

Index

- Albin, S. 76, 77, 78
Alemanno, A. 130
Alliance for Natural Health 35–6, 49, 51
Andenas, M. 185
appraisal and reform proposals 151–93
 Article 114, strict interpretation fears 153–4
 Article 114(3) TFEU protection levels 152, 155, 159, 166, 167, 168, 171
 Article 114(3) TFEU protection levels, strengthening EU's obligations under 174–6
 Article 114(10), safeguard clauses 176–8
 Commission's role, harmonisation paradigm 179–80
 consensus model and enhanced Voice 157
 constitutional normativity of measures 157–8
 Courts' role, harmonisation paradigm 181–4
 derogation grounds 166–9
 derogation grounds, narrow, assessing appropriateness of 154–8
 harmonisation model, possible ameliorations of 162–78
 harmonisation paradigm, administration of Article 114 TFEU 178–86, 191–3
 harmonisation, selecting appropriate form of 175–6
 historical fears, dismissing 151–4
 internal market premise 154–6, 181–2, 187–9
 judicial review 172, 182, 184
 law enforcement, improvement in 161–2, 174–8
 legislature's role, harmonisation paradigm 184–6
 'manifest error' test 173
 Member States' role, harmonisation paradigm 178–9
 minimum harmonisation 154–5, 175–6, 183
 mutual recognition 160–61, 191
 negative integration, alternative to 160–62, 166, 167
 new national standards, introduction of 168–9, 172
 non-economic common objectives 155–6, 177
 notification procedure *see* notification procedure
 positive integration and market-building 161
 proportionality principle 161, 169–74, 180, 182
 qualified majority voting 152–3, 167, 175
 qualified majority voting and exhaustive harmonisation 156–8, 175–6, 182–3, 184–6, 193
 regulation improvements, striving for 158–60
 risk assessment and scientific evaluation 161, 180, 183
 scientific uncertainty cases and precautionary measures 171, 179–80
 scrutiny levels 169–73
 time limits 164–5
 trade restrictions, disguised 171–2
approximation
 measures 96, 102, 104, 105–6, 110
 norm, adaptation of (Article 114 (7) and Article 114(8)) 76, 87–8, 160, 165, 180, 190
Armstrong, K. 192

- Arnold André* 33–5, 48–9
 Arnulf, A. 69, 80, 84, 152, 171
 Article 114 *see* Treaty on the
 Functioning of the European
 Union (TFEU), Article 114
 attribution of powers principle *see*
 conferral principle
*see also First Tobacco Advertising
 Case*
 Austria
Austrian GMOs 75–7, 79, 80, 107,
 126–31, 133, 142–3, 165, 179,
 180, 184
Commission v Austria 167, 168
 Müller Report 127–8, 129–30
- Balthasar, S. 134
 Bär, S. 59, 60, 75, 76, 77, 78, 87
 Barnard, C. 148, 175, 187
BAT 34, 45–6, 47, 50, 51
 Beaumont, P. 31
 Belgium
Inter-Environnement Wallonie 82,
 89
*Walloon Government v Flemish
 Government* 42
Walloon Waste 167
 Bermann, G. 19, 51, 60, 62, 83, 90, 92,
 172, 177
 Biondi, A. 10, 11, 39
Biotechnological Inventions 51, 59
 Brenncke, M. 43–4, 45
 burden of proof 75–6, 83
- Cassis de Dijon* 2, 7, 8, 10, 72–3, 166–7,
 170
 Commission's Decision, effects of,
 Article 114(7) TFEU 86–7, 160,
 169
 competence *see* EU competence in
 internal market
 conferral principle 18, 19, 20, 28, 183
*see also First Tobacco Advertising
 Case*
 consumer protection 59–62, 64–5
see also health and environmental
 protection; public health;
 welfare protection
- Cooper, I. 54
 Craig, P. 61, 80, 160, 185, 187, 189
 cumulative requirements, Article 114(5)
 TFEU 75, 110, 123–4, 138, 183
 Cygan, A. 54
- Dashwood, A. 56, 69, 80, 152, 153
Dassonville 2, 7, 8, 10, 170, 179
 Davies, G. 50
 De Búrca, G. 61, 80, 160, 185, 187, 193
de minimis threshold 42
 De Ruyt, J. 91
 De Sadeleer, N. 62, 69, 70, 73, 74, 76,
 78, 81, 82, 84, 87, 90, 91, 92, 152,
 154, 185
 De Vries, S. 20–21, 87, 88
 De Witte, B. 31, 62–3, 155, 159, 174
 Denmark
Danish Additives 15, 21, 69, 75, 83–7,
 92, 107, 111–19, 125–6, 139–40,
 149, 153, 171, 178, 180
Danish Bottles 11, 142–3, 145, 148,
 170
Deposit Guarantee 51
 derogation mechanism
 appraisal and reform proposals
 166–9
 Article 114 (4)–(9) TFEU 68–89
 exhaustive nature of grounds for
 derogation 72–3, 74–5
 harmonisation model under Article
 114 TFEU in practice 96–101,
 107–10, 114–15, 118–20,
 130–38, 141, 143–4, 147–8
 narrow, assessing appropriateness of
 154–8
- Doherty, M. 76, 109
 Dougan, M. 1, 20, 48, 80, 152, 182,
 183, 184
- EFSA (European Food Safety
 Authority) 127, 129–30, 131
 Ehlermann, C. 20, 59, 61, 71, 166, 177
 Enchelmaier, S. 72
ENISA 37–8
 environmental protection 32, 74–5, 79,
 83, 90–91, 128–9
see also consumer protection
 EU competence in internal market
 28–67
 competence and harmonisation
 trends 63–7

- competence to legislate in internal market 29–32
 competition distortions 29, 46
 consumer protection concerns 59–62, 64–5
 deregulatory effects 30–31
 environmental protection 32
 establishment and functioning of internal market 45–8
 exhaustive harmonisation, potential shift towards 64–7
 free movement of products 42–3
 harmonisation measures as instruments of general governance, concern over 47–8
 harmonisation norm, quality of (Article 114(3)) 56–65
 judicial review 29, 40–41, 44, 48, 50, 58, 59–60
 legislation approximation measures 33–43, 176
 legislation in internal market 48–56
 market justification for EU interference 30
 minimum harmonisation 63–4, 65–7
 national policy concerns, respect for 62–3
 positive integration 31–2
 precautionary principle 35
 product ban, effects of 33–4
 proportionality principle 48–56
 public health harmonisation rules 30–31, 34, 35, 42, 45, 47–8, 168
 reasoned opinions 54–5
 regulation or administrative action in Member States, and provisions laid down by law 43–5
 subsidiarity principle 48–56
 technological developments, legislature discretion 35–8
 trade integration premise 19, 29–58, 61, 62, 64, 155
 welfare protection 57–63
- EU Directives
 Ambient Air Quality Directives 119–23, 131–2, 147–8, *see also* Netherlands, *Dutch Emissions*
 Bathing Water Directive 32
 Consumer Policy Programme for 2002–2006 65
 Dangerous Substances Directive 96, 102, *see also* France, *PCP case*
 Doorstep Selling Directive 32
 Euro 5 Proposal and diesel vehicle emissions 120, 126, 134–5, 144–5, 147
 Food Additives Directive 35–6, 92, 99–100, 112–19, 140, *see also* Denmark, *Danish Additives*; Sweden, *Kortas*
 GM Directive 106, 126–7, 142–3, *see also* Austria, *Austrian GMOs*
 Healthcare Directive 6
 Passenger Name Record (PNR) data (air carriers) 38–9, 40
 Privacy and Electronic Communications Directive 39–40
 Product Safety Directive 33–4
 SCCP Directive 12, 73, 104–5, 106, 109, 179
 Services Directive 187
 Smoke Flavourings Directive 36–7
 Technical Standards Directive 20, 25
 Tobacco Advertising Directive *see* *First Tobacco Advertising Case* *see also* legislation
 European Cooperative Society 38
 European Court of Justice
Afton Chemical 40
Aher-Waggon 73, 167
Alliance for Natural Health 35–6, 49, 51
Alpine Investments 8, 11
Antroposana 63, 176
Arnold André 33–5, 48–9
Artegodan v Commission 78
Austrian GMOs 75–7, 79, 80, 107, 126–31, 133, 142–3, 165, 179, 180, 184
B & Q 170
BAT 34, 45–6, 47, 50, 51
Bauhuis 95
Beef labelling 183–4
Biotechnological Inventions 51, 59
Bosman 8
Burstein 21, 153
Buy Irish 45

- Caixa-Bank* 9
Calfa 52, 95
Canal Satellite 176
Carpenter 8
Cassis de Dijon 2, 7, 8, 10, 72–3, 166–7, 170
CIA Security 20, 89
Commission and Parliament v Council (Beef labelling) 183–4
Commission v Austria 167, 168
Commission v Belgium (Walloon Waste) 167
Commission v Council (choice of legal basis) 184, 186
Commission v Council (Waste Directive) 47, 91, 183
Commission v Council (Titanium Dioxide) 9, 19, 59, 91, 183
Commission v Denmark (Danish Bottles) 11, 142–3, 145, 148, 170
Commission v France (French farmers) 52, 61, 153, 158, 176
Commission v Germany (German Beer) 95, 140, 143
Commission v Germany (Processing of Personal Data) 51–2
Commission v Ireland (Buy Irish) 45
Commission v Italy (Gas Appliances) 10, 79, 95
Commission v Netherlands (SCCP) 12, 73, 104–5, 106, 109, 179
Commission v United Kingdom (Turkeys case) 142
Costa v ENEL 8, 52
Crespelle 72
Danish Additives 15, 21, 69, 75, 83–7, 92, 107, 111–19, 125–6, 139–40, 149, 153, 171, 178, 180
Danish Bottles 11, 142–3, 145, 148, 170
Danner 168
Dassonville 2, 7, 8, 10, 170, 179
De Agostini 10, 168
De Peijper 88
Decker 72, 90, 168
Delège 10
Denkavit 67
Denmark v Commission (Danish Additives) 15, 21, 69, 75, 83–7, 92, 107, 111–19, 125–6, 139–40, 149, 153, 171, 178, 180
Deposit Guarantee 51
Ditlev Bluhme 42
Dusseldorp 167
Dutch Emissions 75, 119, 120–24, 126, 131–9, 144–5, 146–8, 156, 180
Dynamic Medien 11
Elchinov 98
ENISA 37–8
Eyssen 12
Familiapress 10
Fedesa 172
First Tobacco Advertising Case see First Tobacco Advertising Case
France v Commission see France, PCP case
Francesco Guarnieri 10
Francovich 98
French farmers 52, 61, 153, 158, 176
Gebhard 8
Geraets-Smits 10–11
German Beer 95, 140, 143
Germany v Commission (Man-made Mineral Fibres) 73, 75, 77, 101–4, 109, 110, 130–31, 138, 149, 153, 168–9, 179, 183
Germany v Parliament and Council see First Tobacco Advertising Case
Gintec 176
González Sánchez 24
Gourmet 10, 11
Graf 10
Greenpeace France v Ministère de l'Agriculture et de la Pêche 91
Guimont 8
Inter-Environnement Wallonie 82, 89
Ireland v Parliament and Council (Retention of Data) 39–40
Italy v Council (C-120/99) 40
Josemans 10
Keck and Mithouard 9–10, 29, 30
Kohll 168
Kortas 14, 20, 22, 24, 26, 70, 80, 82, 89, 98–101, 105, 110, 123, 153–4, 157–8, 163–5, 186

- Krantz* 10
Kremzow 10
Läärä 11
Land Oberösterreich and Austria v Commission (Austrian GMOs) 75–7, 79, 80, 107, 126–31, 133, 142–3, 165, 179, 180, 184
Laval 11
Man-made Mineral Fibres (Germany v Commission) 73, 75, 77, 101–4, 109, 110, 130–31, 138, 149, 153, 168–9, 179, 183
Mickelsson 10
Mobistar 10
Moormann 67
Netherlands v Commission (Dutch Emissions) 75, 119, 120–24, 126, 131–9, 144–5, 146–8, 156, 180
Netherlands v Parliament and Council (Biotechnological Inventions) 51, 59
Omega 11
Opinion (C-2/00) 91
Parliament v Council 38
Parliament v Council and Commission 38–9
Parti Ecologiste Les Verts v European Parliament 181
PCP see France, PCP case
Peralta 10
Pesqueras De Bermeo and Naviera Laida v Commission 124
PNR 38–9, 40
Poland v Commission (Polish GMOs) 81, 101
Preussen Elektra 73, 168
Processing of Personal Data 51–2
Procureur de la Republique v Adbhu 32
Ratti 67
Retention of Data 39–40
Reyners 95
Ruiz Zambrano 8
Safety High-Tech 61
Säger 8
Sandoz 12
SCCP 12, 73, 104–5, 106, 109, 179
SCE 38
Schindler 11
Schmidberger 11
Second Tobacco Advertising Case see under First Tobacco Advertising Case
Shirley McCarthy 8
Simmenthal 98
Smoke Flavourings 36, 37
Spain v Council 172, 173
Spain v Lenzing 124
Swedish Match 33–5, 47
Technische Universität München 124
Tedeschi 67
Titanium Dioxide 9, 19, 59, 91, 183
Tobacco Advertising see First Tobacco Advertising Case
Toolex Alpha 12
Traghetti del Mediterraneo 98
Turkeys case 142
Uecker and Jacquet 8
UK v Council (Working Time) 52, 63
UK v Parliament and Council (Smoke Flavourings) 36, 37
Unilever Italia 20, 89
UPA 134
Van Bennekom 12
Van Binsbergen 8
Van Gend en Loos 8, 52
Viacom 10
Viking Line 11
Vodafone 35, 44–5, 46, 47, 49–50, 52, 56
Walloon Government v Flemish Government 42
Walloon Waste 167
Waste Directive 47, 91, 183
Winner Wetten 98
Working Time 52, 63
see also legislation
 European Food Safety Authority (EFSA) 127, 129–30, 131
 European Network and Information Security Agency (ENISA) 37–8
 exhaustive harmonisation
 potential shift towards 64–7
 and qualified majority voting 156–8, 175–6, 182–3, 184–6, 193
 see also harmonisation headings;
 minimum harmonisation
 fair hearing and cooperation duty
 85–6, 103–4, 107, 118

- First Tobacco Advertising Case*
 Article 114(8) TFEU 87–8
de minimis threshold 42
 EU competence in internal market
 see EU competence in internal market
Second Tobacco Advertising Case
 40–41, 42, 45, 49, 64
 snus (oral use tobacco) 33–4
 trade integration premise 19, 29–58,
 61, 62, 64, 155
 Flynn, J. 72, 166, 189
 Forwood, N. 71, 90
 France
 French farmers 52, 61, 153, 158, 176
 Greenpeace France v Ministère de l'Agriculture et de la Pêche 91
 France, *PCP case* 19, 21, 24, 71, 83, 85,
 86, 89, 96–7, 125, 149, 179, 180
 free trade and welfare protection
 108, 109–10, 114, 153, 156, 166,
 170
 time limits 101, 122, 163–4
 free movement rules 6–7, 8–9, 10
- Germany
 German Beer 95, 140, 143
 Germany v Parliament and Council
 see First Tobacco Advertising Case
 Man-made Mineral Fibres 73, 75, 77,
 101–4, 109–10, 130–31, 138,
 149, 153, 168–9, 179, 183
 Processing of Personal Data 51–2
 snus (oral use tobacco), prohibition
 of marketing of 33
 Technische Universität München 124
 toy safety 85
 Glaesner, H. 91
- harmonisation of internal market 6–27
 Article 114 TFEU procedure,
 contextual analysis of 18–21
 collective action proposal 11
 deregulation 7–12
 EU harmonisation, presumption in
 favour of 21–3
 exhaustive harmonisation *see*
 exhaustive harmonisation
 free movement rules 6–7, 8–9, 10
 minimum harmonisation 20–21
 mutual recognition principle 7, 8
 negative integration 6, 7–12, 25
 non-economic grounds 14, 16, 18
 positive integration 13–27
 positive integration, historical
 overview 13–18
 precautionary principle and risk
 assessment 12
 proportionality approach 11–12,
 22–3
 regulatory bargain 23–4
 substitutive deregulatory techniques
 7
- harmonisation measures
 EU competence in internal market
 29–30, 34, 36–40, 47–8, 174,
 182–3, 188
 exhaustive, potential shift towards
 64–7
 as instruments of general
 governance, concern over 47–8
 norm, quality of (Article 114(3))
 56–65
 possible ameliorations of 162–78
 selecting appropriate form of 175–6
- harmonisation model under Article
 114 TFEU in practice 94–150
 application diligence 95–6, 114
 approximation measures 96, 102,
 104, 105–6, 110
 Commission decisions and judicial
 responses 94–149
 derogation mechanism 96–101,
 107–10, 114–15, 118–20,
 130–38, 141, 143–4, 147–8
 division of powers between Member
 States and Community
 institutions, significance of
 141–2
 fair hearing and cooperation duty
 103–4, 107, 118
 minimum harmonisation 148
 missed opportunities and strict
 interpretation 108–10
 non-privileged applicants, test for
 standing for 133–4
 notification procedure 95, 99–101,
 104–8, 110–11, 117–18, 126,
 130–31, 142, 144, 147

- notification procedure in practice 149–50
- notifying Member States, diligence required of 101–8
- procedural diligence 95, 98, 100, 101–8, 110, 114, 179
- procedural parameters of
regulatory framework 96–101, 124–5
- proportionality and presumption in favour of EU norms 139–49
- proving a problem specific to a Member State 130–38
- regulatory assessment and conditions guidance 110–49
- right of contradiction 107, 118
- safeguard mechanism 95
- scientific evidence *see* scientific evidence
- substantive diligence 95–6, 98, 100, 131–2, 178–9
- threshold choice, importance of 147–8
- time limits 100, 101, 102–5, 106, 107, 119, 144–5
- see also* regulatory differentiation in internal market; Treaty on the Functioning of the European Union (TFEU) headings
- harmonisation paradigm,
administration of Article 114 TFEU 178–86, 191–3
- Commission's role 179–80
- Courts' role 181–4
- legislature's role 184–6
- Member States' role 178–9
- health and environmental protection 74–5, 79, 83, 90–91
- see also* consumer protection; public health; welfare protection
- Herlin-Karnell, E. 40
- Hofmann, H. 185
- Howells, G. 65, 66, 67
- internal market
appraisal and reform proposals 154–6, 181–2, 187–9
- EU competence *see* EU competence in internal market
- regulatory differentiation *see* regulatory differentiation in internal market
- Ireland
Buy Irish 45
Retention of Data 39–40
- Italy
Commission v Italy (Gas Appliances) 10, 79, 95
Italy v Council 40
- Jacobs, F. 187
- Jans, J. 11, 77, 169
- Joerges, C. 185
- Johnston, A. 6, 22, 65, 66
- Joseph, T. 108, 109, 149, 164, 189
- judicial review
appraisal and reform proposals 172, 182, 184
- and Commission decisions 94–149
- EU competence in internal market 29, 40–41, 44, 48, 50, 58, 59–60
- Keck and Mithouard* 9–10, 29, 30
- Keyaerts, D. 50
- Kiiver, P. 54
- Kortas* 14, 20, 22, 24, 26, 70, 80, 82, 89, 98–101, 105, 110, 123, 153–4, 157–8, 163–5, 186
- Kramer, A. 59, 60, 75, 78, 87
- Kramer, L. 61, 159
- legislation 48–56
approximation measures 33–43, 176
- law enforcement 88–9, 161–2, 174–8
- see also* EU Directives; European Court of Justice; regulatory differentiation in internal market
- Lenaerts, K. 184, 185, 193
- Lonbay, J. 151
- Maduro, M. 9, 10, 31, 35, 44, 47–8, 50
- Man-made Mineral Fibres* 73, 75, 77, 101–4, 109, 110, 130–31, 138, 149, 153, 168–9, 179, 183
- minimum harmonisation
appraisal and reform proposals 154–5, 175–6, 183

- EU competence in internal market 63–4, 65–7
- harmonisation of internal market 20–21
- harmonisation model under Article 114 TFEU in practice 148
- see also* exhaustive harmonisation; harmonisation headings
- Mortelmans, K. 166–7
- Munoz, R. 190
- mutual recognition 160–61, 191
- national legislation following
 - harmonisation *see* harmonisation model under Article 114 TFEU in practice; legislation; regulatory differentiation in internal market; Treaty on the Functioning of the European Union, in particular Articles 114 (4) and 114(5)
- national policy concerns, respect for 62–3
- negative integration 6, 7–12, 21–2, 25
 - alternative to 160–62, 166, 167
 - see also* positive integration
- Netherlands
 - Biotechnological Inventions* 51, 59
 - creosote, marketing and use of 170
 - Dutch Emissions* 75, 119, 120–24, 126, 131–9, 144–5, 146–8, 156, 180
 - emissions by diesel-powered vehicles 85
 - SCCP* 12, 73, 104–5, 106, 109, 179
- non-economic grounds
 - appraisal and reform proposals 155–6, 177
 - harmonisation of internal market 14, 16, 18
 - regulatory differentiation in internal market 72, 90
 - see also* Treaty on the Functioning of the European Union (TFEU), Article 36
- notification procedure
 - advantages of viable 158–62, 192–3
 - appraisal and reform proposals 152
 - Article 114 (4)–(9) review 163–74, 181–3, 185–6
 - diligence required 101–8
 - grounds available for 71–5, 92, 101–2, 166–8, 169, 177, 178
 - harmonisation model in practice 95, 99–101, 104–8, 110–11, 117–18, 126, 130–31, 142, 144, 147, 149–50
 - modernising role 160
 - and scientific evidence 159–60, 180
 - strict interpretation 108–10, 153–4
 - suspensive effect 79–82, 163–4
- Oliver, P. 70, 72, 83, 84, 90, 167, 177
- PCP see* France, *PCP* case
- Pescatore, P. 19, 71, 152
- PNR* 38–9, 40
- Poland, *Polish GMOs* 81, 101
- positive integration 13–27
 - EU competence in internal market 31–2
 - historical overview 13–18
 - and market-building 161
 - see also* negative integration
- precautionary principle 35
 - and risk assessment 12
 - scientific evidence 128–9
 - and scientific uncertainty cases 171, 179–80
- procedural diligence 95, 98, 100, 101–8, 110, 114, 179
 - see also* substantive diligence
- procedural parameters of regulatory framework 96–101, 124–5
- proportionality principle 11–12, 22–3, 139–49
 - appraisal and reform proposals 161, 169–74, 180, 182
- protection levels
 - appraisal and reform proposals 173
 - Article 114(3) TFEU 152, 155, 159, 166, 167, 168, 171, 174–6
 - interpretation of 71–2, 88
 - see also* health and environmental protection
- public health
 - harmonisation rules 30–31, 34, 35, 42, 45, 47–8, 168
 - problems, Article 114(5) TFEU 88
 - protection, Article 114(8) TFEU 87–8, 160, 168, 169, 174

- see also* consumer protection; health and environmental protection; welfare protection
- purely internal market *see* internal market
- qualified majority voting 69
- appraisal and reform proposals 152–3, 167, 175
- and exhaustive harmonisation 156–8, 175–6, 182–3, 184–6, 193
- Raunio, T. 54
- reform proposals *see* appraisal and reform proposals
- regulatory differentiation in internal market 68–93
- approximation norm, adaptation of (Article 114 (7) and Article 114 (8)) 76, 87–8, 160, 165, 180, 190
- Commission's Decision, effects of: Article 114(7) TFEU 86–7, 160, 169
- cumulative requirements 75, 110, 123–4, 138, 183
- derogation grounds, exhaustive nature of 72–3, 74–5
- derogation mechanism, Article 114 (4)–(9) TFEU 68–89
- enforcement mechanism in Article 114(9) TFEU 88–9
- escape clause 69–70
- health and environmental protection 74–5, 79, 83, 90–91
- majority voting effects 69
- non-economic grounds 72, 90
- notification of national provisions already in existence/seeking to introduce (Article 114(4) and (5) TFEU) 68–70, 84
- protection of the working environment, interpretation of 71–2, 88
- public health protection; Article 114(8) TFEU 87–8, 160, 168, 169, 174
- risk assessment procedures 82, 87
- safeguard mechanism *see* safeguard mechanism
- scientific progress and legal adaptation 87, 117, 120, 121, 123–4, 127, 128–9, 131, 132–3, 134, 138, 143, 144
- time limit introduction 80–82, 165
- see also* harmonisation model under Article 114 TFEU in practice
- Retention of Data* 39–40
- right to be heard principle 85–6, 103–4, 107, 118
- risk assessment 82, 87, 161, 180, 183
- Rott, P. 60, 63, 65, 78, 167
- safeguard mechanism, Article 114 (10) TFEU 79–82, 90–92, 176–8
- application conditions 90–91
- control procedure 91
- ‘ecological’ safeguard clause, absence of 90–91
- harmonisation model under Article 114 TFEU in practice 95
- regulatory differentiation, appropriate vehicle selection 91–2
- SCCP* 12, 73, 104–5, 106, 109, 179
- Schill, S. 11
- scientific evidence
- environmental issues, specifying 128–9
- interpretation problems, Article 114(5) TFEU 77–8
- and notification procedure 159–60, 180
- precautionary principle 128–9
- problems with 117–18, 121–8, 131–2
- progress and legal adaptation 87, 117, 120, 121, 123–4, 127–9, 131–4, 138, 143, 144
- and risk assessment 161, 171, 179–80, 183
- role of 111–30, 131
- Scott, J. 193
- scrutiny levels, appraisal and reform proposals 169–73
- Second Tobacco Advertising Case see under First Tobacco Advertising Case*
- Sevenster, H. 75, 76, 77, 78, 84, 86, 88, 162, 169
- Shuibhne, N. 11

- Slot, P. 14, 21, 152, 181
Smoke Flavourings 36, 37
 Spain
 Spain v Council (C-310/04) 172, 173
 Spain v Lenzing 124
 Stewart, R. 60
 Stuyck, J. 60
 subsidiarity principle 48–56
 substantive diligence 95–6, 98, 100, 131–2, 178–9
 see also procedural diligence
 suspensory effect of notification
 procedure 79–82, 163–4
 Swaine, E. 50
 Sweden
 Kortas 14, 20, 22, 24, 26, 70, 80, 82, 89, 98–101, 105, 110, 123, 153–4, 157–8, 163–5, 186
 Swedish Match 33–5, 47
- time limits
 appraisal and reform proposals 164–5
 harmonisation model under Article 114 TFEU in practice 100, 101, 102–5, 106, 107, 119, 144–5
 introduction 80–82, 165
Tobacco Advertising see First Tobacco Advertising Case
- trade
 integration premise 29–58, 61, 62, 64
 restrictions, disguised 84, 116, 171–2
- Treaty of the European Union (TEU)
 Article 3 (objectives) 11
 Article 4 (duty of cooperation) 82, 86, 186
 Article 5 (principle of attributed powers) 18, 30, 48, 50, 186
 Article 19(1) (Court of Justice constituent parts) 1–2
 Article 40 40
- Treaty on the Functioning of the European Union (TFEU)
 Article 11 (environmental protection) 58
 Article 12 (consumer protection) 58
 Article 26 (internal market) 1
 Article 34 (free movement of goods) 8
 Article 36 (free movement of goods derogations) 59, 71, 72–3, 74, 75, 88, 90, 166–7, 168–9, 170, 177
 Article 115 (internal market unanimity legal base) 13, 16, 24, 31–2, 66, 156, 157
 Article 153 (social policy) 20, 183
 Article 168 (public health) 29, 47, 58, 63
 Article 169 (consumer policy) 20, 63, 183
 Article 193 (environment policy) 20, 63, 183
 Article 194 (energy policy) 31
 Article 207 (common commercial policy) 46
 Article 258 and 259 (infringement procedures) 88
 Article 263 (legality of legislative acts) 89, 134
 Article 352 (legislative flexibility) 32, 38, 181–2
 see also harmonisation headings
- Treaty on the Functioning of the European Union (TFEU), Article 114
 adaptation of EU norms, incentive for 26
 contextual analysis 18–21
 cross-disciplinary effects 26
 derogation mechanism 19–20, 24, 26, 59, 68–89
 EU competence in internal market
 see EU competence in internal market
 EU harmonisation, presumption in favour of 21–3
 harmonisation model in practice *see* harmonisation model under Article 114 TFEU in practice
 harmonisation paradigm *see* harmonisation paradigm, administration of Article 114 TFEU
 historical perspective (EC Article 95) and Treaty of Amsterdam 14–18, 35, 46, 103, 104, 106
 historical perspective (EC Article 100a) and Single European Act 13–14, 103, 157

- majority voting 14, 24, 26
- market-building process guarantee 24
- Member States applying different
 - regulatory standards, and protectionism 19–20
- as model for harmonisation of internal market 25–7
- notification procedure 20–22, 23–4, 25, 83–4
- overview 1–3
- principle of the right to be heard 85–6
- safeguard clauses, insertion of 19, 21–2
- strict interpretation fears 153–4
- and theoretical underpinnings of
 - positive and negative harmonisation 21–2
- tobacco advertising *see First Tobacco Advertising Case*
- welfare safeguards 19, 22–3, 26
- Treaty on the Functioning of the European Union (TFEU), Article 114(3)
 - protection levels 152, 155, 159, 166, 167, 168, 171
 - strengthening EU's obligations under 174–6
- Treaty on the Functioning of the European Union (TFEU), Article 114(4), maintaining existing legislation 70–73, 96, 114, 116–17, 139–40, 182–3
 - grounds available for 71–3, 92, 166–8, 169, 177, 178
 - national provisions already in existence/seeking to introduce 68–70, 84
- Treaty on the Functioning of the European Union (TFEU), Article 114(5)
 - additional conditions 75–8
 - burden of proof 75–6, 83
 - cumulative requirements 75, 110, 123–4, 138, 183
 - ex ante* control mechanism, new national legislation following harmonisation 190–91
 - grounds available for 74–5, 92, 101–2, 168, 169
 - national provisions already in existence/seeking to introduce 68–70, 84
 - new national legislation following harmonisation 74–8, 117, 120–21, 123–4, 127–9, 131–4, 138, 143, 144, 162, 177, 178, 183
 - new scientific evidence, interpretation problems 77–8
 - problem arising after adoption of harmonisation measure 76–7
 - public health problems 88
- Treaty on the Functioning of the European Union (TFEU), Article 114(6) 79–86, 92, 101, 139, 165, 169, 170–71, 178, 180
 - Commission's assessment 83–6
 - 'obstacle to the functioning of the internal market', interpretation of 84–5, 171–3
 - suspensory effect of Commission decisions 79–82
- Treaty on the Functioning of the European Union (TFEU), Article 114(7)
 - approximation norm 76, 160, 165, 180, 190
 - Commission's Decision, effects of 86–7, 160, 169
- Treaty on the Functioning of the European Union (TFEU), Article 114(8), public health protection 87–8, 160, 168, 169, 174
- Treaty on the Functioning of the European Union (TFEU), Article 114(9), enforcement mechanism 88–9
- Treaty on the Functioning of the European Union (TFEU), Article 114(10), safeguard mechanism 90–92, 176–8
 - application conditions 90–91
 - control procedure 91
 - 'ecological' safeguard clause, absence of 90–91
 - regulatory differentiation, appropriate vehicle selection 91–2
- Tridimas, T. 10, 23, 172, 173, 174
- Türk, A. 185

- UK
 Smoke Flavourings 36, 37
 snus (oral use tobacco), prohibition
 of marketing of 33
 Turkeys case 142
 Working Time 52, 63
Unberath, H. 6, 22, 65, 66
US, Passenger Name Record (PNR)
 data, (air carriers) 38–9
Usher, J. 57

Van Calster, G. 85, 86
Verhoeven, A. 185
Vodafone 35, 44–5, 46, 47, 49–50, 52,
 56
Von Bogdandy, A. 11
Vos, E. 185

Waelbroeck, M. 72, 94, 188
Wasmeier, M. 190
Weatherill, S. 7, 9, 10, 12, 30, 31, 32,
 34, 43, 47, 51, 52, 55, 56, 57, 58,
 62, 64, 65, 66, 67, 70, 152, 156,
 157, 159, 175, 176, 187, 188,
 193
Weiler, J. 13, 16, 24, 26, 157, 158, 185
welfare protection 108, 109–10, 114,
 153, 156, 166, 170
 see also consumer protection; health
 and environmental protection;
 public health
Wennerås, P. 107, 117, 141, 173
Wyatt, D. 31, 34, 47, 48, 69, 80, 152

Zacker, C. 61, 69, 159