration, neither neo-functionalism with its focus on the role of strong EU institutions, nor intergovernmentalism with its argument for the rational choice of transfer of powers to the EU institutions can adequately explain the negotiations between the EU and the UK, because re-integration does not equal membership in the EU as status quo.

The pressure to maintain integration due to the need to secure the rights of affected persons was evident in the early commitment of the EU to prioritise the rights of EU citizens in Brexit negotiations. According to the European Council, ‘the first priority of the [withdrawal agreement] negotiations’ were the ‘reciprocal guarantees to safeguard the status and rights derived from EU law at the date of withdrawal of EU and UK citizens.’ On the other side, The UK House of Commons stressed:

‘Failure to ‘grandfather’ existing EU social security rights, for those who have already exercised their freedom of movement before Brexit, would have serious consequences for many thousands of people. In the absence of a legally-binding Agreement, the rights UK nationals in the EU derive from Regulation 883/2004 to access, aggregate and export social security entitlements would disappear, and it is not clear whether there would be a unified EU-wide response to address the resulting legal uncertainty for UK nationals. Similarly, it is unclear how the UK Government could unilaterally prevent disruption in the lives of those affected.’

97. UK Office for National Statistics (2017), What information is there on British migrants living in Europe? January, available at: https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/articles/whatinformationisthereonbritishmigrantslivingineuropejan2017
98. House of Commons Library (2020) Migration Statistics, Briefing Paper No CBP 6077, 6 March, available at: commonslibrary.parliament.uk/research-briefings/sn06077/.
99. Verschueren (2017: 379).
100. ‘UK to pay health costs of retired Britons in EU if no deal agreed’, The Guardian, Tuesday 19 Mar 2019, available at: https://www.theguardian.com/politics/2019/mar/19/brexit-uk-to-pay-health-costs-of-retired-britons-in-eu-if-no-deal-agreed. See also British in Europe Letter to Prime Minister Re Healthcare and Pensions of 31 January 2019, available at: https://britishineurope.org/2019/01/31/letter-to-pm-re-healthcare-pensions-31-jan-19/.
101. Hooghe and Marks (2019: 1123).
102. European Council (Art. 50) meeting of 15 December 2017 - Guidelines, EUCO XT 20011/17, para 8.
103. House of Commons European Scrutiny Select Committee, 10 January 2018, Document No (38400), 15642/16 + ADDs 1-8, COM(16) 815, available at: https://publications.parliament.uk/pa/cm201719/cmselect/cmeuleg/301-ix/30110.htm.
As early as in the first phase of Brexit negotiations on 8 December 2017, an agreement was reached on three priority areas, including coordination of social security. The provisions of Title III of the draft Agreement are retained in the EU Withdrawal Agreement 2020 which represents a significant step towards reintegration of the UK into the EU mechanism of coordination of social security to secure the rights of persons and their family members resident, being employed or self-employed in the UK or another Member State and/or being subject to respective legislation at the end of the transition period. Regulation 883/2004 continues to apply to those persons, including the changes to the Regulation after the expiry of the transitional period. The Withdrawal Agreement 2020 ensures life-time protection of the rights of affected persons. The dynamic reference to Regulation 883/2004 means that the UK will continue to be integrated into the EU in the area of social security coordination, albeit in a limited scope. Therefore, revision of Regulation 883/2004 is still of importance to the UK despite its exit from the European Union, because the continued application of the Regulation — including any future amendments decided without the UK — to British and EU nationals who exercised their freedom of movement rights before Britain leaves the Single Market.

The political pressure put on the UK Government by the UK Parliament with regard to the importance and relevance of the revision of Regulation 883/2004 to future arrangements is particularly striking in the conclusions of the House of Commons European Scrutiny Select Committee on 10 January 2018:

7.7 The proposal to amend Regulation 883/2004 remains politically important, given the impact it could have on individual citizens’ lives, and its specific significance within the ‘citizens’ rights’ chapter of the draft Withdrawal Agreement on the UK’s exit from the EU.

7.11 Looking further ahead, the Committee had also asked whether the Government would seek a new social security arrangement with the EU after Brexit, for citizens of both sides who want to move between the two after the UK’s withdrawal from the EU. The Minister was, again, unable to provide clarity on this point. However, if the Government agrees to the post-Brexit transitional arrangement proposed by the EU, Regulation 883/2004 (and freedom of movement more broadly) would apply to the UK until the end of 2020 in any event. That would provide further time for the details of any new EU-UK social security agreement to be negotiated. We will closely follow the negotiations on the transitional period and any subsequent UK-EU economic partnership, especially where these entail a continued obligation on the UK to apply EU law (including Regulation 883/2004).

As things stand now, beyond the scope defined in the Withdrawal Agreement, the UK will no longer be bound by EU coordination of social security regulations. Below, we discuss the options of re-integration which can be pursued as part of the future UK-EU relationship.

104. See further: Roberts (2020).
105. [2020] OJ L29/7.
106. Art. 30 of the EU Withdrawal Agreement 2020.
107. Art. 31 of the EU Withdrawal Agreement 2020.
108. Art. 39 of the EU Withdrawal Agreement 2020.
109. See also EU Parliamentary Committee Conclusions.
110. Document No (38400), 15642/16 + ADDs 1-8, COM(16) 815, available at: https://publications.parliament.uk/pa/cm201719/cmselect/cmeuleg/301-ix/30110.htm.
regarding coordination of social security for future migrants that are not covered by the Withdrawal Agreement.

4.2. The future of re-integration: beyond the EU Withdrawal Agreement

Whilst the Withdrawal Agreement 2020 already provides a certain degree of reintegration, the future arrangements may take a different shape and offer a different degree of re-integration. Therefore, it is possible, that the UK reintegration into coordination of social security will be multi-levelled. Several options can be considered in this respect. Firstly, if no specific agreement is reached on the topic, EU nationals who move to the UK after Brexit would be subject to whatever legislative restrains are put on the access of non-UK nationals to our benefit system. Similarly, UK nationals who relocate to the EU after Brexit would be subject to whatever national restrictions the Member State in question has in place for non-EU nationals (although they could benefit from the extension of Regulation 883/2004 to third country nationals if they subsequently move to another EU country). Secondly, the bilateral social security coordination treaties entered by the UK and other EU Member States, currently waived by Regulation 883/2004, would become applicable again. Nevertheless, these treaties cover only some EU Member States, excluding most Central and European countries, and the provisions contained therein may be outdated compared to the current cross-border situations.111

Thirdly, an agreement can be reached with regard to the future flow of citizens across the border. Distinctions have to be made between the effects of possible restrictions on workers’ freedom of movement, and restrictions to the right to equal treatment when it comes to social security. Whether the UK or the EU introduces stronger requisites than the ones currently enshrined in Directive 2004/38/EC for migration, restrictions can be introduced without prejudice to the rules set forth by Regulation 883/2004 for persons legally moving across the borders. From a formal point of view, under this scenario, the UK would be covered by Regulation 883/2004 as a result of a bilateral agreement with the EU, as is currently the case for Switzerland, or as a third country, pursuant to Regulation 1231/2010. This would not imply any relevant change to the applicable rules, unless ad-hoc derogations are made. Yet, indirect effects should be considered. Categories such as job-seekers might find it harder than in the past to enter the UK or to enter the EU from the UK, and stricter conditions on the movement of persons may target those that are not in employment, although – once they meet the conditions for migration – the existing rules on the coordination of social security would continue to apply. Persons receiving unemployment benefits in the UK or in the EU may also be discouraged from exporting their benefits across the border since they may face obstacles or additional costs to get or maintain their residence right for as long as they do not find a job abroad. In addition, rules on the export of benefits may change compared to the current provisions. In fact, while the EU suggests sticking to Regulation 883/2004, the UK proposes applying a different criterion, i.e. guaranteeing EU citizens the right to export UK benefits on the same footing as its nationals, as well as adopting similar rules for UK citizens wishing to export their benefits from the EU. Even assuming that the EU and the UK agree on the application of Regulation 883/2004, additional problems may arise concerning possible bias in coordination rules or in the interpretation, application, and enforcement. Moreover, Switzerland is the only non-EEA country to which the system created by Regulation 883/2004 applies under the

111. Verschueren (2017: 379).
terms of a bilateral EU-Switzerland Agreement. However, it is part of a wider Treaty which also
extends free movement of people to that country, which the UK government has explicitly ruled
out.\footnote{House of Commons European Scrutiny Select Committee, 10 January 2018, Document No (38400), 15642/16 + ADDS 1-8, COM(16) 815, available at: https://publications.parliament.uk/pa/cm201719/cmselect/cmeuleg/301-ix/30110.htm.}

In any case, the position of the UK is that, in addition to the direct link between the provisions of
Regulation 883/2004 and the status of those UK nationals already resident in the EU (and vice
versa) on the exit day, the Regulation may also be relevant for any future negotiations on a new
framework for coordination of social security for nationals of the UK and EU who move between
the two after Brexit. Therefore, the UK government was keen on participation in the negotiation of
the Commission proposal to ensure that the UK interests were taken into account before the UK
leaves the EU.\footnote{House of Commons European Scrutiny Select Committee, 13 November 2017, available at: https://publications.parliament.uk/pa/cm201719/cmselect/cmeuleg/301-i/30118.htm#_idTextAnchor169.}

However, pursuant to Article 71 of Regulation 883/2004, the UK would no longer be able to
influence the Administrative Commission’s decisions, as only Member States are represented
therein. It may instead receive observer status which means that the downside of disintegration
is that reintegration is likely to weaken the negotiating position of the UK, unless a new agreement
will allow it to be an equal negotiation partner rather than a rule-taker.

Case law and administrative practices may also follow a dual path. The past and future case law
of the CJEU shall no longer apply to the UK, unless this is explicitly agreed by the UK and the EU.
Alternatively, the agreement may entail: (a) the setup of an arbitration body to rule over cases
addressing cross-border EU-UK cases; (b) the coverage by different jurisdictions for UK citizens
in the EU (to be heard by EU national courts and, ultimately, by the CJEU) and for EU citizens in
the UK (to be heard by UK courts and, ultimately, by the UK Supreme Court); and (c) the setup of a
dispute resolution mechanism. Unlike the arbitration body and, especially, the different jurisdic-
tion options, the setup of a dispute resolution mechanism would make it possible to avoid the
overlapping of different interpretations of coordination rules. Such a mechanism would in fact
entitle the UK and the EU to refer to a bilateral body disputes concerning the way coordination
rules are applied in order to maintain a shared understanding. At the same time, despite being a
third country, the UK would gain in this way the possibility to influence – on an equal footing with
the EU as a whole – the interpretation of EU law.\footnote{Coordination of Social Security Schemes in Europe IP/A/EMPL/2017-03. (European Parliament, Directorate General for Internal Policies, 2017), available at http://www.europarl.europa.eu/studies.}

It is clear that the EU institutions are ready to engage in the negotiations on the future coordina-
tion of social security with the UK which may be a good example of the intergovernmentalism
model: Member States channelling their interests to protect the rights of their nationals through the
EU institutions by pooling efforts and using the bargaining power of the EU. In its conclusions of
13 December 2019, the European Council reconfirmed its desire to establish as close as possible a
future relationship with the United Kingdom in line with the Political Declaration and respecting
the previously agreed European Council’s guidelines, as well as statements and declarations,
notably those of 25 November 2018. The European Council reiterated that the future relationship
with the United Kingdom will have to be based on a balance of rights and obligations and ensure a
level playing field. The European Council invited the Commission to submit to the Council ‘a draft

112. House of Commons European Scrutiny Select Committee, 10 January 2018, Document No (38400), 15642/16 + ADDS 1-8, COM(16) 815, available at: https://publications.parliament.uk/pa/cm201719/cmselect/cmeuleg/301-ix/30110.htm.
113. House of Commons European Scrutiny Select Committee, 13 November 2017, available at: https://publications.parliament.uk/pa/cm201719/cmselect/cmeuleg/301-i/30118.htm#_idTextAnchor169.
114. Coordination of Social Security Schemes in Europe IP/A/EMPL/2017-03. (European Parliament, Directorate General for Internal Policies, 2017), available at http://www.europarl.europa.eu/studies.
comprehensive mandate for a future relationship with the United Kingdom immediately after its withdrawal.’

The EU accepts that one of the stated objectives of Brexit was to stop the free movement of citizens. The UK has decided to end the free movement of persons and has limited ambition for specific arrangements with the EU on the mobility of persons. This does not mean that mobility will stop. However, after the end of the transition period, mobility to and from the UK will be different and will happen under different rules than before when free movement rules applied. What exactly those rules will be depends on the outcome of the negotiations. Nevertheless, a degree of re-integration into the EU will be essential because, unlike free movement of goods, social security cannot be modelled on FTAs which deal only with the entry and temporary stay of natural persons for business purposes in defined areas. It is also clear that the negotiating position of the EU is that the social security coordination should be based on having appropriate regard to future movement of persons, non-discrimination between EU Member States and full reciprocity,115 which also suggest reintegration on the basis of principles that are fundamental for the EU integration.

The role of the Commission in the negotiations is going to be instrumental as the Council authorised the Commission to open negotiations for a new partnership agreement with the United Kingdom and nominated the Commission as the EU negotiator.116 At the same time, the role of other institutions is taken into account. The negotiations should be conducted in consultation with the Working Party on the United Kingdom. The Commission should conduct the negotiations in continuous coordination with the Council and its preparatory bodies and will in a timely manner consult and report to the preparatory bodies of the Council and will provide in a timely manner all necessary information and documents relating to the negotiations. The Commission will, in a timely manner, keep the European Parliament fully informed of the negotiations.117

The first reaction of the UK Parliament to the EU directives on negotiating the matters of social security was that they raised matters of vital national interest to the United Kingdom. In its report, The House of Lords European Union Committee welcomed the fact that the directives reflect the commitment made in the Political Declaration by the negotiating parties to include this matter but did not contain any details.118 However, the extent to which the UK will be re-integrated into

115. Annex to the Recommendation for a Council Decision authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland, 3 February 2020, COM(2020) 35 final, paras 53 and 55. Annex to Council Decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement, Brussels, 25 February 2020, paras 56 and 58, available at: https://www.consilium.europa.eu/media/42736/st05870-ad01re03-en20.pdf. See also Future EU-UK Partnership: Question and Answers on the negotiating directives. EU Commission Press, available at: https://www.pubaffairsbruxelles.eu/future-eu-uk-partnership-question-and-answers-on-the-negotiating-directives-eu-commission-press/.
116. Council Decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement, 13 February 2020, available at: https://www.consilium.europa.eu/media/42737/st05870-en20.pdf.
117. Explanatory Memorandum to Recommendation for a Council Decision authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland, 3 February 2020, COM(2020) 35 final.
118. House of Lords, European Union Committee, Report pursuant to section 29 of the European Union (Withdrawal Agreement) Act 2020: Council Decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement. 8th Report of Session 2019–21, published 5 March 2020, available at: https://publications.parliament.uk/pa/id5801/idselect/idecom/32/32.pdf
coordination of social security schemes remains to be seen. It is impossible to rule out that, in the area of social security re-integration, new developments might be so close to the previous integration structure that it may confirm the argument of liberal intergovernmentalists that Brexit is an illusory event that has implications for UK domestic politics but not for the association of the UK with the European Union.¹¹⁹ To paraphrase Moravcsik, the course of UK reintegration will depend on the benefits of cooperation mediated by intergovernmental bargaining whereas intergovernmental bargains will depend not on the referendum outcome but on economic interests, relative power, and credible commitments.¹²⁰

5. Conclusions

The current integration stage in coordination of social security is a complex phenomenon which displays elements of intergovernmentalism, neo-functionalism and post-functionalism. In the negotiation of the Commission’s proposal for the reform of social coordination regulations, the signs of intergovernmentalism were prevalent. This conclusion follows from the disagreements between the key players (the Commission, the Council and the European Parliament). Involvement of the social partners, NGOs, the EESC and EU citizens, in the discussion of the proposal within the neo-functionalist framework, did not make a great impact on the outcome of the negotiation or the dominance of intergovernmentalism. The power struggle between the institutions further undermined the progress of the reform. The different preferences led to a temporary failure to shift the status quo and achieve a solution that would secure collective gains.¹²¹ As an implication of the failure to reach an agreement, intergovernmentalism may continue to define the speed and the direction of the reform. Therefore, it is impossible to rule out an outcome that would be the lowest common denominator which will necessitate a further review of social security regulations. The dominance of intergovernmentalism may also indicate presence of disintegration tendencies, as described by the theory of post-functionalism.

At the same time, we argue that the theory of post-functionalism is important to explain the phenomenon of Brexit with regard to the UK position in the negotiation of the Commission’s proposal and its future relevance for UK and EU citizens affected by the UK departure from the EU. We conclude that disintegration along the lines of post-functionalism does not prevent reintegration of the UK into the EU coordination of social security schemes, but may reinforce the prevalence of intergovernmentalism.

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¹¹⁹. Moravcsik (2016). See also Hooghe and Marks (2019: 1123).
¹²⁰. Ibid. See also Moravcsik and Schimmelfennig (2009).
¹²¹. See Hooghe and Marks (2019: 1117).
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References
Berki, G. (2016) Summary of the Public Consultation on EU Social Security Coordination, Brussels: European Commission.
Blauberger, M, Heindlmaier, A, Kramer, D, Sindbjerg Martinsen, D, Sampson Thierry, J, Schenk, A. and Werner, B. (2018) ‘ECJ Judges read the morning papers. Explaining the turnaround of European citizenship jurisprudence’, Journal of European Public Policy, 25(10), 1422–1441.
Cooper, I. (2011) ‘The Euro Crisis as the Revenge of Neofunctionalism’ 21 September, available at: https://euobserver.com/opinion/113682.
Cornelissen, R. and de Wispelaere, F. (2020) ‘Sixty Years of European Social Security Coordination: Achievements, Controversies and Challenges’ In Vanheche, B, Ghaillani, D, Spasova, S. and Pochet, P. (eds.) Social policy in the European Union 1999-2019: The Long and Winding Road, Brussels: European Trade Union Institute.
Curtin, D. (1993) ‘The Constitutional Structure of the Union: A Europe of Bits and Pieces’ Common Market Law Review, 30(1), 17–69.
Cygan, A. (2013) Accountability, Parliamentarism and Transparency in the EU, Cheltenham: Edward Elgar.
Dahl, R. A. (1961) Who Governs? Democracy and Power on an American City, New Haven: Yale University Press.
Dougan, M. (2009) ‘The Spatial Restructuring of National Welfare States within the European Union: The Contribution of Union Citizenship and the Relevance of the Treaty of Lisbon’, In Neergaard, U., et al. (eds.) Integrating Welfare Functions into EU Law. From Rome to Lisbon, Copenhagen: DJØF Publishing.
Dunn, T.M. (2012) ‘Neo-Functionalism and the European Union,’ E-international relations, 28 November, available at https://www.e-ir.info/2012/11/28/neo-functionalism-and-the-european-union/
Eurofound (2014) Labour Mobility in the EU: Recent Trends and Policies, Luxembourg: Publications Office of the European Union.
European Commission (2014) ‘Labour Mobility and Labour Market Adjustment in the EU’, European Union Economic Paper 539, Brussels: European Commission.
Follesdal, A. and Hix, S. (2005) Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik, European Governance Papers No C-05-02.
Goebel, R.J. (2013) ‘Supranational? Federal? Intergovernmental? The Governmental Structure of the European Union After the Treaty of Lisbon’, Columbia Journal of European Law, 20(1), 77–142.
Golynker, O. (2005) ‘Jobseekers’ Rights in the European Union: Challenges of changing the paradigm of social solidarity’, European Law Review, 30(1), 111–122.
Haas, E.B. (1958) The Uniting of Europe: Political, Social and Economic Forces, 1950–1957, Stanford: Stanford University Press.
Haas, E.B, (1975) *The Obsolescence of Regional Integration Theory*, Berkeley: Institute of International Studies, University of California.

Hailbronner, K. (2005) ‘Union Citizenship and Access to Social Benefits’, *Common Market Law Review*, 42(5), 1245–1267.

Herszenhorn, D. (2019) ‘EU countries reject proposal on social security coordination’, 29 March, available at https://www.politico.eu/article/eu-countries-reject-proposal-on-social-security-coordination/

Hix, S. (2018) ‘When Optimism Fails: Liberal Intergovernmentalism and Citizen Representation’, *Journal of Common Market Studies*, 56(7), 1595–1613.

Hoffmann, S. (1966) ‘Obstinate or obsolete? The fate of the nation-state and the case of Western Europe’, *Daedalus*, 95(3), 862–915.

Hooghe, L. and Marks, G. (2009) ‘A Postfunctionalist Theory of European Integration: from permissive consensus to constraining dissensus’, *British Journal of Political Science*, 39(1), 1–23.

Hooghe, L. and Marks, G. (2018) ‘Re-engaging Grand Theory: European Integration in the 21st Century’ Working Paper RSCAS 2018/43, Firenze: EUI.

Hooghe, L. and Marks, G. (2019) ‘Grand Theories of European Integration in the Twenty-First Century’ *Journal of European Public Policy*, 26(8), 1113–1133.

Hooghe, L. and Marks, G. (2018a) ‘Cleavage Theory and Europe’s Crises: Lipset, Rokkan and the transnational cleavage’, *Journal of European Public Policy*, 25(1), 109–135.

Hooghe, L. and Marks, G. (2018b) ‘Re-engaging Grand Theory: European Integration in the 21st Century’, Firenze: EUI Working Paper RSCAS 2018/43.

House of Commons Briefing Paper. (2020) *Migration Statistics*, Briefing Paper No CBP 6077, 6 March.

House of Commons Library. Available at: commonslibrary.parliament.uk/research-briefings/sn06077/.

House of Lords (2017) *Brexit and the Labour Market*, HL Paper 11, available at: https://publications.parliament.uk/pa/ld201719/ldselect/ldeconaf/11/11.pdf.

Joerges, Ch. (1994) ‘European Economic Law, the Nation State and the Maastricht Treaty’ In Dehousse, R. (ed.), *Europe After Maastricht: An Ever Closer Union?*, London: Sweet and Maxwell.

Jones, E. (2018) ‘Towards a Theory of Disintegration’, *Journal of European Public Policy*, 25(3), 440–451.

Kriesi, H, Grande, E, Lachat, R, Dolezal, M, Bornscheir, S, and Frey, T. (2006) ‘Globalisation and the Transformation of the National Political Space: six European countries compared’, *European Journal of Political Research*, 45(6), 921–956.

Lazowski, A. (2018) ‘When Cives Europea Become Bargaining Chips: Free Movement of Persons in Brexit Negotiations’, *ERA Forum*, 18, 469–491.

Leal-Arcas, R. (2007), *Theories of Supranationalism in the EU*, *Journal of Law and Society*, 8(1), 88–113.

Maduro, M. (ed.) (2017) *The Transformation of Europe: Twenty-five Years On*, Cambridge: Cambridge University Press.
Majone, J. (2017) ‘The European Union post-Brexit: Static or Dynamic Adaptation?’ European Law Journal, 23(1-2), 9–27.
Marks, G (2012) ‘Europe and its empires: from Rome to the European Union’, Journal of Common Market Studies, 50(1), 1–20.
Mitrany, D. (1965) ‘The prospect of European integration: federal or functional’ Journal of Common Market Studies, 4(2), 119–149.
Moravcsik, A. (1998) The Choice for Europe. Social Purpose and State Power from Messina to Maastricht, Ithaca, NJ: Cornell University Press.
Moravcsik, A. (2002) ‘In Defence of the Democratic Deficit: Reassessing Legitimacy in the European Union’, Journal of Common Market Studies, 40(4), 603–624.
Moravcsik, A. (2016) ‘The Great Brexit Kabuki – a Masterclass in Political Theatre’, Financial Times, 8 April, available at https://www.ft.com/content/64159804-fc1f-11e5-b5f5-070dca6d0a0d
Moravcsik, A. and Schimmelfennig, F. (2009) ‘Liberal Intergovernmentalism’, in Wiener, A. and Diez, T. (eds.) European Integration Theory, 2nd edn., Oxford: Oxford University Press, 67–87.
NicShuibhne, N. (2015) ‘Limits Rising, Duties Ascending: the changing legal shape of union citizenship’, Common Market Law Review, 52(4), 889–938.
Nugent, N. (2003) Government and Politics of the European Union, Basingstoke: Palgrave Macmillan.
O’Brien, C. (2016) ‘Civis Capitalist Sum: class as the new guiding principle of EU free movement rights’, Common Market Law Review, 53(4), 937–977.
Pennings, F. (2010) European Social Security Law 5th edn., Antwerp, Oxford and Portland: Intersentia.
Pennings, F. (2015) European Social Security Law 6th edn. Antwerp, Oxford and Portland: Intersentia.
Rios, B. (2019) ‘Social Security Reform Postponed until Next European Parliament’ 19 April, available at https://www.euractiv.com/section/middle-ground-politics/news/social-security-reform-postponed-unti...l-european-parliament/
Roberts, S. (2020) ‘Social Security Coordination After Brexit: trying to take an egg out of an omelette?’, ERA Forum 20, available at https://doi.org/10.1007/s12027-019-00591-9, 531–547.
Rosamond, B. (2012) Theories of European Union Integration, Basingstoke: Macmillan.
Sandholtz, W. and Stone Sweet, A. (2012) ‘Neo-functionalism and Supranational Governance’ In The Oxford Handbook of the European Union, Oxford: Oxford University Press, 18–33.
Schmitter, P.C. (2003) ‘Neofunctionalism’, in Wiener, A. and Thomas Diez, T. (eds). European Integration Theory, Oxford: Oxford University Press.
Schmitter, P.C. (2005) ‘Ernst B. Haas and the Legacy of Neofunctionalism’, Journal of European Public Policy, 12(2), 255–272.
Spaventa, E. (2017) ‘Earned Citizenship - Understanding Union Citizenship through its Scope’, in Kochenov, D. (ed.), Citizenship and Federalism in the European Union: The Role of Rights, Oxford and New York: Oxford University Press, 204–225.
Thym, D. (2015) ‘The elusive limits of solidarity: residence rights and social benefits for economically inactive union citizens’, Common Market Law Review, 52(1), 17–50.
UK Office for National Statistics. (2017) ‘What information is there on British migrants living in Europe?’ January, available at: https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/articles/whatinformationisthereonbritishmigrantslivingineurope/jan2017

Vasilopoulou, S. and Talving, L. (2018) ‘Opportunity or threat? Public attitudes towards EU freedom of movement’, *Journal of European Public Policy*, 26(6), 805–823.

Verschueren, H. (2015) ‘Preventing ‘benefit tourism’ in the EU: a narrow or broad interpretation of the possibilities offered by the ECJ in Dano?’, *Common Market Law Review*, 52(2), 363–390.

Verschueren, H. (2017) ‘Scenarios for Brexit and social security’, *Maastricht Journal of European and Comparative Law*, 24(3), 367–381.

Weatherill, S. (2000) ‘Flexibility or Fragmentation: Trends in European Integration’ in Usher, J. (ed.) *The State of the European Union*, London: Longman.

Weiler, J. (1981) ‘The Community System: The Dual Character of Supranationalism’, *Year Book of European Law*, 1(1), 267–280.

Weiler, J. (1991) ‘The Transformation of Europe’, *Yale Law Journal*, 100(8), 2403–2483.

Weiler, J.H.H. (2011) ‘The Political and Legal Culture of European Integration: An Exploratory Essay’, *International Journal of Constitutional Law*, 9(3-4), 678–694.

Wiener, A. and Diez, T. (2009) Taking Stock of Integration Theory’ in Wiener, A. and Diez, T. (eds.), *European Integration Theory*, 2nd edn., Oxford: Oxford University Press.