Contents

	Table of Cases Table of Instruments			
			xxi 1	
In	trod	troduction		
	1.	The Background	1	
		Caveats as Regards Perspective and Methodology	2	
	3.	The System Applied in this Study	4	
		I. INTRODUCING LOYALTY		
1.	Loy	valty in the EU Treaties	9	
	1.	Introduction	9	
	2.	Loyalty before the Lisbon Treaty	10	
	3.	The Lisbon Treaty Amendments	11	
	4.	Specifications of Article 4 (3) TEU in the Treaties	13	
	5.	Loyalty and National Identities	19	
	6.	The Vectors of the Application of Loyalty	22	
	7.	Conclusion	29	
2.	Loy	yalty in Context	31	
	1.	Introduction	31	
	2.	Some Remarks on Terminology	33	
	3. 4.	Distinguishing the Union Principle of Solidarity The Relation with the Principles of Good Faith	35	
		and pacta sunt servanda	41	
	5.	Federal Fidelity in the European Union	47	
	6.	Conclusion	61	
3.	Loy	valty and the Constitutionalization of EU Law	63	
			63	
		Loyalty in the Literature	64	
		The Foundational Case Law Re-assessed	71	
	4.	The Way Loyalty Has Been Used by the Court in the		
	_	Foundational Case Law	80	
	5.	Conclusion	83	
		Conclusion of the Introductory Part	84	
		II. THE COHESION OF EUROPEAN UNION LAW		
	Inti	roduction	85	
4.	A P	Primer on the Structure of Union Law	87	
	1.	Introduction	87	
	2.	The Unity of National Law and Union Law	88	

x Contents

	3. The (Inner) Unity of the Union Legal Order	92	
	4. Conclusion	99	
5.	Supremacy, Pre-emption, and the Union Interest		
	1. Introduction	101	
	2. Some Thoughts on the Nature of Supremacy	101	
	3. Duties Unrelated to Supremacy Flowing from Secondary Law	105	
	4. Duties Unrelated to Supremacy Flowing from Preparatory		
	Legal Acts	110	
	5. Do We Need a Concept of Pre-emption in Union Law?	115	
	6. The Union Interest	122	
	7. Conclusion	123	
6.	Effectiveness, Judicial Protection, and Loyalty		
••	1. Introduction	125 125	
	2. The Principle of Effectiveness and the Enforcement	12)	
	of Individual Rights	126	
	3. Effectiveness and Compliance by the Member States	131	
	4. Effectiveness, Effective Judicial Protection, and Indirect Effect	133	
	5. Effectiveness, Effective Judicial Protection, and	133	
	Duties of Abstention	136	
	6. Conclusion	137	
	o. Conclusion	13/	
	Conclusion of the Part on Cohesion	139	
	III. COOPERATION IN THE EUROPEAN UNI	ON	
	Introduction	141	
7.	A Primer on Union Competences	143	
	1. Codification in the Lisbon Treaty	143	
	2. Three Categories of Competences	144	
	3. The General System of External Powers of the Union		
	After Lisbon	146	
	4. Exclusive Competences	147	
	5. Non-exclusive Competences	157	
	6. Conclusion	159	
8.	Loyalty and Non-exclusive Competences		
	1. Introduction	161	
	2. Loyalty and 'Regular' Shared Competences	161	
	3. Loyalty and 'Irregular' Shared Competences	163	
	4. Loyalty and Supporting Competences	167	
	5. Conclusion	171	
9.	Manifestations of Loyalty in Secondary Law		
	1. Introduction	173	
	Non-supervisory Notification Obligations	174	
	3. Supervisory Notification Obligations on Technical Standards	175	
	1		

Contents	xi
Comemis	AI

	4.	Hybrid: The Services Directive	1//
	5.	Prohibitions of Frustration and Transitional Periods	178
	6.	'Managed' Preclusion of Member States	179
		Conclusion	182
	<i>,</i> •	Conclusion	102
10.	Lo	valty and Mixed Agreements	183
	1.		183
	2.		185
		-	
	3.	7 7	188
	4.	7 7 1	190
	5.	, ,	192
	6.	, ,	195
		Loyalty and Common Positions	197
	8.	Loyalty and the Ratification of Mixed Agreements	202
	9.	Loyalty and the Interpretation and Implementation of	
		Mixed Agreements	203
	10.	Conclusion	206
			207
		Conclusion of the Part on Cooperation	207
I	V	THE CONSTRUCTION OF THE EUROPEAN UN	ION
-			
	Int	roduction	209
11.	ΑI	Primer on Cooperation and Constitutional Conflict	
		he European Union	211
		Introduction	211
	2.	Preliminary References and Other Interactions Between	
		Courts in the EU	212
	3.	Loyalty, Institutional Balance, and Conflicts of Legal Basis	215
	4.	The Relationship Between the ECJ and the Union Legislature	217
	5.	Constitutional Conflicts Between EU Law and Member	
		State Legal Regimes	225
	6.	Conclusion	232
12.	On	the Nature of Loyalty	233
	1	Introduction	233
		Loyalty as an Independent Source of Obligations	234
		Loyalty as a General Principle of Union Law	241
		Conclusion	249
	5.	Interim Summary of the Roles of Loyalty in EU Law	250
13.	De	constructing Loyalty	252
13.			
	1.	Introduction	252
	2.	Evaluation Criteria for the Reasoning of the Court	253
	3.	Loyalty, Effectiveness, and effet utile	261
	4.	Loyalty and Self-referential Reasoning	267
	5	Conclusion	273

xii Contents

14.	Amplification and the Limits of Loyalty		275
	1.	Introduction	275
	2.	The Amplification of Provisions of Primary and	
		Secondary Law	276
	3.	Loyalty, the Prohibition of Discrimination, and Inter se Treaties	280
	4.	The Amplification of Internal Union Rules	286
	5.	The <i>Hurd</i> Case	288
	6.	The Limits to Amplification	290
		Conclusion of the Part on Construction	297
		Final Remarks	298
Refe	References		301
Inde	Index		