Index

Aarhus Convention (Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters) 33, 551–5, 569
Compliance Committee (ACCC) 555
Abazi, Vigjilenca 7, 576
Access Info Europe (AIE) 410, 411
access to documents
see also information exchange; official secrets, EU; secrecy
administrative documents 382–4, 413–15
case law 407–9, 412–13, 414, 416–17, 420
content of requests 405
Council of Europe Convention on Access to Official Documents 402, 418–19
freedom of information versus data protection 415–17
general presumptions doctrine 414–15
institutional variance 419–20
international relations 418–19
legislation framework for accessing 402–4
legislative documents 407–13
NGO perspective 399–422
oversight system 420–21
persons asking/knowledge requested 404–7
public 405
Regulation 1049/2001 195–9
sensitive information 203–4
types of documents requested 406
accountability 12–13, 61, 263–91
see also complaints systems;
European Ombudsman (EO);
regulation; transparency of agencies 212, 213
and audit 281, 361–3
clear allocation of functions and responsibilities as preconditions of 103–4
and control 7–9
and crisis and legitimate technocratic rule 182–4
definition issues 212
deregulation 278
and European agencies 212
European Agency for Fundamental Rights (FRA) 124–6
European Supervisory Authorities (ESAs), operation of 236–7
extended 270
formal 271
general framework for 213
and information exchange 103–12
integrated administration 40
lack of, within the EU 362
legal protection by courts 104–10
mandates, limits on 270
meta-doctrines of, for EU regulation 270–89
administrative justice 274–9
Better Regulation 283–9, 387–9
regulatory independence and institutional balance 271–4
value for money 279–83
monitoring 277
National Competent Authorities (NCAs) 214
powers to apply consequences, limits on 270
regulatory regimes in the EU, challenge of 264–70
requirements 42
security exceptionalism, tailoring to 202–6
and supervisory mechanisms 41
acquis communautaire 241, 345, 523
additionality principle 59
administration, European 44–68
see also administrative law
administrative procedure 60–62
bureaucracy 275
challenges for EU administrative law 65–8
denial and marginalization 45–7
dominium, power as see dominium
(authority based on control and ownership)
exercise of power 57
existence of, questioning 45–52
expertise, information and persuasion 62–3
imperium, power as see imperium
(right of executive command)
imlications of research findings for theories 52
information exchange as major component of composite administration 81–5
law of 63–8
multilevel governance 64, 286, 342, 496
‘new legal order’ 66
power, forms and exercises of 52–63
procedures of 61
scope and purpose of EU administrative law 67–8
withdrawal of unlawful administrative law acts 46
administrative acts 53–4
administrative cooperation 252–61
see also cooperation; horizontal cooperation
horizontal, background and rationale for 253–5
patterns 257–60
pragmatic responses to implementation failure 255–7
administrative documents, access to 382–4, 413–15
see also access to documents
administrative federalism 243
administrative justice
accountability, meta-doctrines 274–9
and complaints 492–6
administrative law
see also European administrative ‘space,’ development
Asylum Procedures Directive (APD), contribution of administrative law through 152–6
audit and EU administrative law 353–63
and authoritarianism 6–7
challenges for EU administrative law 65–8
delineating 3–6
and enlargement 521–44
Europeanzation of 521, 533
procedural administrative law 537–41
financial 354–61
as invention of seventeenth-century England 73
language of EU scholarship 69–77
parliaments as agents of 316–43
public, Europeanzation of 537–41
scope and purpose of EU administrative law 67–8
substantive, influence of EU law on 536–7
thematic approach to see thematic approach to administrative law
Administrative Procedural Act, 1946 398
administrative reasoning 211–12
administrative rules, judicial review of 423–45
see also courts of the European Union; judicial review
court interpretation of ‘individual concern’ 426–33
EEC Treaty
compared to Treaty of Paris 426–7
locus standi of individuals under 424–6
effective judicial protection 438–9
Jégo-Quéré 432, 433, 440
right to 431–3
Unión de Pequeños Agricultores (UPA) 433, 439, 441
Lisbon Treaty reforms 434–8
locus standi of individuals under EEC Treaty 424–6
Plaumann dispute 427–9, 433, 441
‘pinhole of individual concern’ following 429–31
Van Gend en Loos judgment 426–7
‘administrative space’ 2–3
agencies, EU 27, 29, 30, 60, 117, 170
see also European Agency for Fundamental Rights (FRA); European Supervisory Authorities (ESAs)
accountability issues 212, 213
‘agencification’ of EU administration 28, 30, 117
Common Approach (of EP, EU Council and Commission) 213
commonalities 117–18
control concerns 212
as decentralized forms of administration 29–30
delegation to 264
ECA responsibility for 281
formality 379
growth 30, 50
independence matters 212
information exchange through 94–5
international action 564–7
justification for 213–14
national regulatory agencies 274
new, functions of 209–10
Agency for Cooperation of Energy Regulators (ACER) 267, 282
agricultural field, public spending in 59–60
AIMF (Alternative Investment Management Fund) Directive 231
AKZO Chemie v Commission (1965) 105, 106
alternative dispute resolution (ADR) 490, 491, 495, 501, 516
annulment action
case law 299–300, 303–4
competence, lack of 299
grounds under TFEU 263(2) 299–305
addressee, requirement to hear 301
consultation requirement 300–301
infringement of essential procedural requirements 299–304
infringement of the treaties or any rule of law regarding their application 304–5
internal rules of procedure, compliance with 302
misuse of powers 305
professional secrecy obligation 301–2
statement of reasons requirement 302–4
information exchange 105–7
intensity of legality control in context of 296–311
viewed as act of secondary law 295–6
Anti-Counterfeiting Trade Agreement (ACTA) 323
APD see Asylum Procedures Directive (APD)
Area of Freedom, Security and Justice 143
AsktheEU.org request platform 401, 405
asset freezing 193
Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union (ACA-Europe) 450, 451
Asylum and Migration Fund 146
asylum policy 139
see also Common European Asylum System (CEAS)
Asylum Procedures Directive (APD) 149
see also Common European Asylum System (CEAS)
chapters 152–4, 155
contribution of administrative law through 152–6
harmonization 156
recitals 152–3
revision 157–8
structure 152–3
tribunals 156
asylum seekers 138–40, 146–50, 157, 579
audi alteram partem principle 479
Audit Progress Committee 347–8
audits 344–67, 576–8
civil service 50–51
Civil Service Tribunal, EU 106
civil society organizations (CSOs) 101
CJEU see Court of Justice of the
European Union (CJEU)
classified information 200–201, 204
  access to documents 412–13, 414, 420
co-decision procedure 142, 320, 321
Codex Alimentarius Commission 558
coercion 56–9
Cohesion Fund 249
co-legislators 9, 144–5, 229, 400, 412
security exceptionalism 192, 196–7
comitology 26, 27, 34, 170, 215
command
  and control 4, 53–4
  imperium, power as 55–6
Commission see European Commission
Committee of European Securities
Regulators (CESR) 216
Committee of Independent Experts 35, 347
Common Approach (of EP, EU Council and Commission) 213
Common European Asylum System (CEAS) 3, 137–58
Afghans, claims by 157
asylum and immigration 150
Asylum and Migration Fund 146
asylum applications 148
Asylum Procedures Directive (APD) 149, 152–6
asylum seekers 138–40, 146–50, 157, 579
challenges to legitimacy of 157
CJEU jurisdiction over 145
common minimum standards/common standards 142, 143
and competence 141–6
development of 140
Dublin Convention, 1990 139, 147, 148
Dublin Regulation (Dublin II/Dublin III) 148, 149
  effective remedy, procedural rules for 155–6
  and enlargement of the European
  Union 138, 139, 140
European Parliament (EP) 144–5
Family Reunification Directive 150
fingerprints, database of 146–7
free movement of persons 137–8
future research 156–8
immigration and borders law, EU 150–52
infringement proceedings 158
instability in application of 139
legislation 142, 144–5
length of procedures 154–5
Long-Term Residents’ Directive 150
’massive inflow’ 144
non-refoulement concept 151, 152
original object 150
Qualification Directive 143, 149
reception conditions/Reception
  Conditions Directive 147–8, 153
Refugee Convention, 1952 144, 145–6, 151, 152, 158
refugees 138, 139, 145
Schengen Implementing Agreement, 1990 (CISA) 138–9
state responsibility 139
structure of regulations and directives 146–9
Temporary Protection Directive 147
‘third pillar’ 139
Treaty of Lisbon, 2007 141, 142, 143, 144
Treaty on the Functioning of the
European Union (TFEU), 2007 141, 143, 144, 145, 146
and UN High Commissioner for
  refugees 145, 153, 157
Common Foreign and Security Policy
  (CFSP)
High Representative for 114
  parliamentary scrutiny 337–41
  security exceptionalism 195, 199
Common Market Law Review 71
competence/competences
see also National Competent Authorities (NCAs)
asylum issues 139–40
Common European Asylum System (CEAS) 141–6
creeping competences 328–31
development, in financial administrative law 349–53
discretionary 305–11
of ESAs 226
European Agency for Fundamental Rights (FRA) 116
of European Court of Auditors 349–53
exclusive 177
judicial review of discretionary competences 305–11
lack of competence, annulment action 299

competition law 56–7
complaints systems
see also European Ombudsman (EO)
administrative justice, and complaints 492–6
alternative dispute resolution (ADR) 490, 491, 495, 501, 516
diversity of 496
enforcement and innovation 503–9
EU governance 490–517
EU PILOT 14, 498, 505–6, 507, 509, 511
fresh input 507–9
incomplete recognition 501–3
information and communication technology (ICT) 491
network design 514–15
New Public Management (NPM) 492, 499–501
Ombudsman 276, 512–14
‘one stop shops’ 495–6
online dispute resolution (ODR) 500
proportionate dispute resolution (PDR) 510–12
SOLVIT 14, 249, 259, 261, 498, 506–7, 515
structure and design 496–501
‘Completion of the Internal Market’ 162

compliance
see also non-compliance
audits 349, 351
and Court of Auditors 280
informal capacity to promote 266
with internal rules of procedure 302
perspectives on, in multilevel systems 241–2
Compliance Audit Manual 360
compliance audits 349, 351, 352
composite procedures 37–40, 61
see also European Composite Administration
information exchange 81–5, 104
conditionality 33, 184
conditionality governance 179–80
economic 167, 168, 169, 179, 180, 186
praxis of 187
Conference of European Constitutional Courts 450
Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC) 327, 335
constitution change and legal-institutional practice 380–89
access to administrative documents 382–4
normative promise 380–82
transparency 382–4
Consultative Working Groups 225
control
and accountability 7–9
and command 53–4
legality, in annulment action context 296–311
and parliamentary evaluations 111–12
Convention on the Rights of Persons with Disabilities (CRPD) 133
cooperation
see also information exchange; mutual assistance obligations
administrative 252–60
horizontal, background and rationale for 253–5
patterns 257–60
pragmatic responses to implementation failure 255–7
audit and administrative law 363–6
audit institutes in Member States 364–6
binding international measures 565–7
coordinated formation of policies/subsequent implementation of EU law 23
dealing with by information and composite procedures 37–40
European administration as cooperative system 33–40
horizontal see horizontal cooperation
information management 36–7
interparliamentary 335–7
joint information gathering 95
joint planning structures 38
judicial 258
non-binding measures 567
between Parliament and Council 363–4
procedural 34–40
shared administration 35
structured mechanisms 87, 90–91, 97
vertical 257–8
COREPER (Committee of Permanent Representatives in the European Union) 27
Corporate Europe Observatory (CEO) 223–4
Council of Europe Convention on Access to Official Documents 402, 418–19
Council of the European Union 165, 184, 188, 197, 272, 289
Convention 108 concerning the Protection of Individuals with regard to Automatic Processing of Personal Data 100
corepetition with European Parliament 363–4
and ESAs 209, 210
Legal Service 204, 217, 229, 407, 408
and parliaments as agents of administrative law 318, 320, 322, 326, 327, 333, 334, 339, 340
revoking of delegated acts 243
right of objection by 228–33
Council v In’t Veld (2014) 196, 197, 198, 204
counter-terrorism 198, 561
see also Terrorist Finance Tracking Program (TFTP)
Court of First Instance (CFI) 432–3
see also General Court (GC)
Court of Justice of the European Union (CJEU) access to documents 402
as an administrative court 295–6
case law 25, 42
CEAS, jurisdiction over 145
Common European Asylum System, jurisdiction over 145
confidential information 204–5
dialogue and networking modalities 448, 449
and European Agency for Fundamental Rights 125
and German Federal Constitutional Court 100
information exchange 105, 107–9
and informational sovereignty 98
lack of coherence, jurisprudence 104–5, 106
literature on 468
options for improvements regarding multijurisdictional issues by secondary law 109–10
rulings 247
courts of the European Union 8–9
see also annulment action; judicial review; specific courts, such as Court of Justice of the European Union (CJEU)
administrative justice 275
decision as a measure applying provisions of EU law 293–4
‘individual concern,’ interpretation of 426–33
and informality 378
judicial review of administrative rules 423–45
of discretionary competences 305–11

Carol Harlow, Päivi Leino and Giacinto della Cananea - 9781784710682
Downloaded from Elgar Online at 01/22/2019 08:35:25AM
via free access
Research handbook on EU administrative law

'evident error' concept 308, 309, 315
'manifest error' concept 305, 308–10, 312
multilevel 107–10
Tetra Laval formula 310–11
legal protection by 104–10
national, challenging of non-compliance by 247–8
scope of jurisdiction and review of administrative decisions 292–315
Craig, Paul 308, 309, 347, 357
creeping competences 328–31
crisis ersatz law 164, 165, 166–9, 184
Curtin, Deidre 7, 576
Customs Information System 93
Cyprus, accession to the EU 140
Czech Republic, accession to the EU 140
damages 107
Darbishire, Helen 11
data protection see also databases, shared; information exchange
complex legal pluralism regarding 99–101
directives 100, 205
European Data Protection Supervisor 115, 416, 500
versus freedom of information 415–17
proposals for a future General Data Protection Regulation 110
secondary law 100
sector-specific provisions 100
Data Retention and Investigatory Powers Act, 2014 193, 205–6, 207
databases, shared 86, 92–4, 95
Dawson, Mark 169
de Capitani, Emilio 411
De Gaulle, Charles 47
de lege lata (principles for protection of private parties affected by mutual assistance) 90
de Visser, Maartje 9, 12, 310
de Witte, Bruno 163
Deakin, Simon 176
decisions, court jurisdiction 293–4
action for annulment see annulment action
deliberative supranationalism 170, 171
delineating a law 3–6
della Cananea, Giacinto 6
Dennekamp v European Parliament (Dennekamp II) 416, 417
derivative classification principle 200–201
design, human rights by 131–4
Dicey, AV 69–70
Digital Rights Ireland v Minister for Communications, Marine and Natural Resources (2012) 193, 194, 205, 206, 207, 442
dirigisme 47
dispute resolution see complaints systems
documents, access to see access to documents
dominium (authority based on control and ownership) 52, 54–5, 59–60, 62
see also imperium (right of executive command)
droit commun 45
Dublin Convention, 1990 3, 139, 147, 148
Dubnick, M 361
due process of law, administrative 468–89
and fair administrative procedure 486–8
importance 479–80
methodological issues 469–72
operational aspects 480–84
qualitative analysis 471–2, 479–88
quantitative analysis actors involved 472–4
competition 474–5
Lisbon, before and after 478
nationalities of complainants 473
object and goals 469–71
sectors involved 474–7
security 476–7
Duguit, Léon 54
Early Warning Mechanism (EWM) 83, 316
and creeping competences 328–31
orange and yellow cards 329, 330
ECA see European Court of Auditors (ECA)
ECFR see European Charter of Fundamental Rights (ECFR)
ECHR see European Convention on Human Rights (ECHR)
Economic and Monetary Union (EMU) 173–4
failures of 174–8
as ‘inadequate compromise’ 174, 175
political union, failure to complement monetary union with 175
varieties of capitalism, resistance against socio-economic convergence 176–7
parliamentary scrutiny 337–41
economic conditionality 167, 168, 169, 179, 180, 186
ECTHR see European Court of Human Rights (ECHR)
EEC Treaty
compared to Treaty of Paris 426–7
locus standi of individuals under 424–6
effective judicial protection
Jégo-Qúeré 432, 433, 440, 441
right to 431–3
UPA (Unión de Pequeños Agricultores) 433, 439
effectiveness principle 32
EMU see Economic and Monetary Union (EMU)
enforcement 241–62
see also compliance and accountability/regulation 278
administrative cooperation (bottom-up perspective) 252–61
horizontal, background and rationale for 253–5
patterns 257–60
pragmatic responses to implementation failure 255–7
centralized/decentralized 242–4
complaints systems 503–9
delegated versus implementing acts 242–3
and innovation 503–9
integrated approach 260–62
management and legitimacy (top-down perspective) 245–52, 260
networks 38
non-compliance challenging by litigation before national courts 247–8
by monitoring and sanctioning prosecuting 245–7
preventing by capacity building and contracting 248–50
revoking by persuasion and learning 250–52
perspectives on, in multilevel systems 241–2
enlargement of the European Union 2, 521–44
and administrative law 521–44
and Common European Asylum System 138, 139, 140
diversity 31
influence EU law on administration of Poland 525–33
influence of EU law on general principles of administrative law 533–6
public administrative law, Europeanization of 537–41
substantive administrative law 536–7
EP see European Parliament (EP)
equilibrium credit 181
Equitable Life Assurance Society, collapse (2005) 324
equivalence principle 32
ersatz law, crisis 164, 165, 166–9, 184
ESAs see European Supervisory Authorities (ESAs)
ESMA see European Securities and Markets Authority (ESMA)
Estonia, accession to the EU 140
ethnic minorities 129
EU see European Union (EU)
EU Justice Scoreboard 525
EU PILOT complaints system 14, 498, 505–6, 507, 509, 511
Euro 69, 139, 179, 340, 363
and international agreements 165, 166, 167
EURODAC (database of fingerprints) 146–7
‘Eurogroup’ 31
EUROJUST (EU Judicial Cooperation Unit) 419
Eurolegalism 489, 493
European administrative ‘space,’ development 21–43
‘bottom-up’ and ‘top-down’ proceedings 36
coordinated formation of policies/subsequent implementation of EU law 23
direct and indirect administration of EU law 25
emergence of European space of integrated administration, reconstructing 22–33
European administration as cooperative system 33–40
expansion of range of administrative activities 27
future of integrated EU administration 21–2, 40–43
hard core of European administrative space 33
horizontal opening of Member States’ legal and political systems 25, 40
hybrid procedures 36
impact of creation of European Communities 24
integrated administration 21, 26
emergence of European space of 22–33
future of, in Europe 40–43
values governing 40
metaphor of ‘space,’ use of 21, 65
open questions 28
phases of development 23–8
pluralization of European administration 21, 28–31, 34
procedural law 32
shared administration 35
studies of comparative government and public administration 22
territorially distinct administrations, prior to creation of European communities 24
vertical opening of Member States towards EU law 24
European Affairs Committees (EACs) 326
European Agency for Fundamental Rights (FRA) 115, 116–26
see also human rights
accountability 124–6
autonomy of 123, 124
civil society platform 125
competence 116
enforcement powers, limitations on 281
establishment 116–17, 118
European-wide network of human rights, building of 134
evidence-based approach 128–30
Founding Regulation 117
Fundamental Rights Platform 118
independence 121–4
innovative elements 127
Management Board 122, 133
mandate 118–20, 124
mission, scope of 118–19, 123–4
Multiannual Framework (MAF) 123, 124
Paris Principles compliance 123
Regulation established by 118, 119, 120, 121, 133–4
surveys 129–30
tasks, list of 120
value, adding of 126–34
European Agency for the Management of Operational Coordination at the External Borders of the Member States (Frontex) 58, 499
European Agenda for Security 131–2
European Arrest Warrant (EAW) 460
European Aviation Safety Agency (EASA) 563, 564, 569
European Banking Authority (EBA) 210
European Border and Coast Guard 189
European Central Bank (ECB) 29, 162, 167, 185
and accountability/regulation 272, 273
and European Parliament 323–4
General Council 175
European Charter of Fundamental Rights (ECFR) 167, 315, 386, 401
administration of human rights 115, 131, 136
Common European Asylum System (CEAS) 141, 152
and effective judicial protection 438–9
information exchange 99, 100
European Charter of Local Self-Government 523
European Coal and Steel Community (ECSC) 24
High Authority of 42, 44, 47–9, 54, 61, 65, 425
joint management of coal and steel fields, Monnet on 62
Treaty 55, 61
European Commission
accountability of 271
border management 189
Charter of Fundamental Rights (ECFR), implementation 115
‘Citizens First’ initiative 248
and Common European Asylum System 156–7, 158
and enforcement 243–4
executive agencies, acting through 60
Formal Letters by 246
as ‘guardian of the treaty’ 243, 260
Internal Audit Service 348
power to inspect undertakings and associations of undertakings 57
Regulatory Scrutiny Board 286
Robert Schuman Project 248
role 59–60
RTS, role in adoption of 226–8
Scoreboard, 2012 524
White Paper on Governance, 2001 212–13, 503
European Composite Administration 86, 89, 98, 104, 110
information exchange as major component of 81–5
European Convention on Human Rights (ECHR)
fair trial, right to 493
information exchange 99
Opinion 2/94 on Accession to 117
protection against inhumane treatment or torture 152
semi-blocked access by EU to 135–6
European Council on Refugees and Exiles (ECRE) 150
European Court of Auditors (ECA)
see also audits
agencies, responsibility for 281
Audit Manual 350
budget of EU, as focal point for 280–81
and compliance 280
development of competences 349–53
examination powers 125
as ‘financial conscience of the Union’ 280
history 345–8
institutional pluralization 29
institutional status 346
landscape review 362
and Maastricht Treaty 346, 349
Statement of Assurance (DAS) 344, 349, 351, 357, 359, 367
Value for Money (VFM) audits 349
European Court of Human Rights (ECHR) 532, 538
and asylum system 145, 152, 156, 158
networking and dialogue 447, 448, 452, 454, 459
European Court of Justice (ECJ) see Court of Justice of the European Union (CJEU)
European Criminal Records Information System (ECRIS) 93
European Data Protection Supervisor 115, 416, 500
European Defence Agency 29
European Defence Community 49–50
European Economic Community (EEC) 24
European Environmental Agency 94
European External Action Service (EEAS) 202, 203, 338
European Financial Stability Facility (EFSF) 163, 164
European Food Safety Authority 94
European Group of Public Administration (EGPA) 499
European Insurance and Occupational Pensions Authority (EIOPA) 210
European Market Infrastructure Regulation (EMIR) 230, 231
European Medicines Agency 94
European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) 565
European Network of Ombudsmen (ENO) 502, 514–15, 516
European Ombudsman (EO) 8, 61, 68, 111, 224, 490, 497
and accountability/regulation 268, 275–7, 278
changing role of 512–14
establishment of 268
European Code of Good Administrative Behaviour 534
European Network of Ombudsmen (ENO) 502, 514–15, 516
and human rights 115, 125, 136
limits on powers 275–6, 281
own-initiative investigations (OII) 276
see also parliaments activism 338
budgetary powers 322, 338
co-decision procedure 320, 321
co-legislative powers 192
Committee of Independent Experts set up by 35, 347
committees 324
Common European Asylum System (CEAS) 144–5
cooperation with Council 363–4
economic governance 340–41
foreign and security policy 338
intergroups 325
interparliamentary networking 327
investigative powers 202
and Lisbon Treaty 322, 327–8, 355
Members 318, 320, 321, 323, 326, 341, 406
parliamentary questions 320
‘power of the purse’ 322
president 320
revoking of delegated acts 243
right of objection by 228–33
role 59
and security exceptionalism 192, 202, 203
Spitzenkandidaten process 318, 319
European Police Office (Europol) 29, 190, 192, 201, 202, 565, 566
European Public Prosecutor’s Office (EPPO) 330
European Refugee Fund Decision, 2000 146
European Securities and Markets Authority (ESMA) 210, 219
Annual Report 224
budget 224
objectives 220–21
Preamble to Regulation 227–8
European Stability Mechanism (ESM) 162, 164, 166, 167
European Supervisory Authorities (ESAs)
see also accountability; agencies, EU accountability dilemmas in operation of 236–7
background 209–15
Board of Appeal 219, 231
Board of Supervisors 214
case law 218, 219, 220, 234
founding regulations 210–11
governing structures 214
Level 2 measures 211, 215, 224, 232
powers and status 214–15
regulation of financial markets through 209–37
Rule-making powers 222–36
‘best practice’ 233
Commission role in adoption of RTS 226–8
Post-legislative guidance 233–6 to prepare draft RTS and ITS 222–6
Right of objection by Parliament and Council 228–33
and soft law 211, 233, 234, 235
‘special’ nature of financial regulation 215–22
European System of Financial Supervisors (ESFS) 209, 215
European Systemic Risk Board (ESRB) 210
European Union Agency for Fundamental Rights see European Agency for Fundamental Rights (FRA)
European Union Classified Information (EUCI) 200
European Union (EU) see also information exchange; specific institutions and courts
accountability, lack of 362
administrative law see administration, European; administrative law; European administrative ‘space,’ development
budget 59
complaints systems and EU governance 490–517
courts see courts of the European Union
decision as a measure applying provisions of EU law 293–4
distribution of executive powers in 30 enlargement see enlargement of the European Union
financial resources 59
and four freedoms 137
human rights in see human rights immigration and borders law 150–52
influence of EU law on the general principles of administrative law 533–6
information exchange see information exchange
official languages 69
official secrets, exceptions to 195–202
Polland, influence of law on 525–33
regulatory regimes in 264–70
security exceptionalism 191–4, 207
EUROPHYT (web-based notification and rapid alert system) 83
Europol (European Police Office) 29, 190, 192, 201, 202, 565, 566
Eurosur 58
Eurozone 3, 5, 7, 31, 77, 339
crisis management within 186
fiscal policy 183, 184
post-crisis governance and Fiscal Compact 164, 165, 168, 169, 173, 176, 178, 179, 181, 182, 183, 184, 186
Everson, Michelle 3, 7, 577
evidence-based approach 128–30
‘evident error’ concept, judicial review 308, 309, 315
EWM see Early Warning Mechanism (EWM)
executive rule-making see rule-making expert committees 26, 27
fairness 486–8
financial administrative law 344, 354–61
Delors I package 354
Financial Regulation (FR) 357–8, 360
general principles of law 359–61
inter-institutional agreements (IIAs) 358
primary law 355–7
secondary law 357–8
financial regulation see also European Supervisory Authorities (ESAs)
Financial Regulation (FR) and audits 357–8, 360
594 Research handbook on EU administrative law

'special' nature of 215–22
Financial Services Action Plan, 1999
215, 216
Financial Services Authority (FSA)
Annual Report 225
Ongoing Regulatory Activities
expenditure 224–5
Financial Services Committee (FSC),
Council 215, 226, 230, 232
financial stability and welfare, Fiscal
Compacts as guarantor for 180–82
Finland, accession to the EU 139
fiscal centralization 179–80
Fiscal Compact (Treaty on Stability,
Coordination and Governance) 7
see also post-crisis governance
centralizing tendencies of 180
challenges posed by 185–6
commands 173
Crisis Ersatz law 164, 165, 166–9, 184
economic governance under 174
evaluation of 162–3
and Growth and Stability Pact (GSP)
165, 166, 175, 178
as guarantor for financial stability and
welfare 180–82
impetus for international law as
response to assumed functional
necessities 164–6
implementing commands of 172–3
implementing through
intergovernmentalism and
supranational technocratic rule
169–74
international agreements 163–9
objectives 161–2, 172, 173
and post-crisis governance 161–87
and Regulation 1176/2011 172–3
signature 161, 172
triplemma 161–3
fiscal policy 180, 185
Eurozone 183, 184
fiscal policy, European 186
force, use of 54, 56, 57
Formal Letters 246
founding treaties 55, 373, 521, 572
see also specific treaties

FRA see European Agency for
Fundamental Rights (FRA)
fragmentation, regulatory 269
France
planification politics 175, 181
Surveillance Law 194
freedom of information, versus data
protection 415–17
freedoms, four 137
Frontex (European Agency for the
Management of Operational
Coordination at the External
Borders of the Member States) 58,
499
FSA see Financial Services Authority
(FSA)
fundamental rights 115, 117
Fundamental Rights Agency (FRA) see
European Agency for
Fundamental Rights (FRA)

General Court (GC) 105, 271, 409, 470
see also Court of First Instance (CFI);
Court of Justice of the European
Union (CJEU)
and due process 478, 488–9
executive rule-making 383, 393–4
judicial review of administrative rules
431, 434, 442, 444
on regulatory acts 436–7
Rules of Procedure 205
general principles of law 359–61, 572–6
Germany
Bundesverfassungsgerichtshof, 452
Constitution 168
dominance within the Fiscal Compact
187
Federal Constitutional Court
(BVrG) 100, 166, 167, 169
Unionsersatzrecht 168, 169
Giannini, Massimo Severo 46
Gonod, Pascale 76
goods
direct and indirect delivery of 54
free movement of 137
governmental authority (possessed by
State) see imperium, power as
Greece 169
accession to the EU 138

Grimaldi v Fonds des maladies professionnelles (1989) 234

Grimheden, Jonas 6

Growth and Stability Pact (GSP), late 1990s 165, 166, 175, 177, 178

Guild, Elspeth 3

Hallstein, Walter 50

hard law 174, 235, 262

see also soft law

Harlow, C 33, 35, 73, 284, 285, 286, 361–2, 488

hate crime 129–30

Hauptzollamt München-Mitte v Technische Universität München (1991) 299–300

Health Food Manufacturers’ Association v European Commission (2015) 437, 438

Heidbreder, Eva 7–8, 16

Herrschaft 53

High Authority (HA) of European Coal and Steel Community 42, 44, 47–9, 54, 61, 65, 425

Hirsch, Etienne 47

Hobbes, Thomas 53

Hoffman-Riem, Wolfgang 76

Hofmann, H 293, 306

horizontal cooperation 242, 252

see also administrative cooperation; cooperation

background and rationale for 253–5

effective application 260

information exchange 93, 99, 108

modes 257–8

Huff, A 337–8

human rights 115–36

see also European Convention on Human Rights (ECHR)

by design 131–4

in the EU 114, 115–16

European Agency for Fundamental Rights (FRA) see European Agency for Fundamental Rights (FRA)

evidence-based approach 128–30

and fundamental rights 115

judicial review standards 312–14

law-versus-policy gap 114–15

of LGBT people 129–30, 134

National Human Rights Institutions see National Human Rights Institutions (NHRIs) 122, 135

needs 126–34

whether need to ‘administer’ 135–6

Hungary, accession to the EU 140

immigration and borders law, EU 150–52

impact assessment (IA) 285

imperium (right of executive command) 52, 53–6, 62, 67

see also imperium (right of executive command)

coercion 56–9

‘implementing measures’ 436

Implementing Technical Standards (ITS) 219
draft, power of ESAs to prepare 222–6

independent regulation doctrine 272

information see also information exchange; information systems

characteristics of as an administrative resource and instrument 95–6

classified 200–201, 204

‘commingling’ of EU information with that from other sources 207

joint information gathering 95

national sources 201

self-determination, informational 99

sensitive 191, 195, 198, 199

access to 203–4

context-sensitive 95–6

information and communication technology (ICT) 491, 499–501

information exchange 81–112

see also cooperation

and accountability 103–12

annulment 105–7

automatic, under duty to inform 97

basic rules for informational mutual assistance, versus structured cooperation mechanisms 87
bottom-up cooperation 258
categories 86–95
complex legal pluralism regarding
data protection/other privacy interests 99–101
cross-border service provision 83
damages 107
Early Warning Mechanism (EWM) 83
**ex post** 95
failure to share information 204
horizontal 93, 99, 108
importance of 40, 84
incentives and infrastructures for
effective and efficient exchange 96–7
and individual rights 99–103
information systems, supported by 94
and informational sovereignty over
state secrets 97–8
integrated forms 108
joint information gathering as a
functional equivalent to 95
legal protection
by courts 104–10
by Ombudsman 111
by supervisory bodies 110–11
as a major component of EU
composite administration 81–5
mechanisms, establishing 38–9, 82–3
missing general framework 85
as mode of factual action, reviewable
under EU law 104–7
more systematic approach, need for 85
multijurisdictional nature of 107–10
objectives 82
problems 95–112
rapid alert systems 82–3
realization of 85
regulation of 85
security exceptionalism 192–3, 203
shared databases 86, 92–4, 95
structured cooperation mechanisms
87, 90–91, 97
technical and organizational
infrastructure 86–95
through EU agencies 94–5
transparency 103–4
upon request 86–91
vertical 82, 93, 99, 108
without prior request 91–2
information management 36–7
information systems
see also information exchange
decentralized and central system
architectures 93
definitions 94
Internal Market Information System
(Imi) 83, 101–2, 256, 258, 261
privacy by design in EU information
systems 101–2
Schengen Information System (SIS)
39, 83, 93, 100
supporting information exchange 94
informational mutual assistance 87–90
informational sovereignty 97–8
institutional balance 271–4
institutional pluralization 29–30
institutional variance, access to
documents 419–20
integrated administration 21, 26
emergence of European space of
22–33
future of, in Europe 40–43
values governing 40
Integrated Administration and Control
System 93
Integrated Pollution Prevention and
Control Directives 259
Intelligence Analysis Centre (INTCEN)
192, 201, 202
Intergovernmental Conferences (IGCs)
318
intergovernmentalism 169–74
inter-institutional agreements (IIAs)
200, 355, 358
Inter-Institutional Agreement on
Better Law-Making, 2003
273–4, 284–5, 287, 290
INTERN (Intelligence Analysis Centre)
192
Internal Market directives 250
Internal Market Information System
(Imi) 83, 101–2, 256, 258, 261
Internal Market Score Board 250
Index  597

International Business Machines

International Civil Aviation
Organization (ICAO) 558–9, 563, 564

International law/perspectives 545–71
administration, international 51
agreements 565–7
binding cooperation measures 565–7
composite construction 568–71
full opening 556–7
impetus for as response to assumed
fundamental necessities 164–6
implementation of measures adopted
by international regimes 557–63
basic divide 558–63
non-binding 562–3
relative closure, legally binding
international measures 559–62
relative opening 562–3
incorporation of provisions of
international treaties 549–57
Aarhus Convention 551–5
basic parameters 549–51
directly effective international
provisions 556–7
full opening 556–7
international action of European
agencies 564–7
interplay with EU administrative law
545–8, 551–7
joint measures, implementation of
563–7
legally binding international
measures 559–62
main routes 548–9
non-binding measures 562–3, 567
relative closure
Aarhus Convention 551–5
legally binding international
measures 559–62
relative opening 562–3, 565–7
International Relations 241–2, 245, 251
access to documents 418–19
International Telecommunication
Union (ITU) 559

Interparliamentary cooperation 335–7
Interpol 565, 566
Interstate Commerce Commission, US
271–2
Inuit Tapiríit Kanatami and Others v
Parliament and Council (2011) 434
IPEX (InterParliamentary EU
information exchange) 335
ISEAL Alliance 279
ITS see Implementing Technical
Standards (ITS)

Jackson, Vicki 462
Jean Monnet Centre, New York
University Law School 71
Jégo-Quérré v Commission (2002) 432,
433, 440, 441
Joerges, Christian 3, 7, 171, 577
Joint Consultation Meetings (JCMs)
338
joint information gathering 95
joint planning structures 38
judicial cooperation 258
judicial independence doctrine 272
judicial review
see also annulment action; courts of
the European Union
of administrative rules see
administrative rules, judicial
review of
case law 312, 313, 314–15
of discretionary competences 305–11
European administration 66
High Authority (HA) of European
Coal and Steel Community 49
information exchange 104
‘light-touch’ standard 305
locus standi 423, 424–6
‘manifest error’ concept 308–10
multilevel 107–10
and power 61
security exceptionalism 197
standards of 305–14
discretionary competences 305–11
‘evident error’ concept 308, 309,
315
and human rights 312–14
manifest error’ concept 305, 308–10, 312
Tetra Laval formula 310–11
terminology complexities 73
Juncker Commission 269
Justice and Home Affairs Council 130
Kadelbach, Stefan 5, 15
Kilpatrick, Claire 184
Kjaerum, Morton 6
Laband, Paul 53
Lamfalussy process 215
language of EU administrative law scholarship 69–77
advantages of a common language 72
Austrian scholars 71
challenges, tackling 75–7
deficits of a common language 72–5
double paradox 69–72
Dutch scholars 71
English, use of as language of academic exchange 70–72
French scholars 71
individuality issues 75
intellectual transaction costs, absence 72
multilingual debate requirement 76
official languages of the EU 69
quality concerns 74
sector-specific differentiations, need for 77
terminology complexities 72–4
translations, requirement for 76–7
Latvia, accession to the EU 140
Lavrijssen, S 310
legal protection
see also information exchange by courts 104–10
information exchange 104–11
by ombudspersons 111
parliamentary evaluations and controls 111–12
by supervisory bodies 110–11
legality control, intensity in context of annulment action 296–311
legislative documents, access to 407–13
see also access to documents
Lenaerts, Koen 456
Leppävirta, Liisa 11
LGBT people, human rights of 129–30, 134
Lisbon Council 162
Lisbon Treaty see Treaty of Lisbon
Lithuania, accession to the EU 140
Maastricht Treaty see Treaty of Maastricht
macroeconomic imbalances, correcting 161, 172–3
Maduro, Miguel Poiares 171, 172, 309, 562
Maher, Imelda 8
Mair, Peter 343
Majone, Giandomenico 263
maladministration, preventing 61, 68
Malta, accession to the EU 140
Mandelkern Report, 2001 284
’mannist error’ concept, judicial review 305, 308–10, 312
Maslow, Abraham 455
material misstatements 350–51
Mayer, Otto 53, 66
Melleray, Fabrice 76
Member States
see also European Union (EU) and asylum system 139, 148
audit institutes in 364–6
autonomy of 32, 169, 537, 545, 551
border controls, abolition 138
executive rule-making 373
horizontal opening of legal and political systems 25, 40
limitations on autonomy of 32
and Schengen system 139
sovereignty 267
substantive and procedural administrative law 32
terrorism, criminalization of 193
vertical opening of towards EU law 24
Members of the European Parliament (MEPs) 318, 320, 321, 323, 326, 341, 406
Memoranda of Understanding (MoUs) 180, 184, 563, 566
Mendes, Joana 10–11, 14
Mendez, C 348
MEPs see Members of the European Parliament (MEPs)
Meroni v High Authority (1958) 218, 219, 220
meta-doctrines of accountability see also accountability
administrative justice 274–9
better regulation 283–9
for EU regulation 270–89
regulatory independence and institutional balance 271–4
value for money 279–83
misuse of powers 305
Model Rules on EU Administrative Procedure, ReNEUAL 37, 38, 85, 91, 108, 111
integrated approach of 102–3
Molitor Report, 1995 284
Moloney, N 236
monetary policy 167, 181, 184, 185, 341
EMU, failures of 175, 177
Monnet, Jean 46, 47–51, 62, 63 see also Jean Monnet Centre, New York University Law School
design of 48, 49, 51
as president of High Authority of European Coal and Steel Community 49
Monti Report, 2010 254, 261
Multiannual Financial Framework (MFF) 356
Multiannual Framework (MAF) 123, 124
multijurisdictional issues improvement options, secondary law 109–10
information exchange, multijurisdictional nature 107–10
multilevel governance (MLG) 64, 286, 342, 496
mutual assistance obligations 26, 87–8, 96
Muzi, Laura 13, 14
national administration model 24
National Competent Authorities (NCAs) 211, 214, 225, 231, 235
National Human Rights Institutions (NHRIs) 135
Paris Principles 121–3
National Security Agency, US 191
NCAs (National Competent Authorities) 211, 214, 225, 231, 235
Nehl, H-P 307
Netherlands, EU law 71
Network of the Presidents of the Supreme Judicial Courts of the EU 450, 457
networking, judicial 459–63
challenges, research
CILFIT test 466
conceptual 459–63
normative 465–6
practical 463–4
and dialogue 446–7
modalities 447–53
researching 459–66
generalist 450
rationales and prerequisites 454–9
specialist 450
New Public Management (NPM) 492, 499–501
New World Order, A (Slaughter) 133
Neyer, J 171
NGOs (non-governmental organizations) 224–5, 289, 399–422
non-compliance see also compliance; enforcement challenging by litigation before national courts 247–8
Commission powers 246
deterring 245
by monitoring and sanctioning prosecuting 245–7
prevention by capacity building and contracting 245, 248–50
revoking by persuasion and learning 250–52
non-discrimination doctrine 272
non-refoulement concept 151, 152
norm internalization 245
normative decisions 293
norms, regulation 265–6, 267–8
Office for Harmonization in the Internal Market (OHIM) 482
official secrets, EU see also secrecy; security
exceptionalism
Council rules 199
derivative classification principle 200–201
exceptions to 195–202
growing regulation of 199–202
inaccessibility to 204–5
originator control principle 200, 201–2
OLAF (anti-fraud office) 271, 277, 281
Ombudsman, EU see European Ombudsman (EO)
*Omega Air and Others* (2000) 303
online dispute resolution (ODR) 500
Open Method of Co-ordination 162, 170
‘Open Skies Agreement’ 556
operational intelligence sources, protection 190
Optional Protocol to the Convention against Torture (OPCAT) 133
Orban, Viktor 320
O’Reilly, Emily 420, 512, 513, 515
originator control principle 200, 201–2
oversight system
access to documents 420–21
regulatory oversight 269, 290
own-initiative investigations (OII) 276, 502
Paris attacks 188, 189
Paris Principles on National Human Rights Institutions 121–3
see also European Agency for Fundamental Rights (FRA); human rights
Paris Treaty see Treaty of Paris
parliaments as agents of administrative law 316–43
debates and issue selection 332–4
domestic legislatures 325–34
Early Warning Mechanism (EWM) 316, 328–31
evaluations and controls, parliamentary 111–12
interparliamentary cooperation 335–7
national legislatures, as losers of integration 334
parliamentary scrutiny of CFSP and EMU 337–41
Passenger Name Records (PNR) 188, 189
passport controls 138
performance audits 281, 349–50
persons, free movement of 137–8
Peters, G 22
PILOT see EU PILOT complaints system
planification, French politics of 175, 181
Plaumann dispute 427–9, 433, 441
‘pinhole of individual concern’ following 429–31
pluralization of European administration 21, 28–31, 34
see also European administrative ‘space,’ development consequences 31–3
diversity, due to deepening and widening integration 31
institutional 29–30
Poland 521–44
accession to the Council of Europe and ECHR 523
accession to the EU 140, 522
case law of courts 535
Code of Administrative Procedure 522, 529, 537, 539

Paris Treaty see Treaty of Paris parlaments as agents of administrative law 316–43
debates and issue selection 332–4
domestic legislatures 325–34
Early Warning Mechanism (EWM) 316, 328–31
evaluations and controls, parliamentary 111–12
interparliamentary cooperation 335–7
national legislatures, as losers of integration 334
parliamentary scrutiny of CFSP and EMU 337–41
Passenger Name Records (PNR) 188, 189
passport controls 138
performance audits 281, 349–50
persons, free movement of 137–8
Peters, G 22
PILOT see EU PILOT complaints system
planification, French politics of 175, 181
Plaumann dispute 427–9, 433, 441
‘pinhole of individual concern’ following 429–31
pluralization of European administration 21, 28–31, 34
see also European administrative ‘space,’ development consequences 31–3
diversity, due to deepening and widening integration 31
institutional 29–30
Poland 521–44
accession to the Council of Europe and ECHR 523
accession to the EU 140, 522
case law of courts 535
Code of Administrative Procedure 522, 529, 537, 539

Paris Treaty see Treaty of Paris parlaments as agents of administrative law 316–43
debates and issue selection 332–4
domestic legislatures 325–34
Early Warning Mechanism (EWM) 316, 328–31
evaluations and controls, parliamentary 111–12
interparliamentary cooperation 335–7
national legislatures, as losers of integration 334
parliamentary scrutiny of CFSP and EMU 337–41
Passenger Name Records (PNR) 188, 189
passport controls 138
performance audits 281, 349–50
persons, free movement of 137–8
Peters, G 22
PILOT see EU PILOT complaints system
planification, French politics of 175, 181
Plaumann dispute 427–9, 433, 441
‘pinhole of individual concern’ following 429–31
pluralization of European administration 21, 28–31, 34
see also European administrative ‘space,’ development consequences 31–3
diversity, due to deepening and widening integration 31
institutional 29–30
Poland 521–44
accession to the Council of Europe and ECHR 523
accession to the EU 140, 522
case law of courts 535
Code of Administrative Procedure 522, 529, 537, 539
Index 601

constitutional issues 522, 525–33
Constitutional Tribunal 522, 526
Council of Ministers 524
fundamental principles of administration 533–4
influence of EU law on administration of 525–33
as largest country of ‘Enlargement states’ 521
public administration performance 524
ratification of European Charter of Local Self-Government 523
Republic of 526
Small Constitution 522
substantive administrative law, influence on 536–7
Supreme Administrative Court 522, 528, 531, 534
Portugal, accession to the EU 138
post-crisis governance crisis and legitimate technocratic rule 178–84
accountability 182–4
conditionality governance, fiscal centralization and austerity 179–80
and Fiscal Compact 180–82
EMU, failures of 174–8
instituting unresolvable conflict constellation 177–8
and Fiscal Compact 161–87
ersatz law 164, 165, 166–9, 184
as guarantor for financial stability and welfare 180–82
implementation of 169–74
international agreements as ‘unionseratzrecht’ 163–9
international law 164–6
trilemma 161–3
post-legislative guidance 233–6
power/powers 52–63
see also administration, European to apply consequences, limits on 270 budgetary, of EP 322, 338 command and control (imperium) 4, 53–4 definitions 53 from divided powers to joint exercises of power 63–5
as dominium see dominium (authority based on control and ownership)
of ESAs 214–15
of European Commission 246
of European Ombudsman, limits on 275–6
executive power 189, 191
and founding treaties 55
as imperium see imperium (right of executive command)
investigative, of EP 202
and judicial review 61
misuse of powers 305
procedural constraints on 484–6
and public law 53–4
rule-making powers of European System of Financial Supervisors (ESFS)
Commission role in adoption of RTS 226–8
post-legislative guidance 233–6
power to prepare draft RTS and ITS 222–6
right of objection by Parliament and Council 228–33
security policies 191–2
sociology of power (Weber) 53
theories about power 53–5
preliminary references or rulings 108, 251
primary law 87, 124, 292, 295, 488
audit and administrative law 355–7, 359
security exceptionalism 202, 203
Pringle (Thomas) v Government of Ireland (2012) 166
procedural autonomy 2, 495, 537, 551
procedural cooperation 34–40
dealing with by information and composite procedures 37–40
procedural law 32
property, State capacity to own or acquire see dominium (authority based on control and ownership)
proportionality doctrine 283–4, 299
proportionate dispute resolution (PDR) 510–12
Prüm Treaty, 2005 192
Public Administration studies 260
public authorities 53, 54
public law, and power 53–4
public money, spending in agricultural field 59–60
public power 6
public sector audits 279
public-private partnerships 29

qualitative analysis, due process of administrative law 471–2, 479–88
access to file 484–5
bias, rule against 481
duty to give reasons 485–6
fair hearing, right to 481
importance of administrative due process 479–80
links with other procedural constraints on power 484–6
operational aspects of due process 480–84
right to be heard and right to good administration 480
quantitative analysis, due process of administrative law 471–2
actors involved 472–4
competition 474–5
Lisbon, before and after 478
nationalities of complainants 473
networking and dialogue 463
object and goals 469–71
sectors involved 474–7
security 476–7

rapid alert systems 82–3
Raunio, Tapio 9
Rawlings, Richard 9, 33, 35, 73, 284, 285, 286
REACH Regulation 419
Reasoned Opinions 247
REFIT (Regulatory Fitness and Performance Programme) 285, 287, 288, 289
Refugee Convention, 1952 144, 145–6, 151, 152, 158

see also Common European Asylum System (CEAS); refugees; UN High Commissioner for refugees (UNHCR)
refugees 138, 139, 145, 188
see also Refugee Convention, 1952; UN High Commissioner for refugees (UNHCR)
non-refoulement concept 151, 152
regulation
see also accountability; Better Regulation; transparency
allocation and exercise of dimensions of control 265
audit processes 268
centralized and de-centralized responsibility over EU regulatory regimes 267–8
challenge of regulatory regimes in the EU 264–70
definitions 264–5, 266
delegation 264, 269
extension of concepts 266
fragmentation, regulatory 269
improved 283–9
independent regulation doctrine 272
information exchange 85
as interdisciplinary field 263
Meroni doctrine 266, 273
meta-doctrines of accountability for 270–89
non-state actors 267–8
norms 265–6, 267–8
overall regulatory governance in the EU 266–7
oversight, regulatory 269
regulatory acts, four-part test 436–8
regulatory agencies, US 265, 271–2
regulatory independence and institutional balance 271–4
Smart Regulation 285, 286
whether legislative act ‘regulatory’ 434–5
Regulation 1049/2001 (30 May 2001), security exceptions under 194, 195–9
regulatory impact assessment (RIA) 285
Index

regulatory independence 271–4
Regulatory Scrutiny Board 286, 288
Regulatory Technical Standards (RTS) 211
breaches of 218–19
Commission role in adoption of 226–8
draft, power of ESAs to prepare 222–6
Research Network for EU Administrative Law (ReNEUAL) 94, 262, 503, 575
Book V 88
Book VI 41, 92, 102–3
Model Rules on EU Administrative Procedure 37, 38, 85, 91, 108, 111
integrated approach of 102–3
Reuter, Paul 46, 47
Rivero, Jean 45, 66
Robert Schuman Project, Commission 248
Rödl, Florian 180
Romano (Giuseppe) v Institut National d’Assurance Maladie-Invalidité (1981) 218, 219, 220
Rowe, G 293, 306
RTS see Regulatory Technical Standards (RTS)
rule of law 6, 10, 14, 16, 56, 75, 184, 268, 298, 307, 361, 533, 541, 562, 572, 578
breach or infringement of 111, 304–5, 351
due process of law, analysis 468, 479, 487
and human rights 132, 134
international law/perspectives 560, 561
post-crisis governance and Fiscal Compact 168, 173
rule-making executive 371–98
Better Regulation Agenda 387–9
constitutional change and legal-institutional practice 380–89
differentiation 373–4
entrenching or constraining authority 394–8
institutional focus 373, 374
and law 394–8
versus law-making tout court 371
legislative versus non-legislative acts 383, 387, 437
mapping of 373–80
participation in 385–9
proceduralization 374–5
Schengen Borders Code case 375–6
scope and nature 375–6
selected procedural duties 389–94
powers of European Supervisory Authorities 222–36
Commission role in adoption of RTS 226–8
post-legislative guidance 233–6
to prepare draft RTS and ITS 222–6, 233
right of objection by Parliament and Council 228–33
selected procedural duties case law 393–4
duty of care 392–4
duty to give reasons 390–92
varied spectrum of forms and authors 377–80
Santer Commission, fall of 35, 60, 322, 344, 357
Scharpf, Fritz 173
Schengen Agreement, 1985 100, 138
Schengen area 151, 152
Schengen Implementing Agreement, 1990 (CISA) 93, 138–9
Schengen Information System (SIS) 39, 83, 93, 100
Schlesinger, Helmut 175
Schmidt-Aßmann, Eberhard 37, 76
Schmitt, Carl 179
Schneider, Jens-Peter 3, 6, 38
Schuman Declaration (May 1950) 47, 48, 55
Schuman Plan 46, 47, 51, 61
Schwarze, Jürgen 4, 66, 307, 315, 474, 475, 481, 572
Scott, Colin 8, 270

secondary law

annulment of decision, action for 295–6
court decisions 293
data protection 100
financial administrative law 357–8
Implementing Rules 357
informational mutual assistance 87–8
multijurisdictional issues 109–10

secrecy

business secrets 101
classification of documents 199
complex legal pluralism regarding 99–101
defence of 196
EU official secrets, exceptions to 195–202
informational sovereignty over state secrets 97–8
necessary/unnecessary 190
privacy by design in EU information systems 101–2
professional secrets 101, 301–2
Securities and Markets Stakeholder Group 223

security exceptionalism 188–208
see also secrecy

and 9/11 189, 193
accountability, tailoring to 202–6
case law 193, 194, 195, 196, 197, 198, 204, 205, 206, 207
Common Foreign and Security Policy (CFSP) 195, 199
Data Retention and Investigatory Powers Act, 2014 193, 205–6
decision-making 188
democratic gap 188
emergency situations 189, 193, 205, 207
EU powers in security 191–2
in European Union 191–4
information exchange 192–3, 203
Intelligence Analysis Centre (INTCEN) 192, 201, 202
judicial review 197
mandatory exception 195

under Regulation 1049/2001 194, 195–9
reinforcement 189
security, EU powers in 191–2
Terrorist Finance Tracking Program (TFTP) 190, 201, 204
transparency and EU official secrets, exceptions to 195–202
sensitive information 191, 195, 198, 199
access to 203–4
context-sensitive 95–6
services, free movement of 137
Services Directive 255–6, 284
Shapiro, Martin 10, 44, 63, 469, 477, 487
shared administration 35
Sideri, K 233
Simpler Legislation in the Internal Market (SLIM) programme 284, 285
Single European Acts 51, 138, 321
Single Market Acts 255, 257
Single Market, European 55, 209, 242, 254, 491, 500
Single Supervisory Mechanism (SSM) 182

Sison v Council (Sison I and II), 2005 and 2007 195, 196, 197, 198
Slaughter, Anne-Marie 133
Slovakia, accession to the EU 140
Slovenia, accession to the EU 140
Smart Regulation 285, 286
Snowden, Edward 190
Social Fund 54
soft law 8, 261, 367, 498, 528, 559
see also hard law

bindedness question 234
complaints systems 504, 506
and ESAs 211, 233, 234, 235
judicial control 567–8
regulatory accountability, mega-doctrines 275, 277, 290
SOLVIT complaints system 14, 249, 259, 261, 498, 506–7, 515
SOLVIT+ cases 506
sound management principle 59
sovereign debt crisis 164
sovereignty
  informational, over state secrets 97–8
  Member States 267
  preservation of over national borders 50
  shared 24, 42
  Soviet Union, collapse of 138
  Spain, accession to the EU 138
  Special Reports 281, 282, 283
  Spitzenkandidaten process 318, 319
  Stability and Growth Pact 165, 166, 175, 177
  Stability or Convergence Programmes (SCPs) 340
  Statement of Assurance (DAS) 344, 349, 351, 357, 359, 367
  Stein, Eric 446
  Stephenson, P 280, 281
  Stone Sweet, Alec 13, 253, 469, 472
  supervisory bodies, legal protection by 110–11
  supranational technocratic rule, implementing Fiscal Compact through 169–74
deliberative supranationalism 170, 171
  Sutherland Report, 2005 253, 284
  Sweden, accession to the EU 139
  Sweden and Turco v Council (2008) 196, 218, 382
  access to documents 402, 408–9, 410
  SWIFT Agreement, 2010 323

technocratic rule
  crisis and legitimate technocratic rule 178–84
  accountability 182–4
  conditionality governance, fiscal centralization and austerity 179–80
  and Fiscal Compact 180–82
  supranational, implementing Fiscal Compact through 169–74
  Telefónica SA and Telefónica de España SAU v Commission (2014) 435
  territoriality
  Community principle of 26
  fading notion of, within the EU 28
  hegemony of states over territory 53
  territorially distinct administrations, prior to creation of European communities 24
  trans-territorial reach of national decisions 25
  Terrorist Finance Tracking Program (TFTP) 190, 201, 204
  Tetra Laval formula, judicial review 310–11
  thematic approach to administrative law 1–17
  see also administrative law
  accountability and control 7–9
  ‘administrative space’ 2–3
  authoritarianism and administrative law 6–7
delineating administrative law 3–6
  impact and outreach 14–17
  voice, citizenship and process 9–14
  ‘third pillar’ 139
  Thym, D 70
  Timmermans, Frans 287
  Toggenburg, Gabriel 6
  Trade in Services Agreement (TiSA) 418
  Transatlantic Trade and Investment Partnership (TTIP) 397, 399–400, 418, 513, 577
  transnational networks 557
  transparency
  see also accountability
  constitutional change and legal-institutional practice 382–4
  EU Transparency Register 225
  exceptions to 194, 195–202
  information exchange 103–4
  transsexuals 130
  travaux préparatoires 434
  Treaty of Amsterdam, 1997 139, 327, 400
  Treaty of Lisbon, 2007
  access to documents 400–401, 417, 419
'agency-blind' language of the EU Treaties, ending of 124 and Charter of Fundamental Rights 131
Index 607

Turco judgement see Sweden and Turco v Council (2008)
Türk, A 293, 306
Turkey, accession negotiations 140
UN High Commissioner for refugees (UNHCR) 145, 153, 563
Statistical Yearbook 2014 157
UN Paris Principles on National Human Rights Institutions 121–3
Unión de Pequeños Agricultores (‘UPA’) v Council (2000) 433, 439, 441
United Nations Economic Commission for Europe (UNECE) 16
United States
administrative justice 494
Interstate Commerce Commission 271–2
National Security Agency 191
regulatory agencies in 265, 271–2
value for money 279–83

Value for Money (VFM) audits 349
Van Gend en Loos judgment 426–7
Vesterdorf, Bo 308
Voßkuhle, Andreas 77
Vos, Ellen 10

Water Framework Directive 259
Weber, Max 53, 54, 266
‘Weberian’ administration 28
Weimar Republic, dissolution of 179
whistleblowing 277
White Paper on Governance (WPEG), 2001 212–13, 503, 506
Winzen, T 327, 333–4
Working Arrangement on Continuous Monitoring Activities 563
World Customs Organization 565
World Heritage Committee 558
World Trade Organization (WTO) 547

Yolka, Philippe 76
Yugoslavia, dissolution of 138