EUROPEAN MIGRATION LAW

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2nd 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 TO THE SECOND EDITION

Since the launch of the first edition, EU migration law has gradually matured into a comprehensive system covering all basic topics of migration. This result was not yet evident when the first edition came out. At that time, the building of EU migration law was still under construction and we deemed it an adequate approach to describe European Migration Law as a multilayered assembly of different legal spheres placed adjacent to each other. Nowadays, this format seems to be less appropriate.

The Treaty of Lisbon entered into force. The Charter of Fundamental Rights of the European Union became the binding body of fundamental rights applicable within the scope of Union law. The law of the EU concerning migration now offers a comprehensive structure both at the concrete level of specific provisions and at the abstract level of principles and fundamental rights. In the context of Union law, important human rights treaties such as the European Convention of Human Rights, the UN Refugee Convention and the UN Convention on the Rights of the Child, must be understood not on their own merits but as the primary sources of inspiration for the interpretation of the Charter of Fundamental Rights.

In view of this, we felt that a new approach was necessary. In this second edition, therefore, the legal sphere of EU law is consequently put on the foreground. One consequence is that, as much as possible, relevant aspects of human rights law are no longer discussed separately, but are integrated in the framework of Union law. The book still recognises however, the impact for migration law of human rights regimes outside the EU context such as the case law of the European Court of Human Rights on the right to respect for private and family life (discussed in chapter 5), and the Refugee Convention as primary source of EU refugee status (discussed in chapter 7).

The structure of the book has been simplified as much as possible. We hope that this will add to the readability.

The division of tasks between the authors remained more or less the same. Chapter 4 was written by Gerrie Lodder, the greater part of chapter 7 was written by Kees Wouters, chapters 6 and 8 and a part of chapter 7 were written by Maarten den Heijer. The remaining chapters were written by Pieter Boeles, who also did most of the editing.
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