

THE RECAST OF THE
EUROPEAN WORKS COUNCIL
DIRECTIVE

Edited by
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In Memory to Brian Bercusson

PREFACE

On 16 May 2009, EC Directive 2009/38 (Recast Directive) was published in the Official Journal. This directive is the outcome of a recasting procedure. With effect from 6 June 2011, EC Directive 94/45 on the establishment of a European works council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (EWC Directive) will be repealed.

Nearly a decade has gone by between the date which had been scheduled for the review of the EWC Directive and the publication of the Recast Directive. Nearly 15 years lie between the publication of the EWC Directive and that of the Recast Directive. As witnessed by the grandfather clause of Article 13 of the EWC Directive, the emergence of the European works councils has preceded the adoption of the EWC Directive.

The present volume is retrospective and prospective. The book unfolds as a diptych. The first part examines the background and some of the loopholes of the EWC Directive. The background is studied from a conceptual, a historical, a legislative and a case law perspective. KOLLONAY LEHOCZKY analyzes the fundamental right of workers to information and consultation under the European Social Charter. Insofar as the EWC Directive as well as the Recast Directive refers to the improvement of the right to information and to consultation of employees as the purpose of the directive, the contribution is quintessential. It provides a fundamental rights perspective. DØLVIK focuses on the genesis of the EWC Directive, which was the first EC Directive ever to have been adopted under the Maastricht Protocol on Social Policy. His contribution is complemented by JAGODZIŃSKI's reconstruction of the "Quest for an amended EWC Directive". The EWC Directive stands at the beginning of a genuine renaissance of EC Directives in the field of worker involvement after the golden era marked by the adoption of the Collective Redundancies Directive and the Transfer of Undertaking Directive. Contrary to its predecessors, it has remained unaltered. As indicated in the 7th recital of the Recast Directive, a modernization of the EWC Directive in the light of legislative developments was necessary. At present these directives constitute one of the most developed legislative chapters of European Labour Law. DORSSEMONT's comparative contribution focuses on the state of the art of Worker Involvement in secondary EC Law prior to the Recast Directive. A substantial

part of the first panel of the diptych is dedicated to an analysis of the ECJ and domestic case law related to the EWC Directive. This research was operated on the basis of national reports following a questionnaire or format annexed to the book. Both the national reports (Austria, Belgium, France, Germany, the Netherlands, Slovakia, Sweden and the UK) which have been updated until the end of 2009 as well as a comparative or synthetic report have been integrated into this publication.

The comparative and the national reports have been written as part of a research project of the European Trade Union Institute, which was made possible due to the financial support of the European Community. The background of the project is explained by JAGODZIŃSKI.

The second part does not endeavour a systematic analysis of the Recast Directive. It gathers selected essays which have been written by distinguished scholars as well as by experts who have combined a profound knowledge of law in the books with the experience of law in practice. Some of the essays have a topical character. They focus on specific improvements of the Recast Directive (the scope *ratione temporis*, the nature of the recast procedure, the definitions of information and consultation, the issue of continuity, the articulation between European and local information and consultation procedures). Other authors have tackled the subject matter in a more comprehensive manner, though they have done so from a specific and distinct perspective (e.g. the issue of effectiveness, the issue of actors).

This book has been written “under the shadow” of a remarkable and ever inspiring colleague.

As indicated in the explanatory note of Jagodziński, Brian Bercusson played a crucial role in chairing a kick off meeting to launch the research project on the analysis of the ECJ and domestic case law related to European works councils. The kick off meeting was organized shortly after a previous meeting on 12 March 2008, where Brian presented a Report related to “Information and Consultation Rights in Jurisprudence”. This report written in Brian’s typical way, spreading a wave of acute aphorisms, was published posthumously by the SDA in September 2008. We vividly regret that we were deprived of the human and intellectual pleasure to share the publication of this book with him. Brian’s enthusiasm and social commitment continues to be a source of inspiration. It is with a generous smile full of gratitude that we pay tribute to this rigorous optimist in action. We are grateful to Catherine Bercusson for granting us the privilege to dedicate this book to his memory.

Filip DORSSEMONT
Thomas BLANKE
Romuald JAGODZIŃSKI

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