

International and European Business Law
by Schulze / Lehmann

International and European Labour Law

Article-by-Article Commentary

Ales / Bell / Deinert / Robin-Olivier



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edited by

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2018



Published by

Nomos Verlagsgesellschaft, Waldseestraße 3-5, 76530 Baden-Baden, Germany,
email: vertrieb@nomos.de

Co-published by

Verlag C.H.Beck oHG, Wilhelmstraße 9, 80801 München, Germany,
email: bestellung@beck.de

and

Hart Publishing, Kemp House, Chawley Park, Cumnor Hill, Oxford, OX2 9PH, United Kingdom,
email: orders@isbs.com

Published in North America (US and Canada) by Hart Publishing,
c/o International Specialized Book Services,
930 NE 58th Avenue, Suite 300, Portland, OR 97213-3786, USA,
email: orders@isbs.com

ISBN 978-3-8487-2460-4 (Nomos Print)

ISBN 978-3-8452-6619-0 (Nomos ePDF)

ISBN 978-3-406-70690-5 (C.H.BECK)

ISBN 978-1-5099-2381-6 (Hart Publishing)

First Edition 2018

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Preface

As time goes by ... it was in summer 2014 when the publisher discussed with us the idea of an international commentary on European labour law. This follows a tradition in continental systems, especially in Germany, where commentators all over the country analyse statutes, even those of minor importance. Therefore, the German publishing house Nomos took the initiative to commence this project, given that there are still relatively few commentaries on these important norms at international level.

We discussed the concept and we were quickly convinced that a commentary from a European perspective could provide additional value for any legal practitioner, as well as for legal scholars. The commentary should provide information in order to grant a specific European view, taking into account current legal debates with an EU law context. After a short period of discussion, we concluded that this book should not only provide observations on the EU legal framework. Instead, we wanted to include also international and regional labour law: specifically, the International Labour Organisation and the Council of Europe. This reflects our conviction that it is not sufficient to consider only EU legal instruments, notwithstanding their important status in many of our jurisdictions. By adopting a wider perspective, we can find both old and new tools that enrich our interpretation of domestic labour law. Moreover, looking beyond the EU provides us with external benchmarks against which to evaluate the sufficiency of current EU labour law.

This was a considerable challenge, given that there exists a large number of legal instruments and we had to engage many authors from different countries (which also means from different legal backgrounds). Understandably, it took some time to coordinate the work of all colleagues, but one year later the whole team was assembled. Over the next two years, the authors, editors, and publishers worked together closely in order to produce one of the largest existing commentaries on labour law.

Today, the reader holds a book in his or her hands that we hope will be helpful both for using the law in practice and for the academic study of law.

As editors, we are very grateful to the authors for their generous collaboration and patience. We are exceptionally thankful to the publishers for their willingness to undertake such an ambitious project and to persevere with this endeavour over several years. In particular, we owe a major debt of gratitude to Matthias Knopik and his colleagues for their constantly excellent support.

We have endeavoured to produce a high-quality manuscript, but we are conscious that given the large scale of this project, combined with the multitude of contributors, there is always scope for improvement. With a view to the enhancement of future editions of this text, the authors and editors welcome any feedback, which can be sent to olaf.deinert@jura.uni-goettingen.de.

Cassino, Dublin, Göttingen and Paris, June 2018

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Abbreviations

ADL	Argomenti di diritto del lavoro
ADUE	Annuaire de Droit de l'Union Européenne
AG	Advocate General
AJCL	The American Journal of Comparative Law
AJIL	American Journal of International Law
AuR	Arbeit und Recht
BAG	Bundesarbeitsgericht
BAGE	Entscheidungen des Bundesarbeitsgerichts (public gazette)
BGBL	Bundesgesetzblatt (public gazette)
BVerfG	Bundesverfassungsgericht
CAFTA-DR	Dominican Republic–Central America Free Trade Agreement
CBMD	Cross-Border Mergers Directive (Dir. 2005/56/EC)
CEACR	Committee of Experts on the Application of Conventions and Recommendations (ILO)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDEFOP	European Centre for the Development of Vocational Training
CESP	European Council of Police Trade Unions
CETA	EU-Canada Comprehensive Economic and Trade Agreement
CFREU	Charter of Fundamental Rights of the European Union
CGSP	Centrale générale des services publics
CGSLB	Centrale Générale des Syndicats Libéraux de Belgique
CLLJ	Comparative Labor Law Journal
CLLPJ	Comparative Labor Law & Policy Journal
CLP	Current Legal Problems
CLES	Centre for Law, Economics and Society
CMLR	Common Market Law Review
CJEU	Court of Justice of the European Union
CoE	Council of Europe
Colum.J.Eur.L.	Columbia Journal of European Law
Colum.J.Transnatl	Columbia Journal of Transnational Law
CRD	“Citizens’ Rights Directive” (i.e. Directive 2004/38/EC)
CSC	Confédération des Syndicats Chrétiens de Belgique
CSR	Country-Specific Recommendation
CYELS	Cambridge Yearbook of European Legal Studies
Dir. merc. lav.	Diritto del mercato del lavoro
Dir. com. sc. int.	Diritto comunitario e degli scambi internazionali
DL	Il Diritto del lavoro
DLM	Diritti Lavori Mercati
DDL	Disegni di legge
DEP	Directive on the Execution of the Posting Workers Directive (Directive 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System)
DPCE	Diritto pubblico comparato ed europeo
DRdA	Das Recht der Arbeit

Abbreviations

DRI	Diritto delle Relazioni Industriali
Dr. soc.	Droit social
EAS	Europäisches Arbeits- und Sozialrecht (loose leaf)
EaSI	Employment and Social Inclusion
EAT	Employment Appeal Tribunal
EBLR	European Business Law Review
ECL	European Company Law
ECRI	European Commission against Racism and Intolerance
ECSA	European Community Ship Owners' Association
ECSC	European Coal and Steel Community
ECTHR	European Court of Human Rights
EED	Employment Equality Directive
EGF	European Globalisation Adjustment Fund
EHRLR	European Human Rights Law Review
EJIL	European Journal of International Law
EJIR	European Journal of Industrial Relations
EJSL	European Journal of Social Law
ELJ	European Law Journal
ELLJ	European Labour Law Journal
ELRev.	European Law Review
EMCO	Employment Committee
ENAR	European Network Against Racism
EnzEuR	Enzyklopädie Europarecht, ed. by Armin Hatje and Peter-Christian Müller-Graff (Nomos, Baden-Baden 2013–2016)
EP	European Parliament
EPL	European Public Law
EPSR	European Pillar of Social Rights
ERLR	European Review of Labour and Research
ERPL	European Review of Private Law
ESF	European Social Fund
ESI Funds	European Structural and Investment Funds
EStAL	European State Aid Law Quarterly
ETUC	European Trade Union Confederation
ETUI	European Trade Union Institute
EuGRZ	Europäische Grundrechte-Zeitschrift
EUPO	Publications Office of the European Union, Luxembourg
EuR	Europarecht
Eur. J. Soc. Sec.	European Journal of Social Security
EURES	European Employment Services
EuZA	Europäische Zeitschrift für Arbeitsrecht
EWC	European Works Council
FA	Fachanwalt Arbeitsrecht
FGTB	Fédération Générale du Travail de Belgique
fn	Footnote
Fordham Int'l L.J.	Fordham International Law Journal
FRA	European Agency for Fundamental Rights
GDLRI	Giuridificazione e deregolazione nel diritto del lavoro italiano
GLJ	German Law Journal
HSC	Horizontal Social Clause
IAS	Impact Assessment System

Abbreviations

ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Comparative Jurisprudence
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ICTY	International Criminal Tribunal for Yugoslavia
IJCLLR	International Journal of Comparative Labour Law and Industrial Relations
IJLC	International Journal of Law in Context
ILC	International Law Commission
ILJ	Industrial Law Journal
ILO	International Labour Organization
ILR	International Labour Review
ILRL	Industrial Relations Law Reports
IRJ	Industrial Relations Journal
JAR	Jurisprudentie Arbeidsrecht
JCER	Journal of Contemporary European Research
JCMS	Journal of Common Market Studies
JDE	Journal de Droit Européen
JDI	Journal Droit International
JER	Joint Employment Report
JOH	Journal of Occupational Health
JSWFL	Journal of Social Welfare and Family Law
KritV	Kritische Vierteljahresschrift für Gesetzgebung und Rechtswissenschaft
LD	Lavoro e Diritti
LGDJ	Librairie générale de droit et de jurisprudence
LPICIT	The Law & Practice of International Courts and Tribunals
MARPOL	International Convention for the Prevention of Pollution from Ships
MJECL	Maastricht Journal of European and Comparative Law
MLC	Maritime Labour Convention
MLR	Modern Law Review
mn.	Margin Number
ModLRev	Modern Law Review
MPG	Migration Policy Group
MS	Member States
MSC	Mines Safety Commission
MüHdbAR	Münchener Handbuch zum Arbeitsrecht (3 rd ed., C.H.Beck, Munich 2009)
NICE	Nomenclature of industries in the European Communities
NK-GA	Winfried Boecken, Franz Josef Düwell, Martin Diller, Hans Hanau (eds), <i>Gesamtes Arbeitsrecht</i> (Nomos, Baden-Baden 2016) (Commentary)
NPSHC	National Preventative Safety and Health Culture
NVwZ	Neue Zeitschrift für Verwaltungsrecht
NZA	Neue Zeitschrift für Arbeitsrecht
NZA-RR	NZA-Rechtsprechungsreport Arbeitsrecht

Abbreviations

NZS	Neue Zeitschrift für Sozialrecht
OHS	Occupational Health and Safety
OIAC	Osservatorio dell'Associazione italiana costituzionalisti
OJEC	Official Journal of the European Communities
OMC	Open Method of Coordination
OUP	Oxford University Press
PACS	Pacte civil de solidarité (registered partnership)
PPS	Preventive and Protective Services
Prot.	Protocoll
PSCO	Port State Control Officer
PUF	Presses Universitaires de France
PWD	Posting of Workers Directive (Directive 96/71/EC concerning the posting of workers in the framework of the provision of services)
QMV	Qualified Majority Voting
RabelsZ	Rabels Zeitschrift für ausländisches und internationales Privatrecht
RCDIP	Revue critique de droit international privé
RdA	Recht der Arbeit
RDC/TBH	Revue de Droit Commercial Belge / Tijdschrift voor Belgisch Handelsrecht
RDI	Rivista di diritto internazionale
RDT	Revue de Droit du Travail
RED	Race Equality Directive (Directive 2000/43/EC)
RGL	Rivista giuridica del lavoro e della previdenza sociale
RIDL	Rivista italiana di diritto del lavoro
RIDPC	Rivista italiana di diritto pubblico comunitario
RJS	Revue de Jurisprudence Sociale
RMCUE	Revue du Marché Commun et de l'Union Européenne
RMUE	Revue du Marché Unique Européen
RTDE	Revue Trimestrielle des Droit Européen
SCE	Statute for a European Cooperative Society
SCER	Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society
SE	Societas Europea
SEA	Single European Act
SED	Statute for a European Company Directive (Council Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees)
SIP	Social Investment Package
SNB	Special Negotiating Body
SOLAS	International Convention for the Safety of Life at Sea
SPC	Social Protection Committee
STC	Special Tripartite Committee
STCW	International Convention on Standards of Training, Certification and Watchkeeping
TEC	Treaty establishing the European Community
TRA	Tijdschrift Recht en Arbeid
VTDL	Variazioni sui Temi di diritto del lavoro
WP CSDLE	Centre for the Study of European Labour Law – Working Papers
YEL	Yearbook of European Law

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ZESAR	Zeitschrift für europäisches Sozial- und Arbeitsrecht
ZfA	Zeitschrift für Arbeitsrecht
ZIAS	Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht
ZKM	Zeitschrift für Konfliktmanagement

