Index

Aarhus Convention and public interest litigation 318–319
abuse of power, protection against 144, 145, 147
access to justice 291, 298, 301, 302, 305, 308, 308–309, 311, 318, 425, 428–430
see also fair trial, right to
Accession Agreement 244–246, 252–259
accession countries, Cooperation and Verification Mechanism (CVM) 232
accountability see transparency
administrative governance 84, 85, 142–143, 207–209
advisory bodies 141, 172, 177, 205
advocates general 271–274, 284
agencies see European agencies and institutional balance
Amsterdam Treaty 13, 24, 27–28, 60, 118–119, 122, 128, 130, 156, 195, 200
annulment action 270, 292–293, 295, 297, 299, 447–448
Area of Freedom, Security and Justice (AFSJ) 27, 29, 30, 55, 58
autonomy
EU legal order 252, 253, 320, 382–384
national procedure see national procedural autonomy
Barroso Initiative 35–36, 120–121, 132
Better Regulation agenda 36, 478
Civil Service Tribunal 267, 268, 271, 275, 282, 287, 482
co-respondent mechanism (CRM) 243, 244–246, 252
codification and contestation competences 46–87
Area of Freedom, Security and Justice (AFSJ) 27, 29, 30, 55, 58
choice among possible legal bases for a given measure 48
citizenship rights 58
common commercial policy 59
and ‘competence creep’ 49, 63, 64
competition policy inclusion 52–53
delimitation of the competences controversy 47, 48, 49, 50–51
development cooperation and humanitarian aid shared competence 59
economic policy 57, 65–66
energy policy 76
essential state functions 75–81
euro crisis competences 65–66
exclusive competences 52–53, 60, 66–67
external action and competence confusion 59–60, 66–68
forgotten competences 58, 59
internal market competence 60–61
internal security, safeguarding of 76
judicial review 68–73
legal basis requirement for policy listing 55–56
legislative and treaty-making powers 51–52, 58–59, 64, 65
Lisbon Treaty, institutional controversy in post-Lisbon era 61–68
Lisbon Treaty ‘system of competences’ 49, 50–54, 56–60
monetary policy inclusion 52
national initiatives 85–87
national ultra vires review 70–73
nationality decisions 76
preliminary hearing reference 69
principle of conferral 46, 47–48, 50, 74
principle of subsidiarity 48, 50, 52, 62, 63, 70, 80, 83, 86–87
property ownership system 76
qualified majority voting (QMV) 65, 74
Regulatory Fitness and Performance Programme (REFIT) 83–84, 86
repatriation of competences to Member States 81–87
right of association 76–77
services of general economic interest (SGEI) 58
shared competences 53, 58–59, 63–65, 66–68
sincere cooperation’ principle 67–68, 247, 457
social policy 57
typology and individual legal bases, ambiguous relation between 58–59
UK, Balance of Competences Review 85–86
uncategorised competences 56–57
Work Programme of the Commission on better regulation 84–85
collective action protection 62, 133–136
collective redress mechanisms 426, 471–472, 473
collelgiality of judgments 35–36, 281, 283–284
comitology practices 23, 24, 141, 159, 182, 201, 205
Committee of the Regions (CoR) and principle of subsidiarity 121, 126, 131, 296–297
Common Foreign and Security Policy (CFSP) codification and contestation competences 51, 56–57, 59, 62, 66–67
constitutional foundations 16–17, 29–30, 42–43, 45
and fundamental rights protection 240, 242, 249–250, 256
judicial review in EU law 317–318
liability for breach of EU law and General Court jurisdiction 445
Common Security and Defence Policy (CSDP) 30, 45
competences
at stage of execution of judgment 334–347
contestation see codification and contestation competences
competition policy 52–53, 292–293
Conference of European Affairs Committees (COSAC) role 120, 125, 130–132, 137
confidentiality principle 46, 47–48, 50, 74
Constitution for Europe 3, 15, 18, 21–22
constitutional development 75–81, 99, 195–196, 198
constitutional foundations and Treaty of Lisbon reform 13–45
Amsterdam Treaty 13, 24, 27–28, 60, 118–119, 122, 128, 130, 156, 195, 200
Area of Freedom, Security and Justice (AFSJ) 27, 29, 30, 55, 58
Brexit 29, 36, 86
Charter of Fundamental Rights 15, 18–21, 75, 195, 200, 222–226, 228–229,
Common Foreign and Security Policy see Common Foreign and Security Policy (CFSP)
Common Security and Defence Policy (CSDP) 30, 45
Constitution for Europe 3, 15, 18, 21–22
differentiation accommodation 26–31, 42
European Atomic Energy Community 15–16, 17
European Commission changes 35–37, 43–44
European Commission changes, ‘Better Regulation’ agenda 36, 478
European Council changes 32–34, 40, 41, 42–43
European Parliament changes and democratic legitimacy 37–42
European Parliament changes, participation levels and voter turnout 37–38
external relations, rules governing 16–17, 42–45
High Representative of the Union for Foreign Affairs and Security Policy (HR) 43–44
institutional innovations 31–45
Maastricht Treaty see Maastricht Treaty
ordinary legislative procedure (OLP) 23, 41, 74, 101, 119, 124, 125, 127, 129, 159, 162, 163, 169, 303–304, 332, 478
overregulation concerns 21–22
Police and Judicial Co-operation in Criminal Matters legislation 35, 444
Prüm Convention 28
qualified majority voting (QMV) 4, 34, 65, 74, 124, 129
Schengen acquis 27, 28, 484, 485
secondary legislation 21–25
SOLVIT tools and breach of EU law by a public authority 37
Spitzenkandidaten system 39–40, 160, 162
Treaty on Stability, Coordination and Governance (TSCG) (Fiscal Compact) 28, 93, 102, 320, 328
constitutional guarantee, as judicial review in EU law 290–291

Adam Lazowski and Steven Blockmans - 9781782544746
Downloaded from Elgar Online at 03/01/2019 07:03:22AM
via free access
constitutional neglect of position of agencies 148–150
constitutive character of judgment imposing a financial penalty 342–344
consultation and impact assessment procedures 177, 182–187
consumer protection, and ordre public 433–434
Cooperation and Verification Mechanism (CVM), and accession countries 232
COSAC (Conference of European Affairs Committees) role 120, 125, 130–132, 137
court cases see EU court cases; European Court of Human Rights; individual cases; International Criminal Court
Court of Justice 480
advocates general 271–272, 284
application, and Charter of Fundamental Rights 222–226
‘complete system of legal remedies and procedures’ 483
doctrine of direct effect 389–395
and General Court, redesigning relationship between 285–287
Grand Chamber 272
internal organization 271–274
number of judges 271, 282
penalties for non-execution of judgments see financial penalties for non-execution of judgments of the Court of Justice
role, fundamental rights protection 244–246, 252–255
unmodified jurisdiction 268–271
see also EU court cases; General Court; judiciary reform considerations
Court of Justice, national courts, and spirit of cooperation 353–375, 480, 482
applicability of EU law 366–369
‘common’ and ‘particular’ engagement 355–364
deference possibilities 373–374
due publication of EU legislation 360–361
establishing case law 362–364
EU law in Member States 364–375
final decision and afterwards 360–362
functional legitimacy 371–372
horizontal effects of directives 373, 483–484
language issues 356–357, 360, 363–364
national guidance obligations 371–374
political or constitutional concerns 371–372
preliminary ruling procedure 353, 355–364, 366, 368
res judicata status 372
secret legislation 364
silence in national courts, reasons for 365–366, 369–370
voice and representation problems 358–359
criminal proceedings, doctrine of indirect effect 400–401
crisis management powers 89–90, 96–98, 102, 210
Czech Republic 73, 80
Holubec 73
Lisbon Treaty 73
damages actions 296, 445–455, 459–65, 468–471
deferment 349–350, 373–374
delegation, power delegation concerns 143–146
deliberative democracy theory 171–172, 175, 182
democracy
democratic justification, national parliaments as guardians of principle of subsidiarity 118–121
and fundamental rights 478–480
and transparency in EU 194–199, 203–204, 209, 213–218
transparency in the EU 197–199
democratic foundations of the Union 155–189
complementary sources of democratic legitimacy 171–176
consultation and impact assessment procedures 177, 182–187
deliberative democracy theory 171–172, 175, 182
democratic accountability deficits 161–162
Economic and Social Committee 172–173
European Citizens’ Initiative 176
European Commission, White Paper on Governance 143, 172, 178–179, 180, 184, 185
European Council and the Council 163–168
European Parliament 158–163, 186, 187
governance or democracy distinction 176–181, 184–185, 186–187
490  *Research handbook on EU institutional law*

language issues 149, 161, 356–357, 360, 363–364
Lisbon Treaty *see* Lisbon Treaty
Maastricht Treaty *see* Maastricht Treaty
national parliaments 166–171
ordinary appointment of the members of the Commission 159–160
ordinary legislative procedure of European Parliament 159, 162–163
participation by non-state actors 172–173, 176–187
participatory democracy 156–157, 173–175, 176–187
participatory democracy, procedural rules 181–185
public interest groups 179–181, 187
representative democracy 158–171, 173–174, 175
*Spitzenkandidaten* system 39–40, 160, 162
trilogues practice 119, 123, 162–163, 188, 203–204
voice and equal treatment measures 180–181, 187
voter turn-out in EU elections 37–38, 160–161, 214

Denmark
*Lisbon* 72
*Maastricht Treaty* 72
differentiation accommodation, Lisbon Treaty reform 26–31, 42
direct effect doctrine 264, 266, 292–293
primacy *see under* primacy, direct and indirect effect
disability strategy, fundamental rights protection 229–230
discretion
implementing measures 305–307
liability for breach of EU law and General Court jurisdiction 462–463
dispute resolution, judiciary reform considerations 274, 275
doctrine of direct and indirect effect *see under* primacy, direct and indirect effect
document access, and transparency 199–201, 205, 207–208, 470–471
document depository, IPEX 130
dual model, judicial review in EU law 291–294, 311–314

economic policy 52, 57, 65–66, 205–206, 212
Economic and Social Committee 172–173
efficiency, judicial review in EU law 311–314
employment policy 57, 573
EMU (Economic and Monetary Union) decision-making *see* European financial and sovereign debt crisis and EMU decision-making
energy policy 76
enforcement conditions 37, 342–344, 483–484
esential state functions, codification and contestation competences 75–81
Estonia, ESM involvement 100
EU court cases
*Aannemersbedrijf P.K. Kraaijeveld v Gedeputeerde Staten van Zuid-Holland* 385
*Abdulrahim v Council and Commission* 291
*ADEDY v Council* 300
*Adeneler* 399
*AGM-COS.MET* 458, 461
*Agrokonsulting* 429
*Airtours* 453, 454
*Alassini* 430
*Allain* 432
*Alliance for Natural Health* 144
*AMS* 221, 279, 393
*Apriile* 429
*Arango Jaramillo v EIB* 286, 291, 311
*Area Cova v Council* 292
*Artegodan v Commission* 451
*Association Belge des Consommateurs Test-Achats v Conseil des ministres* 21, 224
*Association de médiation sociale v Union locale des syndicats CGT* 20, 225, 279, 388, 393, 408
*ATC* 456
*Atlanta Fruchthandelsgesellschaft* 293, 431
*Atlanta v Council and Commission* 182
*Audiolux* 372
*Aventis Pasteur* 279
*Azienda Agricola Monte Arcosu v Regione Autonoma della Sardegna (ERSAT)* 388
*Balbiino* 363
*Bank Melli Iran v Council* 294
*Banks* 466
Index 491

Barth 429
Bartsch 279, 397
Baumhast 391
Baustahlgewebe v Commission 267
Beamglow v European Parliament 455
Becker v Finanzamt Münster-Innenstadt
  390, 391, 395
Belgische Radio en Televisie v SV SABAM
  392
Belgium v Spain 326
Bergaderm
  344, 450–451, 459
Berlusconi 432
Bilbaína de Alquitranes
  303, 308
Bloufin Touna Ellas Naftiki Etaireia v Commission
  300
Böck and Lepuschitz v Air France 263
Bolton Alimentari v Agenzia delle Dogane
  293
Borelli 428
Brasserie
Bricmate v Council
  303, 305, 306
Brinkmann 462, 463
British Telecom 423, 431
Brunner Service International v Council
  303, 306, 308, 312
BSI 303
Cannito 467
Carp Snc v Ecorad
  388, 395
Cartesio 280, 431
Carvel and Guardian Newspapers v Council 200
CD Cartondruck v Council and Commission 455
Chacón Navas 279, 372
Chalkor v Commission 314
CIA Security 395
CILFIT 264, 292, 332, 368, 373
Cinco Chemicals v ECHA 303
Ciola 434
City Motors Groupe 468
Clark v Ville d’Orléans
  293
Claro 433
Codorniu v Council 294
Cofidis 433
Commission v AssiDomän Kraft Products
  344
Commission v Belgium
  324, 327, 345, 346, 351
Commission v Bulgaria 329
Commission v Cantina sociale di Dolianova
  450
Commission v Council
  (C-63/12) 269
Commission v Council
  (C-114/12) 67
Commission v Council
  (C-137/12) 67
Commission v Council
  (C-176/03) 17
Commission v Council
  (C-196/12) 269
Commission v Cyprus
  329, 352
Commission v Czech Republic
  324, 329, 332, 333, 334, 341, 345
Commission v EIB
  296
Commission v Estonia 329
Commission v Finland
  330
Commission v France
  327, 330, 339, 340, 341, 344, 345, 346, 348, 349
Commission v French Republic 333
Commission v German Republic
  341, 344
Commission v Germany (VW case)
  324, 333, 334, 340, 341, 342
Commission v Greece
  324, 332, 337, 342, 344, 345, 346, 347, 349–350, 432
Commission v Guido Strack 286
Commission v Hungary
  231
Commission v Ireland
  324, 329, 330, 337, 347, 351, 432
Commission v Italian Republic 388
Commission v Italy
  337, 338, 348–349, 363
Commission v Jégo-Quére
  448
Commission v Luxembourg 340
Commission v Netherlands 329
Commission v Parliament and Council
  (C-43/12) 68
Commission v Parliament and Council
  (C-427/12) 24
Commission v Petrilli 444
Commission v Poland
  329, 330, 331, 332, 352
Commission v Portugal
  324, 332, 335, 336, 337, 338, 340, 341, 342, 350–351
Commission v Romania
  329, 352
Commission v Slovakia 435
Commission v Slovenia 329
Commission v Spain
  324, 329, 332, 346, 347, 348–349, 363
Commission v Sweden
  341, 344
Commission v Systran and Systran Luxembourg 444
Confédération nationale des producteurs de fruits et légumes v Council 294
Consiglio nazionale dei geologi 313
Costa v ENEL
  9, 223, 265, 353, 355, 379, 401–406, 407, 483
Council v Access Info Europe 196, 202
Council v Commission
  (C-66/12) 269
Council v Manufacturing Support & Procurement Kala Naft 295
Research handbook on EU institutional law

Council v Sophie in ‘t Veld 196
Council v Vereniging Milieudelfensie and Stichting Stop Luchtverontreiniging Utrecht 319
Courage 361–362, 441, 465, 467–468, 469, 470
Criminal proceedings v Kolpinghuis Nijmegen 399–400
Da Costa en schaake, Jacob Meijer and Hoechst-Holland v Nederlandse Belastingadministratie 264
Danfoss 430, 463–464
Dano v Jobcenter Leipzig 20, 479
Danske Automat Brancheforening v Commission 306, 307
Danske Slagterier 464, 467
Danske Svineproducenter 313
DEB 290, 428, 441–442, 464
Defrenne v SABENA 221, 391–392, 394
Dekker 430
Delena Wells 421
Denkavit 432, 462
Der Grüne Punkt – Duales System Deutschland v Commission 267, 446
Dereci v Bundesministerium für Inneres 277, 392
Digital Rights Ireland 224–225, 344
Dilexport 427
Dillenkofer 432, 460
Domínguez v Centre informatique du Centre Ouest Atlantique 279, 392, 399
Donau Chemie 470–471
Dorsch Consult 356, 455
Dreyfus v Commission 300, 306
Du Pont de Nemours (France) v Commission 451
Duphar 77
Eco Swiss 433
Edis 427, 428
Édukővíc 354
Edwardu Pallikaropoulos v Environment Agency 291
Elchinov 363
Elitaliana v Euelex Kosovo 317
Elti d.o.o. v Delegation of the European Union to Montenegro 296
Emesa Sugar (Free Zone) v Aruba 236
Erich Stauder v City of Ulm – Sozialamt 7
ERT 224, 366
ESMA 146–148
Etimine and Etiproducts v Commission 299
Eurofer 303, 305, 306, 309, 312
European Ombudsman v Lamberts 447
Europese Gemeenschap v Otis 293, 312
Evropaïki Dynamiki v EIB 296, 310
Extramet Industrie v Council 294
Faccini Dori 393, 394–395, 399
Factormate 353, 404, 423, 430, 431, 441
Fallimento Olimpiclub 372, 435
Farrell v Alan Whitty, Minister for the Environment 394–395
Fedon & Figli v Council and Commission 455
FIAMM 450, 455–456
FIFA v Commission 294
Filipiak 372
Fink-Frucht 387
Flachglas Torgau 304
Fortuna Russo v Comune diNapoli 409
Foselev 388
Foster 393, 394
Fomo-Frost 69, 270, 292, 293, 322
France v United Kingdom 326
Fransson 18, 19–20, 224, 259, 366, 413, 418–419, 479
Fratelli Costanzo v Comune di Milano 395
Fratelli Vartola v Amministrazione italiana delle Finanze 388
Frédéric Hay 77
Fresh Marine v Commission 451
Fuji 392, 431, 458, 461, 464–465
Galileo International Technology v Commission 451
Gascogne Sack Deutschland 21, 267, 446, 449, 450, 480
Gascogne v Commission 267, 273, 446, 449, 450
Gaston Schal 292, 312, 368
Gauweiler v Deutscher Bundestag (OMT) 65–6, 71, 107, 108–109, 112, 269
Geitling v High Authority 221
Geraerts-Smits and Peerbooms 77
Germany and Arcor 427, 434
Germany v Council 116
Gestoras Pro Amnistía v Council 444
Gingerbread 382
Gloszczuk 389
Google Spain 225–226
Gottfried Heinrich 364
Gowan Comércio Internacional e Serviços 312
Grad v Finanzamt Traustein 388, 390
Greenpeace v Commission 318–319
Index 493

Grimaldi v Fonds des maladies professionelles 398
Haim 458, 462
Handlbauer 304
Hanssen-Ensch v EC 444
Hartz v Deutsche Trudax 397
Hassen El Dridi, alias Soufi Karim 392
Hauer v Land Rheinland-Pfalz 221
Hauptzollamt Mainz v Kupferberg 389
Hautala v Council 201
Health Service Executive v S.C. and A.C. 430
HK Danmark 354
Holcim (Deutschland) v Commission 450, 451
Hubert Wachauf 224
Hungary v Slovakia 326
Hüttenwerke Krupp Mannesmann 303, 306
Hydrogene Peroxide 468
i-2i Germany 428
Iaia 428
Impact 429
IN.CO.GE 372, 431
Infront WM v Commission 294
Ingeborg Beuttenmüller and Land Baden-Württemberg 392
Inter-Environnement Wallonie v Région wallonne 396
Intermodal Transports v Staatssecretaris van Financiën 292
International Chemical Corporation 69, 362
International Fruit Company v Commission 294
International Transport Workers’ Federation and Finnish Seamen’s Union v Viking Line 392
Internationale Handelsgesellschaft 221, 268, 353, 403–404, 405, 406, 407, 413, 414
Inuit 20, 270, 285, 299, 301–304, 309, 310, 315, 322, 332, 483
Italian Republic v European Commission 341
Jégo-Quéré 297–298, 300, 309, 310, 312, 448
Jeremy F. v Premier minister 409, 413, 415–419
Johnston v Chief Constable of the Royal Ulster Constabulary 290
Julius Sabatauskas 409
Kadi 290, 295, 310, 315
Kamberaj 354
Kapferer 372, 434–435
KappAhl 300
Kempter 433
Kendrion 267, 449, 450
KONE 468, 469
Konle 458, 461
Koppensteiner v Bundesimmobiliengesellschaft 392
Křižan 363
Krasimir Asparuhov Estov v Ministerski savet na Republika Bulgaria 19
Kreil 371
Krikorian v European Parliament 445
Kucesdzevci 18, 223, 279, 366, 372, 397
Kühne & Heitz 363, 434
Laboratoire du Bain v Council and Commission 455
Lammerzahl 429
Landelijke Vereniging 385
Landtová 358–359
Larsy 462
Laval un Partneri v Svenska Byggnadsarbetareförbundet 392
Lemmens 367
Les Verts 291, 310
Leth 460, 464
Levez 427
Limburgse Vinyl Maatschappij 236
Lucchini 372, 434, 435
Lätticke 387–388, 390
M contre Agence européenne des médicaments (EMEA) 286
Maalis and Mulli v Commission and ECB 112
McCarthy v Secretary of State for the Home Department 277, 284
Maindiaux v ESC 340
Manfredi 429, 441, 466, 467–468, 469
Mangold 277, 278–279, 353, 372, 373, 395–397
Marbury v Madison 277
Maritza East 1 EOOD 354
Marks and Spencer 77
Marleasing 366, 399
Marshall 390, 393–394
Masdar 311, 344, 456
Masterfoods and HB v HB Ice Cream 292
Medici Grimm v Council 445
Melki and Abdeli 358–359
Melkveebedrijf Overenk 456
Research handbook on EU institutional law

Melloni 18, 223, 253, 259, 292, 404, 411–415, 481, 483
Meroni 143–144, 145, 146–148
Microban 300, 303, 307, 308
Molkerei-Zentrale Westfalen 386
Mono Car Styling 428
Muñoz 393, 467
MyTravel Group v Commission 447, 452, 453–454
Napolitano 409
Netherlands v Commission 468
Nexans France v European Joint Undertaking for ITER and the Development of Fusion Energy 296
Nold 221, 268
Norilsk Nickel Harjavalta and Umicore v Commission 299
N.S. v Secretary of State for the Home Department and M. E. v Refugee Applications Commissioner 235
Nunes et de Matos 432
O’Byrn 279
Ocean Group 366, 433
Oktató 357
Opinion 1/92 (EEA) 320
Otis 469
Palacios de la Villa v Cortefiel Servicios 279
Palmisani 427
Parfums Christian Dior v TUK Consultancy 385
Parliament v Council (C-70/88) 310
Parliament v Council (C-130/10) 66
Parliament v Council (C-263/14) 45
Parliament v Council (Chernobyl) 144, 145–146
Parliament v Council (Mauritius Agreement) 45
Paul 462, 463
Peterbroeck 433
Pfeiffer 385, 392, 399
Pfeifer 470, 472
Pimix 363
Plaumann 8, 245, 294
Pohotovosi 433
Poland v Council 280
Poland v Parliament and Council 35
Polska Telefonia Cyfrowa 364
Polyelectrolyte Producers Group and SNF v ECHA 291, 311
Pontin 427, 429
Portugal v Commission 335–336
Posti and Rahko v Finland 298, 316
Presidente del Consiglio dei ministri v Regione Sardegna 409
Preston 427
Pretore di Salò v Persons unknown 400
Pringle 46, 65, 97, 99, 107, 111–112, 269, 290, 300, 302, 320, 332
Pupino 400
Q-Beef and Bosschaert 429
R v Secretary of State for Health ex parte British American Tobacco and Imperial Tobacco 135
Raffaella Mascolo 409
Rakvere Lihakombinaat 363
Ratti 390–391
Rechberger 463
Rechnungshof v Österreichischer Rundfunk 392
Rewe 422–423, 425–426, 430, 432
Reyners 387
Reynolds Tobacco 447–448
Rheinmuhlen 409, 431
Robins 462–463
Roman Angonese v Cassa di Risparmio di Bolzano 392
Romano 147
Rottmann 77
Royal Scandinavian Casino Århus v Commission 306–307
Ruiz-Mateos v Spain 315
Rütgers Germany v ECHA 303
Ruili 221
Safalero 428
Salamander 448
Salgoil v Italian Ministry of Foreign Trade 387
Samba Diouf 290–291, 315, 429
San Giorgio 430
Santex 429
Schindler Holding v Commission 291
Schlüter v Hauptzollamt Lürrach 388
Schneider 451, 452–453, 454
Schwarz 77, 314
Segi v Council 444
Servet Kamberaj v IPES 408
Sgarlata v Commission 221
SGEEM and Eyro v EIB 296, 310
SIA Kurcums Metal 354
Simmenthal 371, 404, 431
Simutenkov 389, 392, 393
Sison v Council 445, 447, 451
Sogelma v EAR 291, 296
Index 495

Solvay v Commission 267
Sozialhilfeverband Rohrbach v Arbeiterkammer Oberösterreich 394
Spain and Italy v Council 28, 290, 321
Spain v Council 28
Spain v Parliament and Council 28
Spain v United Kingdom 326
Stauder v City of Ulm 221, 268, 407
Stichting Woonpunt v Commission 302, 303, 304, 305, 306, 311, 319
Stockholm Lindöpark 462, 463
Stork v High Authority 221
Sturgeon 263, 280, 481
Stylinart v Skarbowi Państwa 19
Svenska Journalistförbundet (Swedish Union of Journalists) v Council 200
Sviluppo Italia Basilicata v Commission 450, 456
Sweden and Turco v Council 196, 201
Sweden v API and Commission 201
Swedish Match 64
Syfait 356
Synthon 462, 463
S.Z. Sevince v Staatssecretaris van Justitie 389
Tay Za v Council 295
Test Claimants in the FII Group Litigation 462, 464
Tobacco Advertising 64, 128
Traghetto del Mediterraneo 363, 372, 432, 460, 463
Transportes Urbanos 427, 457, 461
Trespa International 305
Trubowest Handel and Makarov v Council and Commission 450
TWD Deggendorf 293
UEAPME 173–174
Umweltanwalt von Kärnten 356
Unibet 290, 309, 310, 312, 428
Unilever Italia 395
UPA 295, 297–298, 304, 309, 310, 311, 312, 315, 316, 318, 428, 448
Valeo Vision v Commission 303, 308
Van der Weerd 322–324
Van Duyn 389–390
Van Munster v Rijksdienst voor Pensioenen 385
Van Schijndel 432–433
Vaneevelt v Le Foyer 390, 394
Vassallo v Azienda Ospedaliera Ospedale San Martino di Genova 394
Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht v Commission 319
Verholen 428
Viamex Agrar Handels v Hauptzollamt Hamburg-Jonas 395
Viking Line 77, 133–135
Vischim v Commission 303
Vodafone v Secretary of State for Business, Enterprise and Regulatory Reform 120
Volker and Markus Schecke 225
Van Colson 385, 397–398, 432
Wachauf 366, 407
Wagner Miret 399
Walrave and Koch 391
Wells 434
Weryński 299–300
Winner Wetten 372, 404, 414
X, Y, Z v Minister voor Immigratie en Asiel 269
Ymeraga v Ministre du Travail 277
Yoshikazu Iida v Stadt Ulm 277
Z. v A Government Department, The Board of Management of a Community School 392
Zambrano 277, 278, 284, 287, 481–482
Zoi Chatziv Ypourgos Oikonomikon 408
Zuckerfabrik 293, 312, 431
ZZ v Secretary of State for the Home Department 77
EU Justice Scoreboard, fundamental rights protection 232–233, 258
euro crisis competences 65–66
Eurogroup 97, 111, 112, 205–206, 212, 217
European agencies and institutional balance 139–151
administrative governance 142–143
agencies’ characteristics 139–140, 142–143
agencies’ rise 141–143
constitutional neglect of position of agencies 148–150
constitutionality of institutional balance 143–146
and European System of Financial Supervision 143, 146
and Lisbon Treaty 148–150
see also Lisbon Treaty

Adam Lazowski and Steven Blockmans - 9781782544746
Downloaded from Elgar Online at 03/01/2019 07:03:22AM via free access
496  Research handbook on EU institutional law

Meroni and delegation of powers 143–144, 145, 146–148
parliamentary objections to proliferation 143
personal data protection requirement 149
power delegation concerns 143–146
principle of transparency 149, 150, 205
protection against the abuse of power 144, 145, 147
European Arrest Warrant (EAW) 411–415, 417–418, 481, 484
European Atomic Energy Community 15–16, 17
European Aviation Safety Agency (EASA) 144
European Banking Union 321–322
European Central Bank 206
and sovereign debt crisis see European financial and sovereign debt crisis and EMU decision-making, European Central Bank (ECB)
European Centre for the Development of Vocational Training (CEDEFOP) 142
European Citizens’ Initiative 176
European Commission
‘Better Regulation’ agenda 36
‘Blueprint for a Deep and Genuine EMU’ 101
competition cases, national court judgments running counter to Commission decisions 292–293
constitutional foundations and Treaty of Lisbon reform 35–37, 43–44
and financial penalties see financial penalties for non-execution of judgments of the Court of Justice, Commission’s enforcement role involvement, sovereign debt crisis and EMU decision-making 97–98, 101, 102–103
ordinary appointment of members 159–160
‘Plan D’ for democracy, dialogue and debate 120–121
President role 39–40
White Paper on Governance 143, 172, 178–179, 180, 184, 185
European Convention on Human Rights (ECHR)
EU’s accession 235–243, 249, 258–259, 311, 314, 316–318, 479
fundamental rights protection 221, 222, 235–243
representation in supervisory mechanism 246–249
European Council
Committee of Ministers and European Court of Human Rights (ECHR) 247–248, 257
constitutional foundations and Treaty of Lisbon reform 32–34, 34, 40, 41, 42–43
democratic foundations of the Union 163–168
and fundamental rights protection 228, 240–242, 247, 248–249, 251, 255, 258
involvement, sovereign debt crisis and EMU decision-making 99, 100–101
presidency 33–34, 42–43
transparency in see transparency in the EU, European Council
European Court of Human Rights (ECHR)
Al-Jedda v UK 250
Bosphorus Airlines v Ireland 237, 238, 256
Coop. Producenorganisatievan de Nederlandse Kokkelvisserij U.A. v the Netherlands 237
Dhabhi v Italy 313
Ferreira Santos Pardal v Portugal 313
and fundamental rights protection 236, 246–249, 251–252, 253, 255, 256, 257
M.S.S. v Belgium and Greece 235, 258
Parliamentary Assembly of the Council of Europe (PACE) involvement 248–249, 255
preliminary rulings 313–314
Ullens de schooten and Rezabek v Belgium 313, 323
Vergauwen v Belgium 313
Winterwerp v the Netherlands 235
European Environment Agency 142
European External Action Service 42, 44
European financial and sovereign debt crisis and EMU decision-making 88–113
crisis management 89–90, 96–98, 102
current account deficit and current account surplus economies, divergence between 93, 94
De Larossière Report 95
democratic legitimacy and accountability, ensuring 103, 113

Adam Lazowski and Steven Blockmans - 9781782544746
Downloaded from Elgar Online at 03/01/2019 07:03:22AM
via free access
economic policy coordination,
  strengthening 96–103
emergency assistance packages 89–90, 95,
  96–98, 108–109
EMU, original set-up 90–91
Eurogroup role 97, 111, 112
European Banking Authority (EBA) 95
European Commission involvement 97–98,
  101, 102–103
European Council involvement 99, 100–101
European Financial Stability Facility
  (EFSF) 89–90, 97, 105, 106, 107–108
European Insurance and Occupational
  Pensions Authority (EIOPA) 95
European Parliament, limited involvement
  98, 101–102, 103, 113
European Securities and Markets Authority
  (ESMA) 95
European Stability Mechanism (ESM) 90,
  97, 98–100, 105, 106, 107–108, 109,
  112, 320
European Systemic Risk Board (ESRB) 95
Greek emergency package 89–90, 96–97
Ireland emergency package 89
and Lisbon Treaty institutional balance
  96–97, 98–99, 101
Long Term Refinancing Operations (LTRO)
  90
monitoring macroeconomic developments
  in Member States 93–94, 97–98
multilateral surveillance, enhancing 91–93,
  98, 102–103
national decision-making powers related to
  national budgets, possible
infringements 99–100
Outright Monetary Transactions programme
  (OMT) 90, 105–106, 107, 109, 112
policy response 89–96
Portugal emergency package 89
quantitative easing 104
reversed qualified majority voting (reversed
  QMV) 92, 103
Securities Market Programme (SMP) 90,
  104–105
Single Resolution Mechanism 95–96, 109
‘six pack’ of legislative proposals 92–93,
  94, 101–102, 320
Stability and Growth Pact (SGP) 91–93,
  103
Treaty on Stability, Coordination and
  Governance (TSCG) 28, 93, 102, 320,
  328
European financial and sovereign debt crisis
  and EMU decision-making, European
Central Bank (ECB)
emergency assistance decisions 108–109
evolving role 103–110, 112–113
‘non-standard monetary policy measures’
  90, 103–107
and price stability 104, 109, 112
supervisory role 95, 109–110, 112–113
European Financial Stability Facility (EFSF)
  89–90, 97, 105, 106, 107–108
transparency in the EU 206
European Food Safety Authority (EFSA) 141
European Foundation for the Improvement of
  Living and Working Conditions
  (EUROFOUND) 141–142
European Insurance and Occupational
  Pensions Authority (EIOPA) 95
European Investment Bank (EIB) 296,
  327–328
European Medicines Agency (EMA) 142
European Office for Harmonization (OHIM)
  149–150
European Parliament
  constitutional foundations and Treaty of
Lisbon reform 37–42
democratic foundations of the Union
  158–163, 186, 187
limited involvement, sovereign debt crisis
  and EMU decision-making 98,
  101–102, 103, 113
ordinary legislative procedure 159, 162–163
treaty-making powers 206, 213–214
voter turn-out in EU elections 37–38,
  160–161, 214
European Public Prosecutor’s Office (EPPO)
  proposal and yellow card 137
European Securities and Markets Authority
  (ESMA) 95, 143, 146–147
European Stability Mechanism (ESM) 90, 97,
  98–100, 105, 106, 107–108, 109, 112,
  320
European System of Financial Supervision
  143, 146
European Systemic Risk Board (ESRB) 95
European Trade Mark 149–150
Eurosceptics 38, 477
evidence disclosure 337–338, 472–473
exclusive competences 52–53, 60, 66–67
external action
codification and contestation competences
  59–60, 66–68
498  *Research handbook on EU institutional law*

constitutional foundations and Treaty of Lisbon reform 16–17, 42–45
European External Action Service 42, 44
fundamental rights protection 235–243, 258–259, 479

fair trial, right to 410–419, 425
  *see also* access to justice

financial penalties for non-execution of judgments of the Court of Justice
324–352
constitutive character of judgment imposing a financial penalty and enforceability question 342–344
declaratory character of finding of a failure to comply with court’s judgment 339–342
enforcement conditions and State sovereignty 343–344
European Investment Bank (EIB) 296, 327–328
failure to fulfil an obligation under the Treaties, scope of application 326–339
legal character of judgments based on Article 260(2) TFEU 339–344
legislative procedure, understanding of 331–332
Lisbon Treaty, procedural novelties 328–332
lump sum or penalty payment imposition while lodging a classical infringement action 329–330
Member State making improper use of powers to maintain or introduce national provisions 327
Member States’ measures related to essential interests in the field of security 327
non-communication cases and lack of notification of measures implementing directives 330–331
proportionality principle application 338–339
removal of the reasoned opinion from pre-litigation stage 329–330
scope of measures taken by a Member State in order to comply with judgment 341
special judicial procedure for enforcement of judgments 340–341
Treaty on Stability, Coordination and Governance (TSCG) 28, 93, 102, 320, 328
  *see also* Court of Justice

financial penalties for non-execution of judgments of the Court of Justice, Commission’s enforcement role 332–339
additional evidence, production of 337–338
competences at stage of execution of judgment 334–337
discretion as to initiation of pre-litigation phase 333–334
general and persistent infringement (GAP) obligation 337, 338–339
Internal Recovery Procedure 335–336
‘minimum lump sum’ concept 334
time frame discretion 334
financial penalties for non-execution of judgments of the Court of Justice, sanctions levied under Article 260(2) 344–351
adaptation of penalty payment in regard to progress made by a Member State 348–349
calculation of periodic penalty payment 347–348
deferment and modulation of penalty payment 349–350
financial penalties, determining and adapting 346–351
penalty payments and lump sums 345–346
starting date for obligation to pay 347
suspension of penalty payment and principle of proportionality 350–351
Finland, collective action protection 133–134
Fiscal Compact (Treaty on Stability, Coordination and Governance (TSCG)) 28, 93, 102, 320, 328
flexibility clause (Art. 352 TFEU) 58, 61–62, 72–73, 74
forgotten competences 58, 59
France 80–81, 415–419
Treaty of Lisbon 80
free movement provisions 74, 77, 86, 133, 342, 387–388, 392
fundamental rights complaints, judicial review in EU law 314–317, 322–323
fundamental rights protection 220–259
countermechanism (CRM) and Accession Agreement 243, 244–246, 252
Index 499

**Common Foreign and Security Policy (CFSP) implications** 240, 242, 249–250, 256

**Cooperation and Verification Mechanism (CVM)**, and accession countries 232 and Council of Europe 228, 240–242, 247, 248–249, 251, 255, 258

**Court of Justice role** 244–6, 252–255

disability strategy 229–230
draft Accession Agreement as incompatible with EU law (Opinion 2/13) 252–257
draft Accession Agreement as incompatible with EU law (Opinion 2/13), re-appraisal considerations 255–259

**EU Justice Scoreboard** 232–233, 258

**European Convention on Human Rights** see **European Convention on Human Rights**

**European Court of Human Rights** see **European Court of Human Rights (ECHR)**

exclusion of parts of EU law 249–250

Fundamental Rights Agency (FRA) 226–228, 235

historical lead-up to 2013 accession 238–243

human rights, progression towards legal obligation 220–222

human rights standards, additional internal mechanisms 226–235

human rights violations by EU institutions 237

international human rights treaties, ratification of 229–230

Lisbon Treaty 222–223, 240

see also Lisbon Treaty

Maastricht Treaty 221–222

see also Maastricht Treaty

new mechanism proposal 233–234

right of complaint in inter-state cases or against EU 250–251

rule of law deficiencies 230–234

**General Court (GC)** 480–482

CJEU and GC, redesigning relationship between 285–287

judiciary reform considerations 266–267, 270–271, 275, 282, 482

and liability for breach of EU law see liability for breach of EU law and General Court jurisdiction

number of judges 267–268, 271, 282, 287

see also Court of Justice; EU court cases; judiciary reform considerations

general and persistent infringement (GAP) obligation 337, 338–339


Alcan 70

Antiterrordatei 70

Banana Market 406, 407

Data Retention 70

Eurocontrol I 70

European Arrest Warrant 70

Honeywell 70, 71, 278

Kloppenburg 70

Lisbon Treaty 70, 71, 78, 127, 175

Maastricht 61, 70, 78, 406, 407

OMT reference 71

Solange 221, 380, 406, 407

Vorratsdatenspeicherung 79

governance or democracy distinction 176–181, 184–185, 186–187

see also democracy

Greece, emergency package and Grexit crisis 28–29, 34, 89–90, 96–97

‘green card’ proposal 125–126, 131

harm, quantification, liability for breach of EU law and General Court jurisdiction 448, 469, 471, 472, 473

High Level Group on Administrative Burdens 84, 85

High Representative of the Union for Foreign Affairs and Security Policy 43–44

horizontal effects

coordination between national parliaments 128, 129, 130, 135–136

Court of Justice, national courts, and spirit of cooperation 373, 483–484

doctrine of direct effect of EU legal order 385, 388–395

human rights see fundamental rights

humanitarian aid competence 59

impact assessment 134–135, 177, 182–187

implementing measures, judicial review in EU law 293, 298, 299, 303, 304–309

indirect effect doctrine, primacy see primacy, direct and indirect effect

indirect review, judicial review in EU law 293–294, 311–314

individuals

citizenship rights 58
condition of individual concern, judicial review in EU law 294
liability for breach of EU law and General Court jurisdiction 461–462, 465–474
personal data protection requirement 149
relations between individuals under EU law 391–392, 394–395
standing before national courts 428
institutional balance, and European agencies see European agencies and institutional balance
institutional consolidation, transparency in the EU 199–209
institutional controversy in post-Lisbon era 61–68
institutional innovations 31–45
institutional monism/pluralism structure and procedural rules 436–438
institutional and procedural pluralism, national procedural autonomy 438–440
Intellectual Property Enforcement Directive 426
internal administrative responses to pressures of transparency policy 207–209
internal market competence 63–65
Internal Recovery Procedure 335–336
international agreements, disputes related to 320
International Criminal Court
  *Frontini v Ministero Delle Finanze* 406
  *Spa Grantial v Amministrazionedelle Finanze dello Stato* 406
international human rights treaties, ratification of 229–230
IPEX document depository 130
Ireland, emergency package 89
judicial architecture 480–483
judicial co-operation in cross-border situations 423–424
judicial decisions, finality, and *res judicata* cases 434–435
judicial and legislative practice definition 422–435
judicial limitations, national procedural autonomy 423, 427–435
judicial procedure for the enforcement of judgments 340–341
judicial protection, liability for breach of EU law and General Court jurisdiction 447–450, 457–458, 465–468
judicial remedies, judicial review in EU law 291, 310–311
judicial representation, European Court of Human Rights (ECtHR) 246–247, 253, 256
judicial review
  *codification and contestation competences* 68–70
  *national parliaments as guardians of principle of subsidiarity* 126–127, 128
judicial review in EU law 289–323, 482–483
Aarhus Convention and public interest litigation 318–319
access to justice 291, 298, 301, 302, 305, 308, 308–309, 311, 318, 425, 428–430
admissibility of national disputes 309
annullment modifications 295, 297, 299
codification and contestation competences 68–73
Committee of the Regions (CoR) and subsidiarity principle 121, 126, 131, 296–297
common foreign and security policy (CFSP) 317–318
competition cases, national court judgments running counter to Commission decisions 292–293
as constitutional guarantee 290–291
damages actions brought against Union bodies 296
direct action for annulment of acts adopted by EU institutions 292–293
dual model 291–294, 311–314
European Banking Union and single resolution mechanism (SRM) 321–322
Fiscal Compact involvement 320
fundamental rights complaints 314–317, 322–323
fundamental rights complaints, prior involvement mechanism 316–317
implementing measures 293, 298, 299, 303, 304–309
implementing measures, and discretion by implementing authority 305–307
implementing measures, ‘does not entail’ or ‘does not require’ provisions 307–308
implementing measures, and existence of effective national remedy 308–309
indirect review 293–294, 311–314
internal security matters 295
international agreements, disputes related to 320
judicial remedies 291, 310–311
legislative acts, exclusion from regulatory acts 301–302, 304, 315–316
Index 501

language issues 149, 161, 356–357, 360, 363–364
legislation
  constitutional foundations and Treaty of Lisbon reform 37, 38–39, 41–42
due publication 360–361
legal basis requirement for policy listing 55–56
legal remedies and effectiveness requirement 430–432
legal-constitutional approach to access to documents 199–201
legislative acts, exclusion from regulatory acts 301–302, 304, 315–316
legislative acts, pro actione principle 311
legislative change and non-exercise of competences 83
legislative practice, national procedural autonomy 422–435
legislative procedure, understanding of, financial penalties for non-execution of judgments of the Court of Justice 331–332
legislative and treaty-making powers 51–52, 58–59, 64, 65
leniency programmes, disclosure of evidence in 472–473
liability for breach of EU law and General Court jurisdiction 441–474, 484
action for damages and action for annulment, relationship between 447–478
breach of EU law, testing seriousness of 451–454, 462–463
collective redress mechanisms 426, 471–472, 473
Common Foreign and Security Policy (CFSP) 445
damages action, requirements and conditions 447–455, 463–464
direct causal link between breach committed and damage sustained, determining 463–464
disclosure of evidence in leniency programmes 472–473
discretion, situations involving 462–463
individual liability 461–462, 465–474
institutions and bodies whose acts or conduct may form the basis of an action for damages 445–446
judicial review and action for damages, relationship between 449–450
Lisbon Treaty impact 443–447
Member State liability for breach of EU law 457–465
Police and Judicial Cooperation in Criminal Matters (PJCCM) 444–445
preliminary ruling reference 458, 459, 461, 464, 466, 467
quantification of harm 448, 469, 471, 472, 473
right of third parties to have access to documents 470–471
right to good administration 446–447
State liability principle 461, 464–465
Union liability in absence of unlawful acts or conduct 455–457
unjust enrichment claim 456–457
codification and contestation competences 49, 50–54, 56–60, 61–68
and European agencies and institutional balance 148–150
and European financial and sovereign debt crisis and EMU decision-making 96–97, 98–99, 101
fundamental rights protection 222–223, 240
judiciary reform considerations 267, 269, 270, 272–273
and liability for breach of EU law and General Court jurisdiction 443–447
national parliaments as guardians of principle of subsidiarity 115–116, 117, 118, 119, 122–123, 130, 131
post-Lisbon era, judicial review in EU law 294–303, 483
procedural novelties, financial penalties for non-execution of judgments of the Court of Justice 328–332
reform, constitutional foundations see constitutional foundations and Treaty of Lisbon reform
transparency in the EU 196, 200, 214
Long Term Refinancing Operations (LTRO) 90
lump sums 334, 345–346

see also financial penalties for non-execution of judgments of the Court of Justice, sanctions
Maastricht Treaty 13, 24, 156, 195, 199, 221–222
Denmark 72
Germany 61, 70, 78, 406, 407
Member States
adaptation of penalty payment in regard to progress made by a Member State 348–349
admissibility of national disputes, judicial review in EU law 309
decision-making powers related to national budgets, possible infringements 99–100
EU legal order and the domestic legal systems, relationship between 384
implementation of EU law obligations 269, 270–271
implementing measures, and existence of effective national remedy 308–309
legislation enforcement levels 37
liability for breach of EU law 457–465
making improper use of powers to maintain or introduce national provisions 327
measures related to essential interests in the field of security 327
monitoring macroeconomic developments in Member States 93–94, 97–98
national courts, and Court of Justice see Court of Justice, national courts, and spirit of cooperation
national initiatives, codification and contestation competences 85–87
national law conflicting with Directive 396
ultra vires review 70–73
new areas of cooperation 319–322
repatriation of competences 81–87
sovereignty 30–31, 343–344
State liability principle 461, 464–465
subsidiarity principle across national parliaments, lack of common approach to 39
see also individual countries; national parliaments; national procedural autonomy
monitoring macroeconomic developments in Member States 93–94, 97–98
multilateral surveillance, enhancing, sovereign debt crisis and EMU decision-making 91–93, 98, 102–103
national parliaments, democratic foundations of the Union 166–171, 168–171
national parliaments as guardians of principle of subsidiarity 114–138
allocation of subsidiarity monitoring 114–115
Barosso Initiative 35–36, 120–121, 132
collective action protection and yellow card 133–136
Committee of Regions (CoR) and subsidiarity monitoring 121, 126, 131, 296–297
COSAC (Conference of European Affairs Committees) role 120, 125, 130–132, 137
democratic justification 118–121
effectiveness of subsidiarity monitoring 127–137
European Commission, ‘Plan D’ for democracy, dialogue and debate 120–121
European Public Prosecutor’s Office (EPPO) proposal and yellow card 137
‘Green Card’ proposal 125–126, 131
horizontal coordination between national parliaments, problems with 128, 129, 130, 135–136
Impact Assessment 134–135
institutional justification 121–123
IPEX document depository 130
judicial review of subsidiarity 126–127, 128
Laeken Declaration 122, 129
see also Laeken Declaration
Lisbon Treaty effects 115–116, 117, 118, 119, 122–123, 130, 131
Protocol 2 114, 115, 117, 118, 119–120, 123, 124, 125, 126–129, 130, 132, 133, 137
qualified majority voting (QMV) 124, 129
red card procedure, absence of 125
subsidarity definition 116–118
subsidarity monitoring, need for 116–123
subsidarity monitoring in practice 131–133
vote allocation to national parliaments 124–125, 127, 128–129
yellow cards, first 133–137
yellow and orange card procedures 124–126, 132, 169
see also Member States

Index 503

national procedural autonomy 421–440, 484
effectiveness requirement 428–434
fair trial access 425
federal procedural rules 437–438
finality of administrative and judicial decisions and res judicata cases 434–435
harmonization of national criminal procedural law 424–425, 438
individuals’ standing before national courts 428
institutional monism/pluralism structure and procedural rules 436–438
institutional and procedural pluralism 438–440
interim relief against national legislation 430–431
IP Enforcement Directive 426
judicial and legislative practice definition 422–435
judicial limitations 423, 427–435
legislative limitations 423–426
minimum requirements for sanctions to achieve the required deterrent effect 426
no-new-remedy-principle 430
ordre public and the consumer protection cases 433–434
preliminary ruling procedure 431
private international law development 424
procedural conditions for awarding damages for violation of EU law 431–432
procedural rules for judicial co-operation 423–424
sanctions for violations of EU law by national authorities 432
specialized courts 429–430
Stockholm Programme roadmap 424–425
supranational legislation limit 422–423
see also Member States
Netherlands, ‘subsidiarity exercise’ 86–87
Nice Treaty 34, 48, 267, 275
no-new-remedy-principle, national procedural autonomy 430
non-communication cases, financial penalties for non-execution of judgments of the Court of Justice 330–331
‘non-standard monetary policy measures’, European Central Bank (ECB) 90, 103–107
non-state actors, participation by 172–173, 176–187
open method of coordination (OMC), hidden 60
ordinary legislative procedure (OLP) 23, 41, 74, 101, 119, 124, 125, 127, 129, 159, 162, 163, 169, 303–304, 332, 478
ordre public and consumer protection cases 433–434
Outright Monetary Transactions programme (OMT) 65–66, 90, 105–106, 107, 109, 112
PACE (Parliamentary Assembly of the Council of Europe) 248–249, 255
participation levels and voter turnout 37–38, 160–161, 214
participation process, transparency in the EU 198, 199
participatory democracy 156–157, 172–175, 176–187
penalties for non-execution of judgments see financial penalties for non-execution of judgments of the Court of Justice pluralism, institutional and procedural, national procedural autonomy 436–440
Poland 72, 79–80, 272
Accession Treaty 72, 407
Treaty of Lisbon 72, 79–80
Police and Judicial Cooperation in Criminal Matters (PJCCM) 444–445
policy reform, codification and contestation competences 55–56, 83
policy response, European financial and sovereign debt crisis and EMU decision-making 89–96
political actor, court as 263–266, 274–275
political concerns, Court of Justice, national courts, and spirit of cooperation 371–372
Portugal, emergency package 89
power delegation concerns, European agencies 143–146
preliminary ruling procedure 482
codification and contestation competences 69
Court of Justice, national courts, and spirit of cooperation 353, 355–364, 366, 368
judicial review in EU law 292, 293, 295, 300, 313–314
liability for breach of EU law and General Court jurisdiction 458, 459, 461, 464, 466, 467
national procedural autonomy 431
primacy, direct and indirect effect 386, 393–394, 398, 409–410, 416–417
presidency of European Council 33–34, 42–43
presidentialization and democratic legitimacy 203
price stability, European Central Bank (ECB) 104, 109, 112
primacy, direct and indirect effect 379–420
autonomy of EU legal order 252, 253, 320, 382–384
Costa solution to conflicts between the EU law and domestic laws 401–406
European Arrest Warrant (EAW) 411–415, 417–418
national constitutional level 405–406
preliminary ruling procedure 386, 393–394, 398, 409–410, 416–417
recent reactions of national constitutional courts 407–419
right to a fair trial 410–419
primacy, direct and indirect effect, doctrine of direct effect of EU legal order 381–397, 402
compliance with obligations emerging from EU membership 385–387
extension to international treaties 388–389
horizontal direct effect 388–395
horizontal and vertical effect, distinction between 385
infringement procedure 385–386
jurisprudence of the Court of Justice 389–395
Mangold and fixed-term contracts and ‘Hartz’-laws 395–397
national law conflicting with Directive 396
preliminary ruling procedure 386, 393–394
regulations and directives, distinction between 394
relations between individuals under EU law 391–392, 394–395
secondary legislation and horizontal effect 393–394
Index 505

primacy, direct and indirect effect, doctrine of indirect effect 397–401
criminal proceedings 400–401
preliminary ruling procedure 398
principle of interpretation 399–401
private international law development 424
property ownership system 76
proportionality principle, financial penalties for non-execution of judgments of the Court of Justice 338–339, 350–351
Protocol 2, national parliaments as guardians of principle of subsidiarity 114, 115, 117, 118, 119–120, 123, 124, 125, 126–129, 130, 132, 133, 137
Prüm Convention 28
public access to documents 199–201, 205, 207–208, 470–471
public contestation possibilities, transparency in the EU, European Council 215, 216
public interest groups 179–181, 187
public interest litigation 318–319
public procurement procedures 425–426
qualified majority voting (QMV) 4, 34, 65, 74, 124, 129
reversed 92, 103
reasoned opinion, removal from pre-litigation stage 329–330
red card procedure, absence of 125
refugee crisis effects 4, 5
’regressive nationalism’ tendencies 4
regulations and directives, distinction between 394
regulatory acts, judicial review in EU law 297–309, 315–316
Regulatory Fitness and Performance Programme (REFIT) 83–84, 86
regulatory intervention, repatriation by downgrading 83–85
repatriation of competences to Member States 81–87
representative democracy 158–171, 173–174, 175
res judicata status 372
reversed qualified majority voting (reversed QMV) 92, 103
rule of law
deficiencies, fundamental rights protection 230–234
use to confer rights on individuals, General Court jurisdiction 461–462
sanctions
national minimum requirements to achieve required deterrent effect 426
TFEU Article 260(2) see financial penalties for non-execution of judgments of the Court of Justice, sanctions levied under Article 260(2)
Schengen acquis 27, 28, 484, 485
secondary legislation 21–25, 393–394
Securities Market Programme (SMP) 90, 104–105
security policy 76, 202, 295, 327
services of general economic interest (SGEI) 58
shared competences 53, 58–59, 63–65, 66–68
silence in national courts, reasons for 365–366, 369–370
‘sincere cooperation’ principle 67–68, 247, 457
Single Resolution Mechanism 95–96, 109, 321–322
‘six pack’ of legislative proposals 92–93, 94, 101–102, 320
social policy 75, 573
SOLVIT tools and breach of EU law by a public authority 37
sovereign debt crisis, and EMU decision-making see European financial and sovereign debt crisis and EMU decision-making
sovereignty 30–31, 343–344
see also Member States
Spain 71–72, 410–413
special legislative procedure, judicial review in EU law 303–304
specialized courts 267, 268, 271, 275, 282, 287, 429–430
Spitzenkandidaten system 39–40, 160, 162
Stability and Growth Pact (SGP) 91–93, 103
Stockholm Programme roadmap 424–425
subsidarity principle
codification and contestation competences 48, 50, 52, 62, 63, 70, 80, 83, 86–87
Committee of the Regions (CoR) 121, 126, 131, 296–297
definition 116–118
European Parliament changes and democratic legitimacy 39
and national parliaments see national parliaments as guardians of principle of subsidiarity
supervisory role, European Central Bank (ECB) 95, 109–110, 112–113
supranational legislation limit, national procedural autonomy 422–423

TEU (Treaty of the European Union)
conferral principle (Article 5(2)) 46, 47–48, 50, 74
fundamental rights (Article 7) 230–231, 480 and institutional structure of EU, constitutional foundations and Treaty of Lisbon reform 15–17, 18, 29, 32, 33, 34, 35, 39, 42, 43
subsidiarity monitoring (Article 12) 114, 121, 129, 169
subsidiarity principle (Article 5) 116, 135–136
withdrawal of membership (Article 50) 81–82

TFEU (Treaty on the Functioning of the European Union)
categories of competences (Articles 2–6) 50–54
competition rules (Article 101 and 102) 466, 469, 470, 471
constitutional foundations and Treaty of Lisbon reform 15–17, 21, 22–24, 30
cross-border cooperation (Articles 81 and 82) 423–424

Tobacco Products Directive 35
third parties, right to have access to documents 470–471

Transparency in the EU 190–219, 477
accountability process 198, 199, 215

expedite (Article 314) 159
flexibility clause (Article 352) 58, 61–26, 72–73, 74
freedom, security and justice (Article 72) 76
harmonization (Article 114) 63–65, 74, 327, 425–426
health services and medical care (Article 168(7)) 77
immigration policy (Article 79(5)) 76
import duties (Article 28) 383
internal security (Article 276) 76, 295
international agreements (Article 218) 206, 255, 479
judge nomination (Article 255) 272–273
judicial cooperation (Article 74) 124
multilateral surveillance (Article 121 and 126) 91, 97, 101
nationality decisions (Article 20(1)) 76
ordinary legislative procedure of European Parliament (Article 294) 159
preliminary ruling procedure (Article 267) 21, 152, 292, 293, 368, 416, 458, 482
prohibition of monetary financing (Article 123) 91, 105, 107
property ownership (Article 345) 76
prudential supervision (Article 127(6)) 109
repealing a legislative act (Article 241) 83, 163
right of access to documents (Article 15(3)) 200
sanctions (Article 260(2)) see financial penalties for non-execution of judgments of the Court of Justice, sanctions levied under Article 260(2)
secondary legislation division (Articles 288–291) 22–23, 147, 148, 149–150, 159, 331, 388, 394, 483
single currency participation (Article 140) 94
special agreement between member states (Article 273) 320
state security (Article 346(1)) 78
subsidiarity principle (Article 69) 124
vocational training (Article 166) 77
third parties, right to have access to documents 470–471
transparency in the EU 190–219, 477
accountability process 198, 199, 215
Amsterdam Treaty 13, 24, 27–28, 60, 118–119, 122, 128, 130, 156, 195, 200
consensus-based voting records 208–209
constitutional development 195–196, 198
decision-making concerning democratically important and sensitive policies 203–204, 209
democracy 194–199, 203–204, 209, 213–218
document classification 207–208
economic and monetary policy governance structures 205–206, 212
Eurogroup 205–206, 212, 217
European agencies 149, 150, 205
European Central Bank (ECB) 206
European Council 164–168
European Financial Stability Facility (EFSF) 206
European Parliament 206, 213–214
German law on access to EU information 216–218
implementation shortcomings 194
input and output legitimacy 197–198
institutional consolidation 199–209
internal administrative responses 207–209
international law-making capacities 206
legal-constitutional approach to access to documents 199–201
Lisbon Treaty 196, 200, 214
Maastricht Treaty, Declaration 17 195, 199
participation process 198, 199
presidentialization and democratic legitimacy 203
public access to documents 199–201, 205, 207, 208
privacy rules 201–209, 215–216
security and defence policy 202
strengthening measures, suggested 219
transfer of decision-making to sites outside traditional institutions 204–206, 209
transparency concept 192–199
transparency-evasion 191, 202–218
treaty-making powers 206
trilogues and upwards transparency-evasion 203–204
‘widest possible access’ idea 191
transparency in the EU, European Council
as centre of politics and policy 209–212
crisis management powers 210
democracy 213–218
new working methods 212–213
public contestation possibilities 215, 216
and secrecy rules 215–216
and upwards transparency-evasion 203, 205, 209–218
Treaty on Stability, Coordination and Governance (TSCG) 28, 93, 102, 320, 328
treaty-making powers 51–52, 58–59, 64, 65
transparency in the EU 206
trilogues practice 119, 123, 162–163, 188, 203–204
UK 62, 85–86, 114
The Queen v Secretary of State for Health ex parte British American Tobacco 63
UN Convention on the Rights of People with Disabilities 229–230
unclear reasoning, judiciary reform considerations 281–283
uniformity of interpretation of EU law concerns 275–276
Union liability in absence of unlawful acts or conduct 455–457
unitary patent, judicial review in EU law 321
unjust enrichment claim 456–457
voice and equal treatment measures 180–181, 187, 358–359
voting
qualified majority voting see qualified majority voting (QMV)
vote allocation to national parliaments 124–125, 127, 128–129
voter turn-out in EU elections 37–38, 160–161, 214
‘widest possible access’ idea 191
withdrawal of membership and repatriation of competences 81–82
Work Programme of the Commission on better regulation 84–85
yellow cards, national parliaments as guardians of principle of subsidiarity 124–126, 132, 133–137, 169