

## Contents

<i>Foreword by Carol Harlow</i>	vi
<i>Preface and Acknowledgements</i>	xi
<i>Abbreviations</i>	xix
<b>1 Legislative Powers and Normative Instruments</b>	<b>1</b>
I. INTRODUCTION	1
II. LEGISLATIVE POWERS AND NORMATIVE INSTRUMENTS UNDER THE CURRENT TREATIES	2
III. SIMPLIFICATION OF THE UNION'S NORMATIVE INSTRUMENTS AND THE TRANSFORMATION OF EUROPEAN ADMINISTRATIVE LAW	6
IV. NEW NORMATIVE INSTRUMENTS UNDER THE CONSTITUTIONAL TREATY	9
1. Legislative Level: European Law and Framework Law	11
2. Delegated European Regulations	12
(a) <i>On Requirements and Limits</i>	13
(b) <i>Mechanisms of Control</i>	13
3. Implementing Acts	15
(a) <i>Areas where Implementing Acts might be Used</i>	16
(b) <i>The Form and Mechanism for the Control of Implementing Acts</i>	18
V. A THIRD TYPE OF EUROPEAN REGULATION	18
1. Competition Policy	19
2. State Aids	20
3. Economic and Monetary Policy	20
4. Area of Freedom, Security and Justice	20
VI. THE CHOICE BETWEEN PRIMARY LAW AND SECONDARY LAW: CONSEQUENCES	21
<b>2 Implications of a Binding European Charter of Fundamental Rights for the Individual Decisions Made by the European Public Administration</b>	<b>25</b>
I. INTRODUCTION	25
II. THE RIGHT TO GOOD ADMINISTRATION	26
1. Origin of the Right to Good Administration in Community Law	28
2. Content of the Right to Good Administration	30
3. Implications of a Binding Right to Good Administration for the Community Administration	37

xvi Contents

III. THE RIGHT OF ACCESS TO DOCUMENTS	39
1. Origin of the Right of Access to Documents	39
2. The Current Meaning of the Right of Access to Documents	43
(a) Which Bodies are under an Obligation to Provide Access to their Documents?	45
(b) Who Can Access Institutions' and Bodies' Documents?	46
(c) Judicial Protection of the Right of Access to Documents	47
3. Implications of a Binding European Charter of Fundamental Rights for the Right of Access to Documents	48
IV. THE RIGHT TO PROTECTION OF PERSONAL DATA	49
1. Its Origins in EU Law	50
2. Scope of the Right to Protection of Personal Data	52
(a) The Rundfunk Case	53
(b) The Lundqvist Case	55
(c) The PNR Case	57
3. Personal Data Protection in the Charter and in the Constitutional Treaty	60
(a) Introduction	60
(b) Implications	61
<b>3 The Impact of the Charter of Fundamental Rights on Decisions Adopted by Member States</b>	<b>65</b>
I. FUNDAMENTAL RIGHTS OF THE UNION AND MEMBER STATES: WHAT DOES 'IMPLEMENT' MEAN?	65
1. General Considerations: The Relevance of the Topic	65
2. Subjecting National Administration to the Fundamental Rights of the Union	67
(a) Case Law on the Application of Fundamental Rights of the Union to Member States	67
(b) The Formula in Article 51 (1) of the Charter: Subjecting Member States to Community Fundamental Rights 'only when they are implementing Union law'	71
3. A Theory of the Concept of Implementing EU Law from the Perspective of the Protection of Fundamental Rights against the Acts of Member States	73
II. THE RIGHTS TO GOOD ADMINISTRATION, ACCESS TO DOCUMENTS AND PROTECTION OF PERSONAL DATA: EFFECTS OF RECOGNITION IN NATIONAL LEGAL SYSTEMS	83
1. A Preliminary Question	83
2. The Field of Application of the Right to Protection of Personal Data, Access to Documents and Good Administration	85
(a) The Right to Good Administration	86
(b) The Right of Access to Documents	93

(c) <i>The Right to Protection of Personal Data</i>	97
III. FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION AND MEMBER STATES: THE CASE OF STRUCTURAL FUNDS	98
IV. CONCLUSION	104
<b>4 Towards a Law on Administrative Procedure</b>	<b>107</b>
I. AN OLD ISSUE REVISITED: WHY NOW A EUROPEAN LAW ON A COMMON ADMINISTRATIVE PROCEDURE?	107
1. General Considerations	107
2. A Public Administration without a Law of Administrative Procedure	109
(a) <i>Separated Procedural Norms in Primary and Secondary Law</i>	109
(b) <i>Shaping of the General Principles of Administrative Procedure by the Court of Justice</i>	113
3. New Arguments for the Creation of a Law on Administrative Procedure	115
II. CODIFYING EUROPEAN ADMINISTRATIVE PROCEDURE	115
1. Legal Foundation	118
(a) <i>Formal Basis: Article III-398 of the Treaty establishing a Constitution for Europe</i>	118
(b) <i>Substantive Basis: The Right to Good Administration as a Binding Fundamental Right and the Principles of Democracy and Legality</i>	120
2. Content: Putting the Individual at the Centre of Procedure	126
(a) <i>Prior Considerations: A Law of General Principles or a Law of Particulars? A Law on European Administrative Procedure or a Law of European Administrative Procedures?</i>	126
(b) <i>General Considerations regarding the Content of the Law on European Administrative Procedure</i>	131
(c) <i>The Development and Guarantee of the Rights of the Parties in Procedure</i>	132
(d) <i>The Rise of Transparency, Impartiality, Equality and Legal Certainty</i>	133
(e) <i>The Strengthening of Participation Rights: Towards a More Democratic and Open European Administration</i>	135
III. CONCLUSION	137
<b>5 Judicial Protection</b>	<b>139</b>
I. INTRODUCTION	139
II. THE RULE OF STANDING AND THE RIGHT TO EFFECTIVE JUDICIAL PROTECTION	140
1. Brief Description of the Current Rule of Standing found in Article 230(4) of the EC	141
2. <i>UPA and Jégo-Quéré</i> Cases and the Gaps in Judicial Protection in the Union	144

xviii *Contents*

3. Modifications to the Rule of Standing of Private Parties Introduced by the Constitutional Treaty	148
4. Modifications to the Rule of Standing of Private Parties and the Action for Failure to Act	152
5. Conclusions	154
III. THE EXTENSION OF ARTICLES III-365 AND III-367 TO UNION BODIES AND AGENCIES INCLUDING EUROPOL AND EUROJUST	154
1. Agencies and Bodies of the Union: General Framework	155
2. Judicial Review of Agencies' Acts	157
3. Standardising the Judicial Review of Acts of the EU's Agencies and Bodies	159
4. Europol and Eurojust's Decision and its Judicial Review by the Community Courts	161
IV. MEMBER STATES' OBLIGATION TO PROVIDE APPROPRIATE REMEDIES TO ENSURE EFFECTIVE LEGAL PROTECTION IN THE FIELDS COVERED BY UNION LAW	164
1. Origin of the Provision	164
2. Possible Implications of Article I-29(1)(2) of the Constitutional Treaty for Member States	165
V. EXTENSION OF THE COURT OF JUSTICE'S COMPETENCE TO THE PRESENT THIRD PILLAR	168
1. Freedom, Security and Justice in the Treaties: Evolution	168
2. The Convention's Proposals	173
3. Reforms Achieved by the Constitutional Treaty	175
<i>Bibliography</i>	179
<i>Index</i>	189