

Contents

Map                   xix

Preface               xxi

Abbreviations       xxvii

Table of Cases       xxix

Table of Treaties, Instruments and Legislation   lxxxi

Table of Equivalents       ciii

Informative EU Related Websites and Blogs   cix

Time Line           cxi

  

**1 European Integration and the Treaty on European Union   1**

1 Introduction       2

2 Europe and the European Union   4

    (i) The Idea of Europe   4

    (ii) The Idea of 'European Union'   7

3 The European Communities   11

    (i) From the Treaty of Paris to the Treaty of Rome   11

    (ii) The EEC Treaty   13

    (iii) The Emergence of Two Visions of EU Law: The Intergovernmental and the Supranational   14

    (iv) The Initial Enlargements   17

    (v) The Single European Act   18

4 The Establishment of the European Union   20

    (i) The Road to Maastricht   20

    (ii) Maastricht and the Union's Three Legitimation Strategies   21

    (iii) The Treaty of Amsterdam   25

5 Recasting the Borders of the European Union   27

6 The Road to Lisbon: The Decade of Institutional Reform   29

    (i) The Road to the Constitutional Treaty   29

    (ii) The Lisbon Treaty   31

        (a) The Consolidation of EU Competencies and Two Treaties of Equal Value: The Treaty on European Union and the Treaty on the Functioning of the European Union   32

        (b) The Lisbon Treaty and the Pursuit of Democratic Values   35

        (c) Lisbon and the Recasting of the Union Public Sphere   38

7 The European Union and the Era of Crisis   38

    (i) The Sovereign Debt Crisis   40

        (a) Emergency Politics and the Salvaging of Euro Area Finances   40

        (b) The Disciplining of Fiscal and Economic Governance: The 'Six-Pack' and the Fiscal Compact   41

viii Contents

- (c) The Increasing Government of the Euro Area by the European Central Bank 43
  - (ii) Brexit 45
    - (a) The 2016 Referendum to Leave the European Union 45
    - (b) The Withdrawal Negotiations 46
    - (c) The United Kingdom's Relations with the European Union after Brexit 48
    - (d) Managing the Domestic Legal Consequences of Brexit 50
  - (iii) The Crisis of Liberal Values 52
  - Further Reading 56
- 2 The EU Institutions 57
  - 1 Introduction 58
  - 2 The EU Institutions and the Institutional Framework 59
  - 3 The Commission 63
    - (i) The Commission Bureaucracy 63
      - (a) The College of Commissioners 63
      - (b) The Directorates General 66
      - (c) The Cabinets 67
    - (ii) The Powers of the Commission 67
      - (a) Legislative and Quasi-Legislative Powers 68
      - (b) Agenda-Setting 72
      - (c) Executive Powers 77
      - (d) Supervisory Powers 78
    - (iii) Regulatory Agencies and the Commission 80
  - 4 The Council of Ministers 82
    - (i) The Powers and Workings of the Council 82
    - (ii) Decision-Making within the Council 84
    - (iii) The Management of the Council: The Presidency and COREPER 87
  - 5 The European Council 89
    - (i) The Institution of the European Council 89
    - (ii) The Powers of the European Council 89
    - (iii) The European Council within the EU Institutional Settlement 92
  - 6 The European Parliament 94
    - (i) The Composition and Authority of the European Parliament 94
    - (ii) The Powers of the European Parliament 97
      - (a) The Legislative Powers of the European Parliament 99
      - (b) Powers over the Executive 99
      - (c) The Power of Parliamentary Government? 101
      - (d) The Financial Powers of the Parliament 102
  - 7 The Principle of Transparency 103
    - (i) The Scope of the Right of Access to Documents 103
    - (ii) The Exceptions to the Right of Access to Documents 104
    - Further Reading 109
- 3 Lawmaking 111
  - 1 Introduction 111
  - 2 Types of EU Law 113
    - (i) Binding Laws 113
    - (ii) Soft Law 116
  - 3 The Allocation of Legislative Procedures 119
  - 4 The Legislative Procedures 121
    - (i) The Ordinary Legislative Procedure 121
      - (a) The Central Features of the Ordinary Legislative Procedure 121

ix Contents

- (b) The European Parliament as a Rival Agenda-Setter to the Commission 123
  - (c) The Trilogue 124
- (ii) The Consultation Procedure 128
- (iii) The Consent Procedure 131
- 5 National Parliaments 132
  - (i) National Parliaments Inputting into EU Lawmaking 133
  - (ii) Policing the Subsidiarity Principle 135
  - (iii) National Parliaments: A Third Legislative Chamber? 137
- 6 Differentiated Lawmaking 138
  - (i) Differentiated Integration and the EU Treaties 138
  - (ii) The Practice of Differentiated Rule-Making beyond Enhanced Cooperation 143
- 7 Comitology 146
  - (i) The Committee Procedures 146
  - (ii) The Practice of Comitology 149
- 8 EU Lawmaking: The Measure of its Democracy 151
  - Further Reading 157
- 4 The EU Judicial Order 158
  - 1 Introduction 158
  - 2 The Court of Justice of the European Union 160
    - (i) The Court of Justice 160
    - (ii) The General Court 163
  - 3 The Architecture of the EU Judicial Order 166
    - (i) Article 267 TFEU and its Progenies 166
    - (ii) The Structuring of Interaction between the Court of Justice and National Courts by Article 267 TFEU 168
    - (iii) The Autonomy of the EU Judicial Order 170
    - (iv) The Subjects of the EU Judicial Order 177
  - 4 The Functions of the Union Judicial Order 180
    - (i) The Development of EU Law 180
    - (ii) Judicial Review of EU Institutions 182
    - (iii) Preserving the Unity of EU Law 184
    - (iv) Dispute Resolution 186
  - 5 The Management of the EU Judicial Order 188
    - (i) Managing the Circumstances in which National Courts Refer 188
    - (ii) The Binding Effects of Court of Justice Judgments 196
  - 6 The Authority of the European Union Courts in the United Kingdom after Brexit 197
    - (i) The Authority of the Court of Justice during the Transition Period 197
    - (ii) The Endurance of the Preliminary Reference Procedure after the Transition Period 198
    - (iii) The Enduring Effects of Court of Justice Judgments after Brexit 199
    - Further Reading 200
- 5 The Authority of EU law 202
  - 1 Introduction 202
  - 2 The Genesis of EU Legal Authority 204
  - 3 The Claims of EU Legal Authority 208
    - (i) The Autonomy of EU Law 208
    - (ii) The Primacy of EU Law 209
    - (iii) Pre-Emption 210
    - (iv) The Fidelity Principle 212
  - 4 The Foundations of EU Legal Authority 215
    - (i) The Pedigree of EU Legal Authority 215
    - (ii) Reasons for EU Legal Authority 217

x Contents

- (iii) Mediating Challenges to EU Legal Authority 219
- 5 The Conditional Authority of EU Law 224
  - (i) National Courts' Qualified Acceptance of the Authority of EU Law 224
  - (ii) EU Law and Fundamental Rights 227
  - (iii) *Ultra Vires* Review 231
  - (iv) EU Law and Identity Review 235
  - (v) Dynamic EU Laws and Parliamentary Review 240
- 6 The Authority of EU Law in the United Kingdom after Brexit 243
  - (i) Existing EU Law after Brexit 243
  - (ii) Retained EU Law and Other United Kingdom Law 246
  - (iii) The Status of EU Laws Adopted after Brexit 247
- Further Reading 248
- 6 Fundamental Rights 249
  - 1 Introduction 249
  - 2 Fundamental Rights and the Schema of the Treaties 251
    - (i) Fundamental Rights as the Premise for the EU Legal Order 251
    - (ii) The Sources of EU Fundamental Rights 252
    - (iii) EU Fundamental Rights and Policing Domestic Constitutional Breakdown 253
  - 3 The European Charter of Fundamental Rights and Freedoms 255
  - 4 General Principles of Law 260
  - 5 Standard of Protection of EU Fundamental Rights 263
    - (i) Interpretation and the European Union Context 263
    - (ii) The Formal Parameters of Interpretation 264
    - (iii) Fundamental Rights and a Union Vision of Individual Autonomy 266
  - 6 Fundamental Rights and the Institutional Scheme of the European Union 272
    - (i) Fundamental Rights and the EU Institutions 272
    - (ii) Fundamental Rights and the Member States 276
      - (a) Fundamental Rights and the Sensitivities of National Law 276
      - (b) The Scope of Fundamental Rights Review over National Measures 277
  - 7 Brexit and EU Fundamental Rights 281
  - 8 EU Fundamental Rights and Domestic Authoritarianism 284
  - Further Reading 288
- 7 Rights and Remedies in Domestic Courts 289
  - 1 Introduction 289
  - 2 Direct Effect and the Development of Individual Rights 291
    - (i) *Van Gend en Loos* and the Early Hesitant Conceptions of an EU Right 291
    - (ii) Relaxing the Criteria: Towards a Test of Justiciability 293
    - (iii) The Emergence of Horizontal Direct Effect 294
  - 3 Remedies and Procedures in Domestic Courts 296
    - (i) The Right to Effective Judicial Protection 296
    - (ii) Union Oversight of Domestic Remedies and Procedures 300
    - (iii) EU Law Remedies and Procedures in Domestic Courts 302
  - 4 Direct Effect and EU Secondary Laws 303
    - (i) Regulations and International Agreements 303
    - (ii) The Vertical Direct Effect of Directives 303
    - (iii) Directives and the Burdens and Rights of Third Parties 307
    - (iv) The Duty to Refrain from Compromising the Result Prescribed by the Directive 309
  - 5 Indirect Effect 310
  - 6 State Liability 314
    - (i) The Establishment of State Liability 314

xi Contents

- (ii) The Conditions of Liability 316
  - (iii) Liability for Acts of Judicial Institutions 320
- 7 The Duty to Disapply EU Law and Fundamental Rights 322
- 8 EU Law in United Kingdom Courts after Brexit 325
  - Further Reading 326
- 8 The Infringement Proceedings 328**
  - 1 Introduction 328
  - 2 The Different Dimensions to the Infringement Proceedings 330
    - (i) Policing Compliance with EU Law 331
    - (ii) Securing Effective Performance of Union Policies 335
    - (iii) A Framework for Structuring Domestic Accommodation of EU Law's Demands 338
  - 3 The Scope of Member State Responsibilities 341
    - (i) The Acts and Omissions of all State Agencies 341
    - (ii) The Accountability of State Actors 344
  - 4 The Three Stages of the Article 258 TFEU Proceedings 346
    - (i) The Informal Pre-Litigation Stage: The Initial Screening and Resolution of Potential Infringements 347
    - (ii) The Formal Pre-Litigation Stage 348
    - (iii) The Reasoned Opinion and the Period for National Compliance 349
  - 5 The Administration of the Infringement Proceedings 352
    - (i) The Commission's Discretion over the Management of the Proceedings 352
    - (ii) Complainants and Article 258 TFEU 356
  - 6 Sanctions and Article 260 TFEU 357
    - (i) Article 260 TFEU and the Two Routes to Sanctions 357
    - (ii) The Procedure for Failure to Transpose a Directive 358
    - (iii) The Procedure for Failure to Comply with a Court Judgment 359
    - (iv) The Sanctions Levied under Article 260 TFEU 361  - Further Reading 363
- 9 Judicial Review 364**
  - 1 Introduction 365
  - 2 The Scope of Judicial Review and Article 263 TFEU 366
  - 3 Grounds of Review 369
    - (i) Lack of Competence 369
    - (ii) Manifest Error of Assessment and Abuse of Power 371
    - (iii) Rights of Process 374
      - (a) Rights of Defence 374
      - (b) The Right to a Hearing 376
      - (c) The Right to Good Administration 377
    - (iv) Infringement of the Treaties or of any Rule of Law Relating to their Application 379
      - (a) Non-Discrimination 379
      - (b) Legal Certainty 381
      - (c) Legitimate Expectations 381
      - (d) Subsidiarity 383
      - (e) Proportionality 385
  - 4 Standing under Article 263 TFEU 388
    - (i) Privileged and Semi-Privileged Applicants 388
    - (ii) Non-Privileged Applicants 389
      - (a) The Distinction between Regulatory Acts and Other Acts 389
      - (b) Direct Concern 390
      - (c) The Absence of Implementing Measures for Regulatory Acts 391
      - (d) Individual Concern 393

xii Contents

5	Article 265 TFEU and the Failure to Act	397
6	The Plea of Illegality	399
7	Non-Contractual Liability	400
	(i) The Conditions for Liability	400
	(ii) Breach of a Rule of Law Intended to Confer Rights on Individuals	401
	(iii) The Breach Must Be Sufficiently Serious	402
	(iv) The Loss Must Be Caused by the Illegal Act	403
8	The Consequences of Annulment	404
	Further Reading	405
10	Brexit	406
1	Introduction	407
2	The Immediate Uncertainties of Brexit	409
3	The Withdrawal Agreement	411
	(i) The Transition Period	411
	(ii) The Governance of the Withdrawal Agreement	414
	(a) The Joint Committee	414
	(b) The Regular Dialogue	416
	(c) Dispute Settlement	417
	(iii) The Protocol on Ireland/Northern Ireland	420
	(a) The Dilemma of the Border: The Need for External Borders to Have Customs Checks versus the Imperative of No Hard Border on the Island of Ireland	420
	(b) The Single Customs Territory	424
	(c) The Indeterminate Length of the Protocol and the 'Jersey' Option	429
4	The Framework for the Future Relationship between the European Union and the United Kingdom	432
	(i) The Basis for Cooperation	432
	(ii) The Economic Partnership	433
	(iii) The Security Partnership	435
	(iv) Governance of the Future Relationship	436
5	Models for Future EU–UK Relations	437
	(i) The European Economic Area (EEA)	438
	(a) The Qualities of EEA Law	439
	(b) The Institutional Settlement of the EEA	442
	(ii) The 'Ukraine' Model: 'Close and Privileged Links' between the European Union and the United Kingdom	445
	(a) The Deep and Comprehensive Free Trade Area (DCFTA)	446
	(b) Political Dialogue and Close Cooperation	448
	(c) The EU–Ukraine Agreement Institutional Settlement	448
	(iii) A Free Trade Agreement: The Canada Model	450
	(a) Market Access and Liberalisation under CETA	450
	(b) Regulatory Cooperation and Regulatory Protection in the Free Trade Area	453
	(c) CETA's Institutional Settlement	455
6	'No Deal' Brexit	457
	(i) A World of World Trade Organisation (WTO) Rules	457
	(ii) The Influence of EU Law in the United Kingdom in a No Deal Brexit	460
	(a) The 'Brussels Effect'	460
	(b) The Territorial Extension of EU Law	463
	(c) The Autonomous Adoption of EU Law	464
	Further Reading	465
11	Citizenship of the Union	466
1	Introduction	466

xiii Contents

2	Evolution of Modern Citizenship	468
3	Nature of Union Citizenship	471
4	Right to Move and Reside within the Union	475
	(i) Categories of Residence under the Directive	476
	(ii) Conditions of Residence	478
	(a) The Requirement to Be Self-Sufficient	478
	(b) Proportionality	479
	(c) Level of Resources Required	481
	(d) Source of Resources	481
	(e) Time of Assessment	481
	(iii) Administrative Formalities	482
	(iv) Equality in the Host State	484
	(a) The General Principle	484
	(b) Citizenship, Equality and Social Assistance	487
	(c) Real Links and Integration	492
	(v) Restrictions on Movement and U-Turns	495
	(a) The Returnee	495
	(b) Free Movement Restrictions by Other Member States	497
	(c) Exit Restrictions	497
	(vi) Family Rights	498
	(a) The Right to Be with One's Family	498
	(b) The EU Idea of the Family	500
	(c) Separation, Death and Divorce	503
	(d) The Rights of Children and Carers	504
	(e) The Right to Remain in the Union	507
	(f) U-Turns and Family Rights	511
	(vii) Expulsion and Exclusion	515
5	Political Rights of Union Citizens	519
6	Union Citizenship and Brexit	521
	(i) The Withdrawal Agreement	522
	Further Reading	525
12	Non-EU Nationals	527
1	Introduction	527
2	The Union Competences on Border Checks, Asylum and Immigration	529
3	Central Themes Shaping EU Government of Non-EU Nationals	532
	(i) Economic Mercantilism	533
	(ii) National Security	535
	(a) Internal Union Borders as Policing Zones	536
	(b) The External Frontier	540
	(iii) Humanitarianism	545
4	'Unwelcome Foreigners': The Returns Directive	548
5	'Desirable Foreigners': Worker Residents and Long-Term Residents	551
	(i) The Acquisition of Employment and Long-Term Residence Status	552
	(ii) Rights Acquired against the Host State	553
6	'Suspicious Foreigners': The EU Regime on International Protection	557
	(i) The Dublin Regime and the Allocation of National Responsibilities for International Protection	558
	(ii) The Dublin Regime and the Humanity of the Transfer	563
	(iii) The Right to Remain Pending Examination of the Application	565
	(iv) The Provision of Material Reception Conditions	568
	(v) The Policing of Applicants through Welfare	569
	Further Reading	572

**13 Equal Opportunities Law and Policy 574**

- 1 Introduction 574
- 2 Development of EU Equal Opportunities Law 575
  - (i) Economic versus Non-Economic Visions of EU Law 575
  - (ii) Sources of Equal Opportunities Law 578
  - (iii) Equal Opportunities versus Substantive Equality 581
- 3 Common Core of EU Equal Opportunities Law: The Labour Market 582
  - (i) Direct Discrimination 584
  - (ii) Indirect Discrimination 585
    - (a) Concept of Indirect Discrimination 585
    - (b) Legitimate Aim Defence 587
  - (iii) Harassment 589
  - (iv) Defences 591
    - (a) Genuine Occupational Requirements 591
    - (b) Public Security 592
  - (v) Remedies 593
    - (a) Procedures 593
    - (b) Compensation 594
- 4 Equality Grounds 595
  - (i) Sex and Gender 596
  - (ii) Racial or Ethnic Origin 598
  - (iii) Religion or Belief 600
  - (iv) Disability 603
  - (v) Age 606
  - (vi) Sexual Orientation 609
  - (vii) Excluded Groups 611
- 5 Widening the Scope of EU Equal Opportunities Policy 613
  - (i) Beyond the Labour Market 613
  - (ii) Positive Action 616
  - (iii) Dialogue 618
  - (iv) Mainstreaming 620
- 6 Brexit 623
  - Further Reading 624

**14 The Internal Market 626**

- 1 Introduction 626
- 2 Purpose of the Internal Market 627
- 3 Legal Framework of the Internal Market 629
  - (i) Economic Integration 629
  - (ii) Achieving the Internal Market 631
  - (iii) Achieving Free Movement 632
    - (a) Non-Discrimination 633
    - (b) Mutual Recognition 633
    - (c) Market Access 634
- 4 Competence to Legislate 635
- 5 Techniques of Regulation 644
  - (i) Old and New Approaches 644
  - (ii) Mechanics of the New Approach 646
  - (iii) Minimum Harmonisation 648
- 6 Non-Economic Interests in the Internal Market 649
- 7 Regulatory Competition 651
  - Further Reading 655



**15 Economic and Monetary Union 656**

- 1 Introduction 656
- 2 The Central Pillars of Economic and Monetary Union 658
- 3 The Differentiated Obligations of Economic and Monetary Union 662
- 4 The Institutional Shock of the European Sovereign Debt Crisis 663
- 5 Union Oversight of National Fiscal and Economic Performance 665
  - (i) The Ambit of Union Surveillance: Excessive Deficits, Balanced Budgets and Macroeconomic Imbalances 667
  - (ii) The European Semester and Collective Guidance over Domestic and Fiscal Economic Policy 669
  - (iii) The Commission and National Budgets 672
  - (iv) The Sanctions Procedures 674
  - (v) The Prohibition on Cross Financing unless for Sound Budgetary Policy Reasons 677
- 6 The European Central Bank 680
  - (i) The European Central Bank and its Decision-Making Bodies 680
  - (ii) The Independence and Accountability of the European Central Bank 682
  - (iii) The Expansion of the European Central Bank's Monetary Powers 685
  - (iv) Banking Union and the European Central Bank as a Financial Supervisor 690
- Further Reading 694

**16 The Free Movement of Goods 695**

- 1 Introduction 695
- 2 General Definition of a Measure Equivalent to a Quantitative Restriction 696
  - (i) *Dassonville* 698
  - (ii) Limits of the Notion of a MEQR 700
  - (iii) Form of a MEQR 704
  - (iv) *De Minimis* 706
  - (v) Internal Situation 707
  - (vi) Article 34 TFEU and Private Actors 708
- 3 Product Standards and *Cassis de Dijon* 713
  - (i) Mutual Recognition 716
  - (ii) Mandatory Requirements 719
    - (a) Consumer Protection 720
    - (b) Protection of the Environment 723
- 4 Selling Arrangements and *Keck* 724
  - (i) Notion of a Selling Arrangement 727
  - (ii) Unequal Effect of Selling Arrangements 729
- 5 Article 35 TFEU and Restrictions on Exports 731
  - Further Reading 733

**17 The Free Movement of Services 734**

- 1 Introduction 734
- 2 Regulating the Services Market 736
- 3 Cross-Border Services 737
  - (i) What Is a Service? 738
  - (ii) Cross-Border Element 739
  - (iii) Remuneration 741
- 4 Restrictions on the Movement of Services 744
  - (i) Notion of a Restriction on the Provision of Services 744
  - (ii) Horizontal Application of Article 56 TFEU 747
- 5 Justifying Restrictions on Services 754
  - (i) Restrictions on Marketing and Prices 756

xvi Contents

- (ii) Access to Regulated Industries and Professions 759
  - (iii) Tax and Investment Issues 761
- 6 Services and the Market Society 763
  - (i) Right to Trade and Socially Sensitive Services 763
  - (ii) Article 56 TFEU and the Welfare State 765
- 7 Services Directive 773
  - (i) Scope of Application of Services Directive 774
  - (ii) Administrative Simplification 775
  - (iii) Right to Provide and Receive Services 775
  - (iv) Administrative Cooperation 778
- Further Reading 779
- 18 The Pursuit of an Occupation in Another Member State 780**
  - 1 Introduction 780
  - 2 Taking Up and Pursuit of an Occupation in Another Member State 781
    - (i) Employment and Self-Employment 783
    - (ii) Performance of Significant Economic Activity in Another Member State 785
    - (iii) Cross-Border Element 788
    - (iv) Right to Pursue an Occupation in Another Member State 789
  - 3 Restrictions on the Taking Up of an Occupation 791
    - (i) Discriminatory Restrictions on Taking Up an Occupation 791
    - (ii) Equally Applicable Restrictions on Taking Up an Occupation 792
    - (iii) *De Minimis*: Limits of the Right to Take Up an Occupation 794
    - (iv) Restrictions on Secondary Establishment 795
    - (v) Restrictions on the Use of Diplomas and Qualifications 796
    - (vi) Restrictions on Grounds of Abuse of Free Movement 802
  - 4 Restrictions on the Pursuit of an Occupation 804
    - (i) Discrimination in Labour Markets 804
    - (ii) Discrimination in the Pursuit of a Business 806
    - (iii) Equally Applicable Restrictions on the Pursuit of an Occupation 807
  - 5 Free Movement of Companies 810
    - (i) Discrimination and Foreign Companies 810
    - (ii) Movement of Companies and Reincorporation 811
  - 6 Services Directive and Freedom of Establishment 817
  - Further Reading 818
- 19 Trade Restrictions and Public Goods 820**
  - 1 Introduction 820
  - 2 Balancing Free Movement against Other Interests 821
  - 3 Public Goods Protected under EU Law 822
  - 4 Principles Mediating Conflicts between Free Movement and Public Goods 827
    - (i) The Measure Must Be Necessary 829
    - (ii) The Measure Must Be Effective 834
    - (iii) Arbitrary Discrimination and Mutual Recognition 838
    - (iv) The Measure Must Be the Least Restrictive Option 840
    - (v) The Measure Must Be Procedurally Fair 846
  - 5 Environmental Protection 849
  - 6 Public Health 853
  - 7 Public Policy, Public Security and Public Morality 855
  - 8 Public Service and Official Authority 858
  - Further Reading 864

<b>20 EU Competition Law: Function and Enforcement</b>	<b>865</b>
1 Introduction	865
2 Aims of EU Competition Law	867
(i) Economics of Competition	867
(ii) Politics of Competition Law	873
(iii) Aims of EU Competition Policy	875
(iv) Impact of the Economic Crisis	878
3 Enforcement by the Commission	879
(i) First Stage: Investigation	880
(a) Requests for Information and Interviews	880
(b) Inspections	883
(ii) Second Stage: Adjudication	886
(a) Statement of Objections and Access to the File	886
(b) Oral Hearing	887
(iii) Penalties for Infringement	887
(a) Fining Policy	889
(b) Leniency Policy	891
(iv) Commitment Decisions	893
(v) Commission's Procedures: An Assessment	895
(vi) Commission's Performance	899
4 Resettlement of Competition Regulatory Authority	900
(i) Modernisation	900
(ii) Commission's New Role	903
(iii) European Competition Network	904
(a) Case Allocation and Cooperation	905
(b) Modernisation in Practice	906
(c) Negative and Positive Harmonisation	908
5 Private Enforcement	909
(i) An EU Law Right to Damages	910
(ii) The Damages Directive	912
(iii) Assessment	914
6 Brexit	915
(i) Workload	916
(ii) Cooperation	916
Further Reading	917
<b>21 Antitrust and Monopolies</b>	<b>918</b>
1 Introduction	918
2 Scope of Application of EU Competition Law	919
(i) Undertakings	919
(ii) Effect on Trade between Member States	922
(iii) Excluded Agreements	923
3 Article 101 TFEU: Restrictive Practices	927
(i) Agreements, Decisions and Concerted Practices	928
(a) Cartels	928
(b) Algorithms and Collusion	934
(ii) Object or Effect the Restriction, Distortion or Prevention of Competition	936
(a) Notion of Restriction of Competition	936
(b) Agreements Restrictive of Competition by Object	938
(c) Agreements Having an Anti-Competitive Effect	940
(iii) Role of Article 101(3) TFEU	944
(a) Individual Exemptions	945

xviii Contents

- (b) Block Exemptions 947
  - (c) Block Exemptions and E-Commerce 949
- 4 Article 102 TFEU: Abuse of a Dominant Position 951
  - (i) Dominance 952
    - (a) Market Shares 953
    - (b) Additional Factors 953
  - (ii) Abuse of Dominance: General Principles 955
  - (iii) Predatory Pricing 958
  - (iv) Reform 959
  - (v) Response by the Court of Justice 964
- 5 The Hidden Side of Competition Law Enforcement 966
- 6 Brexit 968
  - Further Reading 969
- 22 State Aid Law 970
  - 1 Introduction 970
  - 2 Role of State Aid Law in the European Union 971
    - (i) Justifications for State Aid Control 971
    - (ii) Commission's State Aid Policy 973
  - 3 Meaning of State Aid 975
    - (i) Intervention by the Member State and through State Resources 976
      - (a) Necessary Involvement of State Resources 976
      - (b) State Involvement 979
    - (ii) Intervention Gives the Recipient an Advantage 979
    - (iii) Intervention Is Selective 982
      - (a) Geographical Selectivity 982
      - (b) Material Selectivity 983
    - (iv) Effect on Trade and Restriction of Competition 986
      - (a) Overly Broad Standards 986
      - (b) *De Minimis* Aid 988
  - 4 Enforcement and Supervision 988
    - (i) Commission Supervision 988
    - (ii) Enforcement 989
      - (a) Recovery 989
      - (b) Private Enforcement 991
  - 5 Exemptions 993
    - (i) Overview 993
    - (ii) Better Targeted Aid and Europe 2020 995
    - (iii) Better Targeted Aid Enforcement 998
    - (iv) Rescuing Banks 1000
  - 6 State Aid and Brexit 1005
    - (i) State Aid Policy 1005
    - (ii) State Aid Law 1006
    - Further Reading 1007
  - Index* 1009