Index

academic writing 38
accession differentiation 160–74
accession law see accession treaties
accession treaties
differentiation by 146–8
differentiation tool, EU member state 148–53
migrant workers restrictions in 155–9
acquis communautaire 77, 79, 148, 149, 391
Adler-Nissen, Rebecca 397
Åkerberg Fransson 187
à la carte flexibility 15
Amsterdam Treaty 1, 2, 13, 16, 21, 39–41, 45, 77, 348, 365, 406
anti-discrimination law 100–102
area of freedom, security and justice (AFSJ) 189, 190, 387, 389, 394, 397, 398
Armati, Lorna 23
Arthuis Report 135, 136
Article 100A EEC 11, 307
Article 114(4 and 5) TFEU 307
Article 114(4) and (5) TFEU 308–13
Article 48a TEU 248
Article 194(1)(c) TFEU 352
Article 233 EEC Treaty 21
Article 53 of Charter 188, 197
Article 13 of Fiscal Compact 121, 136
Article 11 of Regulation 987/2009 167
Article 30(4) of Vienna Convention 53
Article 14 of WFD 103
Articles 82 and 83 TFEU 5
Articles 258 and 260 TFEU 152
Articles 82 TFEU 388
Articles 139–144 TFEU 212
Articles 326–334 TFEU 43
Article 2 TEU 195
Article 2(4) TEU 411
Article 3(3) TEU 215
Article 4(2) TEU 200, 201
Article 4(3) TEU 390
Article 10 TEU 122
Article 13(2) TEU 231
Article 14 TEU 121, 125
Article 14.2 TFEU 124, 126
Article 20 TFEU 43, 80, 230, 285, 299
Article 20(1) TEU 43, 233, 297
Article 20(2) TEU 298
Article 42 TEU 407
Article 42(2) TEU 409
Article 42(3) TEU 422
Article 42(4) TEU 413
Article 42(5) TEU 413
Article 42(6) TEU 415
Article 44 TFEU 414
Article 46(1) TEU 416
Article 46(2) TEU 416
Article 46(5) TEU 417
Article 46(5) TEU 417
Article 48(6) TEU 220
Article 5(3) TFEU 391
Article 11 TFEU 356
Article 18 TFEU 59, 163
Article 20(2) TFEU 390
Article 26(1) TFEU 45
Article 26(2) TFEU 44, 299, 304
Article 34 TFEU 306, 325
Article 36 TFEU 45, 306, 309, 356
Article 45 TFEU 162, 164
Article 86 TFEU 392
Article 113 TFEU 283
Article 114 TFEU 4, 238, 305–8
Article 114(1) TFEU 349, 352
Article 114(3) TFEU 304
Article 114(5) TFEU 318, 350
Article 114(10) TFEU 326
Article 118 TFEU 88, 89
Article 119(3) TFEU 215, 218

425
Article 122(2) TFEU 217
Article 123 TFEU 217, 224
Article 124 TFEU 217
Article 125 TFEU 53, 217, 220, 222, 223
Article 126 TFEU 216, 243
Article 126(14) TFEU 243, 244
Article 130 TFEU 213
Article 136 TFEU 220
Article 136(3) TFEU 222
Article 139 TFEU 239
Article 139(2) TFEU 4, 249
Article 140(1) TFEU 210, 211
Article 191(3) TFEU 316
Article 193 TFEU 349–51
Article 258 TFEU 346
Article 260(2) TFEU 346
Article 263 TFEU 286
Article 267 TFEU 183, 187, 388
Article 273 TFEU 231
Article 288 TFEU 93
Article 326 TFEU 244
Article 326(2) TFEU 44
Article 327 TFEU 85, 286, 298, 299
Article 328 TFEU 81
Article 329 TFEU 81, 285, 390
Article 330 TFEU 81
Article 332 TFEU 85, 286
Article 333 TFEU 62, 86
Article 20(3) TFEU enhanced cooperation 48
asylum policy 19
asymmetric realisation, monetary union 39
avant garde group 385
Bank for International Settlements (BIS) 240
Bank Recovery and Resolution Directive (BRRD) 264, 266
Bekker, Sonia 111, 112
Benelux Economic Union 20
Berlusconi, Silvio 61
Beukers, T. 232
Bowles, Sharon 133
Brandt, Willy 30
Broad Economic Policy Guidelines (BEPG) 108, 109
Búrca, Gráinne de 101
burden of proof 321–2
Cameron, David 35, 147, 421
carbon leakage scenario 355
Central and Eastern European (CEEC) countries 155, 162, 168
charter of fundamental rights, impact 400–401
Chirac, Jacques 33
civil society 343
Coal and Steel Community 32, 60
Commission v Greece 419
Common Consolidated Corporate Tax Base (CCCTB) 43
Common European Asylum System 363, 365
Common European Asylum System (CEAS) 5, 369–71, 379
Common Foreign and Security Policy (CFSP) 405, 407, 411–13
Common Security and Defence Policy (CSDP) 405, 410, 411–13
constitutional implications 56–68
cohesion, united in diversity 63–6
identity and legitimacy, drawbacks for 66–8
legal order, unity of 56–60
single institutional framework 60–63
constitutional moments 67
constitutional pluralism 180–85
constitutional reform process 33
Constitutional Treaty 3, 14
Copernican revolution 40
country-specific recommendations (CSRs) 111, 112
Croatian Accession Treaty 152
Croatian Act of Accession 163
Curtin, Deirdre 57

Danish additives case 316, 317, 321
Darvas, Zsolt 262
Dassonville formula 45
Denmark, case of 396–8
Denmark v Commission 349
derogation mechanisms, internal market 330–33

De Witte, B. 232
differentiated integration
Cinderella of 76–91
competing models for 28–70
concept and realisation 29–40
economic and monetary policy 237–50
economic governance, participation 213–14
in EMU 209–34
EuroArea, membership of 210–13
European Banking Union 252–79
incompatibility of 375–82
perils of 362–82
political debate 29–36
pragmatism, of Treaty Regime 36–40
unavailability and limits, mechanisms 242–4
differentiated participation terms 262–7
differentiated representation 118–43
differentiated treaty amendment procedures 248–50
differentiation, definition of 1
differentiation, in CFSP/CSDP 418–23
differentiation, institutional practice 19–23
inter se agreements, decline and revival 20–23
secondary EU law 19–20
diversity 93–4
downward flexibility 355
Dublin Regulation 366, 367, 375–82
Dutch emissions case 316, 321, 322
ECJ 59, 61, 68
economic and monetary affairs (ECON) committee 132, 133, 142

Economic and Monetary Union (EMU) 2, 11–13, 22, 119, 128–9, 133–5, 137, 140, 146, 209–34, 237–8, 243, 248, 249
financial stability of union 217–25
price stability, focus on 215–17
Treaty framework 215–17
economic crisis 120
EEA 170, 173, 175, 268
EEA Agreement 169–74
EEC Treaty 20, 151, 239, 240, 337
effet utile 54, 189, 191, 203
EFSA 317, 324, 328, 330, 331
employment policies 106
employment reforms 112
enhanced cooperation, supranational differentiation 41–9
procedural requirements 46–9
substantive constraints 43–6
enhanced cooperation process 76–91, 283–8
analysis 85–9
application, in practice 83–4
CFSP/CSDP 411–13
competences rule 87
current legal framework 80–83
EU law, compliance 88–9
EU objectives 87–8
future of 90–91
historical background 76–80
internal market and competition 89
last resort rule 86–7
legal challenges 84–5
non-participating states 89
Environmental Action Programme (EAP) 339–40, 344, 345
environmental flexibility 357
environmental policy 102–5
EU criminal law
flexibility and disintegration in 384–403
integration and 387–9
mutual recognition, differentiation and 398–401
EU environmental law, flexibility in 336–61
EU internal market measures 304–33
EU legal order 250
differentiation 9–26
Euro area flexibility clause 244
euro crisis 33, 34, 38, 49, 51, 65, 128, 132
Eurodac regulations 367, 382
European Arrest Warrant (EAW) 186, 387, 398
European Banking Authority (EBA) 268, 274–6
European Banking Union (EBU) 252–79
appeal of participation 258–62
component parts of 253–6
differentiated integration 276–8
and differentiated integration 258–70
differentiated participation terms 262–7
disintegration risks 270–72
economic incentives and 276–8
EU regulatory and supervisory framework 256–7
integration and differentiation, theories 258
key features and issues 253–7
legal safeguards, disintegration risks 272–6
non-euro member states and 268–70
public preferences and 276–8
European Central Bank (ECB) 123, 134, 135, 210, 224, 227, 248, 262, 268, 269, 273, 276
European Convention on Human Rights (ECHR) 179, 187, 378, 400
European Council on Refugees and Exiles (ECRE) 379, 380
European Court of Human Rights (ECHR) 376–9
European Defence Agency (EDA) 417
European Employment Strategy (EES) 107
European Financial Stabilisation Mechanism (EFSM) 219, 243, 274
European Financial Stability Facility (EFSF) 113, 219, 225–8, 237
European integration process 10
European Monetary Agreement (EMA) 240
European monetary constitution 239–41
European parliament (EP)
Eurozone crisis 142
flexibility and 140–43
functional effectiveness of 142, 143
European Parliament (EP) 63, 78
European Public Prosecutor (EPP) 392–3
European Securities and Markets Authority (ESMA) 271–2
European Stability Mechanism (ESM)
European System of Central Banks (ESCB) 210
Euro-Plus Pact 129
eurosclerosis 29
Eurozone, parliamentary chamber for 135–40
directly elected eurozone parliament 137
enhanced inter-parliamentary cooperation 138–40
national parliaments and 137–8
Eurozone crisis 120
Eurozone sub-committee 131–4
EU’s external action 411
EU-Swiss bilateral agreement 147
Excessive Deficit Procedure 110
extra-community measures 239–41
fast-track enhanced cooperation 296–301
inherent 297–9
internal market objections 299–301
fast-track European integration scheme 282, 293–6
fast-track Europe service 292–301
federal core Europe 32–4
financial crisis 67
financial institutions 290–91
financial transaction 289
financial transaction tax (FTT) 17, 42, 84, 85, 282–302
Index

fiscal austerity 94
Fiscal Compact 21, 24, 34, 38, 49–51, 59, 65, 135
Fischer, Joschka 33
Fletcher, Maria 362, 365
flexibility
and differentiation 179–203
in enforcement of obligations 344–7
EU legislation and 347–56
of implementation 338–44
justifying, environmental law and policy 358–61
limits of 357
modes of 92–115
and soft law 105–12
of standards 347
tools of 23–6
unity in austerity 112–14
flexibility à la carte 34–6
flexibility, CFSP/CSDP 406–11
ad hoc opt-outs, constructive abstention 407–8
general opt-out for Denmark 406–7
security opt-outs, defence and 408–11
flexibility instruments 38
flexibilization 102
flexible differentiation 37
flexible European Parliament 118–43
flexible legal instruments (FLIs) 92, 93, 96, 100, 106
force majeure 98
foreign policy 405–23
formal differentiated integration 363
asylum field and 364–8
forms, of differentiation 10, 11–18
block opt-out option 14
enhanced cooperation, slow development of 15–18
opt-outs, gradual spread of 11–15
France v Commission 314
free movement rights 146–75
fundamental rights domain 179–203
differentiation and flexibility, tools 196–203

genetically modified organisms (GMOs) 4, 326–9, 352–4
Geneva Convention 363
Grabitz, Eberhard 38
Greek Loan Facility (GLF) 219
Hague Programme 369, 371
‘half a loaf’ principle 89
Hallstein, Walter 57
hard law 105
harmonious interpretation, of disharmony 247–8
Imigration Law Practitioners’ Association (ILPA) 366
indirect taxation 284
informal flexibility 5, 363
discretion and improper implementation 368–75
inherent ‘enhanced cooperation’ objections 297–301
institutional flexibility 16
integrated flexicurity approach 111
intergovernmental differentiation 150
internally differentiated European Parliament 127–34
internal market law, diversity and 306–8
internal market objections 299–301
International Monetary Fund (IMF) 238, 243
international satellite treaties, containment 49–55
international cooperation, disadvantages of 49–52
protective shields, for supranational legal order 52–5
inter se agreements 20–23, 230
inter se Treaty amendments 4, 237–50
Ipsen, Hans-Peter 63
Irish Government 113
Irish Waste Framework Directive 346
Isaescu, Mugur 267
Jaeger case (2003) 95, 96
Jellinek, Georg 65
judicial approach, critical analysis of Article 53 of Charter 186–7
National Fundamental Rights Standards, flexibility 192–6
primacy, unity and effectiveness, fundamental rights domain 188–92
Justice and Home Affairs (JHA) 77, 152
Kelsen, Hans 58
Kumm, Mattias 184
Kyoto Protocol 318, 330, 331
Lamers, Karl 33
Lamers-Schäuble paper 16
Lancaster House agreements 18
legality, of derogations 160–74
standstill clause applies 168–9
transitional restrictions, Croatian citizens 160–61
union preference and non-discrimination principle 169–74
legal safeguards, disintegration risks 272–6
legislation, directives and framework 95–105
anti-discrimination law 100–102
environmental policy 102–5
Parental Leave Directive 97–100
Part-Time Work Directives 97–100
Working Time Directive 96–7
legislation v ‘soft’ law framework 92–115
legislative flexibilization 96
Lisbon 2020 process 107, 111
Lisbon Treaty 3, 14, 15, 17, 18, 41, 80, 82, 83, 150, 369, 374, 388, 389, 391, 393, 398, 401, 409, 411, 413–18
member states and permanent cooperation 415–18
Lombardy Tripartite Agreement 345

macro-economic imbalances procedure (MIP) 110
Major, John 15, 35
Maletic, Isidora 311

MEPs 119–21, 125, 126, 129–31, 133, 134, 137–41
migrant workers restrictions 154–9
in accession treaties 155–9
in southern enlargement 154–5
Monar, Jörg 362
monetary union 39
Möstl, Markus 190
MSS v Belgium and Greece 376, 377
multiple fundamental rights regimes co-existence of 180–85
in Europe and constitutional pluralism 180–85
multi-speed integration 24
national central banks (NCBs) 210
national derogations 304–33
national differentiation 179–203
National Progress Reports (NPRs) 107
national transposition 95
Netherlands v Commission 349
non-discrimination principle 169–74

North Sea Regional and Local Implementation of the Water Framework Directive (NOLIMP-WFD) 104
Obama, Barack 421
omnipresent micro-flexibility 24
Open Method of Coordination (OMC) process 99, 106–8, 111, 114
opt-out clauses, derogation and 308–13
burden of proof 321–2
international developments, relevance of 318–20
national norms and provisions 322–5
precautionary principle 317–18
proportionality 320–21
scientific evidence, role 314–17
opt outs/opt ins, politics and constitution 393–6

Parental Leave Directive (PLD) 97–100
Part-Time Work Directives (PTWD) 97–100
Peers, Steve 374, 378, 381, 382
plural parliamentary representation, European Union 121–7
committee system, sub-committee for eurozone 131–4
EP representation, national or European 123–7
multi-level parliamentary field 121–3
rights of MEPs 129–31
political debate, differentiation 29–36
economic differences, reflection 29–32
federal core Europe 32–4
flexibility à la carte 34–6
multiple speeds 29–32
post-crisis soft law regime, element 110, 111
post-crisis system 110
pragmatism, of Treaty Regime 36–40
pre-crisis European monetary constitution 242–4
Pringle judgment 54, 68, 225, 231, 232, 246
Pringle v Ireland 256
Procedures Directive 373
Prüm Conventions 2
public international law 51
eurozone purposes 245–7
Qualifications Directive 372
qualified majority vote (QMV) 78, 86, 201, 307
refoulement 380
Refugee Convention 370
regulatory differentiation 292–301
Regulatory Fitness and Performance Programme 338
River Basin Management Plan 104
Rosas, Allan 23
safeguard clauses 305
safeguard clauses, differentiation
Article 114(10) 325–6
in EU legislation 325–6
GMOS, case of 326–9
Sarkozy, Nicolas 421
Schäuble, Wolfgang 33, 136
Schengen Conventions 2, 21
Schengen regime 13, 21, 25, 39
Schoenmaker, Dirk 218
Schuman declaration 32
short-chain chlorinated paraffins (SCCPs) 319
Single European Act (SEA) 406
single financial market 252–79
Single Resolution Board (SRB) 275
Single Resolution Fund (SRF) 264, 265
single resolution mechanism (SRM) 134, 238, 259, 263, 264
single supervisory mechanism (SSM) 134, 258, 259, 263, 267, 273
Smet, Miet 98
Social Partners Pact 99
social policy 95, 96, 111
soft law 105–12
and crisis 108–12
sovereign debt crisis 217
Spain and Italy v Council 297–9, 398
Spain v United Kingdom 124
Spanish Tribunal Constitucional 186
Special Purpose Vehicle (SPV) 219
SRF Intergovernmental Agreement 265
Stabilisation and Association Agreement (SAA) 168
Stability and Growth Pact (SPG) 109, 110, 127–8
Stockholm Convention 320, 357
Stockholm Programme 369
structural differentiation 11
Stubb, Alexander 38
supranational differentiation 39–55, 62, 64
generic model, enhanced cooperation 41–9
international satellite treaties, containment of 49–55
supranational integration 68
supranational law making 70
supranational legal order, protective shields 52–5
Swiss Bilateral Agreement 169–74
Szczurek, Mateusz 260
Tampere Programme 369
Between flexibility and disintegration

Tindemans, Leo 30
transitional restrictions, Croatian citizens 160–61
complex arrangement 161–4
market access and non-discrimination, EU citizens 164–8
Treaty establishing the European Stability Mechanism (TESM) 245, 248
Treaty of Accession 166
Treaty of Nice 78, 80
Treaty of Prüm 386
Treaty on European Union (TEU) 77
Treaty on Stability Coordination and Governance (TSCG) 213, 214, 225–8, 237, 247, 248
Treaty on the Functioning of European Union (TFEU) 80, 81, 248, 371
Turkish accession treaty 150
Tuystschaever, Filip 38
ultimo ratio 390
UNECE Aarhus Convention 343
UNHCR 366, 376
unitary legal order 9
United Kingdom v Council judgment 297
United Nations Security Council Resolution 421
unity dogma 56
unity in austerity 112–14
Upper Austria cases 316, 318
value-added tax (VAT) 199, 284
variable geometry definition of 10
EU legal order and 9–26
functional reason 10
Verhofstadt, Guy 33
Vestager, Margrethe 267
veto bustor 61
Vienna Initiative 259
Villalón, AG Cruz 199
voting cartels 55, 61
Waldron, Jeremy 194
Water Framework Directive (WFD) 102–5, 339, 355
Wild Birds Directive 340
Wolff, Guntram B. 262
workers’ registration scheme 167
Working Time Directive (WTD) 96–7