

Index

Page numbers: **bold** = table, *italics* = figure.

- AA, 193, 194, 197, 201, 204
 - Accession Agreement of EU to ECHR ('AA' agreed at Reykjavik, March 2023), 177, 191, 201
 - Article 01(1) (in footnote), 186
 - Article 03(1), 194
 - Article 03(2), 195, 197
 - Article 03(3), 195
 - Article 03(3) in footnote, 180
 - Article 03(5), 195
 - Article 03(7), 197, 198
 - Article 03(8), 196
 - Article 04a, 202
 - Article 36(4), in footnote, 198
 - EU accession to ECHR, 179
 - protocols not ratified by all EU Member States (in footnote), 186
- AA (2013 version), 195, 196, 201
- Aarhus Compliance Committee, 190, 217
- Aarhus Convention (2005), 191, 217
- abilities doctrine, 66, 67, 74
- ability to give evidence, 68, 70, 86
 - interrelationship with effective judicial protection, 70, 71–77
- abuse of power, 15, 277
- access to court, 212, 213, 283
 - DG COMP, 293–94
 - ESMA, 286–88
 - OLAF, 301–2
 - 'severely limited' (EU), 212
- access to justice, 9, 151, 153, 212, 346
 - applicable fundamental rights, 274, 276–80
 - beyond judge, 280–84
 - beyond nation-state, 280–84
 - chapter structure, 274–75
 - co-existence of judicial and non-judicial remedies, 309, 310
 - definition, 272
 - division of competences, 309
 - elements, 272
 - enforcement by EU authorities, 274, 275–84
 - enforcement stages, 274, 275, 276–80, 285, 307
 - investigation, 278–79, 282, 287, 291, 292
 - monitoring, 276–78, 287
 - sanctioning, 279–80, 291, 292
 - evolution of concept, 274, 280–84
 - functional role, 272
 - identification of gaps, 306–10
 - implementation, 274, 275, 284–305
 - DG COMP, 289–97
 - ESMA, 285–89
 - OLAF, 297–305
 - judicial versus non-judicial remedies, 284–305
 - legislative design of enforcement, 309
 - legislative practice, 275
 - lessons, 309–10
 - 'must be more than access to court', 283
 - procedural limb, 272
 - recommendations, 275, 310
 - socio-legal literature, 274, 275
 - testing of remedies systems, 271–310
- accessibility, 100, 145, 248, 256, 331, 338, 371
- Accession Agreement. *See* AA

- accountability, 127, 129, 130, 252, 253, 265, 429
 - diffusion, 171
 - 'effective orchestration through public messaging', 153
 - political, 284
 - public appearance versus substantive, 131
- accountability forums, 146, 151, 153
- actio popularis*, 214, 215, 225, 226
- action for annulment, 8, 17–21, 93, 94, 152, 168, 192, 198, 200, 216, 301, 307, 425, 428, 429. *See also* Article 263 TFEU
- admissibility, 60, 70, 86, 319, 322, 341
 - in footnote, 340
- applicants (non-privileged), 18
- applicants (privileged), 18
- applicants (semi-privileged), 18
- 'centrepiece of remedies system', 422
- Court of Justice (jurisprudence), 28–35
- crucial instrument to review lawfulness of EU action, 20
- directives not yet transposed into national law (systematic inadmissibility), 85
- EU factual conduct, 319–22
- fundamental rights, 13–35
- General Court (jurisprudence), 21–28
- looking beyond, 426
- pleas, 17, 20
- possible outcomes, 13
- procedural fundamental rights dominate case law, 35
- procedural rules (constraint), 20
- procedure over substance (thus far), 35
- rules, 17
- standing, 18–21
- standing (heavy burden of proof), 77–82
- standing (pleas to lighten burden of proof), 82–87
- standing for bringing (broad view), 100
- strengths and weaknesses, 35
- unavailability (soft law), 381
- action for damages, 8, 36–63, 216, 301, 363, 424, 426. *See also* TFEU Article 268 *juncto* Article 340
- admissibility, 60
 - in footnote, 340
- charter rights (successful damages cases), 45
- conclusion (better utilisation of fundamental rights protection in EU), 60–63
- damages liability as remedy for fundamental rights violations, 38–43
- EU factual conduct, 324–27
- against Frontex (pending), 218
- fundamental rights remedy, 36–63
- harm and compensation (types), 41
- joint liability between EU and Member States, 55–60
 - establishing joint liability (attribution and causation), 56–59
 - implementing joint liability (court competence and parallel proceedings), 59–60
- lack of clear admissibility/substance stages, 70
- liability law (main functions), 38–43
 - compensating harm caused by fundamental rights, 38–40
 - condemning undesired behaviour, 41–42
 - vindicating rights, 42–43
- literature (in footnote), 37
- 'might be admissible, but will always fail on merits' (soft law cases), 382
- 'not very effective for fundamental rights remedy' (two factors), 61
- quantitative glance (CJEU damages case law in proceedings), 43–47
- soft law, 381–82
- 'unlawfulness' as condition for EU fundamental rights liability, 47–55
 - CJEU's approach to 'sufficiently serious breach' test in fundamental rights cases, 53–55
 - no conferral of rights by charter principles, 48–49
 - three arguments against applying 'sufficiently serious breach' test to fundamental rights, 49–53
- action for damages (requirements on evidence)
 - ability to seek judicial redress, 87–93
 - effective participation (restriction), 87–93
- action for failure to act, 189, 192, 216, 319, 362. *See also* TFEU: Article 265
- EU factual conduct, 322–23
- against Frontex (pending), 218
- actori incumbit probatio*: initial burden to give evidence falls on claimant, 69
- adjudication, 125, 136, 140, 146, 150
 - right to within reasonable time, 54
 - usage (in footnote), 125

- administrative action, 50, 130, 313, 317, 326, 329, 347, 348, 357, 364
 - in footnote, 318
- administrative review: soft law, 384–88, 390
- administrative tribunals (Australia/UK): in footnote, 126
- admissibility of evidence, 65, 69, 86
 - in footnote, 65
- Advocates General, 70
 - AG Bobek, 85, 86, 374, 381, 382
 - AG Bot, 376
 - AG Campos Sánchez-Bordona: in footnote, 389
 - AG Cruz Villalón, 48
 - in footnote, 186
 - AG Hogan, 77
 - AG Jacobs, 99, 189
 - in footnote, 4
 - UPA Opinion (2002), 82
 - AG Mengozzi, 42
 - AG Rantos, 32, 59
 - AG Roemer
 - ‘ontological grounds’ of Article 173, 78
 - Plaumann* case (1963), 78, 79
 - AG Saugmandsgaard Øe
 - Associação Sindical dos Juízes Portugueses* case (2017), 375
 - AG Sharpston, 32
 - AG Wathelet, 376
- Association de médiation sociale* (AMS) case (2013), 48
- Opinions (full list), xxvii–xxviii
- aerial surveillance, 391, 402, 405, 406, 421
 - Frontex, AI-powered, 393–99
- ‘Agency’. *See* Frontex
- AI, 9, 250, 253, 423, 428
 - EU border surveillance, 392–406
 - Frontex, 393–99
 - AI-powered aerial surveillance, 397–99
 - risks to fundamental rights
 - diverse nature, 399–406
 - risk of discrimination, 403–5
 - risks to ‘other substantive rights’, 405–6
 - risks to privacy and data protection, 400–3
 - ‘human-centric approach’, 410, 420
 - manual-review requirement, 404, 408, 409, 414
 - AI Act Proposal, 391, 409, 410–17, 421
 - application to border surveillance (scope), 411–12
 - double-hatting EDPS, 417–21
 - interplay with data protection rules, 412–17
- AI Act Proposal (Articles)
 - Annex III, 411
 - Article 01, 410
 - Article 02, 412
 - Article 05(a), 411
 - Article 05(b), 411
 - Article 05(c), 411
 - Article 10(3), in footnote, 412
 - Article 10(5), in footnote, 416
 - Article 53, 418
 - Article 53(1b), 419
 - Article 53(1f), 420
 - Article 53(a), 419
 - Article 57(a), 418
 - Article 59(8), 417
 - Article 63(6), 418
 - Article 68(a), 415, 418
 - recital 41, 416
- AI and fundamental rights, 391–421
 - conclusion, 421
 - double-hatting EDPS, 417–21
 - protection gaps, 421
 - remedial possibilities, 406–17
 - access, 407–10
 - AI Act Proposal, 410–17
 - AI Act Proposal (application to border surveillance), 411–12
 - AI Act Proposal (interplay with data protection, 412–17
 - reviewability, 409, 410
 - risks (EU border surveillance), 392–406
- AI Liability Directive (proposed, 2022), 63
- AI Office, 418
- AI systems, 393, 410, 411, 412, 415, 419
 - definition, 392
 - in footnote, 416
- AI tools, 392, 393, 394, 397, 398, 404
- AIRE Centre, 220
- Albania, 143
- algorithmic risk assessments, 397, 404, 408
- algorithms, 250, 393, 394, 396, 398, 402, 403, 406, 408. *See also* ETIAS
- alliance and conflict systems in courtroom (Andersen), 212
- Alonso de León, Sergio, 354
- alternative dispute resolution (ADR), 8, 228, 234
 - EU directive (2013), 256
 - in footnote, 234, 256

- alternative dispute resolution (ADR) (cont.)
passim, 245–57
amicus curiae (friend of court), 219, 220
 Amsterdam, 225
 Andersen, Ellen, 212
 Anderson, Terence: in footnote, 77
 annulment. *See* action for annulment
 antitrust proceedings, 290, 291, 295, 296
 appeals procedures, 329
 ARAs. *See* automated risk assessments
 arbitral tribunals, 230, 231, 235, 237, 238, 240, 243
 area of freedom, security and justice (AFSJ), 392, 394
 soft law, 377–79
 Arnulf, Anthony, 381, 383
 Article I tribunals (USA): in footnote, 129
 artificial intelligence. *See* AI
 Asylum Procedures Directive (2013)
 Article 14, 377
 Article 15, 377
 Article 15(3)(c), 377
 asylum seekers, 111, 220, 374. *See also* EUAA
 in footnote, 136, 216
 attributability problem, 358–59
 attribution
 and causation (sequential questions), 56
 clear rules required, 63
 definition (action for damages), 56
 threshold, 59
 austerity, 163, 170, 375, 376, 377
 EU-induced, 167–70
 Austria, 80, 160
 automated risk assessments, 393–97, 401, 402, 404, 410
 definition, 393
 Azoulai, L.: in footnote, 106

 Belgium, xxix, 111, 173
 Bentham, Jeremy, 96
 Treatise on Judicial Evidence (1825), 95
 binding legal effects, 20, 50, 320, 321, 348, 381
 in footnote, 322
 Bitcoin blockchain, 251
 Blongren Amsler, Lisa, 252, 253
 in footnote, 253
 Boards of Appeal. *See* BoAs
 BoAs, 123, 124, 125, 129, 140, 150, 151, 152, 341, 388, 389, 426
 access to justice perspective, 150
 administrative review bodies, 334
 authority and measures, 139–40, 146
 decisions ‘legally binding’, 134
 one exception (in footnote), 134
 definition (broad), 133
 expertise and funding, 146, 147–48, 149
 increasingly ‘judicialized’, 129, 130
 ‘individual interest orientation’, 137
 judicative function, 134
 offer accountability ‘in quintessentially adjudicative fashion’, 129
 ‘often conceptualised as quasi-judicial’, 139
 portrait, 133–34
 ‘share many characteristics with judicial institutions’, 139
 Bogucki, Artur: in footnote, 416
 Bosphorus doctrine. *See* ECtHR (cases)
 Bourdieu, Pierre (in footnote), 126
 Bovend'Eerd, Koen, xi, 9, 271–310, 423, 425, 426
 Briggs LJ, 254, 255
 Brito Bastos, Felipe, 355
 Broberg, M.: in footnote, 108
 Brussels Convention, 235
 Brussels I bis Regulation (2012), 235
 Bundesverfassungsgericht, 159, 174, 175
 CJEU ruling rejected (ECB PSPP case, 2020), 173, 175
 non-publication of complaints not accepted for decision (in footnote), 175
 Bundesverfassungsgericht (cases)
 Atlanta case (2000), 167
 full list, xxix–xxx
 Maastricht case (2000), 172
 Solange I case (1974), 163, 164, 165, 166, 167
 Wünsche Handelsgesellschaft (Solange II) case (1986), 166
 Bündnis 90/Grünen, 172
 Bündnis Bürgerwille, 173
 burden of proof, 65, 93. *See also* *onus probandi*
 in footnote, 65

 Campact, 173
 Canada: British Columbia, 248
 Canada-EU Trade Agreement (CETA), 174
 capabilities (Nussbaum), 66
 Cappelletti, M., 2
 case law, 107, 139, 155, 183. *See also* (for example) CJEU (cases)
 CJEU versus ECtHR, 184, 185, 186, 187, 188, 190, 193

- causal link, 58, 59, 91, 92, 325, 326, 381, 382
 - in footnote, 88, 325
- causation, 59, 88
 - clear rules required, 63
 - definition (action for damages), 56
 - threshold, 58
- ceremony (neo-institutional organisation theory), 131
- CFR, 1, 3, 19, 109, 110, 171, 428
 - actions for damages, 43, 44
 - 'can guide interpretation of Treaties', 426
 - determination of whether provision contains 'right' or 'principle', 49
 - entry into force (2009), 158
 - EU soft law, 374
 - incorporation into EU law, 2, 423
 - 'rights' versus 'principles', 48
 - only violations of former risk damages, 48
 - 'should extend to soft law', 380
 - social and economic rights, 168
- CFR (Articles)
 - Article 01, 316, 399
 - Article 02, 316, 405
 - Article 03, 316
 - in footnote, 188
 - Article 04, 316
 - in footnote, 188
 - Article 06, 315, 405
 - Article 07, 45, 114, 214, 215, 278, 298, 306, 315, 316, 349, 400
 - in footnote, 45, 188
 - Article 08, 45, 114, 214, 215, 315, 400, 414
 - in footnote, 45
 - Article 11, 380
 - Article 15, 374
 - Article 16, 45, 85, 316, 374
 - Article 17, 45, 85, 316, 374
 - Article 18, 144, 316, 400
 - Article 19, 316
 - Article 20, 114, 378
 - Article 21, 45, 114, 352, 378, 400, 404
 - right to non-discrimination (*qv*), 403
 - Article 22, 114
 - Article 23, 114
 - Article 24, 351, 380
 - Article 25, 49
 - Article 26, 49
 - Article 31, 44
 - Article 34(1), 49
 - Article 34(3), 49
 - Article 35, 49
 - Article 35(3), 380
 - Article 36, 49
 - Article 37, 49
 - Article 38, 49, 380
 - Article 41, 27, 31, 44, 46, 52, 134, 291, 306, 343, 407
 - right to sound administration (*qv*), 330
 - Article 41(1), 330, 342
 - Article 41(2), 330
 - Article 41(3), 43, 331
 - Article 43
 - in footnote, 330
 - right to lodge complaints with Ombudsman (*qv*), 331
 - Article 47, 2, 5, 32, 36, 42, 44, 46, 47, 50, 62, 64, 76, 77, 85, 86, 94, 97, 129, 134, 231, 240, 306, 308, 318–19, 320, 325, 343, 385, 418, 424, 426.
 - See also effective judicial protection
 - Article 47(2), 74
 - Article 48, 44, 306
 - Article 49, 306
 - Article 51, 17, 375
 - Article 51(1), 103
 - Article 51(2), 188
 - Article 52, 32
 - Article 52(1), 47, 368, 382, 400, 415
 - Article 52(3), 33, 52
 - Article 52(4), 52
 - Article 52(5), 48
- CFSP, 46, 47, 178, 181, 424
 - EU accession to ECHR, 199–204
 - benefits, 196–204
 - current gap in effective protection, 199–201
 - key to abbreviation (Common Foreign and Security Policy), 24
- Chamon, Merijn, xi, 9, 366–90, 422, 423, 425, 427
- 'Charter'. See CFR
- Charter of Fundamental Rights, See CFR
- Civil Courts Structure Review (UK), 254
- civil law, 248
 - in footnote, 38
- civil liberties, 156, 174, 190
 - challenges to EU intrusion on personal liberties, 170–71
- civil service (of EU), 45, 192
- Civil Service Tribunal, xxvi
 - in footnote, 44
- civil society, 155, 156, 160, 161, 162, 169, 170, 174, 175, 414

- CJEU, 1, 9, 14, 192
acte clair and *acte éclairé*, 158
 action for annulment, 36
 action for damages (appeals on points of law only), 43
 annuls EU regulations (rather than acts), 114
 approach to action for damages, 47
 association between evidence and effective judicial protection, 67
 attribution tests, 57
 'axiological assumptions', 95, 96
 'broad interpretation of own jurisdiction', 199
 competence limited to pleas of law, 20, 21
 'complements jurisprudence of General Court', 35
 composite procedures (case law), 346
 composite procedures ('failure to clarify essential aspects of judicial review'), 365
 conditions for liability, 43
 deference to national courts 'almost absent', 115, 118
 direct access 'limited', 219
 economic sanctions case law, 87
 EU accession to ECHR (*Opinion 2/94* and *Opinion 2/13*), 178
 fundamental rights reasoning, 424
 'has not developed coherent approach to attribution', 57
 'has seldom qualified an act as both regulatory and self-executing', 84
 'incoherent approach to attribution', 58
 'inconsistent terminology', 57
 internal market, 70, 262, 371, 373, 390
 joint liability between EU and Member States, 55–60
 legality of Frontex's activities (2021–2023), 4
 looking beyond, 426–27
 'may not annul or declare primary EU law invalid', 180
 preliminary reference procedure, 16, 114
 procedures of decisional nature, 357
 purpose, 371
 reliance in decisions on ECB's Administrative Board of Review, 139
 restriction of fundamental rights (notion 'not properly clarified'), 371
 sole authority claimed to review validity of EU acts, 156
 sufficiently serious breach test, 49–55, 61
 refusal to lighten burden of proof, 93
 third-party interventions ('not easily allowed access'), 211
 treatment of fundamental rights complaints, 114–15
 'two-speed effective judicial protection', 94
 two-step test (criminal cooperation), 184
 understanding of hierarchy of European legal norms, 158
 'very reticent to annul EU acts', 118
 view of Article 47 CFR, 424
 will be subject to jurisdiction of ECtHR (upon EU accession to ECHR), 183
- CJEU (cases)
Abdulrahim case (2013), 40
Achbita case (2017), 187
Achmea case (2018), 236, 237
Addis case (2020), 378
Akzo and Akeros joined case (2007), 320, 328
Al-Aqsa case (2012), 33
Aranyosi case (2016), 185
Association Greenpeace France ruling (1999), 362
Asturcom case (2009), 239
Atlanta case (1995), 166
Bank Refah Kargaran case (2020), 200
Baustahlgewebe case (1998), 183
Belgium v Commission (2018), 381, 382, 384
Bergaderm case (2000), 88, 89, 93
Berlusconi ruling (2018), 359, 360–63, 365
Bevándorlási és Állampolgársági Hivatal case (2018), 374
Bollman case (1973), in footnote, 105
Borelli case (1992), 359–63, 365
Brasserie du Pêcheur case (1996), 88, 93
Case Opinion 1/17 (2019), xxi, 16
Centraal Israëlitisch Consistorie van België case (2020), 111
Codorniu case (1994), 82
Digital Rights Ireland case (2014), 183, 214, 215
Eco Swiss case, 239
Elitiana v Eulex Kosovo case (2015), xix, 200, 201
ERTA case (1971), in footnote, 312
Factortame case (1990), 73
Fédération bancaire française (FBF) case (2021), 288, 382, 384, 390

- FIAMM case (2008), 93
 Foto-Frost case (1987), 158, 171, 282, 307, 358, 359
 French Republic v People's Mojahedin Organization of Iran (2011), 30–32
 full list, xiii–xxii
 Funke ruling (2023), 364
 Gascogne Sack Deutschland case (2013), 54
 Grimaldi ruling (1989), 358
 Groupe Gascogne v Commission (2013), 54
 Hauer case (1979), 165
 Homoki v Commission (2021), 300
 Hungary v European Parliament and Council of EU (2022), 34–35
 IBM v Commission (1981), 301
 Internationale Handelsgesellschaft case (1970), 164
 Inuit case (2013), 318, 327
 in footnote, 83
 Jeanningros ruling (2020), 361
 Jégo-Quéré case (2004), 81, 99, 383, 384
 Johnston case (1986), 73, 95
 in footnote, 73
 Kadi judgment (2008), 30, 87
 established two principles, 24
 Kampffmeyer case (1967), 59, 60, 89
 Kempter case (2008), in footnote, 105
 Kendrion case (2013), 54
 Kočner v EUROPOL (currently under appeal), 58
 Komstroy case (2021), 236, 237
 KS and KD case (pending), 200, 203
 La Quadrature du Net case (2020), 188
 Laval case (2007), 187
 Ledra Advertising joined case (2016), 376, 381
 Les Verts case (1986), 4, 17, 95, 327, 365
 Liga van Moskeeën case (2018), 114
 Ligue des droits humains judgment (2022), 404
 Lisrestal case (1996), 353
 Mallis joined case (2016), 376
 Mediocurso case (2000), 354
 Mellifera case (2020), 217
 Mostaza Claro case (2006), 238, 239
 Mulder (milk quotas) case (1992), 103
 N.S. and M.E. joined case (2011), 220
 Nölle case (1991), 407
 Nord Stream 2 appeal, 84–87
 Opinion 2/13 (2014), xviii, 178, 195, 196, 197, 201, 236, 237
 Otero Ramos case (2017), 74, 81
 Plaumann case (1963), 78, 79, 82, 83, 87, 93, 94, 133, 155, 164, 168, 170, 189, 211, 216, 217, 218, 226, 383, 387
 Poland v European Parliament and Council of EU (2022), 34–35
 Pringle case (2012), 375
 Randstad [variously spelled] Italia case (2021), 77
 Rewe case (1976), 73, 95
 in footnote, 73
 Rosneft case (2017), 200
 San Giorgio case (1983), 74, 81
 Schecke case (2010), 103
 Schindler Holding Ltd v European Commission (2013), 33–34
 Schrems I case (2015), 183, 215
 Sharpston case (2021), 32
 Steffensen case (2003), 75
 Stichting Greenpeace Council case (1998), 217
 Sturgeon case (2009), 102
 Sweden v Commission (2007), 355
 T.Port case (2003), 91
 Tillack case, xvi, 316, 324, 326, 330, 332, 339
 in footnote, 323
 TUM case (1991), 407
 TWD rule (1994), 100
 Unibet case (2007), 384
 UPA case (2002), 82, 88, 383, 384
 Van Gend en Loos case (1963), 72, 78, 95, 273
 Vendrame v Commission (pending), 300
 Viking case (2007), 187
 Wütsche Handelsgesellschaft case (1982), 166
 CJEU (procedural fundamental rights reviews) circumscribed, yet not inconsequential, 30–35
 lawfulness of limitations to fundamental rights (fourfold requirement), 32
 legally-structured tests, 32
 CJEU (Rules of Procedure), 104, 106, 107
 Article 023(2), in footnote, 106
 Article 060, in footnote, 115
 Article 094 (in footnote), 104
 Article 096, 106, 220
 Article 097, 219
 Article 097, in footnote, 106
 Article 130(2), 85

- CJEU case law
- action for damages proceedings (quantitative glance), 43–47
 - effective judicial protection ‘central fundamental right’, 22
 - principles of evidence (ability to give evidence), 68
 - principles of evidence (distribution of evidentiary duties), 68
 - principles of evidence (two families), 68
 - procedural entitlements recognised by, 68
- CJEU Statute
- Article 23, 106
 - Article 25, 152
 - Article 42, 152
 - Article 58a(3), in footnote, 125
 - recent reforms, 134
- CJEU’s jurisprudence
- action for annulment (*qv*), 28–35
 - action for annulment involving fundamental rights (numerical evidence), 29–30
 - appeals against General Court decisions, 29
 - ‘virtually impossible to win an appeal’, 29
- ClientEarth, 217
- Coman-Kund, Florin, xi, 9, 311–44, 423, 426, 427
- commercial arbitration, 237, 243
- Commission. *See* European Commission
- Commission Delegated Regulation (2012), 285
- Common Agricultural Policy, 103, 112, 350
- Common Foreign and Security Policy. *See* CFSP
- common law, 220
- in footnote, 38, 129, 371
- communications, 101, 250, 278, 292, 298, 349
- in footnote, 188, 314
- Community Plant Variety Office, 386
- BoA attached to, 134
- companies, 37, 109, 111, 156, 158, 161, 163, 167, 170, 174, 277, 296
- competition law, 183, 300, 307, 314, 316, 349, 350
- Commission’s guidelines, 369
 - in footnote, 66, 186
 - parallel behaviour ‘strong evidence’ of concerted practice, 70
- competition policies, 26, 294
- complaints mechanism, 50, 143, 259, 262, 265, 338, 342
- complete system of remedies, 4, 8, 16, 227, 244, 327, 424, 430
- EU accession to ECHR, 177–205
- completeness principle, 95
- composite procedures
- access to justice, 365
 - access to justice (difficulties), 357
 - access to justice (factual action), 357, 358–59
 - access to justice (problem of attributability), 357, 358–59
- ‘administrative action criterion’, 348
- admissibility, 359
- available remedies (to violations of fundamental rights), 347
- case law, 346, 349, 353–56, 359–64, 365
- categorisation, 346
- chapter structure, 346–47
- chapter thesis, 347
- conclusions, 364–65
- of decisional nature, 350
- definition, 9, 345
- discretion, 360, 361
- factual conduct, 348–50, 364
- finding competent court, 356–64
- separation of jurisdiction, 356–57
- fundamental procedural rights, 352–56
- fundamental rights violations, 345–65
- fundamental rights which might be violated, 346, 348–50
- further research, 364, 365
- ‘horizontal’ versus ‘vertical’, 346
- identification of appropriate judicial forum, 348
- judicial protection (gaps), 347, 357, 365
- lack official definition and clear conceptualisation, 345
- literature review available, 345
- structural shortcomings, 365
- ‘substantive’ fundamental rights, 350–52
- sufficient remedies (availability), 345–65
- term coined by Herwig C. Hofmann (in footnote), 345
- conferral, 172, 234, 243, 423
- confidentiality, 96, 140, 230, 292
- in footnote, 140, 252, 299
- configuration of elites (Andersen), 212
- constitutional courts, 159, 160, 161, 162, 175
- constitutional identity, 159, 175
- constitutional review, 161, 162
- Constitutional Treaty, 423
- constitutions, 168
- rights (first-generation versus second-generation), 159

- consumer law, 245, 256
 consumer protection, 238, 242, 256, 380
 Consumidor.gov.br, 251
 contradictory debate, 68, 69, 87
 Convention. *See* ECHR
 corporate procedures: admissibility, 359
 Council of Europe. *See also* ECtHR
 guidelines on ODR mechanisms (2021), 256, 264, 266
 Reykjavik Summit (May 2023), 177
 Steering Committee for Human Rights, 202
 Council of European Union, 18, 24, 26
 Court of First Instance, 183, 217, 354
 in footnote, 183
 later 'General Court' (*qv*), 189
 Court of Justice of EU. *See* CJEU
 COVID-19 pandemic, 173, 249
 credit rating agencies (CRAs), 285, 286, 287
 Credit Rating Agency Regulation (CRAR, 2011), 286, 287, 288
 Annex III, 287
 Article 23(b), 287
 Article 23(e), 287
 Article 36(a), 287
 Article 36(e), 287
 cultural and legal frames (Andersen), 212
 culture, 252, 264, 284
 Curia database, 109
 Curtin, Deirdre: in footnote, 127, 153
 cybersecurity, 253, 256
 Cybersettle, 248, 250
 Cyprus: pension system, 377
- Data Governance Act (DGA, 2022), 379
 data protection, 23, 183, 214, 220, 262, 315, 396. *See also* CFR Article 8
 AI risks, 400–3
 data protection authorities (DPAs), 415
 Ireland, 223
 data protection rules. *See also* right to data protection
 'far from homogeneous', 413
 interplay with AI Act Proposal, 412–17
 Data Retention Directive, 214
 data sharing, 350, 365
 De Coninck, Joyce, xi, 8, 36–63, 424, 425, 426, 429
de facto, 280, 284
 De Fazio, Gianluca: legal opportunity structures (three dimensions), 212
 de Gregorio, Giovanni: in footnote, 258
- de jure*, 280, 284, 287, 289, 307, 309
 Demková, Simona, xi, 9, 391–421, 423, 427, 428
 Denmark: constitutional identity, 175
 DG COMP, 275, 284, 289–97, 300
 access to court, 293–94
 access to justice, 294–97
 acts in parallel with national authorities, 275
 Hearing Officers, 295–96, 297, 308
 independence, 296–97
 investigative and sanctioning powers, 291
 legal framework (safeguards and defence rights), 291–93
 manual of procedures, 292
 political accountability, 294–95
 powers mostly 'of coercive nature', 291
 Regulation (2003), 290, 291
 Article 11(6), 290
 Regulation (2004), 291
 remedies (judicial), 293–94
 remedies (non-judicial), 294–97
 Digital Rights Ireland, 214, 215
 Digital Services Act (DSA), 246, 254, 258, 259, 262
 adoption (2022), 379
 Article 02(h), in footnote, 258
 Article 21, 265
 Article 34, 380
 out-of-court dispute settlement bodies (prospective), 266
 digital sphere: soft law interferences with fundamental rights (practice), 379–80
 direct actions, 8, 61, 64, 95, 97, 100, 104, 117, 211, 318, 328
 evidentiary requirements (limitation to private parties' seeking of judicial redress, 70
 evidentiary requirements (obstruction of access to legal remedy), 70
 possibility for third-party interventions, 221
 strategic litigation, 216–19
 direct concern, 78, 83, 84, 98, 155, 168, 189, 410, 424
 applied *talis qualis* in failure to act proceedings, 79
 possibility to establish in name of 'effective judicial protection', 85
 probandum, 86
 direct effect doctrine, 78, 95
 Directorate General for Competition. *See* DG COMP

- discretion, 51, 53, 92, 369, 370, 409
 absence of, 79
 can relate to policy choices and assessment of fact, 361
 definition, 361
 form a decision might take, 361
 whether to exercise a power, 361
- dispute resolution mechanisms, 227, 229, 230, 234, 236, 240, 241, 243, 244, 245
 addition of fourth party (technology), 249
 eBay, 247
 in footnote, 253
 traditional (three-party), 249
- distributed ledger technologies (DLTs), 251
- domestic law, 189, 243, 370
 in footnote, 194
- double jeopardy. *See ne bis in idem*
- drones, 391, 398, 402, 405
- Dublin system, 220
- due process, 17, 252, 256, 310
- Dutch Council for Refugees (DCR), 224
- duty of care, 407, 408
- duty to give reasons, 355, 356
 Article 41 CFR, 353
- Dworkin's Herculean judge, 149
- eBay, 246, 247
- eBay: Resolution Centre, 245
- EBCG Agency. *See* Frontex
- EBCG Regulation (2019), xxxviii, 336, 337
 Article 097(3), in footnote, 337
 Article 098, 338
 Article 098(1), in footnote, 338
 Article 111, 335
 Article 111(2) (in footnote), 335
 Article 111(3) (in footnote), 336
 in footnote, 135
 recital 24 (in footnote), 135
 recital 42 (in footnote), 135
- ECHR, 17, 33, 50, 158, 236, 370, 428
- EU accession, 177–205, 424
 'just satisfaction' for violations, 40
- ECHR (Articles)
 Article 03, 182
 in footnote, 188
 Article 06, 33, 188, 190, 256, 296, 308. *See also* right to fair trial
 Article 06(1), 188, 189, 190
 Article 08, 349
 in footnote, 188
 Article 09, 372
- Article 13, 190, 256. *See also* right to remedy
 in footnote, 272
- Article 35, 192
- Article 36, 194
- Article 36(4), 197
- Article 46, 40, 184
- ECN+ Directive (2019), 292, 295, 297
- e-commerce, 245, 247, 250, 252
- economic operators, 19, 37, 90, 289
- economic rights, 156
 challenges to EU trade regimes, 163–67
- ECtHR, 8, 178, 226, 371, 372, 428
 admissibility requirements, 191–93
 case law, 52, 278
 case law (quantitative analysis), 40
 diagnostic test (five main stages) (Letsas), 371
 exhaustion rule, 192
 'Greek hot spots for asylum seekers', 2023
 (in footnote), 136
 judgments ('binding nature'), 185
 third-party interventions, 211
- ECtHR (cases)
A, B and C v Ireland (Grand Chamber, 2010), 372
Al-Jedda v United Kingdom (2011): in footnote, 203
Behrami and Saramati case (2007), 203
 in footnote, 203
Bivolaru and Moldovan case (2021), 182
Bosphorus case (2005), 181, 182, 187, 190, 204
Cha'are Shalom Ve Tsedek v France (2000), 372
Connolly case (2008), 181
Dangeville v France (2002), 189
Dhahbi case (2014), 188
 full list, xxviii–xxix
Menarini Diagnostics Srl v Italy (2011), 34
Posti and Rahko v Finland (2002), 190
Sanofi Pasteur v France (2020), 188
Spasov case, 189
- ECtHR (intensity of review: four aspects), 187–91, 204
 doctrine of positive obligations, 187, 204
locus standi requirements, 189
 margin of appreciation, 187
 'rather procedural *Dhahbi* case law', 188
- ECtHR: Practical Guide on Admissibility Criteria (2022), in footnote, 372

- EDPS, 342, 343, 392, 412, 413, 415, 421, 426
 clear obligation when dealing with
 complaints, 339
 conformity assessments, 418
 double-hatting, 417–21
 key to abbreviation (European Data
 Protection Supervisor), 338
 offers ‘quite effective legal protection’, 340
 participate in organisation of regulatory
 sandboxes, 419
 role (protecting fundamental rights), 420
 role in AI Office, 418
 supervisory role, 420
- Edwards, Lilian: in footnote, 412
- effective judicial protection, 8, 16, 22, 23, 25,
 64, 67, 93, 97, 205, 231, 240, 319,
 366, 383, 425, 429. *See also* Article
 47 CFR
 access to remedy ‘the procedural guarantee’,
 73
 by third country, 25
 choice of procedures, 95
 competition policies, 26
 EU and national institutions (various fields
 of law), 26
 holistic reading (some scholarly
 endorsement), 75
 holistic reading (some support in case law),
 75
 holistic reading of ‘procedure’, 76, 94
 interrelationship with effective ability to give
 evidence, 70, 71–77
lato sensu understanding (Wildemeersch),
 75
 limit, 32
 restricted by evidence requirements, 77–87
 standard of ‘effectiveness’, 73, 75
 standard of ‘effectiveness’ (uniformity
 between EU and Member states),
 76, 77, 94
 ‘two-speed’, 94
- effective participation, 68, 70, 94
 definition, 67
 definition (in footnote), 67
- effective participation (restriction in action for
 damages), 87–93
- effectiveness
 Article 47 CFR, 76, 87, 94
 ‘clear definition lacking’, 71
national systems of procedures and
 remedies, 76
 ‘outcome-oriented notion’, 71, 72
 preliminary observations, 71
 scope, 71
 uniformity, 71
 effectiveness test (rules on evidence), 74
 effectiveness-rights correlation, 72
effet utile, 72
 electronic communications, 188, 245
 Electronic Frontier Foundation, 214
 Eliantonio, Mariolina, xi, 9, 345–65, 368, 370,
 423, 425, 427
 English High Court, 171, 203
 entrepreneurs, 163, 167
 Entry/Exit System (EES), 394, 395, 396, 412
 environmental law, 216, 217, 219
 e-Privacy Directive (2002): in footnote, 413
 equal opportunities: in footnote, 66, 226
 equal treatment, 23, 28
 in footnote, 66, 226
 equivalence, 75, 238, 239, 384
 in footnote, 281
 error in law, 31, 238
 ESM, 167, 173
 MoUs, 375, 377, 381
 ESM Treaty (2012), 375
 ESMA, 274, 307, 308, 309
 access to court, 286–88
 access to justice, 285–89
 availability of judicial review, 287
 founding regulation (2010, amended 2019),
 288
 Article 03, 289
 Article 05, 289
 Article 10–16, 287
 Article 42, 46, 49, 52, and 59, 289
 Article 60(a), 289
 Article 62, 289
 independence, 289
 ‘independent agency lacking fully-fledged
 input legitimacy’, 287
 ‘intentional’ or ‘negligent’ violations by
 private actors, 288
 on-site inspections, 307
 positioned above national authorities, 275
 procedural safeguards (‘clarity’ question),
 287
 remedies (judicial), 286–88
 remedies (non-judicial), 288–89
 ESMA: Board of Appeal, 287, 308
 ESMA: Independent Investigation Officer
 (IIO), 287

- ESMA: Recommendations (2013) on scope of CRAR, 286
- ETIAS, xxxvii, 394–97, 399, 401–4, 405, 408, 412, 421
- risk algorithm, 397, 409, 410, 413, 414
- ETIAS Central System, 395
- ETIAS Central Unit, 395, 410, 414
- identical to ‘Frontex’ (*qv*), 395
- ETIAS National Units, 397, 409
- ETIAS Regulation (2018), 409, 410
- Article 14, 403
 - Article 33(1), 396
 - in footnote, 395
- EU
- asylum *acquis*, 377
 - border surveillance (risks to fundamental rights), 392–406
 - burgeoning transnational executive (cloak of legitimacy), 130
 - closed legal opportunity structures, 211–12
 - common asylum policy, 262
 - executive actors’ ‘lack of electoral accountability’, 153
 - ‘expanding competence’, 227, 242
 - foreign missions, 171
 - ‘functionally-tailored non-state actor’, 53
 - fundamental rights violations (ODR as redress mechanism), 261–66
 - fundamental rights violations (role of national courts in redressing), 155–76
 - general system of evidence, 64–71
 - as lawmaker, 6, 7
 - as lawmaker (outdated vision), 422–23
 - level of democratic accountability ‘lags behind’ (in footnote), 128
 - multiple legal orders (challenge of ensuring protection of rights in same fashion), 307
 - positive obligations (sometimes lacks means or competence), 53
 - power, 3, 5
 - range of action ‘ever growing’, 99
 - response to Russian invasion of Ukraine (soft law), 378–79
 - rule intended to confer rights on individuals (mode of determination), 48
 - specific interest in upholding fundamental rights, 13
 - ‘vast executive expansion since 1990s’, 123
- EU accession to ECHR, 177–205, 424
- benefits of accession, 179–91
 - external remedies filling two protection gaps, 179, 180–83
 - greater coherency between EU and ECHR, 179, 183–86
 - substantive effects of accession on practices, 179, 186–91
- CFSP, 199–204
- conclusion, 204–5
 - procedural practicalities after accession, 191–98
 - co-respondent mechanism, 194–97, 204
 - ECtHR admissibility requirements, 191–93
 - prior involvement procedure, 197–98, 204
 - shared or concurrent responsibility, 194–97
 - would silence ‘charges of double standards’, 180
- EU administrative authorities
- accountability, 351
 - infringement of EU fundamental rights, 347
- EU agencies, 127, 385
- list of, with own BoA (in footnote), 133
 - soft law, 369
- EU Agency for Asylum. *See* EUAA
- EU Agency for Large-Scale IT Systems. *See* eu-LISA
- EU authorities, 6–7
- definition (broad versus narrow), 6
- EU Aviation Safety Agency, 134
- EU citizen, 99, 137, 331
- EU consumer ODR platform, 256–58
- design shortcoming, 264
- EU DPR. *See* GDPR (2018/1725)
- EU enforcement authorities (EEAs), 200, 308, 309, 310
- EU factual conduct, 9, 311–44, 359, 364
- act with ‘binding legal effects’, 320–21
 - in footnote, 322
 - act without ‘binding legal effects’ (way to review legality), 321–22
 - acts of ‘physical’ conduct, 315
 - and fundamental rights, 311, 312–16
 - closing legal protection gap, 344
 - composite procedures, 358–59
 - conceptual reflections, 311, 312–15
 - conclusion, 344
 - judicial remedies, 311, 318–29, 340
 - action for damages, 324–27
 - action of annulment, 319–22
 - failure to act, 322–23

- gaps and shortcomings, 327–29
- plea of illegality, 327
- preliminary reference procedure, 323–24
- right to effective judicial remedy, 318–19
- legal protection against fundamental rights violations, 317–18
- non-judicial remedies, 311, 329–40, 341
 - BoAs, 334–35
 - Frontex fundamental rights complaint mechanism, 335–38
 - legal review of EU executive agencies acts, 333–34
 - Ombudsman, 331–33
 - right to good administration, 329–31
- overall assessment, 311, 340–42
- ‘prescribed and confined by law’, 317
- reflections and recommendations, 311, 342–44
- risk for fundamental rights, 315–16
- underpinning implicit legal act, 322
- underpinning implicit physical act, 321
- way forward (effective administrative remedies plus judicial review), 344
- EU Human Rights Review Panel, 200
- EU institutions, 116, 151
 - failures, 322
 - ‘failures’ (examples), in footnote, 322
 - invocation of fundamental rights protection, 18
 - non-judicial, 222–24
 - procedural obligations, 14
- EU Integrated Border Management (EIBM), 405
- EU integration
 - centrality of CJEU, 227
 - challenges (political rights), 172–74
- EU Intellectual Property Office (EUIPO)
 - BoA attached to, 134
 - in footnote, 133
- EU Intellectual Property Office Regulation (2017), 385
- EU judicial architecture, 427
 - composite procedures, 345–65
 - international arbitration (constitutional limits), 235–40
 - separation of jurisdiction, 364
 - separation of jurisdiction ‘cornerstone’, 356–57
- EU law, 99, 103, 111
 - challenge to legality of before CJEU, 16
 - declarations of invalidity, 183
 - full list, xxxiii–xxxix
 - looking beyond, 427–28
 - principle of autonomy, 236
 - uniform application (argument to limit international arbitration), 238–39
 - uniformity, 107, 118, 120
 - uniformity of interpretation, 237
- EU law enforcement
 - direct, 281
 - indirect, 280
 - ‘necessitates other forms of control’ (functional perspective), 283
- EU law enforcement authorities (examples)
 - DG COMP (*qv*), 289–97
 - ESMA (*qv*), 285–89
 - OLAF (*qv*), 297–305
- EU legal order, 7, 14, 16, 17, 18, 24, 35, 36, 107, 185, 238, 239, 301, 317, 346, 356, 406
 - arbitration (role), 233, 243
 - backbone, 34
 - court-centricity (literature survey, in footnote), 124
 - effectiveness, 239
 - maturity, 35
 - preliminary reference procedure, 99
 - principle of freedom of proof, 85
 - ‘shaped like few others by single judicial institution’, 124
 - soft law, 367
 - uniformity, 120
- EU legislator, 118, 246, 256, 280, 302, 310, 365, 379, 385, 386, 390, 410, 418, 428, 430
 - ‘can do no wrong’, 96, 422
- EU Review Bodies. *See* Review Bodies
- EU sanctions, 19, 24, 30, 54, 199, 282, 349
 - absence of duty to notify before adoption, 31
 - factual basis for imposition, 25
 - illegality (whether breach of fundamental rights), 54
 - judicial review (approach), 24
 - Kadi* judgment (principles), 24
 - maintaining individual on list, 31
 - procedure followed to adopt these measures, 24
 - statement of reasons (appropriateness), 25
 - third-country compliance with fundamental rights, 25

- EU Travel Information and Authorisation System. *See* ETIAS
- EUAA, 135, 144, 148, 262, 265, 266, 350, 351
Article 13 of establishing Regulation (2021 version), 377
focus, 143
FROs (authority and measures), 140, 142, 143–44
guidance (2019), 377
soft law interferences with fundamental rights (practice), 377–78
- EUAA: Management Board, 377
- eu-LISA, 351, 392, 395, 413
- EURODAC, 339, 394, 395
- Euro-expertise, 213, 225, 429
- European Anti-Fraud Office. *See* OLAF
- European arrest warrant, 185
in footnote, 109
- European Artificial Intelligence Office. *See* AI Office
- European Asylum Policy Regulation (2021), 262
- European Asylum Support Office, 135
- European Banking Authority (EBA): in footnote, 313, 316
- European Board for Digital Services (EBDS), 379
- European Border and Coast Guard Agency. *See* Frontex
- European Border and Coast Guard Regulation. *See* EBCG Regulation (2019)
- European Border Surveillance System (EUROSUR), 339, 398, 399
fusion services, 398
- European Central Bank, 18, 125, 173, 314, 375
Administrative Board of Review, 139
arrangements (procedural and institutional), 140
opinions ‘not legally binding’, 139
whether may be referred to as a ‘BoA’ (in footnote), 139
- European Central Bank: Joint Inspection Teams, 358
- European Centre for Disease Prevention and Control (ECDC) Regulation (2022 revision), 385
- European Chemicals Agency (ECHA)
BoA attached to, 134
in footnote, 134, 334
- European Code of Good Administrative Behaviour: in footnote, 331
- European Commission, 18, 26, 194, 292, 314, 349, 351, 362, 369, 378, 382, 385, 396
annual reports, 295
confidentiality of documents (General Court), 96
ESM MoUs, 375–77
Guidelines to DG COMP on method of setting fines, 292
‘independence questioned’, 297
rules of political accountability to European Parliament, 294
- European Commission: Framework Agreement with EP, 294
- European Competition Network (ECN), 290, 307
‘lacks legal personality’, 293
passim, 293–97
rules for case allocation (in footnote), 290
- European Consumer Centre, 257
- European Convention for Protection of Human Rights and Fundamental Freedoms. *See* ECHR
- European Council, 233, 262
- European Court of Auditors (ECA), 18, 221–22, 223, 295, 302
- European Court of Human Rights. *See* ECtHR
- European Criminal Records Information System (ECRIS-TCN), 394
- European Data Innovation Board (EDIB), 379
- European Data Protection Board (EDPB), 223, 379, 412, 419
- European Data Protection Supervisor. *See* EDPS
- European Economic Community, 1
- European exceptionalism, 178
- European Food Safety Authority, 386
in footnote, 355
- European Investment Bank, 224
- European Ombudsman. *See* Ombudsman
- European Parliament, 18, 27, 145, 262, 289, 294, 295, 388, 415
AI legislation (2023 amendments), in footnote, 391
Committee on Petitions, 223
- European Public Prosecutor’s Office (EPPO), 315
in footnote, 299, 315, 317, 339

- European Research Council Executive Agency (ERCEA), 333
- European Research Executive Agency (REA), 333
- European Securities and Markets Authority. *See* ESMA
- European Social Charter, 158
- European Stability Mechanism. *See* ESM
- European Supervisory Authorities (ESAs): in footnote, 313
- European Supervisory Authorities: Joint Board of Appeal, 147
- European Supervisory Authority Regulations (2010, amended 2019), 386–89
- Europol, 63, 395, 396, 409, 420
in footnote, 317
- Europolis, 173
- Eurozone crisis, 172, 173, 375
- Eurozone Member States, 375
- evidence
associative view, 67
‘can hinder judicial protection provided by Treaty provisions’, 70
concept and system in EU law, 65
definition (in footnote), 64
EU law or general system ‘cannot exist’, 66
general system (EU), 64–71
harm suffered (abnormality), 90
national rules, 66
probative value, 69
procedural perspective, 65
processual perspective, 66
secondary law instruments, 66
sectoral systems, 66
- evidence as enabler or filter (action brought by private parties), 64–97
action for damages, 87–93
conclusion, 93–97
effective ability to give evidence, 71–77
effective judicial protection, 71–77
evidence requirements restricting effective access to remedy, 77–87
general system of evidence (EU), 64–70
- evidence requirements (restriction on effective access to remedy), 77–87
burden of proof (pleas to lighten), 82–87
direct concern criterion, 78
individual concern, 78
legality review, 77–87
standing (heavy burden of proof), 77–82
- evidence rules, 8, 229
- evidentiary duties: distribution (definition), 69
- evidentiary entitlements: main purpose (fairness), 68
- ex ante* authorisation, 292, 308
- ex ante* consultation, 278, 287
- ex hypothesi* argument, 80
- ex post*, 58, 123, 178, 302, 303, 306, 309
- Excessive Deficit Procedure, 168
- executive agencies
legal review (EU factual conduct), 333–34
Regulation (2003), xxxiv, 333
in footnote, 329
- Facebook, 215, 254, 260
- facti probandi*
admissibility, 78, 81
‘relevant facts’, 65
- facti probans* (facts that prove *probandum*), 80
- factual action
composite procedures, 348–50
- factual conduct, 50, 348, 423
examples, 313
two different senses, 313
- failure to act proceedings
admissibility, 70
standing (heavy burden of proof), 77–82
standing (pleas to lighten burden of proof), 82–87
- ‘fake validity’ question (Krajewski), 102
- Fenger, N.: in footnote, 108
- Fink, Melanie, xi, 1–9, 36–63, 142, 422–30
in footnote, 101
- Foodstuff Directive (1989), 75
- Foodwatch, 173
- foreign policy, 17, 30
‘largely exempt from judicial review’, 171
- formal legally-binding acts. *See* legal acts (binding)
- forum shopping, 225, 288
- fourth branch: in footnote, 128
- France, 82, 130, 160
- Frankfurt administrative court, 164, 165, 166
Atlanta case, 166
- free movement, 235, 372, 373, 374
- free proof system, 69
in footnote, 69
- freedom from harm, 157, 163
- freedom of assembly, 159, 170
- freedom of expression, 13, 159, 170, 181, 259
Article 11 CFR, 380
- freedom of religion, 114, 187

- freedom of speech, 150, 258, 261
- Freiheitliche Partei Österreichs (FPÖ): in footnote, 81
- Freiwillige Selbstkontrolle Multimedia-Diensteanbieter (FSM), 260
- Frontex, 4, 7, 56, 125, 133, 135, 140, 216, 265, 266, 315, 316, 332, 339, 349, 351, 393, 402, 405, 406, 413, 420, 421, 429
- ability to file complaints against, 138
- AI systems, 391
- AI-powered aerial surveillance, 393–99
- automated risk assessments, 393–97
- complaint mechanism (EU factual conduct), 335–38
- complaints mechanism, 342, 427
- revision (2022), in footnote, 335, 338
- complaints mechanism (alleged shortcomings), 336–38
- forefront of border surveillance, 393–99
- FROs (authority and measures), 140–43
- FROs (complaint mechanism), in footnote, 126
- FROs (expertise and funding), 148, 149
- fundamental rights violations, 4
- fundamental rights-sensitivity (criticism and praise), 142
- 'lack of individualised accountability mechanisms', 145
- maritime operations in Mediterranean, 171
- Ombudsman's 'special report' to European Parliament (from 2013), 152
- Ombudsman's 'strategic inquiries', 145
- structural problems (identification), 143
- 'team members' (in footnote), 144
- Frontex Executive Director (ED), 336–38
- Frontex Management Board: in footnote, 336
- Frontex Regulation (2019), 263
- front-LEX*, 216, 218
- FROs, 123, 131, 150, 264, 265, 266, 426
- access to justice perspective, 150
- authority and measures, 140–44, 146
- EUAA, 140, 142, 143–44
- expertise and funding, 147, 148–49
- Frontex, 140–43, 148, 149, 336–37, 339
- 'handle serious incident reporting' (internal complaint mechanism), 141
- 'hardly silver bullet against structural flaws', 142
- lack of enforcement powers, 265
- main task, 137
- no authority to remedy complaints, 141
- 'not yet subject to intense academic scrutiny', 124
- 'only review admissibility of complaints', 141
- recommendations, 124
- 'relatively novel institutions', 140
- responsibilities, 136
- roles, 140
- situational embeddedness, 140
- short portrait, 135–36
- 'various tools', 138
- 'fundamental principle of EU law', 42, 231. *See also* 'general principle of EU law'
- fundamental rights, 1, 7–8
- AI, 391–421
- compliance (procedural), 13
- compliance (substantive), 13
- conceptualised as individual entitlements, 19
- concretisation process, 52
- courts 'the guardians', 138
- essential values of society, 15
- EU factual conduct and, 312–16
- joint responsibility (EU and Member States), 425
- protection through action for annulment (constraint), 20
- regulate relationship between EU/Member States versus individuals, 48
- reluctance to engage in reasoning, 423–24
- risks (EU border surveillance), 392–406
- risks (EU factual conduct), 315–16
- Fundamental Rights Agency, 138, 140, 152, 398
- fundamental rights complaints, 8
- framing, 118
- further research required, 118
- preliminary reference procedure (*qv*), 98–120
- 'secondary part' of claims, 117
- fundamental rights liability
- 'clarity' requirement, 52, 53, 61
- 'unlawfulness' as condition, 47–55
- Fundamental Rights Monitors, 141, 143
- Fundamental Rights Officers. *See* FROs
- fundamental rights protection
- action for damages, 36–63
- better utilisation of action for damages, 60–63
- EU-specific regime, 1
- Review Bodies, 123–54
- three levels, 9

- fundamental rights violations
 - committed by EU itself, 6
 - composite procedures, 345–65
 - EU factual conduct, 311–44
 - EU liability to damages (three conditions), 47
 - international arbitration (as supplementary tool), 227–44
 - legal protection against EU factual conduct, 317–18
 - ODR mechanisms, 258–61
 - online dispute resolution (ODR), 245–66
 - role of national courts in redressing, 155–76
 - ‘simple’ versus ‘reprehensible’, 55
 - structural root causes, 427
- Galanter, Marc, 225
- Garthy, B., 2
- Gas Directive (2009, amended 2019), 84
- GC. *See* General Court
- GDPR (2016/679 version), xxxvi, 379, 413
 - Article 09(2), 415
 - Article 22, 414
 - Article 22(3) as revised in 2017 and 2018, 402, 408
 - in footnote, 396
- GDPR (2016/680). *See* Law Enforcement Directive (2016/680)
- GDPR (2018/1725), xxvii, 338–40, 413, 417, 418, 420, 421
 - Article 52(2), 417
 - Article 63, 417, 418
 - Article 64, 417, 418
 - Article 64(1), in footnote, 341
- General Court, 14, 20, 134, 192
 - annulment of EU law in 312 cases, 22
 - cases alleging breaches of substantive rights, 28
 - cases relating to procedural issues, 23
 - in charge of most cases against EU institutions, 20
 - competence to hear actions for damages at first instance, 43
 - confidentiality of Commission documents, 96
 - fundamental rights (types) receiving special attention, 22
 - inadmissibility rulings, 168
 - previously ‘Court of First Instance’, 189
 - quantitative influence of EU fundamental rights ‘relatively limited’, 22
 - ‘recent expansion’, 382
 - ‘remarkable contribution’, ‘significant role’, 28
 - standing rules, 24
 - ‘sufficiently serious breach’ test, 50
- General Court (cases)
 - ADDE v Parliament* (2019), 27
 - Aisha Muammer case* (2021), 24
 - Belgium v Commission* (2015), 381
 - Bowland* (2009), 363
 - Branco I* ruling (1995), 356
 - Dole Fresh Fruit International case* (2003), 91
 - Edinger case* (2001), 80
 - FIAMM case* (2005), 92, 93
 - France-Aviation case* (1995), 354
 - full list, xxii–xxvi
 - Hautala case* (1999), xxiii, 200, 201
 - Italy v Commission* (2020), 28
 - Klymenko v Council* (2019), 25
 - Kočner v EUROPOL* (2021), 59
 - Malagutti* (2004), 363
 - Minister for Justice and Equality* (2018), 26
 - Nord Stream 2 case* (2020), 84, 85
 - Pharma Mar v Commission* (2020), 27
 - Prodifarma e.a. v Commission* (1990), 71
 - Sison v Council* (2011), 54
 - Sped-Pro S.A. v Commission* (2022), 26
 - T.Port case* (2001), 91
 - ThyssenKrupp* (2018)
 - also General Court case (2011) and CJEU case (2021), xxi, xxiv–xxv, 369, 379
 - Tillack case*, xxiv
 - in footnote, 316, 323, 324, 326, 330, 339
 - Wilson-Holland case* (2001): in footnote, 354
 - WS and Others v Frontex* (2023), 429
- General Court’s jurisprudence (action for annulment in EU law), 21–28
 - influence of procedural rights, 23–28
 - numerical evidence, 21–23
- General Data Protection Regulation. *See* GDPR
- general interest, 18, 32, 33, 51, 400
- ‘general principle of EU law’, 17, 22, 33, 186, 317, 342, 399, 407
- General Product Safety Directive (2002), 351
- Geneva Convention (1951) and Protocol (1967), 144

- Gentile, Giulia, xii, 8, 13–35, 422, 424, 426, 429
- Gerards, Janneke, 372
- German constitutional court. *See*
Bundesverfassungsgericht
- Germany, 59, 78, 79, 91, 160, 161, 162
constitution, 174
federal administrative court, 166
ODR process, 259
rules on evidence, 75
- Gkliati, Mariana, 144
- good administration, 14, 137, 317, 408, 428,
See also right to good administration
- Gragl, Paul, 186
- Grand Chamber, 108, 115, 115, 119
- Greece, xxx, 144, 168, 169, 218
asylum-seekers (in footnote), 136
constitution, 169
highest administrative court, 169
in footnote, 376
- Greenpeace, 217
- Grimheden, Jonas, 141, 148
- Grimmenstein, Marianne, 174
- Grozdanovski, Ljupcho, xii, 8, 64–97, 422,
424, 425, 426
- Gündel, Jörg, 383
- Halberstam, Daniel, 152
- Hanf, Dominik: in footnote, 134
- hard law, 367, 388
- harm, 93, 160
- Hauer, Liselotte, 165
- Hearing Officers (DG COMP), 295–96, 297,
308
- Hertog, Leonhard den (in footnote), 337
- hierarchy of legal norms, 158
- higher law: sources, 15
- Hillion, Christophe, 203
- Hofmann, Andreas, xii, 8, 155–76, 425
- Hofmann, Hervig: in footnote, 345, 367
- home, 278, 316. *See also* CFR Article 7
- human dignity, 399, 400. *See also* right to
human dignity
- Hungarian constitutional court, 175
- impartiality, 27, 69, 74, 280, 284, 296, 330,
342, 407
in footnote, 252
‘in law we trust’ presumption, 72
- indicia*, 70
- individual concern, 79, 80, 82, 83, 98, 155,
173, 189, 190, 216, 410, 424
- individual concern *probandum*, 86
redefinition suggested by Jacobs (2002), 83
- individuals, 8, 9, 18, 111, 116, 156, 161, 174,
179
access to justice, 273
‘central role within EU legal system’, 36
important actors, 273
- individuation: desired level (two criteria), 80
- informalisation, 142, 144, 366, 368, 389
- instant implicit decision (concept), 321, 322, 325
in footnote, 323
- institutions. *See* EU institutions
- inter partes* stage, 291
- Inter-American Court of Human Rights: in
footnote, 40
- international arbitration, 428
benefits, 229–30
CJEU approach, 235–39
argument of uniform application of EU
law, 238–39, 240
interim conclusion, 239–40
principle of autonomy, 236–37, 239, 243,
244
conclusion, 243–44
- constitutional limits within EU judicial
system, 228, 235–40
- constitutional potential within EU judicial
system, 228, 240–43
practical implications, 242–43
way forward, 241–42
- defining, 228–29
- EU law, 228, 232–35
EU’s competence and arbitration, 232–34
regulation of arbitration (legal
instruments), 234–35
- limitations, 230–31
- model, 228–31
- new way forward (EU fundamental rights
violations), 227–44
- no provision in ‘the Treaties’, 232
- ‘should in no way replace EU judicial
system’, 242
- supplementary tool for EU fundamental
rights violations, 227–44
- international commercial arbitration
definition, 228
- International Council for Online Dispute
Resolution (ICODR): in footnote, 252
- International Covenant on Civil and Political
Rights: compensation for violations, 40
- international human rights, 39, 42, 158, 406

- international law, 36, 92, 428
 - list, xxxix
 - private, 228, 232–34, 241
 - public, 38, 39, 57, 233
- international trade, 90, 243
- Internationale Handelsgesellschaft* case (1969–1974), 163–65
- internet, 246, 254, 258
- Internet Corporation for Assigned Names and Numbers (ICANN), 245, 247
 - in footnote, 253
- interoperability, 401
 - definition (in footnote), 401
- Interpol, 395
- investor-state arbitration, 237
- Ireland, 160, 169, 182, 214, 215, 220
- Isiksel, T. (in footnote), 185
- Italy, 74, 77, 175, 213
- IUropa dataset, 109

- Jääskinen, Niilo, 384
- Johansen, Stian Øby, 171, 205
- joint liability
 - EU and Member States (action for damages), 55–60, 62
 - literature (in footnote), 55
- judicial protection
 - essence of EU system of, 425
 - ‘two-speed’, 424
- judicial remedies
 - DG COMP, 293–94
 - ESMA, 286–88
 - EU factual conduct, 318–29, 344
 - ex ante*, 306
 - limits, 422–23
 - OLAF, 301–2
 - versus non-judicial remedies, 284–305
- judicial review
 - definition, 15
 - EU executive agencies acts, 333–34
 - evidence requirements restricting effective access to remedy, 77–87
 - hallmark of rule of law, 16
 - modalities according to which litigants give evidence, 82
 - overview of EU model, 15–17
 - plea for lightening admissibility burden (two types), 82
- justice (concept): ‘humanist approach’, 67
- justiciable rights, 212
 - EU remedies system, 212
- Karagianni, Argyro, xii, 9, 271–310, 423, 425, 426
- Kelsenian model of hierarchy of norms, 17
- Kelsenian pyramid of legal sources, 15
- Kenner, Jeff, 374
- Kerber, Markus C., 173
- Kosovo, 171, 200
 - in footnote, 203
- Krajewski, Michał, 6, 19, 145, 148
- Krommendijk, Jasper, xii, 8, 177–205, 424, 428

- Latvia, xxx, 168
- law enforcement, 241, 423
 - definition, 271
- Law Enforcement Directive (2016/680), xxxvi, 413
 - Article 11, 414
 - in footnote, 413
- law of evidence: ideal principles, 65
- Łazowski, Adam, 201
- LED. *See* Law Enforcement Directive
- legal action, 209, 218, 277
- legal acts, 2, 314, 321, 327, 334, 407, 423, 424, 427
 - EU factual conduct underpinning implicit, 322
 - in footnote, 84, 314, 317, 327, 340
- legal acts (binding), 9, 311, 313, 317, 318, 320, 322, 323, 325, 333, 339, 343
 - definition, 312
 - in footnote, 312, 313, 328, 376
- legal acts (non-binding), 313
 - in footnote, 313
 - soft law (*qv*), 311
- legal aid, 170, 255
- legal certainty, 34, 55, 230, 306, 307, 428
- legal culture, 161, 210, 425
- legal expertise, 157, 213, 219, 224, 225, 229, 429
 - in footnote, 147
- legal mobilisation
 - definition, 210
 - literature, 210
- legal opportunities, 210, 213, 226
 - dimensions (Andersen), 212
- legal opportunity structures, 157–60, 211, 212, 217, 219, 226
 - access to courts, 160
 - availability of rights to challenge EU acts, 158–59

- legal opportunity structures (cont.)
 closed, 211–12
- legal orders, 103, 156, 186, 273, 281, 307
 coherence, 15
- legal persons, 38, 116, 192, 222, 263, 276, 289,
 298, 315, 329, 331, 383, 386, 416
- legal profession, 162, 174
- legal professional privilege, 279, 291, 292, 296,
 299, 306
- legislation: full list, xxxiii–xxxix
- legislative acts: versus ‘regulatory acts’ (in
 footnote), 84
- legislative clarity, 34, 310
- legislative courts (USA): in footnote, 129
- legitimacy assets, 128, 140, 152
- legitimate expectations, 55, 103
- Lenaert, Koen, 129
- Leskinen, Charlotte (in footnote), 186
- Letsas, George, 371
- lex arbitri*, 229
- liability law, 38–43, 62
 compensating harm, 38–40
 compensation can be of pecuniary or non-
 pecuniary nature, 40
 preventing undesired behaviour, 41–42
 use of term, 38
 in footnote, 38
 vindicating rights, 42–43
- Libya, 222, 223, 405
- litigant characteristics, 160–62
- locus standi*, 98, 217
 in footnote, 83
 lack of argument, 218
 national rules, 100
 strict requirements, 178, 183, 189, 192, 198,
 204, 217, 221
- López Zurita, Lucía, xii, 8, 98–120, 425, 428
- Lucke, Bernd, 173
- Lustig, D., 15, 16
- Luxembourg, 82
 shorthand for ‘CJEU’, 106, 224, 307
- Maas, Herman: in footnote, 369
- maladministration, 132, 133, 137, 145, 149,
 224, 289, 305, 331, 332, 385
 examples (in footnote), 332
- Massachusetts Amherst Center, 247
- Mehr Demokratie, 173
- Member States, 18, 425, 427
 action for damages (joint liability with EU),
 55–60
 enforcement autonomy, 281
 invocation of fundamental rights protection,
 18
- Memoranda of Understanding (MoU), 167, 168,
 170
- Meta, 223
- Meta Oversight Board, 254, 258
 annual report, 265
 charter (2019), 260
 first annual report (2022), 261
passim, 260–66
 procedures for appeals, 260
 statistics, 261
- Meyer, John W.: in footnote, 126, 130, 131,
 142
- migration and asylum: further reading (in
 footnote), 135
- migration law, 7, 213, 222, 225
- Migration Law Clinic (Vrije Universiteit
 Amsterdam), 225
- Moldova, 237
- Möllers, Christoph: in footnote, 128
- Montaldo, Stefano, 280
- Montesquieu, *Spirit of Laws* (1748): in
 footnote, 128, 130
- multi-level administration, 55, 61
- naming and shaming, 143, 151
 in footnote, 313, 316
- national apex courts, 156, 159, 160, 161
- national authorities, 26, 63, 155, 181, 189,
 265, 275, 279, 285, 300, 309, 394
passim, 345–63
 soft law, 369, 370, 377, 379
- national competent authority: definition, 417
- national competition authorities (NCAs)
 ‘independence questioned’, 297
passim, 289–97
 powers laid down in national law, 292
- national courts, 9, 59, 68, 98, 102, 105, 113,
 114, 185, 238, 247, 324
 central role (bringing preliminary reference
 procedures to CJEU), 104–5
 central role within model established by
 Article 267 TFEU, 117
- composite procedure cases, 345, 356–63
- EU remedies system (over-reliance on),
 424–26
- inclusion of pre-emptive opinion, 114
- judicial protection of private parties, 78
- lack competence to rule on OLAF’s
 investigative acts, 307
- obligation to review preparatory measures,
 362

- role, 8
- stripped of jurisdiction by CJEU ('certain composite procedures'), 360
- national courts (lists of cases), xxix–xxxi
 - Belgium, xxix
 - England and Wales, xxxi
 - Germany, xxix–xxx
 - Greece, xxx
 - Latvia, xxx
 - Netherlands, xxx
- national courts (role in redressing fundamental rights violations by EU), 155–76
 - access to courts, 157, 160
 - availability of rights to challenge EU acts, 157, 158–59
 - chapter offering (limitations), 175
 - conclusions, 174–76
 - legal opportunity structures, 156, 157–60
 - litigant characteristics, 156, 157, 160–62
 - rights-based litigation against EU Acts (empirical overview), 156, 162–74
 - civil liberties, 163, 170–71
 - economic rights, 163–67
 - political rights, 172–74
 - social rights, 163, 167–70
- national judges, 5, 157, 383
- national law, 73, 84, 104, 158, 303, 308, 383
- national litigation culture, 425
- national procedural rules, 117, 214, 241, 281, 360
 - effectiveness (CJEU case law), 81
- national rules, 74, 81, 100, 163, 220, 221, 425
 - in footnote, 281
- national sources of rights: legal mobilisation against EU acts, 155–76
- national sovereignty, 307
 - in footnote, 66
- natural language processing (NLP), 250
- ne bis in idem*, 23, 290, 291
- Netherlands, xxx, 213, 224, 248
 - district court (in footnote), 185
 - system of constitutional adjudication 'missing', 162
 - welfare allocation scandal, 404
- Netzwerkdurchsetzungsgesetz (NetzDG), 260
- Neustadt an der Weinstraße administrative court, 165
- New Public Management, 127
- New York City, 248
- New York Convention, 230, 234. *See also* international arbitration
 - signed (1958), in footnote, 234
- NextGenerationEU, 173
- NGOs, 19, 109, 111, 116, 171, 210, 217, 218, 222, 263
- non-binding measures, 131, 150, 373
- non-contractual liability, 50, 55, 63, 87, 88, 92, 326, 344, 381
 - Article 340 TFEU (*qv*), 87, 341
 - may not differ between EU and Member States, 88
 - system of evidence (overall design), 88
- non-discrimination, 23, 34, 114, 213, 352, 404, 414. *See also* right to non-discrimination
 - in footnote, 66
 - three EU directives, 226
- non-judicial mechanisms, 6, 274, 302, 312, 318, 426, 430
- non-judicial remedies, 306, 308
 - DG COMP, 294–97
 - ESMA, 288–89
 - EU factual conduct, 329–40, 344
 - versus judicial remedies, 284–305
 - limits, 308
- non-pecuniary compensation, 40, 52, 62
 - in footnote, 328
- non-pecuniary harm, 38, 40, 326
 - 'broad notion' in EU liability law, 39
- remedies, 39
- non-privileged applicants, 2, 333
 - in footnote, 189
- non-refoulement, 143, 316, 349, 351, 406. *See also* CFR Articles 18 and 19
- norms: types (Terpan), 367
- noyb, 215, 223
- Nussbaum, Martha C., 66
- obiter dictum*, 203
- OCMC. *See* Online Civil Money Claims
- ODR [online dispute resolution (*qv*)]
 - Regulation (2013), xxxv, 256, 262
- OLAF, 284, 297–305, 307, 316
 - access to court, 301–2
 - access to justice, 302–5
 - acts in support of national authorities, 275
 - complaints mechanism, 304–5
 - digital forensics operations, 299
 - external investigations, 298, 301
 - in footnote, 339
 - internal investigations, 298
 - investigatory body, 298
 - judicial remedies, 301–2
 - key to abbreviation, 275
 - legal framework, 299

- OLAF (cont.)
 legal framework (revised, 2020), 302
 legal framework (safeguards and defence rights), 299–301
 mission, 297
 non-judicial remedies, 302–5
 review (external), 303–5
 review (internal), 303
 role of Ombudsman, 305, 308
- OLAF: Controller of Procedural Guarantees, 303–5, 308
- OLAF: Review Team, 303
- Ombudsman, 123, 140, 150, 223, 264, 265, 266, 289, 339, 426, 428
 access to justice perspective, 150
 authority and measures, 145–46
 criticism of Frontex, 152
 duties, 132
 EU factual conduct, 331–33, 342
 expertise and funding, 148, 149
 lack of enforcement powers, 265
 legal basis (Article 228 TFEU), 263
 ‘major limitation’, 332
 mandate, 145
 ‘non-binding and structure-focused approach’, 145
 orientation ‘towards improving administrative procedures’, 137
 own initiative inquiries, 132, 145
 ‘quasi-legal route’, 284
 recommended (twice) establishment of individual review mechanisms to Frontex (in footnote), 135
 reports, 124, 145
 right to lodge complaints with (Article 43 CFR), 331
 role *vis-à-vis* OLAF, 305, 308
 short portrait, 132–33
 soft law, 385
 strategic inquiries, 133, 145
 ‘various tools’, 138
- Online Civil Money Claims, 249, 250, 251, 254–56, 258, 263
- online dispute resolution, 8, 428
 definition, 245
 elements, 246–53
 from private actors to public sector, 246–53
 redress mechanism for EU fundamental rights violations, 261–66
 design options, 263–66
 legal basis, 261–63
 redressing fundamental rights violations, 245–66
 technological component, 249–51
 online dispute resolution mechanisms
 Blomgren Amsler framework, 252–53
 design, 251–53
 examples, 246, 254–61
 EU consumer ODR platform, 254, 256–58
 ODR mechanisms set up by judiciary, 254–56
 redress of fundamental rights violations, 254, 258–61
 stages, 251, 253
 online dispute resolution redress mechanism for EU fundamental rights violations (design options), 246, 263–66
 1. establishment of goals, 263
 2. engagement with stakeholders, 263
 3. consideration of context and culture, 264
 4. decisions regarding structure and procedure, 264–65
 5. funding, 265
 6. periodic evaluations, 266
 online platforms, 258
 DSA definition (in footnote), 258
 internal complaint handling system (right to appeal), 259
onus probandi, 93, See also burden of proof
 organisational expertise, 137, 147, 148, 149, 152
 Owusu-Bempah, Abenaa: procedural abilities, 67
- pacta sunt servanda* principle, 92
 para-law function, 368
 Passalacqua, Virginia, 213
 passenger name record (PNR), xxxvi, 394, 404
 in footnote, 394
 Peake, Katrina, 374
 Pergantis, Vassilis Pergantis, 205
 personal data processing operations, 315
 personal interview, 377, 378
 personal liberties, 170–71
 Pescatore, Pierre, 99
 physical acts, 313, 320, 321, 322, 323, 325, 332, 333, 344
 in footnote, 327
 Pijnenburg, Annick, 171
Plaumann doctrine. See ‘CJEU (cases)’
 plea of illegality
 Article 277 TFEU, 319
 EU factual conduct, 327
 pleas, 17, 19, 20, 21, 22, 23, 29, 82

- pluralism, 34, 35, 175, 259, 380
- PNR. *See* passenger name record
- Polakiewicz, Jörg (in footnote), 186
- policy cycle, 368, 370
- Polish constitutional court, 175
- political accountability, 289, 306, 308
 - DG COMP, 294–95
 - OLAF, 302
- political opportunity structures, 211
- political rights, 156
 - challenges to EU policies and EU integration, 172–74
- political will, 152, 284
- Portugal, 160, 168, 169, 170, 375
- Portuguese Constitutional Court: in footnote, 376
- post-legislative guidance, 368, 377
- post-legislative soft law, 368, 369
- Poulou, Anastasia, 376
- praemissa maior* (higher law), 15
- praemissa minor* (secondary measures), 15
- preliminary reference procedure, 8, 95, 190, 211, 224, 225, 282, 371, 425, *See also* TFEU: Article 267
 - admissibility, 323
 - constraints, 383–84
 - EU factual conduct cases, 323–24
 - judicial review (difficulties), 323
 - limitations, 119
 - mobilisation (strategic litigation), 213–16
 - possibility for third-party interventions, 219
 - role, 99
 - soft law, 382–84
 - whether also ‘citizens’ infringement procedure’, 99
 - ‘works as decentralised infringement procedure’, 99
- preliminary reference procedure (fundamental rights complaints), 98–120
 - conclusion, 119–20
 - empirical material and research process, 100, 109–11
 - claimants, 109
 - framing of claim, 110
 - fundamental rights treatment, 110
 - empirical material and research process (limitation of study), 109
 - inherent limitations in procedure
 - limit (1) central role of national courts, 104–5
 - limit (2) reduced role of parties in proceedings, 104, 105–6
 - limit (3) procedural freedom of court, 104, 107–8
 - private applicants and fundamental rights claimants, 112
 - framing of claim, 112
 - fundamental rights treatment by CJEU, 112
 - private applicants and fundamental rights (assessment), 100, 116–19
 - private applicants and fundamental rights (mapping), 100, 111–15, 116
 - case distribution among chambers, 115
 - claimants, 111–13
 - framing of claim, 113–14
 - framing of claim (breach of fundamental rights or CFR used without specific fundamental rights framing, 113
 - fundamental rights treatment by CJEU, 114–15
 - intervention of EU institutions, 116
 - policy areas, 113
 - summary of findings, 112
 - questions of interpretation, 102, 108, 110, 113, 118, 119
 - raison d’être*, 107
 - references on validity, 101, 102
 - reformulation, 108, 114
 - use against EU (inherent limitations), 100, 103–8, 118
 - use against EU (possibilities), 100–3
 - challengeable acts, 100–1
 - types of grounds, 103
 - types of questions, 101–2
 - validity rulings, 102, 108, 110, 113, 114, 118, 119
- ‘prescribed by law’, 368, 370, 372
- presumption of innocence, xxxvi, 23, 69
- pre-trial ODR, 254
- primary law, 2, 76, 96, 101, 102, 117, 119, 120, 172, 180, 195, 331, 423
 - in footnote, 341, 414
 - includes CFR, 99
- principle of equality, 170
 - between men and women, 74
- principle of equality of arms, 68, 85
 - in footnote, 68
- principle of legality, 280, 291, 306, 317
- privacy, 13, 183, 223, 253. *See also* ‘right to privacy’ and ‘right to respect for private life’
- AI risks, 400–3
- Privacy International, 214

- private actors, 155, 266, 276, 277, 285, 286, 287, 289, 306, 307, 308, 428
- private applicants: fundamental rights complaints (assessment), 100, 116–19
- private law, 38, 39, 232, 246
in footnote, 133
- private parties, 9, 386, 425
action before EU courts (evidence as enabler or filter, *qv*), 64–97
availability of remedies (judicial and non-judicial), 306
vindication of fundamental rights within EU remedies system, 4
- pro bono* legal clinics, 161, 171
- probandum*, 79, 84, 93
in footnote, 83
- probatio diabolica*, 81
- procedural abilities, 67, 82, 86, 90, 93
effectiveness, 93
litigants' entitlements, 67
theoretical vantage point, 73
- procedural autonomy, 74, 77, 94, 306, 307, 383
- procedural entitlements, 68, 74, 75, 87
- procedural fairness, 23, 25, 28, 67, 96, 308
- procedural law, 65, 94, 95, 117, 232, 362
- procedural rights, 75, 295, 307, 330, 348, 391, 421
CJEU, 30–35
composite procedures, 352–56
General Court, 23–28
- professional associations, 169, 174
- profiling, 396, 401
GDPR definition (in footnote), 396
- prohibition of torture, 171, 188, 316
Article 4 CFR, 349
in footnote, 52
- proportionality, 32, 51, 164, 234, 243, 280, 291, 292, 306, 317, 373, 386, 415
- public administration, 312, 314
accountability, 331
- public interest, 18, 33, 51, 136, 160, 214, 231
- public sector purchasing programme (PSPP), 173
- pushing boundaries, 8, 245–66
international arbitration (supplementary tool for EU fundamental rights violations), 227–44
online dispute resolution (ODR), 245–66
strategic litigation, 8, 209–26
- quasi-judicial, 334, 415
in footnote, 258
meaning 'often remains unclear' (in footnote), 139
- quid iuris*, 353
- Rademacher, Timo, 50, 344
in footnote, 319, 325, 328
- Ranchordás, Sofia, 420
- Rapid Exchange of Information System (RAPEX), 351, 352, 363, 364
- ratione personae*, 181
- Rauchegger, Clara, xii, 8, 36–63, 424, 425, 426, 429
- Raz, Joseph: in footnote, 15
- receptivity of judiciary, 157, 162, 174, 212
CJEU judgment on politically salient issues, 212
- Rechtwijzer platform (2014–2017), 248, 250
in footnote, 248
- recurso de amparo*, 3
- Redressing Fundamental Rights Violations by EU*
book aim, 4–5
book scope, 5–8
three lines of enquiry, 4
- Redressing Fundamental Rights Violations by EU* (book scope), 5–8
EU authorities, 6–7
fundamental rights, 7–8
remedies system, 5–6
- Redressing Fundamental Rights Violations by EU* (book structure), 8–9
conclusion, 422–30
final remarks, 429–30
pushing boundaries, 8, 245–66
remedies before CJEU, 8, 98–120
remedies beyond CJEU, 8, 123–54
testing of remedies systems, 8–9, 391–421
- Regulation 1049/2001 (right to access documents), 85
- Regulation 2019/1896. *See* EBCG Regulation (2019)
- regulatory acts, 18, 83, 84
in footnote, 84
- regulatory sandboxes, 418, 419, 420
- Regulatory Scrutiny Board, 389
- relevance, 65, 70, 77
definition (in footnote), 77
- remedies before CJEU, 8, 98–120
action for annulment, 13–35
action for damages, 36–63

- evidence as enabler or filter (action brought by private parties), 64–97
- preliminary reference procedure (fundamental rights complaints), 98–120
- remedies beyond CJEU, 8, 123–54
 - EU accession to ECHR, 177–205
 - national courts (role in redressing violations by EU), 155–76
 - Review Bodies, 123–54
- remedies system, 4, 5–6, 9
 - creative use, 221–25
 - definition, 5
 - filling the gaps, 430
 - final remarks, 429–30
 - gaps, 423
 - jewels in crown, 16
 - ‘simply outdated’, 429
 - testing, 391–421
 - whether has potential to enable individuals to vindicate their fundamental rights, 5
 - whether infringements of rights should be treated differently from other breaches of EU law, 5
 - whether tailor-made required, 5
- remedies system (limits), 422–26
 - judicial remedies and outdated vision of EU as lawmaker, 422–23
 - over-reliance on national courts, 424–26
 - reluctance to engage in fundamental rights reasoning, 423–24
- remedies system (potential), 426–29
 - applicants with agency, 428–29
 - looking beyond action for annulment, 426
 - looking beyond CJEU, 426–27
 - looking beyond EU law, 427–28
 - technology as opportunity, 428
- repeat litigants, 172, 174, 222, 225
- res judicata*, 230, 231, 238, 239
- Research Network on EU Administrative Law (ReNEUAL): in footnote, 343
- Ress, J., 190
- Review Bodies, 8, 123–54, 426, 427
 - access to justice perspective, 150
 - advantages, 126
 - ambivalent new normal, 124–32
 - complementarity and structural focus, 125–26
 - functional differentiation, 127–28
 - interim conclusion, 132
 - peril of ceremony (mimicry of justice), 130–31, 150
 - tripartite government, 128–30
 - authority emerges ‘only incrementally’, 145, 146, 148, 149
 - characteristics (taxonomy), 124, 136–50
 - authority and measures, 136, 138–46, 149
 - expertise and funding, 137, 146–49, 150
 - interim conclusion, 132–50
 - orientation towards public or individual interest, 136, 137–38
 - complementarity, structure, ambivalence, 123–54
 - conclusion (key takeaways), 124, 151, 153–54
 - crucial advantage, 151
 - definition, 124
 - ‘issue non-binding normative material’, 140, 146
 - ‘less formal authority than courts’, 126
 - ‘most efficient when teaming up with other accountability forums’, 146
 - non-binding normative output, 151
 - possibilities for reform, 124, 150–53
 - more money, more wit, 152–53
 - teaming up, 150–52, 153
 - ‘quick fix to EU executive’s accountability and legitimacy deficits’, 130
 - role in protecting fundamental rights, 123–54
 - short portraits, 124, 132–36
 - structural issues, 151
- Review Bodies (three types)
 - Boards of Appeal (*qv*), 133–34
 - Fundamental Rights Officers (*qv*), 135–36
 - Ombudsman (*qv*), 132–33
- reviewable act, 35, 321, 328, 346, 357, 409
 - Article 263 TFEU, 322, 341
- right to access courts, 68, 281, 293, 306
- right to access documents, 27, 85, 291, 292, 296, 300, 306
- right to access lawyer, 292, 299, 306
- right to asylum, 316, 349, 377, 391, 398, 406
 - Article 18 CFR, 405
- right to avoid self-incrimination, 279, 291, 296, 299, 306
 - ‘right to remain silent’, 292
- right to be heard, 27, 28, 31, 68, 280, 291, 292, 296, 306, 348, 353, 354
 - Article 41 CFR, 353
 - general obligation, 28
- right to conduct business, 45, 46, 85, 103, 164, 187, 276, 279, 316, 351
 - Article 16 CFR (*qv*), 352

- right to consumer protection: Article 38 CFR, 380
- right to data protection, 45, 332, 338–40, 380, 400
- Article 8 CFR (*qv*), 352
- right to decent living, 169, 170
- ‘right to fair working conditions’, 44, 45
- ‘right to work’, 159
- right to effective defence, 25, 31, 44, 68, 91
- right to effective remedy, 9, 14, 37, 42, 50, 61, 73, 74, 75, 82, 85, 86, 93, 114, 130, 241, 256, 281, 318, 323, 341, 346, 365, 408. *See also* effective judicial protection
- Article 13 ECHR (in footnote), 272
- Article 47 CFR (*qv*), 53, 353, 406
- EU factual conduct, 318–19
- procedural, 82
- right to fair trial, 44, 67, 68, 74, 75, 85, 166, 185, 256, 278, 291, 298, 306
- Article 47(2) CFR, 75
- Article 6 ECHR, 256
- in footnote, 14, 296
- right to good administration, 22, 27, 44, 141, 277, 306, 310, 391, 407, 408, 421
- Article 41 CFR (*qv*), 52, 353, 407
- EU factual conduct, 329–31
- right to health care, 157, 159, 169
- right to housing, 159, 167
- right to human dignity, 170, 316, 377
- Article 1 CFR (*qv*), 380
- right to liberty, 315
- Article 6 CFR, 349
- right to life, 53, 157, 163, 170, 171, 316, 332, 372
- Article 2 CFR, 405
- right to non-discrimination, 45, 391, 403, 405, 421
- Article 21 CFR (*qv*), 380, 403
- right to occupational freedom, 156, 165, 166
- right to physical integrity, 38, 332
- Article 3 CFR, 316
- ‘right to integrity of person’, 316
- ‘right to security of person’, 315
- right to privacy, 23, 170, 278, 282, 291, 298, 306, 332, 400
- Article 7 CFR, 306
- in footnote, 271
- right to property, 23, 33, 38, 45, 46, 85, 156, 159, 165, 166, 169, 182, 279, 316, 376
- Article 17 CFR, 316
- right to respect for private and family life, 45, 278, 315, 352, 375. *See also* ‘right to privacy’
- Article 7 CFR (*qv*), 380
- in footnote, 188
- right to respect for rights of child, 351
- Article 24 CFR, 380
- right to social security, 157, 167
- right to vote, 157, 159, 174
- ‘right to democracy’, 174
- ‘right to free and fair elections’, 172
- rights enforcement, 241, 244, 428
- Rocca, Penelope, 368
- Romania, 168, 170
- Rowan, Brian: in footnote, 126, 130, 131, 142
- rule (supremacy) of law, 2, 14, 34, 140, 317, 362, 365, 399, 400, 419, 426, 429
- crucial manifestation, 16
- different visions, 35
- essence, 406
- EU notion (CJEU articulation), 34
- requirements on individuals, 271
- requirements on those who govern, 271
- role, 271
- Rule of Law Conditionality Framework, 34
- evidence-based approach, 34
- rule of law crisis, 156, 297
- rule of law debate, 272
- rules (tenets) of law, 88, 89, 325, 332
- rules of evidence
- national, 74
- national (unrealistic burdens on private parties), 81
- Rules of Procedure of Court of Justice. *See* CJEU (Rules of Procedure)
- Russian Federation
- EU soft law, 378–79
- exclusion from Council of Europe, 177
- Sarmiento, Daniel, 105
- Scandinavia, 160, 161
- Schengen Area, 392, 395, 397, 399
- Schengen Information System (SIS), 351, 352, 363, 394, 395, 412
- in footnote, 317
- Schengen Visa Code, 378
- Schermers, H.: in footnote, 106
- Schmidt-Kessen, Maria José, xii, 8, 245–66, 428
- Scholten, Miroslava, xii, 9, 271–310, 423, 425, 426

- Schramm, Moritz, xii, 8, 214–15, 262, 426, 427
 in footnote, 6
- Schrems, Maximilian, 215, 223
- secondary law, 96, 99, 102, 191, 198, 199, 289, 426
- secondary legislation, 47, 63, 101, 102, 117, 234, 238, 242, 311, 342
 concretisation of CFR (greater chance to hold EU liable), 46
 in footnote, 341
- secondary measures, 15, 17
- security threats, 394, 397
- Senden, Linda, 367, 368
- separation of powers, 128, 145
- shield, 271, 273
 in footnote, 271
- Single Supervisory Mechanism (SSM), 314
- small claims, 254, 258
- Snowden, Edward, 215
- social movements, 210, 211
- social rights, 156
 challenges to EU-induced austerity, 167–70
- soft law, 6, 9, 50, 276, 277, 287
 admissibility requirements, 388, 389
 author and addressee, 369
 challenges to access to justice, 366–90
 conclusion, 389–90
 constitutional relevance, 371
 definition (Senden), 367
 ex ante participation of private actors, 287
 features, 367
 in footnote, 314
 functions, 368–70
 implementation (different ways), 374
 interferences with fundamental rights
 (practice), 375–80
 area of freedom, security and justice (AFSJ), 377–79
 digital sphere, 379–80
 economic coordination and Euro crisis, 377
 EU's response to Russia's invasion of Ukraine, 378–79
 EUAA, 377–78
 interferences with fundamental rights
 (theory), 370–75
 judicial remedies, 390
 'no watertight system of remedies', 423
 non-binding nature, 366, 382, 388
 not easily amenable to judicial review, 306
 possibility to question through preliminary reference procedure, 288
 remedies, 380–89
 action for damages, 381–82
 administrative review, 384–88, 390
 possible way forward (three issues), 388–89
 preliminary reference procedure, 382–84
 unavailability of action for annulment, 381
 risks for EU executive overreach, 371
 'unclear legal status', 288
- soft-law documents, 277, 285
- soft-law guidance, 277, 310, 368, 420
- soft-law instruments, 277, 292, 294, 306, 307
- software, 248, 249, 250, 251, 398
- solange* (German, 'as long as'), 164
- Solum, Lawrence B.: definition of effective participation (in footnote), 67
- Spain, 160, 239
- stakeholders, 252, 255, 258, 263
- standards of proof, 65, 69
 beyond reasonable doubt, 69
 in footnote, 65
 preponderance of evidence, 69
- standing, 333. *See also locus standi*
 heavy burden of proof, 77–82
 strict rules under Article 263(4) TFEU (in footnote), 83
- state liability: system of evidence, 88
- statement of objections (SO), 292
- Stefan, Marco (in footnote), 337
- Strasbourg: shorthand for 'ECtHR' (*qv*), 185
- strategic litigation, 8, 209–26
 creative use of remedies system, 210, 221–25
 calling upon non-judicial institutions, 222–24
 informal involvement, 224–25
 petition to European Court of Auditors, 221–22
 definition, 209
 EU as system with closed legal opportunity structures, 210, 211–12
 lessons (informing future action), 211, 225–26
 successful mobilisation before CJEU (examples), 210, 213–21
 direct actions, 216–19
 mobilising preliminary reference procedure, 213–16
 third-party interventions, 219–21
- structural issues, 151, 152, 153
- structure and internal practice: literature survey (in footnote), 126

- subsidiarity, 17, 234, 243
- substantive expertise, 137, 147, 148, 151
- substantive law, 95
 - in footnote, 189
- sufficiently serious breach, 47, 49–53, 61, 62, 93, 325, 382
 - CJEU's approach in fundamental rights cases, 53–55
 - decisive test, 89
 - non-contractual liability cases, 88
- sword, 271, 273
 - in footnote, 271
- Taobao platform (Alibaba), 250
- TEC: Articles 288(1) and 288(3), in footnote, 88
- technology as opportunity, 428
- TEEC
 - Article 173 (currently Article 263 TFEU, *qv*), 78, 79
 - Article 220, 232
- Terpan, Fabien, 367
- territoriality, 357, 364
- testing of remedies systems, 391–421, 423
 - access to justice, 271–310
 - AI, 391–421
 - composite procedures, 345–65
 - EU factual conduct, 311–44
 - EU law enforcement authorities, 271–310
 - soft law, 366–90
- TEU
 - Article 02, 2, 16, 34, 399
 - Article 03, 72
 - Article 03(2), 234
 - Article 04(3), 282
 - Article 06, 16
 - Article 06(1), 188
 - Article 06(3), 186
 - Article 17(8) (power of EP to dismiss Commission), 294
 - Article 19, 16, 86
 - Article 19(1), 384
 - Article 24, 199
 - Article 40, 201
 - Article 40(1), 199
 - Title V, 200
 - Title V, chapter 2, 18
- TFEU
 - Article 016, 262
 - Article 019, 200, 262
 - Article 026, 262
 - Article 067, 234
 - Article 075, 17
 - Article 078, 262
 - Article 078(2)(d), 262
 - Article 081, 234
 - Article 081(2)(g), in footnote, 234
 - Article 087(2)(a): in footnote, 413
 - Article 101, 289, 290
 - in footnote, 317
 - Article 102, 71, 289, 290
 - Article 114, 262, 410
 - in footnote, 234
 - Article 126(7), 375
 - Article 215, 17
 - Article 226, 294
 - Article 227, 222
 - Article 228, 263, 266
 - in footnote, 330
 - Article 228(1), 132
 - Article 245, 297
 - Article 256(1), 43
 - Article 257, 134
 - Article 258, 70
 - Article 263, 2, 16, 24, 32, 50, 62, 64, 78, 82, 83, 86, 98, 101, 104, 117, 189, 190, 277, 282, 319–22, 327, 333, 334, 338, 341, 343, 344, 362, 370, 376, 381, 386, 387, 388, 389. *See also*
 - action for annulment
 - admissibility requirements, 335, 370
 - in footnote, 328
 - narrow interpretation 'remains contested', 99
 - Article 263(4), 3, 77, 81, 82, 83, 84, 94, 192
 - in footnote, 84, 189
 - Article 265, 64, 80, 81, 82, 86, 218, 322. *See also*
 - action for failure to act
 - Article 265(3), 192
 - Article 267, 16, 117, 119, 190, 193, 323–24, 341, 357, 382
 - drafting 'minimalistic', 98
 - passim*, 100–4
 - primary purpose, 213
 - Article 267(3), 83, 94
 - Article 268, 3, 192
 - Article 268 *juncto* 340, 324
 - action for damages (in footnote), 319
 - Article 270, 192
 - Article 272, 192
 - Article 275, 18, 24, 199, 200, 201
 - Article 277, 190, 319, 327

- Article 278: in footnote, 328
 Article 279: in footnote, 328
 Article 285, 295
 Article 286, 295
 Article 287, 295
 Article 288: in footnote, 312, 313, 314
 Article 298(1): 'open, efficient and independent administration', 330
 Article 340, 3, 61, 64, 87, 88, 89, 90, 93, 192, 216, 218, 324–27, 344
 'high restrictive thresholds regarding EU liability conditions', 341
 Article 340(2), 43, 47
 Article 340(3): in footnote, 88
 Article 344, 237
 the Court. *See* CJEU
 the Treaties, 4, 5, 16, 17, 18, 19, 65, 243, 324, 328, 340, 426
 third parties, 20, 51, 152, 213, 215, 224, 226, 253, 296, 298, 305, 320, 321, 333, 339
 strategic litigation, 219–21
 Timmermans, Christiaan, 183
 in footnote, 186
 trade unions, 168, 169, 174, 187
 transparency, 144, 231, 256, 338, 404, 409
 OLAF, 302
 Treaties of Rome (1957), 1
 Treaties on which EU based. *See* 'the Treaties'
 Treaty Establishing European Economic Community. *See* TEEC
 Treaty of Amsterdam, 233
 Treaty of Lisbon, 3, 76, 83, 84, 100, 101, 172, 175, 234, 384, 385
 entry into force (1 December 2009), 109
 in footnote, 189
 Treaty of Maastricht, 159, 172, 174, 233
 Treaty on European Union. *See* TEU
 Treaty on Functioning of EU. *See* TFEU
 tripartite government, 128–30
 trust, 72, 247, 248, 252, 264
 Turkey, 218, 405
 Uitelkaar.nl platform (2017–): in footnote, 248
 Ukraine, 237
 EU soft law, 378–79
ultima ratio, 72
ultra vires control, 159
 UN Charter, 30
 UN Guidelines on Violations of International Humanitarian Law
 definition of 'compensation' versus 'satisfaction', 39
 definition of 'full reparation', 39
 UN Security Council, 30
 UNCITRAL, 251, 253
 undertakings, 92, 290, 292, 295
 in footnote, 317
 Unfair Terms in Consumer Contracts Directive (1998), 242
 UNHCR, 220, 224
 United Kingdom, xxxi, 73, 160, 193, 213, 220, 254
 United States, 92, 215, 248
 constitution, 161
 federal rules of evidence, 65
 unlawful conduct, 47, 48, 50, 56, 57, 87, 88, 91, 92, 93, 194
 as condition for EU fundamental rights liability, 47–55
 user interface, 264
 USA (in footnote), 264
 validity. *See also* reformulation
 van den Brink, Ton, 368
 van der Pas, Kris, xii, 8, 171, 209–26, 425, 429
 Vanhala, Lisa, 212
Verfassungsbeschwerde, 3
 vertical composite procedures. *See* composite procedures
 Villiger, Mark Eugen: in footnote, 371
 Visa Information System (VIS), 394, 395
 Visa Requirement Regulation (2018), 379
 von der Boegart, Sina, 152
 Waelbroeck, D.: in footnote, 106
 Weiler, Joseph H.H., 15, 16
 Werkmeister, Christophe (in footnote), 84
 Wessel, Ramses, 201, 203
 WHO, 396
 Wildemeersch, Jonathan, 75, 76
 Wróblewski, Jerzy, 65
 wrongful act, 376, 405
 definition, 89
 WTO, 92
 Xanthoulis, Napoleon: in footnote, 313
 Yefremova, Veronika, xii, 8, 227–44, 428

