

**Thüsing**

# **European Labour Law**

**C. H. Beck • Hart • Nomos**

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by

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C. H. Beck · Hart · Nomos

*Published by*

Verlag C. H. Beck oHG, Wilhelmstraße 9, 80801 München, Germany,  
eMail: [bestellung@beck.de](mailto:bestellung@beck.de)

*Co-published by*

Hart Publishing, 16C Worcester Place, Oxford, OXI 2JW, United Kingdom,  
eMail: [www.hartpub.co.uk](http://www.hartpub.co.uk)

and

Nomos Verlagsgesellschaft mbH & Co. KG, Waldseestraße 3–5,  
76530 Baden-Baden, Germany  
eMail: [nomos@nomos.de](mailto:nomos@nomos.de)

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

This book is mainly based on *Gregor Thüsing*, *Europäisches Arbeitsrecht*, 2<sup>nd</sup> ed. 2012. It was shortened, translated and adopted in its references.

ISBN 978-3-406-65047-5 (Beck)  
ISBN 978-1-84946-488-8 (Hart Publishing)  
ISBN 978-3-8487-0297-8 (Nomos)

© 2013 Verlag C. H. Beck oHG  
Wilhelmstr. 9, 80801 München

Printed in Germany by  
Nomos Verlagsgesellschaft  
In den Lissen 12, 76547 Sinzheim

Typeset by  
Reemers Publishing Services GmbH, Krefeld

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## Preface

In the beginning Labour Law and Social Security Law were of little significance in the development of European Law. They only played a very minor role in the founding Treaties of the European Communities as their aim was primarily to harmonise economic, not social conditions. More than 50 years after the Rome Treaties the situation is completely different: There is more and more awareness that the only way to further develop European Law and the European Union as a whole is by not only getting rid of competitive constraints but also by making the citizens of Europe aware of its social dimension. The Saint Pope *John Paul II* once made the quite beautiful remark that Europe must breathe with both lungs, East and West. This image can be applied here: Both lungs, i. e. the economic as well as the social breath of air must feature in the future development of the law.

Therefore today is a good time for an outline of European Labour Law. This book was written mainly with students in mind that are specialising in Labour Law but it also gives practising labour lawyers an overview of the most important regulations and judgments on this subject. References were deliberately kept to a minimum, instead numerous examples and a summary of the most significant judgments of the ECJ illustrate vividly the contentious issues. This publication focuses on the key issues of the debate. Therefore, some points have been left out to make room for a more profound discussion of others.

This book is dedicated to the memory of my dear father, *Dr. Rolf Thüsing*, who first introduced me to European Labour Law.

Bonn, August 2013

*Gregor Thüsing*



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## Selected Abbreviations

|                                   |                                                                                                          |
|-----------------------------------|----------------------------------------------------------------------------------------------------------|
| ADA .....                         | Americans with Disabilities Act                                                                          |
| ADEA .....                        | Age Discrimination in Employment Act                                                                     |
| AGG .....                         | Allgemeines Gleichbehandlungsgesetz (German Anti-Discrimination Act)                                     |
| Art. ....                         | article                                                                                                  |
| AuR .....                         | Arbeit und Recht (German law journal)                                                                    |
| BAG .....                         | Bundesarbeitsgericht (Federal Labour Court)                                                              |
| BetrVG .....                      | Betriebsverfassungsgesetz (Works Constitution Act)                                                       |
| BGB .....                         | Bürgerliches Gesetzbuch (German Civil Code)                                                              |
| BGBL. ....                        | Bundesgesetzblatt (Federal Law Gazette in Germany and Austria)                                           |
| BGE .....                         | Entscheidungen des schweizerischen Bundesgerichts (Leading cases of the Swiss Federal Courts)            |
| BGH .....                         | Bundesgerichtshof (Federal Court of Justice)                                                             |
| BUrlG .....                       | Bundesurlaubsgesetz (German Federal Leave Act)                                                           |
| BVerwG.....                       | Bundesverwaltungsgericht (Federal Administrative Court)                                                  |
| BVerwGE.....                      | Entscheidungssammlung des Bundesverwaltungsgerichts (decisions of the Federal Administrative Court)      |
| C.M.L.R. ....                     | Common Market Law Review (journal)                                                                       |
| Calliess/Ruffert/<br>author ..... | <i>Calliess/Ruffert</i> , commentary EUV/AEUV, 3 <sup>rd</sup> ed., 2007                                 |
| CEEP .....                        | European Centre of Enterprises with Public Participation and of Enterprises of General economic Interest |
| cf. ....                          | confer                                                                                                   |
| CFREU .....                       | Charter of fundamental rights of the European Union                                                      |
| CMLR .....                        | Common Market Law Review (journal)                                                                       |
| COM.....                          | Proposal by the Commission of the European Union                                                         |
| DB .....                          | Der Betrieb (German law journal)                                                                         |
| E/A/S.....                        | <i>Oetker/Preis/Balze</i> , Europäisches Arbeits- und Sozialrecht – EAS, 174. Ergänzungslieferung        |
| e. g. ....                        | exempli gratia                                                                                           |
| ECJ .....                         | European Court of Justice                                                                                |
| ECR .....                         | European Court Reports                                                                                   |
| ECSC Treaty.....                  | European Coal and Steel Community Treaty                                                                 |
| EEC Treaty.....                   | European Economic Community Treaty                                                                       |
| ERA .....                         | Employment Rights Act                                                                                    |
| ESC.....                          | European Social Charter                                                                                  |
| ETUC.....                         | European Trade Union Confederation                                                                       |
| EUROATOM Treaty                   | European Atomic Energy Community Treaty                                                                  |
| EWiR .....                        | Entscheidungen zum Wirtschaftsrecht (journal)                                                            |
| EWS .....                         | Europäisches Wirtschafts- und Steuerrecht (journal)                                                      |
| H/S/W/author.....                 | <i>Hanau/Steinmeyer/Wank</i> , Handbuch des europäischen Arbeits- und Sozialrechts, 2002                 |

|                                       |                                                                                                                                                      |
|---------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>v. Hoyningen-Huene/Linck</i> ..... | <i>von Hoyningen-Huene/Linck</i> , Kündigungsschutzgesetz, 14 <sup>th</sup> ed., 2007                                                                |
| i. e. ....                            | id est                                                                                                                                               |
| Ibid .....                            | Ibidem                                                                                                                                               |
| ILJ .....                             | Industrial Law Journal                                                                                                                               |
| ILO .....                             | International Labour Organization                                                                                                                    |
| InsO .....                            | Insolvenzordnung (German Insolvency Act)                                                                                                             |
| IRLR.....                             | Industrial Relations Law Reports                                                                                                                     |
| ITF.....                              | International Transport Workers Federation                                                                                                           |
| KR/ <i>author</i> .....               | <i>Etzel</i> , Gemeinschaftskommentar zum Kündigungsschutzgesetz und zu sonstigen kündigungsschutzrechtlichen Vorschriften, 8 <sup>th</sup> ed. 2007 |
| KSchG.....                            | Kündigungsschutzgesetz (German Protection Against Dismissal Act)                                                                                     |
| LEBEP.....                            | Ley del estatuto básico del empleado público                                                                                                         |
| MLR .....                             | Modern Law Review                                                                                                                                    |
| NJW .....                             | Neue Juristische Wochenschrift (German law journal)                                                                                                  |
| NZA .....                             | Neue Zeitschrift für Arbeitsrecht (German law journal)                                                                                               |
| OJ.....                               | Official Journal of the European Union                                                                                                               |
| para. ....                            | paragraph                                                                                                                                            |
| PWD .....                             | Posted Workers Directive (96/71/EC)                                                                                                                  |
| RdA .....                             | Recht der Arbeit (German law journal)                                                                                                                |
| RRA.....                              | Race Relations Act                                                                                                                                   |
| SAE .....                             | Sammlung arbeitsrechtlicher Entscheidungen (German law journal)                                                                                      |
| SDA.....                              | Sex Discrimination Act                                                                                                                               |
| SE.....                               | Societas Europaea                                                                                                                                    |
| sec. ....                             | section                                                                                                                                              |
| SNCF.....                             | Société nationale des chemins de fer français                                                                                                        |
| Streinz/ <i>author</i> .....          | <i>Streinz</i> (ed.), commentary EUV/AEUV, 2 <sup>nd</sup> ed., 2012                                                                                 |
| STSJ.....                             | Spanish Supreme Court of Justice                                                                                                                     |
| TFEU .....                            | Treaty on the Functioning of the European Union                                                                                                      |
| TUPE .....                            | Transfer of Undertakings (Protection of Employment) Regulations 2006                                                                                 |
| TzBfG.....                            | Teilzeit- und Befristungsgesetz (German Part-Time and Temporary Employment Act)                                                                      |
| UNICE.....                            | Union of Industrial and Employers' Confederation of Europe                                                                                           |
| WLR .....                             | Weekly Law Review                                                                                                                                    |
| ZESAR.....                            | Zeitschrift für Europäisches Arbeits- und Sozialrecht (German law journal)                                                                           |
| ZEuP .....                            | Zeitschrift für Europäisches Privatrecht (German law journal)                                                                                        |
| ZfA .....                             | Zeitschrift für Arbeitsrecht (German law journal)                                                                                                    |
| ZZP .....                             | Zeitschrift für Zivilprozessrecht (German law journal)                                                                                               |