THE RECAST OF THE
EUROPEAN WORKS COUNCIL
DIRECTIVE

Edited by
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In Memory to Brian Bercusson
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Community-scale groups of undertakings for the purposes of informing and consulting employees (EWC Directive) will be repealed.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 consultation of employees as the purpose of the directive, the contribution is quintessential. It provides a fundamental rights perspective. Dolvik 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
# CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface</td>
<td>..............................................................................................</td>
<td>vii</td>
</tr>
<tr>
<td>A.</td>
<td>ABOUT THE CONTRIBUTORS</td>
<td>xxv</td>
</tr>
<tr>
<td>A.</td>
<td>Background and loopholes of the EWC Directive 94/45</td>
<td></td>
</tr>
<tr>
<td>I.</td>
<td>The fundamental right of workers to information and consultation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>under the European Social Charter</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Csilla Kollonay Lehoczky</td>
<td>3</td>
</tr>
<tr>
<td>I.</td>
<td>Introduction</td>
<td>3</td>
</tr>
<tr>
<td>I.</td>
<td>Precedence and sequence of emerging involvement rights in Europe</td>
<td></td>
</tr>
<tr>
<td>I.</td>
<td>1. The alleged precursor: Article 6 paragraph 1</td>
<td>6</td>
</tr>
<tr>
<td>I.</td>
<td>2. The sequence of emerging involvement rights in Europe</td>
<td>8</td>
</tr>
<tr>
<td>II.</td>
<td>Common features of Articles 21 and 22</td>
<td></td>
</tr>
<tr>
<td>II.</td>
<td>1. Legal framework</td>
<td>10</td>
</tr>
<tr>
<td>II.</td>
<td>2. Personal scope</td>
<td>11</td>
</tr>
<tr>
<td>II.</td>
<td>2.1. Employers obliged to involve workers in issues of</td>
<td></td>
</tr>
<tr>
<td>II.</td>
<td>management</td>
<td>11</td>
</tr>
<tr>
<td>II.</td>
<td>2.1.1. Restriction of the obligation to ‘undertakings’</td>
<td>11</td>
</tr>
<tr>
<td>II.</td>
<td>2.1.2. Exempting religious communities and spiritual/</td>
<td></td>
</tr>
<tr>
<td>II.</td>
<td>ideological undertakings</td>
<td>14</td>
</tr>
<tr>
<td>II.</td>
<td>2.1.3. Exempting small employers</td>
<td>14</td>
</tr>
<tr>
<td>II.</td>
<td>2.2. The concept of workers’ representatives</td>
<td>16</td>
</tr>
<tr>
<td>II.</td>
<td>2.3. The ‘great majority’ rule</td>
<td>18</td>
</tr>
<tr>
<td>III.</td>
<td>The different attributes of Articles 21 and 22</td>
<td>20</td>
</tr>
<tr>
<td>III.</td>
<td>1. Material scope, rules and procedures under Article 21</td>
<td>20</td>
</tr>
<tr>
<td>III.</td>
<td>2. Material scope, rules and procedures of Article 22</td>
<td>23</td>
</tr>
<tr>
<td>IV.</td>
<td>Article 29: scope, content, rules and procedures</td>
<td>26</td>
</tr>
<tr>
<td>V.</td>
<td>Sanctions</td>
<td>28</td>
</tr>
<tr>
<td>2.</td>
<td>Worker involvement in secondary EC law prior to the Recast Directive</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Filip Dorssemont</td>
<td>31</td>
</tr>
<tr>
<td>2.</td>
<td>Introduction</td>
<td>31</td>
</tr>
</tbody>
</table>

Intersentia ix
Contents

I. A conceptual study ................................................................. 34
   1. Worker involvement ......................................................... 37
   2. Information ................................................................. 38
   3. The right to consultation ................................................. 39
   4. The right to participation ............................................... 46
   5. The representation and the collective defence of the interests
      of workers ................................................................. 48

II. Basic principles of the Community right to worker involvement ...... 50

III. The substantive scope of application of the directives in retrospect . 54

IV. The spirit of cooperation: re-negotiational, pre-contractual and
    post-contractual ............................................................. 55

V. Horizontal subsidiarity ....................................................... 58

VI. To whom does this right to information and consultation belong? .... 62

VII. Limitations of the fundamental right to information and consultation . 66
    1. Limitations ratione personae in Treaty articles and human rights
       instruments ................................................................. 67
    2. The limitation ratione personae in the worker involvement
       directives ................................................................. 68
       2.1. Undertakings, public and/or private sector ....................... 68
       2.2. Thresholds and levels ............................................... 71
       2.3. Tendenzschutz ........................................................ 74
       2.4. Seagoing vessels ...................................................... 77
    3. Reservation and confidentiality .......................................... 78
    4. Bankruptcy and analogous insolvency proceedings .................. 83

VIII. Sanctions ........................................................................ 84

IX. Conclusion: On articulation and codification ........................... 87
    1. The issue of definitions ................................................... 87
    2. Articulation ................................................................. 88
       2.1. Collective Redundancies Directive, Transfer of
       2.2. EWC Directive and the transfer of undertakings: Effects of
            structural change ...................................................... 88
       2.3. SE Directive and EWC Directive .................................... 89

3. The first test of the Maastricht Social Protocol: European works
councils

   JON ERIK DØLVIK ......................................................... 91

I. Background ................................................................. 91

II. The talks about talks ..................................................... 95

III. Organizational and analytical lessons .................................. 99

References ........................................................................ 103

x

Intersentia
4. The EWC in domestic and ECJ case law ........................................ 105

I. European works councils related litigation – Rationale for a systematic analysis

Romuald Jagodziński .............................................................. 107

Summary ................................................................. 107
1. Existing legal studies on EWCs .............................................. 107
2. Background of the research project on EWC-related case law ........ 109
3. Research approach .......................................................... 110
4. Conclusion ................................................................. 112

References ................................................................. 113

II. National reports ............................................................. 115

Austria

Domenico Rief ................................................................. 115

Procedural part .............................................................. 115
1. List of the judgments ..................................................... 115
   a. Austrian judgments: Kühne & Nagel AG & Co KG (Germany) v Kühne & Nagel GmbH (Austria) ...................................................... 115
   b. Parties .................................................................... 115
   c. Stage of the procedure .............................................. 116
2. Procedure to take legal action .............................................. 116
   a. Standing .............................................................. 116
   b. Financial costs of the legal procedure ......................... 118
3. Judicial interpretation of Article 6 and Article 13 Agreements ........ 120

Substantial part .............................................................. 120
1. The exemption from the EWC Directive based on the grandfather clause (Article 13 EWC Directive): case law related to Article 13 agreements ................................................................. 120
2. Legal issues related to the assessment by workers (‘representatives) of the Community-scale dimension of transnational establishments and of enterprises ........................................ 120
   a. Decision of the Court of first instance ......................... 121
   b. Decision by the Court of Appeals ................................. 123
   c. Decision by the Supreme Court .................................. 123
   d. Comment ............................................................ 125
3. The responsibility of central management for the establishment of a European works council ........................................ 126
4. Legal issues of Article 6 Agreements ................................... 126
5. Functioning of the SNB and the EWC ................................. 126
### Contents

6. Legal issues related to the information and consultation procedure .................................................. 126
7. Relation between EWCs and national works councils or national bodies of employee representation ................. 126
8. External restrictions to information and consultation .................................................................................. 126
9. Subsidiary requirements .............................................................................................................................. 126
10. Other issues .................................................................................................................................................. 126

**Belgium**

**FILIP DORSEMENT** ........................................................................................................................................ 127

Procedural part .................................................................................................................................................. 127
1. List of all the cases .......................................................................................................................................... 127
2. Procedure to take legal action ....................................................................................................................... 128
3. Judicial interpretation of Article 6 and Article 13 agreements .................................................................. 130
4. Judicial and territorial competence ............................................................................................................ 130

Substantial part ............................................................................................................................................... 130
1. The exemption from the EWC Directive based on the grandfather clause (Article 13 EWC Directive): case law related to Article 13 agreements ...................................................................................... 130
   a. Facts ...................................................................................................................................................... 131
   b. Ruling .................................................................................................................................................... 132
   c. Anticipatory agreements and representativity ....................................................................................... 132
2. Legal issues related to the assessment by workers ('representatives) of the Community-scale dimension of transnational undertakings or groups of undertakings ................................................................................. 136
3. “The responsibility of central management for the establishment of a European Works Council” .................. 136
4. Legal issues of Article 6 agreements ........................................................................................................... 136
5. Functioning of the SNB and the EWC .......................................................................................................... 136
6. Legal issues related to the information and consultation procedure ...................................................................... 136
   a. Facts .................................................................................................................................................. 136
   b. Ruling ................................................................................................................................................ 137
   c. Assessment ......................................................................................................................................... 138
   d. Sanctions in case of violation of the information and consultation procedure .................................... 138
7. Relation between EWCs and national works councils or national bodies of employee representation .......... 138
8. External restrictions to information and consultation .................................................................................. 138
9. Subsidiary requirements .............................................................................................................................. 138
10. Other issues .................................................................................................................................................. 139
France
RACHID BRIHI......................................................... 141

Introduction............................................................... 141
Procedural part.......................................................... 141
1. List of all cases ...................................................... 141
2. Standing of the EWC: the issue of legal personality .......... 142
3. Procedure to take legal action ................................... 143
Substantial part.......................................................... 144
1. The exemption from the EWC Directive based on the grandfather clause (Article 13 EWC Directive): case law related to Article 13 Agreements .......................................................... 144
2. Legal issues related to the assessment by workers (‘representatives) of the community-scale dimension of transnational undertakings or groups of undertakings .................................................. 144
3. The responsibility of central management for the establishment of a European works council .................................. 144
4. Legal issues of Article 6 Agreements .............................. 144
5. Functioning of the SNB and the EWC ............................ 144
6. Legal issues related to the information and consultation procedure .......................................................... 144
   a. On the EWC’s right to information .............................. 144
   b. On the EWC’s right to consultation ............................. 146
   c. What sanctions should there be for the rights of the EWC? .... 152
7. On the links between the EWC and the national bodies for the representation of workers .................................. 154
8. External restrictions to information and consultation .......... 156
9. Subsidiary requirements ............................................ 156
10. Other issues: towards the affirmation of a true transnational stakeholder? .................................................. 156

Germany
THOMAS BLANKE...................................................... 159

List of abbreviations..................................................... 159
1. Case studies............................................................ 159
   1.1. Schneider Electric: Review of the appointment of national employees’ representatives to the EWC – national jurisdiction .. 159
   1.2. Forbo: The European works council does not supersede national participation rights ............................................. 162
   1.3. Valora/Stielke: Priority of the request to set up a Special Negotiating Body pursuant to §9 EBRG over a judicial declaration of the invalidity of an agreement in accordance with §41 EBRG (= Article 13 Directive) ..................... 164
1.4. British Airways: Injunctive relief for the European Works Council in the case of a failure to consult in temporary injunction proceedings and inadmissibility of the cautioning of a EWC chairperson because she visited a works council abroad (Vienna) in connection with outsourcing measures  


2. Judgment of the Labour Court of Düsseldorf (19.3.2008): Inadmissibility of the cautioning of the EWC chair on account of a visit to a works council abroad (Austria) with regard to an outsourcing matter  

1.5. Junk/Kühnel: Timeliness of the consultation procedure  

1.6. Jungheinrich: Free choice of venue for the EWC committee and the scope of the information obligation – no decision on the merits  

1.7. Bo-frost, Kühne & Nagel, ADS Anker: The right to information in accordance with Article 11, subsection 2 EWC Directive (§5, subsection 1 and 2 EBRG)  

1.8. Bo-frost: Claim for information by the EWC for the purpose of clarifying the scope of application of the EBRG  

1. History of the proceedings and central legal issues  

2. The reception of the ECJ decision in the German literature  

3. The decision of the first division of the Federal Labour Court of 30.3.2004: The right to information presupposes a certain real probability if the directive is to be applicable  

4. The internal right to information between undertakings  

1.9. Kühne & Nagel: Horizontal request for information by the deemed central management against all group undertakings  

1. Facts of the case: Judicial proceedings in connection with preparing an application  

2. Judicial proceedings to assert the right to information  

3. Enforcement of adjudicated claims  

4. The central works council’s own efforts  

5. Alternative courses of action and evaluation: Self-constitution of a EWC?  

1.10. ADS Anker: ‘Horizontal’ right to information also against a foreign parent company  

1.11. General summary of cases VII–IX: Need for further proceedings  

1.11. Crawford Tar: No information
2. European works councils – A foreign body in German law?............. 191

*The Netherlands*

*Robbert van het Kaar* .......................................................... 193

I. Procedural part ................................................................. 193
   1. List of cases ............................................................. 193
   2. Legal standing ......................................................... 193
   3. Costs ........................................................................ 193
   4. Role of trade unions .................................................... 194
   5. Interpretation of judges ............................................... 194
   6. Forum ........................................................................ 194

II. Substantial part .................................................................. 194
   1. The exemption from the EWC Directive based on the
grandfather clause (Article 13 EWC Directive): case law related
to Article 13 agreements .................................................. 194
   2. Legal issues related to the assessment by workers
(‘representatives) of the Community-scale dimension of
transnational undertakings or groups of undertakings ............. 194
   3. The responsibility of central management for the establishment
of a European works council ............................................ 194
   4. Legal issues of Article 6 agreements .................................. 197
   5. Functioning of the SNB and the EWC .............................. 197
   6. Legal issues related to the information and consultation procedure
197
   7. Relation between EWCs and national works councils or national
bodies of employee representation ..................................... 197
   8. External restrictions to information and consultation .............. 197
   9. Subsidiary requirements ............................................... 197
   10. Other issues ............................................................... 197

References ........................................................................... 198

*Slovak Republic*

*Maria Svořenová* ............................................................... 199

Procedural part ................................................................. 199
1. List of all the cases .......................................................... 199
2. Procedure to take legal action .......................................... 200
3. Financial costs of legal proceedings ................................. 200
4. The role of trade unions.................................................. 201
5. Judicial interpretation of Article 6 and 13 Agreements .......... 201
6. Judicial and territorial competence .................................... 201
Contents

Substantial part ................................................................. 201
1. The exemption from the EWC Directive based on the grandfather
clause (Article 13 EWC Directive): case law related to Article 13
agreements ................................................................. 201
2. Legal issues related to the assessment by workers (‘representatives) of
the Community-scale dimension of transnational undertakings and
of groups of undertakings ............................................. 201
3. The responsibility of central management for the establishing of
a European works council .......................................... 202
   a. Legal framework ............................................... 202
   b. Summary ......................................................... 203
   c. Commentary ..................................................... 205
4. Legal issues of Article 6 agreements .................................. 206
5. Functioning of the SNB and the EWC ............................... 206
6. Legal issues related to the information and consultation procedure ... 206
7. Relation between EWCs and national works councils or national
bodies of employee representation ................................ 206
8. External restrictions to information and consultation ............... 206
9. Subsidiary requirements .............................................. 206
10. Other issues ............................................................ 206

Sweden
   MAGNUS LUNDBERG .................................................. 207

Procedural part ................................................................. 207
List of all the cases .......................................................... 207
Substantial part ................................................................. 207
1. The exemption from the EWC Directive based on the grandfather
clause (Article 13 EWC Directive): case law related to Article 13
agreements ................................................................. 207
2. Legal issues related to the assessment by workers (‘representatives) of
the Community-scale dimension of transnational undertakings and
of groups of undertakings ............................................. 207
3. The responsibility of central management for the establishment of a
European works council .......................................... 207
   a. Background ...................................................... 207
   b. The legal issue ................................................. 208
4. Legal issues of Article 6 agreements .................................. 211
5. Functioning of the SNB and the EWC ............................... 211
6. Legal issues related to the information and consultation procedure ... 211
7. Relation between EWCs and national works councils or national
bodies of employee representation ................................ 211
8. External restrictions to information and consultation ............... 211
9. Subsidiary requirements ......................................................... 212
10. Other issues ................................................................. 212

References ................................................................. 212

United Kingdom

PASCAL LORBER ................................................................. 213

Procedural part ................................................................. 214
1. List of all cases ............................................................... 214
2. Procedure to take legal action ........................................... 216
   a. Standing ............................................................... 216
   b. Financial cost of the legal procedure ................................ 217
   c. Role of trade unions .................................................. 217
3. Judicial interpretation of Article 6 and 13 agreements .............. 217
4. Judicial and territorial competence .................................... 218

Substantial part ............................................................... 219

Thematic Analysis Structure ............................................. 219
1. The exemption from the EWC Directive based on the grandfather clause (Article 13 EWC Directive) .................................. 219
2. Legal issues related to the assessment by workers (‘representatives’) of the Community-scale dimension of transnational establishments and of enterprises .................................................. 220
3. The responsibility of central management for the establishment of a European works council .......................................... 221
   a. EWC1/2004 Mr. Haines, Ms. Dickson & Mr. Plews and The British Council .................................................. 221
   b. EWC4/2008 Unite the Union and Easyjet ................................ 222
4. Legal issues of Article 6 agreements ..................................... 223
5. Functioning of the SNB and the EWC ..................................... 223
6. Legal issues related to the information and consultation procedure .... 223
7. Relation between EWCs and national works councils or national bodies of employee representation .............................. 223
8. External restrictions to information and consultation ................ 223
9. Subsidiary requirements .................................................... 223
10. Other issues ..................................................................... 223

A critical analysis of the legal issues at stake

FILIP DORSSEMONT ............................................................. 225

Procedural and general issues .................................................. 225
Procedural issues ................................................................. 225
1. The EWC and Recast Directive ........................................... 225
Contents

2. The reported case law: litigation in four stages ......................... 226
   a. Legal disputes prior to the start of negotiations .................. 227
   b. Legal disputes which arise at the start or during the negotiations . 228
   c. Legal disputes at the start and in the course of a statutory or conventional EWC .................................................. 229
   d. Legal disputes subsequent to the expiry or the termination of the agreements ............................................................... 233
3. The standing of the European Works Council ............................... 233
4. The domestic Courts and the issue of interpretation ........................ 235
5. Private International Law Issues: the issue of competence and standing ............................................................ 238
Substantial issues ........................................................................ 241
1. The exemption from the “obligations arising from the EWC Directive”: the validity of existing agreements challenged .............. 241
2. Legal issues related to the assessment of the Community-scale dimension of transnational establishments and of enterprises ..... 243
3. The designation of national workers' representatives ....................... 248
4. Issues related to the internal Functioning of the SNB and the EWC in view of the new Recast Directive ........................................ 250
5. Legal issues related to the information and consultation procedure ...... 253
   a. The competence of the EWC regarding transnational matters .... 253
   b. The right to information and consultation within the Recast Directive .......................................................... 256
   c. Quality of the information and consultation procedure .......... 260
   d. Time is of the essence ....................................................... 261
   e. Sanctions in the case of violation of the information and consultation procedure ......................................................... 261
6. Issues related to the termination of an Article 6 agreement ............... 262
7. External restrictions to information and consultation ....................... 263
8. Articulation or concordantia with other EC instruments related to worker involvement ...................................................... 264
Conclusions .................................................................................. 268

IV. Format for the national reports related to EWC case law

Filip Dorssemont ........................................................................ 271

Procedural part .......................................................................... 271
Substantial part ......................................................................... 272
Third part: Collected materials ..................................................... 272
   Thematic analysis structure (cf. second part) .............................. 273
   1. The exemption from the EWC Directive based on the
grandfather clause (Article 13 EWC Directive) ....................... 273
2. Legal issues related to the assessment by workers ('representatives) of the Community-scale dimension of transnational undertaking and groups of undertakings 273
3. The responsibility of central management for the establishment of a European Works Council 273
4. Functioning of the SNB and the EWC 273
5. Legal issues related to the information and consultation procedure 274
   a. Content and space 274
   b. Time is of the essence 274
   c. Quality of the information and consultation procedure 274
   d. Sanctions in case of violation of the information and consultation procedure 274
7. Relation between EWCs and national works councils or national bodies of employee representation 274
8. External restrictions to information and consultation 275
9. Subsidiary requirements 275
10. Other issues 275

B. THE RECAST OF THE EWC DIRECTIVE (2009/38)

   SÉVÉRINE PICARD 279

I. The recasting technique: the EU legislator in a straightjacket 280
   1. Recast vs revision – definitions and procedural consequences 280
   2. Political consequences of the recast – a limited agenda for reform 282

II. ‘Back to the future’ – the scope ratione temporis of the Recast Directive 283
    1. No obligation to renegotiate existing agreements 284
    2. A tailored application of the new rules to existing agreements 284

III. Towards a unification of the applicable regime to all company agreements? The key role of the adaptation clause 290

2. Review, revision or recast? The quest for an amended EWC Directive
   ROMUALD JAGODZIŃSKI 293

Introduction 293
I. The prelude to the EWC Directive of 1994 294
II. The first missed deadline for revision 294
III. Position of the European Trade Union Confederation 295
IV. The employers’ organisations 296
V. 2008: The final phase in the quest for a EWC revision 297
VI. The ETUC’s reviewed position .......................................................... 298
VII. The European Commission’s proposal for a revised EWC Directive . . 299
VIII. Review, revision or recast? .............................................................. 300
IX. Reactions of the social partners ......................................................... 301
X. The new EWC Directive ................................................................. 303
XI. Conclusion ...................................................................................... 308
References ........................................................................................... 309

3. Information and consultation in the Recast Directive
   CORINNE SACHS-DURAND ................................................................. 313

   Introduction ......................................................................................... 313
   I. Comparison between different concepts of information-consultation . 315
      1. The notion of information and consultation ............................... 315
         1.1. Effectiveness of information and consultation ..................... 315
               a. Effectiveness for the workers ...................................... 315
               b. Effectiveness for the employers ................................. 315
         1.2. The definitions ................................................................. 316
               a. The information ...................................................... 316
               b. The consultation .................................................... 317
               c. The relation with contractual autonomy .................... 318
               d. Information and consultation in the subsidiary
                  requirements ........................................................... 318
      2. Anticipation and action ............................................................... 319
   II. Will the new concept of information and consultation be effective? . 321
      1. The agreements: a possible evolution? .................................... 321
      2. The case law: some tracks for the interpretation of the recast
         directive? ............................................................................. 323
            2.1. The autonomy of the EWC concerning the content of the
                 information .................................................................. 323
            2.2. The necessary quality of the information ......................... 324
            2.3. The respect of a time schedule allowing the workers’
                 representatives to play their role .................................. 324
            2.4. The powers of the judge (in France) to modify the process,
                 if necessary ............................................................... 325

4. Who is first? The correct timing of information and consultation
   of European works councils in relation to national rights of worker
   involvement
   THOMAS BLANKE and EDGAR ROSE .............................................. 327

   I. The relevance of correct timing of information and consultation .... 327
   II. The correct time for information and consultation of the EWC ...... 329
   1.1. The concept of Directive 94/45 ........................................ 330
   1.2. Fall-back provisions of national transposition law ................. 333
   1.3. EWC agreements: French and German regulations at group or company level compared ........................................... 336
       1.3.1. German agreements ..................................................... 337
       1.3.2. French agreements ...................................................... 338
       1.3.3. Comparison .............................................................. 339
   1.4. Court decisions ............................................................. 340
2. Concept of Recast Directive 2009/38 ....................................... 342

III. Priority regulations concerning the succession of supranational and national information and consultation procedures ............... 344
   1. Priority regulations in times of EWC Directive 94/45.................. 344
       1.1. Early information and consultation of national bodies in France and Germany ...................................................... 345
       1.2. Priority regulations in selected EWC agreements ................. 347
       1.3. Solutions in court decisions ............................................ 348

IV. Conclusions: The progress made by the EWC Recast Directive 2009/38 .............................................................................. 352

References ................................................................................... 355

5. EWC’s role recast: A European actor?
   Josee J.M. Lamers ........................................................................ 357

I. Introduction .................................................................................. 357
   1. Two directives, two directions? ................................................. 357
   2. Setup: the European role to play .............................................. 358

II. The principles of the EWC Directives ......................................... 359
   1. Why we have a framework solution ....................................... 359
       1.1. Autonomy: a key principle .................................................. 360
       1.2. Autonomy v mandatory report back ................................. 361
       1.3. Autonomy v transnational competence ............................. 362
       1.4. Autonomy v negotiating transnational texts ....................... 364
   2. Subsidiarity .............................................................................. 364
       2.1. Subsidiarity v competence EU ......................................... 364
       2.2. Hierarchy of powers .......................................................... 365
       2.3. Subsidiarity v nomination employees’ representatives ........ 365
       2.4. Subsidiarity v insiders, court ruling .................................... 366
       2.5. Subsidiarity v confidentiality ............................................. 367
       2.6. Subsidiarity v duration national mandates ......................... 368
   3. Proportionality ......................................................................... 368
   4. Equality ..................................................................................... 370
4.1. Equality v equal access to top management ......................... 370
4.2. Equality v equal representation ........................................ 371
5. Flexible rule ........................................................................ 371
6. Spirit of cooperation ............................................................ 371
7. Effectiveness ........................................................................ 372
8. Useful effect .......................................................................... 372
9. Fundamental rights ................................................................ 373
10. Concluding remarks about the principles ............................. 373
III. The dialogue of the EWC with central management ............... 374
1. The effectiveness of the dialogue ............................................ 374
2. Standard setting by courts .................................................... 375
3. Linking European consultation with local levels .................... 378
4. The representation status of the EWC ................................. 381
5. Negotiating transnational agreements .................................... 383
6. The relation with the trade unions .......................................... 385
IV. EWCs development and European actor? ............................. 387
V. Training and time off for EWC members ............................... 388
VI. Concluding remarks ............................................................ 392
References ................................................................................ 395

6. Can the Recast Directive bring more and more effective EWCs?
   PETER KERCKHOFS ................................................................. 399
I. Facilitating new EWCs .............................................................. 400
1. The extending geographical scope increased the number of
   missing EWCs ........................................................................ 401
2. Preparing for the written demand to start the setting up of
   a EWC .................................................................................. 402
3. Legal incentives to start the process of setting up EWCs .......... 404
4. Help for SNBs to establish missing EWCs ............................. 405
II. Upgrading existing EWCs ........................................................ 408
1. Legal upgrading of existing EWCs ......................................... 408
   1.1. What kind of legal upgrading can existing EWCs benefit
       from? .................................................................................. 408
   1.2. Different timing of the legal upgrading of existing EWCs .... 409
2. The shadow of the Subsidiary Requirements of the Recast
   Directive .................................................................................. 410
   2.1. The impact of the subsidiary requirements on EWC
       negotiations ........................................................................ 411
   2.2. Changes in the subsidiary requirements of the Recast
       Directive .............................................................................. 412
III. Effect on actors providing support for EWCs .......................... 413
1. Different social partner recommendations in the transition period 414

xxii

Intersentia
2. More consensus-oriented approaches may prevail ............... 415
IV. Conclusions ................................................................. 416
References ................................................................. 417
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