

EUROPEAN SOCIAL SECURITY LAW

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Frans PENNINGS

6th edition



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SERIES PREFACE

The role of European law is becoming more and more central in comparative law, in the law of the other Member States and as an outstanding model for legal policy. Insiders have known for a long time that in almost all core areas of law, the important spurs to reform have been coming from Europe and that European law increasingly dominates the cornerstones of our legal systems. Therefore, a discussion of European law involves addressing the main problems and guiding principles but, in practical terms, it also increasingly entails raising questions that are threatening to revolutionise national legal traditions and render entire libraries obsolete.

Since 2002, the year marking the introduction of the Euro, a new law of obligations has been in place in Germany, with the old codifications in France and Austria following to a lesser extent. The next years were characterised by unrestricted cross-border mobility of court decisions; re-writing of core areas of company law such as accounting, cross-border mobility, but as well the promulgation of supranational types of company, with some of the largest German enterprises becoming 'European Companies' (SE); and also cross-border crediting of contributions to social security systems becoming a reality. The law on competition and subsidies has been primarily European for a long time and its mighty implementing mechanisms – overriding Heads of State – fill title pages. The same applies to intellectual property law, foreign exchange law, banking and insurance law and environmental law. These have become genuinely European subjects. Then, in the last years, the cross-border arrest warrant fundamentally changed European Criminal Law; anti-discrimination law is all encompassing; there is now a proposal for a European Optional Contract Law (Code); the Lisbon Treaty – though formally not a constitution – installed a new institutional setting strengthening democratic legitimacy and powers of the European Union; and the financial and state debt crises, not even ten years after the introduction of the Euro, triggered measures which considerably strengthened and broadened financial stability schemes at the EU level, from banking law to capital market law and collaboration with respect to systemic risk. The near future will show whether Europe is to have an institutionalised economic collaboration for its political economy ('true economic government') in some way, reflecting the now global importance of the Euro and the responsibility attached to it!

European law – in all legal areas – has long since assumed dimensions that make it absolutely necessary to refer to more than a single book. This series, now beginning its second edition, is structured so as to provide the relevant European complement to a traditional legal area. It offers the internal market package organised in this way, with those areas being chosen for users that have a significant internal market dimension. In comparison with a multi-volume looseleaf work, it has advantages not only in terms of price, but also in that it puts a greater emphasis on classification and limits the material to the essential, which is important in an overflowing area such as European law, of which only very few people manage to preserve an overview.

The dynamic nature of European law is impressive, as its development hurtles along, gathering momentum. There is a need for direction. A serious application of law can no longer focus solely on national transposition. The original, the European guideline, which *de facto* almost always has to be directly applied (even in national legal processes), must be considered. Such direction can best be provided by presenting the contents of European law in context and in the necessary detail – in the present case, up to twelve individual volumes. Some of the volumes have already had considerable success in one national market and are now presented to a pan-European public.

The volumes cover the most important topics in the ‘Europeanisation’ of law. For practitioners – solicitors and barristers, corporate lawyers, judges or lawyers in state authorities or ministries – who do not wish to turn a blind eye to European law, these volumes provide a reliable treatment of the important problems, with sufficiently detailed references. They provide practitioners with all they need on the EU level, and moreover give comparative law and legal policy insight. As a series, they give an overview of those areas most affected by European law. Likewise, they provide advanced students with material for excellent examination results. Students must study European law seriously as part of their main subject if they really wish to specialise in this in the future and do more than pass their examination with an average result. Works with comparative law and interdisciplinary aspects also prepare students for a possible period of study abroad, help them to analyse law in terms of function and also support studies in related subjects. Thus, *IUS COMMUNITATIS* makes European substantive law accessible in the form of the classic systematic textbook and specialist work.

All volumes on the applicable law of the Union begin by presenting the necessary tools: in each case, the EC/EU law and the instruments whereby this law enters into the national legal systems are introduced. In all volumes, a thorough description of the EC/EU law rules forms the core of the discussion. However, economic or other interdisciplinary references of significance to the legislation in question are also explained, i.e. what the rules are intended to achieve and,

where there are lacunae, the various models that exist and are discussed throughout Europe. European law is, indeed, a law in the making. Each legal area is presented in a logical order, as an organic whole; this implies that the approximated or harmonised law forms only the skeleton or hard nucleus and is supplemented by comparative law explanations where harmonisation is not advanced. In this way, the relationship to national law becomes clearer and the ability of readers to deal with European law will improve, as they are given a coherent picture rather than the fragmentary one often complained of. These are to be textbooks, discussion books and, above all, practical books – sufficiently condensed to contain all the necessary details and yet clear in their outlines. This was the objective we strive for and the challenge. The authors and the editor (Stefan.Grundmann@rewi.hu-berlin.de) thank those who have criticised and inspired us and who may do so in the future.

The entire IUS COMMUNITATIS series owes much to the Thyssen Foundation, which considered the European aspect and in particular the connection with comparative law so important that it generously supported a good number of the volumes. As the editor, I should like to express my deepest thanks.

Berlin, Spring 2014

Stefan Grundmann

PREFACE

In 2010 a new Regulation for the coordination of social security came into force, Regulation 883/2004. This is a very good reason for making a new, fully revised edition of this handbook. Now we are 4 years further in time and the Regulation has been amended some times and new judgments of the Court of Justice were given. Time for a new edition of the book.

As in previous editions of the book Part I is dedicated to this coordination Regulation. Regulation 883/2004 and the judgments of the Court of Justice are extensively described and analysed. The judgments of the Court on Regulation 883/2004 that are still relevant – and there are many of these – are dealt with and there are already judgments on the present coordination Regulation.

The differences between the present Regulation and Regulation 1408/71 will be outlined and proposals for further amendments will be made.

This Part of the Book also deals with EU citizenship and its relevance to access to social advantages.

Part II is dedicated to social policy and harmonisation initiatives of the EU. Apart from equal treatment of men and women in social security also topics as the Open Method of Coordination are discussed.

I am grateful for the comments by the users of the book on the earlier editions and the experiences when using the book as a handbook in my courses. Comments on this edition are also welcome.

The materials of this book are also used for a Dutch language edition and for the volume on the EU of the *Encyclopaedia of social security* (Wolters Kluwer).

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Utrecht
November 2014

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ABBREVIATIONS

AAW	Algemene Arbeidsongeschiktheidswet [General Invalidity Benefits Act]
ABP	Algemene Burgerlijke Pensioenwet [Public Servants' Superannuation Act]
AG	Advocate-General
AKW	Algemene Kinderbijslagwet [General Child Benefits Act]
ANW	Algemene nabestaandenwet [General Survivors' Benefits Law]
AOW	Algemene Ouderdomswet [General Old Age Pension Act]
AWW	Algemene Weduwen- en Wezenwet [Widows and Orphan's Benefits Act]
BTSZ	Belgisch Tijdschrift voor Sociale Zekerheid [Belgian magazine]
CMLR	Common Market Law Reports
CMLRev	Common Market Law Review
COM	proposal of the European Commission
CRvB	Centrale Raad van Beroep [Central Appeals Court]
CSG	Cotisation sociale généralisée [Generalized Social Levy]
CSV	Coördinatiewet sociale verzekeringen [Social Security (Co-ordination) Act]
DLA	Disability living allowance
EC	European Community
ECR	European Court Reports
ECU	European currency unit
EEA	European Economic Area
EEC	European Economic Community
EFTA	European Free Trade Association
EJSS	European Journal of Social Security
ELR	European Law Review
EP	European Parliament
ESC	European Social Charter
EU	European Union
ILJ	Industrial Law Journal
ILO	International Labour Organisation
ILR	International Labour Review
IOAW	Wet Inkomensvoorziening Oudere en gedeeltelijk Arbeidsongeschikte werkloze Werknemers [Law on income for older and partially incapacitate unemployed persons]

KB	Koninklijk Besluit [Royal Decree]
LIEI	Legal Issues of European Integration
MR	Migrantenrecht
NCIP	non-contributory invalidity pension
NJCM	Magazine of Netherlands Committee for Human Rights
NJB	Nederlands Juristenblad [Dutch magazine]
NLG	Dutch guilders
NTER	Nederlands Tijdschrift voor Europees Recht [Dutch magazine]
NYIL	Netherlands Yearbook of International Law
OJ C	Official Journal of the European Communities, Information and Notices
OJ L	Official Journal of the European Communities, Legislation
OMC	Open Method of Coordination
PS	Periodiek voor sociale verzekering, sociale voorzieningen en arbeidsrecht [Dutch magazine]
RMC	Revue du Marché Commun
RSV	Rechtspraak Sociale Verzekering [Dutch magazine with law reports]
RTDE	Revue Trimestrielle de Droit Européen
RV	Rechtspraak Vreemdelingenrecht [Dutch magazine]
RvB	Social Security Appeals Tribunal [former Netherlands social security court]
SDA	Severe Disablement Allowance
SEW	Tijdschrift voor Europees en economisch recht [Dutch magazine]
SGB	Sozialgesetzbuch [Social security code]
SMA	Sociaal Maandblad Arbeid [Dutch magazine]
SR	Nederlands tijdschrift voor sociaal recht [Dutch magazine]
Stb	Staatsblad [Netherlands Official Journal]
SVB	Sociale Verzekeringsbank [Netherlands administration of national insurances]
TFEU	Treaty on the Functioning of the EU
Trb.	Tractatenblad [Netherlands official journal of treaties]
Wajong	Wet Arbeidsongeschiktheidsvoorziening Jonggehandicapten [Invalidity Provision (Young Disabled Persons) Act]
WAO	Wet op de Arbeidsongeschiktheidsverzekering [Netherlands law relating to insurance against incapacity for work]
WW	Werkloosheidswet [Unemployment Insurance Act]
WWV	Wet Werkloosheidsvoorziening [Unemployment Benefits Act]
YEL	Yearbook of European Law