
DETAILED CONTENTS

<i>Foreword</i>	v
<i>About the Authors</i>	vii
<i>Abbreviations</i>	ix
<i>Outline Contents</i>	xi
<i>Table of Treaties, Conventions and EU Legislation</i>	xxix
Part 1. Enforcement of EU Law and Judicial Organisation of the EU	1
1.1. Introduction – Enforcement of EU Law and Judicial Avenues (<i>Luszcz</i>).....	3
1.1.1. Overview – Structure of the Book.....	3
1.1.2. Core Principles – How to Assert Rights Derived from Union Law?.....	4
1.1.2.1. Where EU Law is Breached by a Member State or a Private Party.....	4
1.1.2.2. Where Union Law is Breached by an EU Institution or Body.....	6
1.2. The Court of Justice of the European Union (<i>Luszcz</i>).....	8
1.2.1. The Institution and its Powers.....	8
1.2.1.1. Status and History.....	8
1.2.1.2. The Reform of the General Court and the Absorption of the Civil Service Tribunal.....	9
1.2.1.3. Division of Competences between the EU Courts.....	10
1.2.2. Structure of the Court of Justice of the European Union.....	15
1.2.2.1. The Court of Justice.....	15
(i) Composition.....	15
(ii) Structure and Organisation.....	17
1.2.2.2. The General Court.....	22
(i) Composition.....	22
(ii) Structure and Organisation.....	23
Part 2. Enforcement of EU Law against Member States and Private Parties	27
2.1. Infringement Actions (<i>Kristof</i>).....	29
2.1.1. Overview.....	29
2.1.2. Defendants.....	31
2.1.3. Applicants.....	34
2.1.4. The Subject Matter of Infringement Proceedings.....	35
2.1.4.1. What was Infringed?.....	35
2.1.4.2. Failure.....	37
2.1.4.3. Defences Invoked by Member States and the Court’s Receptiveness to them.....	39
2.1.5. Pre-litigation Phase.....	40
2.1.5.1. Difference between Proceedings Initiated by the Commission and those Initiated by a Member State.....	41

2.1.5.2. Administrative Stage	41
(i) Letter of Formal Notice.....	41
(ii) Reasoned Opinion	42
2.1.6. Time Limits.....	43
2.1.7. Litigation Phase.....	44
2.1.7.1. Formal and Substantive Requirements as to the Application.....	44
2.1.7.2. Connection with the Pre-litigation Phase	44
2.1.7.3. Evidence.....	46
2.1.8. Result of the Proceedings.....	47
2.1.8.1. Legal Force of the Judgment Declaring the Infringement	47
2.1.8.2. Limitation of Temporal Effects	47
2.1.8.3. State Liability.....	48
2.1.9. Sanctions	48
2.1.9.1. Article 260(2) TFEU	48
2.1.9.2. Article 260(3) TFEU	49
2.1.9.3. Decision to Impose a Lump Sum and a Penalty Payment (When ‘Or’ Means ‘And’).....	50
2.2. Preliminary Rulings on Interpretation (<i>Geulette</i>).....	52
2.2.1. Overview	52
2.2.2. Decision to Request a Preliminary Ruling.....	57
2.2.2.1. Discretion of the National Court to Refer.....	57
2.2.2.2. Obligation of Courts of Last Instance to Refer	61
2.2.2.3. Exceptions to the Duty to Refer.....	63
2.2.2.4. Consequences for not Complying with an Obligation to Refer	66
2.2.3. Jurisdiction of the Court of Justice – Subject Matter of the Question Referred.....	67
2.2.3.1. Interpretation of the Treaties	67
2.2.3.2. Interpretation of the Acts of Institutions, Bodies, Offices or Agencies of the Union.....	68
2.2.3.3. Acts not Falling within the Interpretative Jurisdiction of the Court of Justice	71
2.2.4. Admissibility of the Reference.....	75
2.2.4.1. Admissibility of the Reference – Features of the Referring Body	75
(i) The Notion of ‘Court or Tribunal’ for the Purposes of Article 267 TFEU	75
(ii) The Notion of Court or Tribunal ‘of a Member State’ for the Purposes of Article 267 TFEU	83
2.2.4.2. Admissibility of the Reference – Proceedings before the Referring Body	85
(i) A Question of Interpretation of EU Law must be Raised before the Referring Court.....	85
(ii) The Preliminary Ruling must be Necessary to Give Judgment.....	87
(iii) Purely Internal Situations	90
(iv) Inapplicability of EU Law <i>Rationae Temporis</i>	93
(v) Contrived Disputes.....	94
2.2.4.3. Admissibility of the Reference – Issues Related to the Form of the Order for Reference.....	96

2.2.5. The Preliminary Ruling and its Effects.....	99
2.2.5.1. Formulation and Reformulation of the Questions Referred.....	99
2.2.5.2. Effect – Binding Nature	101
2.2.5.3. Effect – Retroactive Effect	102
Part 3. Protection against Acts of the EU	107
3.1. Action for Annulment (<i>Luszczyk</i>).....	109
3.1.1. Overview	109
3.1.2. Reviewable Acts.....	110
3.1.2.1. Binding Act.....	112
(i) Notion of the Binding Act.....	112
(ii) Legitimate Legal Basis.....	112
(iii) Legal Effect.....	113
(iv) Substance Rather than Form is Examined	117
(v) Preparatory, Preliminary, Intermediary Acts	122
(vi) Confirmatory Acts.....	125
3.1.2.2. Illustrations – Reviewable and Non-reviewable Acts	127
(i) Informative or Interpretative Acts	127
(ii) Declaration of Intent.....	128
(iii) Internal Rules, Instructions and Guidelines	128
(iv) Refusal to Initiate Infringement Proceedings against Member States under Article 258 TFEU.....	129
(v) Decision to Initiate Court Proceedings	130
(vi) Decision to Conclude an International Agreement.....	130
(vii) OLAF Reports.....	130
3.1.2.3. Alternative Judicial Remedies against Acts not Amenable to Review.....	131
3.1.2.4. Existent Act	131
(i) Non-existent Acts.....	131
(ii) Withdrawn Acts and Replaced Acts	133
(iii) Expired Acts.....	134
3.1.3. Defendants	134
3.1.3.1. EU Institutions, Bodies, Offices and Agencies.....	134
3.1.3.2. Act Imputable to the Institution or Body	138
3.1.3.3. Member States as Defendants?	139
3.1.4. Applicants and Standing	140
3.1.4.1. Member States, Parliament, Council, Commission	140
3.1.4.2. Court of Auditors, ECB, Committee of the Regions.....	142
3.1.4.3. Individual Applicants – General Conditions of Admissibility Related to the Applicant.....	144
(i) Capacity to Bring Proceedings – Legal Personality	144
(ii) Legal Interest in Bringing Proceedings	145
3.1.4.4. Individual Applicants – Overview of Standing.....	154
3.1.4.5. Individual Applicants Challenging Acts Addressed to them – The First Variant	155

3.1.4.6.	Individual Applicants Challenging Acts not Addressed to them which are of Direct and Individual Concern – The Second Variant	156
	(i) General	156
	(ii) Direct Concern	157
	(iii) Individual Concern	165
3.1.4.7.	Individual Applicants Challenging Regulatory Acts not Entailing Implementing Measures – The Third Variant	175
	(i) General	175
	(ii) Regulatory Acts	177
	(iii) Not Entailing Implementing Measures	183
	(iv) Direct Concern and ‘Not Entailing Implementing Measures’	187
3.1.4.8.	The Standing of Associations	188
	(i) Standing Derived from that of Members	189
	(ii) Association’s Standing Based on an Interest of its Own	190
3.1.4.9.	The Standing of Trade Unions and Consortia	191
3.1.4.10.	Partial Interest to Act, Partial Standing, Partial Annulment	192
3.1.4.11.	Alternative Judicial Remedies in the Case of Lack of Standing	194
3.1.5.	Formal Requirements	195
3.1.6.	Time Limits	195
3.1.6.1.	Overview	195
3.1.6.2.	Publication	196
3.1.6.3.	Notification	199
3.1.6.4.	Becoming Aware of the Contested Act	200
3.1.6.5.	Particular Situations	201
3.1.6.6.	Not Bringing an Action for Annulment in Good Time Precludes the Use of Other Judicial Avenues	201
3.1.7.	Grounds for Review	202
3.1.7.1.	General	202
3.1.7.2.	Lack of Competence	203
	(i) Where the EU Lacks Competence	204
	(ii) Institution Arrogating the Power of Another Institution	205
3.1.7.3.	Infringement of an Essential Procedural Requirement	207
	(i) General Rules	207
	(ii) Insufficient Reasoning	208
	(iii) Rights of the Defence	213
	(iv) Other Essential Procedural Requirements	215
3.1.7.4.	Infringement of EU Law	216
	(i) The Treaties and the Charter of Fundamental Rights	217
	(ii) General Principles of EU Law	217
	(iii) International Agreements	221
	(iv) Secondary Legislation	224
	(v) Guidelines and Notices	225
	(vi) Administrative Practice	226
	(vii) Reference to Judgments Handed Down after the Adoption of the Contested Decision	226
	(viii) Errors of Fact or Assessment	226
	(ix) National Law	227

3.1.7.5. Misuse of Powers	227
3.1.7.6. Scope of the Review.....	229
(i) Main Principles	229
(ii) The Role of Pleadings in the Review	230
(iii) Full Review and Marginal Review	231
(iv) Antitrust: Review of Legality and Full Jurisdiction.....	234
(v) Does the Illegality Justify Annulment?	236
3.1.7.7. Severability and Partial Annulment.....	237
3.1.8. Consequences of Annulment	237
3.1.8.1. Temporal Aspects	238
3.1.8.2. Erga Omnes Effect, but the Act is Often Annulled Only in Respect of the Successful Applicant.....	239
3.1.8.3. Duties of the Institution or Body.....	240
3.1.8.4. Res Judicata	244
3.2. Action for Failure to Act (<i>Bottkä</i>)	246
3.2.1. Overview	246
3.2.2. Pre-litigation Phase – Invitation to Act.....	248
3.2.3. Time Limit to Bring the Court Action	250
3.2.4. Failure to Act	251
3.2.4.1. Duty to Act	251
3.2.4.2. Definition of a Position.....	253
3.2.4.3. Link with Legal Effects.....	255
3.2.4.4. Practice.....	257
3.2.5. Defendants	258
3.2.6. Applicants and Standing	259
3.2.6.1. Privileged Applicants	259
3.2.6.2. Non-privileged Applicants	260
3.2.7. Formal Requirements and Procedural Aspects.....	262
3.2.8. Grounds for Review	262
3.2.9. Result of the Proceedings.....	263
3.3. Action for Damages (<i>Farley</i>).....	265
3.3.1. Overview	265
3.3.2. The Non-contractual Liability of the EU	266
3.3.2.1. Action for Damages only Concerns Non-contractual Liability	266
(i) Contractual Liability of the EU.....	267
(ii) Non-contractual Liability of the EU.....	268
3.3.2.2. Concurrent Liability where EU Acts are Implemented by National Authorities.....	268
3.3.2.3. Actions for Damages are an Independent Form of Action.....	270
3.3.3. Defendants	271
3.3.4. Applicants.....	272
3.3.5. Formal Requirements	273
3.3.6. Limitation Period	273
3.3.7. Substantive Requirements for Liability	274
3.3.7.1. Unlawful Act or Conduct	275
(i) General.....	275
(ii) Breach of a Rule of Union Law	276
(iii) Rules Conferring Rights on Individuals	276

(iv)	Sufficiently Serious Breach – Notion	278
(v)	Sufficiently Serious Breach – Manifest and Grave Disregard for the Limits of Discretion.....	278
(vi)	Sufficiently Serious Breach – Other Elements Affecting the Seriousness of the Breach	280
(vii)	Liability for Lawful Acts?.....	282
(viii)	The Justification for High Thresholds to the Award of Damages	283
3.3.7.2.	Causation	284
3.3.7.3.	Existence of Damage.....	285
3.3.8.	Compensation for Damage.....	287
3.3.8.1.	General	287
3.3.8.2.	Quantifying the Damage.....	287
3.4.	Staff Cases (<i>Bottka</i>)	289
3.4.1.	Overview	289
3.4.2.	Legal Basis for Bringing Actions	290
3.4.3.	Parties	292
3.4.4.	Pre-litigation Phase.....	294
3.4.5.	Time Limits and Formal Requirements.....	296
3.4.6.	Subject Matter of Staff Litigation	297
3.4.6.1.	General	297
3.4.6.2.	Claim for Annulment	297
(i)	Act with Adverse Effect	298
(ii)	Adversely Affecting the Applicant.....	299
(iii)	Grounds for Review	301
3.4.6.3.	Claim for Damages	301
3.4.7.	The Rule of Correspondence	302
3.4.8.	Result of the Proceedings.....	303
3.4.8.1.	Claim for Annulment	303
3.4.8.2.	Claim for Damages	304
3.5.	Intellectual Property Cases (<i>Luszcz</i>)	305
3.5.1.	Overview	305
3.5.2.	Legal Basis for Bringing Actions.....	308
3.5.3.	Parties	309
3.5.3.1.	The Defendant Offices.....	309
3.5.3.2.	Applicants.....	310
3.5.3.3.	The Other Party to the Proceedings before the Board of Appeal....	311
3.5.4.	Pre-litigation Phase.....	313
3.5.5.	Time Limits and Formal Requirements.....	315
3.5.6.	Subject Matter of Intellectual Property Litigation	316
3.5.6.1.	Annulment or Alteration of the Contested Decision.....	316
3.5.6.2.	Inadmissible Heads of Claim.....	317
3.5.6.3.	Costs	318
3.5.6.4.	Cross-claims.....	318
3.5.7.	Connection with the Pre-litigation Phase.....	319
3.5.8.	Grounds for Review.....	320
3.5.8.1.	The Scope of Review	320
3.5.8.2.	The Alteration Power.....	321
3.5.9.	Result of the Proceedings.....	324

3.6. Appeals (<i>Bottka</i>).....	326
3.6.1. Overview.....	326
3.6.2. Appealable Decisions.....	329
3.6.3. Parties.....	332
3.6.3.1. Appellants.....	332
(i) Categories of Appellants.....	332
(ii) Conditions of Admissibility for Non-Privileged Appellants.....	334
3.6.3.2. Respondents.....	335
3.6.3.3. Interveners.....	336
3.6.4. Formal Requirements and Procedural Aspects.....	336
3.6.5. Time Limits.....	337
3.6.6. Grounds for Review.....	337
3.6.6.1. General.....	337
3.6.6.2. Identifying an Error of Law.....	338
3.6.6.3. Fact-Related Issues.....	341
(i) General.....	341
(ii) Distortion of Evidence.....	342
3.6.7. Result of the Proceedings.....	344
3.6.8. Cross-Appeals.....	345
3.7. Plea of Illegality (<i>Luszczyk</i>).....	347
3.7.1. Overview.....	347
3.7.2. Acts against Which a Plea of Illegality can be Raised.....	349
3.7.2.1. Acts of General Application.....	349
3.7.2.2. Link with the Subject Matter of the Case.....	350
3.7.3. Parties.....	352
3.7.3.1. Natural or Legal Persons.....	352
3.7.3.2. Member States.....	354
3.7.3.3. EU Institutions.....	355
3.7.4. Formal Requirements.....	356
3.7.5. No Time Limit.....	358
3.7.6. Grounds for Review.....	359
3.7.7. Effects of Inapplicability.....	361
3.8. Preliminary Rulings on Validity of EU Measures (<i>Geulette</i>).....	363
3.8.1. Overview.....	363
3.8.2. Decision to Request a Preliminary Ruling on Validity.....	364
3.8.3. Subject Matter of the Question Referred.....	366
3.8.4. Assessment of Validity.....	367
3.8.5. Relationship with Article 263 TFEU.....	369
3.8.6. Consequences of the Ruling.....	372
3.8.6.1. Effects for National Authorities and Courts.....	372
3.8.6.2. Effects for EU Institutions and Bodies.....	374
3.9. Opinions on International Agreements to be Concluded by the EU (<i>Bottka</i>).....	376
3.9.1. Overview.....	376
3.9.2. Parties.....	379
3.9.3. Subject Matter of the Opinion Proceedings.....	379
3.9.4. Time Limits and Formal Requirements.....	380
3.9.5. Assessment of Compatibility.....	381
3.9.6. Consequences of the Opinion.....	382

Part 4. Procedure before the EU Courts	385
4.1. Common Rules on Procedure (<i>Luszcz</i>).....	387
4.1.1. Overview.....	387
4.1.2. The Rules Governing Procedure.....	387
4.1.2.1. The Statute.....	388
4.1.2.2. The Rules of Procedure of the Court of Justice.....	388
4.1.2.3. The Rules of Procedure of the General Court of 2015.....	389
4.1.2.4. The Practice Directions and the Practice Rules.....	391
4.1.2.5. The e-Curia Decisions.....	392
4.1.3. Types of Proceedings.....	392
4.1.4. Language of the Case.....	396
4.1.4.1. Determining the Language of the Case.....	396
4.1.4.2. Use of the Language of the Case in the Proceedings.....	398
4.1.4.3. Exceptions and Derogations from the Exclusive Use of the Language of the Case.....	400
(i) States.....	400
(ii) Requests for the Authorisation to Use Another Language.....	400
4.1.5. Representation of the Parties.....	401
4.1.5.1. The Obligation to be Represented.....	401
(i) Direct Actions.....	401
(ii) Preliminary Rulings.....	404
4.1.5.2. Rights and Obligations of Representatives.....	404
4.1.6. Lodging, Service and Removal of Procedural Documents.....	405
4.1.6.1. Lodging Documents.....	405
(i) e-Curia.....	406
(ii) Lodging Documents with the Court of Justice by Post or in Person.....	406
4.1.6.2. Service of Documents.....	408
(i) e-Curia.....	408
(ii) Post, Fax, Personal Delivery.....	408
4.1.6.3. Removal from the File.....	408
4.1.7. Time Limits.....	409
4.1.7.1. Types of Time Limits.....	409
4.1.7.2. Calculation of Time Limits.....	410
(i) Step One: Starting Day.....	411
(ii) Step Two: Duration of the Period.....	412
(iii) Step Three: Extension on Account of Distance.....	412
(iv) Step Four: The Day on Which the Time Limit Expires.....	412
(v) Step Five: In the Case of Forward Copies, the Original has to Arrive at the Registry within 10 Days.....	413
4.1.7.3. Requesting the Extension of Time Limits.....	414
4.1.7.4. Documents Filed Out of Time.....	414
4.1.7.5. Justifications – Unforeseeable Circumstances and Force Majeure.....	414
4.1.7.6. Procedure Regarding Actions Filed Out of Time.....	416
4.2. Procedure in Direct Actions (<i>Luszcz</i>).....	418
4.2.1. Overview.....	418

4.2.2. Application.....	420
4.2.2.1. Formal Requirements.....	420
(i) Identification of the Applicant	421
(ii) Identification of the Defendant.....	422
(iii) Identification of the Subject Matter of the Case, Forms of Order Sought.....	424
(iv) Pleas in Law and Summary of the Pleas in Law.....	425
(v) Information Relating to Service.....	426
(vi) Length of the Application	426
(vii) Mandatory Annexes	427
(viii) Other Formal Requirements	428
4.2.2.2. Clear and Precise Definition of the Subject Matter of the Application.....	428
(i) Infringement Actions	428
(ii) Where Annulment is Sought.....	429
(iii) Where Compensation of Damages is Sought.....	429
(iv) Actions for Failure to Act.....	431
4.2.2.3. Forms of Order Sought (Heads of Claim)	431
(i) Notion and Types of Forms of Order Sought.....	431
(ii) The Forms of Order Sought must be Clear and Precise.....	435
(iii) No New Head of Claim After the Application	435
(iv) Adaptation of the Application When the Contested Act was Replaced or Amended	436
(v) Request to Annul the Contested Act in Part or Only in Respect of the Applicant.....	438
(vi) Inadmissible Forms of Order Sought	439
(vii) Costs	439
4.2.2.4. Pleas in Law and Arguments	440
(i) General	440
(ii) The Pleas in Law must be Clear and Precise	442
(iii) How to Construct Pleas in Law?.....	443
4.2.2.5. Submitting, Offering, Requesting Evidence	448
4.2.2.6. Actions by the EU Courts after Receiving the Application	449
(i) Examination of the Application by the Registry.....	449
(ii) Service of the Application on the Defendant	449
(iii) <i>Publishing the Notice of the Application</i> <i>in the Official Journal</i>	449
(iv) Designation of the Judge-Rapporteur	449
4.2.3. Defence.....	450
4.2.3.1. Formal Requirements.....	450
4.2.3.2. Substantive Requirements.....	452
4.2.3.3. Forms of Order Sought	452
4.2.3.4. Pleas in Law and Arguments	453
4.2.3.5. Actions by the EU Courts after Receiving the Defence	454
4.2.4. Reply	454
4.2.4.1. General	454

4.2.4.2. New Pleas in Law in the Reply or Later	456
(i) New Matters of Fact	457
(ii) New Matters of Law	458
(iii) Expounding Pleas in Law or Expressing them in Different Terms	458
(iv) New Pleas May be Raised if they are a Matter of Public Policy	460
4.2.4.3. New Evidence in the Reply or Later	461
4.2.4.4. Actions by the EU Courts after Receiving the Reply	463
4.2.5. Rejoinder	463
4.2.5.1. General	463
4.2.5.2. New Pleas in Law and New Evidence in the Rejoinder	463
4.2.5.3. Actions Taken by the EU Courts upon Receiving the Rejoinder	464
4.2.6. Preliminary Report	464
4.2.6.1. Timing	465
4.2.6.2. Content	465
4.2.6.3. The Report for the Hearing	466
4.2.6.4. Actions by the EU Courts	467
4.2.7. Measures of Organisation of Procedure and of Inquiry	467
4.2.7.1. Common Rules	467
4.2.7.2. Measures of Organisation of Procedure	470
4.2.7.3. Measures of Inquiry	472
(i) Personal Appearance of the Parties	473
(ii) Request for Information or Materials	473
(iii) Request for Documents to Which Access has been Denied by an Institution	476
(iv) Oral Testimony by Witnesses	477
(v) Expert's Report	477
4.2.7.4. Handling Incidents that May Occur at the Stage of Responses to Written Questions and Requests for Materials	478
(i) Unsolicited Documents	478
(ii) New Pleas in Law	479
4.2.8. Hearing	479
4.2.8.1. Overview	479
4.2.8.2. Is There a Hearing?	481
(i) The Court of Justice	481
(ii) The General Court	482
4.2.8.3. Preparation for the Hearing	483
4.2.8.4. Course of the Hearing	484
(i) The Oral Argument (the Oral Pleading Proper)	486
(ii) Questions by the Court	488
(iii) Replies	489
4.2.8.5. Actions Taken by the EU Courts after the Hearing	489
(i) General	489
(ii) Minutes and Recording of the Hearing	490
(iii) Keeping the Oral Procedure Open after the Hearing	490
(iv) Reopening the Oral Part of the Procedure	491
4.2.9. Opinion of the Advocate General	492

4.2.10. Deliberations	493
4.2.11. Judgments and Orders Ending the Case.....	493
4.2.11.1. Judgment or Order?.....	493
(i) Judgments on the Substance of the Case	493
(ii) Final Orders of the General Court on the Substance of the Case	494
(iii) Final Orders without Decision on the Substance of the Case.....	495
(iv) Inadmissibility Stated in a Judgment.....	495
4.2.11.2. Closure of the Case.....	496
4.3. Procedure in Intellectual Property Cases (<i>Luszcz</i>)	498
4.3.1. Overview.....	498
4.3.2. General Rules	498
4.3.3. Written Part of the Procedure	500
4.3.3.1. Application	500
(i) Formal Requirements.....	500
(ii) Clear and Precise Definition of the Subject Matter of the Action	501
(iii) Service of the Application and Transfer of the Case File.....	502
4.3.3.2. Response	502
4.3.3.3. Cross-claims	504
4.3.3.4. Actions by the General Court	505
4.3.4. Oral Part of the Procedure.....	505
4.3.5. Closure of the Case.....	506
4.4. Procedure in Appeals (<i>Botka</i>)	507
4.4.1. Overview.....	507
4.4.2. Considerations on Whether and How to Appeal	508
4.4.3. Written Part of the Procedure	511
4.4.3.1. The Appeal.....	511
(i) Formal Requirements.....	511
(ii) Clear and Precise Definition of the Subject Matter of the Appeal.....	513
(iii) Actions by the Court of Justice upon Receiving the Appeal	514
4.4.3.2. Response and Possible Cross-Appeal.....	515
4.4.3.3. Reply and Rejoinder	516
4.4.3.4. The Preliminary Report and the Assignment of the Case.....	517
4.4.3.5. Measures of Organisation of Procedure and of Inquiry	518
4.4.4. Oral Part of the Procedure.....	518
4.4.5. Closure of the Case.....	518
4.4.5.1. Closure of the Case by a Judgment.....	518
4.4.5.2. Closure of the Case by a Reasoned Order	519
(i) Final Orders on the Substance of the Case.....	519
(ii) Final Orders without Decision on the Substance of the Case.....	519
4.4.6. Procedure in Cases Referred Back to the General Court	520
4.5. Procedure in Preliminary Rulings (<i>Geulette</i>)	523
4.5.1. Overview.....	523
4.5.2. Lodging the Request for a Preliminary Ruling	524

4.5.3. Registration, Translation and Service of the Order for Reference.....	526
4.5.4. Participation in Preliminary Ruling Proceedings.....	527
4.5.5. Written Part of the Procedure	529
4.5.5.1. Written Observations.....	529
4.5.5.2. The Preliminary Report	530
4.5.5.3. Measures of Organization of Procedure and Measures of Inquiry	530
4.5.6. Oral Part of the Procedure.....	531
4.5.7. Ruling of the Court of Justice	531
4.5.7.1. Closure of the Case by Judgment	531
4.5.7.2. Closure of the Case by Reasoned Order in a Simplified Procedure	532
4.5.8. Expedited Procedure, Urgent Procedure, Priority Treatment.....	532
4.5.8.1. Expedited Preliminary Ruling Procedure	532
4.5.8.2. Urgent Preliminary Ruling Procedure	535
4.5.8.3. Priority Treatment	536
4.6. Procedure in Opinions on International Agreements to be Concluded by the EU (<i>Bottka</i>).....	537
4.6.1. Overview	537
4.6.2. General Rules.....	537
4.6.3. Written Part of the Procedure	538
4.6.4. Oral Part of the Procedure.....	539
4.6.5. The Opinion Delivered.....	539
Part 5. Incidental and Ancillary Procedural Issues.....	541
5.1. Evidence and Confidential Information (<i>Luszcz</i>)	543
5.1.1. Overview	543
5.1.2. Access to Documents Held by EU Institutions or Bodies	543
5.1.2.1. Access to Documents in the Administrative Procedure.....	544
(i) Rules Governing Particular Procedures	544
(ii) General Principles – The Rights of the Defence and the Right to be Heard	545
5.1.2.2. Public Access to Documents under Regulation 1049/2001 or its Equivalents	547
(i) General	547
(ii) Main Features of Regulation 1049/2001.....	548
(iii) Regulation 1049/2001 and Litigation before the EU Courts	550
5.1.2.3. National Courts Requesting EU Documents.....	552
5.1.2.4. Obtaining Documents in the Procedure before the General Court.....	555
(i) Legal Basis	555
(ii) Applying for Access to Documents.....	556
(iii) Outcome of the Application for Access to Documents.....	561
5.1.3. Treatment of Confidential and Sensitive Evidence by the General Court	562
5.1.3.1. Treatment of Confidential Evidence under Article 103 of the GC RoP.....	564
5.1.3.2. Treatment of Sensitive Evidence under Article 105 of the GC RoP	566

5.1.4. Anonymity and Confidential Treatment of Information vis-à-vis the Public.....	569
5.2. Interim Measures (<i>Terrien</i>).....	571
5.2.1. Overview.....	571
5.2.2. The Parties to the Interim Relief Proceedings.....	573
5.2.2.1. Applicants.....	573
5.2.2.2. Defendants.....	574
5.2.2.3. Third Parties to the Main Proceedings.....	574
5.2.2.4. Interveners.....	575
5.2.3. Time Limits and Formal Requirements.....	576
5.2.4. Procedure.....	578
5.2.4.1. Competence.....	578
5.2.4.2. Ancillary Nature of the Interim Relief Procedure and Admissibility.....	578
5.2.4.3. Interim Measures Adopted <i>Inaudita Altera Parte</i>	580
5.2.4.4. Observations by the Parties.....	582
5.2.4.5. Standard of Proof.....	584
5.2.5. Substantive Requirements.....	585
5.2.5.1. <i>Fumus Boni Juris</i>	586
5.2.5.2. Urgency.....	590
(i) General Characteristics of the Damage.....	590
(ii) Serious Harm.....	591
(iii) Irreparable Harm.....	593
5.2.5.3. Balancing Interests.....	595
5.2.6. The Order Closing the Interim Proceedings.....	596
5.2.6.1. Main Features of the Order Closing the Interim Proceedings.....	596
5.2.6.2. Effect of a Closing Order Rejecting the Application for Interim Relief.....	597
5.2.6.3. Effect of a Closing Order Granting Interim Relief.....	598
5.2.6.4. Costs.....	600
5.2.7. Appeal.....	600
5.2.7.1. Appealing the Interim Relief Order.....	601
(i) Appealable Interim Measures Orders.....	601
(ii) Appeal against an Order of the General Court Closing the Interim Proceedings.....	601
5.2.7.2. Requesting Interim Measures within the Appeal Procedure.....	604
(i) General.....	604
(ii) Requesting Interim Relief in Appeals Where Interim Relief was Obtained at First Instance.....	605
(iii) Requesting Interim Relief in Appeals Where no Interim Relief was Sought or Obtained at First Instance.....	606
5.3. Expedition (<i>Terrien</i>).....	609
5.3.1. Overview.....	609
5.3.2. Expedited Procedure.....	610
5.3.2.1. General.....	610
5.3.2.2. Formal Requirements and Procedural Aspects.....	611
(i) The Request for Expedited Procedure.....	611
(ii) Procedural Implications for the other Main Party.....	613

5.3.2.3.	Substantive Requirements as to Granting the Request for Expedited Procedure.....	614
	(i) Court of Justice	614
	(ii) General Court	617
5.3.2.4.	The Decision on Expedited Procedure	617
	(i) Competence to take the Decision.....	617
	(ii) Expedited Procedure Applied by the EU Courts of their Own Motion	618
	(iii) Reasoning	618
5.3.2.5.	Effects of Expedited Procedure.....	618
5.3.3.	Priority Treatment.....	621
5.4.	Interventions (<i>Luszcz</i>)	625
5.4.1.	Overview	625
5.4.2.	Cases in Which Intervention is Possible	626
5.4.3.	Who Can Intervene?.....	628
5.4.3.1.	Privileged Interveners.....	628
5.4.3.2.	Non-privileged Applicants to Intervene.....	628
	(i) Legal personality not required	629
	(ii) Direct and existing interest in the result of the case	629
	(iii) Associations and Non-Governmental Organisations.....	632
5.4.3.3.	Interveners in Intellectual Property Cases	634
5.4.3.4.	Interveners at First Instance become Respondents in Appeals.....	634
5.4.4.	Time Limits, Formal Requirements, Procedure.....	635
5.4.4.1.	Time Limits	635
5.4.4.2.	Content and Formal Requirements for Applications to Intervene	636
5.4.4.3.	Procedure for Granting Leave to Intervene	637
5.4.5.	Confidentiality Issues	637
5.4.5.1.	Confidentiality Issues before the General Court.....	638
5.4.5.2.	Confidentiality Issues before the Court of Justice.....	641
5.4.6.	Rights of the Intervener.....	642
5.4.6.1.	Procedural Rights: Receiving Procedural Documents, Submission of Statements.....	643
5.4.6.2.	Cannot Alter or Distort the Framework of the Dispute.....	644
	(i) Admissibility and No Need to Adjudicate.....	645
	(ii) No New Pleas in Law and Limited Right to Raise Substantive Arguments	646
5.4.6.3.	Restricted Right to Appeal	648
5.4.6.4.	Extended Rights in Intellectual Property Cases	648
5.4.7.	Costs in Interventions	649
5.4.7.1.	Decision on Costs in the Order on Intervention	649
5.4.7.2.	Intervener's Withdrawal	649
5.4.7.3.	Order on Costs in the Final Judgment or Order Closing the Case ...	649
	(i) Allocation of Costs	649
	(ii) Taxation of Costs	651

5.5. Joinder of Cases (<i>Bottka</i>).....	652
5.6. Stay of Proceedings (<i>Bottka</i>).....	655
5.7. Inadmissibility and No Need to Adjudicate (<i>Bottka</i>)	658
5.7.1. Inadmissibility.....	658
5.7.1.1. Inadmissibility of Direct Actions, Intellectual Property Cases, Appeals.....	658
(i) Inadmissibility Raised by the Courts of their Own Motion.....	659
(ii) Inadmissibility Raised by a Party	661
(iii) Typical Grounds for Finding Inadmissibility	662
5.7.1.2. Inadmissibility of Preliminary References.....	664
5.7.2. No Need to Adjudicate	664
5.8. Discontinuance, Withdrawal, Settlement (<i>Bottka</i>).....	667
5.9. Judgment by Default (<i>Bottka</i>).....	669
5.10. Costs and Legal Aid (<i>Farley</i>).....	671
5.10.1. Overview	671
5.10.2. Cost of Court Proceedings.....	672
5.10.3. Allocation of Costs in Direct Actions and in Intellectual Property Cases.....	673
5.10.3.1. Allocation of Costs in Final Judgments or Orders Deciding the Merits of the Case.....	673
(i) General Rule: The Unsuccessful Party Pays	673
(ii) Exceptions	675
(iii) Unreasonable or Vexatious Litigation.....	676
(iv) Interventions	678
5.10.3.2. Allocation of Costs in Orders Not Deciding the Merits of the Case.....	679
(i) Inadmissibility of the Action.....	679
(ii) No Need to Adjudicate	680
(iii) Discontinuance and Withdrawal.....	681
(iv) Amicable Settlement	682
(v) Interim Measures.....	682
(vi) Applications to Intervene	683
5.10.4. Allocation of Costs in Appeals.....	684
5.10.5. Disputes Concerning the Costs to Be Recovered	685
5.10.5.1. Procedure.....	686
(i) Time Limits	686
(ii) Structure of Proceedings	687
5.10.5.2. Additional Costs for the Taxation Procedure and Interest.....	688
5.10.6. Recoverable Costs	689
5.10.6.1. Sums Payable to Witnesses and Experts	689
5.10.6.2. Expenses Necessarily Incurred for the Purposes of Proceedings	690
(i) Agents, Advisers and Lawyers	691
(ii) Travel and Subsistence Expenses.....	694
(iii) Miscellaneous Expenses	695

5.10.7. Costs in Preliminary Rulings.....	696
5.10.8. Legal Aid	696
5.10.8.1. Substantive Rules Applicable to the Granting of Legal Aid.....	697
5.10.8.2. Procedure Relating to Applications for Legal Aid.....	698
5.11. Applications Relating to Judgments and Orders (<i>Bottka</i>)	700
5.12. Requirements as to Enforcement (<i>Bottka</i>).....	703
<i>Index</i>	705