

Prospectus of legal cooperation to protect migrant workers' social security rights within ASEAN

Abstract

It is estimated that there are currently 23.6 million migrants originating from ASEAN countries, of those, nearly 6.9 million have moved within the region. This number has risen dramatically, increasing more than fivefold since 1990 (UNDESA, 2016). However, their access to social insurance rights is still limited due to the diversity of legal systems and the application of the territoriality principle. In this context, many mechanisms of legal cooperation have been suggested for ensuring the entitlement of migrant workers, but the result is still far from being expected. Therefore, this paper examines different modules of legal cooperation to consider how legal cooperation between ASEAN countries might be designed. The reference for this module is legal cooperation between European countries. The first part of the paper will discuss unification, harmonization, and coordination between legal systems of European countries in protecting migrant workers' social insurance rights. Some experiences from this process shall be considered as suggestions for establishing practical legal cooperation between ASEAN countries. The second part shall focus on the current situation of migrant workers in ASEAN countries. The last part discusses the proposal for a feasible mechanism for cooperation between ASEAN countries in improving migrant workers' social insurance rights.

Key words: ASEAN, migrant workers, social insurance rights, unification, harmonization

Introduction

The region of south-eastern Asia is defined by large-scale population movement. It is estimated that, among about 23.6 million migrants, a third stay in the area.¹ The number of migrant workers increases and brings benefits to both sending and host countries. The estimated migrant stock of Singapore and Brunei Darussalam represent respectively 37.1 and 25.5 percent of the

¹ UN, Department of Economic Social Affairs (DESA), 2020, available at <https://www.migrationdataportal.org/regional-data-overview/south-eastern-asia> (last accessed on 13 October, 2022).

population in 2019.² Also, remittance sent back by migrant workers contributes to the economic development of sending countries. In this context, it raises the demand to protect migrant workers through a network of cooperation between countries. Among others, legal cooperation is expected to provide a framework for the rights of migrant workers, not only during their stay and working time in host countries but also after their return. Such an issue has been well aware by ASEAN members. At the regional level, ASEAN countries commit to protect migrant workers' rights, including social security rights. However, many migrant workers in the area are still victims of exploitation, and almost half of the victims in Asia are exploited within Southeast Asia. Also, an estimated one-third of migrant workers in the region have an irregular status in their host countries, which lead them to be excluded from legal protection.³ As a result, further research on improving legal protection for this target is at high demand, especially in the context of pushing legal harmonization within the region. This paper aims to clarify both perspectives and challenges for the region in finding an effective method of cooperation between ASEAN member states, considering requirements for such cooperation in social security rights, and, lastly, providing some feasible proposals. The paper shall examine the legal coordination process between European countries as a sample for the research. The paper includes three main parts. The first is on European legal coordination on social security rights for migrant workers; the second is about the ASEAN context and commitments between members states. The last part is reserved for some proposals in this issue.

1. European legal coordination on social security rights for migrant workers

1.1. The legal nature of the European Union

European countries have a history of strong cooperation. The establishment of the European Coal and Steel Community (1951) was an important first step. After that, the European Economic Community and the European Atomic Energy Community were created under the Treaties of Rome (1957). The creation of the European Union under the Treaty of Maastricht (1992) marked a new stage of the unification of Europe. The Treaties of Amsterdam (1997), Nice (2001) and

² ILO, Measuring labour migration in ASEAN, Analysis from the ILO's International labour Migration Statistics (ILMS) Database, page 23.

³ Migrant data portal, Migrant data in South-eastern Asia, available at <https://www.migrationdataportal.org/regional-data-overview/south-eastern-asia> (last accessed on 13, October, 2022).

Lisbon (2007) aimed at preserving the EU's capacity for effective decision making in the context of eastward enlargement of the EU and led to the Treaty on the Functioning of the European Union (2007), alongside the Treaty on European Union. The legal nature of the EU was first mentioned in the EEC Treaties and then interpreted by the ECJ.⁴ Accordingly, the 'law stemming from the Treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question'. It appears from these judgments that the special legal nature of the EU is characterized by three main elements. Firstly, the Member States have transferred powers to the Union to a greater degree than in other international organizations and with respect to areas in which States normally retain their sovereign rights. Secondly, Union law is directly applicable. This makes the provisions of Union law fully and uniformly applicable in all Member States and bestows rights and imposes obligations on both the Member States and their citizens. The third element is the primacy of Union law. This ensures that Union law may not be revoked or amended by national law and that it takes precedence over national law if the two conflict.⁵

This nature of the European community facilitates the cooperation of legal rules between the member states. The idea of the unification of legal rules in Europe is not a new phenomenon. The process started with the harmonization of Code Civil de Napoleon, which took effect in March 1804 and was imposed in some countries occupied by France. The German Civil Code is a harmonized work that took effect on 1 January 1900.⁶ However, it is necessary to wait until the application of core treaties providing a legal basis for comprehensive cooperation between member states in social security rights for migrant workers. In 1904, France and Italy signed what is generally regarded as the first international social security treaty.⁷ Multilateral agreements also played an essential role in the cooperation between European countries soon after the end of the

⁴ Case 26-62 *Van Gend & Loos* [1964] ECR, I-0001, Case 6-64 *Costa v. Enel* [1964], ECR I-00585

⁵ K.-D. BORCHARDT, *The ABC of European Union Law*, Publications Office of the European Union, Luxembourg, 2010, p. 32.

⁶ Bertrand Crettez, Regis Deloche, 'On the unification of legal rules in the European Union' (2006) *European Journal Law and Economic*, vol. 21, 203-214.

⁷ S. Roberts, "A short History of Social Security Coordination" in Y. JORENS (ed.), *50 Years of Social Security Coordination, Past – Present – Future*, (2010), Report of the Conference celebrating 50th Anniversary of the European Coordination of Social Security, Luxembourg, Publications Office of the European Union, 13.

Second World War⁸ The consecutive coordination regulations contain provisions concerning the interaction between these agreements and the regulations.⁹

1.2. Modules of legal cooperation between EU Member States.

Harmonization is the first stage of cooperation between EU member states. It is defined as the bringing about of the compatibility between the national laws of member states. It can have both a positive and negative effect in facilitating national legal systems to be on similar lines and in conformity with the objectives of the Treaty of Rome. Also, harmonization is expected to eliminate existing differences and prevent the creation of further discrepancies between national laws.¹⁰ The process of harmonization is considered in comparison with the approximation of national legal systems. Accordingly, the approximation of the laws of member states requires each system to be modified in such a way that they have precisely similar effects throughout the community. Harmonization, however, allows divergencies in national-level legal systems so long as these do not conflict with community objectives and policies. In the context of the European Community, harmonization might be spontaneous (through the action of member states) or as a result of the decision of the Court of Justice. Despite efforts at both national and regional levels, the process of harmonization in social security rights faced many obstacles. Significant differences lay between the social security systems of member states, and the lack of internal harmonization within some of them is the main legal issue. The idea of harmonization is modified to be a means to attain minimum standards in social security.¹¹ In other words, harmonization is not really a practical module for legal cooperation between countries in terms of protecting social security rights.

⁸ See S. ROBERTS, "A short History of Social Security Coordination" in Y. JORENS (ed.), *50 Years of Social Security Coordination, Past – Present – Future*, (2010) Report of the Conference celebrating 50th Anniversary of the European Coordination of Social Security, Luxembourg, Publications Office of the European Union, 15.

⁹ Council Regulation (EC) 3/1958 concerning social security for migrant workers, OJ 561, Art. 5; Council Regulation (EEC) 1408/71 on the application of social security schemes to employed person and their families moving within the Community, Art. 6; Council Regulation (EC) 883/2004, OJ L166/2 on the coordination of social security systems, Art. 8.

¹⁰ Philippa Watson, 'Harmonization of Social security within the European Community – the history of changing concept' (1977) *Social and Economic Administration*, Vol. 11(1), 21-37.

¹¹ *Ibid*, page 31.

In this context, coordination of legal rules on social security shows its practical advantages. Different from harmonization, coordination intends to adjust social security schemes in relation to each other (as well as to international regulations) to regulate transnational questions, with the objective of protecting the social security position of migrants. In other words, it intends to bridge the differences between social security schemes, to protect persons whose social security position is or was connected to different countries.¹² The application of this method does not require member states to amend their social security regulations, it rather demands them to treat persons who have been affiliated to different national social security systems, equally to persons who have only been affiliated to their own social security system. Then, the coordination still recognizes differences between social security systems, but aims to prevent migrant workers from being confronted with problems arising from those differences. The application of this method shall be further explained in the below part, but firstly, it should be noticed that the nature of the coordination of social security systems is setting a floor for these systems to connect to each other to social security rights. Moreover, the content and form of Union action must be limited to what is necessary to achieve the objectives of the Treaties. The European Treaties have provided only very limited competence to interfere directly in member states social security systems.¹³ The coordination of the national social security systems observes those principles much more than the harmonization of the member states' social security systems.

1.3. Suggestion for the application of coordination module

The process of coordination between EU member states has reached many outstanding achievements. However, it is not an easy and smooth one. Instead, the process requires many conditions for making the coordination of the social security rights of migrant workers to be feasible. These conditions are below mentioned as a suggestion for a sample of legal cooperation.

Firstly, with legal documents issued by the European Commission and case law judged by the European Court of Justice (here and after ECJ), some core issues about social security rights are determined. The first one is the personal scope of EU regulations in this field. All the terms such

¹² F. PENNING, "Principles of EU Coordination of Social Security" in F. PENNING and G. VONK, *Research handbook on European social security law*, Cheltenham, Edward Elgar Publishing, 2015, 321.

¹³ Consolidated version of the Treaty on European Union, [2008] OJ C115, art. 151-153.

as “worker”, “employed person”, and “self-employed” are interpreted through the case law. Other factors that might influence these concepts, such as “nationality”, “stateless person”, “third country nationals,” or “survivor or family members,” ... are all examined. By defining all these terms, the personal scope of coordination is pointed out clearly, which in turn shall be applied to determine who is included or excluded from the protection. An essential point of this issue is a broad interpretation of the main principles of the European Community’s regulations to extend legal protection. The second core issue for the coordination scope is the material scope of such protection. In practice, each member state has its legal and welfare systems, which lead to a diversity of benefits provided to its citizens. One of the leading legal questions here is how to recognize the nature of each benefit to be coordinated. Firstly, a limitative and enumerative approach is chosen for determining the branches of social security falling within the material scope of Regulation (EC) no. 883/2004 on the coordination of social security systems (here and after Regulation 883/2004). This document’s approach remains the same as in previous EU regulations, despite criticism of its effectiveness in providing a comprehensive reference on this issue. According to Article 3.1. Regulation 883/2004 applies to all legislation concerning sickness benefits, maternity and equivalent paternity benefits, invalidity benefits, old-age, and survivors’ benefits, benefits concerning accidents at work and occupational diseases, death grants, unemployment benefits, pre-retirement benefits, and family benefits. Without further clarification, these terms, are still ambiguous and sometimes difficult to be applied in a straightforward manner. The second issue is the determination of the material scope of social security regulations. EU regulations found it essential to point out which benefits are regulated in the context of many private social or non-contributory benefits provided by European companies or governments. A limitative and enumerative approach is chosen for determining the branches of social security falling within the material scope of Regulation 883/2004. In principle, Regulation 883/2004 only applies to statutory social security schemes and benefits. In other words, only social security based on legislation is covered.¹⁴ Legislation means, in respect of each member State, laws, regulations, and other statutory provisions and all other implementing measures relating to the social security branches covered by Article 3.1 of Regulation 883/2004. Also, EU regulations clearly limit their application to social security schemes, even non-contributory ones, but do not apply to social

¹⁴ Regulation 883/2004, Art. 3.1

assistance.¹⁵ However, the definition of the terms “*social security*” or “*social assistance*” does not exist in the regulations of this organization, then the distinction between these concepts is difficult. Some non-contributory benefits can be considered as borderline benefits arising from the progressive integration, in various legislations, of social assistance into social security.¹⁶ In this context, many case law of the ECJ have interpreted these terms and the EU issue some specific documents for the application of these schemes in EU member states. One of these documents is the Regulation (EEC) 1247/92 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community. These documents are meaningful in explaining the details and characteristics of these terms, which leads to a common understanding of these terms in the Community.

Secondly, European regulations are guided by some core principles in the main Treaties of the organization. During the development of social security branches in all countries of the region, these principles have significant value in interpreting broad legal protection for migrant workers. The first one is the principle of equal treatment. Even though this principle is not defined in the document on social security, The ECJ has given a broad interpretation of this principle in this respect and considers that it prohibits not only overt discrimination based on nationality but also covert forms of discrimination which, although they apply other distinguishing criteria, lead in fact to the same result.¹⁷ All arguments concerning practical difficulties¹⁸ and demographic policy¹⁹ are not considered as an objective justification in this respect. The second principle is avoiding conflicts of law. The problem of conflict of law is clearly recognized as an obstacle to the free movement of persons.²⁰ However, the determination of applicable law is complicated due to the

¹⁵ Regulation 883/2004, Article 3.5

¹⁶ R. CORNELISSEN, “EU Coordination of Social Security Systems and Special Non-Contributory Benefits: a source of never ending controversy” in E. GUILD, S. CARRERA and K. EISELE (eds.), *Social Benefits and Migration. A contested relationship and policy challenge in the EU*, Brussels, Centre for European Policy Studies, 2013, pp. 82-110.

¹⁷ M. FUCHS and R. CORNELISSEN (eds.) *EU Social Security Law. A Commentary on EU Regulations 883/2004 and 987/2009*, (2015), Baden-Baden, Nomos, 106-109; F. PENNING, *European social security law* (2015), Antwerp, Intersentia, 117.

¹⁸ Case C-10/90 *Masgio vs Bundesknappschaft* [1991] ECR I-0119.

¹⁹ Case 237/78, *Caisse régionale d'assurance maladie de Lille (CRAM) v Diamante Palermo, née Toia* [1979] ECR I-02645.

²⁰ Case C-71/93 *Guido Van Poucke v Rijksinstituut voor de Sociale Verzekeringen der Zelfstandigen and Algemene Sociale Kas voor Zelfstandigen* [1994] ECR I-0110, Case C-302/84, *A. A. Ten Holder v Bestuur van de Nieuwe Algemene Bedrijfsvereniging* [1986] ECR I-01821, Case C-169/98, *Commission vs. France* [2000], ECR I-01049.

diversity of social security branches and legal systems in the region. This principle is protected by the binding effect of the EU conflict rules, which have an exclusive effect. Also, some clear criteria are used to determine the applicable legislation and European legislator have to accept that in some complex cases, the conflict rules do not lead to the most opportune solution. The third principle is the requirement for the maintenance of acquired rights. This requirement is essential in protecting social security rights because migrant workers risk losing their contribution while moving between different countries. According to this principle, all contributions of migrant workers in one country have a similar effect in another country. The last but not the least principle is close cooperation between institutions of the concerned countries for further clarification or supporting migrant workers.

The above analysis pointed out the main characteristics of EU coordination of the social security system, which is complex but well-organized. Such a mechanism is built on a solid legal basis, with many implementing legal documents and effective interpretation of the ECJ. Even though these pre-conditions are not popular in other regional organizations, these suggestions are still available to be examined.

2. ASEAN context and commitments

ASEAN is also an organization with diversity in culture, economic development and even political systems. In the context of intra-ASEAN flow of international migrant workers, a large share of those migrants is working without social security agreement or without access to social protection.²¹ This part will examine how the commitment within ASEAN should be developed for a more effective protection of migrant workers' social security rights.

The community has recognized the importance of labor migration by including this issue in two of the three ASEAN Blueprints: the Economic Community Blueprint and the Social-Cultural Community Blueprint.²² The Declaration on the Protection and Promotion of the Rights of Migrant

²¹ G. PASADILLA, 'Social Security and Labour Migration in ASEAN', (Research policy brief 34, November 2011) <<https://www.adb.org/sites/default/files/publication/157275/adbi-rpb34.pdf>> accessed 10 October 2022.

²² R. LARGA, M. TUNON and N. BARUAH, 'Progress on the Implementation of the recommendations adopted at the 3rd and 4th ASEAN Forum on Migrant Labour' (2012) https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_219040.pdf accessed 10 October 2022.

Workers was signed at the 2007 ASEAN Summit. Dubbed as the Cebu Declaration, it is the main regional instrument concerning migrant workers' rights. This document was signed with a view to the ASEAN Economic Community Blueprint envisioning a single market and single production base with the free flow of goods, services, and investment and a more recent version, AEC Blueprint 2025. In 2017, the leaders of ASEAN signed the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers. However, ASEAN Member States have different social protection systems²³ and there is a lack of sufficient cooperation between them. So, ASEAN member states must overcome various obstacles before migrant workers' social security rights will be fully protected. For the research purpose, principles, the personal and material scope of ASEAN instruments will be analyzed.

The first well-known principle of ASEAN concentrates on action taken at the national rather than the regional level. In other words, the main stakeholders who cope with migrant workers' social security rights are the Member States rather than ASEAN as an entity. This principle follows from ASEAN Charter and is clarified in other documents. In the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, migrant workers' rights are to be protected within each of the three political, economic and social pillars of the ASEAN Community. Both receiving and sending States are responsible for protecting migrant workers.²⁴ These regulations express the importance of national measures for coping with the protection of migrant workers' rights. In a similar way, the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant workers, the protection of these rights is the '*obligation of ASEAN Member States under appropriate international instruments to which they are parties.*'²⁵ Interestingly, while focusing on the competence of each Member State to provide policies and measures regarding regional concerns, ASEAN also affirms the role of ASEAN as a unified organization. The AEC Blueprint also states that "*ASEAN is also working towards harmonization and standardization, with a view to facilitating [labor] movement within the region*". Also, AEC Blueprint 2025

²³ See E. TAMAGNO, 'Strengthening Social Protection for ASEAN Migrant Workers through Social Security Agreements' (REGIONAL OFFICE FOR ASIA AND THE PACIFIC, ILO, 1/2008), <https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_160332.pdf> accessed 12 October 2022.

²⁴ ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers

²⁵ ASEAN Consensus on the Protection and Promotion of the Rights of Migrant workers, Art. 1(b), (c), (d), (e); Art. 3, 8,9, 12, 13.

confirms that one of its main objectives is to ‘*facilitate the seamless movement of [...] skilled labor within ASEAN*’. This implies that, by respecting the sovereignty and right to self-determination of Member States, ASEAN considers the harmonization process a legal and administrative requirement for migrant workers. Although this requirement is not as strong as expected by those in civil society fighting for the full protection of migrant workers, this points out ASEAN’s concern and expectation to deal with the issue at the regional level and through a harmonization process. In sum, although several ASEAN instruments deal with the legal protection of migrant workers’ rights, there is no binding document creating a strong legal basis for this protection. ASEAN intends that each Member State maintains its sovereignty entirely in dealing with regional issues, including labor migration. Therefore, ASEAN instruments are only recommendations for the member states to improve their regulations.

Secondly, the personal scope of ASEAN documents on migrant workers is not clearly defined. The ASEAN Consensus only covers migrant workers ‘*who are documented and those who become undocumented through no fault of their own*’.²⁶ This is a strong confirmation of the exclusion of undocumented migrant workers by their own fault. Furthermore, ASEAN instruments seem to pay more attention to skilled migrant workers, one of the purposes of ASEAN being the creation of “*a single market and production base [...] with [...] facilitated movement of business persons, professionals, talents and labour*.”²⁷ Both AEC Blueprint and AEC Blueprint 2025 only mention free flow of skilled labor instead of a general concept of free movement of worker.²⁸ This point of view is shared by other authors and most of them have recognized the differences between the initial ASEAN policy on labor migration and the reality in practice.²⁹ Although there are many agreements regarding different skills of labor, all of them have strict requirements on education, licensing and demonstration of labor competences.³⁰ In addition, the notion ‘migrant worker’

²⁶ ASEAN Consensus, Art. 2

²⁷ ASEAN Charter, Art. 1.5

²⁸ AEC Blueprint <<http://www.asean.org/archive/5187-19.pdf>> para. 33; AEC Blueprint 2025, <<https://www.asean.org/storage/2016/01/ASCC-Blueprint-2025.pdf>> para 6 (v), accessed 12 October 2022

²⁹ A. ORBETA, Jr., ‘Enhancing labor mobility in ASEAN: Focus on lower skilled workers’, (Discussion Paper Series No. 2013-17), Philippine Institute for Development Studies, Makati City, 2013, <https://www.econstor.eu/bitstream/10419/126934/1/pidsdps1317.pdf> accessed 15 October 2022.

³⁰ ASEAN Mutual Recognition Arrangement Framework on Accountancy Services (adopted on November 13, 2014), ASEAN Mutual Recognition Arrangement on Medical Practitioners (adopted on February

refers to a person who is to be engaged or employed, is engaged or employed, or has recently been engaged or employed in a remunerated activity in a State of which he or she is not a national.³¹ This definition is considered as a great development of the ASEAN mechanism in this regard. Indeed, the most important component of the new definition is the ‘remunerated activity’ and ‘employed’. Furthermore, this definition might be supplemented by national legislation. It is clear that, different from European documents, the requirement on “documented” status is at the spot line of ASEAN policies. Also, skilled migrant workers seem to have more chances to move within the region.

Thirdly, regarding the material scope of the social security rights of migrant workers, ASEAN documents do not have a straightforward answer. Therefore, consulting other “soft” non-binding ASEAN documents is necessary. Among them, the program adopted by the member states’ Ministers of Labor calls for improving national social protection systems to cover the risks faced by workers, of illness, disability and old- age.”³² Although this statement cannot be considered as a delimitation of the material scope of the migrant workers’ social protection, it represents the three most prevalent branches of social security systems. According to these instruments, migrant workers’ social security rights should be protected from the aspect of occupational health and safety. The cooperation between member states needs to start with an exchange of data on the occupational health and safety of migrant workers. This requirement is too weak to fully protect migrant workers. Its value lies in providing an initial step towards further measures aimed at effective protection in the future. At least, these recommendations present ASEAN’s intention to deal firstly with social protection from the aspect of occupational health and safety.

In general, it might be concluded that ASEAN is not known as a strongly integrated area. In addition, the question of migrant workers’ social security rights is still complex for many member

26, 2009), ASEAN Mutual Recognition Arrangement on Dental Practitioners (adopted on February 26, 2009), ASEAN Mutual Recognition Arrangement on Engineering Services (adopted on December 9, 2005), ASEAN Mutual Recognition Arrangement on Nursing Services (adopted on December 8, 2006) , ASEAN Mutual Recognition Arrangement on Architectural Services (adopted on November 19, 2007) and ASEAN Framework Arrangement for the Mutual Recognition of Surveying Qualification (adopted on November 19, 2007),.

³¹ ASEAN Consensus, Art. 3

³² MAHIDOL MIGRATION CENTER, ‘Migrant Workers’ Rights to Social Protection in ASEAN: Case Studies of Indonesia, Philippines, Singapore and Thailand, Institute for Population and Social Research’, (Mahidol University, Thailand, 2011) <https://www.social-protection.org/gimi/gess/ShowRessource.action?ressource.ressourceId=27722> accessed 19 October 2022.

states, especially in the context of increasing flows of undocumented migrant workers. Only regular skilled migrant workers are entitled to social protection, although this entitlement is still limited. In fact, no standards on migrant workers' social protection are laid down in a multilateral document or agreement within ASEAN.³³ At the moment, one can only conclude that ASEAN instruments did not have any influence on the material scope of migrant workers' social security rights in member states.

3. Discussion and proposals

The above parts pointed out a vast difference between European coordination and commitments between ASEAN member states. This paper does not aim at a comparison between them, it focuses on discussing what ASEAN might learn from the European coordination in protecting migrant workers' social security rights.

The first discussion should be about a legal environment for European coordination on social security rights for migrant workers. European Union is a supra-national instead of an intergovernmental organization. As a result, Union legislations directly affect the national legal system. Also, national legislation must not conflict with community rules and in the case of conflict, community rule shall take precedence over national law.³⁴ Such prevalence led to a relative uniformity between legal systems in the area because they all follow some specific standards set by the Community and are required to cooperate strictly with others. Additionally, the ECJ has the authority over national courts and it plays an essential role in interpreting all union regulations, which also prevail over national ones. National legislations are usually diverse, especially in terms of social security, but they are interpreted under the light of community rules. As a result, despite divergence, all national regulations might follow the standards of community rules which leads to similar legal protection for citizens of all the concerned member states. In general, such coordination of social security systems has a solid legal basis and a smooth process of

³³ M. OLIVIER and A. GOVINDJEE, 'Labour Rights and Social Protection of Migrant Workers: In Search of a co-ordinated Legal Response' (Inaugural conference of Labour Law Research Network (LLRN), Barcelona, Spain, 13-15 June 2013), https://www.upf.edu/documents/3298481/3410076/2013-LLRNConf_OlivierxGovind.pdf/fd58864e-aa42-4400-b854-5767063ffb8d accessed 19 October 2022

³⁴ K.-D. BORCHARDT, *The ABC of European Union Law*, Publications Office of the European Union, Luxembourg (2010), 32

implementing these standard rules. It is recognized that these legal grounds are necessary precondition for strong cooperation between legal systems on social security. However, these grounds do not exist in the ASEAN community. ASEAN member states are finding unified actions, but almost actions are taken at the national level. ASEAN member states might agree in general but each one has its own policies, which might be different from each others. Regarding social security for migrant workers, each member state is the only stakeholder providing legal protection. Regarding the judiciary branch, the ASEAN community does not have a court dealing with conflict between member states like the ECJ. In other words, all legal grounds for European coordination of the social security system of the EU are not found in the ASEAN community. The regional cooperation in the area is only presented by the commitment to the issue and some guidance for such cooperation.

In this context, it is necessary to discuss the question of how the ASEAN community should cooperate to improve its legal protection of social security for migrant workers. Some suggestions from European coordination might be a good example. Even lacking legal grounds for similar coordination, detailed issues are still helpful in clarifying specific cooperation between countries on social security rights for migrant workers. In fact, the coordination between European member states is still based on the determination of personal scope and the material scope of social security benefits. Each legal system has its own regulations on social security benefits and some of them are differently recognized by other national legal systems as well as regional regulations. In this case, a shared understanding of some key terms such as “migrant workers”, “regular or irregular migrant workers”, “legislation”, “social security and social assistance”... are the basis for deciding a specific person or specific benefit is included or excluded from community regulations. Also, such detailed information shall facilitate cooperation between legal systems because a member state is able to predict the application of the social security systems of others. The conflict of law in determining personal and material scope might be diminished. In fact, even in the case of European member states, there is always a conflict of law between legal systems and some principles on dealing with such issue is highly recommended. These principles do not require strong cooperation between legal systems, in fact, they can be established by agreements between countries.

The third issue to be discussed in this part is the importance of principles guiding legal cooperation between European member states in general and the coordination of the social security system in particular. These principles are important for protecting the social security rights of migrant workers. They are the principle of equality of treatment and maintenance of acquired rights. Many cases-law judged by the ECJ pointed out that migrant workers always face both direct and indirect discrimination in access to the social security system due to their nationality. In these cases, the principle of equality of treatment is a legal basis for broadly interpreting national regulations and protecting migrant workers' rights more effectively. The second principle is meaningful in ensuring the contribution of migrant workers to an abroad social security system. The cooperation between social security systems in this issue is complex due to the divergencies between them. However, this principle at least protects some foreign contributions of migrant workers, which are the basis for their entitlement to specific benefits and motivation for joining the system.

The last but not the least concern of the European coordination is enhancing technical measures. These measures strengthen the cooperation between countries on social security. The rather technical and often complex provisions in the regulations on the coordination of social security systems are to be implemented by the authorities and institutions of member states. This is possible only if there is smooth and effective cooperation and communication between the authorities and competent institutions of the various member states. European regulations emphasize the need for institutions to provide active assistance to citizens in enforcing their rights under these regulations. A key aspect of this assistance is the provision of information about their rights and obligations. The duty to provide information is mutual. Through these authorities, divergencies between legal systems shall be coordinated to find a feasible solution for migrant workers in terms of social security rights. It is said that the coordination rules cannot function if there is not close and practical cooperation between the national authorities and institutions.

4. Conclusion

Legal cooperation, harmonization, and unification are always complex in all international organizations. It requires both national and regional efforts to improve legal protection for citizens. Among many regional organizations, European Union can be seen as a good sample with achievements in protecting migrant workers' social security rights. Citizens of EU member states

are entitled to free movement and full access to the social security system regardless of their nationality, residence, or place of work. The keys to this success are a strong legal basis created by EU treaties, a precise determination of main concepts such as the personal and material scope of regulation, as well as broad principles for ensuring the concerned rights. From the perspective of ASEAN, the social security rights of migrant workers also attract attention, and the member states commit to protecting these rights. However, these commitments are too general to apply directly and require further clarification. From the lessons from the examination of European coordination in this field, the paper points out that ASEAN could start a legal harmonization on social security rights for migrant workers by agreement on some central issues, such as principles and the personal and material scope of the regulations. Also, technical measures are vital for smooth legal cooperation.