

# Contents

<i>Table of Abbreviations</i>	xxvii
<i>Table of Cases</i>	xxxii
<i>Table of Legislation</i>	li
<i>Table of Proposed Legislation</i>	cxvii
<b>Chapter 1: Introduction</b>	<b>1</b>
<b>Chapter 2: Institutional Framework</b>	<b>4</b>
2.1. Introduction	4
2.2. Overview of the institutional framework	5
2.2.1. Framework prior to the Treaty of Amsterdam	9
2.2.1.1. Framework prior to the Maastricht Treaty	9
2.2.1.2. Framework in the Maastricht Treaty	10
2.2.2. Treaty of Amsterdam	17
2.2.2.1. Immigration, asylum, and civil law	19
2.2.2.2. Policing and criminal law	24
2.2.2.3. Integrating the Schengen <i>acquis</i>	36
2.2.3. Treaty of Lisbon	41
2.2.3.1. Overview	41
2.2.3.2. General provisions	48
2.2.3.3. Transitional rules	61
2.2.3.4. Special decision-making rules	64
2.2.3.4.1. The emergency brake	65
2.2.3.4.2. The 'pseudo-veto'	70
2.2.4. Competence issues	71
2.2.5. Territorial scope	73
2.2.5.1. United Kingdom and Ireland	74
2.2.5.1.1. Border controls	74
2.2.5.1.2. Title v TFEU	74
2.2.5.1.3. Schengen Protocol	79
2.2.5.1.4. Pre-existing third pillar measures	82
2.2.5.1.5. Opt-out by repeal?	83
2.2.5.2. Denmark	85
2.2.5.3. Accession States	88
2.2.5.4. Norway, Iceland, Switzerland, and Liechtenstein	90
2.2.5.5. General rules on enhanced cooperation	93
2.3. Human rights	96
2.4. Relationship with other EU law	108
2.4.1. Competence issues, 1993–1999	108
2.4.2. Treaty of Amsterdam	110
2.4.3. Treaty of Lisbon	117

2.5.	Legitimacy and accountability	118
2.6.	EU funding	123
2.7.	External relations	127
2.7.1.	General rules on EU external relations	127
2.7.2.	External relations and the former third pillar	131
2.8.	Conclusions	135
<b>Chapter 3: Border Controls</b>		<b>136</b>
3.1.	Introduction	136
3.2.	Institutional framework and overview	138
3.2.1.	Framework prior to the Treaty of Amsterdam	138
3.2.1.1.	EEC Member States' cooperation pre-Maastricht	138
3.2.1.2.	Schengen integration	140
3.2.1.3.	Maastricht-era framework and overview	141
3.2.2.	Treaty of Amsterdam	142
3.2.2.1.	Institutional framework	142
3.2.2.2.	Overview of practice	144
3.2.3.	Treaty of Lisbon	146
3.2.4.	Competence issues	150
3.2.5.	Territorial scope	157
3.3.	Human rights	162
3.3.1.	International human rights law	162
3.3.2.	Application to EU law	166
3.4.	The impact of other EU law	168
3.4.1.	Free movement law	168
3.4.2.	Association agreements	174
3.4.3.	Other issues	176
3.5.	Internal border controls	178
3.6.	External border controls: basic rules	182
3.6.1.	Schengen Borders Code	184
3.6.2.	Entry-exit system	197
3.6.3.	Assessment	199
3.7.	Schengen Information System	201
3.7.1.	Current Schengen Information System	201
3.7.2.	SIS II	203
3.7.3.	Assessment	208
3.8.	Local border traffic	210
3.9.	Biometric passports	214
3.10.	Operational cooperation	216
3.10.1.	Frontex	216
3.10.2.	Other operational cooperation	220
3.10.3.	Assessment	220

3.11. Administrative cooperation and EU funding	221
3.12. External relations	222
3.13. Conclusions	225
<b>Chapter 4: Visas</b>	<b>226</b>
4.1. Introduction	226
4.2. Institutional framework and overview	227
4.2.1. Framework prior to the Treaty of Amsterdam	227
4.2.2. Treaty of Amsterdam	229
4.2.2.1. Institutional framework	229
4.2.2.2. Overview of practice	231
4.2.3. Treaty of Lisbon	233
4.2.4. Competence issues	234
4.2.5. Territorial scope	237
4.3. Human rights	241
4.4. The impact of other EU law	242
4.4.1. Free movement law	242
4.4.2. Association agreements	245
4.4.3. Other issues	248
4.5. Visa list	249
4.5.1. Overview	249
4.5.2. Visa lists	250
4.5.3. Exceptions	253
4.5.4. Visa reciprocity	254
4.5.5. Analysis	255
4.6. Visa format	256
4.7. Conditions for issuing visas	258
4.7.1. Overview and background	258
4.7.2. The visa code	261
4.7.3. Other rules governing the issue of visas	270
4.7.4. Analysis	271
4.8. Visa Information System	271
4.8.1. Legal framework	271
4.8.2. Analysis	279
4.9. Freedom to travel	281
4.10. Administrative cooperation and EU funding	287
4.11. External relations	287
4.11.1. Visa waiver treaties	288
4.11.2. Visa facilitation treaties	290
4.11.3. Other EU measures	293
4.12. Conclusions	293

<b>Chapter 5: Asylum</b>	<b>295</b>
5.1. Introduction	295
5.2. Institutional framework and overview	297
5.2.1. Cooperation prior to the Treaty of Amsterdam	297
5.2.2. Treaty of Amsterdam	298
5.2.3. Treaty of Lisbon	303
5.2.4. Competence issues	307
5.2.5. Territorial scope	312
5.3. Human rights	314
5.3.1. International human rights and refugee law	314
5.3.2. Application to EU law	323
5.4. The impact of other EU law	324
5.4.1. Asylum and EU citizens	324
5.4.2. Other issues	326
5.5. Uniform status	328
5.5.1. Current qualification Directive	328
5.5.2. Proposal for amendment	340
5.6. Temporary protection	342
5.7. Common procedures	345
5.7.1. Current asylum procedures Directive	345
5.7.2. Proposal for amendment	355
5.8. Responsibility for applications	357
5.8.1. The Schengen Convention and the Dublin Convention	358
5.8.2. The 'Dublin II' Regulation	360
5.8.3. Eurodac	363
5.8.4. Proposals for amendment	366
5.9. Reception conditions	368
5.9.1. Current reception conditions Directive	368
5.9.2. Proposal for amendment	373
5.10. Administrative cooperation and EU funding	375
5.10.1. European Asylum Support Office	375
5.10.2. Other measures	377
5.11. External relations	379
5.12. Conclusions	380
<b>Chapter 6: Legal Migration</b>	<b>382</b>
6.1. Introduction	382
6.2. Institutional framework and overview	383
6.2.1. Cooperation prior to the Treaty of Amsterdam	383
6.2.2. Treaty of Amsterdam	384
6.2.3. Treaty of Lisbon	388
6.2.4. Competence issues	391
6.2.5. Territorial scope	397

6.3.	Human Rights	398
6.3.1.	The right to family reunion, family life, and private life	398
6.3.2.	The right to non-discrimination	404
6.3.3.	Other human rights of migrant workers	405
6.3.4.	Application to EU law	405
6.4.	Impact of other EU law	408
6.4.1.	EU free movement law	409
6.4.2.	Social security coordination	415
6.4.3.	Association agreements	417
6.4.4.	Posting of workers	427
6.4.5.	Social policy	429
6.4.6.	Commercial policy	430
6.5.	Primary migration	433
6.5.1.	General rules on labour migration	434
6.5.2.	Specific categories of workers	437
6.5.2.1.	Highly-skilled workers	437
6.5.2.2.	Other workers	450
6.5.3.	Researchers	451
6.5.4.	Non-economic migrants	456
6.6.	Family reunion	459
6.6.1.	General rules	460
6.6.2.	Special rules	473
6.7.	Long-term residents	478
6.7.1.	General rules	478
6.7.2.	Special rules	483
6.8.	Social security coordination	485
6.9.	Residence permits and long-stay visas	487
6.9.1.	Residence permits	488
6.9.2.	Long-stay visas	492
6.10.	Integration policy	493
6.11.	Administrative cooperation and EU funding	495
6.12.	Conclusions	498
<b>Chapter 7: Irregular Migration</b>		<b>500</b>
7.1.	Introduction	500
7.2.	Institutional framework and overview	501
7.2.1.	Framework prior to the Treaty of Amsterdam	501
7.2.2.	The Treaty of Amsterdam	502
7.2.2.1.	Institutional framework	502
7.2.2.2.	Overview of practice	503
7.2.3.	The Treaty of Lisbon	506
7.2.4.	Competence issues	508
7.2.5.	Territorial scope	511

7.3.	Human rights	513
7.3.1.	European Convention on Human Rights	513
7.3.2.	Geneva Convention and detention issues	516
7.3.3.	Other rights	520
7.3.4.	Application to EU law	520
7.4	The impact of other EU law	522
7.4.1.	Free movement law	522
7.4.2.	Association agreements	528
7.5.	Prevention of irregular migration	530
7.5.1.	Carrier sanctions	531
7.5.2.	Passenger data	533
7.5.3.	Facilitation of unauthorized entry and residence	535
7.5.4.	Trafficking in persons	539
7.5.5.	Immigration liaison officers	544
7.6	Treatment of irregular migrants	546
7.6.1.	Sanctions against employers of irregular migrants	546
7.6.2.	Victims of trafficking or smuggling in persons	557
7.7.	Expulsion	561
7.7.1.	Returns Directive	563
7.7.2.	Mutual recognition of expulsion measures	575
7.7.3.	Transit for expulsion	578
7.7.3.1.	Expulsion via air	578
7.7.3.2.	Expulsion via land or sea	581
7.7.4.	Joint expulsion flights	582
7.8.	Administrative cooperation and EU funding	583
7.9.	External relations	585
7.9.1.	Readmission agreements	586
7.9.2.	Irregular migration and external relations policy	589
7.10.	Conclusions	594
<b>Chapter 8: Civil Cooperation</b>		<b>595</b>
8.1.	Introduction	595
8.2.	Institutional framework and overview	595
8.2.1.	Cooperation prior to the Treaty of Amsterdam	595
8.2.1.1.	Cooperation prior to the Maastricht Treaty	595
8.2.1.2.	Cooperation from Maastricht to Amsterdam	597
8.2.2.	The Treaties of Amsterdam and Nice	598
8.2.2.1.	Institutional framework	598
8.2.2.2.	Overview of practice	599
8.2.3.	Treaty of Lisbon	603
8.2.4.	Competence	607
8.2.5.	Territorial scope	618

8.3.	Human rights	621
	8.3.1. The right to a fair trial	621
	8.3.2. Application to EU law	622
8.4.	Impact of other EU law	624
8.5.	Overview of legislation adopted	628
	8.5.1. Mutual recognition, enforcement, and jurisdiction	629
	8.5.2. Service of documents	632
	8.5.3. Conflict of laws	634
	8.5.4. Transmission of evidence	637
	8.5.5. Access to justice	637
	8.5.6. Civil procedure	639
	8.5.7. Alternative dispute resolution	641
	8.5.8. Judicial training	642
8.6.	Family law	642
8.7.	European contract law	644
8.8.	Administrative cooperation and EU funding	646
	8.8.1. European Judicial Network	646
	8.8.2. EU funding	647
8.9.	External relations	648
8.10.	Conclusions	653
<b>Chapter 9: Criminal Law: Mutual Recognition and Criminal Procedure</b>		<b>655</b>
9.1.	Introduction	655
9.2.	Institutional framework and overview	656
	9.2.1. Cooperation before the Treaty of Amsterdam	656
	9.2.2. The Treaty of Amsterdam	658
	9.2.2.1. Institutional framework	658
	9.2.2.2. Implementing the Treaty of Amsterdam	659
	9.2.2.3. Basic principles of mutual recognition in criminal law	661
	9.2.3. Treaty of Lisbon	664
	9.2.4. Competence issues	667
	9.2.5. Territorial scope	673
9.3.	Human rights	675
	9.3.1. Right to a fair trial	675
	9.3.2. Legality of criminal law	681
	9.3.3. Search and seizure	682
	9.3.4. Detention	682
	9.3.5. Application to EU law	684
9.4.	Impact of other EU law	688
9.5.	Extradition and the European Arrest Warrant	693
	9.5.1. Extradition	693
	9.5.2. European Arrest Warrant	696

9.6. Pre-trial measures	710
9.6.1. Movement of evidence	710
9.6.1.1. Mutual assistance in criminal matters	711
9.6.1.2. European Evidence Warrant	713
9.6.1.3. European Investigation Order	715
9.6.1.4. Criminal records	716
9.6.2. Freezing orders	719
9.6.3. Recognition of pre-trial supervision orders	721
9.7. Post-trial measures	723
9.7.1. Enforcement of sentences	723
9.7.1.1. Financial penalties	724
9.7.1.2. Custodial penalties	725
9.7.2. Consequences of convictions	729
9.7.3. Disqualification	729
9.7.4. Confiscation orders	730
9.7.5. Probation and parole	734
9.7.6. European Protection Order	736
9.8. Domestic criminal procedure	738
9.8.1. Evidence law	738
9.8.2. Suspects and defendants	739
9.8.3. Victims of crime	744
9.9. Administrative cooperation and EU funding	749
9.10. External relations	750
9.11. Conclusions	752
<b>Chapter 10: Substantive Criminal Law</b>	<b>754</b>
10.1. Introduction	754
10.2. Institutional framework and overview	755
10.2.1. Framework prior to the Treaty of Amsterdam	755
10.2.2. Treaty of Amsterdam	756
10.2.3. Treaty of Lisbon	759
10.2.4. Competence issues	762
10.2.5. Territorial scope	766
10.3. Human rights	767
10.3.1. International human rights law	767
10.3.2. Application to EU law	768
10.4. EU criminal law and other areas of EU law	769
10.4.1. Community criminal law competence	769
10.4.1.1. Before the Treaty of Lisbon	769
10.4.1.2. After the Treaty of Lisbon	774
10.4.2. Criminal law as a restriction on free movement rights	777
10.4.3. Scope of the relationship	779



10.5.	Offences	780
10.5.1.	Range of offences	780
10.5.1.1.	EC law prohibitions	781
10.5.1.2.	EU law offences	783
10.5.1.3.	EC criminal law measures	791
10.5.2.	Scope of offences	794
10.5.2.1.	Liability of legal persons	794
10.5.2.2.	Inchoate offences	797
10.5.2.3.	Complicity	799
10.5.2.4.	Possession	800
10.5.2.5.	Omissions	800
10.5.3.	Conditions of criminal liability	801
10.5.4.	Defences	802
10.6.	Penalties	803
10.7.	Administrative cooperation	806
10.8.	External relations	807
10.9.	Conclusions	808
<b>Chapter 11: Criminal Law: Jurisdiction, Coordination, and Prosecution</b>		<b>810</b>
11.1.	Introduction	810
11.2.	Institutional framework and overview	811
11.2.1.	Cooperation before the Treaty of Amsterdam	811
11.2.2.	Treaty of Amsterdam	812
11.2.3.	Treaty of Lisbon	813
11.2.4.	Competence issues	816
11.2.5.	Territorial scope	818
11.3.	Human rights	819
11.3.1.	International human rights law	819
11.3.2.	Application to EU law	821
11.4.	Impact of other EU law	822
11.5.	Asserting jurisdiction	823
11.6.	Conflicts of jurisdiction	827
11.7.	Transfer of proceedings	834
11.8.	Double jeopardy	834
11.8.1.	Legal framework	835
11.8.2.	Interpreting the rules	838
11.9.	Eurojust	855
11.10.	European Public Prosecutor	858
11.11.	External relations	860
11.12.	Conclusions	861

<b>Chapter 12: Policing and Security</b>	<b>862</b>
12.1. Introduction	862
12.2. Institutional framework and overview	863
12.2.1. Cooperation prior to the Treaty of Amsterdam	863
12.2.2. Treaty of Amsterdam	864
12.2.2.1. Institutional Framework	864
12.2.2.2. Implementing the Treaty of Amsterdam	866
12.2.3. Treaty of Lisbon	868
12.2.4. Competence issues	873
12.2.5. Territorial scope	877
12.3. Human rights	879
12.3.1. International human rights law	879
12.3.2. Application to EU law	882
12.4. Impact of other EU law	885
12.4.1. Customs cooperation	885
12.4.2. Police cooperation	887
12.4.3. The private sector and security	890
12.4.3.1. Private security industry	890
12.4.3.2. Private sector security cooperation	892
12.4.4. Transport security and infrastructure protection	892
12.4.5. Anti-terrorist sanctions	894
12.4.6. OLAF	900
12.4.7. Other measures	901
12.5. Crime prevention	905
12.6. Exchange of information	906
12.6.1. EU databases	907
12.6.1.1. Schengen Information System	907
12.6.1.2. Customs Information System	910
12.6.1.3. Access to the Visa Information System	912
12.6.1.4. Access to Eurodac	913
12.6.2. Access to national databases	913
12.6.3. Ad hoc exchange of information	914
12.6.4. Data protection	919
12.6.4.1. General rules on data protection	919
12.6.4.2. Specific rules on data protection	921
12.6.5. Assessment	923
12.7. Other forms of police cooperation	924
12.7.1. Controlled deliveries	925
12.7.2. European Police College	925
12.7.3. Police Chiefs' Task Force	926
12.7.4. Other measures	927
12.8. Europol	930

12.9.	Cross-border operations	934
12.9.1.	Hot pursuit	934
12.9.2.	Surveillance	937
12.9.3.	Covert operations	938
12.9.4.	Joint operations and investigations	939
12.9.5.	Special intervention units	941
12.10.	EU funding	941
12.11.	External relations	942
12.12.	Conclusions	943

<i>Appendix I</i>	945
<i>Appendix II</i>	953
<i>Bibliography</i>	965
<i>Index</i>	973

CCJ  
 CRAS  
 CETS  
 CIRBA  
 CIREFI  
 CIS  
 CFI  
 CFR  
 CFSF  
 CMLK  
 CMLIV  
 COTD  
 COSI  
 CUP  
 CYEIS  
 DCFR  
 DNA  
 EASO  
 EAW  
 EC  
 ECF