

## INDEX

- abortion, 145
- absent or fleeing defendant. *See also*  
     hot pursuit; *in absentia*  
     sentencing
- double jeopardy restrictions  
     and, 159
- police and judicial co-operation and,  
     411, 414
- procedural law approximation and,  
     414–15
- rights of, 96–7, 247n.907
- absolute-necessity principle  
     intervention and, 134–5
- right to life and, 121
- abuse of process doctrine, length of  
     proceedings and, 89–90,  
     186n.222
- access to case files. *See also* information,  
     right to  
     ECHR articles on, 112–13
- ECtHR rulings on, 94–5
- EU directives on, 138–9
- accession to EU  
     CJEU rejection of draft agreement,  
         79–80
- draft agreement for, 77–8
- fundamental rights protection linked  
     to, 76
- institutional relationship and  
     conflicting competence  
     over, 80
- accounting principle, double jeopardy  
     and, 161
- accusations, information on nature and  
     cause of, 94–5
- acquittals, double jeopardy and, 149
- Act on Therapy and Detention of  
     Mentally Disturbed Violent  
     Offenders (Germany), 131–3
- actus reus*  
     dynamic and static norm references  
         and, 334
- scope of EU law to issue instructions,  
         337–8
- additional competencies rule, 337
- Additional Protocols to ECHR  
     cybercrime and, 319
- extradition restrictions in, 428–32
- Protocol 1, Art. 3, 75
- Protocol 6, 81, 145, 429
- Protocol 7, Art. 2, 83–4, 117–19,  
         146–7, 430
- Protocol 7, Art. 4, 83–4, 117–19,  
         146–7, 158
- Protocol 13, 81
- Protocol 15, 202n.378
- Protocol 16, 79–80
- administrative proceedings  
     double jeopardy interpretations and,  
         259n.1030
- of L’Office européen de lutte  
     anti-fraude, 560–3
- admissibility procedure, extradition  
     process, 419, 423–4, 432–3, 447,  
     449–51
- adversarial procedure  
     duty of disclosure and, 94
- pre-trial detention and, 111
- right to, 86–7
- age of criminal responsibility, financial  
     penalties, mutual recognition  
     of, 529n.806
- Agreement on Illicit Traffic by Sea,  
     317–19, 416
- agricultural law, national and EU mutual  
     assistance concerning, 369n.222
- alcoholics, preventive detention of,  
     107–8

- alerts
  - in European Arrest Warrant, 425–6, 433–4
  - extradition and surrender procedures, 425–6
  - in Schengen Information System, 424–5
- a limine*
  - death penalty and, 121
  - double jeopardy and, 161
  - restrictions on examination of witnesses and, 99–100
  - right to adversarial procedure, 86–7
  - secondary law reference norms and, 330–1
- Alternative Draft of Penal European Prosecution, 24–5
- American Court of Human Rights (ACtHR), fair trial violations and, 200–1
- amnesty
  - extradition procedures and, 424–6
  - unenforceability of penalties and, 159–60
- analogy, prohibition of, 127–8
- ancillary competence
  - approximation of EU law and, 336–8
  - financial interest protections and, 325–6
  - intergovernmentalisation of, 372n.272
  - minimum rules and, 322–3
  - supranational criminal law and, 17–18
- ancillary jurisdiction, principle of, 11–12
- Andorra, Schengen *acquis* and, 55n.296
- animals, transportation of, prosecution for, 326
- annulment actions, ancillary competence and, 372n.272
- anonymous witnesses, ECtHR guidelines on, 99–100
- Anti-terrorism, Crime and Security Act 2001 (ATCSA) (UK), 108–9
- applicable law
  - due information or publication of, 335–6
  - dynamic references to EU law and, 335
  - EPPO prosecution process and, 578–9
  - statutory powers reservation and, 333
- approximation of law. *See also* harmonisation of criminal procedure
  - areas of criminal law, 324–6
  - cross-border crime and, 320
  - enforcement instruments and, 462–3
  - EU criminal law and, 319–26
  - harmonisation of criminal procedure and, 22
  - judicial co-operation among Member States and, 411–12
  - by minimum rules, 20–1
  - of procedural law, 414–15
  - right to security and, 321–2
- area of freedom, security and justice
  - Europeanisation of criminal law and, 20
  - Lisbon Treaty creation of, 6–10
- argumentum e contrario*
  - competence and, 17–18
  - right to life and, 120–3
- arrests
  - arbitrary arrest, extradition restriction in threat of, 430
  - double jeopardy and, 148
  - extradition and admissibility of, 425–6, 427–8
  - mutual recognition principle and, 433
- Article 50 (TEU), withdrawal agreements and, 32n.57
- assets, freezing of, legal assistance for, 418
- assimilation
  - duty of loyalty or sincere co-operation and, 338–40
  - equal treatment amounting to, 339
  - EU law references to national law, 328–31
  - harmonisation of criminal procedure and, 22

- of national and EU criminal law, 22–3
- objections to, 329
- assisted suicide, 115, 145
- asylum seekers, detention of, 108–9
- audiovisual examination of witnesses, 99–100
- Austria
  - double jeopardy interpretations in, 161–2
  - EAW implementation in, 498–9
  - extradition in, 419–20
  - judicial decisions and double jeopardy restrictions in, 149
- authorisation of extradition, 419–20
  - EAW impact on, 443–4, 447, 449–51
- availability, principle of
  - EPPO investigations and, 576–7
  - European Investigation Office and, 458–9
  - information exchange and, 22
  - police co-operation and, 412
- bail, release from pre-trial detention on, 111
- balancing of interests principle
  - extradition procedures and, 428–32
  - surveillance of correspondence and, 114
- Belgium, EAW implementation in, 498–9
- Berlusconi, Silvio, 341–2
- blanket criminal laws, 327–8
  - constitutional law and, 369n.235
  - EU reference norms and accessory issues, 333
  - static and dynamic references to EU law and, 334–5
  - statutory powers reservation and, 333
  - target group norms and, 335
- border controls. *See also* unauthorised entry into countries
  - approximation of law on, 324
  - exceptions to, 26–7
  - human rights violations and, 119–20
  - Nuremberg Clause in cases involving, 129
  - retroactive punishment and, 128–9, 135
  - Schengen *acquis* and, 26
- Brexit vote
  - impact on EU criminal justice, 5
  - Lisbon Treaty opt-in provisions and, 10–11
- ‘Brighton Declaration’, 202n.378
- burden of proof
  - presumption of innocence and, 92
  - reversal of, 93
  - state abuse charges, 125
- capacity of States, compliance with ECtHR decisions and, 174–5
- capital punishment, restrictions on, 121, 145, 417
  - extradition and, 429
- censorship, ECHR Art. 10
  - interventions, 115–17
- Central Intelligence Agency (CIA)
  - extraordinary renditions by, 111–12, 123–4
- certainty, principle of
  - competence-safeguarding limb of, 335
  - conformity with EU law and, 345
  - constitutional law compliance of national law reference norms and, 333
  - legality and, 127
  - reference norms in primary law and, 329–30
  - specificity requirement versus reservation of statutory powers, 333
- chain extradition, 415–16, 431, 449–51
- Charter of the Fundamental Rights of the European Union (CFREU), 74
  - Art. 2, 145
  - Art. 4, 123–7, 145
  - Art. 6, 145
  - Art. 7, 145
  - Art. 8, 141–2, 145
  - Art. 19(2), 145
  - Art. 47(1), 144–5
  - Art. 47(2), 144–5

- CFREU (cont.)  
 Art. 47(3), 144–5  
 Art. 48(2), 144–5  
 Art. 49(1), 76–7, 145–6  
 Art. 49(3), 429–30  
 Art. 50, 142–4, 146–7, 158, 254n.976  
 Art. 51(1), 142–4  
 Art. 52(1), 142  
 Art. 52(3), 76–7, 145  
 criminal law and, 142–6  
 foundations and binding effect of, 142–4  
 national law and, 76–7  
 procedural rights in, 144–5  
 substantive criminal law in, 145–6  
 supranationalisation of criminal law and, 442–3  
 child pornography  
 approximation of law on, 324  
 cybercrime and, 319  
 children. *See* juvenile criminal law  
 child witnesses, examination of, 100  
*chose jugée*. *See* *res judicata*  
 Churchill, Winston, 1  
 citizens, protection from criminal law of, 321  
 civil procedure  
 cross-border crime, legal remedy in, 413  
 EAW implementation in Member States and, 437–42  
 ECHR Art. 6(1) and, 87–8  
 preventive detention in, 105  
 Cleve rules, presumption of innocence and, 92–3  
 Committee of Ministers (Council of Europe), 80–2  
 Common Foreign and Security Policy (CFSP), 79–80  
 reference norms concerning, 329–30  
 common law  
 ECHR incompatibility with, 75–6  
 right to life and, 222n.621  
 communication, right to, 100  
 ECHR Art. 8 limits on surveillance and, 113–15  
 communitisation, EU formation and principle of, 3–4  
 community-friendly approach, to supranational criminal legislation, 17–18  
 community law, duty of loyal co-operation and EU harmonisation and, 338–40  
 compensation. *See also* restitution  
 pre-trial detention and right to, 111–12  
 undue delay as basis for, 90  
 for wrongful conviction, 117–19  
 competence  
 ancillary competence, supranational criminal law and, 17–18  
 approximation of criminal law and, 349–50  
 CJEU/ECtHR conflict over, 80  
 double jeopardy and rules of, 160  
 EPPO areas of, 575–6  
 EU immigration and human trafficking regulation, 19  
 of Europol, 565  
 of executing State, EAW procedures and, 437  
 harmonisation through directives and, 336–8  
 scope of EU law to issue instructions, 337–8  
 competence-competence (*Kompetenz-Kompetenz*), EU lack of, 17–18, 320  
 complementarity, European Public Prosecutor's Office as model of, 575–6  
 compliance  
 detention for failure of, 105–6  
 with ECtHR decisions, 174–5  
 concession contracts, approximation on award of, 357–8  
 conditional termination of proceedings, double jeopardy in cases of, 150–1  
 conferral, principle of  
 harmonisation of criminal law and, 336–7  
 supranational criminal legislation, 15–18

- confiscation
  - of crime proceeds, 317–19, 356–7, 361–2, 374–5
  - of documents
    - ECHR Art. 8 limits on, 113–15
    - ECHR Art. 10 interventions, 115–17
  - in European Evidence Warrant, 454–5
  - legal assistance in, 415, 418
  - non-conviction based model of, 361–2
- conflict resolution, double jeopardy and, 160–1
- confrontation
  - restrictions on right of, 99–100, 118
  - right to, 98–100, 118
- consent to surrender, European Arrest Warrant and, 433–4
- Constitutional Court of the Russian Federation, 75
- Constitutional Courts
  - challenges to EAW in, 443–4
  - CJEU case law and, 144
  - detention procedures in, 206n.419
  - ECHR interpretations and, 76
  - Lisbon Treaty and, 11, 12–14
- constitutional law
  - EAW implementation and, 437–42
  - EU interpretation standards and, 333, 345
  - national reference norm compliance with, 333
  - static references to national law and, 334–5
- Constitution for Europe (TCE), failure of ratification, 5–6
- contact-point network against corruption, 357–8
- continuation, of pre-trial detention, basis for, 106–7
- continuous detention, extradition and, 423–4
- Convention against Trafficking in Human Organs, 317–19
- Convention between the EC MS on the Enforcement of Foreign Criminal Sentences of 13 November 1991 (EC Enforcement Convention), 416–17, 462
- Convention between the Member States of the European Communities on Double Jeopardy, 151
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 431–2
- Convention for the Suppression of Unlawful Seizure of Aircraft, 431–2
- Convention Implementing the Schengen Agreement (CISA). *See also* Schengen *acquis*
  - absent or fleeing defendant and, 411, 414
  - Art. 41(5)(a), 413
  - Art. 54, 74, 146–62
  - Art. 55(1), 147–8
  - Art. 57, 147–8
  - Art. 58, 151
  - cross-border crime, legal remedy in, 413
  - double jeopardy prohibition in, 74, 146–7
  - establishment of, 25–6
  - extradition and, 424–6
  - final judicial decision in, 149–54
  - legal assistance provisions in, 452–3
  - police and judicial co-operation and, 412–13
  - surrender procedures and, 448–9
  - transfer of enforcement in, 462
- Convention on Action against Trafficking in Human Beings, 317–19
- Convention on Cybercrime, 317–19, 416
- Convention on Human Rights and Biomedicine, 317–19
- Convention on Insider Trading, 416
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 16 May 2005, 317–19, 416

- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990, 318
- Convention on Preventing and Combating Violence against Women and Domestic Violence, 317–19
- Convention on the Compensation to Victims of Violent Crimes, 416
- Convention on the Counterfeiting of Medical Products, 317–19
- Convention on the Fight against Corruption, 251n.947
- Convention on the Manipulation of Sports Commissions, 317–19
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents, 431–2
- Convention on the Prevention of Terrorism, 317–19
- Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 317–19
- Convention on the Protection of Individuals with Regard to Automatic Processing of Personal Data, 416
- Convention on the Protection of the Environment through Criminal Law, 317–19
- Convention on the Protection of the European Communities' Financial Interests of 26 July 1995 (PIF Convention), 324–5, 356n.124
  - EPPO and, 575–6
  - new directives concerning, 325–6
- Convention on the Transfer of Sentenced Persons (TransferC), 461–2
- convictions
  - in criminal law, 104–5
  - double jeopardy prohibition and, 146–7
  - legal assistance concerning, 418–19, 466
  - wrongful conviction, 117–19
- co-operation on justice and home affairs (CJHA), 4–5
- co-ordinated defence, European Arrest Warrant and, 441–2
- 'Corpus Juris' proposals, 574
- correspondence, surveillance of, ECHR Art. 8 limits on, 113–15
- corruption
  - approximation in law on, 324
  - L'Office européen de lutte anti-fraude investigations of, 560–3
- costs orders, principle of culpability or guilt and, 93
- Council of Europe
  - Europeanised national law and, 19–20
  - founding of, 1
  - fundamental rights protection and, 80–135
  - legal assistance and, 415, 452–3
  - 'mother conventions' of, 417, 420
  - structure and purpose, 80–1
  - substantive law conventions, 317–19
- counterfeiting of currencies, 320, 358n.128
  - L'Office européen de lutte anti-fraude and prevention of, 560–3
- Court of Justice of the European Union (CJEU)
  - CFREU and, 142–4
  - conflicting competence with ECtHR, 80
  - criminal legislation and, 15–18
  - detention as bar to surrender, rulings on, 448–9
  - double jeopardy interpretations by, 149–50, 153–4, 156
  - environmental decisions by, 336–7
  - EPPO prosecutions and, 578–9
  - establishment of, 2–3
  - EU primary law and, 24
  - European Arrest Warrant rulings by, 436

- Europol and, 568–9
- institutionalisation of EU criminal law and, 573–4
- jurisdiction of, 4–5, 10–11, 25–6, 79–80, 243–4
- national courts' reference to, 343
- national law and, 76–7
- obligation to reverence in preliminary rulings, 342–3
- Opinion 2/13 (rejection of draft accession agreement), 79–80
- proceedings before, 595n.223
- Statute, Art. 30, 328–31
- Stockholm Programme and, 139
- tax violations cases and, 142–4
- crime provocation
  - cases involving, 117
  - ECHR Art. 6 on, 90–1
  - fairness in proceedings of, 88
  - police incitement to, 101
- crimes against humanity, police co-operation and exchange of information concerning, 467–9
- Criminal Justice and Immigration Act (CJIA), 222n.621
- criminal justice systems, expansion in EU of, 5
- criminal law
  - approximation in EU of, 319–26
  - areas of approximation in, 324–6
  - Brexit impact on, 37n.105
  - conviction and, 104–5
  - ECHR and, 83–135
  - global references to national criminal law, 329–30
  - harmonisation of criminal procedure versus national co-operation legislation, 34n.76
  - legality principle and, 127–35
  - Lisbon Treaty and changes in, 6–10
  - in post-Lisbon EU, 5–10
  - post-Lisbon European concept of, 14–15
  - protection of citizens from, 321
  - supranational European criminal procedure, 6–10
  - supranational legislation, 15–19
- Criminal Law Convention on Corruption, 317–19
- criminal procedure. *See also* procedural laws
  - ECHR and, 83–4, 87–8
  - fair trial, right to, 86–7
  - length of proceedings and crime provocation, 88–91
  - right to information in, 138–9
- criminal proceeds, confiscation of, 317–19, 356–7, 361–2, 374–5
- criminal records
  - legal assistance on management of, 418–19
  - police exchange of information concerning, 477n.129
- criminal sanctions, freedom of expression and, 116
- cross-border crime
  - approximation and, 320
  - conflicts of jurisdiction and, 160–1
  - double jeopardy and, 148
  - EU legal assistance conventions and, 515n.604
- Europol and, 563–4
- expansion of punishability and, 320–1
- institutionalisation of prosecution of, 411–12
- overall assessment test and, 103
- police and judicial co-operation concerning, 413
- procedural rights and, 136–7
- right to interpretation and translation and, 137–8
- surveillance and, 412–13
- terrorism laws and, 324
- TFEU provisions on, 17–18
- cross-border prosecution, Eurojust and, 569–70
- cross-examination of witnesses, ECHR Art. 6(3)(d), 100
- culpability, principle of, 11–12
  - financial penalties, mutual recognition of, 464–5
- presumption of innocence and, 93
- prohibition of analogy and, 127–8
- cultural property, European convention on, 317–19

- custodial measures
  - deprivation of liberty and, 104–5
  - retroactive extension of, 131
  - retrospective measures, 108
- customary law, Union law as, 24
- Customs Information System database, 330–1
- customs law, reference norms of, 330–1
- cybercrime
  - approximation of law on, 324
  - European Council Cybercrime Convention, 319
  - European Cybercrime Centre and, 563–4
- Cyprus
  - court challenges to EAW in, 443–4
  - EAW implementation in, 500n.396
- Czech Republic
  - CFREU provisions and, 243–4
  - Constitutional Court of, 11, 12–13
  - court challenge to EAW in, 443–4
- data. *See also* personal data
  - ECHR Art. 8 limits on surveillance of, 113
  - EPPO prosecutions and protection of, 578–9
  - Eurojust as clearing house for, 570–1
  - Europol access to, 566–7
  - Europol management of, 564–6
  - protection of, 141–2, 417, 469n.17
  - in Schengen Information System, 424–5
- death penalty, ECHR Protocols 6 and 13 on, 81, 429
- defence
  - absent or fleeing defendant, right continues with, 96–7
  - access to files and right to, 95
  - adequate time and facilities for preparation of, 95
  - duty of care concerning, 97
  - effective and appropriate defence, right to, 91–2, 96–7
  - European Investigation Order and right to, 460–1
  - of marital immunity, 128
  - pro-bono defence, right to, 97
  - restrictions on right to examine witnesses and, 99–100
  - right to examine witnesses and, 98
  - right to interpreter and, 91–2, 100
- defence counsel. *See* legal counsel
- defence of persons, right to life and, 121
- defendants' rights
  - absent or fleeing defendant, 96–7
  - access to case files, 94–5, 112–13
  - contact with legal counsel, confidential and unrestricted contact, 96
  - to content of witness statement, 98
  - duty of care and, 97
  - to effective defence, 96–7
  - to factual basis of detention information, 111
  - to fair hearing, 96, 433–4
  - fairness principle and, 91–2
  - to interpreter, 91–2, 100
  - to legal assistance and counsel, 96
  - overall assessment test and, 103
  - to pro bono defence, 97
  - restrictions on witness examination and, 99–100
  - self-defence as, 96
  - simplified extradition, consent to, 427
- De Gaulle, Charles, opposition to European integration by, 2–3
- degrading treatment
  - European convention on, 317–19
  - torture versus, 123–4, 125–6
- delay of proceedings. *See also* length of proceedings
  - complaint on grounds of, 90
  - ECtHR deliberations concerning, 88–9
  - preliminary ruling procedures and, 380–1
  - pre-trial detention and, 110–11
- democracy, principle of
  - constitutional law compliance of national law reference norms and, 333
  - mutual recognition as violation of, 439–41
- denial of the holocaust, freedom of expression and, 115–17



- Denmark
  - EAW implementation in, 498–9
  - opt-out agreement with, 4–5, 10–11, 55n.294
  - Prüm Convention and, 468n.16
- deportation
  - detention for purposes of, 108–9
  - ECHR Art. 3 and, 126–7
- Derogation Order (UK), 108–9
- detention
  - access to files, 112–13
  - of asylum seekers, 108–9
  - continuous detention, extradition and, 423–4
  - conviction as basis for, 104–5
  - EU legislation and directives concerning, 139
  - European Arrest Warrant and, 433–4, 441–2
  - factual basis of, 111
  - failure to comply or fulfill legal obligation as basis for, 105–6
  - grounds for (ECHR Art. 5), 104–9
  - inhuman or degrading treatment during, 125–6
  - of minor, 107
  - pre-trial detention, 109–12, 114
  - preventive detention, 105, 106–8
  - provisional arrest and pre-trial detention, 106–7
  - surrender procedures and, 144, 448–9
- differentiation/distinction
  - requirement, preventive detention and, 131–3
- Directive 2008/99/EC, 360n.132
- Directive 2015/849/EU, 380n.341
- directives of the European Union
  - on access to case files, 138–9
  - harmonisation with national law and, 336–8
  - on presumption of innocence, 139
  - primacy principle and, 341–2, 346–7
  - procedural law approximation and, 414–15
  - on protection of financial interests, 325–6
  - on right to be present at trial, 139–40
- disciplinary trials
  - conviction in, 104–5
  - ECHR Art. 6 application in, 87–8
- disclosure, duty of
  - access to case files and, 112–13
  - on accusation, nature and cause of, 94
  - incriminating evidence, 94
- discrimination, prohibition of, primacy of EU law in, 340–3
- disorder, freedom of expression versus prevention of, 117
- DNA samples
  - in European Evidence Warrant, 454–5
  - police co-operation and exchange of information concerning, 467–9
- documentation centre, Eurojust as, 570–1
- dolus eventualis*, 134
- domestic courts
  - overall assessment doctrine and, 102–3
  - right to life and, 121
- domestic law. *See* national law of Member States
- double jeopardy
  - alternative proposals involving, 160–1
  - cases involving, 161–2
  - in CFREU Art. 50, 142–4
  - in CISA Art. 54, 147–62
  - conditional termination of proceedings and, 150–1
  - conflict in purpose and, 152–3, 155–6
  - ECHR prohibitions, 83–4, 146–7
  - enforcement component of, 157–60
  - enforcement instruments and, 462–3
  - European law focus on, 146–62
  - final judicial decision and, 148–54
  - grammatical interpretation, 150–1, 153, 155–6
  - interim results and, 153
  - internal judgments and, 148
  - multiple prosecutions and, 161
  - prohibitions against, 117–19
  - purpose of prohibition of, 151–2
  - same-act principle and, 155–7
  - Schengen *acquis* prohibition of, 26, 74
  - systematic interpretation of, 151, 155–6

- double jeopardy (cont.)
  - teleological interpretation of, 151–2, 155–6
- Draft Council Conclusions 2009, 321
- drug addiction
  - approximation of laws and practices concerning, 362n.136
  - preventive detention on basis of, 107–8
- drug trafficking
  - approximation of law on, 324
  - crime provocation issue and, 90–1
  - double jeopardy cases and, 156, 161–2
  - emetics administration to suspects in, 126, 134–5
  - European Drugs Unit and, 563
  - exclusion of evidence in, 119–20
- dual citizenship, extradition and, 432–3
- dual criminality principle
  - European Arrest Warrant and, 434–5, 436–7, 439, 441
  - European Enforcement Order and, 463–4
  - European Evidence Warrant and, 454–5
  - European Investigation Order and relinquishment of, 458–9
  - European Supervision Order and, 465–6
  - extradition and, 421
  - freezing of evidence and property and, 454
  - judgment and probation assistance and, 466
- duty of care
  - ECtHR requirements concerning, 97
  - EU regulations concerning, 380n.341
- duty of loyalty, harmonisation by
  - assimilation and, 338–40
- dynamic references
  - to EU law, 334–5
  - to national law, 327–8
- economic crime. *See also* financial interests of EU
  - approximation in, 324
  - European integration and focus on, 2
  - EC Summit of Luxembourg, 563
- educational supervision, 107
- effective and appropriate defence
  - access to files and, 95
  - duty of care and, 97
  - European Arrest Warrant and role of, 435
  - individual right to, 96–7
  - right to, 91–2
- effet utile*, supranational criminal law and, 17–18
- electronic communication, ECHR Art. 8 limits on surveillance of, 113
- ‘emergency brake’ procedure
  - ancillary competence and, 336–7
  - Constitutional Courts and, 11–12
  - criminal law approximation and, 319–20
  - immigration and human trafficking law and, 19
  - in Lisbon Treaty, 6–10
  - Member State legislation and, 323
  - procedural law approximation and, 414–15
  - supranational criminal law and, 15–18
- emetics, administration to suspects, 126, 134–5
- enforced disappearance of prisoners, 111–12
  - right to life and, 121
- enforcement
  - CJEU role in, 573–4
  - double jeopardy and requirement for, 148–9, 157–60
  - of environmental law, 336–7
  - EU Financial Penalties Act, 465
  - European Supervision Order and, 465–6
  - existing convictions and, 466
  - extradition and, 419, 432–3
  - instruments of assistance for, 418–19
  - judgment and probation measures and, 466
  - legal assistance in, 461–7
  - mutual recognition in instruments for, 462–7
  - of penalties, 158
  - of sentencing, 159

- transfer and enforcement
  - agreements, 461–2
- English Suicide Act, 115
- enlargement of EU, criminal law
  - structure and, 2–3
- Enlightenment philosophy, European
  - criminal law and, 24–5
- environmental protection
  - ancillary competence concerning, 336–7
  - approximation of law on, 324
  - blanket criminal law offences and, 369n.235
  - conformity with EU interpretations of, 343–5
- equal treatment amounting to
  - assimilation, 339
- equality of arms principle
  - access to case files and, 94–5, 112–13
  - adequate time and facilities for preparation of defence, 95
  - in ECHR articles, 83–4
  - factual basis of detention and, 111
  - fair trial and, 86–7
  - information on nature and cause of accusation and, 94–5
  - right to examine witnesses and, 98
- erga omnes intra partes* effect, 82–3, 342–3
- EU Financial Penalties Act, 465
- eurocrimes
  - ancillary competence and, 17–18
  - mutual recognition principle and, 20–1
- Eurojust, 142, 160–1
  - cross-border prosecution and, 411–12
  - European Arrest Warrant and, 433–4
  - European Public Prosecutor's Office and, 574
  - organisation and tasks of, 570–1
  - overview of, 569–73
- Eurojust Annual Report, 571
- European Agency for the Management of Operational Co-operation at the External Borders, 361n.134
- European Arrest Warrant (EAW)
  - alerts and, 425–6, 433–4
  - conditions for execution of, 437
  - dual criminality principle and, 434–5, 436–7, 439, 441
  - enforcement instruments and, 462–3
  - EU framework for, 433–7
  - evaluation of, 447–9
  - extradition requests and, 417–18, 437–42, 447
  - foreign nationals and, 446
  - German Constitutional Court
    - annulment of, 442–6
  - grounds for non-execution, 436–7
  - maximum punitivity principle and, 439–41
  - mutual assistance procedures, 417–18
  - national implementation issues
    - involving, 437–42
  - offences included in, 435
  - ordre public* and, 441–2
  - pre-trial detention and, 343–5
  - procedural rights concerning, 137–9, 143–4
  - refusal to execute, 158–9
  - scope of application, 434–5
  - stages in procedure for, 433–4
  - substantial link concept and, 445–6
  - surrender procedures and, 432–51
- European Atomic Energy Community (Euratom) (EAEC), 2
  - primary law reference norms and, 329–30
  - three-pillar model and, 3–4
- European Central Bank, OLAF
  - investigation of, 562
- European Charter of Fundamental Rights (CFREU), 24
- European Coal and Steel (ECSC), 1–2
- European Commission, 136
  - double jeopardy proposals and, 160
- European Committee on Crime Problems (CDPC), 19–20
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 26 November 1987, 317–19
- extradition restrictions in, 428–32

- European Convention for the  
 Protection of Human Rights  
 and Fundamental Freedoms  
 (ECHR). *See also* Additional  
 Protocols to ECHR
- Art. 1, 102
- Art. 1(1), 77–8
- Art. 2, 119, 120–3
- Art. 2(1), 430
- Art. 2(2), 145
- Art. 3, 123–7, 429, 431
- Art. 5, 103–13
- Art. 5(1)(a), 104–5
- Art. 5(1)(b), 105–6
- Art. 5(1)(c), 106–7
- Art. 5(1)(d), 107
- Art. 5(1)(e), 104–5, 107–8
- Art. 5(1)(f), 108–9
- Art. 5(2), 100, 111
- Art. 5(3), 109–11
- Art. 5(4), 111–13
- Art. 5(5), 111–12
- Art. 6
- access to files, 112–13
- consequences of violations of,  
 101–3
- extradition restrictions in, 430–1
- fair trial and equality of arms  
 and, 84–8
- length of proceedings and crime  
 provocation, 88–91
- right to remedy in, 144–5
- systematics of, 91–4
- Art. 6(1), 91–2, 111, 117
- Art. 6(2), 92, 93–4, 117–18
- Art. 6(3), 91–2
- Art. 6(3)(a), 94–5, 430–1
- Art. 6(3)(b), 95
- Art. 6(3)(c), 96–7, 102
- Art. 6(3)(d), 98–100, 118
- Art. 6(3)(e), 100
- Art. 7, 127–35
- Art. 8, 113–15, 118–19, 430
- Art. 10, 115–17, 118–19
- Art. 13, 90, 144–5
- Art. 15, 108–9, 145
- Art. 15(2), 125–6
- Art. 17, 115–17
- Art. 18, 177n.145
- Art. 33, 79–80
- Art. 34, 111
- Art. 46, 82–3
- Art. 56(1), 93–4
- Art. 59(2), 77–8
- CFREU and, 142–4
- civil and criminal proceedings  
 and, 87–8
- constitutional status of, 74
- criminal law and, 81–135
- ECtHR decisions and, 81–3
- establishment of, 1
- EU primary law and, 24
- European Union and, 74–80
- excessive length of proceedings and  
 crime provocation, 88–91
- individual rights and, 94–103
- procedural rights in, 103–19, 135–42
- Protocol 1, Art. 3, 75
- Protocol 6, 81
- Protocol 13, 81
- Protocol 15, 202n.378
- Protocol 16, 79–80
- right to information in, 139
- right to interpretation and  
 translation and, 137–8
- supranationalisation of criminal law  
 and, 442–3
- European Convention on Extradition  
 (EuCExt), 415, 416–17, 421–4,  
 426–8
- European Convention on Information  
 on Foreign Law, 415–16
- European Convention on Mutual  
 Assistance in Criminal Matters  
 (EuCMACM), 22–3, 415–17,  
 452–3
- European Convention on Offences  
 relating to Cultural Property of  
 23 June 1985, 317–19
- European Convention on Spectator  
 Violence and Misbehaviour at  
 Sports Events and in Particular  
 at Football Matches of  
 19 August 1985, 317–19
- European Convention on the Control  
 of the Acquisition and

- Possession of Firearms by  
 Individuals, 416
- European Convention on the  
 International Validity of  
 Criminal Judgments, 415–16
- European Convention on the Non-  
 applicability of Statutory  
 Limitation to Crimes against  
 Humanity and War Crimes of  
 25 January 1974, 317–19
- European Convention on the  
 Punishment of Road Traffic  
 Offences of 30 November 1964,  
 317–19
- European Convention on the  
 Supervision of Conditionally  
 Sentenced or Conditionally  
 Released Offenders, 415–16
- European Convention on the  
 Suppression of Terrorism of  
 27 January 1977 and the  
 Protocol of Amendment of  
 15 May 2003, 317–19, 426–8,  
 431–2
- European Convention on the Transfer  
 of Proceedings in Criminal  
 Matters, 251n.947, 415–16
- European Convention on the Transfer  
 of Sentenced Persons, 415–16
- European Council  
 ‘emergency brake’ procedure  
 and, 323
- Laundering Convention of, 318
- Stockholm Programme passed by,  
 136–7
- European Court of Human Rights  
 (ECtHR)  
 absent or fleeing defendant, rights of  
 protected by, 96–7  
 access to files and, 112–13  
 civil and criminal procedure  
 and, 87–8  
 compensation awarded by, 82–3  
 compliance with ECHR monitored  
 by, 81–2  
 conflicting competence with  
 CJEU, 80  
 crime provocation issue and, 90–1  
 detention procedures before, 104–5,  
 206n.421  
 ECHR and decisions of, 76,  
 79–80, 81–3  
 extradition rulings by, 429  
 freedom of expression protections  
 and, 115–17  
 Grundgesetz (German Basic Law)  
 and, 166–7  
 jurisdiction of, 4–5, 25–6, 78–9  
 legal basis for deprivation of liberty  
 and, 103–4  
 on length of pre-trial detention,  
 109–11  
 length of proceedings rulings  
 by, 88–9  
 national detention judgments and, 105  
 national implementation or  
 compliance with decisions of,  
 174–5  
*nemo tenetur* principle and, 189–90  
 on preventive detention, 106–7  
 procedural rights violations  
 and, 86–7  
 prohibition of analogy and, 127–8  
 prohibition of torture and, 123–7  
 restrictions on witness examination  
 and, 99–100  
 right to life rulings by, 122  
 Scoppola judgment of, 76–7  
 on surveillance limits, 113  
 UK compliance with, 75
- European Court of Justice (ECJ), 2–3  
 jurisdiction expansion for, 4–5
- European Criminal Bar Association  
 (ECBA), 560
- European criminal defence  
 network, 24–5
- European criminal law  
 institutionalisation of, 560  
 post-Lisbon concept of, 14–15  
 sources, 23–7
- European Criminal Policy  
 Initiative, 24–5
- European Cybercrime Centre (EC3),  
 563–4
- European Data Protection Supervisor  
 (EDPS), 568–9

- European Defence Community (EDC), 1–2
- European Delegated Prosecutors
  - investigations initiated by, 576–7
  - in proposed EPPO structure, 574–5
- European Drugs Unit (EDU), 563
- European Economic Community (EEC)
  - establishment of, 2
  - ‘Northern Southern enlargement’ of, 2–3
- European Enforcement Order, 418–19
  - legal assistance in enforcement and, 463–4
- European Evidence Warrant (EEW), 418, 454–5
- European integration
  - CJEU and, 573–4
  - economic versus criminal integration, 596n.230
  - historical process, 1–14
  - Schuman plan 1950 to Nice 2001, 1–5
- European Investigation Order (EIO), 418
  - evidence gathering and, 456–61
  - exclusion of evidence in, 461
  - grounds for refusal in, 458–9
  - legal assistance and, 451–2, 453–4
  - specific investigative measures in, 459–60
- European Investment Bank (EIB),
  - OLAF investigation of, 562
- Europeanised criminal law
  - Council of Europe and national laws and, 19–20
  - definition of, 14–15
  - double jeopardy prohibitions and, 251n.947
  - national law reference norms and, 331–3
- European Judicial Network (EJN), 569
  - Eurojust co-operation with, 572–3
- European Parliament
  - OLAF investigation of, 562
  - strengthening of, 3–5
- European Police College (CEPOL), 563–4
- European Political Community (EPC), 1–2
- European Protection Order, 418–19
- European Public Prosecutor’s Office (EPPO)
  - areas of competence for, 575–6
  - cross-border prosecution and, 411–12
  - forum shopping and, 21–2
  - investigations by, 576–7
  - Lisbon Treaty and, 10–11
  - organisation and structure of, 574–5
  - overview of, 574–80
  - proposed creation of, 6–10, 560
  - prosecution process and, 577–8
- European Supervision Order (ESO), 465–6
- European Union (EU)
  - approximation of criminal law in, 319–26
  - coherence in protection of rights in, 76–7
  - criminal law in post-Lisbon era, 5–10
  - enlargement in 2004, 5
  - establishment of, 2–3
  - European Convention for the Protection of Human Rights and Fundamental Freedoms and, 74–80
  - extradition and conventions of, 426–8
  - fundamental rights protection in, 135–62
  - harmonious interpretation of Member States criminal law and, 343–5
  - interpretation standards for law of, 333
  - legal assistance and framework of, 415, 416–17, 452–3
  - legal personality of, 77–8
  - Member States duty to protect law of, 339
  - mutual recognition principle and criminal law in, 20–2
  - national law references to law of, 331–6
  - primacy over national law, 340–3, 346–7

- primary and secondary law influence
  - in, 326–47
- references to national law
  - (assimilation), 328–31
- scope of application in law of, 142–4, 337–8
- supranational criminal law
  - framework in, 20–3
  - three-pillar structure of, 3–4
- European Union Mutual Assistance Convention (EUMAC), 453
- Europe des Patries* (Europe of Fatherlands), 2–3
- Europol, 142
  - Convention on the Enactment of, 563–4
- counterfeiting protections and, 358n.128
- Eurojust and, 572–3
- European Public Prosecutor Office and, 579–80
- information processing activities of, 565–6
- monitoring of, 568–9
- objectives of, 565
- overview of, 563–9
- police co-operation and exchange of information and, 412
- tasks of, 564–5
- Europol liaison officers (ELOs), 565–6
- evidence
  - duty to disclose incriminating evidence, 94
  - EPPO prosecution process and admissibility of, 578–9
  - European Evidence Warrant and, 454–5
  - European Investigation Order
    - guidelines and, 456–61
  - exclusion of, drug trafficking case, 119–20
  - fairness violations in gathering of, 101–3
  - free movement of, 455–6
  - freezing of, 418, 454
  - harmonisation on admissibility of, 414–15
  - key evidence, witness examination and, 99–100
  - legal assistance in gathering of, 415, 418, 453–61
  - mandatory exclusion of, 125
  - mutual recognition and gathering of, 21–2, 453–61
  - ‘sole or decisive rule’ on, 101–2
  - transnational gathering of, 455–6
- executing State
  - European Enforcement Order and, 463–4
  - European Evidence Warrant and, 454–5
  - European Investigation Order and, 456–61
- execution solution, length of proceedings, 89–90
- executive decrees, static and dynamic
  - references to EU law and, 334–5
- executive transfer procedure, European Arrest Warrant and, 417–18
- expansion of punishability principle, 320–1, 345
- expedient proceedings, right to, 88–9
- expert witnesses, ECHR Art. 6(3)(d) on, 98–9
- external investigations, by L’Office européen de lutte anti-fraude, 561–2
- external references, norms of reference and, 327–8
- extradition procedures
  - admissibility of, 419, 423–4, 432–3, 449–51
  - alerts for purposes of, 425–6
  - applicable European conventions on, 419–32
  - chain extradition, 415–16, 431, 449–51
  - in CISA, 424–6
  - comparison of EuCExt and other EU conventions, 426–8
  - deportation violations and, 126–7
  - detention for purposes of, 108–9
  - double jeopardy and, 251n.947, 258n.1018
  - dual criminality principle and, 421

- extradition procedures (cont.)
  - ECHR and Additional Protocol restrictions on, 428–32
  - European Arrest Warrant impact on, 417–18, 437–42, 447–9
  - German court challenges to, 444–5
  - inter-state co-operation on crime and, 22–3
  - legal assistance and, 415
  - Member State comparisons of, 419–20
  - ‘mother conventions’ of CoE and, 420
  - national or ECHR barring of, 442–6
  - non-extradition of nationals, 427, 432–3
  - obstacles to, 421
  - overview of, 419
  - simplified extradition, EU convention on, 427
  - surrender procedures and, 432–51
  - US–EU agreements on, 417
- extraordinary renditions, 111–12, 123–4, 125, 126–7
- extraterritoriality
  - extradition and issues of, 428–32
  - of national criminal law, 328–9
- factual *erga omnes* effect, 342–3
- factual precedent effect, 342–3
- fair hearing, defendants’ right to, 96, 433–4
- fairness principle
  - crime provocation and, 90–1
  - defendants’ rights and, 91–2
  - ECtHR test of, 101–3
  - length of proceedings as violation of, 89–90
  - pre-trial detention control and duration and, 109–11
- fair trial, right to
  - CFREU provisions on, 144–5
  - in ECHR Article 6, 84–8
  - equality of arms principle and, 86–7
  - extradition restrictions based on threat to, 430
  - presumption of innocence and, 93
  - as procedural right, 83–4
  - temporal application of, 87, 109–10
  - in US Constitution, 451–2
- false testimony
  - extraterritorial application of national law on, 328–9
  - prosecution for, 326
- family life, right to
  - in CFREU, 145
  - in ECHR Art. 8, 113–15
  - extradition restrictions based on threat to, 430
- final judicial decision, double jeopardy and requirement for, 148–54
- ‘final rescue shot’, right to life and, 121–2, 128–9, 135
- financial interests of EU. *See also* economic crime
  - additional directives for protection of, 325–6
  - approximation of laws concerning, 324–5
  - criminal legislation relating to, 18–19, 251n.947
  - duty of loyalty and protection of, 340
  - EPPO role in protection of, 574, 575–6
  - EU Financial Penalties Act, 465
  - extradition for offences involving, 421
  - mutual recognition of financial penalties, 418–19, 464–5
  - L’Office européen de lutte anti-fraude investigations of, 560–3
- fines. *See* penalties
- fingerprint data, police co-operation and exchange of information concerning, 468n.16
- fixing of penalty solution, length of proceedings and, 89–90
- flight passenger data, CJEU decision on, 336–7
- food law
  - preliminary rulings and, 342–3
  - primacy of EU law in, 340–3, 346–7
- forced confession
  - presumption of innocence and, 93
  - torture and, 101



- foreseeability, principle of
  - prohibition of analogy and, 127–8
  - retroactive punishment and, 128–9
- formal criminal complaint, extradition
  - procedures and, 424–6
- forms of conduct, punishability criteria, 320–1
- ‘47+1 Group’, 169–70
- forum regit actum*
  - in European Evidence Warrant, 454–5
  - European Investigation Order and, 456–61
- forum shopping
  - EPPO prosecution process and, 577–8
  - EU rights protections and, 135–42
  - Member State use of EIO as, 457–8
  - mutual recognition of evidence and, 21–2
- Framework Decision on Conflicts of Jurisdiction, 160–1
- Framework Decision on the European Arrest Warrant (FD EAW), 433–7. *See also* European Arrest Warrant (EAW)
- Framework Decision on the Mutual Recognition of Judgments and Probation Decisions, 466
- Framework Decision on the Protection of the Environment through Criminal Law, 336–7
- Framework Directive on the European Supervision Order, 458–9
- France
  - Constitutional Court of, 14
  - excessive length of proceedings in, 186n.222
  - extradition in, 419–20, 500n.396
  - fairness test of proceedings in, 102
  - ordonnance de non-lieu*, 152–4
  - Schuman Plan and, 1–2
  - veil prohibitions in, 115
- fraud
  - approximation of EU financial interest protections and, 324–5
  - Member States’ definitions of, 45n.188
  - minimum penalties for, 325–6
- L’Office européen de lutte anti-fraude investigations of, 560–3
- TFEU authorisation of criminal legislation on, 18–19
- freedom of expression
  - cybercrime criminalisation and, 319
  - in ECHR Art. 8, 113
  - in ECHR Art. 10, 115–17
- freedom of movement, ECHR Art. 5 on, 103
- freedom of the press
  - in ECHR Art. 8, 113
  - in ECHR Art. 10, 115–17, 118–19
- freezing of property or evidence, legal assistance in, 418, 454
- Freiburg Proposal, 161
- full-face veil, French prohibition against, 115
- fundamental rights. *See* human rights
- fund transfers, approximation of minimum rules on, 324
- gap-filling tools, harmonisation and, 22
- General Data Protection Regulation, 141–2
- general policy areas, approximation of EU directives on, 336–8
- genocide
  - legality principle and issue of, 129–31
  - police co-operation and exchange of information concerning, 467–9
- German Act on the CJEU, EuGHG (EuGH-Gesetz), 343
- German Aviation Security Act, 122–3
- German Federal Constitutional Court
  - annulment of EAW in, 442–6
  - approximation in, 320, 340
  - cost-of-interpretation liability in, 100
  - due information or publication of applicable law and, 335–6
  - Lisbon Treaty and, 11
  - preventive detention in, 131–3
  - state of emergency rules in, 122–3
  - three-step test of proportionality in, 510–11

- German–Swiss Police Treaty (1999), 470n.25
- Germany
- absent or fleeing defendant, rights in courts of, 96–7
  - border guard cases in, 128–9
  - breach of State or official secrets in, 329–30
  - CFREU provisions and, 244–5
  - Constitutional Court of, 11–12, 96–7
  - crime provocation cases in, 117
  - criminal law references to EU law, 331–6
  - custodial measures in, 108
  - detention conditions in, 125–6, 206n.421
  - double jeopardy interpretations in, 149, 151, 161–2
  - EAW implementation in, 437–42, 444–5
  - ECHR and case law in, 75–6
  - equal treatment of interests in criminal law of, 339
  - EU Financial Penalties Act and, 465
  - examination of witnesses in, 198n.346
  - extradition procedures in, 419–20, 427–8
  - false testimony, law on, extraterritorial application of, 328–9
  - Federal Criminal Police (BKA) in, 566–7
  - forced criminal prosecution procedure in, 152–3
  - foreign nationals, status in, 446
  - identity review procedures in, 247–8
  - judicial decisions restrictions in, 149
  - law on CJEU in, 343
  - legal assistance conventions and, 416–17
  - length of proceedings cases in, 90
  - liability for cost of interpreter in, 100
  - mutual assistance procedures and, 203n.389, 439
  - presumption of innocence issues in, 93–4
  - preventive detention in, 105, 131–3
  - reference norms in law of, 366–7
  - retroactive punishment cases in, 135
  - Schuman Plan and, 1–2
  - sibling incest criminalisation in, 115
  - state of emergency versus right to life in, 122–3
- Gesetz über die internationale Rechtshilfe in Strafsachen (Act on International Legal Assistance in Criminal Matters, Germany) (IRG)
- dual criminality reviewed in, 439
  - EAW implementation and, 437–42
  - extradition procedures and, 427–8, 449–51
  - legal protections against extradition and, 446
- governance, compliance with ECtHR decisions and effectiveness of, 174–5
- Greece
- detention procedures in, 206n.419
  - double jeopardy initiative of, 160–1
  - ECHR Art. 6 violations by, 86
  - excessive length of proceedings in, 88, 185–6
  - extradition in, 419–20, 500n.396
  - reference norms in law of, 366–7
  - treaties and national law in, 382n.361
- ‘Greek Maize Scandal’, 320–1, 338–40
- Green Paper on Conflicts of Jurisdiction, 160–1
- Green Paper on Procedural Safeguards, 82–3, 94, 136
- Green Paper on Sanctions, 462–3
- Green Paper on the establishing of a European Public Prosecutor, 455–6
- ground of revision, 83
- Grundgesetz* (German Basic Law)
- democratic self-determination and, 11–12
  - double jeopardy and, 161–2
  - ECHR and, 75–6
  - ‘guarantee of correctness’, double jeopardy prohibitions and, 151–2

- guarantor's obligations, EU regulations concerning, 380n.341
- guilt
  - conviction and, 104–5
  - presumption of innocence and, 93
- Habeas Corpus Act (1679), 109
- Hague Summit (1970), 2–3
- harmonisation of criminal procedure.
  - See* approximation of law
  - ancillary competence and, 322–3
  - approximation and, 22, 324, 349–50
  - approximation of EU financial interest protections and, 324–5
  - assimilation and standardisation versus, 22
  - conflicts of jurisdiction and, 160–1
  - conforming interpretation and, 343–5
  - constitutional compliance of
    - national reference norms and, 333
  - directives as vehicle for, 336–8
  - duty of loyalty or sincere co-operation and, 338–40
  - EPPO investigations and, 576–7
  - EU financial interest protections, 324–5
  - legal assistance and, 451–2
  - mutual recognition principle and, 20–1
  - versus national co-operation
    - legislation, 34n.76
  - proportionality and subsidiarity and limits of, 337–8
  - regulatory powers ancillary to, 336–7
  - right to interpretation and translation and, 137–8
  - secondary law approximation and, 337
  - unequal treatment of EU norms and, 331–3
- hazardous waste violations, 327
- Holocaust, denial of, freedom of expression and, 115–17
- home country, sentenced persons allowed to serve in, 461–2
- home search, ECHR Art. 8 limits on, 113–15
- hot pursuit. *See also* absent or fleeing defendant
  - CISA provisions on, 412–13
  - double jeopardy and, 148
- human rights
  - CJEU interpretation of, 596n.230
  - EAW impact on, 437, 447–9
  - EU accession linked to protection of, 76
  - European Investigation Order and issues of, 458–9
  - legal assistance and standard of, 451–2
  - in secondary law, 74
- Human Rights Act 1998 (United Kingdom), 75–6
- human trafficking
  - approximation of law on, 324
  - supranational criminal law and, 19
- Hungary
  - detention procedures in, 206n.419
  - EAW implementation in, 498–9
  - ECHR Art. 6 violations by, 86
  - excessive length of proceedings in, 88
  - extradition in, 419–20, 500n.396
  - length of proceedings remedies in, 185–6
  - reference norms in law of, 366–7
  - treaties and national law in, 382n.361
- Iceland
  - CISA provisions and, 470n.25
  - European Arrest Warrant in, 489–90, 498–9
  - extradition procedure in, 427
  - Prüm Convention and, 468n.16
  - Schengen *acquis* and, 55n.296
- identity review
  - CJEU case law and, 144
  - European Arrest Warrant and, 441–2, 448–9
- immediacy, principle of, mutual recognition of evidence and, 21–2
- immigration law, supranational criminal law and, 19

- immigration law, unauthorised entry
  - into countries and approximation of, 324
- implied powers competence, supranational criminal legislation and, 17–18
- imprisonment. *See also* detention; prisoners' rights; sentencing
  - double jeopardy and sentence of, 157–60
  - inhuman or degrading treatment during, 125–6
  - protection from illegitimate imprisonment, 103
- in absentia* sentencing
  - execution of EAW and, 437
  - extradition and, 430–1
  - harmonisation of procedural law and, 414–15
  - ordre public* and, 441–2
  - right to be present at trial and, 139–40
- incapacitation order, custodial measures, 108
- in concreto* test, 103–4, 114, 115, 133–4
- indirect victims, ECtHR review of
  - individual applications involving, 173–4
- individual guilt, principle of, 247–8
- individual rights
  - to adequate time and facilities for preparation of defence, 95
  - in ECHR, 94–103
  - ECtHR review of individual applications involving, 81–2
  - to effective defence, 96–7
  - European Arrest Warrant directives and, 143–4
  - harmonisation of procedural law on, 414–15
  - in Lisbon Treaty, 6–10
  - nature and cause of accusation, information on, 94–5
  - primacy of EU law and, 341–2
  - privacy rights, ECHR Art. 8 limits on, 114
  - procedural rights, in ECHR Article 6, 84–8
- infectious disease, preventive detention involving, 107–8
- information, right to
  - content of witness statements, 98
  - cybercrime attacks on information systems, 324
  - due information or publication of applicable law and, 335–6
  - European Arrest Warrant and, 433–4
  - Europol powers concerning, 566–7
  - factual basis of detention, 111
  - freedom of expression/freedom of the press and, 116–17
  - on fund transfers, 356–7
  - nature and cause of accusation in, 94–5
  - police co-operation and exchange of information, 412
  - Schengen Information System, 424–5
- inhuman treatment
  - European convention on, 317–19
  - extradition restrictions due to risk of, 429–30
  - torture versus, 123–4, 125–6
- insider trading, approximation in law on, 324
- institutionalisation of EU criminal law
  - CJEU and, 573–4
  - Eurojust and, 569–73
  - European Public Prosecutor Office proposal and, 579–80
  - Europol and, 563–9
  - OLAF regulations and, 560–3
  - overview, 560
- intent, right to life and killings by, 122
- intergovernmental co-operation
  - assimilation of EU and national law and, 329–30
  - EAW challenges and, 443–4
  - expansion of, 4–5
  - history of, 2–3
  - legal assistance and, 416–17
  - mutual recognition principle and, 20
  - three-pillar structure and, 3–4
- internal investigations, by L'Office européen de lutte anti-fraude, 561–2

- internal market, Member States
  - commitment to, 3–4
- internal references, norms of reference
  - and, 327–8
- international law, legal assistance
  - and, 415
- Interpol, European Arrest Warrant
  - and, 433–4
- interpreter, right to use of, 91–2, 100, 137–8, 433–4
- inter-state proceedings
  - Council of Europe and, 80–1
  - double jeopardy and, 146–7
  - ECtHR review of ECHR compliance and, 81–2
  - ‘emergency brake’ procedure and, 323
  - EU criminal law and, 22–3
  - legal assistance and framework of, 416–17
  - procedural rights directives and, 139
  - on torture, 123–4
- intervention
  - EAW impact on extradition as, 443–4
  - in extradition, 430
  - freedom of expression and
    - restrictions on, 115–17
  - legal grounds for, 134
  - right to life and grounds for, 121
- investigations
  - appointment of defence counsel
    - during, 96
  - contradictory balanced pre-trial investigation, 180–1
  - by ECtHR, 81–2
  - Eurojust role in, 570–1
  - European Investigation Order
    - guidelines on, 456–61
  - European Public Prosecutor’s Office
    - initiation of, 576–7
  - European systems for, 14–15
  - legal assistance in, 451–2
  - L’Office européen de lutte
    - anti-fraude and suppression of, 560–3
  - police incitement and, 186–7
  - right to examine witnesses during, 98
  - State obligations in death of persons, 120–3
  - suspect’s participation in, 87
- Ireland, Republic of
  - CFREU provisions and, 243–4
  - CISA opt-in by, 470n.25
  - extradition in, 484n.242
  - opt-out agreement with, 4–5, 10–11
  - Prüm Convention and, 468n.16
  - Schengen *acquis* and, 55n.295
- issuing State
  - in European Arrest Warrant, 433
  - in European Enforcement Order, 463–4
  - in European Evidence Warrant, 454–5
  - European Investigation Order and
    - responsibilities of, 456–61
- Italy
  - detention procedures in, 206n.419
  - EAW implementation in, 498–9, 500n.396
  - ECHR Art. 6 violations by, 86
  - extradition in, 419–20
  - length of proceedings remedies in, 185–6
  - reference norms in law of, 366–7
  - treaties and national law in, 382n.361
- Japan, EU Mutual Assistance
  - Agreement with, 417
- joint investigation teams (JITs)
  - Eurojust and, 572–3
  - Europol and, 564–5
  - police co-operation and exchange of
    - information and, 412
- Joint Parliamentary Scrutiny Group (JPSG), 568–9
- joint transport policy, harmonisation of
  - criminal law and, 336–7
- judgments, legal assistance concerning, 418–19, 466
- judicial co-operation. *See also* police and judicial co-operation in criminal matters (PJCCM)
  - mutual recognition principle and, 411–12

- judicial decisions
  - double jeopardy and final decision requirement, 148–54, 158–9
  - ECHR on right to, 83–4
  - European Arrest Warrant and, 433
  - European Investigation Order and, 456–61
  - freedom of expression and protection of, 116
- judicial review
  - EPPO prosecutions and, 578–9
  - pre-trial detention, 111–12
  - right to, 117–19
- jurisdiction. *See also* subject matter jurisdiction
  - ancillary jurisdiction, 11–12
  - approximation and prevention of conflicts in, 321–2
  - balanced mechanism for, 252n.960, 264–5
  - of CJEU, 4–5, 10–11, 25–6, 79–80
  - conflicts of, 160–1
  - convention violations and, 83
  - criteria for determining, 160–1
  - EAW implementation in Member States and, 437–42
  - in European Evidence Warrant, 454–5
  - European Investigation Order and, 456–61
  - European Public Prosecutor's Office and issue of, 575–6
  - extradition and issue of, 439–41
  - extraterritorial application of national criminal law, 328–9
  - judicial co-operation among Member States and, 411–12
  - legality and, 127, 231n.708
  - mutual assistance procedures and, 102
  - national law and, 87–8
  - prohibition of torture and, 123–7
  - in right to life, 120–3
  - Schengen *acquis* and, 25–6
  - 'three-pillar structure' of criminal law and, 4–5, 25–6
- juvenile criminal law, 107
  - EU legislation and directives on procedural rights in, 139
- key evidence, restrictions on witness examination and, 99–100
- Kubiciel, M., 44n.187
- Latvia, Constitutional Court of, 11, 13
- Law on Preventive (Custodial) Detention (Germany), 131–3
- legal assistance. *See also* extradition procedures; surrender procedures
  - areas of, 415
  - defendant's right to, 96
  - for enforcement, 418–19
  - enforcement assistance, 461–7
  - Eurojust proceedings and, 571
  - European agreements on, 452–3
  - European Investigation Order and, 456–61
  - evolution from treaty-based to executive legal assistance, 415–19
  - on gathering of evidence, 453–61
  - instruments of, 418
  - investigative measures, 451–2
  - pro bono defence, 97
- legal counsel
  - absent or fleeing defendant, 96–7
  - access to files for, 94–5, 112–13
  - appointment of, 96
  - contact with defendant, right to, 96
  - defendant's right to, 96, 433–4
  - duty of care and, 97
  - EU directives on right to, 138–9
  - European Investigation Order and right to, 460–1
- legal interests
  - double jeopardy and protection of, 156
  - of EU law, assimilation of national law and, 328
- legality, principle of
  - CFREU and, 145–6
  - detention and, 115
  - EPPO and, 575–6
  - EU criminal law and, 24, 345
  - European Arrest Warrant and, 436
  - marital immunity defence and, 128
  - objections to assimilation and, 329

- past grave human rights violations, 129–31
- punishment restrictions and, 127–35
- legal personality
  - of Eurojust, 570–1
  - of European Union, 77–8
  - of Europol, 563–4
- legal reserve model, 42n.162
- legislation for criminal law
  - ‘emergency brake’ procedure and, 323
  - EU framework, 20
  - L’Office européen de lutte
    - anti-fraude role in, 560–3
  - procedural rights and, 137–40
  - right to life and, 222n.621
  - secondary Union law and, 25
  - supranational framework, 15–19
- length of proceedings. *See also* temporal
  - application of procedural rights; undue delay of proceedings
- ECHR Art. 6 on, 88–91
  - as fairness violation, 89–90
- pre-trial detention control and duration, 109–11
- procedural or factual analysis and, 88–9
- right to effective remedy and, 90
- ‘letter of rights’, proposal for, 94
- letters rogatory, European legal assistance conventions and, 452–3
- lex certa*. *See* certainty, principle of
- lex fori*
  - EPPO prosecutions and rule of, 578–9
  - EU legal assistance conventions and, 453
  - rules of evidence and, 102
- lex loci*
  - approximation of EU criminal law and, 321–2
  - EPPO investigations and, 576–7
  - EU Mutual Assistance Convention and, 453
- lex mitior* rule, 133–4
  - in CFREU, 145–6
- lex posteriori*, ECHR and, 75–6
- lex priori*, ECHR as, 75–6
- lex specialis*, 145
- liaison magistrates and prosecutors
  - Eurojust proceedings and, 570–1
  - European Judicial Network and, 569
- liberty, right to. *See also* detention
  - CFREU on, 145
  - custodial deprivation of, 104–5
  - deprivation of, conditions for, 103–4
  - double jeopardy and deprivation of, 147–8
  - ECHR on right to, 83–4, 103–13
  - pre-trial detention and, 110
- Liechtenstein
  - extradition procedure in, 427
  - Schengen *acquis* and, 55n.296
- life imprisonment, extradition
  - restrictions involving threat of, 429–30
- Lisbon Treaty (2007)
  - conferral principle and, 17–18
  - criminal law and, 5–10
  - criminal legislation authorisation, 18–19
  - Eurojust and, 572–3
  - failure of TCE ratification and, 5–6
  - legal personality of EU under, 77–8
  - opt-outs and constitutional concerns in, 10–11
  - police and judicial co-operation in criminal matters and, 5–6, 411
  - Protocol 19, 25–7
  - Protocol 30, 243–4
  - Protocol 35, 243–4
  - Protocol 36, 10–11
  - supranationalisation of criminal law and, 442–3
- ‘listening traps’, ECHR Art. 8 limits on, 114, 118–19
- locus regit actum* rule
  - EU legal assistance conventions and, 515n.604
  - in European Evidence Warrant, 454–5
  - European Investigation Order and, 456–61

- L'Office européen de lutte anti-fraude (OLAF), 560–3  
 Eurojust and, 572–3  
 European Public Prosecutor Office and, 579–80
- Maastricht Treaty (1992), 3–4  
 Europol creation and, 563  
 mandatory life sentence, 124–5  
 Manifesto on Criminal Policy, 24–5  
 Manifesto on European Criminal Procedure Law, 24–5  
 manslaughter, right to life and prohibition of, 121–2  
 margin of appreciation doctrine  
   for evidence, 101–2  
   right to life and, 121  
   sibling incest criminalisation, 115  
   veil prohibitions and, 115  
 marital immunity defence, 128  
 market abuse and manipulation,  
   approximation of sanctions for, 357n.126  
 material assets, right to life and versus protection of, 121–2  
 material competence. *See* subject matter jurisdiction  
 Mauritius, EU extradition agreements with, 417  
 maximum punitivity, principle of, European Arrest Warrant and, 439–41  
 May, Theresa, 32n.57  
 means of payment. *See* payment, means of  
 Member States. *See also* national law of Member States  
   accession to ECHR by, 78–9  
   approximation and jurisdiction of, 321–2  
   approximation of EU financial interest protections with, 324–5  
   bilateral agreements with US of, 417  
   Council of Europe and, 80–1  
   draft accession agreement for, 77–8  
   duty of loyal co-operation and EU harmonisation and, 338–40  
   EAW implementation in, 437–42  
   ‘emergency brake’ procedure and, 323  
   Eurojust co-operation with, 571–2  
   European Arrest Warrant and, 433  
   European Public Prosecutor’s Office and, 575–6  
   Europol links with, 564–6  
   Europol monitoring by, 568–9  
   extradition process in, 419  
   harmonisation of criminal codes with TFEU, 44n.187  
   judicial co-operation among, 411–12  
   legal assistance and, 416–17  
   non-execution of EAW by, 436–7  
   Prüm Convention and, 467–8n.16  
*mens rea*, right to life and, 122  
 mental illness, prevention detention and criteria for, 107–8  
 Messina Conference (1955), 2  
 military secrets, freedom of expression protections and publication of, 116–17  
 minimum penalties, proposals for, 325–6  
 minimum rules, approximation by  
   ancillary competence and, 322–3  
   areas of approximation, 324  
   criminal law in EU and, 319–20  
   criminal procedure and, 34–5  
   definition of minimum requirements, 320–1  
   judicial co-operation among Member States and, 411–12  
   minimum trias sanctions and, 338–40  
   mutual recognition principle and, 20–1  
   procedural law approximation and, 414–15  
 minimum trias sanctions, 338–40  
 minor, detention of, 107  
 mitigation solutions  
   crime provocation, 117  
   length of proceedings and, 89–90  
 mixed cases, European Arrest Warrant challenges and, 445–6  
 Monaco, Schengen *acquis* and, 55n.296



- money laundering
  - approximation in law on, 324
  - harmonisation competence and, 337
  - substantive law on, 318
- Monnet, Jean, 1–2
- ‘mother conventions’, 417, 420, 427, 452–3
- motor vehicle data, police co-operation and exchange of information concerning, 468n.16
- multi-level system of fundamental rights, ECHR and national law of Member States, 74, 76
- multiple prosecutions
  - consensual solutions, 160–1
  - double jeopardy and, 148, 160
  - Freiburg Proposal and, 161
- mutual assistance procedures
  - customs and agricultural law, national and EU co-operation on, 369n.222
  - double jeopardy prohibitions and, 251n.947
  - enforcement of penalties and, 158
  - European Arrest Warrant and, 417–18
  - European Investigation Order, 456–61
  - fairness test of proceedings and, 102
  - in German law, 203n.389, 439
  - judicial co-operation among Member States and, 411–12
  - ‘mother conventions’ of Council of Europe and, 417
  - US–EU agreements on, 417
- mutual availability, police co-operation and exchange of information and, 412
- mutual recognition, principle of approximation of law and, 321–2, 414–15
  - CJEU defence of, 595n.227
  - criticism of, 451–2
  - defined, 20–1
  - double jeopardy and, 151–2
  - in enforcement instruments, 462–7
  - European Arrest Warrant and, 417–18, 433, 439
  - European Supervision Order and, 465–6
  - gathering of evidence and, 453–61
  - judicial co-operation and, 411–12
  - legal assistance and, 415–19
  - Lisbon Treaty creation of, 6–10
  - maximum punitivity principle and, 439–41
  - ordre public* and, 441–2
  - origins in Single Market of, 21–2
  - procedural law approximation and, 414–15
  - supranationalisation of criminal law and, 442–3
  - surrender procedures and, 433
  - transnational evidence gathering and, 455–6
- mutual trust
  - CJEU defence of, 595n.227
  - European Arrest Warrant and role of, 436–7, 494–5
  - mutual recognition and, 20–1
- national co-operation legislation, harmonisation of criminal procedure versus, 34n.76
- national courts, reference to CJEU by, 343
- national exclusionary rules, conformity of EU interpretation and, 343–5
- national law of Member States, extradition in, 421–2
  - approximation areas in, 324
  - civil and criminal procedure and, 87–8
  - compliance with ECtHR decisions and, 174–5
  - conflicts and interactions on national level of, 76–7
  - constitutional law, compliance of reference norms with, 333
  - constitutional status of rights in, 74
  - detention procedures in, 103–4, 105
  - double jeopardy and, 161–2
  - ECHR equivalence to, 75–6
  - ‘emergency brake’ procedure and, 323

- national law of Member States (cont.)  
   EU criminal law framework and, 22–3, 328–31  
   European Arrest Warrant and, 436, 437–42  
   European Public Prosecutor's Office and role of, 575–6  
   extradition procedures and, 427–8, 447  
   extraterritorial application of, 328–9  
   fundamental rights and, 74  
   *ordre public* as replacement for, 441–2  
   primacy of EU law over, 340–3, 346–7  
   primary and secondary EU law and norms of, 327–8  
   provisional arrest and pre-trial detention in, 106–7  
   references to EU law by, 331–6  
   same-act principle in double jeopardy and, 155–7  
   static references to, 334–5  
   statutes versus executive decrees, reference norms and, 331–3  
   substantial link concept in EAW procedures and, 445–6  
 nationals, non-extradition of, 427, 432–3, 444–5, 500n.396  
 national security  
   freedom of expression protections and, 116–17  
   reference norms concerning breaches of, 329–30  
   surveillance of written correspondence, ECHR Art. 8  
   limits on surveillance of, 114  
 natural law  
   border regimes and human rights violations, 129  
   double jeopardy and, 156  
   *ne bis in idem* principle. *See* double jeopardy  
   necessity, principle of, freedom of expression and, 116  
   negative obligation, right to life and, 120–3  
   *nemo tenetur* principle, 189–90  
 Netherlands  
   double jeopardy interpretations in, 151, 152–3  
   EAW implementation in, 498–9  
   extradition in, 419–20, 500n.396  
   length of proceedings remedies in, 185–6  
   treaties and national law in, 382n.361  
 non-discrimination principle, European Arrest Warrant and, 446  
 Nordic Arrest Warrant (NAW), 489–90, 498–9  
 'Northern Enlargement' of EEC, 2–3  
 Norway  
   CISA provisions and, 470n.25  
   European Arrest Warrant in, 489–90, 498–9  
   extradition procedure in, 427  
   Schengen *acquis* and, 55n.296  
*nulla poena sine lege*, 127–35  
*nullem crimen sine iure*, 129  
*nullum crimen sine lege*. *See* legality, principle of  
 Nuremberg Clause, 129  
  
*Official Journal of the EU*, 335–6  
 optimisation requirements, mutual recognition principle and, 50n.223  
 opt-out provisions  
   failure of Constitutional ratification and, 4–5  
   Lisbon Treaty and, 10–11  
   Prüm Convention and, 468n.16  
 ordinary legislative procedure, Lisbon Treaty creation of, 6–10  
*ordre public*  
   EAW and, 447–9  
   European legal assistance conventions and, 452–3  
   financial penalties, mutual recognition of, 464–5  
   replacement of national law with, 441–2  
 organised crime  
   approximation of law on, 324

- common penalty for participation in, 462–3
  - same-act principle in double jeopardy and, 155–7
  - ‘ought-to-follow’ rule, mutual recognition principle and, 21–2
  - overall assessment of proceedings test
    - blanket criminal law and, 335–6
    - ECtHR performance of, 101–3
    - references to EU law and, 334–5
  - pardons, unenforceability of penalties and, 159–60
  - Parliamentary Assembly (Council of Europe), 80–1
  - parliamentary consent, approximation in cross-border crime and, 320
  - payment, means of
    - approximation in law on, 6–10, 324
    - counterfeiting of, 320, 358n.128
    - detention for failure to fulfill, 105–6
    - double jeopardy rulings and, 146
    - enforcement of, 157–60
  - pecuniary sanctions, supranational criminal law and, 18
  - penalties. *See also* payment, means of common penalty for participation in organised crime, 462–3
    - detention for failure to pay, 105–6
    - double jeopardy and payment of, 157–60
    - enforcement of, 157–60
    - EU competence concerning, 18, 320–1
    - EU Financial Penalties Act, 465
    - European Commission directives concerning, 325–6
    - financial penalties, mutual recognition of, 464–5
    - unenforceability of, 159–60
  - per curiam* intention, German challenges to EAW and, 446
  - Perez v. France*, 87–8
  - personal data. *See also* data
    - Eurojust access to, 570–1
    - Europol access to, 567–8
  - piracy, EU extradition agreements involving, 417
  - Poland
    - CFREU provisions and, 243–4
    - Constitutional Court of, 11, 13–14
    - court challenges to EAW in, 443–4
    - detention procedures in, 206n.419
    - EAW implementation in, 444–5, 498–9, 500n.396
    - excessive length of proceedings in, 88
    - extradition in, 419–20
    - length of proceedings remedies in, 185–6
    - reference norms in law of, 366–7
    - treaties and national law in, 382n.361
  - Police and Criminal Justice Authorities
    - Data Protection Directive, 141–2
  - police and judicial co-operation in criminal matters (PJCCM), 4–5
    - absent or fleeing defendant and, 411, 414
    - approximation and, 321–2
    - CISA provisions and, 412–13
    - conformity of EU and national law on, 344
    - cross-border crime and, 413
    - data protection and, 469n.17
    - double jeopardy prohibitions and, 151–2
  - Europeanisation of criminal law and, 20
  - Europol and, 563–4
  - exchange of information and, 412
  - foundations of procedural law and, 411–14
  - identities of undercover police, 118
  - legal assistance and, 415–67
  - Lisbon Treaty and, 5–6, 411
  - national criminal law and, 22–3
  - preliminary rulings and, 342–3
  - restrictions on witness examination and, 99–100
  - secondary Union law and, 25
  - Stockholm Programme and, 136–7
- police incitement, crime provocation and, 101, 186–7
  - political offences, as obstacle to extradition, 421
  - political rights, ECHR on right to, 83–4

- Portugal  
   detention procedures in, 206n.419  
   EAW implementation in, 500n.396  
   excessive length of proceedings in,  
     88, 185–6  
   extradition in, 419–20  
   reference norms in law of, 366–7  
 positive obligation  
   prohibition of torture as, 123–7  
   right to life and, 120–3  
 Post-Stockholm Programme (PSP)  
   plan, 136–7  
 prejudgment, presumption of  
   innocence and, 92  
 preliminary ruling, primacy principle  
   and procedural law and, 342–3  
 presumption of innocence  
   Cleve rules and, 92–3  
   ECHR Art. 6(2) on, 92  
   EU legislation and directives on, 139  
   OLAF regulations and, 562–3  
   revocation of suspended sentence  
     case, 117–18  
   right to remain silent and not  
     incriminate oneself, 92–3  
 presumption of relevance, primacy of  
   EU law and, 342–3  
 pre-trial detention  
   duration of, 109–11  
   in ECHR Art. 5(1)(c), 106–7  
   in ECHR Art. 5(3), 109–11  
   individual circumstances of, 110–11  
   judicial review, 111–12  
   reasonable time and duration limits  
     for, 110  
   risk of flight as grounds for, 343–5  
   surrender procedures and deduction  
     of, 433–4  
   written correspondence during,  
     ECHR Art. 8 limits on  
     surveillance of, 114  
 pre-trial procedures  
   EPPO prosecution process and, 577–8  
   European Supervision Order on,  
     418–19, 465–6  
 preventive detention, 105, 106–8, 120  
   German legislation on, 131–3  
   retroactive extension of, 106–7, 131  
 primacy, principle of  
   EU criminal law framework  
     and, 20–3  
   EU versus national law and, 340–3,  
     346–7  
   Europol access to data and, 566–7  
   procedural law and, 342–3  
 primary law  
   directives passed on, 325–6, 336–8  
   equality with national law,  
     91.30.75–6  
   EU law references to national law  
     and, 328–31  
   in European Union, 326–47  
   sources of, 23  
 prisoners. *See also* extraordinary  
   rendition; imprisonment  
   enforced disappearance of, 111–12  
   EU legislation and directives on  
     rights of, 139  
   inhuman or degrading treatment of,  
     125–6  
 privacy, right to  
   data protection and, 417, 469n.17  
   in ECHR Art. 8, 113–15  
   Europol access to data and issues of,  
     566–8  
   extradition restrictions based on  
     threat to, 430  
 private-sector corruption,  
   approximation of minimum  
   rules on, 357–8  
 probation revocation  
   ECtHR rulings on, 93–4  
   legal assistance concerning,  
     418–19, 466  
 procedural guarantees  
   OLAF regulations on, 562–3  
   pre-trial detention and, 111–12  
 procedural law. *See also* civil and  
   criminal procedure  
   approximation of, 414–15  
   double jeopardy and, 148–9,  
     259n.1030  
   ECHR articles on rights in, 103–19  
   EPPO prosecution process and, 578–9  
   European Investigation Order and,  
     456–61

- Europeanisation of criminal law
  - and, 20–1
  - explicit competence in, Lisbon Treaty creation of, 6–10
  - police and judicial co-operation and foundations of, 411–14
  - primacy principle and, 342–3
  - right to examine witnesses and, 98
- procedural or factual analysis, length of criminal proceedings and, 88–9
- procedural rights
  - CFREU provisions on, 144–5
  - to data protection, 141–2
  - directives and legislative acts for, 137–40
  - enumerative protection of, 143–4
  - EU initiatives concerning, 135–42
  - fair trial, 86–7
  - Green Paper on Procedural Safeguards (EU Commission), 82–3, 94, 136
  - judicial review, 111–12
  - presence at trial as, 139–40
  - Stockholm Programme and, 136–7
  - temporal application of fair trial, 87, 109–10
- procedural solution, length of proceedings and, 89–90
- Procédure Préjudicielle d'Urgence* (PPU), 342–3
- procurement procedures,
  - approximation on corruption in, 357–8
- prohibition of analogy, legality principle and, 127–8
- prompt judicial control, pre-trial detention monitoring, 109–10
- property laws
  - ECHR Art. 8 on searches and confiscation, 113–15
  - freezing of property, 418, 454
  - Laundering Convention, 113–15
  - right to life and versus protection of, 121–2
  - substantive criminal law concerning, 119
- proportionality, principle of ancillary competence and, 322–3
  - in CFREU, 145–6
  - cross-border crime and, 320
  - in Draft Council Conclusions 2009, 352–3
  - European Arrest Warrant and, 247n.905, 447–9
  - European Investigation Order and, 457–8
  - European Public Prosecutor's Office and issue of, 575–6
  - financial penalties, mutual recognition of, 464–5
  - freedom of expression and, 116, 118–19
  - limits of harmonisation and, 337–8
  - Member State criminal codes and, 44n.187
  - pre-trial detention and, 106–7
  - supranational criminal law and, 15–18
  - surrender procedures and, 448–9
  - surveillance of correspondence and, 114
- prosecution process
  - CFREU provisions and, 142
  - cross-border prosecution, institutionalisation of, 411–12, 569–70
  - data protection and, 141–2
  - duty of disclosure and, 94
  - EPPO role in, 577–8
  - European Investigation Order and, 456–61
  - Europol and, 563–4
  - extradition and, 419
  - legal interests of, double jeopardy and, 156
  - restrictions on witness examination and, 99–100
  - right to examine witnesses and, 98
  - secrecy needs of, access to files and, 112–13
  - translation of telephone surveillance records and, 100
- protection of confidence, conformity with EU law and, 345
- Protocol of 29 November 1996, 324–5
- provisional arrest, 106–7
  - extradition and, 423–4, 425–6

- Prüm Convention, 467–9
- psychiatric commitment
- deprivation of liberty and, 104–5
  - preventive detention and, 107–8, 132–3
  - retrospective custodial measures, 108
- public interest
- surveillance of written
    - correspondence, ECHR Art. 8
    - limits on surveillance of, 114
  - weighing up of, in pre-trial detention, 110–11
- public procurement, approximation
- on corruption in, 325–6, 357–8
- public servants, misapplication of funds by, 325–6
- punishment
- approximation and standards of, 321–2, 337–8
  - emergency brake procedure and limits of, 354–5
  - EU competence concerning, 18
  - expansion of punishability principle, 320–1, 345
  - forms of conduct and, 320–1
  - harshness of, extradition restrictions based on, 429–30
  - maximum punitivity principle and, 439–41
  - scope EU law concerning, 337–8
- punitive norms
- legitimacy of, 124–5
  - length of proceedings and, 89–90
  - retroactive punishment, 127, 128–9
  - supranational criminal law and, 18
  - torture prohibitions and, 123–4
- pursuit, right of, double jeopardy and, 148
- pyrolysis decision, EU waste laws and, 343–5
- quarantine, preventive detention and, 107–8
- question, right to, 98
- written questions in cross-examination, 100
- racism
- approximation of law on, 324
  - cybercrime and criminalisation of, 319
- rape
- extradition in cases of, 432–3, 449–51
  - marital immunity defence, 128
- ratione loci* jurisdiction, 156–7
- ratione materiae* principle, right to life and, 121–2
- ratione temporis* jurisdiction, 220–1
- reasonable suspicion, pre-trial detention based on, 106–7
- reciprocity
- in legal assistance, 422–3
  - surrender procedures and, 433–4
- reference norms
- constitutional law and national norm compliance, 333
  - of EAEC Treaty states, 329–30
  - EU law, national law references to, 331–6
  - primary and secondary EU law and, 327–8
  - rule of law considerations and, 335–6
  - secondary law, 330–1
  - statutes versus executive decrees in national law and, 331–3
  - unequal treatment of EU norms, 331–3
- referral procedures
- ECHR provisions and, 79–80
  - EPPO prosecution process and, 577–8
- refugee/migrant crisis of 2015–16, Schengen Border Code and, 26–7
- Regulation Proposal EPPO 2016, 574
- regulations
- ancillary competence to, 336–7
  - as secondary Union law, 25
- rehabilitation, of sentenced persons, 461–2
- reliability of witness, testing of, 98
- remedy, right to
- in CFREU provisions, 144–5
  - European Investigation Order system of remedies and, 459–60

- German Court challenge to EAW
  - and, 443–4
  - length of proceedings and, 90
  - police and judicial co-operation
    - concerning cross-border crime, 413
- renewed prosecution, prohibition of, 148–9
- requested State
  - in CISA extradition provisions, 424–6
  - in double-jeopardy cases, 142–4
  - dual criminality and extradition conventions and, 421
  - in ECHR and Additional Protocols extradition provisions, 428–32
  - European Arrest Warrant and, 433
  - extradition procedures and, 417, 419
  - in mutual recognition principle, 21–2, 417–18
- requesting State
  - in CISA extradition provisions, 424–6
  - in double jeopardy cases, 142–4
  - dual criminality and extradition conventions and, 421
  - in ECHR and Additional Protocols extradition provisions, 428–32
  - European Arrest Warrant and, 433
  - extradition procedures and, 417, 419
  - in mutual recognition principle, 21–2, 417–18
- reservation of statutory powers, certainty principle and, 333, 335
- res judicata*
  - double jeopardy and, 152–3
  - in ECHR interpretations, 76
- restitution. *See also* compensation
  - for pre-trial detention, 111
  - for undue delay, 186n.222
- restrictive conditions, Constitutional Courts and, 11–12
- retroactive punishment, 127, 128–31, 133, 135
- revision, ECHR violation as ground of, 83
- right to be present at trial, EU legislation and directives concerning, 139–40
- right to die, ECHR Art. 2 and, 120–3
- Right to Interpretation and Translation, Framework for, 137–8
- right to life
  - in CFREU provisions, 145
  - in ECHR Art. 2, 120–3
  - extradition restrictions in case of threat to, 430
- right to remain silent, 93
  - restrictions on witness examination and, 99–100
- road traffic offences
  - European Convention on, 317–19
  - financial penalties, mutual recognition of, 464–5
- Romania
  - ECHR Art. 6 violations by, 86
  - excessive length of proceedings in, 88
- Rosdorf Preventive Detention Centre
  - and prison complex, 133, 210n.467
- ‘rounding-off competences’ rule, 337
- rule of law
  - due information or publication of applicable law and, 335–6
  - necessity of restrictions and, 321
- Russia
  - ECHR Art. 6 violations by, 86
  - ratification of ECHR AP XIV by, 77–8
- same-act principle, double jeopardy and, 155–7
- sanctions, enforcement instruments and, 462–3
- San Marino, Schengen *acquis* and, 55n.296
- scalping practices, conformity with EU directives on, 343–5
- Schengen *acquis*. *See also* Convention Implementing the Schengen Agreement (CISA)
  - border controls and, 26
  - double jeopardy interpretations and, 148
  - EU criminal law and, 25–7
  - inter-state co-operation on crime and, 22–3
- Schengen Borders Code (SBC), 26–7

- Schengen Information System (SIS)  
   alerts in, 263n.1075, 424–5  
   extradition and, 424–6  
   SIS II adoption and, 426  
   surrender procedures and, 448–9
- Schleswig Employment Tribunal, 342–3
- Schuman, Robert, 1–2
- Schuman Plan, drafting of, 1–5
- scope of protection  
   freedom of expression and, 217n.569  
   torture and, 125–6
- Scoppola judgment, 76–7
- searches  
   ECHR Art. 8 limits on, 113–15  
   EU law and, 317–19  
   legal assistance in, 415
- secondary law  
   accession to ECHR by, 78–9  
   ancillary competence and, 337  
   characteristics of, 25  
   EU law references to national law and, 328–31  
   EU rights protections and, 135–42  
   in European Union, 326–47  
   fundamental rights and, 74  
   reference norms of, 330–1
- Securities Trading Act  
   (Wertpapierhandelsgesetz, Germany) (WpHG), 343–5
- security, right to  
   CFREU on, 145  
   ECHR on, 103–13  
   Member State criminalisation and, 321–2  
   police and judicial co-operation in criminal matters and, 411
- self-defence  
   right to, 96  
   right to life protections versus, 121–2, 134
- self-determination  
   Europol activity and right to, 568–9  
   Lisbon Treaty on right to, 11–12
- self-execution of primary law  
   assimilation, 329
- self-incrimination, right to refrain from, 93
- OLAF regulations on, 562–3
- sentencing  
   Convention on the Transfer of Sentenced Persons (TransferC) and, 461–2  
   enforcement of, 159  
   EU competence concerning, 18  
   European Enforcement Order and, 463–4  
   *in absentia*, 139–40, 414–15, 430–1, 437, 441–2
- separation of powers, constitutional law  
   compliance of national law  
   reference norms and, 333
- September 11, 2001 attacks, 417
- sex trafficking, of children,  
   approximation of law on, 324
- ship-source pollution, criminal law  
   framework for enforcement of law against, 336–7
- sibling incest, German criminalisation of, 115
- Sicherungsverwahrung*. *See* preventive detention
- Single European Act (1986), 3–4
- Slovakia, EAW implementation in, 498–9
- Slovenia, excessive length of proceedings in, 88
- ‘sole or decisive rule’, tainted evidence and, 101–2
- solution cases  
   categories of, 89–90  
   crime provocation, 117  
   retroactive punishment, 134–5
- ‘Southern enlargement’ of EEC, 2–3
- sovereign punitive force (*ius puniendi*)  
   European Arrest Warrant and, 439–41  
   supranational criminal law and, 14–15
- Spaak, Paul-Henri, 2
- Spain  
   crime provocation and undercover operations in, 186n.225  
   EAW implementation in, 498–9, 500n.396  
   excessive length of proceedings in, 186n.222



- extradition in, 419–20, 500n.396
- reference norms in law of, 366–7
- reparations for undue delay in proceedings in, 186n.222
- speciality, principle of
  - European Enforcement Order and, 463–4
  - extradition and, 422–3, 424–6, 427–8, 449–51
  - surrender procedures and, 433–4
- specificity, certainty principle and, 333
- spectator violence, European convention on, 317–19
- standardisation, harmonisation of criminal procedure and, 22
- state of emergency rules, right to life and, 122–3
- State secrets, breach of, reference norms concerning, 329–30
- static references
  - to EU law, 334–5
  - to national law, 327–8
- statute of limitations
  - approximation of rules on, 325–6
  - crimes against and humanity and war crimes, non-applicability, 317–19
  - for extradition, CISA provisions on, 424–6
  - unenforceability of penalties and, 159–60
- Stockholm Programme, 136–7, 321
  - Europol and, 563–4
  - limitations of, 139
  - procedural law approximation and, 414–15
- Strafgesetzbuch (Criminal Code, Germany), 93–4, 115, 327, 339, 346
- stricto sensu* defence, 91–2, 456–61
- subject matter jurisdiction. *See also* jurisdiction
  - for EPPO, 575–6
  - of Eurojust, 570–1
  - of Europol, 565
- subsidiarity, principle of
  - ancillary competence and, 322–3
  - assimilation and, 22
  - cross-border crime and, 320
  - in Draft Council Conclusions 2009, 352–3
  - European Public Prosecutor's Office and issue of, 575–6
  - limits of harmonisation and, 337–8
  - in Lisbon Treaty, 8–9
  - supranational criminal law and, 15–18
- Subsidiarity Protocol (Lisbon Treaty), 8–9
- subsidy fraud, 45n.188
- substantial link concept, European Arrest Warrant challenges and, 445–6, 449–51
- substantive criminal law
  - CFREU on, 145–6
  - Council of Europe conventions, 317–19
  - cybercrime and, 319
  - ECHR and, 83–4
  - Europeanisation of criminal law and, 20–1
  - rights under, 119–20
- substantive offence, double jeopardy and definition of, 152–3
- suffering, torture versus, 123
- Supplementary Information Request at the National Entry (SIRENE), 424–5
- supranational comprehensive offences, expansion of primary law assimilation and, 329
- supranationalisation of criminal law
  - ancillary competence in, 17–18
  - areas in, 6–10
  - Council of Europe framework, 19–20
  - EAW and, 442–3
  - ECHR and, 82–3
  - EU framework for, 20–3
  - immigration and human trafficking, 19
  - legislation, 15–19
  - Lisbon Treaty establishment of, 5–6
  - post-Lisbon concept of, 14–15
  - transnational evidence gathering and, 455–6

- surrender procedures
  - alerts and, 425–6
  - detention conditions and, 144, 448–9
  - EU framework for, 433–7
  - European Arrest Warrant and, 432–51
  - extradition and, 417–18, 419
  - fundamental rights reservation and, 437
  - mutual recognition principle and, 433
  - national law and implementation of, 437–42
  - Nordic Arrest Warrant and, 489–90
  - ordre public*, 441–2
  - SIS II provisions and, 426
  - temporal issues in, 433–4
- surrogate or substitute sanctions, detention as, 105–6
- surveillance
  - cross-border surveillance, 412–13
  - ECHR limits on, 113–15, 119
- suspects, rights of
  - detention in terrorism investigations, 108–9
  - emetics administration, restriction of, 126, 134–5
  - in European Evidence Warrant, 454–5
  - European Investigation Order and, 456–61
  - participation in investigations, 87
  - pre-trial detention, 110–11
- suspended sentences
  - double jeopardy and, 157–60
  - presumption of innocence and, 93–4
- suspicion, extradition on basis of, 422–3
- Sweden
  - detention procedures in, 206n.420
  - EAW implementation in, 498–9
  - reparations for undue delay in proceedings in, 186n.222
- Switzerland
  - European Arrest Warrant and, 489–90, 498–9
  - extradition in, 419–20
  - extradition procedure in, 427
  - Schengen *acquis* and, 55n.296
- Tanzania, EU extradition agreements with, 417
- ‘tariff approach’ to punishment, 226–7
- tax violations
  - CFREU provisions concerning, 142–4
- extradition procedures and, 424–6
- teleological interpretation of double jeopardy, 151–2
- telephone surveillance records
  - ECHR Art. 8 limits on, 113, 114
  - translation of, 100
- temporal application of procedural rights, 87. *See also* delay of proceedings; length of proceedings
  - CFREU provisions on, 144–5
  - conformity of EU and national law on, 344–5
  - European Arrest Warrant and, 433–4
  - extradition and, 427–8
  - provisional arrest for extradition and, 423–4
- termination of proceedings, double jeopardy restrictions and, 150–1, 152–3
- terrorism
  - approximation of law on, 324
  - duration of pre-trial detention for suspects of, 110–11
  - European convention on, 317–19
  - extradition conventions and, 426–8, 431–2
  - financing for, prevention of, 356–7, 374–5
  - pre-trial detention in cases of, 110–11
  - preventive detention of suspected terrorists, 106–7, 108–9
  - surveillance violations and, 119
- therapeutic detention. *See* psychiatric commitment
- Therapieunterbringungsgesetz (Act on Therapy and Detention of Mentally Disturbed Violent Offenders, Germany) (ThuG), 210n.465
- third-country nationals, unauthorised entry of, 361n.134

- three-pillar structure of the European Union (EU)
  - Europeanisation of criminal law and, 20
  - origins of, 3–4
  - reference norms in primary law and, 329–30
- three-step test of proportionality, 510–11
- torture
  - burden of proof of state abuse and, 125
  - CFREU provisions on, 145
  - ECHR Art. 3 prohibition of, 123–7
  - European convention on, 317–19
  - extradition restrictions due to risk of, 429–30
  - inhuman or degrading treatment versus, 123–4, 125–6
  - mandatory exclusion of evidence obtained by, 125
  - overall assessment of proceedings and use of, 101
- trade violations, cases involving, 346
- traffic offences
  - financial penalties, mutual recognition of, 464–5
  - police exchange of information concerning, 468n.16
- trans-European defence, EAW and, 449
- transfer of sentenced persons, 415–16, 430–1, 461–2
- translation, procedural right to, 91–2, 100, 137–8
- transnational trial proceedings
  - conformity of EU interpretation on, 343–5
  - defence counsel for, 460–1
  - double jeopardy and, 148, 151–3
  - European Investigation Order and, 459–60
  - overall assessment test as, 103
  - same-act principle in double jeopardy and, 155–6
- treaties
  - legal assistance and, 415
  - national law and, 382n.361
- Treaties of Rome, 2
- Treaty of Amsterdam (1997), 4–5
- Treaty of Nice (2001), 5
  - Lisbon Treaty comparisons with, 5–6
- Treaty on the European Economic Community (TEEC)
  - provisions of, 3–4
  - subsidiarity and proportionality principles and, 15–18
- Treaty on the European Union (TEU)
  - accession to EU and, 77–8, 79–80
  - Art. 4(3), 79–80, 338–40
  - Art. 6, 144, 417
  - Art. 6(1), 74
  - Art. 6(2), 77–8, 79–80
  - Art. 6(3), 74, 76–7
  - Art. 29, 435
  - Art. 29(2), 319–20
  - Art. 34(2)(b), 344
  - Art. 34(2)(d), 415
  - Lisbon Treaty and, 5–6
  - Protocol No 8, 77–8, 79–80
  - recognition of ECHR in, 76–7
  - Subsidiarity Protocol in Lisbon Treaty and, 8–9
  - supranational criminal legislation and, 15–18
  - Union law principles in, 74
- Treaty on the Functioning of the European Union (TFEU)
  - accession to ECHR in, 78–80
  - Art. 16, 141–2
  - Art. 61(3), 435
  - Art. 67(1), 321–2
  - Art. 67(3), 319–20, 321–2
  - Art. 82(2), 34–5, 414–15, 564–5
  - Art. 82(2)(b), 136–7
  - Art. 83(1), 319–23, 336–8
  - Art. 83(2), 322–3, 325–6, 336–8
  - Art. 85, 569–70
  - Art. 86, 574
  - Art. 87, 412
  - Art. 88, 412
  - Art. 89, 412
  - Art. 114, 337
  - Art. 218, 78–9
  - Art. 258, 139
  - Art. 263(4), 568–9
  - Art. 267, 79–80, 342–3

- TFEU (cont.)  
 Art. 288, 344  
 Art. 325(1,2), 339  
 Art. 325(4), 325–6  
 Art. 344, 79–80  
 Art. 352, 337  
 conferral principle and, 17–18  
 criminal legislation authorisation  
 and, 18–19  
 cross-border crime and, 17–18  
 Lisbon Treaty and, 5–6  
 Member States' criminal code  
 harmonisation with, 44n.187  
 pecuniary sanctions and, 18  
 right to interpretation and  
 translation and, 137–8  
 treaty reform, EU plan for, 5–6  
 Turkey  
 ECHR Art. 6 violations by, 86  
 excessive length of proceedings in, 88  
 'two-hat model' of EPPO, 574–5  
 two-levels test, of fairness  
 violations, 101
- Ukraine, ECHR Art. 6 violations by, 86  
*ultima ratio* principle, supranational  
 criminal law and, 15–18  
*ultra vires* review  
 CJEU case law and, 144  
 Grundgesetz and, 11–12  
 national law reference norms, 331–3  
 umbrella-like system, European  
 criminal law as, 14–15  
 unauthorised entry into countries  
 approximation of law on, 324  
 preventive detention for, 108–9  
 undercover operations, crime  
 provocation and, 186n.225  
*Unité de coordination de la lutte  
 anti-fraude* ('UCLAF'), 560–3  
 United Kingdom  
 CFREU provisions and, 243–4  
 CISA opt-in by, 470n.25  
 criminal justice systems in, 31n.55  
 detention procedures in, 108–9,  
 206n.420  
 EAW implementation in, 498–9  
 ECHR and rights laws in, 75–6  
 excessive length of proceedings in,  
 186n.222  
 extradition procedures in,  
 419–20, 429  
 opt-out agreement with, 4–5, 10–11  
 possible breakup of, 32n.58  
 Prüm Convention and, 468n.16  
 reference norms in law of, 366–7  
 reparations for undue delay in  
 proceedings in, 186n.222  
 Schengen *acquis* and, 55n.295  
 Schuman plan opposed by, 1–2  
 United Nations Convention against  
 Torture, 123  
 United States, extradition from EU to,  
 419–20, 429  
 unlawful violence, right to life and,  
 121, 122  
 unsound mind, preventive detention  
 for persons with, 107–8  
 urgency, European Arrest Warrant as  
 matter of, 433–4  
 use of force  
 retroactive punishment in, 128–9  
 right to life and, 121, 122
- vagrancy, preventive detention and,  
 107–8  
 value-added tax (VAT)  
 CFREU provisions concerning,  
 142–4  
 duty of loyalty and, 340  
 VAT Directive 2006/112/EC, 142–4  
 Vatican City, Schengen *acquis* and,  
 55n.296  
 vehicle equipment violations, 327  
 verdicts, double jeopardy and, 149  
 veterinary practice violations,  
 326–7, 347  
 victim protection, restrictions on  
 examination of witnesses and,  
 99–100  
 victims of crime, rights of, procedural  
 law approximation and,  
 414–15  
 Vienna Convention on Illicit Drugs,  
 318, 416  
 Visa Information System (VIS), 468n.16

- war crimes, police co-operation and
  - exchange of information concerning, 467–9
- waste disposal
  - harmonisation competence and, 337
  - hazardous waste violations, 327
- weapons control, harmonisation competence and, 337
- welfare law, 107
- white torture, 225–6
- wine import violations, 326–7
- witnesses
  - audiovisual examination of, 99–100
  - cross-examination of, 100
  - in European Evidence Warrant, 454–5
  - extradition of, 419
  - identity of, 118
  - legal assistance in questioning of, 415
  - restrictions on examination of, 99–100
  - right to examine, 91–2, 98–100
- written correspondence, ECHR
  - Art. 8 limits on surveillance of, 114
- written primary Union law, 23
- xenophobia
  - approximation of law on, 324
  - cybercrime and criminalisation of, 319