

CONTENTS

	<i>Acknowledgements</i>	v
	<i>Abbreviations of Journal Titles</i>	xvii
	<b>Introduction</b>	3
PART	I Constitutional Issues	
CHAPTER	I.1 <b>The European Court of Justice and the Division of Competence in the European Union</b> Ronald van Ooik	
	I Introduction	13
	2 Exclusive competence	14
	2.1 Areas of exclusive competence	14
	2.1.1 The concept of an area of exclusive competence	15
	2.1.2 External exclusive competence	15
	2.2 Nature and meaning of ‘exclusivity’ of Community powers	17
	2.3 Delineations within the field of exclusive EC competences	19
	3 Shared competence	20
	3.1 The areas of shared competence	20
	3.2 What does sharing of competences mean?	20
	3.2.1 The EC is still silent	21
	3.2.2 Brussels awakes	22
	3.2.3 Brussels retreats	24
	3.2.4 Exceptions to the system	25
	3.3 The Court of Justice and shared competence	26
	4 Complementary competence of the EC	27
	4.1 The areas concerned	28
	4.2 Meaning of complementary competence	29
	4.3 The Court of Justice and complementary competences	30
	5 Residual competence of the EC/EU	30
	6 Cross-categorical litigation before the Court of Justice	34
	6.1 Exclusive versus shared competence	34
	6.2 Exclusive versus complementary competence	35
	6.3 Exclusive versus residual competence	35
	6.4 Shared competence or complementary competence?	36
	6.5 Shared versus residual EC/EU competence	37
	6.6 Complementary or residual competence?	37
	7 Concluding remarks	38

CHAPTER I.II	<p><b>Integration by Stealth: On the Exclusivity of Community Competence; A Comment on the Ronald van Ooik Contribution</b> Ramses Wessel</p>	
I	Introduction	43
2	Exclusive competence	44
3	Shared competence	45
4	Complementary competence	47
5	Residual competence	48
6	Conclusion	48
CHAPTER II.I	<p><b>The Interface between EC Rules on Public Participation in Environmental Decision-Making Operating at the European and National Levels</b> Daniela Obradovic</p>	
I	Introduction	53
2	Disparities between EC rules governing national and European level consultations with interest groups on environmental matters prior to the EC accession to the Aarhus Convention	53
3	Disparities between EC rules governing national and European level consultations with interest groups in the area of environmental decision-making subsequently to the approval of the Aarhus Convention by the EC	57
3.1	Transposition of the Aarhus requirements in EC law	57
3.2	Consultation standards	59
3.3	The enforcement of participation rights	63
3.3.1	The internal review	63
3.3.2	The judicial review at the EC level	65
3.3.3	The distinction between the criteria for commencing administrative and judicial review by NGOs for the purpose of protecting their Aarhus participation rights at the EC level	66
3.3.4	The justiciability of the Commissions minimum standards for consulting interested parties	68
3.3.5	The distinction between national and EC level conditions to be met by NGOs indenting to protect their Aarhus participation rights in courts	70
4	Recommendations for the elimination of the discrepancies between the EU and national level eligibility criteria for the consumption and enforcement of the Aarhus participation rights by interest groups	72

CHAPTER II.II	<b>Tensions in Decision-Making Processes Relating to the Environment: The Role of Public Participation; A Comment on the Daniela Obradovic Contribution</b> Nicolas de Sadeleer	
1	Introductory remarks	79
2	From international to EC law	79
3	From EC to national law: much leeway to the Member States	81
4	A double-edged sword for developers and public authorities	82
5	A shift from representative democracy to a new technocracy?	83
6	A threat to scientific expertise?	84
7	Participation in the face of uncertainty	84
8	Participation in the field of product policy	85
CHAPTER III.I	<b>Interface between the European Union and Its Member States in Union Public Finances</b> Thomas Beukers	
1	Introduction	89
2	The European Union and its Member States: budget and budgetary procedure	90
3	Decision-making on Union finances	92
4	From annual to multiannual budget planning: explaining the historical shift	94
5	Interface between the European Union and its Member States in public finances	96
6	European Council agreement linking revenue and expenditure	98
7	Incorporation of a European Council agreement in an interinstitutional agreement	99
8	Conclusions	100
PART	<b>2 Substantive Issues</b>	
CHAPTER IV.I	<b>Safeguarding National Identity in Community Legislation</b> Annette Schrauwen	
1	Respect for national identity	107
2	Food regulation	110
3	Wine	112
4	Cheese	113
5	Chocolate	114
6	Snus	118
7	Cultural policy	120

8	Language regulation	122
9	Social security regulation	126
10	Concluding remarks	129
CHAPTER V.I	<b>The Impact of EMU Law on National Budgetary Freedom; An Inquiry into the Limits of State Sovereignty in Economic Policy Matters</b>	
	René Smits	
I	Introduction	133
2	State of the law: economic union	133
2.1	Who is competent: monetary union versus economic union plus internal market	133
2.2	General economic policy coordination: principles, prohibitions, provisions and procedures	135
2.2.1	General: the four 'P's'	135
2.2.2	Principles	135
2.2.3	Prohibitions	136
2.2.4	Provisions and procedures	136
2.2.5	Community policy measures	138
2.3	Fiscal policy framework: reasons, rules and procedure	138
2.4	Application to all Member States with special rules for Euro zone members	143
2.5	Stability and Growth Pact	144
2.5.1	Original texts	144
2.5.2	2005 amendments	146
3	Practical experience with the EDP and the SGP	151
3.1	EDP and SGP experience	151
3.2	Stand-off in 2003	151
3.3	ECJ judgment in 2004	152
4	European Constitution	156
4.1	Amendments to economic union texts	156
4.2	Voting rules	157
4.3	Missed opportunity	158
4.4	Prospects	158
5	Proposals for strengthening economic union	159
5.1	Within the current context	159
5.1.1	Statistical data gathering and review	159
5.1.2	'Agreed overruling': the case of Germany in 2006	160
5.1.3	Intensified application of Article 100(1) EC	160
5.1.4	Acceptance of Union pre-emption of fiscal parameters ( <i>Wellink</i> doctrine)	161
5.1.5	Aligned decision-making on economic policy – policy mix proposals by EEAG	162
5.2	Outside the current context	163

CONTENTS

5.2.1	Stronger role for the Commission as overseer of fiscal prudence	163
5.2.2	<i>République européenne</i> proposals: EP sets limits for States' budgets	163
5.2.3	New voting arrangements excluding deficit States	164
6	Conclusions	165
7	Recommendations	165
7.1	Testing some suggested improvements and preparing for future Treaty changes	165
7.2	Single representation of EU at international level	166
7.3	Further inroads into national law: payments	167
7.4	Correcting EMU's basic division and fulfilling EMU's potential	167
CHAPTER V.II	<b>Integration, Coordination or Fragmentation in Economic Policy Matters? A Comment on the René Smits Contribution</b> Fabian Amtenbrink	
1	Introduction	171
2	European Economic and Monetary Union: A case of integration, coordination or fragmentation?	173
2.1	Legal framework	173
2.2	Practice	177
2.3	Fragmentation rather than integration or coordination	179
3	Impact of EMU's multilevel system of economic governance on democratic legitimacy	181
4	Conclusions	184
CHAPTER VI.I	<b>Interface: EC and Dutch Competition Law – In Which Fields or Areas Would the Netherlands Still Have Autonomous Regulating Powers? And Would It Be Wise to Use Those Powers?</b> Floris Vogelaar	
1	The basic legal framework after the modernisation	187
2	Recent developments and trends in the Netherlands	188
3	Application of Article 3(2) of Regulation 1/2003 in the Netherlands	190
4	Exemptions from the national cartel prohibition	192
5	Article 3(3) of Regulation 1/2003 and national concentration control	195
6	Freedom to determine a national type of sanctioning – the criminal law route	196
7	Private enforcement: very complex choices to be made	199

CHAPTER VI.II	<b>The Interface between EC Competition Law and the Competition Laws of the New Member States: Implementation or Innovation?</b>	
	Katalin Cseres	
I	Introduction	205
2	The relevance of this research: competition law and the CEECs	205
3	Competition law in the new Member States	206
3.1	The road to accession	206
3.2	The effect of modernisation of EC competition law: what room is left for national competition laws?	209
3.2.I	Accession and transitional rules	209
4	Implementation of competition law in the CEECs	212
4.1	Substantive issues	215
4.2	Specific characteristics of the CEECs and their implications for competition law	216
4.2.I	Different economic setting and economic goals	216
4.2.I.I	Small economies	216
4.2.I.2	Transition economies: diverging focus of competition law in transition economies	218
4.3	Comparison: convergence or divergence?	220
5	Law in the books <i>v.</i> effective enforcement	226
6	What lessons can be learned from the CEECs case for future enlargement and the EC competition policy design	230
PART 3	<b>Domestic Effects of European Law</b>	
CHAPTER VII.I	<b>The Application of Community Precedent and <i>Acte Clair</i> by the <i>Hoge Raad</i>; A Case Study in the Field of Establishment and Services</b>	
	Herman van Harten	
I	Introduction	237
2	Community precedent and <i>acte clair</i>	238
2.1	Precedent in Community law	238
2.2	The classic preliminary reference system and the obligation	239
2.3	The jurisprudential exceptions: the <i>Cilfit</i> doctrine	239
2.4	The actuality of the <i>Cilfit</i> doctrine	241
3	Establishment and services	242
3.1	Definition and applicability	243
3.2	The qualification of the restriction	244
3.3	The applicability of a justification and the principle of proportionality	246

4	Community precedent and <i>acte clair</i> applied	246
4.I	The maximum age of a Member of the Supervisory Board; Judgment of 8 May 1998	247
4.I.1	Factual background and proceedings	247
4.I.2	AG	247
4.I.3	<i>Hoge Raad</i>	248
4.I.4	Commentary	248
4.2	A case with similarities to <i>Alpine Investments</i> without mentioning it; Judgment of 2 February 1999	249
4.2.1	Factual background and proceedings	249
4.2.2	AG	250
4.2.3	<i>Hoge Raad</i>	250
4.2.4	Commentary	251
4.3	The <i>Albany</i> case at the <i>Hoge Raad</i> before the Court delivered its judgment in this case; Judgment of 5 February 1999	251
4.3.1	Factual background and proceedings	251
4.3.2	AG	252
4.3.3	<i>Hoge Raad</i>	254
4.3.4	Commentary	254
4.4	The <i>Rotterdam parking fine</i> case, the <i>Dutch chip card</i> ( <i>chipknip</i> ) as the only way to pay a parking ticket; Judgment of 8 July 2005	255
4.4.1	Factual background and proceedings	255
4.4.2	AG	256
4.4.3	<i>Hoge Raad</i>	257
4.4.4	Commentary	258
5	Concluding remarks	258
6	Towards decentralized responsibility: exceptions as a rule?	259
CHAPTER VIII.II	<b>National Case Law in the Field of Free Movement of Services and the Freedom of Establishment: Is the Time Ripe for a Change in the <i>Cilfit</i> Doctrine? A Comment on the Herman van Harten Contribution</b>	
	Johan van de Gronden	
I	Introduction	265
2	What approach does Van Harten take in his paper?	265
3	Developments in the EU law on services and establishment	267
4	How did the <i>Hoge Raad</i> deal with the developments in the free movement case law?	269
4.1	The <i>Westerterp and Tolman</i> case	270
4.2	The <i>Dutch Act on the Supervision of the Securities Trade</i> case	270
4.3	The <i>Albany</i> case	271

4.4	The <i>Rotterdam parking fine</i> case	273
5	Concluding remarks	274
CHAPTER VIII.I	<b>State Liability: In Search of a Dividing Line between National and European Law</b>	
	Jan H. Jans	
I	Introduction	281
2	The existence of state liability as a matter of principle	281
3	Setting the conditions for <i>Francovich</i> -liability	284
3.1	Liability under more stringent conditions	284
3.2	Lowering the standards for liability	285
4	Applying the principle and its conditions	287
4.1	Serious breach	287
4.2	Rights for individuals	288
4.3	Causality	289
4.4	Summing up	290
5	Applying procedural rules	291
5.1	The qualification of the remedy according national law	292
5.2	Extent of the reparation	293
5.3	How to allocate liability internally	294
5.4	Violating the <i>Rewe/Comet</i> rule of effectiveness	294
6	Concluding remarks	295
CHAPTER VIII.II	<b>Beyond <i>Francovich</i>: Completing the Unified Member State and EU Liability Regime; A Comment on the Jan Jans Contribution</b>	
	Gerrit Betlem	
I	Legal bases of <i>Francovich</i>	299
2	Liability of the EC in the absence of unlawfulness	300
3	State liability for breach of Union law	301
3.1	Absence of direct effect	301
3.2	Consistent interpretation indirectly inherent in EU Treaty	302
3.3	Levels of European integration	304
3.4	State liability for breach of EEA law	305
3.5	The Constitutional Treaty	308
CHAPTER IX.I	<b>Domestic Legal Effects of EU Criminal Law: A Transfer of EC Law Doctrines?</b>	
	Jolande Prinssen	
I	Introduction: the (new) legal architecture of the PJCC area	313
2	Character of third pillar measures	314

3	Extended jurisdiction of the ECJ in the third pillar	315
3.1	ECJ's debut in the third pillar	317
4	Can the doctrines on the domestic legal effects of European law be transferred to the PJCC instruments?	318
4.1	Introducing the primary principles of European law	318
4.2	The principle of consistent interpretation	320
4.2.1	Interpretation in conformity with framework decisions: the <i>Pupino</i> case	320
4.2.2	Scope of the interpretative obligation (in criminal matters)	321
4.2.3	Broader implications	322
4.3	Direct effect	323
4.4	Supremacy	325
4.5	State liability	326
4.6	Judicial protection under national law: European law requirements	327
5	Concluding remarks	328
5.1	Rapprochement of third pillar law with EC law	328
5.2	Domestic legal effects of EU criminal law: limitations and prospects	329
CHAPTER IX.II	<b>Domestic Legal Effects on EU Criminal Law: Variations on Three Themes; A Comment on the Jolande Prinssen Contribution</b> Sacha Prechal	
1	Introduction	335
2	The paradox of direct effect	335
3	Supremacy put in perspective	337
4	Fundamental rights <i>acquis</i>	341
5	Creeping depillarisation	343
CHAPTER X.I	<b>The Interface between European and National Procedural Law: UN Sanctions and Judicial Review</b> Nikolaos Lavranos	
1	The legal framework	349
1.1	UN Security Council Resolutions in the Community legal order	349
1.2	ECJ jurisprudence on UN Security Council Resolutions	350
2	The interface between European and national procedural law	353
2.1	Review of UN sanctions before the CFI/ECJ	353
2.1.1	Hierarchy of norms in the Community legal order	355
2.1.2	Invalidating EC Regulation	357

2.2	Review of UN sanctions before the ECtHR	358
2.3	The consequences for the national courts	361
3	Conclusions	364
CHAPTER X.II	<b>The International Community, the European Union and Its Member States; A Comment on the Nikolaos Lavranos Contribution</b> James Kingston	
I	Introduction	369
2	The emerging structure of public international law	369
3	The interface between the United Nations Charter and regional and domestic legal systems	372
3.1	European Union law	372
3.2	European Convention on Human Rights	377
3.3	Domestic legal systems	380
4	Action at UN Level	381
5	Conclusions	383
	<i>Index</i>	386