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
Arnall, 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
Index

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
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
Arnontopasana 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
Burststein 21, 153
Buy Irish 45

Isidora Maleti - 9781781004142
Downloaded from Elgar Online at 12/26/2018 06:18:29AM via free access
The law and policy of harmonisation in Europe’s internal market

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 (Walloons 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
Danmer 168
Dassonville 2, 7, 8, 10, 170, 179
De Agostini 10, 168
De Peijper 88
Decker 72, 90, 168
Deliège 10
Denkavit 67
Deposito Garantie 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
Pesquerias 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 Adhbu 32
Ratti 67
Retention of Data 39–40
Reyners 95
Ruiz Zambrano 8
Safety High-Tech 61
Ságer 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
Traghetto 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
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
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
The law and policy of harmonisation in Europe's internal market

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

grounds available for 71–5, 92, 101–2, 166–8, 169, 177, 178

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 existenceSeeking 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
The law and policy of harmonisation in Europe’s internal market

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
cross-disciplinary effects 26
derogation mechanism 18–21
derogation mechanism 18–21
derogation mechanism 18–21
derogation mechanism 18–21
derogation mechanism 18–21
harmonisation model in practice see harmonisation model under Article 114 TFEU
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
Türkiye, A. 185
The law and policy of harmonisation in Europe’s internal market

UK
Smokes 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
Vodaphone 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