

Index

- absolute supremacy *see* supremacy
- 'abuse of rights' doctrine, 'letter-box companies', 630–4
- academic resources, how to find, Appendix 4
- accession *see* association and accession
- Acheson, Dean, 'Schuman Plan', and, 5
- '*acte clair*' doctrine, preliminary rulings, 395–6
- adjudicatory powers *see* judicial powers, European
- administrative powers
 - centralised enforcement model, 335
 - scope, 336
 - subsidiarity, 340
 - decentralised enforcement model
 - national administrative acts, and, 347
 - national administrative autonomy, and, 347
- Advocates General *see* Court of Justice
- African, Caribbean and Pacific Group of States (ACP) *see* Development Cooperation
- Agencies of the Union *see* Commission
- approximation (harmonisation) *see* positive integration
- atypical work *see* employment law
- audit *see* Court of Auditors
- barriers to trade, removal of
 - illegal *see* negative integration
- bilateral association *see* association and accession
- bilateral trade agreements *see* Common Commercial Policy
- Block Exemption Regulations *see* cartels
- Bretton Woods system, *see* Economic and Monetary Policy
- budget
 - deficits, 'golden rule', 787
 - Parliament's powers, 168–9
- 'bundling' *see* dominant undertakings
- capital, free movement *see* free movement of capital
- cartels
 - anti-competitive object or effect, 724–5
 - Block Exemption Regulations, 734
 - concerted practices, 721–2
 - cooperation agreements, 717–19, 735
 - de minimis* rule, 730
 - direct exemptions, 732–3
 - distribution agreements, 717–19, 736
 - effect on trade, 722–4
 - exclusive distribution agreements, 737–8
 - exemptions, 732
 - forms of collusion, 717
 - horizontal agreements, 717–19, 735
 - inter-brand and intra-brand competition, 725–6
 - jurisdictional aspects, 712–13
 - non-appreciable restrictions, 730
 - parallel conduct, 721–2
 - '*per se* rules', 726–8
 - restrictions by effect, 728–30
 - restrictions by object, 726–8
 - restrictions of competition, 724–5
 - 'Rule of Reason', 728–30
 - selective distribution agreements, 737–8
 - 'single economic unit' doctrine, 715–17
 - substantive aspects, 724
 - 'tacit acquiescence' or 'unilateral conduct', 719–21
- Treaty provisions, 712–13, 769
- 'undertaking', concept of, 713–15
- vertical agreements, 717–19, 736
- Charter of Fundamental Rights
 - 'incorporation doctrine', 479–85
 - limitations, 461–4
 - principles and rights, 460–1
 - relations with other European Treaties, 465–7
 - status, 30–1, 37, 458
 - structure and content, 458–60
- 'Chicago School' *see* competition law
- citizenship
 - Citizenship Directive, 641
 - equal treatment, 643–6
 - European Citizenship, 639–48
 - 'horizontal' rules, free movement rights and, 590
 - public policy-based limitations, 652
 - Public Service Exception, 648–51
 - residency rights, 642–3
 - Treaty provisions, 638
- Civil Service Tribunal *see* Court of Justice of the European Union
- co-decision procedure *see* Parliament
- cohesion policy
 - Cohesion Fund, 835–7
 - creation of, 828
 - development of, 828
 - dimensions of, 828
 - Europe 2020 Strategy, 831
 - European Regional Development Fund
 - implementation, 834
 - objectives, 831
 - national distribution, 829
 - objectives, 831
 - overview, 830
 - Structural and Investment Funds, 829–31

- Title, 829
 collusion *see* cartels
 Comitology, delegated legislative powers, and, 317
 Commission
 administrative organs, 194
 Commissioners, 194
 Common Foreign and Security Policy, 26
 composition, 190–1
 decision-making, 195–7
 delegated legislative powers, 316
 European Agencies
 creation, 199–201
 delegated powers, 332–5
 functions, 201
 structure, 201–2
 executive powers, 311
 functions and powers, 197
 origin in ECSC, 7–8
 policy instruments, 313–14
 President, 192–4
 status, 189–90
 ‘Stockholm Programme’, 315–16
 structure, 190–1
 supranational nature, 8–10, 14
 Treaty of Nice, 30–1
 trilogues, 252–5
 Common Agricultural Policy
 common market organisations, 582–4
 horizontal harmonisation (‘new’ CAP), 584–6
 introduction, 579
 negative and positive integration in relation, 579
 objectives, 580–1
 pre-emption of national law, 582–4
 Title III, 579–80
 vertical harmonisation (‘old’ CAP), 581–2
 Common Commercial Policy (CCP), 838
 Common Foreign and Security Policy (CFSP)
 EU special competences in relation, 277–9
 generally, 271–2
 sui generis nature, 279, 80–306
 decision-making procedures
 distinctiveness, 285
 institutional arrangement, 286
 voting arrangements, 287
 direct effect, 280
 High Representative for Foreign Affairs and Security Policy, 182
 intergovernmentalism, 26
 restrictive measures
 counter-terrorism measures, second pillar of EU, 26–7
 Treaty of Lisbon, 37, 38–9
 common market organisations
 Common Agricultural Policy, 582
 pre-emption of national law, 582–4
 term, use of, 581n
 Community law *see* European law
 companies
 definition, 621–2
 Delaware effect, 621
 European Company (Societas Europaea (SE)), 636–51
 European Cooperative Society (SCE), 636–51
 European Economic Interest Grouping (EEIG), 636–51
 ‘failing company defence’ (USA), 768n
 freedom of establishment
 ‘abuse of rights’ doctrine, 630–4
 ‘companies’ defined, 621–2
 company law directives, 634–6
 corporate forms, 636–51
 Home State restrictions, 622–4
 Host State restrictions, 624–5
 ‘letter-box companies’, 630–4
 material scope, 625–6
 personal scope, 621–2
 positive integration, 634
 primary establishment, 626–8
 secondary establishment, 629
 Treaty provisions, 620–1
 incorporation theory, 621
 ‘letter-box companies’, ‘abuse of rights’ doctrine, 630–4
 real seat theory, 621
 competence
 categories, 240
 complementary competences, 245–7
 coordinating competences, 245
 exclusive competences, 241–2
 external *see* external competences
 general competences, 233
 harmonisation competence, 233–5
 minimum harmonisation competences, 243–5
 overview, 263
 pre-emption and, 146
 residual competence, 235–8
 scope, 228–9
 shared competences, 242–3
 supremacy and, 133–6
 teleological interpretation, 230–3
 ‘competence-competence’ (*Kompetenz-Kompetenz*) concept, 62
 ‘competing’ foreign goods, discriminatory taxation, 516–19
 competition law
 cartels *see* cartels
 ‘Chicago School’, 710, 724–5
 ‘competition’ defined, 710
 competition rules overviewed, 712,
 dominant undertakings *see* dominant undertakings
 ‘Harvard School’, 710, 724–5
 merger control *see* merger control
 origins of Treaty provisions, 711
 pillars of, 712, 769
 private undertakings *see* cartels
 state interferences *see* public undertakings; State aid
 Treaty provisions, 711, 769
 US law, 710
 Completing the Internal Market White Paper, 576–7
 concerted practices *see* cartels
 consistent interpretation principle *see* judicial powers, national
 constitutional structure
 alternative views, 44
 American theory *see* federalism
 development summarised, 39–40
 European theory
 application to EU, 62
 ‘competence-competence’ (*Kompetenz-Kompetenz*), 62
 confederation versus federation, 50–2
 constitutional denials, 67–70
 ‘democratic deficit’, 70–1
 indivisibility of sovereignty, 50
 international law theory, 64–7
 Kelsen’s critique, 53–4
 Maastricht Treaty ratification, and, 64–7
 Schmitt’s critique, 54–5
 sui generis theory, 44, 62–4
 federalism *see* federalism
 sovereignty in relation, 43–4 *see also* institutions
 Constitutional Treaty 2004
 failure, 4, 32
 ‘total revision’ approach to EU, 33–5
 consumer protection
 ‘consumer’, concept of, 815
 Consumer Rights Directive, 817–18
 contract formation, 817–19
 dual approach to harmonisation, 815
 freedom of contract, realist critique, 819
 indirect effect, 816

- consumer protection (cont.)
 omission from Rome Treaty, 813
 principal competence, 815
 Product Liability Directive, 824–7
 proportionality, 539–40
 Sales Directive, 818–19
 selected measures, 816
 specific competence, 814
 Treaty provisions, 814
 Unfair Commercial Practices Directive, 822–4
 Unfair Terms Directive, 819–22
 consumer use restrictions, prohibition, 527–30
 contracts, consumer *see* consumer protection
 cooperation agreements *see* cartels
 cooperative federalism, positive integration, 569
 ‘coronation theory’ *see* economic union
 corporate tax rates, 566
 Council of Europe
 aim, 4
 establishment, 3–4
 Council of Ministers
 Committee of Permanent Representatives (Coreper), 180
 Common Foreign and Security Policy, 26
 composition and configurations, 177–8
 decision-making, 183–7
 decisional supranationalism, 14–18
 functions, 187–8
 High Representative for Foreign Affairs and Security Policy, 182
 international nature, 14
 origin in ECSC, 7–8
 powers, 187–8
 Presidency, 178–9
 qualified majority voting *see* qualified majority voting
 role, 176
 SEA reforms, 21
 specialised committees, 180–2
 Treaty of Maastricht, 22
 Treaty of Nice, 30–1
 trilogues, 252–5
 voting, 183–7
Courage doctrine *see* judicial powers, national
 Court of Auditors
 audit procedures, 222
 decision-making, 221
 establishment, 220
 functions and powers, 221
 structure, 221
 Court of First Instance (CFI) *see* General Court
 Court of Justice
 Advocates General, 206
 composition and structure, 204–5
 decisional supranationalism, 17–18
 origin in ECSC, 7–8
 SEA reforms, 21
 Treaty of Nice, 30–1
 Court of Justice of the European Union (CJEU)
 Civil Service Tribunal, 208–9
 European court system, 203–4
 judgments, how to find, 897
 judicial procedures, 209–11
 judicial reasoning, 211–12
 jurisdiction *see* judicial powers, European
 overview, 203
 powers *see* judicial powers, European
see also Court of Justice; General Court
 customs duties
 definition, 506
 exceptions to prohibition, 509–11
 as fiscal barrier, 506
 prohibition, 506–9
 customs union
 definition, 12–13, 491
 free trade area contrasted, 12
 Turkey *see* association and accession
 Davignon Report, political integration proposals, 18–19
 de Gaulle, General Charles, ‘Luxembourg Compromise’, 15–16
de minimis rule, cartels, 730
 decisions
 definition, 92
 non-addressed decisions, direct effect, 94
 specifically addressed decisions, direct effect, 93–4
 Delaware company law, ‘letter-box companies’, 621–2
 delegated powers *see* executive powers
 Delors Commission, establishment, 576
 ‘democratic deficit’, constitutional theory and, 70–1
 derogations
 free movement of capital *see* free movement of capital
 ‘incorporation doctrine’, 478–9
 merger control, 768
 positive integration, 560–4
 Development Cooperation, 838
 differential integration
 definition, 23
 Economic and Monetary Policy, 786–9
 supranationalism, and, 23
 direct applicability
 direct effect in relation, 79–80
 regulations, of, 90–2
 direct effect
 decisions *see* decisions
 direct applicability in relation, 79–80
 doctrine of, 79–80, 280n, 336
 incidental horizontal direct effect, 101–3
 internal market *see* direct effect
 international agreements *see* international agreements
 monist and dualist theories, 76–8
 no-horizontal-direct-effect rule
 exception, 101–3
 limitation, 100–1
 operation, 98–9
 problem of, 116
 norm, as, 115
 regulations *see* regulations
 test, 84–6, 115
 Treaties, 81–4
Van Gend en Loos case, 77–9, 81–4
 vertical and horizontal direct effect, 86–8
 direct responsibility doctrine *see* fundamental rights
 directions, positive integration, 554
 directives
 definition, 95
 direct effect, limitations, 96–8
 incidental horizontal direct effect, 101–3
 indirect effect
 European law, via, 106–10
 national law, via, 103–6, 115
 no-horizontal-direct-effect rule
 exception, 101–3
 limitation, 100–1
 operation, 98–9
 problem of, 116
 positive integration, 551
 pre-emptive capacity, 143–4
 ‘discretionary pricing’ *see* dominant undertakings
 discrimination
 free movement of capital, 685
 free movement of services, 664–6
 free movement of workers, 601–5
 freedom of establishment, 614–16
 negative integration, 502
 ‘reverse discrimination’, 504–6

- dismissal *see* employment law
 distribution agreements *see* cartels
 domestic law *see* national law
 dominant undertakings
 ‘bundling’, 753–5
 ‘discretionary pricing’, 751
 justifications, 755–6
 market abuse, 739–40
 ‘Market’, concept of, 741–3
 market dominance
 abuse of, 747–8
 collective dominance, 745–7
 generally, 743–4
 ‘predatory pricing’, 748–50
 ‘refusal to supply’, 750–1
 Treaty provisions, 769
 ‘tying’, 753–5
 dualism, direct effect of European law,
 and, 76–8
- Economic and Monetary Policy
 Bretton Woods system, and, 775
 complexity, 777
 differential integration *see* differential
 integration
 economic convergence, 776
 economic coordination, 777
 European Monetary System, 775
 Eurozone inflation rate, 792
 financial assistance, 782–5
 financial stability, 792–4
 monetary integration, 775
 overview, 778
 price stability, 789–92
 Stability and Growth Pact, 779–82
 Treaty provisions, 777
- economic convergence *see* Economic
 and Monetary Policy
 economic sanctions *see* Common
 Foreign and Security Policy
 (CFSP)
- economic union
 ‘coronation theory’, 18n
 Hague Summit, 18
 internal policies, and, 774
 Treaty of Maastricht, 22
 Werner Report, 18 *see also* monetary
 union
- EEC Treaty *see* Treaty of Rome 1957
 effectiveness principle *see* judicial
 powers, national
- elections *see* Parliament
- employment law
 atypical work, 802–5
 ‘employment’ defined, 594–6
 equal pay principle, 808–10
 equal treatment, 811
 pay discrimination, 811
 positive action, 811
 protection against dismissal, 805–8
 protection at work, general
 principles, 800–1
 enforcement *see* administrative powers;
 judicial powers, European
 enlargement policy *see* association and
 accession
 equal pay principle *see* employment law
 equal treatment
 citizenship, 643–6
 employment law, 811
 equivalence principle *see* judicial
 powers, national
- ERTA doctrine *see* external
 competences
- ‘essential core’ doctrine *see* fundamental
 rights
- ‘essential elements’ doctrine *see*
 executive powers
- establishment *see* freedom of
 establishment
- Europe 2020 Strategy *see* cohesion policy
- European Agencies *see* Commission
- European Atomic Energy Community
 (Euratom)
 creation, 4
 integration into EU, 39
- European Central Bank (ECB)
 administrative structure, 216–18
 decision-making, 218–19
 establishment, 25, 213
 functions and powers, 219–20
 internal divisions, 218–19
 model, 790
 monetary policy, 789–92
 status, 214–16
- European citizenship *see* citizenship
- European Coal and Steel Community
 establishment, 4
 ‘Schuman Plan’, 5
 supranational structure, 7–10
- European Communities
 European Union in relation, 23
 first pillar of EU, 25–6
 Treaty of Amsterdam, 29
 Treaty of Lisbon, 38–9
 Treaty of Maastricht, 23 *see also*
 European Coal and Steel
 Community; European
 Economic Community
- European Company (Societas Europaea
 (SE)) *see* companies
- European Convention on Human
 Rights 1950 (ECHR)
 constitutional preconditions for
 Union accession, 472–5
 direct review post-accession, 471–2
- entry into force, 4n
 ‘incorporation doctrine’, 486
 indirect review pre-accession,
 468–71
 influence, 467–8
 standard for Union acts, 468
- European cooperation
 growth of, 4 *see also* supranationalism
- European Cooperative Society (SCE)
 see companies
- European Council
 Common Foreign and Security
 Policy
 institutional arrangement, 286
 ‘intergovernmental’ character,
 26, 286
 international character, 26
 policy-making role, 285, 286
 voting arrangements, 287
 composition, 172
 decision-making, 173
 establishment, 19
 executive powers, 311
 functions and powers, 174–6
 Laeken Declaration, 32
 meetings, 173
 policy instruments, 312
 President, 173–4
 status, 172
 ‘Stockholm Programme’, 314–16
 Treaty of Maastricht, 23
 Treaty of Nice, 31
- European Court of Human Rights
 (ECtHR), establishment, 4n
- European Court of Justice (ECJ) *see*
 Court of Justice
- European Defence Community (EDC),
 failure, 10–12,
- European Development Fund *see*
 Development Cooperation
- European Economic Community
 (EEC)
 establishment, 4, 12–13
 supranational decisionmaking,
 14–18
 supranational legal system, 13–14
- European Economic Interest Grouping
 (EEIG) *see* companies
- European Free Trade Association
 (EFTA)
 establishment, 12n
- European law
 direct effect *see* direct effect
 domestic law in relation, 76–81
 dualism, and, 76–8
 ‘incorporation doctrine’, and,
 476–7
 indirect effect, 106–10

- European law (cont.)
 internal policies as basis, 774
 international law contrasted, 9,
 13–14
 invocability, procedural limits,
 418–21
 legislation *see* legislative procedures
 monism, and, 76–8
 monist and dualist theories, 76–8
 normative quality, 9, 13–14
 pre-emption *see* pre-emption
 secondary law
 forms of, 80–1, 89
 how to find, 893 *see also* decisions;
 directives; international
 agreements; regulations
 State liability for judicial breaches,
 427–30
 supranational nature, 13–14
 supremacy *see* supremacy
 European Monetary System (EMS)
 see Economic and Monetary
 Policy
 European Political Community, failure,
 11–12
 European Regional Development
 Fund *see* cohesion policy
 European System of Central Banks
 (ESCB)
 establishment, 25
 monetary policy, 789–92
 European Union
 constitutional development
 summarised, 39–40
 dual Treaty basis, 36
 establishment, 4, 23
 European Communities in relation,
 23
 historical overview, 6
 international personality, 268
 legal pragmatism, 31
 ‘new’ EU *see* Treaty of Lisbon
 ‘old’ EU *see* Treaty of Maastricht
 policies and internal actions, 230
 Schengen Agreement, and, 29
 Eurozone *see* Economic and Monetary
 Policy
 executive powers
 administrative powers *see*
 administrative powers
 Comitology, 317
 core functions, 310
 delegated implementing powers
 agencies, 332–5
 constitutional safeguards, 318–29
 control of, 326
 ‘*Meroni* doctrine’, 334–5
 scope of provisions, 329–32
 delegated legislative powers
 advent of, 310
 constitutional safeguards, 317
 ‘essential elements’ doctrine,
 321–4, 332, 348
 judicial safeguards, 321–4
 ‘non-delegation’ doctrine, 317
 political safeguards, 324–6
 system of, 316–18
 Treaty provisions, 318–21
 dual executive, 311–12
 executive acts, types of, 317
 ‘executive federalism’, 311
 informal governmental procedures,
 314–16
 ‘*Meroni* doctrine’, 334–5
 ‘non-delegation’ doctrine, 317
 policy instruments, 312–14
 power of decision, 309–10
 residual character, 309
 system summarised, 348–9
 ‘exhaustion of rights’ doctrine,
 intellectual property, 543–5
 exports, quantitative restrictions,
 530–2
 external competences
 Common Foreign and Security
 Policy
 generally, 271–2
 special competences in relation,
 277–9
 sui generis nature of competence,
 280–1
 conferral of, 305
 ERTA doctrine, 273–7, 282
 external objectives of EU, 269
 functional succession doctrine,
 295–6, 456
 implied external powers doctrine
 (Opinion 1/76 doctrine),
 development of, 277n, 282, 299,
 international personality of EU,
 268
 international treaties, rise of, 268
 Locke’s ‘federative’ power definition,
 268
 nature of, 279–306
 provisions generally, 269–71
 ‘residual’ treaty power
 background, 273
 codification, 275–7
 development of implied powers
 doctrine, 274–5
 special external powers
 CFSP in relation, 277–9
 generally, 272–3
 split between Treaties, 269
 subsequent exclusive treaty powers
 critique of, 283–4
 generally, 281
 types, 281–3
 ‘WTO doctrine’, 281
 external policies
 see association and accession;
 Common Commercial
 Policy; Common Foreign and
 Security Policy; Development
 Cooperation
 external procedures
 CFSP-specific procedures *see*
 Common Foreign and Security
 Policy
 generally, 284–5, 306
 shared powers
 duty of cooperation, 301–2
 mechanisms, 297
 Member States as ‘trustees of the
 Union’, 302–3
 mixed agreements, 298–301
 ‘open federation’ model, 297, 307
 restrictions on the exercise of
 shared State power, 303–5
 ‘reversed’ subsidiarity, 303
 treaty-making *see* treaty-making
 procedure
 trustees doctrine, 302–3
 family members, workers’ *see* free
 movement of workers
 federal model of negative integration,
 539
 federalism
 American tradition, emergence of, 45
 application to EU, 44, 55
 Comitology system, 317
 confederation versus federation,
 50–2
 division of powers in EU, 60
 EU as ‘mixed’ constitution, 61, 72–4
 EU as Union of States and peoples,
 58–60
 EU Treaties as Constitutional Treaty,
 56–8
 ‘executive federalism’, 311
 ‘in between’ international and
 national structure, 45
 judicial system, 404, 405
 Kelsen’s critique, 53–4
 Madisonian theory, 45–8
 ‘mixed’ constitution, 48–9, 55, 61,
 72–4
 Schmitt’s critique, 54–5
 sovereignty in relation, 48–9, 50–2
 ‘State Constitutions’, 69
 ‘federative’ power, Locke’s definition,
 268

- financial assistance *see* Economic and Monetary Policy
 financial stability *see* Economic and Monetary Policy
 fiscal barriers
 customs duties *see* customs duties
 discriminatory taxation *see* taxation
 flowchart, 518 (figure)
 foreign affairs *see* Common Foreign and Security Policy; external competences; external procedures
 former workers *see* free movement of workers
Francovich doctrine *see* judicial powers, national
 free movement of capital
 ‘capital’, concept of, 683–5
 derogations
 special derogations for third-country restrictions, 702
 special grounds of justification, 702–3
 special standards of justification, 703–4
 Treaty provisions, 696–7
 direct effect, 683
 direct taxation, discrimination test, 688–91
 discrimination, 685
 free movement of services in relation, 695–6
 freedom of establishment in relation, 692–5
 justifications for restrictions
 tax discriminations, 697–701
 Treaty provisions, 696–7
 nature of, 679–80
 non-discriminatory capital restrictions, 686–8
 other freedoms in relation, 692
 restrictions on capital, 685
 scope of, 679–80, 706
 status of, 705,
 free movement of goods, overview, 495
 free movement of persons
 citizenship rules *see* citizenship
 distinctions within, 652
 economic rationale, 590
 flowchart, 592
 general rights, 592
 harmonisation competences, 592
 overview, 591
 public policy-based limitations, 652
 scope, 652
 scope of provisions, 590
 workers *see* free movement of workers
 free movement of services
 addressees and beneficiaries, 658–61
 ambivalent approach to, 656
 discrimination, 664–6
 free movement of capital in relation, 695–6
 general regime, 657–8
 negative integration, 656, 658, 705–6
 positive integration, 656, 666–70, 705–6
 public services, cross-border provision, 675–9
 service providers, posted workers, 670–5
 ‘services’, concept of, 661–4
 Services Directive, 666–70
 special regimes, 670
 status of, 655–6, 705
 free movement of workers
 discrimination, 601–5
 ‘employment’ defined, 594–6
 family members, 599–601
 former workers and job-seekers, 597–9
 national social security systems
 national coordination, 607–10
 positive integration, 606–7
 ‘single legislation’ principle, 610–11
 Treaty provisions, 592 (figure)
 free trade area
 customs union contrasted, 12
 definition, 491
 freedom of contract, realist critique, 819
 freedom of establishment
 companies *see* companies
 discrimination, 614–16
 free movement of capital in relation, 692–5
 mutual recognition of professional qualifications, 617–19
 natural persons
 material scope, 614–16
 negative integration, 612
 personal scope, 612–14
 positive integration, 617–19
 Treaty provisions, 611–12
 self-employed persons, 612–14
 Freedom, Security and Justice
 ‘Stockholm Programme’, 314–16 *see also* Justice and Home Affairs
 functional succession doctrine *see* external competences
 fundamental freedoms, internal market and, 491
 fundamental rights
 Charter *see* Charter of Fundamental Rights
 direct responsibility doctrine, 468
 ‘essential core’ doctrine, 453–4, 464
 European Convention on Human Rights, 486n
 general principles of European law, and, 476–7
 implementation situation, 477
 private actions, 486–7
 judicial review, 446
 limitations, 453–4
 sources, 446
 standard of, 450–2
 supremacy and, 131–3
 general competences, positive integration, 551–3
 General Court (Court of First Instance)
 composition and structure, 207
 establishment, 21
 Germany
 budget deficits, ‘golden rule’, 787
 central bank, model of, 790
 Common Agricultural Policy, and, 579
 companies, real seat theory, 621
 competence limits, 133–6
 corporate governance structure, 652
 Council representation, 184
 direct effect, and, 114–15,
 ECSC, and, 5
 ‘essential core’ doctrine, 453–4, 464
 European Convention on Human Rights, and, 486n
 European Parliament representation, 158n, 159, 162,
 executive powers, 311, 335
 external sovereignty, 297
 federalism, 44, 52–5, 61
 governmental liability for lawful acts, 379
 indirect effect, and, 106–10
 international law, status of, 121
 judicial federalism, 405
 judicial powers, 405n, 407
 legislative pre-emption, and, 144
 liability principle, and, 424n, 426n
 Lisbon Treaty ratification, 35
 ‘Maastricht Decision’, 22n, 64–7, 133–6
 non-discrimination and equivalence principle, 408–9
 pension rights for migrant workers, 609
 public service, theory of, 674
 residual competence, and, 238
 social security system, 606

- Germany (cont.)
 sovereignty, 50n
 standing before European Court ('Plaumann test'), 365–6
 'State Constitutions', 69
 supremacy, and, 120, 127, 131–6
- Hague Summit 1969, proposals on
 European integration, 18
- harmonisation *see* positive integration
- 'Harvard School' *see* competition law
- High Representative for Foreign Affairs
 and Security Policy, functions
 and powers, 182
- 'home state control' principle, negative
 integration, 539
- horizontal competence, internal market,
 552, 555
- horizontal direct effect *see* direct effect
- horizontal harmonisation
 Common Agricultural Policy and,
 584–6
 competence, 552
- 'host state control' principle, negative
 integration, 501
- human rights *see* fundamental rights
- illegal trade barriers, removal of *see*
 negative integration
- implied external powers doctrine
 (Opinion 1/76 doctrine),
 development of, 277n, 282,
 299
- implied powers doctrine, development
 of, 274–5
- imports, quantitative restrictions,
 519–20
- incidental horizontal direct effect *see*
 direct effect
- 'incorporation doctrine' *see*
 fundamental rights
- incorporation theory *see* companies
- indirect effect *see* directives
- institutions
 correlation with national institutions,
 151
 governmental functions, 156–7
 governmental structure summarised,
 223
 list, 151
 'separation-of-powers' principle,
 153–7
 Treaty provisions, 150–2
see also specific institutions e.g.
 Commission
- intellectual property
 'exhaustion of rights' doctrine,
 543–5
 'existence' and 'exercise', distinction
 between, 541
 justification for trade barriers, 540
 pharmaceutical patent protection,
 positive integration, 554
 positive integration, 550, 566–9
 'specific subject matter' doctrine,
 541–3
 trademark confusion, 545
- intergovernmentalism
 Common Foreign and Security
 Policy, 26
 developments outside EEC, 18–20
 SEA reforms, 20–2
 Treaty of Maastricht, 23
- internal market
 Completing the Internal Market
 White Paper, 576–7
 customs union distinguished, 491
 Delors Commission, 576
 establishment objective, 555–8
 free movement of goods *see* free
 movement of goods
 free trade area distinguished, 491
 functioning objective, 555–8
 fundamental freedoms *see*
 fundamental freedoms
 horizontal competence, 555
 introduction, 491
 negative integration *see* negative
 integration
 overview, 495 (table), 656 (table)
 positive integration *see* positive
 integration
 qualified majority voting and, 576
 SEA reforms, 21
 shared competences, 569
- internal policies
 economic union, and, 774
 expansion of, 774
 overview, 775, 837–8
 selected policies, 774
 substantive context for European
 law, 774 *see also* cohesion
 policy; Consumer Protection;
 Economic and Monetary
 Policy; Social Policy
- international agreements
 definition, 110
 direct effect
 conditions for, 111–13
 vertical and horizontal direct
 effect, 114–15
 pre-emptive capacity, 144–6
 international cooperation, sovereignty
 and, 3–4
 international law
 domestic law in relation, 76–7
 European law contrasted, 13–14
 international cooperation and, 3–4
 monist and dualist theories, 76–7
 sovereignty and, 43–4
 international law theory, Maastricht
 Treaty ratification, and, 64–7
 international model of negative
 integration, 501
 international treaties, rise of, 268
- job-seekers *see* free movement of
 workers
- judicial cooperation, Schengen
 Agreement, 19
- judicial powers
 conception of, historical
 development, 351–3
 core functions, 352
 fundamental rights *see* fundamental
 rights *see also* judicial powers,
 European; judicial powers,
 national
- judicial powers, European
 annulment powers *see* judicial review
- enforcement actions
 against EU, 383–6
 financial sanctions, 382–3
 against Member States, 812–13
 procedural conditions, 380–2
 provision for, 379
- judicial review *see* judicial review
- liability actions
 governmental liability for lawful
 acts, 378
 procedural conditions, 375–6
 provision for, 374–5
 substantive conditions, 377–9
- overview, 212–13, 355
- preliminary rulings
 'acte clair' doctrine, 395–6
 conditions, 389
 eligibility, 389–92
 jurisdiction, 388–9
 legal nature, 398–400
 necessary questions, 392–4
 obligation to refer, 394–7
 provision for, 386–7
 provisions summarised, 400
- judicial powers, national
 consistent interpretation principle,
 407–8
 cooperative federalism, 404

- effectiveness principle
 development, 412–18
 generally, 406
 invocability of European law,
 procedural limits, 418–21
 overview, 411
 enforcement role of national courts,
 403–4
 equivalence principle, 406, 408
 judicial federalism, comparative
 perspective, 405
 judicial harmonisation of national
 procedural laws, 407
 liability principle
 conditions for State liability, 424–7
 Francovich doctrine, 421–4
 generally, 407, 421
 private liability, *Courage* doctrine,
 430–2
 state liability for judicial breaches
 of European law, 427–30
 limits on national procedural
 autonomy, 408
 national non-discrimination
 remedies in EU actions, 408–9
 ‘national procedural autonomy’
 principle, 405–6
 powers summarised, 441–3
 ‘similar’ actions, equivalence test,
 409–11
 ‘sincere cooperation’, duty of, 406
 voluntary cooperation with
 European Court, 405
 judicial review
 ‘formal’ and ‘substantive’ grounds,
 359–60
 fundamental rights *see* fundamental
 rights
 grounds generally, 358–9
 illegality plea, 371–2
 indirect review, 371
 preliminary rulings, 372–4
 proportionality, 360–2
 provision for, 355–6
 ‘reviewable’ acts, 357–8
 standing
 applicants, types of, 362–3
 Lisbon formulation, 367–71
 ‘Plaumann test’, 365–6
 Rome formulation, 363–7
 Justice and Home Affairs
 third pillar of EU, 27
 Treaty of Amsterdam, 27 *see also*
 Freedom, Security and Justice
 Kelsen, Hans, federalism theory, 53–4
Kompetenz-Kompetenz *see* ‘competence-
 competence’
 Laeken Declaration, aims, 32
 lawful acts, governmental liability for,
 378
 legislative powers *see* competence,
 executive powers, legislative
 procedures, subsidiarity
 legislative pre-emption *see* pre-
 emption
 legislative procedures
 legislation, conceptions of, 227–8,
 247–8
 ‘ordinary’ legislative procedure
 formal stages, 248–52
 informal practices, 252–5
 overview, 264–5
 ‘special’ procedures, 255–6
 trilogues, 252–5
 ‘letter-box companies’ *see* companies
 liability principle *see* judicial powers,
 national
 Locke, John, ‘federative’ power
 definition, 268
 ‘locomotive theory’ *see* monetary union
 Madison, James, federalism theory,
 45–8
 market abuse *see* dominant
 undertakings
 market dominance *see* dominant
 undertakings
 Measures having an Equivalent Effect
 to Quantitative Restrictions”
 (MEEQR) concept, 519–20
 Member State law *see* national law
 Member State population sizes, 186
 merger control
 compatibility of mergers, appraisal,
 764–6
 defences, 766–8
 derogations, 768
 ‘dominance’ test, 764–5, 766
 EU Merger Regulation, 760
 judicial origins, 757–9
 public policy justifications, 768
 scope
 1989 Merger Regulation, 765
 generally, 761–4
 ‘significantly impedes effective
 competition (SIEC)’ test,
 765–6
 Treaty provisions, 756,
 ‘Meroni doctrine’ *see* executive powers
 minimum harmonisation
 definition, 571
 rise of, 577–8
 Monetary Policy *see* Economic and
 Monetary Policy
 monetary union
 Hague Summit, 18
 ‘locomotive theory’, 18
 Treaty of Maastricht, 22, 25
 Werner Report, 18
 see also economic union
 monism, direct effect of European law,
 and, 76–8
 Montesquieu, Baron Charles de,
 ‘separation-of-powers’ principle,
 153–4
 mutual recognition
 negative integration, 17–18, 539
 positive integration, 575–6
 professional qualifications, freedom
 of establishment, 617–19
 national law
 derogations *see* derogations
 pre-emption *see* pre-emption
 prior existence of, positive
 integration and, 554
 subsequent existence of, positive
 integration and, 553–4
 supremacy of European law *see*
 supremacy
 ‘national procedural autonomy’
 principle *see* judicial powers,
 national
 negative integration
 applicability, 497–500
 Common Agricultural Policy and,
 579
 conclusion, 546–7
 constitutional limits, 502
 de minimis, 502–4
 definition, 491
 discrimination test, 502
 enlargement of scope, 575
 federal model, 539
 fiscal barriers *see* customs duties,
 taxation
 ‘home state control’ principle, 539
 ‘host state control’ principle, 501
 international model, 501
 introduction, 494–6
 jurisdictional questions, 495–7
 models, 501, 502
 mutual recognition and, 17–18, 539
 origin, 17–18
 ‘purely internal situations’, 504–6
 regulatory barriers *see* regulatory
 barriers
 remoteness criterion, 503
 restriction test, 502
 ‘reverse discrimination’, 504–6
 unitary model, 501
 ‘non-delegation’ doctrine *see* executive
 powers

- Ospinion 1/76 doctrine *see* implied external powers doctrine
- optional harmonisation, definition, 570
- Organisation for European Economic Cooperation, establishment, 3–4
- Paris Summit 1974, establishment of European Council, 19
- Parliament
- budgetary powers, 168–9
 - co-decision procedure, 25–6, 38
 - Common Foreign and Security Policy, 26
 - composition, 158–61
 - decision-making, 165–7
 - decisional supranationalism, 16–17
 - election, 157
 - elective powers, 170–2
 - legislative powers, 167–8
 - membership, 161–3
 - organs, 164–5
 - origin in ECSC, 7–8
 - political parties, 161–3
 - powers, definition, 167
 - size, 158–61
 - status, 157
 - structure, 164–5
 - supervisory powers, 169–70
 - Treaty of Lisbon, 38
 - Treaty of Maastricht, 22, 25–6
 - Treaty of Nice, 30–1
 - trilogues, 252–5
 - voting, 165–7
- patents *see* intellectual property
- pay discrimination *see* employment law
- pensions *see* free movement of workers, national social security systems
- ‘*per se* rules’ *see* cartels
- ‘Plaumann test’ *see* judicial review
- Pléven, René, ‘Pléven Plan’, 10
- Police and Judicial Cooperation in Criminal Matters’ (PJCC), third pillar of EU, 28
- police cooperation, Schengen Agreement, 19
- political integration
- Davignon Report, 18–19
 - failure of EDC, 10–12
 - Hague Summit, 18
 - Treaty of Lisbon, 38
 - Treaty of Maastricht, 25–6
- see also* supranationalism
- political parties, representation in Parliament, 161–3
- population sizes of Member States, 186
- positive action *see* employment law
- positive integration
- adoption, 549–50
 - approaches to, 569
 - centralised oversight, 568
 - choice of competences, 559–60
 - Common Agricultural Policy *see* Common Agricultural Policy
 - competences, 550
 - Completing the Internal Market White Paper, 576–7
 - concept, 553–4
 - conclusion, 586–7
 - cooperative federalism, 569
 - definition, 491
 - derogations, 560–4
 - by directions, 554
 - by directives, 551
 - ‘establishment’ or ‘functioning’ of internal market, 555–8
 - exceptions to general competence, 559–60
 - general competences, 550, 551–3
 - horizontal competence, 552
 - introduction, 549–51
 - measures (selection), 553
 - methods, 570–1
 - minimum harmonisation, 571, 577–8
 - mutual recognition and, 575–6
 - ‘new approach’, 574, 577–8
 - ‘old approach’, 571
 - optional harmonisation, 570
 - pre-emption of national law, 569, 582–4
 - prior existence of national laws, 554
 - qualified majority voting and, 551–2, 576
 - reduction of intensity, 576–8
 - reduction of scope, 575–6
 - by regulations, 553
 - relationship to other competences, 559–60
 - shift to negative integration, 17–18
 - special competences *see* intellectual property, taxation
 - subsequent existence of national laws, 553–4
 - total harmonisation, 570
- posted workers, free movement, 670–5
- pre-accession procedure *see* association and accession
- ‘predatory pricing’ *see* dominant undertakings
- pre-emption
- categories, 138–9
 - Common Agricultural Policy, 582–4
 - common market organisations, 582–4
 - competence limits, 146
 - constitutional limits, 141
 - EU secondary law, pre-emptive capacity
 - directives, 143–4
 - generally, 142
 - international agreements, 144–6
 - regulations, 142–3
 - express and implied pre-emption, 141
 - field pre-emption, 139–40
 - obstacle pre-emption, 140
 - positive integration, 569, 582–4
 - principle, 119
 - rule pre-emption, 141
 - supremacy in relation, 138, 147–8 *see also* supremacy
- price stability *see* Economic and Monetary Policy
- ‘private creditor/investor’ test *see* State aid
- private persons, negative integration, 497–500
- private undertakings *see* cartels
- product liability *see* consumer protection
- product requirements, 522–5
- professional qualifications, mutual recognition, 617–19
- prohibitions
- introduction, 519 *see also* regulatory barriers
- public policy
- citizenship rights, limitation, 652, 648
 - merger control, 768
- Public Service Exception, citizenship, and, 648–51
- public services
- cross-border provision, 675–9
- ‘purely internal situations’, negative integration, and, 504–6
- qualified majority voting (QMV)
- cooperation procedure, 21
 - internal market and, 551–2, 576
 - ‘Luxembourg Compromise’, 15–16
 - Member State population sizes, 186
 - SEA reforms, 21
 - weighted votes, 183–5
- quantitative restrictions
- exports, 530–2
 - imports, 519–20
 - MEEQR, concept of, 519–20
- real seat theory *see* companies
- ‘Reform Treaty’ *see* Treaty of Lisbon
- ‘refusal to supply’ *see* dominant undertakings

- regional aid *see* State aid
 Regional Policy *see* cohesion policy
 regulations
 definition, 89
 direct application and direct effect, 90–2
 general application, 89
 positive integration, 553
 pre-emptive capacity, 142–3
 regulatory barriers
 consumer protection, proportionality, 539–40
 consumer use restrictions, 527–30
 definition, 519
 flowchart, 537 (figure)
 intellectual property protection *see* intellectual property
 justifications, grounds for, 532–6
 MEEQR, concept of, 519–20
 national standards, proportionality, 536–9
 product requirements, 522–5
 quantitative restrictions on exports (*Groenveld* and *Gysbrechts* cases), 530–2
 quantitative restrictions on imports, 519–20
 selling arrangements, 524–7
 trading rules, 520–2
 types, 519
 removal of illegal trade barriers *see* negative integration
 residency rights *see* citizenship
 restriction test, negative integration, 502
 ‘reverse discrimination’, negative integration, and, 504–6
 ‘Rule of Reason’ *see* cartels
 sale of goods *see* consumer protection
 Schengen Agreement
 aims, 19
 incorporation in EU, 29
 Schmitt, Carl, federalism theory, 54–5
 Schuman, Robert, ‘Schuman Plan’, 5
 secondary law *see* European law
 security *see* Freedom, Security and Justice
 self-employed persons, freedom of establishment, 612–14
 selling arrangements, 524–7
 service providers, free movement of posted workers, 670–5
 services, free movement *see* free movement of services
 Services of General Economic Interest (SGEI) *see* public services
 shared competences, internal market, 569
 ‘similar’ actions, equivalence test *see* judicial powers, national
 ‘similar’ foreign goods, discriminatory taxation, 513–16
 ‘sincere cooperation’, duty of *see* judicial powers, national
 ‘single economic unit’ doctrine *see* cartels
 Single European Act 1986 (SEA), supranational and intergovernmental reforms, 20–2
 ‘single legislation’ principle *see* free movement of workers
 Social Policy
 collective agreements, 798–800
 employment *see* employment law
 expansion, 795
 overview, 796 (table)
 scope, 795–8
 sources of law, 795
 Title, 794
 social security systems *see* free movement of workers
 sovereignty
 federalism in relation, 48–9, 50–2
 international cooperation, and, 3–4
 international law, and, 43–4
 transfer to EU, 9
 Spaak, Paul-Henry, ‘Spaak Report’, 12–13
 special competences *see* intellectual property, taxation
 ‘specific subject matter’ doctrine, intellectual property, 541–3
 Stability and Growth Pact *see* Economic and Monetary Policy
 State aid, 770
 State measures, negative integration, 497–500
 ‘Stockholm Programme’ as example of institutional cooperation, 314–16
 Structural and Investment Funds *see* cohesion policy
 subsidiarity
 principle, 256–7
 procedural standard, 257–60
 ‘reversed’ subsidiarity as to Member State’s treaty power, 303
 substantive standard, 260–3
 succession doctrine *see* external competences
sui generis theory *see* constitutional structure
 supranationalism
 concept, 44, 62
 decisional, 9–10, 14–18
 dual nature, 9–10
 failure of EDC, 10–12
 intergovernmental developments outside EEC, 18–20
 ‘Luxembourg Compromise’, 15–16
 normative, 9, 13–14
 origins in ECSC, 7
 qualified majority voting, 15–16
 Single European Act, 20–2
 Treaty of Rome and, 14
 supremacy
 absolute supremacy
 disapplication of national law, 126–30
 over international treaties, 124–6
 over national laws, 122–4
 principle, 121–2
 scope, 122
 competence, exercise of EU, 133–6
 national fundamental rights, and, 131–3
 national perspectives, 130–1
 pre-emption in relation, 138, 147–8
 principle, 13–14, 119, 336 *see also* pre-emption
 taxation
 ‘competing’ foreign goods, 516–19
 corporate tax rates, 566
 free movement of capital, 688–91
 positive integration, 550, 564–6
 prohibition of protectionist taxation, 511–13
 ‘similar’ foreign goods, 513–16
 ‘total harmonisation’, definition, 570
 trade barriers, removal of illegal *see* negative integration
 trade liberalisation and protection *see* Common Commercial Policy
 trade marks *see* intellectual property
 trading rules, 520–2
 Treaties
 external *see* external competences
 how to find, 889
 Treaty establishing a Constitution for Europe (TCE) *see* Constitutional Treaty
 treaty-making procedure
 Council’s primary role, 288
 initiation and negotiation, 289–92
 modification, suspension and termination, 294–5
 secondary roles, 288
 signing and conclusion, 292–4
 subsequent external exclusivity, 279–306

- treaty-making procedure (cont.)
 succession to Member States'
 agreements (functional
 succession doctrine), 295–6, 456
 Treaty of Amsterdam 1997, Justice and
 Home Affairs reform, 28–9
 Treaty of Lisbon 2007
 background, 31–3
 Common Foreign and Security
 Policy, and, 37, 38–9,
 Constitutional Treaty, and, 35
 delegation of powers, 318
 dual Treaty basis for Union, 36
 entry into force, 35
 Laeken Declaration, 32
 'new' TEU
 content, 36
 democracy provisions, 38
 institutional provisions, 37
 reform of EU, 4, 36–9
 TFEU *see* Treaty on the Functioning
 of the European Union
 Treaty of Maastricht 1993
 constitutional debate over
 ratification, 64–7
 creation of EU, 4
 intergovernmental elements, 23
 pillar (temple) structure, 24
 subsequent amendment, 27–8
 supranational elements, 23
 Treaty of Nice 2001, institutional
 reforms, 30–1
 Treaty of Paris 1951, creation of ECSC,
 4
 Treaty of Paris 1952, creation of EDC,
 10–11
 Treaty of Rome 1957
 creation of EEC, 4, 12–13
 precision of wording, 31
 Treaty on European Union (TEU)
 'new' EU *see* Treaty of Lisbon
 'old' EU *see* Treaty of Maastricht
 Treaty on the Functioning of the
 European Union (TFEU)
 competence provisions, 38
 institutional provisions, 37
 trustees doctrine *see* external
 procedures
 'tying' *see* dominant undertakings
 ultra vires *see* competence
 unfair commercial practices *see*
 consumer protection
 unfair contract terms *see* consumer
 protection
 unitary model of negative integration,
 501
 United Kingdom
 Charter of Fundamental Rights, and,
 483–5, 848
 companies, incorporation theory, 621
 competition law, 710
 corporate governance structure, 652
 corporate tax rate, 566
 Council representation, 184
 decisions addressed to individuals,
 adoption of, 338
 delegation of powers to agencies,
 and, 334–5
 differential integration, 29n
 direct effect, and, 96–8, 100–1
 dualism, 77
 Economic and Monetary Union,
 and, 25
 effectiveness standard, and, 414–15
 ESCB, and, 216
 European Convention on Human
 Rights, and, 486
 European Parliament representation,
 159, 162
 European Regional Development
 Fund, and, 828
 exclusive competence, and, 241
 'incorporation doctrine', and, 477
 incorporation of international law,
 77
 judicial powers, 405n
 judicial review, 352n
 liability principle, and, 423
 National Health Service, 677
 parliamentary sovereignty, doctrine
 of, 79 (footnote), 446,
 preliminary rulings, and, 388–9
 product liability law, 824
 residual competence, and, 238
 subsidiarity, and, 261–2
 supranational nature, 68
 supremacy, and, 130
 teleological interpretation, and, 231–2
 'undertaking', concept of, 713–14
 United States
 Bill of Rights, 476
 company law
 Delaware effect, 630–1
 'failing company defence', 768
 competition law *see* competition law
 executive powers, 311, 335
 external sovereignty, 297
 federalism *see* federalism
 freedom of contract, realist critique,
 819
 incorporation of international law,
 77
 judicial power, development of, 352
 monetary policy, 775
 product liability law, 824
 'Schuman Plan', and, 5
 'separation-of-powers' principle,
 153–4
 social security system, 606
 'State Constitutions', 69
Van Gend en Loos case, direct effect of
 European law, and, 77–9,
 81–4
 vertical direct effect *see* direct effect
 vertical harmonisation, Common
 Agricultural Policy, 581–2
 voting
 Council of Ministers, 183–7
 Parliament, 165–7
 qualified majority voting *see*
 qualified majority voting
 weighted votes *see* qualified majority
 voting
 Werner Report, proposals on European
 integration, 18
 Western European Union (WEU)
 dissolution, 38–9
 establishment, 3–4
 'worker', definition, 594–6
 worker protection *see* employment
 law
 WTO Agreement *see* Common
 Commercial Policy
 'WTO doctrine' *see* external
 competences