

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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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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CONTENTS

Preface	V
Authors	XV
Abbreviations	XXVII
General Introduction	XXXIII

PART I FUNDAMENTAL PROVISIONS

Fundamental Provisions: Introduction	1
--	---

CHAPTER I TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

Article 8 TFEU	7
Article 9 TFEU	13
Article 10 TFEU	21
Article 19 TFEU	23
Article 21 TFEU	26
Article 45 TFEU	41
Article 46 TFEU	66
Article 47 TFEU	68
Article 48 TFEU	69
Article 56 TFEU	76
Article 57 TFEU	76
Article 58 TFEU	76
Article 59 TFEU	76
Article 60 TFEU	77
Article 61 TFEU	77
Article 62 TFEU	77
Pre. Articles 101–106 TFEU	94
Article 101 TFEU	97
Article 102 TFEU	107
Article 106 TFEU	111
Article 107 TFEU	117
Article 108 TFEU	125
Article 109 TFEU	126
Pre. Articles 145–150 TFEU	133
Article 145 TFEU	134
Article 146 TFEU	135
Article 147 TFEU	136
Article 148 TFEU	138
Article 149 TFEU	142
Article 150 TFEU	142
Article 151 TFEU	143
Article 152 TFEU	150
Article 153 TFEU	155
Article 154 TFEU	165
Article 155 TFEU	165
Article 157 TFEU	176
Article 174 TFEU	188
Article 175 TFEU	188

Contents

CHAPTER II CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Article 5 CFREU	Prohibition of slavery and forced labour	195
Article 15 CFREU	Freedom to choose an occupation and right to engage in work	195
Article 20 CFREU	Equality before the law	200
Article 21 CFREU	Non-discrimination	203
Article 23 CFREU	Equality between women and men	209
Article 27 CFREU	Workers' right to information and consultation within the undertaking	214
Article 28 CFREU	Right of collective bargaining and action	218
Article 29 CFREU	Right of access to placement services	218
Article 30 CFREU	Protection in the event of unjustified dismissal	219
Article 31 CFREU	Fair and just working conditions	219
Article 32 CFREU	Prohibition of child labour and protection of young people at work	219
Article 33 CFREU	Family and professional life	225
Article 51 CFREU	Field of application	234
Article 52 CFREU	Scope and interpretation of rights and principles	239
Article 53 CFREU	Level of protection	244
Article 54 CFREU	Prohibition of abuse of rights	248

CHAPTER III (REVISED) EUROPEAN SOCIAL CHARTER

Article 1 RESC	The right to work	253
Article 2 RESC	The right to just conditions of work	255
Article 3 RESC	The right to safe and healthy working conditions	264
Article 4 RESC	The right to a fair remuneration	272
Article 5 RESC	The right to organise	277
Article 6 RESC	The right to bargain collectively	286
Article 7 RESC	The right of children and young persons to protection	297
Article 8 RESC	The right of employed women to protection of maternity	304
Article 15 RESC	The right of persons with disabilities to independence, social integration and participation in the life of the community	307
Article 18 RESC	The right to engage in a gainful occupation in the territory of other Parties ..	310
Article 19 RESC	The right of migrant workers and their families to protection and assistance	313
Article 20 RESC	The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex .	316
Article 21 RESC	The right to information and consultation	319
Article 22 RESC	The right to take part in the determination and improvement of the working conditions and working environment	330
Article 24 RESC	The right to protection in cases of termination of employment	336
Article 25 RESC	The right of workers to the protection of their claims in the event of the insolvency of their employer	339
Article 26 RESC	The right to dignity at work	343
Article 27 RESC	The right of workers with family responsibilities to equal opportunities and equal treatment	346
Article 28 RESC	The right of workers' representatives to protection in the undertaking and facilities to be accorded to them	348
Article 29 RESC	The right to information and consultation in collective redundancy procedures	354

CHAPTER IV INTERNATIONAL LABOUR ORGANIZATION

The Declaration of Philadelphia (DoP)	361
ILO Convention 88 Employment Service Convention, 1948 (No. 88)	375
ILO Convention 122 Employment Policy Convention, 1964 (No. 122)	383
ILO Convention 142 Human Resources Development Convention, 1975 (No. 142)	387
ILO Convention 144 Tripartite Consultations, 1976 (No. 144)	391
ILO Convention 150 Labour Administration Convention, 1978 (No.150)	403
ILO Convention 168 Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)	427

**PART 2
EQUALITY LAW**

Equality: Introduction 431

**CHAPTER I
GENERAL**

International Covenant on Civil and Political Rights: Article 26 (ICCPR) 433
 International Covenant on Economic, Social and Cultural Rights: Articles 2 and 7 (ICESCR) 438
 International Convention on the Elimination of All Forms of Racial Discrimination: Articles 1, 2 and 5 (ICERD) 444
 Convention on the Elimination of All Forms of Discrimination against Women: Articles 1, 2, 3, 4 and 11 (CEDAW) 449
 United Nations Convention on the Rights of Persons with Disabilities (CRPD) 455
 Article 14 ECHR Prohibition of discrimination 461

**CHAPTER II
EU LAW**

Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security 466
 Directive 86/378/EEC on equal treatment in occupational social security and pension schemes .. 481
 Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin 495
 Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation 520
 Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) 547
 Directive 2010/41/EU on the application of the principle of equal treatment between men and women 586

**CHAPTER III
NON EU LAW**

ILO Convention 100 Equal Remuneration Convention, 1951 (No. 100) 602
 ILO Convention 111 Discrimination (Employment and Occupation) Convention, 1958 (No. 111) 612
 ILO Convention 118 Equality of Treatment (Social Security) Convention, 1962 (No. 118) 630
 ILO Convention 159 Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) 635

**PART 3
WORKERS' MOBILITY**

Introduction 641

**CHAPTER I
GENERAL**

Directive 96/71/EC concerning the posting of workers in the framework of the provision of services 643
 Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I) – Articles 8 and 9 664
 Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (Rome II) .. 674
 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 677

Contents

CHAPTER II EU LAW FOR EU NATIONALS

Directive 2004/38/EC	on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States	692
Directive 2005/36/EC	on the recognition of professional qualifications	713
Regulation (EU) 492/2011	on freedom of movement for workers within the Union	785
Directive 2014/54/EU	on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers	800

CHAPTER III EU LAW FOR NON EU NATIONALS

Introduction: Labour Rights of Third-Country National Workers in the European Union	806
Directive 2003/109/EC Article 11	809
Directive 2005/71/EC Article 12	814
Directive 2009/50/EC Article 14	816
Directive 2011/98/EU Article 12	819
Directive 2014/36/EU	823
Directive 2014/66/EU Article 18	827
Directive 2016/801/EU Article 22	829
Directive 2009/52/EC	832

CHAPTER IV NON EU LAW

ILO Convention 94	Labour Clauses (Public Contracts) Convention, 1949 (No. 94)	840
ILO Conventions 97 and 143	Migration for Employment Convention (Revised), 1949 (No. 97) and Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	848

PART 4 NON-STANDARD WORK

Non-Standard Work: Introduction	868
---------------------------------	-----

CHAPTER I EU LAW

Directive 97/81/EC	concerning the Framework Agreement on part-time work	872
Directive 1999/70/EC	concerning the Framework Agreement on fixed-term work	882
Directive 2008/104/EC	on temporary agency work	894

CHAPTER II NON EU LAW

ILO Convention 175	Part-Time Work Convention, 1994 (No. 175)	906
ILO Convention 177	Home Work Convention, 1996 (No. 177)	909
ILO Convention 181	Private Employment Agencies Convention, 1997 (No. 181)	911
ILO Convention 189	Domestic Workers Convention, 2011 (No. 189)	916

**PART 5
WORKING CONDITIONS**

Introduction: Working Conditions 934

**CHAPTER I
EU LAW**

Article 8 CFREU Protection of personal data 937
 Article 30 CFREU Protection in the event of unjustified dismissal 942
 Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship 948
 Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation – GDPR) 958
 Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies 981
 Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights 996
 Directive 2008/94/EC on the protection of employees in the event of the insolvency of their employer 1012
 Directive 2010/18/EU implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC 1026

**CHAPTER II
NON EU LAW**

ILO Convention 29 Forced Labour Convention, 1930 (No. 29) 1049
 ILO Convention 81 Labour Inspection Convention, 1949 (No. 81) 1073
 ILO Convention 95 The Protection of Wages Convention, 1949 (No. 95) 1093
 ILO Convention 129 The Labour Inspection Convention (Agriculture), 1969 (No. 129) ... 1106
 ILO Convention 131 The Minimum Wage Fixing Convention, 1970 (No. 131) 1120
 ILO Convention 138 Minimum Age Convention, 1973 (No. 138) 1124
 ILO Convention 140 Paid Educational Leave Convention, 1974 (No 140) 1136
 ILO Convention 156 Workers with Family Responsibilities Convention, 1981 (No. 156) .. 1142
 ILO Convention 158 Termination of Employment Convention, 1982 (No. 158) 1149
 ILO Convention 182 Worst Forms of Child Labour Convention, 1999 (No. 182) 1165
 Maritime Labour Convention, 2006 (MLC, 2006) 1179
 Article 4 ECHR Prohibition of slavery and forced labour 1200

**PART 6
HEALTH AND SAFETY LAW**

Introduction: Occupational Health and Safety 1203

**CHAPTER I
EU LAW**

Article 31 CFREU Fair and just working conditions 1207
 Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work 1210
 Directive 91/383/EEC supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship 1242
 Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding 1252
 Directive 94/33/EC on the protection of young people at work 1268
 Directive 2003/88/EC concerning certain aspects of the organisation of working time 1285

Contents

CHAPTER II NON EU WORK

ILO Convention 1	Hours of Work (Industry) Convention, 1919 (No. 1)	1321
ILO Convention 47	Forty-Hour Week Convention, 1935 (No. 47)	1332
ILO Convention 79	Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79)	1336
ILO Convention 89	Night Work (Women) Convention (Revised) and P 89 – Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948	1343
ILO Convention 90	Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90) (and ILO Convention 6 – Night Work of Young Persons (Industry) Convention, 1919 (No. 6))	1355
ILO Conventions 3, 103 and 183	on Maternity Protection	1365
ILO Convention 132	Holidays with Pay Convention (Revised), 1970 (No. 132)	1370
ILO Convention 153	Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153)	1381
ILO Convention 155	Occupational Safety and Health Convention, 1981 (No. 155)	1392
ILO Convention 161	Occupational Health Services Convention, 1985 (No. 161)	1413
ILO Convention 171	Night Work Convention, 1990 (No. 171)	1428
ILO Convention 187	Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)	1437

PART 7 COLLECTIVE ORGANIZATION AND ACTION

Introduction: Collective Organisation and Action	1454
--	------

CHAPTER I EU LAW

Article 28 CFREU	Right of collective bargaining and action	1457
------------------	---	------

CHAPTER II NON EU LAW

ILO Convention 87	Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Convention 98 – Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and Convention 154 – Collective Bargaining Convention, 1981 (No. 154)	1492
Article 11 ECHR	Freedom of assembly and association	1513

PART 8 WORKERS' INVOLVEMENT

Introduction: Workers' Involvement	1534	
Directive 2001/86/EC	supplementing the Statute for a European company with regard to the involvement of employees	1535
Directive 2002/14/EC	establishing a general framework for informing and consulting employees in the European Community	1551
Directive 2003/72/EC	supplementing the Statute for a European Cooperative Society with regard to the involvement of employees	1567
Directive 2005/56/EC	on cross-border mergers of limited liability companies, Art 16 – Employee participation	1592
Directive 2009/38/EC	on the establishment of a European Works Council	1601

PART 9
DISPUTE RESOLUTION

Introduction: Dispute Resolution	1636
Article 6 ECHR Right to a fair trial (extract)	1637
Regulation (EC) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Recast) ...	1643
Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters .	1650
Index	1665

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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

XXX

Abbreviations

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

