

# Contents

<i>Map</i>	xvii
<i>Preface</i>	xix
<i>Abbreviations</i>	xxiii
<i>Table of Cases</i>	xxv
<i>Table of Treaties, Instruments and Legislation</i>	lxxiii
<i>Table of Equivalents</i>	xcix
<i>Electronic Working Paper Series</i>	cv
<i>Time Line</i>	cvii

<b>1 European Integration and the Treaty on European Union</b>	<b>1</b>
1 Introduction	1
2 Europe and the European Union	4
(i) The idea of Europe	4
(ii) The idea of 'European Union'	7
3 The European Communities	11
(i) From the Treaty of Paris to the Treaty of Rome	11
(ii) EEC Treaty	13
(iii) Emergence of two visions of EU law: intergovernmental and supranational	14
(iv) Early enlargements	20
(v) Single European Act	20
4 Establishment of the European Union	23
(i) Road to Maastricht	23
(ii) Maastricht and the Union's three legitimation strategies	24
(iii) Ratification of Treaty on European Union and end of permissive consensus	28
(iv) Treaty of Amsterdam	29
5 Recasting the Borders of the European Union	30
6 Decade of Institutional Reform	35
(i) European Union Charter of Fundamental Rights and Treaty of Nice	35
(ii) Constitutional Treaty	36
(iii) Road to the Lisbon Treaty	38
(iv) Lisbon Treaty	39
(a) Two treaties of equal value: Treaty on European Union and Treaty on the Functioning of the European Union	40
(b) Lisbon Treaty and a democratic identity for Europe?	42
(c) Lisbon and the recasting of the Union public sphere	46

<b>7</b>	<b>Sovereign Debt Crisis and the European Union</b>	<b>46</b>
	(i) European Stability Mechanism	48
	(ii) Fiscal compact and the 'six-pack'	50
	(iii) Integration and disintegration beyond the crisis	53
	Further reading	56
<b>2</b>	<b>The EU Institutions</b>	<b>57</b>
1	Introduction	57
2	EU Institutions and the Institutional Framework	59
3	The Commission	63
	(i) The Commission bureaucracy	63
	(a) College of Commissioners	63
	(b) Directorates-General	65
	(c) Cabinets	66
	(d) Modus operandi of the Commission	66
	(ii) Powers of the Commission	67
	(a) Legislative and quasi-legislative powers	67
	(b) Agenda-setting	72
	(c) Executive powers	74
	(d) Supervisory powers	75
	(iii) Regulatory agencies and the Commission	78
4	Council of Ministers	80
	(i) Powers and workings of the Council	80
	(ii) Decision-making within the Council	82
	(iii) Management of the Council: the Presidency, the Secretariat and COREPER	86
5	European Council	88
	(i) Powers of the European Council	89
	(ii) European Council President	91
	(iii) European Council within the EU institutional settlement	92
6	European Parliament	94
	(i) Composition and authority of the European Parliament	94
	(ii) Powers of the European Parliament	98
	(a) Legislative powers of the European Parliament	100
	(b) Powers over the Executive	101
	(c) Financial powers of the Parliament	103
7	Court of Auditors	103
	Further reading	103
<b>3</b>	<b>Union Law-making</b>	<b>106</b>
1	Introduction	106
2	Allocation of Legislative Procedures	108
3	EU Legislation	111
	(i) Binding instruments in EU law	111
	(ii) Soft law	114
4	Union Legislative Procedures	117
	(i) Ordinary legislative procedure	117
	(a) Central features of the ordinary legislative procedure	117
	(b) Legislative practice and the ordinary legislative procedure	119
	(c) First reading and the trilogue	120
	(ii) Consultation procedure	123
	(iii) Consent procedure	126

5	National Parliaments and Representative Democracy	127
	(i) National parliaments and political dialogue	128
	(ii) National parliamentary policing of the subsidiarity principle	131
	(iii) National parliaments: a third legislative chamber?	132
6	Differentiated Law-making	135
	(i) Enhanced cooperation	135
	(ii) Other differentiated law-making within the EU Treaty framework	138
	(iii) Differentiated law-making outside the EU Treaty framework	141
7	Comitology	144
8	EU Law-making: The Measure of its Democracy	151
	Further reading	155

## 4 The EU Judicial Order 156

1	Introduction	156
2	Court of Justice of the European Union	157
	(i) Court of Justice	158
	(ii) General Court	161
	(iii) European Union Civil Service Tribunal	163
3	Architecture of the EU Judicial Order	164
	(i) Judicial cooperation and competition within the EU judicial order	164
	(ii) Subjects of the EU judicial order	171
	(iii) Unified Patent Court as a challenge to the EU judicial order	173
4	Functions of the Preliminary Reference Procedure	174
	(i) Development of EU law	174
	(ii) Judicial review of EU institutions	177
	(iii) Preserving the unity of EU law	179
	(iv) Dispute resolution	183
5	Management of the EU Judicial Order	186
	(i) Managing the circumstances in which national courts refer	186
	(ii) Binding effects of Court of Justice judgments	192
	(iii) Protection of the parties' positions	195
	Further reading	197

## 5 The Authority of EU law 199

1	Introduction	199
2	Genesis of EU Legal Authority	200
3	Claims of EU Legal Authority	204
	(i) Autonomy of EU law	204
	(ii) Primacy of EU law	208
	(iii) Pre-emption	209
	(iv) Fidelity principle	213
4	Foundations of EU Legal Authority	215
	(i) Pedigree of EU legal authority	215
	(ii) Reasons for EU legal authority	217
5	Conditional Authority of EU Law	222
	(i) EU law and national fundamental rights	225
	(ii) Ultra vires review	229
	(iii) EU law and protection of democratic authority	235
	Further reading	245

<b>6</b>	<b>Fundamental Rights</b>	<b>247</b>
1	Introduction	247
2	Fundamental Rights and the Schema of the Treaties	249
3	Substance of EU Fundamental Rights Law	250
	(i) National constitutional traditions and the ECHR in EU fundamental rights law	251
	(ii) European Union Charter of Fundamental Rights	254
4	Standard of Protection of Fundamental Rights	259
	(i) Formal parameters of interpretation	261
	(ii) Development of fundamental rights in the light of EU objectives	266
5	Fundamental Rights and the Institutional Scheme of the European Union	275
	(i) Fundamental rights and the EU institutions	275
	(ii) Fundamental rights and the Member States	280
6	European Union Accession to the European Convention for the Protection of Human Rights	288
	Further reading	290
<b>7</b>	<b>Rights and Remedies in National Courts</b>	<b>291</b>
1	Introduction	291
2	Direct Effect and the Idea of an EU Right	293
3	Direct Effect and Development of Individual Rights	295
	(i) Relaxing the criteria: towards a test of justiciability	295
	(ii) Member State's duty to protect individual rights and emergence of horizontal direct effect	296
4	Direct Effect and the Development of EU Remedies and Procedures	298
	(i) Union oversight of local remedies in domestic courts	300
	(ii) EU law procedures and remedies in national courts	305
5	Direct Effect and EU Secondary Legislation	308
	(i) Direct effect of Directives	308
	(ii) Incidental direct effect	313
6	Indirect Effect	316
	(i) Evolution of indirect effect	316
	(ii) Duty to disapply and fundamental rights	321
	(iii) Duty to refrain from compromising EU law	323
7	State Liability	325
	(i) Arrival and challenges of Member State liability	325
	(ii) Conditions of liability	328
	(iii) Liability of judicial institutions	333
	Further reading	335
<b>8</b>	<b>The Infringement Proceedings</b>	<b>337</b>
1	Introduction	337
2	Different Dimensions to the Infringement Proceedings	339
	(i) Policing compliance with EU law	340
	(ii) An instrument for securing satisfactory performance of Union policies	343
	(iii) A public law framework to structure domestic negotiation of EU law	348
3	Scope of Member State Responsibilities	351
	(i) Acts and omissions of all state agencies	351
	(ii) Accountability of state actors	355
4	Different Stages of Article 258 TFEU Proceedings	357
	(i) EU Pilot	357
	(ii) Letter of formal notice and Member State observations	359
	(iii) Reasoned Opinion and period for national compliance	360

5	Administration of the Infringement Proceedings	363
	(i) Commission's discretion over the management of the proceedings	363
	(ii) Complainants and Article 258 TFEU	368
6	Sanctions and Article 260 TFEU	371
	(i) Article 260 TFEU and two routes to sanctions	371
	(ii) Level and form of sanctions levied under Article 260 TFEU	374
	Further reading	377
<b>9</b>	<b>Governance</b>	<b>379</b>
1	Introduction	379
2	Governance Agenda	381
	(i) Norms of governance	382
	(ii) Features of governance	383
3	Participatory Democracy and the European Citizens' Initiative	388
4	Subsidiarity and Proportionality	393
	(i) An outline of the subsidiarity and proportionality principles	393
	(ii) Subsidiarity	394
	(iii) Proportionality	399
	(iv) Subsidiarity, proportionality and 'Smart Regulation'	405
5	Consultation	406
	(i) General standards and the minimum principles for consultation	406
	(ii) Dialogue within the consultation process	407
	(iii) Transparency of the consultation process	410
	(iv) Inclusiveness of EU consultation	411
6	Transparency	412
	(i) Scope of the right of access to documents	412
	(ii) Exceptions to the right of access to information	414
	Further reading	422
<b>10</b>	<b>Judicial Review</b>	<b>423</b>
1	Introduction	423
2	Scope of Judicial Review and Article 263 TFEU	425
3	Grounds of Review	428
	(i) Lack of competence	428
	(ii) Manifest error of assessment and abuse of power	429
	(iii) Rights of process	433
	(a) Rights of defence	433
	(b) Right to a hearing	437
	(c) Right to good administration	437
	(iv) Infringement of the Treaties or of any rule of law relating to their application	439
	(a) Non-discrimination	439
	(b) Legal certainty	441
	(c) Legitimate expectations	442
4	Standing under Article 263 TFEU	443
	(i) Privileged and semi-privileged applicants	443
	(ii) Non-privileged applicants	444
	(a) Regulatory acts and legislative acts	444
	(b) Direct concern and implementing measures	446
	(c) Individual concern and <i>Plaumann</i>	448
	(d) Standing and interest groups	452

- 5 Article 265 TFEU and the Failure to Act 455
- 6 Plea of Illegality 457
- 7 Non-contractual Liability 458
  - (i) Quality of the breach of EU law 459
  - (ii) Presence of loss caused by the Union 462
- 8 Consequences of Annulment 464
  - Further reading 465
  
- 11 Citizenship of the Union 466**
  - 1 Introduction 466
  - 2 Evolution of Modern Citizenship 468
  - 3 Nature of Union Citizenship 471
  - 4 Right to Move and Reside within the Union 475
    - (i) Conditions of residence 478
    - (ii) Overcoming obstacles to migration 481
      - (a) Prohibition of discrimination 481
      - (b) Scope of the prohibition 482
      - (c) Restrictions on movement 484
      - (d) Citizenship and social assistance 487
      - (e) Real links and integration 489
      - (f) Internal situation and reverse discrimination 491
    - (iii) Family rights 494
      - (a) The EU idea of the family 495
      - (b) Separation, death and divorce 497
      - (c) Rights of children and carers 498
      - (d) Family members arriving from outside the Union 503
    - (iv) Administrative formalities 506
    - (v) Grounds for exclusion 508
  - 5 Political Rights of Union Citizens 513
    - Further reading 515
  
- 12 EU Law and Non-EU Nationals 517**
  - 1 Introduction 517
  - 2 Union Competences on Border Checks, Asylum and Immigration 519
    - (i) Central competences 519
    - (ii) Differentiated integration and EU border control, asylum and immigration policy 520
  - 3 Non-EU Nationals and the Area of Freedom, Security and Justice 524
    - (i) Economic mercantilism 526
    - (ii) National security and national sovereignty 528
      - (a) Frontiers as national markers 528
      - (b) Criminalisation of migration 531
      - (c) External frontier 534
    - (iii) Humanitarianism 536
    - (iv) European solidarity 539
  - 4 'Unwelcome Foreigners': Returns Directive 544
  - 5 'Desirable Foreigners': Worker Residents and Long-term Residents 546
    - (i) Acquisition of employment and long-term residence status 547
    - (ii) Rights acquired against the host state 549

- 6 'Suspicious Foreigners': EU Regime on International Protection 554
  - (i) Right to remain pending examination of the application and to individual examination of the application 555
  - (ii) Provision of material reception conditions 557
  - (iii) Policing of applicants through welfare 559
- 7 'Poor Foreigners': Refugees and Subsidiary Protection 562
  - (i) Acquisition of refugee status 563
  - (ii) Subsidiary protection 565
  - (iii) Benefits of international protection 567
 Further reading 568

## 13 Equal Opportunities Law and Policy 569

- 1 Introduction 569
- 2 Development of EU Equal Opportunities Law 571
  - (i) Economic versus non-economic visions of EU law 571
  - (ii) Sources of equal opportunities law 573
  - (iii) Equal opportunities versus substantive equality 577
  - (iv) Common core of EU equal opportunities: the labour market 578
- 3 Equality Grounds 581
  - (i) Sex/gender 583
  - (ii) Racial or ethnic origin 585
  - (iii) Religion or belief 586
  - (iv) Disability 587
  - (v) Age 590
  - (vi) Sexual orientation 591
  - (vii) Excluded groups 593
- 4 Discrimination: Meaning, Defences and Remedies 596
  - (i) Direct discrimination 596
  - (ii) Indirect discrimination 597
    - (a) Concept of indirect discrimination 597
    - (b) Legitimate aim defence 599
  - (iii) Harassment 600
  - (iv) Defences 601
    - (a) Genuine occupational requirements 601
    - (b) Other defences 603
  - (v) Remedies 608
    - (a) Procedures 608
    - (b) Compensation 610
- 5 Widening the Scope of EU Equal Opportunities Policy 611
  - (i) Beyond the labour market 612
  - (ii) Positive action 614
  - (iii) Dialogue 616
  - (iv) Mainstreaming 618
 Further reading 622

## 14 EU Criminal Law 623

- 1 Introduction 623
- 2 Characterising EU Criminal Law 625
  - (i) Member States and internal security 626
  - (ii) Rationales of EU criminal law: augmentation of national security and European Union public order 629

(iii)	Mediation of domestic and Union security concerns	634
(a)	Retention of pre-Lisbon Treaty normative order	634
(b)	National controls over the law-making process	635
(c)	Differentiated integration	636
3	Judicial Cooperation in Criminal Justice	638
(i)	Principle of mutual recognition	638
(ii)	European Arrest Warrant	640
(a)	European Arrest Warrant and duties of surrender	640
(b)	European Arrest Warrant and rights of defence	642
(c)	European Arrest Warrant and principles of legality and proportionality	647
(d)	European Arrest Warrant and national citizenship	649
(iii)	Principle of <i>ne bis in idem</i>	651
4	Harmonisation and Increased Criminalisation through EU Law	655
(i)	Euro-crimes	657
(ii)	EU criminal law and regulatory effectiveness of other EU policies	661
5	European Union Rights of Victims	661
	Further reading	666
<b>15</b>	<b>The Internal Market</b>	<b>667</b>
1	Introduction	667
2	Purpose of the Internal Market	668
3	Legal Framework of the Internal Market	670
4	Competence to Legislate	677
5	Techniques of Regulation	687
(i)	Old and new approaches	687
(ii)	Mechanics of the new approach	689
(iii)	Minimum harmonisation	692
6	Non-economic Interests in the Internal Market	693
7	Regulatory Competition	697
	Further Reading	702
<b>16</b>	<b>Economic and Monetary Union</b>	<b>704</b>
1	Introduction	704
2	Central Pillars of Economic and Monetary Union Prior to the Crisis	707
(i)	Delors Blueprint for economic and monetary union	707
(ii)	Four pillars of economic and monetary union prior to the crisis	709
3	Differentiated Obligations of Economic and Monetary Union	713
4	Revised Institutional Architecture after the Crisis	714
(i)	Earthquake of the European sovereign debt crisis	714
(ii)	More extensive Union oversight and disciplining of national fiscal and economic performance	717
(iii)	Formalisation of financial support to sustain euro area state public finances	720
(iv)	Extension of powers of European Central Bank	720
(v)	Composite architecture of economic and monetary union	722
5	European Central Bank and European System of Central Banks	725
(i)	European Central Bank and its decision-making bodies	725
(ii)	Independence and accountability of European Central Bank	726
(iii)	Tasks of European Central Bank	731
(a)	Monetary policy	731
(b)	Prudential supervision	733
(c)	Lender of last resort	736



6	European Stability Mechanism	740
7	Europeanisation of Economic, Employment and Budgetary Policy through the European Semester	745
8	Sanction Procedures for Significant Observed Deviations from the MTBO, Excessive Imbalances and Excessive Deficits	748
	Further reading	753
<b>17</b>	<b>The Free Movement of Goods</b>	<b>754</b>
1	Introduction	754
2	General Definition of a Measure Equivalent to a Quantitative Restriction	756
	(i) <i>Dassonville</i>	757
	(ii) Limits of the notion of a MEQR	759
	(iii) Form of a MEQR	763
	(iv) <i>De minimis</i>	765
	(v) Internal situation	766
	(vi) Article 34 TFEU and private actors	768
3	Product Standards and <i>Cassis de Dijon</i>	773
	(i) Mutual recognition	776
	(ii) Mandatory requirements	779
	(a) Consumer protection	780
	(b) Protection of the environment	783
4	Selling Arrangements and <i>Keck</i>	786
	(i) Notion of a selling arrangement	790
	(ii) Unequal effect of selling arrangements	792
5	Article 35 TFEU and Restrictions on Exports	794
	Further Reading	796
<b>18</b>	<b>The Free Movement of Services</b>	<b>798</b>
1	Introduction	798
2	Regulating the Services Market	800
3	Cross-border Services	802
	(i) What is a service?	802
	(ii) Cross-border element	803
	(iii) Remuneration	805
4	Restrictions on the Movement of Services	808
	(i) Notion of a restriction on the provision of services	808
	(ii) Horizontal application of Article 56 TFEU	813
5	Justifying Restrictions on Services	820
	(i) Restrictions on marketing and prices	822
	(ii) Access to regulated industries and professions	825
	(iii) Tax and investment issues	828
6	Services and the Market Society	830
	(i) Right to trade and socially sensitive services	830
	(ii) The market society	832
	(iii) Article 56 TFEU and the welfare state	833
7	Services Directive	842
	(i) Scope of application of Services Directive	842
	(ii) Administrative simplification	843
	(iii) Right to provide and receive services	844
	(iv) Administrative cooperation	845
	Further reading	846

<b>19</b>	<b>The Pursuit of an Occupation in Another Member State</b>	<b>848</b>
1	Introduction	848
2	Taking Up and Pursuit of an Occupation in Another Member State	849
	(i) Employment and self-employment	851
	(ii) Performance of significant economic activity in another Member State	853
	(iii) Cross-border element	856
	(iv) Right to pursue an occupation in another Member State	856
3	Restrictions on the Taking Up of an Occupation	859
	(i) Discriminatory restrictions on taking up an occupation	859
	(ii) Equally applicable restrictions on taking up an occupation	860
	(iii) <i>De minimis</i> : limits of the right to take up an occupation	863
	(iv) Restrictions on secondary establishment	864
	(v) Restrictions on the use of diplomas and qualifications	866
	(vi) Restrictions on grounds of abuse of free movement	873
4	Restrictions on the Pursuit of an Occupation	875
	(i) Discrimination in labour markets	876
	(ii) Discrimination in the pursuit of a business	878
	(iii) Equally applicable restrictions on the pursuit of an occupation	879
5	Free Movement of Companies	883
	(i) Discrimination and foreign companies	883
	(ii) Movement of companies and reincorporation	884
6	Services Directive and Freedom of Establishment	890
	Further reading	891
<b>20</b>	<b>Trade Restrictions and Public Goods</b>	<b>892</b>
1	Introduction	892
2	Balancing Free Movement Against other Interests	893
3	Public Goods Protected under EU Law	894
4	Principles Mediating Conflicts between Free Movement and Public Goods	899
	(i) The measure must be necessary	901
	(ii) The measure must be effective	906
	(iii) Arbitrary discrimination and mutual recognition	911
	(iv) The measure must be the least restrictive option	914
	(v) The measure must be procedurally fair	922
5	Environmental Protection	925
6	Public Health	930
7	Public Policy, Public Security and Public Morality	933
8	Public Service and Official Authority	937
	Further reading	941
<b>21</b>	<b>EU Competition Law: Function and Enforcement</b>	<b>942</b>
1	Introduction	942
2	Aims of EU Competition Law	944
	(i) Economics of competition	944
	(ii) Politics of competition law	950
	(iii) Aims of EU competition policy	953
	(iv) Impact of the economic crisis	955

<b>3</b>	<b>Enforcement by the Commission</b>	<b>957</b>
	(i) First stage: investigation	958
	(a) Requests for information and interviews	958
	(b) Inspections	960
	(ii) Second stage: adjudication	963
	(a) Statement of objections and access to the file	963
	(b) Oral hearing	964
	(iii) Penalties for infringement	965
	(a) Fining policy	966
	(b) Leniency policy	969
	(iv) Commitment decisions	971
	(v) Commission's procedures: an assessment	973
	(vi) Commission's performance	977
<b>4</b>	<b>Resettlement of Competition Regulatory Authority</b>	<b>978</b>
	(i) Modernisation	978
	(ii) Commission's new role	981
	(iii) European Competition Network	982
	(a) Case allocation	982
	(b) Cooperation within the Network	983
	(iv) Modernisation in practice	984
	(v) Modernisation and the courts	987
<b>5</b>	<b>Private Enforcement</b>	<b>988</b>
	(i) An EU law right to damages	989
	(ii) Commission initiatives	992
	(iii) Assessment	995
	Further reading	995
<b>22</b>	<b>Antitrust and Monopolies</b>	<b>997</b>
<b>1</b>	<b>Introduction</b>	<b>997</b>
<b>2</b>	<b>Scope of Application of EU Competition Law</b>	<b>999</b>
	(i) Undertakings	999
	(ii) Effect on trade between Member States	1001
	(iii) Excluded agreements	1003
<b>3</b>	<b>Article 101 TFEU: Restrictive Practices</b>	<b>1006</b>
	(i) Agreements, decisions and concerted practices	1007
	(a) Cartels	1008
	(b) Distinguishing between agreement and unilateral action	1014
	(ii) Object or effect the restriction, distortion or prevention of competition	1018
	(a) Background	1018
	(b) Agreements restrictive of competition by object	1020
	(c) Agreements having an anti-competitive effect	1022
	(iii) Role of Article 101(3) TFEU	1025
	(a) Individual exemptions	1026
	(b) Block Exemptions	1029
<b>4</b>	<b>Article 102 TFEU: Abuse of a Dominant Position</b>	<b>1031</b>
	(i) Dominance	1032
	(a) Market shares	1033
	(b) Additional factors	1033
	(ii) Abuse of dominance: general principles	1035
	(iii) Predatory pricing	1038

19	(iv) Reform	1041
	(v) Response by the Court of Justice	1046
5	Hidden Side of Competition Law Enforcement	1049
	Further reading	1051
<b>23</b>	<b>State Aid Law</b>	<b>1052</b>
1	Introduction	1052
2	Role of State Aid Law in the EU	1053
	(i) Justifications for state aid control	1053
	(ii) Commission's state aid policy	1055
3	Meaning of State Aid	1057
	(i) Intervention by the Member State or through state resources	1058
	(a) Necessary involvement of state resources	1058
	(b) State involvement	1060
	(ii) Intervention gives the recipient an advantage	1061
	(iii) Intervention is selective	1063
	(a) Geographical selectivity	1064
	(b) Material selectivity	1065
	(iv) Effect on trade and restriction of competition	1069
	(a) Overly broad standards	1069
	(b) <i>De minimis</i> aid	1070
4	Enforcement and Supervision	1071
	(i) Commission supervision	1071
	(ii) Enforcement	1072
	(a) Recovery	1072
	(b) Private enforcement	1074
5	Exemptions	1076
	(i) Overview	1076
	(ii) Better targeted aid and Europe 2020	1077
	(iii) Better targeted aid enforcement	1080
	(iv) Rescuing banks	1082
	Further reading	1085
	<i>Index</i>	1087