

PROLOGUE

If memory has something else to do rather than only remembering past times, then this book, that reflects in part an activities record, let us claim for the major task started more than three years ago, when with limited resources and plenty of illusion we opened ourselves to an idea that has come to an exciting collective experiment. When the *Observatory on Business and Courts* -born thanks to the joint effort of academics from the Law and Economics Research Center of the Universidad Complutense and others universities from Madrid, and the Colegio Jurídico of the Instituto de Empresa- initiated its path, we were convinced of its success as the unanimous support that this unique initiative have aroused could not be disappointed. And effectively, as time has gone by, our good omen has been confirmed.

This means, at the same time, the ascertainment of gratitude and the statement of a constitutive principle that makes from strength and dynamism of social actors the base of all human progress. In front of the aspirations that privilege collective progress and certain visions prevailing individualism, the Observatory is the result of an individual and collective effort. This project has been possible only because an abundant group of professionals and businesses of different economic sectors have contributed with their efforts and generosity to create a new springboard for the analysis of said questions not adjusting to the traditional paradigm of parceled knowledge.

The real facts of the business world detect unquestionable evidence of the necessity to articulate new categories in order to uniform and integrate economic and legal approaches, as those areas cannot be analyzed separately any longer. Both subjects are interdependent when referring to the business world.

The Observatory is exactly that, a tool for facilitating integrated information for the decision making process, at the same time it works as a laboratory that generates new ideas and projects that nourishes said information. It is also something else: an intellectual stimulating meeting point for all those professionals involved in the world of the Law and Economics; it is an open classroom for innovation and creative thinking; an authentic discussion forum that address real problems in a real world.

But above all, the Observatory has pretended to link two worlds that in many occasions walk in parallel and with few or no communication. Business and justice share plenty of intersectional zones; it is common that the business decision making process include parameters related to the functioning of the Administration of Justice.

That is why the analysis of the economic effects produced by regulations and its application by courts, the evaluation of the judicial systems, in terms of quality, efficiency and equity, of its organization and management, whether in areas typically related to business –as antitrust, arbitration, tax litigation, judicial valuation of damages and torts or the functioning of the Business Courts--, or others, such as criminality or freedom guarantees, decisively contribute to improve the evaluation that businesses grant to justice. Said matters –as well as others as judicial certainty- are essential for the business activity, as investments, employment, productivity, innovation and growth, as well as the improvement for those under an unfavorable socio-economic situation, depends on it. As we have confirmed during these years, we trust that companies will reciprocally respond with their contributions and support in order to improve justice in areas affecting them directly as well as in those aspects that will benefit the well-being of all citizens.

For the Administration of Justice the Observatory is a springboard of great utility as it allows the legal agents to exchange points of view and experiences with the addressee of the regulations, improving the mutual interest and understandings. Several times, judges and magistrates have confirmed us that the Observatory provides them an open window to the world which connects the different perspectives allowing improvement and avoiding any kind of wrapping.

This book leave on record the different contributions carried out for the last three years by numerous professionals, public secretaries, businessmen and researchers, regarding justice, business and their interconnection. In some cases we refer to reports drafted by the Observatory itself, as the Report of the Civil and Administrative contentious Justice (chapters I and II). In others, the standing point in face to relevant reforms, as the regulation for the access to the legal profession (chapter III). However, more than expressing the opinions of the Observatory's contributors, it has tried to cherish external ideas and points of view and to facilitate the exchange of perspectives. And we have tried to spread the knowledge arising from these debates leaving on record the expressed ideas and discussed conclusions, so as those that were not able to join the discussion may have later access to them. Accordingly to the multiple aspects that shape the relationship between justice and business, the matters discussed are also wide and assorted. In this way, the Observatory has analyzed issues related to the Organization and Management of the Judicial System, purpose of chapter IV; to the contents of the judicial activity and its institutional design and procedures (chapter IV); to issues referring to the EU and the international dimensions or to reflections about particular legislative reforms that may result interesting for other countries (chapter V), and subjects concerning economic regulation with relevant repercussion in the

justice, businesses and professionals working within them (Chapter VI). The association of issues from chapters III a VI is sometimes arbitrary, thus some of these matters may be indistinctly analyzed in one or another chapter.

The liability for the accuracy and errors of this book is jointly and equally shared by the directors of this publication, despite said liability is reduced in case of chapters III to VI, as they reflect the points of view of the corresponding speakers. The wording of chapters I and II belong to Santos Pastor, notwithstanding the invaluable contribution of those that have collaborated with the *Observatory*, and named hereof.

Besides accounting our activities over this period, it is time to thank to all those that have supported this initiative whether contributing with economic resources, ideas and, in many cases, with their personal efforts. The extensive list of acknowledgment and gratitude shown at the end of this Prologue is the best evidence of a collective Enterprise born and arose from the civil society and for the civil society and public agents. This project would not have developed unless the decisive support it received since its beginnings from the managers of the Instituto de Empresa, to whom we are deeply grateful. Special mention deserves the assistance provided by Carolina Valdivia, whose knowledge and efforts have been fundamental for the publication of this book; of Carmen Hermida, that with her constant support has contributed with the continuity of the Observatory's activities; of Rogelio Biazzi, Laura Louza and Juanita Gómez, prior collaborators of the Observatory, and to all those that work or have worked in the Colegio Jurídico –specially, Ana Isabel García Marqueta and Puri Ortiz- and other divisions of the Instituto de Empresa that have contributed to make this project come truth. A particular mention deserves the contributions of Rosa Bendala, whose advice has accompanied the Observatory since its birth.

Special gratitude deserve our sponsors, El Corte Inglés, BP España, Seintex, Azertia, Indra, Everis (ex DMR) and Accenture, and the law firms Baker & Makenzie, Clifford Chance, Cuatrecasas, Garrigues Abogados, Gómez-Acebo & Pombo, and Uría y Menéndez, all of which have not only contributed with financial aid but also with their ideas.

The Observatory starts a new stage after having successfully overcome its gestation. However the principles that have inspired our project are consolidated and will continue to inspire our future. Notwithstanding, we believe that it is essential to move forward joining the efforts, ideas and contributions of all those interested in the improvement of justice and business, and the continuity of the improvement measures, as without continuity there are no institutions and with no institutions there is no progress.

Speakers and assistants

Qualified professionals performing in different scenarios and issues participated in the debates held by the Observatory, either as speakers or assistants. We are very grateful to their interest in our project.

We would not been able to deeply analyze the dynamics of how the Administration of Justice really works or the problems they face without the participation of the real actors. Their contributions to the debates and their reports have allowed us to get to know their perspective and introduce it, as well as their experience and knowledge about the mistakes and good choices of the latest reforms, in our analysis and improvement proposals. Likewise they contributed with their valuable criteria in order to solve the legal and procedural problems that day after day separate judges and magistrates from lawyers. In this sense we left on record our gratitude to Matilde María del Pilar Aguayo, Milagros Aparicio Avenado, Marisol Fernández Aragoncillo, Pablo Aramendi, Alberto Arribas Hernández, Enrique Bacigalupo, Carlos Beltrá, Ricardo Bodas, Ignacio Borrajo Iniesta, Ramón Castillo, María Emma Cobo, Ricardo Conde, Julio de Diego, Eduardo de Porres Ortiz de Urbina, Nicolás Díaz Méndez, Antoni Frigola, Gema Gallego, Santos Gandarillas, María José García Galán, Enrique García García, Antonio García Paredes, Jesús Nicolás García Paredes, José Golderos, Pedro María Gómez, José Luis González Armengol, Luis Aurelio González, Pedro José Hernández Gallego, Máximo Javier Herreros Ventosa, María Isabel Huertas Martín, María del Mar Ilundain, María del Mar Jiménez López, Emilio López Duran, Francisco Marín Castán, Margarita Martínez González, Lourdes Menéndez, Manuel Moix, José Luis Ortiz Grande, Ángel Ortiz, Pilar Palá, Mercedes Pedraz, Laura Pedrosa, Luis Carlos Pelluz, Diego Pérez, Fernando Prieto Rivero, Raquel Resa, Ramón Rodríguez Jackson, Teresa Sánchez, Tomas Sanz, Santiago Senent, Jesús Serrano, Marcelino Sexmero, José Manuel Suárez Robledano, José Luis Terrero, Santiago Torres, Carmen Valcarce, Elisa Veiga, Francisco José Vieira y Antonio Viejo.

We have also incorporated the vision of attorneys at law that, whether from big or mid-sized law firms or in house counsels, have to daily advice their clients in legal, economic or business matters, decisions that afterwards, and in many situations, will be subject to a later analysis and judicial judgment. The point of view of the directly implicated agents has let us understand the main difficulties of the lack of instruments for anticipating judicial results or the term of a resolution, the different factors that influence a proper legal decision as well as the elements they would have need to arrive to said decision. Some coming from the business world, others from the law schools, and others from both, their participation undoubtedly enriched this debate. For the reasons stated above we are grateful to Pablo Albert, Clara Ana Alcaraz, Jesús Alfaro, Juan Carlos Alfonso, Rafael

Allendesalazar, Juan Carlos Almazán, Luis Alonso, María Alonso, Ricardo Alonso, Ana Isabel Alpera, Hermenegildo Altozano, Cristina Alum, Gloria Antuña, Javier Aparicio Solom, Fernando Aparicio, Estibaliz Aramburu, Marcos Araujo, Juan Carlos Areces, Javier Areilza, Alfonso Armada, Enrique Armijo, Aydi Arroyo, José Ayllón, Rafael Baena, Begoña Barrantes, Luis Baz, Rosa Bedregal, Fernando Begerano Guerra, Luis Francisco Bermejo, Ela Blasco Villanueva, Emilio Borrego, Esteban Bosch, Álvaro Bourkaib, Enrique Braquehais, Miguel Bravo Ferrer, Helmut Brokelmann, Enrique Buenaventura, Ana Buitrago, Samuel Burón, Susana Cabrera, Juan Cadarso, José Antonio Cainzos, David Cairos, Gema Calero del Pozo, Fernando Calvacho, Iria Calviño, Ana Camacho, Jorge Capell, Agustín Capilla, Higinio Capote, Mariano Carbajales, María de los Ángeles Carnicer, José Ignacio Casas, Antonio Castán, Antonio Castro Jiménez, David Cerdán, Marga Chamorro, Arancha Cienfuegos, Pedro Claros, Jorge Colominas, Rosa María Cordeiro, Isabel Cordero, Rebeca Corral, Begoña Costas de Vicente, Daniel Costas, Antonio Creus, Gregorio Cristóbal, Covadonga Cubino, Mariana D'alessandro, Iñigo Dago, Enrique Dancausa, Manuel Dapena, José Luis De la Calle, Joaquín De la Concha, Rodrigo De la Mota, Fernando De Lucas, Noelia De Miguel, Sergio Del Bosque, José María Del Rey, Nina Dentici Velasco, Eduardo Ruíz Montoya, Carmen Gutiérrez Dorronsoro, José María Dutilh, Diego Eche copar, Ricardo Egea, Antonio Entrena López Peña, Isabel Escanderos, Daniel Escoda, Beatriz Escudero, José Miguel Fatás, Manuel Fernández Navarro, Miguel Ángel Fernández-Ballesteros López, Fernán Fernández-Caztea, José María Fernández-Daza, Gonzalo Fernández-Isla, Javier Fernández-Lasquetty, Jaime Folguera, Marta Foncillas, Andrés Font, Ana Fuster, Francisco Galán de la Fuente, Félix Gallo, Blanca García Marín, Chus García Pico, Javier García Sanz, Álvaro García Soto, Manuel García Villarrubia, Eduardo García, Rafael García-Palencia, Luis Gimeno, Jesús Giner, Pedro Gómez de la Serna, Julio Gómez Pomar, Emilio Gómez, Ricardo Gómez, Alfonso Gómez-Acebo, Agustín González, María Jesús González Espejo, Henar Gonzalez, Juan Carlos González, Pablo González, Elías Gonzalo, Carlos Gutiérrez, Diego Gutiérrez, Fernando Gutiérrez, Christian Hendel, Pablo Henríquez de Luna, Joaquín Hernández Millas, Reyes Hernández Moras, José María Hernández, Carmen Herranz, Rafael Hinojosa, Paul Hitchings, Begoña Iglesias, Vicente Inoges, Eduardo Isla, Gonzalo Iturmendi Morales, Gonzalo Jimenez Blanco, Luis Jiménez Díaz, Fernando Jiménez Latorre, Juan Carlos Jiménez Mancha, Beatriz Jiménez, Irma Jiménez, Patricia Koch, Mercedes Laguna, Cristina Laso, Julián Lausín, Juan José Lavilla, Carmen Leal, María de los Ángeles León, Patricia Liñán, Álvaro Lobato, Manuel Lobato, Álvaro Lopez de Argumedo, Ana López de los Mozos, Ángeles López Lobatón, José Pablo Lopez, María López, Antonio María Lorca Navarrete, Fernando Lorente, Rafael Loscertales, Mar Lozano Lozano, Ricardo Lozano, Mariano Oliveira Magagnini, Mariano Magide Herrero, Ángeles Manzano, Marta Marañón, Lorena Martín López, Victoria Martín, Francisco Martínez Hernán, Santiago Martínez Lage, Belén Martínez, Eulalia Martínez, Gloria

Martínez, Javier Martínez, Rodrigo Martos, Javier Marzo Coscullela, Carlos Mateu, Mariano Medina Crespo, Javier Mendieta, Álvaro Mendiola, Adolfo Menéndez, Dulce María Miranda, Juan Montero Radil, Carlos Moran, Antonio Moreno Rodríguez, Manuel Moreno, Natalia Moreno, María de los Ángeles Morillas, Miguel Moscardó, José María Moyano, Gonzalo Muñoz Rusillo, José Narvaez, David Navarro, José Ignacio Navas, Oscar Navazo, Silvia Nebra, Juan Pablo Nieto, Miguel Odriozola, Alfonso Ois, Teresa Olivie, Juan Enrique Orgaz, Luis Ortiz Blanco, Santiago Ortiz Vaamonde, Tatiana Ortiz, Álvaro Pascual Morcillo, Julio Pascual, Juan Passan, Cándido Paz-Ares, Susana Pedrosa, José Heraclio Peña Pérez, María Pereira Sanz, Carmen Perete, José Luis Pérez de Ayala, Paloma Pérez de León, Montserrat Pérez de Miguel, Gerard Pérez Olmos, Ángel Pérez Pardo, Ernesto Pérez, José Pérez, Luis Miguel Pérez, Yolanda Pérez, Isabel Pez, Ingrid Pi Amorós, Pilar Pignatelli, Alberto Pimenta, Miguel Pintos, Antonio Pipó, Victoria Plazuelo, Jesús Pombo, José María Pou, Cinthia Prado, Nieves Prieto, Javier Puyol, Beatriz Rabadán, Francisco Rabadán, Francisco Ramírez, Jesús Remón Peñalver, Arantxa Rial, Leticia Ríos, José Luis Roca Aymar, Fernando Rodríguez Alvial, Soledad Rodríguez Antón, Ana Rodríguez Encina, María Luisa Rodríguez López, Iñigo Rodríguez Sastre, Carlos Rodríguez, José Antonio Rodríguez, Pedro Rodríguez, Vicente Roldán, Macarena Rosado, José Félix Ruiz Cámara, Javier Ruiz Paredes, Arantzazu Ruiz, Javier Ruiz, José Ángel Ruiz, Esperanza Saavedra, Myriam Saiz Ortiz, Emilio Sánchez Cuartero, Albert Sánchez, Alejandro Sánchez del Campo, Luis Javier Sánchez, Pedro Sangro, Silvia Sanz, Valentin Sebastian Chena, Marta Senante, Miguel Ángel Serrano, Luis Serrano, José Manuel Sipos Gálvez, Pedro Suárez, Carmen Tabares, Francisco Terrón Reynolds, Caroline Tomas, Marta Torres, José Manuel Tourné, Eduardo Trigo, Natalia Trujillo, Carlos Ulecia Palacios, Juan Alberto Urrengoechea, Javier Valcárcel Martínez, Ainoa Veiga, Juan Velásquez Saiz, Manuel Vélez, Carmen Venegas, Carlos Verquez, Patricia Vidal, Ana Vide, Rosana Viejo, José María Viñals, Miguel Virgós, Andrew Ward y Guillermina Yanguas.

Also from the business world and besides the persons referred above, hereby we thanks the assistance of Clara Barreiro, Carlos Coll Crespo, Rodolfo Contreras, José Dóvalo, Patricio Gil Olmedo, Javier Ramírez, José Ramos Valhorat, Manuel Saus i Plans, Marc Serra y José Soriano Atencia.

From the academic sphere, we have enjoyed the presence of Maite Álvarez Vizcaya, Amaya Arnaíz, Rosemary Barberet, María de los Ángeles Catalina, José Antonio Colmenar, Ignacio Colomer Hernández, Pedro Del Olmo Fernández, Fernando Díez Estella, María Dolores Fernández Fuste, Nicolás González Cuellar, Ruth González, Yanna Gutiérrez, María Fernanda Lesch, Raquel López Jiménez, Marcos Louredo Colunga, Francisco Marcos, Diego Marín-Barnuevo, Liliana Maspóns, Víctor Moreno Catena, Ana Mosácula, Iñigo Ortiz de Urbina, Sabela Oubiña, Luis Pásara, Jesús Pintos, Marisa Ramos, Alfonso Rincón, Jesús Robledo, Virginia Rosales, Maite Salvador

Crespo, Juan Santaló, Elena Soletto, Carmen Vargas, Pablo Vásquez, María Zato Etcheverría.

Regarding the Public Administration, we always deemed important to know the data, reports and statements conducted by the different governmental agencies. Having said information we have been able to contribute, from our debates, with valuable information and a different vision coming from the users and addressees of regulations. In this sense, we thank the participation of José Luis Bueren, Ana María Álvarez de Yraola, Elvira Arconada, Agustín Azparren, Rosa Bendala, Carlos Casado, Leticia Cervera, Nuria Clèries, Alfonso Cuenca, Ana De la Cueva, Inmaculada de Miguel, Amparo Delgado, Juan Manuel Fernández López, Fernando Fernández Martín, Belén Gámez, María del Carmen García de Leániz, Ana Isabel García León, José María Gil Sáez, Gregoria Guidel Solano, Miguel Ángel Gutiérrez Sanabria, Antonio Gutiérrez, Antonio Hernández, Pedro Hernández, José Jover Ibarra, Rafael Jiménez Asensio, Mercedes Juárez, Juan Junquera, Sebastián Lastra Liendo, Maximino Linares Gil, Luis López Guerra, Juan López-Dóriga, María del Carmen Martín Irañeta, Juan Esteban Martínez Jiménez, Javier Martínez Lázaro, Patricia Montagud, Francisco Moreno, Belén Ordóñez Sánchez, Rafael Pacheco, José Palazuelos, Yolanda Pecharromán, María José Pérez-Cejuela Revuelta, Alfredo Prada, Javier Rodríguez Mañas, Pilar Rodríguez, César Rubio Marzo, José Daniel Sanz, Javier Serra-María Tome, Luis Tejada, María Antonia Trujillo y Luis Vacas.

We have also shared opinions and incorporated to the debate, the experience of international experts interested in the facts of the Spanish Administration of Justice and its methods, choices and mistakes committed in legislative reforms and within the process of incorporation of new technologies. We also shared the results of similar experiences with experts coming from Europe, North and South America, and discussed about how each country has faced the challenges of introducing legal or organizational reforms or the results when trying to bring near justice and business. Our recognition to Cornelia A. Clark, Cristián Conejeros Roos, Giuseppe Di Federico, Michael Elmer, Irina Kichigina, Robert J. Manzanares, Luis Paulino Mora, Alan Phillips, Ana Soler, Rüdiger Tönnies, David Varela, Gustavo Ernesto Andrade Miranda, Graciela Caccuri, Eduardo Campo Soto, José Ricardo Chiguila Duran, M^a Luisa Conde, Jorge Antonio Cruz Ramos, Emilio Iván Elgueta Torres, Rubén Eliú Higueros, Francisco Escobar Henríquez, Concepción Verónica Ferrufino, Roxana Beatriz García del Águila, Nicolás García Zorto, Franklin Eduardo González Morales, Cristián Hernández Gálvez, Rodrigo Andrés Herrera Marchant, José Hurtado Poveda, Rosa María Maggi Ducommun, Helga Marchant Bustamante, Aragón Mendía, Rodolfo Mérida Rendón, Adolfo Octaviano, Luis Guillermo Rivas Loáiciga, Jorge Vial Ramos, Maripaz Vindas Cordero, Robert Wesley, Andrés Zaror y Rodrigo Zúñiga Carrasco.

Many of the Observatory's sessions had a broad media impact, although the call for discretion in some cases and that fact that the current affairs are not always compatible with the detailed institutional analysis made that not all the matters discussed in the Observatory were spread in the media. We are grateful to the presence and to the interest shown by the reporters that assisted our meetings, specially, Juan Cardona, Arancha Corella, Ana Belén del Pozo, Ignacio J. Domingo, David Gracia, Manuel Llamas, Victoria Martínez Vares, and Susana Palacios.