

CONTENTS

<i>Preface</i>	v
<i>Contents</i>	vii
<i>List of Abbreviations</i>	xiii
<i>Overview of English Terminology</i>	xix

Introduction

1	Setting the Scene: The Influence of European Law on National Administrative Law	3
2	National Remedies before the ECJ	5
3	Europeanisation, Convergence and Harmonisation	11
4	The Role of the European Convention on Human Rights (ECHR)	14
5	The Selected Legal Systems	16
6	Some Methodological and Terminological Considerations	24
7	Outline of the Book	25

CHAPTER I **The Possibility of Challenging an Administrative Measure Before a Court**

I	Introduction	29
2	The ECJ's Case Law	29
2.1	Introduction	29
2.2	The Right to Judicial Protection	30
2.3	The Restriction to the Access to Court in Cases of Preparatory Measures Issued in the Context of Mixed Administrative Decision-making Proceedings	32
2.4	Conclusion	34
3	Italian Law	35
3.1	The Italian Rules concerning the Possibility of Challenging an Act before the Administrative Courts	35
3.2	Assessment of the Compliance of the Administrative Procedural System with the ECJ's Judgments	37
3.3	Application of the Standards set out in the ECJ's Judgments by the Administrative Courts in Cases dealing with 'European Matters'	38
3.4	Conclusion	42
4	German Law	42
4.1	The German Rules concerning the Possibility of Challenging an Act before the Administrative Courts	42
4.2	Assessment of the Compliance of the Administrative Procedural System with the ECJ's Judgments	48
4.3	Application of the Standards set out in the ECJ's Judgments by the Administrative Courts in Cases dealing with 'European Matters'	49
4.4	Conclusion	53
5	English Law	53

5.1	The English Rules concerning the Possibility of Challenging an Act in Judicial Review Proceedings	53
5.2	Assessment of the Compliance of the Administrative Procedural System with the ECJ's and ECtHR's Judgments	61
5.3	Conclusion	62
6	Comparative Conclusion	64
	Table 1: The possibility of challenging an administrative measure before a court	67
CHAPTER 2	Time Limits for Challenging the Administrative Action Before a Court	
I	Introduction	71
2	The ECJ's Case Law	72
2.1	The Initial Period – Deference to National Time Limits	72
2.2	<i>Emmott</i>	72
2.3	'Post- <i>Emmott</i> ' Case Law	74
2.4	Is <i>Emmott</i> still alive?	78
2.5	Conclusion	82
3	Italian Law	83
3.1	The Italian Rules on Time Limits for bringing a Claim before an Administrative Court	83
3.2	Assessment of the Compliance of the Administrative Procedural System with the ECJ's Judgments	86
3.3	Application of the Standards set out in the ECJ's Judgments by the Administrative Courts in Cases dealing with 'European Matters'	88
3.4	Conclusion	94
4	German Law	96
4.1	The German Rules on Time Limits for bringing a Claim before an Administrative Court	96
4.2	Assessment of the Compliance of the Administrative Procedural System with the ECJ's Judgments	98
4.3	Application of the Standards set out in the ECJ's Judgments by the Administrative Courts in Cases dealing with 'European Matters'	101
4.4	Conclusion	105
5	English Law	106
5.1	The English Rules on Time Limits for bringing a Claim for Judicial Review	106
5.2	Assessment of the Compliance of the Administrative Procedural System with the ECJ's and the ECtHR's Judgments	113
5.3	Application of the Standards set out in the ECJ's Judgments by the Administrative Courts in Cases dealing with 'European Matters'	115

5.4	The Requirement of ‘Promptness’ scrutinised for its Compliance with EC and ECHR Law in Cases involving purely Domestic Situations	117
5.5	Conclusion	119
6	Comparative Conclusion	121
	Table 2: Time limits for challenging the administrative action before a court	124
CHAPTER 3	The Duty of National Courts to Raise <i>ex Officio</i> Points of EC Law	
1	Introduction	129
2	The ECJ’s Case Law	130
2.1	Introduction	130
2.2	<i>Van Schijndel</i>	130
2.3	<i>Peterbroeck</i>	132
2.4	Two Different Outcomes for Two Similar Cases?	134
2.5	The Subsequent Case Law	136
2.6	Conclusion	141
3	Italian Law	143
3.1	The Italian Rules on the <i>ex officio</i> Powers of the Administrative Courts	143
3.2	Assessment of the Compliance of the Administrative Procedural System with the ECJ’s Judgments	146
3.3	Application of the Standards set out in the ECJ’s Judgments by the Administrative Courts in Cases dealing with ‘European Matters’	147
3.4	The Contribution of the ECJ’s Case Law to the Broadening of the <i>ex officio</i> Powers of Administrative Courts in Cases involving purely Domestic Situations	152
3.5	Conclusion	159
4	German Law	160
4.1	The German Rules on the <i>ex officio</i> Powers of the Administrative Courts	160
4.2	Assessment of the Compliance of the Administrative Procedural System with the ECJ’s Judgments	164
4.3	Conclusion	165
5	English Law	166
5.1	The English Rules on the <i>ex officio</i> Powers of the Courts in Judicial Review Proceedings	166
5.2	Assessment of the Compliance of the Administrative Procedural System with the ECJ’s Judgments	168
5.3	Conclusion	169
6	Comparative Conclusion	169
	Table 3: The duty of national courts to raise <i>ex officio</i> points of EC law	172

CHAPTER 4	The Evidence Regime Applicable in Claims Before Administrative Courts	
I	Introduction	177
2	The ECJ's Case Law	177
2.1	National Procedural Autonomy, Subject to the Principles of Equivalence and Effectiveness	177
2.2	Conclusion	181
3	Italian Law	181
3.1	The Italian Rules of Evidence applicable before Administrative Courts	181
3.2	Assessment of the Compliance of the Administrative Procedural System with the ECJ's Judgments	188
3.3	Application of the Standards set out in the ECJ's Judgments by the Administrative Courts in Cases dealing with 'European Matters'	189
3.4	The Reliance on the ECHR and the General Principles of EC Law for the Admission of the CTU by the Administrative Courts in Cases involving purely Domestic Situations	190
3.5	The Admission of the CTU by Way of Legislative Reform	194
3.6	Conclusion	196
4	German Law	197
4.1	The German Rules of Evidence applicable before Administrative Courts	197
4.2	Assessment of the Compliance of the Administrative Procedural System with the ECJ's Judgments	201
4.3	Conclusion	202
5	English Law	203
5.1	The English Rules of Evidence applicable in Judicial Review Proceedings	203
5.2	Assessment of the Compliance of the Administrative Procedural System with the ECJ's Judgments	209
5.3	Application of the Standards set out in the ECJ's Judgments by the Administrative Courts in Cases dealing with 'European Matters'	212
5.4	The Reliance on the ECHR for the Admission of Cross-examination in Judicial Review Proceedings in Cases involving purely Domestic Situations	214
5.5	Conclusion	216
6	Comparative Conclusion	218
	Table 4: Evidence regime applicable in claims before administrative courts	221
CHAPTER 5	Interim Relief Before Administrative Courts	
I	Introduction	225
2	The ECJ's Case Law	226

CONTENTS

2.1	Introduction	226
2.2	The Right to obtain Interim Relief	227
2.2.1	‘ <i>Factortame</i> Cases’	227
2.2.2	‘ <i>Zuckerfabrik</i> Cases’	229
2.2.3	<i>T. Port</i> : the Outer Limits of the Power to grant Interim Protection	232
2.3	Types of Interim Relief that can be granted	233
2.3.1	‘ <i>Factortame</i> Cases’	233
2.3.2	‘ <i>Zuckerfabrik</i> Cases’	233
2.4	Conclusion	235
3	Italian Law	235
3.1	The Italian Rules on Interim Relief before Administrative Courts	235
3.2	Assessment of the Compliance of the Administrative Procedural System with the ECJ’s Judgments	245
3.3	Application of the Standards set out in the ECJ’s Judgments by the Administrative Courts in Cases dealing with ‘European Matters’	245
3.4	Application of the Standards set out in the ECJ’s Judgments by the Administrative Courts in Cases involving purely Domestic Situations	248
3.5	The Admission of the Possibility of issuing Positive Interim Measures by Way of Legislative Reform	251
3.6	Conclusion	252
4	German Law	253
4.1	The German Rules on Interim Relief before Administrative Courts	253
4.2	Assessment of the Compliance of the Administrative Procedural System with the ECJ’s Judgments	259
4.3	Conclusion	260
5	English Law	261
5.1	The English Rules on Interim Relief in Judicial Review Proceedings	261
5.2	Assessment of the Compliance of the Administrative Procedural System with the ECJ’s Judgments	272
5.3	Application of the Standards set out in the ECJ’s Judgments by the Administrative Courts in Cases dealing with ‘European Matters’	273
5.4	Application of the Standards set out in the ECJ’s Judgments by the Administrative Courts in Cases involving purely Domestic Situations	275
5.5	Conclusion	278
6	Comparative Conclusion	280
	Table 5: Interim relief before administrative courts	283

CHAPTER 6	Europeanisation, Convergence and Harmonisation of the Systems of Administrative Justice	
I	Introduction	287
2	The Degree of Europeanisation of the Systems of Administrative Justice	288
2.1	An Analysis based upon the Five Selected Areas of Influence	288
2.2	An Analysis based upon the Three Selected Legal Systems	292
2.3	Conclusion	294
3	The Process of Convergence of the Systems of Administrative Justice and Role of the ECJ's Case Law	295
3.1	The 'ECJ-induced' Process of Convergence	295
3.2	Other Factors for the Process of Convergence	297
3.3	Conclusion	298
4	The Need for Harmonisation of the Rules for the Decentralised Enforcement of Community Law	299
4.1	Introduction	299
4.2	The Possibility and Desirability of Harmonised Procedural Rules applicable to the Judicial Review of Administrative Action	300
4.3	The Choice of the Legal Instrument	307
5	Conclusion	308
	Table 6: The Europeanisation of the systems of administrative justice	310
	Table 7: The convergence of the systems of administrative justice	311
	Conclusion	315
	<i>Bibliography</i>	332
	<i>List of Cases</i>	366
	<i>List of Legislative Instruments</i>	392
	<i>Summary</i>	396
	<i>Samenvatting</i>	400
	<i>Zusammenfassung</i>	404
	<i>Riassunto</i>	408
	<i>Gearfetting</i>	412
	<i>Curriculum Vitae</i>	416