

TABLE OF CONTENTS

<i>Acknowledgments</i>	9
<i>Foreword</i>	13
<i>Preface</i>	17
<i>Main abbreviations used</i>	21
<i>Contents</i>	23
<i>Introduction</i>	25
CHAPTER 1. – THE GAP IN JUDICIAL PROTECTION LEFT BY THE RULES GOVERNING THE ADMISSIBILITY OF JUDICIAL REVIEW	41
Section 1. – <i>The objective facet of the rules on locus standi</i>	45
A – Reviewable acts	46
B – Comparative critical presentation of articles 263 and 267 TFEU	50
C – <i>Locus standi</i> vs interest in bringing proceedings	57
Section 2. – <i>The objective facet of locus standi and the evolution over time of the notion of direct concern</i>	61
Section 3. – <i>The distinction between privileged and non-privileged applicants in actions for direct judicial review</i>	66
Section 4. – <i>The subjectification of locus standi via the requirement of individual concern</i>	74
A – The <i>Codornú</i> exception as regards the requirement of individual concern	80
B – Judicial review following the broad logic of executive federalism	81
C – The current subjective requirements in the case-law on individual concern	83
Section 5. – <i>The inadmissibility-driven subjectification of locus standi via the condition regarding failure to entail implementing measures</i>	86
A – The partially discarded analysis of failure to entail implementing measures proposed by Advocate General Kokott in <i>Telefónica</i>	89
B – The discarded objective analyses of failure to entail implementing measures proposed by Advocates General Cruz Villalón and Wathelet in <i>T & L Sugars</i> and <i>Stichting Woonlinie</i>	93
Conclusion of chapter 1.	98

CHAPTER 2. – THE STATED COMPLEMENTARITY BETWEEN DIRECT AND INDIRECT JUDICIAL REVIEW FOR THE SAKE OF ENFORCING EFFECTIVE JUDICIAL PROTECTION	101
Section 1. – <i>The stated complementarity between direct and indirect judicial review as an alternative means for the enforcement of effective judicial protection</i>	102
Section 2. – <i>The gap filling function of national courts for the purposes of judicial protection as stated by EU institutions</i>	113
A – The confirmation of the complementarity between actions for annulment and preliminary references on validity made by the European Parliament	114
B – The analysis of the complementarity between actions for annulment and preliminary references on validity made by the European Commission	117
Section 3. – <i>The complementarity between legal remedies as a duty upon the EU, the national legislature and the referring courts pursuant to constitutional principles</i>	119
A – Judicial complementarity duties upon national courts pursuant to general principles of EU law	119
B – Duties upon national courts pursuant to the national (and someday also EU?) constitutional principle of the natural forum	123
Section 4. – <i>Public enforcement actions for failure to fulfil the obligation to enforce the complementarity between direct and indirect judicial review</i> . . .	131
A – Breach of which substantive obligation justifying an infringement action for failure to refer under Article 267 TFEU?	134
B – The European Commission’s stance on enforcement actions for failures to make requests for preliminary rulings	137
Section 5. – <i>Enforcement of EU law vs voluntary compliance with it: the momentum towards increased judicial cooperation in the framework of preliminary references on validity</i>	139
A – The advantages of preliminary references on validity over direct actions for annulment	140
B – The promotion of preliminary references on validity in the current case-law of the Court of Justice and its impact on national courts’ cooperation	141
Section 6. – <i>The enforcement of the principles of effectiveness and of sincere cooperation</i>	144
A – <i>Rewe</i> -effectiveness and the principle of sincere cooperation	145
B – The requirements of the principle of sincere cooperation	149
C – Consequences of the principle of sincere cooperation on national courts’ duty to refer	150

D – Consequences of increased decentralisation of judicial review of Union measures in terms of training needs and/or obligations	162
Conclusion of chapter 2.	164
CHAPTER 3. – THE THEORETICAL AND PRACTICAL HURDLES TO THE OPERATION OF COMPLEMENTARITY BETWEEN DIRECT AND INDIRECT JUDICIAL REVIEW	165
Section 1. – <i>The lack of remedial complementarity between actions for annulment and pleas of illegality</i>	166
Section 2. – <i>Do remedies form part of substantive law or of procedural law?</i> . . .	169
Section 3. – <i>The relatively neutral effect of compulsory national enforcement of effective judicial protection under EU law on national procedural autonomy</i>	172
Section 4. – <i>The consequences of annulment vs the consequences of invalidity.</i> . .	186
Section 5. – <i>The remedial complementarity between actions for annulment and preliminary references on validity despite the TWD procedural estoppel.</i>	188
Conclusion of chapter 3.	195
CHAPTER 4. – JUDICIAL REVIEW OF UNION MEASURES TRIGGERED VIA NATIONAL DECLARATORY REMEDIES	197
Section 1. – <i>Summary presentation of declaratory remedies in common law jurisdictions</i>	199
Section 2. – <i>National declaratory remedies as a trigger for admissible preliminary references on validity absent any prior breach of a legal rule</i> . . .	204
Section 3. – <i>General overview about declaratory relief.</i>	207
Section 4. – <i>The existence of declaratory relief as a remedial obligation pursuant to the case-law of the Court of Justice of the EU</i>	209
A – The existence of declaratory remedies as a consequence of a fundamental right that the Member States and their organs have a duty to enforce	209
1. – EU law developments on the creation of national declaratory remedies	209
2. – Factortame: the first line of authorities on the creation of new national remedies for the enforcement of Union law.	211
3. – The Unibet and Inuit lines of authorities on the creation of new remedies for the enforcement of EU law before national courts.	215
B – Remarks about the case-law on the proper triggering of preliminary references.	222

Section 5. – <i>Declaratory remedies in comparative law</i>	223
A – Declaratory relief in English law	224
B – Declaratory relief in Ireland	228
C – Declaratory remedies in Scots law	230
D – Declaratory remedies in Cyprus	233
E – Declaratory relief in Israel	233
F – Declaratory judgments in American law	234
G – Declaratory judgments in German law	236
H – Declaratory remedies in French law	237
I – Declaratory remedies in other national jurisdictions within the EU	238
Conclusion of chapter 4.	240
CHAPTER 5. – DECLARATORY ADJUDICATION BY THE COURT OF JUSTICE OF THE EU ITSELF	
Section 1. – <i>The judgments in Imperial Tobacco, Omega air and Swedish Match</i>	242
Section 2. – <i>The judgments in British American Tobacco, IATA and ELFAA and Intertanko</i>	245
Section 3. – <i>Bosman and Österreichischer Gewerkschaftsbund</i>	250
Section 4. – <i>Gauweiler, Philip Morris Brands and American Express Company</i>	252
Section 5. – <i>Declaratory adjudication with actions for failure to fulfil obligations</i>	258
Section 6. – <i>Declaratory adjudication disconnected from both the need for a full-scope judicial review and the rules on jurisdiction or judgments in the form of opinions rather than actual dispute settlement (Kadi, Schrems II, General Court rulings, Wightman, Sharpston)</i>	259
Section 7. – <i>Declaratory adjudication potentially leading to non-justiciability and how to remedy it</i>	264
Section 8. – <i>Declaratory relief as subject-matter of disputes before the Court of Justice of the EU</i>	268
Conclusion of chapter 5.	271
CHAPTER 6. – THE POTENTIAL OF EXTERNAL CONTROL OF THE COMPLETENESS OF THE EU LAW SYSTEM OF LEGAL REMEDIES.	
Section 1. – <i>The right of access to justice under public international law</i>	275
Section 2. – <i>The likely outcome of a direct compatibility review in case of accession of the EU to the European Convention</i>	283

TABLE OF CONTENTS	381
Section 3. – <i>The future of the Bosphorus compatibility presumption</i>	294
Section 4. – <i>The effect of a failure to make a request for a preliminary ruling on the Bosphorus compatibility presumption</i>	299
Section 5. – <i>The findings of the Aarhus Convention Compliance Committee on the effectiveness of judicial protection offered by the EU law system of complementary remedies</i>	301
A – General presentation of Union law rules on access to environmental justice	302
B – EU Environmental law remedies before national courts	306
C – The first relevant findings against the EU by the Aarhus Convention Compliance Committee in ClientEarth	308
D – Functioning of the Aarhus Convention Compliance Committee	310
E – The reiteration, in Ökobüro, of the previous key findings in ClientEarth	313
Conclusion of chapter 6.	318
<i>General conclusion</i>	321
<i>Bibliography</i>	339
<i>Index of key notions and cases</i>	369