

Contents

| | |
|--|-----------------|
| <i>List of illustrations</i> | <i>page</i> xvi |
| <i>List of tables</i> | xvii |
| <i>Acknowledgements</i> | xviii |
| <i>Table of cases</i> | xix |
| <i>List of abbreviations</i> | xxxviii |
| | |
| Introduction | 1 |
| | |
| Part I: European Law: Creation | 7 |
| | |
| 1 Union Institutions | 9 |
| <i>Introduction</i> | 9 |
| <i>1. The European Parliament</i> | 11 |
| (a) Formation: Electing Parliament | 12 |
| (b) Parliamentary Powers | 15 |
| (i) Legislative Powers | 15 |
| (ii) Budgetary Powers | 17 |
| (iii) Supervisory Powers | 17 |
| (iv) Elective Powers | 18 |
| <i>2. The Council of Ministers</i> | 20 |
| (a) Composition and Configurations | 21 |
| (b) Internal Structure and Organs | 22 |
| (c) Decision-making and Voting | 23 |
| (d) Functions and Powers | 27 |
| <i>3. The Commission</i> | 28 |
| (a) Composition and Election | 28 |
| (b) The President and “his” College | 29 |
| (c) Functions and Powers | 32 |
| <i>4. The Court of Justice of the European Union</i> | 34 |
| (a) Judicial Architecture: the European Court System | 35 |
| (b) Jurisdiction and Judicial Powers | 36 |
| <i>Conclusion</i> | 37 |

| | | |
|----------|--|----|
| 2 | Union Legislation | 39 |
| | <i>Introduction</i> | 39 |
| | 1. <i>The “Ordinary” Legislative Procedure</i> | 41 |
| | (a) Constitutional Theory: Formal Text | 41 |
| | (b) Constitutional Practice: Informal Trilogues | 44 |
| | 2. <i>The “Special” Legislative Procedures</i> | 46 |
| | 3. <i>The Principle of Subsidiarity</i> | 47 |
| | (a) Subsidiarity as a Political Safeguard | 49 |
| | (b) Subsidiarity as a Judicial Safeguard | 52 |
| | 4. <i>Excursus: The (Ordinary) Treaty-Making Procedure</i> | 56 |
| | (a) Initiation and Negotiation | 57 |
| | (b) Signing and Conclusion | 59 |
| | (c) Modification and Suspension (Termination) | 60 |
| | (d) Union Succession to Member State Agreements | 61 |
| | <i>Conclusion</i> | 63 |
| 3 | Union Competences | 65 |
| | <i>Introduction</i> | 65 |
| | 1. <i>Union Competences: Teleological Interpretation</i> | 67 |
| | 2. <i>General Competences of the Union</i> | 70 |
| | (a) The Harmonization Competence: Article 114 | 71 |
| | (b) The Residual Competence: Article 352 | 73 |
| | 3. <i>The Doctrine of Implied (External) Powers</i> | 76 |
| | (a) ERTA and the Doctrine of Parallel Powers | 77 |
| | (b) Article 216: Codifying ERTA? | 79 |
| | 4. <i>Categories of Union Competences</i> | 80 |
| | (a) Exclusive Competences: Article 3 | 82 |
| | (b) Shared Competences: Article 4 | 85 |
| | (c) Coordinating Competences: Article 5 | 86 |
| | (d) Complementary Competences: Article 6 | 87 |
| | <i>Conclusion</i> | 88 |
| 4 | Fundamental Rights | 90 |
| | <i>Introduction</i> | 90 |
| | 1. <i>The Birth of European Fundamental Rights</i> | 92 |
| | (a) The European Standard – An “Autonomous” Standard | 94 |
| | (b) Limitations, and “Limitations on Limitations” | 97 |

| | Contents | xi |
|--|------------|----|
| 2. <i>United Nations Law: External Limits to European Human Rights?</i> | 99 | |
| 3. <i>The Charter of Fundamental Rights</i> | 102 | |
| (a) (Hard) Rights and (Soft) Principles | 104 | |
| (b) Limitations, and “Limitations on Limitations” | 106 | |
| 4. <i>The “External” Bill of Rights: The European Convention on Human Rights</i> | 108 | |
| (a) Before Accession: Indirect Review of Union Law | 108 | |
| (b) After Accession: Direct Review of Union Law | 110 | |
| <i>Conclusion</i> | 111 | |
| Part II: European Law: Enforcement | 113 | |
| 5 Direct Effect | 115 | |
| <i>Introduction</i> | 115 | |
| 1. <i>Direct Applicability and Direct Effect</i> | 117 | |
| 2. <i>Direct Effect of Primary Law</i> | 120 | |
| (a) Direct Effect: From Strict to Lenient Test | 122 | |
| (b) Vertical and Horizontal Direct Effect | 125 | |
| 3. <i>Direct Effect of Secondary Law: Directives</i> | 128 | |
| (a) Direct Effect of Directives: Conditions and Limits | 129 | |
| (b) The No-Horizontal-Direct-Effect Rule | 131 | |
| (c) The Limitation to the Rule: The Wide Definition of State (Actions) | 133 | |
| (d) The Exception to the Rule: Incidental Horizontal Direct Effect | 135 | |
| 4. <i>Indirect Effects: The Doctrine of Consistent Interpretation</i> | 137 | |
| <i>Conclusion</i> | 141 | |
| 6 (Legal) Supremacy | 142 | |
| <i>Introduction</i> | 142 | |
| 1. <i>The European Perspective: Absolute Supremacy</i> | 144 | |
| (a) Supremacy over Internal Law of the Member States | 145 | |
| (b) Supremacy over International Treaties of the Member States | 147 | |
| 2. <i>Supremacy’s “Executive” Nature: Disapplication, not Invalidation</i> | 149 | |
| 3. <i>National Challenges I: Fundamental Rights</i> | 152 | |

xii Contents

| | |
|---|-----|
| 4. <i>National Challenges II: Competence Limits</i> | 156 |
| <i>Conclusion</i> | 159 |
| 7 National Actions | 161 |
| <i>Introduction</i> | 161 |
| 1. <i>National Remedies: Equivalence and Effectiveness</i> | 164 |
| (a) The Equivalence Principle | 165 |
| (b) The Effectiveness Principle | 167 |
| 2. <i>State Liability: The Francovich Doctrine</i> | 170 |
| (a) The Birth of the <i>Francovich</i> Doctrine | 171 |
| (b) The Three Conditions for State Liability | 173 |
| 3. <i>Preliminary Rulings I: General Aspects</i> | 177 |
| (a) The Jurisdiction of the European Court | 178 |
| (b) The Legal Nature of Preliminary Rulings | 179 |
| 4. <i>Preliminary Rulings II: Special Aspects</i> | 182 |
| (a) “Who”: National Courts and Tribunals | 182 |
| (b) “What”: Necessary Questions | 184 |
| (c) The Obligation to Refer and “ <i>Acte Clair</i> ” | 186 |
| <i>Conclusion</i> | 189 |
| 8 European Actions | 191 |
| <i>Introduction</i> | 191 |
| 1. <i>Enforcement Actions against Member States</i> | 192 |
| (a) The Procedural Conditions under Article 258 | 193 |
| (b) Judicial Enforcement through Financial Sanctions | 195 |
| 2. <i>Actions Against the Union: Failure to Act</i> | 196 |
| 3. <i>Annulment Actions: Judicial Review</i> | 198 |
| (a) “Whether”: The Existence of a “Reviewable” Act | 200 |
| (b) “Why”: Legitimate Grounds for Review | 201 |
| (i) “Formal” and “Substantive” Grounds | 202 |
| (ii) Proportionality: A Substantive Ground | 204 |
| (c) “Who”: Legal Standing before the European Courts | 206 |
| (i) The Rome Formulation and its Judicial Interpretation | 207 |
| (ii) The Lisbon Formulation and its Interpretative Problems | 210 |
| 4. <i>Damages Actions: Union Liability</i> | 214 |
| (a) Procedural Conditions: From Dependent to Independent Action | 215 |

| | Contents | xiii |
|---|----------|------|
| (b) Substantive Conditions: From <i>Schöppenstedt</i> to <i>Bergaderm</i> | 216 | |
| <i>Conclusion</i> | 218 | |
| Part III: European Law: Substance | 219 | |
| 9 Internal Market: Goods I | 221 | |
| <i>Introduction</i> | 221 | |
| 1. <i>Fiscal Barriers I: Customs Duties</i> | 222 | |
| (a) Article 30: An Absolute Prohibition | 223 | |
| (b) Objective “Justifications” | 225 | |
| 2. <i>Fiscal Barriers II: Discriminatory Internal Taxation</i> | 227 | |
| (a) Paragraph 1: Discrimination against “Similar” Foreign Goods | 228 | |
| (b) Paragraph 2: Protection against “Competing” Foreign Goods | 230 | |
| 3. <i>Regulatory Barriers: Quantitative Restrictions</i> | 232 | |
| (a) Quantitative Restrictions on Imports: Article 34 | 233 | |
| (b) Quantitative Restrictions on Exports: Article 35 | 240 | |
| 4. <i>Justifying Regulatory Barriers: Article 36 and Mandatory Requirements</i> | 241 | |
| (a) Implied Justifications: Mandatory Requirements | 242 | |
| (b) The Proportionality Principle and National Standards | 244 | |
| <i>Conclusion</i> | 246 | |
| 10 Internal Market: Goods II | 247 | |
| <i>Introduction</i> | 247 | |
| 1. <i>Harmonization Competences: General Issues</i> | 249 | |
| (a) The Concept of “Approximation” or “Harmonization” | 251 | |
| (b) The “Establishment” or “Functioning” of the Internal Market | 254 | |
| 2. <i>Relationship to “Sectoral” Legislative Competences</i> | 258 | |
| 3. <i>“Opting Up”: Derogation Clauses in Article 114</i> | 260 | |
| 4. <i>Tax Harmonization, in particular: Article 113</i> | 264 | |
| <i>Conclusion</i> | 266 | |

| | | |
|-----------|---|-----|
| 11 | Internal Market: Persons | 268 |
| | <i>Introduction</i> | 268 |
| | 1. <i>Free Movement of Workers</i> | 270 |
| | (a) Personal Scope: Workers and “Quasi-workers” | 271 |
| | (b) Material Scope: Discrimination and Beyond | 275 |
| | 2. <i>Freedom of Establishment</i> | 279 |
| | (a) Personal Scope: Self-employed Persons (and Companies) | 279 |
| | (b) Material Scope: Discrimination and Beyond | 281 |
| | 3. <i>European Citizenship: A General Right to Move and Stay?</i> | 283 |
| | (a) Article 21(1): A Direct Source of Movement Rights | 284 |
| | (b) Directive 2004/38: Rights and Limitations | 286 |
| | 4. <i>Justifying Restrictions on (Self-)employed Persons</i> | 289 |
| | (a) Express Justifications and (Implied) Imperative Requirements | 289 |
| | (b) In particular: The Public Service Exception | 291 |
| | <i>Conclusion</i> | 293 |
| 12 | Competition Law: Cartels | 295 |
| | <i>Introduction</i> | 295 |
| | 1. <i>Article 101: Jurisdictional Aspects</i> | 297 |
| | (a) The Concept of “Undertaking” | 299 |
| | (b) Effect on Trade between Member States | 300 |
| | 2. <i>Forms of Collusion between Undertakings</i> | 303 |
| | (a) Agreements I: Horizontal and Vertical Agreements | 303 |
| | (b) Agreements II: “Tacit Acquiescence” versus “Unilateral Conduct” | 305 |
| | (c) Concerted Practices and Parallel Conduct | 307 |
| | (d) Cartel Decisions through Associations of Undertakings | 308 |
| | 3. <i>Restriction of Competition: Anti-competitive Object or Effect</i> | 309 |
| | (a) Two Dimensions: Inter-brand and Intra-brand Competition | 310 |
| | (b) Restrictions by Object: European “Per Se Rules” | 311 |
| | (c) Restrictions by Effect: A European “Rule of Reason”? | 313 |
| | (d) Non-appreciable Restrictions: The <i>De Minimis</i> Rule | 316 |

Cambridge University Press

978-1-107-11181-3 - An Introduction to European Law: Second Edition

Robert Schütze

Table of Contents

[More information](#)

| | Contents | xv |
|--|------------|----|
| <i>4. Article 101(3): Exemptions through Pro-competitive Effects</i> | 317 | |
| (a) Direct Exemptions under Article 101(3) | 317 | |
| (b) Exemptions by Category: Block Exemption Regulations | 319 | |
| <i>Conclusion</i> | 320 | |
| Appendices | 321 | |
| <i>Appendix I: Academic Literature: Further Reading</i> | 323 | |
| <i>Appendix II: How to Find (and Read) EU Judgments</i> | 330 | |
| <i>Index</i> | 335 | |