

EU PROCEDURAL LAW

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GENERAL INTRODUCTION

A. Overview

This book generally concerns the system of judicial protection in the European Union. On the one hand, at the European level, this concerns the role and the competences of the institution of the Court of Justice of the European Union (composed of the Court of Justice, the General Court, and the Civil Service Tribunal, which are often referred to as the ‘Union courts’ or the ‘Union judicature’ *sensu stricto*) and the various types of acts that can be brought before it by individuals, Member States, and Union institutions. On the other hand, this also includes the examination of the relationship between the national and the Union judicial and procedural frameworks more generally in terms of the relationship between the Court of Justice and the national courts through the preliminary ruling procedure, by which the national courts refer to the Court questions about the interpretation and validity of Union law, as well as through the dynamic interplay between the principle of national procedural autonomy and the Union framing principles of equivalence and effectiveness. **1.01**

By way of general introduction, this chapter highlights several crucial themes underlying the system of judicial protection in the European Union and the two-fold task of the Union judicature within this system.

B. The complete and the coherent system of judicial protection in the European Union

The European Union is unique in the sense that it has a highly developed complete and coherent system of judicial protection, such that the rights derived from Union law can be enforced in court, as opposed to international organizations, whereby enforceability is often far less certain. The ‘complete’ system of judicial protection means that sufficient legal remedies and procedures exist before the Union courts and the national courts to enforce Union law rights and to ensure the judicial review of Union acts, whereas the ‘coherent’ system of judicial protection means that there exist both direct and indirect routes by which to enforce rights based on Union law and to review the legality of Union acts, each of which implicates important, albeit differing, roles for the Union courts and the national courts as laid down by the Treaties.¹ **1.02**

¹ K. Lenaerts, ‘The Rule of Law and the Coherence of the Judicial System of the European Union’ (2007), C.M.L. Rev. 1625–59. See also M. Jaeger, ‘Les voies de recours sont-elles des vases communicants?’, in G.C. Rodriguez Iglesias, O. Due, R. Schintgen, and C. Elsen (eds), *Mélanges en hommage à Fernand Schockweiler* (Baden Baden, Nomos, 1999), 233–53.

C. Union based on the rule of law

- 1.03** At the heart of the system of judicial protection in the European Union is the core principle of upholding the rule of law upon which the Union is founded.² The preamble to the Charter of Fundamental Rights of the European Union³ states that the Union is based in particular on the ‘principle of the rule of law’. The substance of that principle is fleshed out in the first paragraph of Art. 47 of the Charter, which provides that ‘Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal...’.

As proclaimed by the Court in its landmark ruling in *Les Verts*, the then European (Economic) Community, now the European Union, is ‘based on the rule of law, inasmuch as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter, the Treaty’.⁴ As further underscored in that judgment, the Treaties set out to establish a complete system of legal remedies, whereby any act or failure to act on the part of an institution or a Member State in violation of Union law can be subject to review by the Union judicature,⁵ which must ensure that in the interpretation and application of the Treaties the law is observed.⁶

As such, the stakes are enormous in the sense that the system of judicial protection in the European Union must live up to its promise that individuals, Member States, and Union institutions are all guaranteed a route by which to enforce Union law rights. This is above all guided by the Treaties, which constitute the legal basis for the Union legal order as a whole and set down the framework for judicial protection, which combines both the judicial routes before the Union courts on the European level and before the national courts, which hold a crucial place in the Union system of judicial protection. In this way,

² Art. 2 TEU. On the rule of law in the EU, see G. De Baere, ‘European Integration and the Rule of Law in Foreign Policy’, in J. Dickson and P. Eleftheriadis (eds), *Philosophical Foundations of European Union Law* (Oxford, Oxford University Press, 2012), 354–383.

³ [2000] O.J. C364/1, which was proclaimed at Nice on 7 December 2000 by the European Parliament, the Council, and the Commission and adapted at Strasbourg on 12 December 2007 ([2007] O.J. C303/1). By virtue of the first para. of Art. 6(1) TEU, the Charter has the same legal value as the Treaties.

⁴ ECJ, Case 294/83 *Les Verts v European Parliament* [1986] E.C.R. 1339, para. 23. See further ECJ (order of 13 July 1990), Case C-2/88 Imm. *Zwartveld and Others* [1990] E.C.R. 3365, para. 16; ECJ, Opinion 1/91 *Draft Agreement between the Community, on the one hand, and the countries of the European Free Trade Association, on the other, relating to the creation of the European Economic Area* [1991] E.C.R. I-6079, para. 21; ECJ, Case C-314/91 *Weber v European Parliament* [1993] E.C.R. I-1093, para. 8; ECJ, Case C-15/00 *Commission v EIB* [2003] E.C.R. I-7281, para. 75; ECJ, Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakat International Foundation v Council and Commission* [2008] E.C.R. I-6351, para. 81; ECJ, Case C-550/09 *E and F* [2010] E.C.R. I-6213, para. 44; CFI (order of 17 January 2002), Case T-236/00 *Stauner and Others v European Parliament and Commission* [2002] E.C.R. II-135, para. 50; CFI, Case T-231/99 *Joyson v Commission* [2002] E.C.R. II-2085, para. 32; CFI, Case T-299/05 *Shanghai Excell M&E Enterprise and Shanghai Adepteck Precision v Council* [2009] E.C.R. II-565, para. 57.

⁵ See further K. Lenaerts, ‘Case 294/83 *Parti écologiste “Les Verts” v European Parliament*. The Basic Constitutional Charter of a Community Based on the Rule of Law’, in M. Poiares Maduro and L. Azoulai (eds), *The Past and Future of EU Law: The Classics of EU Law Revisited on the 50th Anniversary of the Rome Treaty* (Oxford and Portland Oregon, Hart Publishing, 2010), 295–315.

⁶ Art. 19(1), first para., TEU.

judicial protection in the European Union hinges on the interlocking system of jurisdiction of the Union courts and the national courts.⁷

D. Role of the national courts

Following on from this discussion, the national courts are in effect the ‘lynchpin’ of the judicial system of the European Union. They can be considered the normal Union courts in the sense that it is generally before such courts that all sorts of litigants may bring cases involving issues of Union law.⁸ **1.04**

By contrast, the ‘organic’ Union courts at the European level—the Court of Justice, the General Court, and the Civil Service Tribunal—are bound by the principle of conferral, whereby they exercise only the jurisdiction conferred upon them under the Treaties.⁹ In other words, the Union courts do not have inherent jurisdiction just because matters of Union law are involved in a particular case. Instead, there must be a specific legal basis set down in the Treaties which delineates the extent of the Union courts’ power to adjudicate a particular case or cause of action. Consequently, everything falling outside of what the Treaties confer upon the Union courts falls within the residual competences of the national courts.¹⁰ That is to say, cases between natural and legal persons, on the one hand, and cases between natural and legal persons and national authorities, on the other, are brought before the national courts; in effect, the only occasion in which a private party may bring a case before the Union courts is under circumstances where the action is lodged against a ‘Union defendant’, i.e. an institution, office, body, or agency of the Union.

This serves to underscore the importance of the preliminary ruling procedure, which constitutes a mechanism by which the Court of Justice and the national courts work together so as to enable the national courts to carry out their function in deciding the various cases before them involving matters of Union law, and at the same time, allowing the Court of Justice to ensure the uniform application of Union law such that the same rules are applied in the Member States.

E. Challenges underlying the system of judicial protection of the European Union

Notwithstanding the Court of Justice’s seminal proclamation in *Les Verts*, there are certain aspects of the institutional framework of the European Union that present challenges to the **1.05**

⁷ See K. Lenaerts, ‘Interlocking Legal Orders in the European Union and Comparative Law’ (2003) I.C.L.Q. 873–906; K. Lenaerts, ‘La systématique des voies de recours dans l’ordre juridique de l’Union européenne’, in A. De Walsche (ed.), *Mélanges en hommage à Georges Vandersanden: promenades au sein du droit européen* (Brussels, Bruylant 2008), 257–82. For an analysis in relation to the Belgian legal order, see J. T. Nowak, ‘Wettigheidstoetsing van handelingen van de instellingen van de Europese Unie: complementaire rechtsbescherming in een meerlagige context’ (2013) T.B.P. 195–211.

⁸ ECJ (8 March 2011), Opinion 1/09 *Draft Agreement Creating a Unified Patent Litigation System (European and Community Patents Court)* [2011] E.C.R. I-1137, para. 80. See further para. 2.02.

⁹ Art. 13(2) TEU; see also Art. 5(2) TEU and ECJ, Case C-196/09 *Miles and Others* [2011] E.C.R. I-5105, para. 45.

¹⁰ See Art. 274 TFEU.

system of judicial protection in the European Union in terms of ensuring that it is both complete and coherent. This encompasses examination of the apparent gaps in the former Treaty framework comprising the EU and EC Treaties, which provides the setting for the evaluation of the extent to which such gaps have been addressed through the changes brought by the Lisbon Treaty and other institutional developments heralded by the Court of Justice of the European Union.¹¹

F. Former Treaty framework and the pillar structure

- 1.06** The original version of Art. L of the EU Treaty limited the exercise of powers by the Court of Justice of the European Communities as it was then called, to the EC Treaty, the ECSC Treaty, the EAEC Treaty, the former third paragraph of Art. K.3(2)(c) of the EU Treaty, and former Arts L¹² to S of that Treaty. Accordingly, the jurisdiction of the Court of Justice covered Community law, certain agreements concluded by the Member States outside Community law (see Ch. 21), and the final provisions of the EU Treaty. The Amsterdam Treaty introduced a new Art. 46 into the EU Treaty (which was further amended by the Nice Treaty), replacing the former Art. L and considerably extending the jurisdiction of the Court of Justice in the field of Police and Judicial Cooperation in Criminal Matters,¹³ expressly empowering the Court of Justice to review acts of the institutions in the light of fundamental rights protected by Art. 6(2) EU insofar as the Court had jurisdiction under the Community Treaties or the EU Treaty.¹⁴

In that regard, former Art. 46 EU did not prevent the Court of Justice itself from delimiting the scope of its jurisdiction. For instance, a measure which was purportedly adopted in connection with a pillar other than the Community pillar of the Union (for example, sanctions imposed under the Common Foreign and Security Policy) could in fact be ascribable to a Community competence (for example, the common commercial policy referred to in Art. 133 EC [now Art. 207 TFEU]), which would mean that the Court of Justice would be competent to review the measure for compatibility with the Community Treaties. In the event of a dispute, it was the task of the Court of Justice or the Court of First Instance, as it was then called, to define the pillars of the Union in relation to each other. That task could not be undertaken by any other institution, since it was a matter of interpreting and applying the Community Treaties and hence within the jurisdiction of the Court of Justice and the Court of First Instance within the Community legal order, which, by virtue of the judicially enforceable former Art. 47 EU, was not affected by any other provision of that Treaty.¹⁵

¹¹ K. Lenaerts, 'Le traité de Lisbonne et la protection juridictionnelle des particuliers en droit de l'Union' (2009) C.D.E. 711–45.

¹² For an application of former Art. L EU, see ECJ (order of 7 April 1995), Case C-167/94 *Grau Gomis and Others* [1995] E.C.R. I-1023, para. 6.

¹³ As far as the Court's jurisdiction in this connection under the former Treaty framework was concerned, see paras 22.02–22.04.

¹⁴ For further details, see K. Lenaerts, 'Le respect des droits fondamentaux en tant que principe constitutionnel de l'Union européenne', in M. Dony and A. De Walsche (eds), *Mélanges en hommage à Michel Waelbroeck*, Vol. I (Bruylant, Brussels, 1999), 423–57.

¹⁵ See, e.g. ECJ, Case C-170/96 *Commission v Council* [1998] E.C.R. I-2763, paras 12–18; ECJ, Case C-176/03 *Commission v Council* ('Environmental crimes') [2005] E.C.R. I-7879, paras 38–40; ECJ, Case C-440/05 *Commission v Council* ('Ship-source pollution') [2007] E.C.R. I-9097, paras 52–53; ECJ, Case C-91/05 *Commission v Council*

Nevertheless, both in relation to the former second and third pillars of the Union and as the Community pillar, the jurisdiction of the Union judiciary was curtailed to varying degrees.¹⁶ As far as the second pillar of Common Foreign and Security Policy was concerned, generally speaking the Court of Justice was not accorded jurisdiction in this area save for certain exceptions, such as the adjudication of so-called 'inter-pillar' disputes pursuant to former Art. 47 EU, as previously mentioned. As regards the third pillar of Police and Judicial Cooperation in Criminal Matters, the Court of Justice was given some jurisdiction, although it was greatly restricted under former Art. 35 EU. Moreover, even within the Community pillar, where the Union courts' jurisdiction was in principle the strongest, there were still significant difficulties for individuals to enforce their Community law rights against certain types of Community measures due to the strict standing requirements of former Art. 230 EC. Also, for matters falling within Title IV of the EC Treaty on visas, asylum, immigration, and other policies concerning the free movement of persons, the jurisdiction of the Court of Justice was subject to special rules pursuant to former Art. 68 EC, which also curtailed that jurisdiction. As Title IV of the EC Treaty and the third pillar of Title VI of the EU Treaty comprised the Area of Freedom, Security and Justice, this had the result that measures adopted by the Union institutions in those areas often presented significant issues of judicial protection for individuals, particularly with a view to the protection of fundamental rights.¹⁷ Altogether, the limitations placed on the Court's jurisdiction emanating from the three pillars of the Union highlighted apparent gaps in the claimed complete and coherent system of judicial protection under the former EU and EC Treaties.

G. Changes brought by the Treaty of Lisbon

The Treaty of Lisbon, which entered into force on 1 December 2009, brought significant changes to the system of judicial protection of the European Union, which are delineated in detail in the various chapters of this book.¹⁸ With the elimination of the pillar structure by

1.07

(*'Small arms and light weapons' case*) [2008] E.C.R. I-3651, paras 31–33. In connection with litigation on access to documents of the Union institutions, it follows from the scope of Council Decision 93/731/EC of 20 December 1993 (now replaced by Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council, and Commission documents, [2001] O.J. L145/43) that the Union judiciary is competent to review the legality of any decision made pursuant to that Council decision, even if the documents to which access is sought relate to a sphere of activity of the Council which is not subject to judicial review by the Court of Justice: CFI, Case T-14/98 *Hautala v Council* [1999] E.C.R. II-2489, paras 40–42 (appeal dismissed in ECJ), Case C-353/99 P *Council v Hautala* [2001] E.C.R. I-9565).

¹⁶ For a summary of the relevant case-law, see K. Lenaerts, 'The Rule of Law and the Coherence of the Judicial System of the European Union' (2007) C.M.L. Rev. 1625, at 1626–33.

¹⁷ See Ch. 22.

¹⁸ See further R. Barents, 'The Court of Justice after the Treaty of Lisbon' (2010) C.M.L. Rev. 709–28; M. Berger, 'Der Europäische Gerichtshof und der Vertrag von Lissabon', in Österreichischen Notariatskammer (eds), *Festschrift Klaus Woschnak* (Vienna, Manz, 2010), 41–54; W. Hakenberg and C. Schilhan, 'Die Architektur der EU-Gerichtsbärkeit: Aktualität und Perspektiven im Lichte von Lissabon' (2008) *Zeitschrift für Europarecht, internationales Privatrecht und Rechtsvergleichung* 104–112; K. Lenaerts, 'Challenges Facing the European Court of Justice After the Treaty of Lisbon' (2010) *Revista Romana de Drept European* 19–39; V. Skouris, 'Die Reform der Europäischen Verträge und ihre Auswirkungen auf die europäische Gerichtsbarkeit', in W. Dürner and E.-J. Peine (eds), *Reform an Haupt und Gliedern—Verfassungsreform in Deutschland und Europa* (Munich, Beck, 2009), 83–102; V. Skouris, 'The Court of Justice of the European Union: A Judiciary in a Constant State of Transformation', in E. Cardonnel, A. Rosas, and N. Wahl (eds),

the Lisbon Treaty, this meant that in principle the same level of judicial protection would apply for all matters falling within the scope of the Treaties.¹⁹ However, this is not the case wholly across the board, and the present EU Treaty as amended and the TFEU still contain vestiges of limitations placed on the Court of Justice's jurisdiction.

As regards the former Community pillar, the Treaty framers attempted to cure the apparent gap in the *locus standi* for private litigants in connection with actions for annulment under the fourth paragraph of Art. 263 TFEU, although certain questions regarding the breadth of such changes remain.²⁰ Also, with the consolidation of the various provisions concerning the Area of Freedom, Security and Justice in Title V of the TFEU, the constraints of former Art. 68 EC have been eliminated.²¹

As regards the former second pillar of Common Foreign and Security Policy, the Court of Justice as a general matter has still not been given jurisdiction under the Treaties, save for certain exceptions, although amendments have been made in connection with challenging the legality of restrictive measures against natural and legal persons pursuant to Art. 263 TFEU.²²

As regards the former third pillar of Police and Judicial Cooperation in Criminal Matters, in principle the limitations of former Art. 35 EU have been deleted and the Court of Justice's jurisdiction in this area has essentially been 'mainstreamed'. Certain exceptions do remain, however, especially in relation to acts adopted within this field before the entry into force of the Lisbon Treaty.²³

H. The two-fold task of the Union judicature

1.08 In complement to the important role played by the national courts, the Union judicature has a two-fold task in connection with the system of legal remedies set down by the Treaties. In the first place, it is responsible for enforcing all the rules of Union law. As a result, it affords protection against any act or failure to act on the part of national authorities and persons which offends against such provisions. In this respect, Union law acts as a 'sword' for safeguarding the rights deriving from that law and hence this implicates certain types of actions and procedures which ensure that the Member States comply with their obligations under the Treaties (see Part II).

In the second place, the Union judicature secures the enforcement of written and unwritten superior rules of Union law²⁴ and affords protection against any act or failure to act of

Constitutionalising The EU Judicial System. Essays in Honour of Pernilla Lindh (Oxford and Portland, Hart Publishing, 2012), 3–13.

¹⁹ In comparison to former Art. 47 EU, Art. 1, third para., TEU now provides that the Union shall be founded on the TEU and the TFEU, both of which 'have the same legal value'.

²⁰ See paras 7.03 and 7.110.

²¹ See para. 22.05.

²² See Art. 24(1), second para., TEU; Art. 275 TFEU. See further para. 7.04.

²³ See para. 22.05.

²⁴ For a survey of the hierarchy of norms in Union law, see K. Lenaerts and P. Van Nuffel (R. Bray and N. Cambien (eds)), *European Union Law* (3rd edn, London, Sweet & Maxwell, 2011), paras 22.02–22.06. See also K. Lenaerts and M. Desomer, 'Towards a Hierarchy of Legal Acts in the European Union? Simplification of Legal Instruments and Procedures' (2005) E.L.J. 744–65.

institutions and other bodies of the Union in breach of those rules.²⁵ In this respect, Union law acts as a ‘shield’ (see Part III).

I. Structure of the book

Both the two-fold task of the Union judicature and the interlocking relationship between the Union courts and the national courts determine the structure of this book. **1.09**

Importantly, aspects concerning the relationship between the Court of Justice and the national courts through the preliminary ruling procedure permeate all five parts of the book. In Part I concerning the judicial organization of the European Union, Chapter 2 begins by highlighting the role played by both the national courts and the Union courts in the judicial system of the European Union and placing emphasis on the ‘organic’ Union judicature in terms of its organization, composition, and allocation of jurisdiction. Chapter 3 looks at the system of cooperation between the national courts and the Court of Justice through the reference for a preliminary ruling, thereby comprising general features of the preliminary ruling procedure, such as the framing of the questions, the obligation placed on certain national courts within a particular Member State’s judicial architecture, and the division of tasks between the Court of Justice and the national courts in this context. Chapter 4 likewise examines the interaction between the national legal orders and Union law through the principle of national procedural autonomy and the Union framing principles of equivalence and effectiveness.

Part II concerns the enforcement of Union law and therefore encompasses two forms of action falling within the ‘sword’ function. Chapter 5 examines the action brought against a Member State for its failure to fulfil its obligations under the Treaties (commonly referred to as the ‘infringement action’) under Arts 258–260 TFEU. Chapter 6 proceeds to the preliminary ruling procedure in relation to the interpretation of Union law under Art. 267 TFEU, which albeit indirectly implicates matters concerning the compatibility of national law with Union law and delves further into the dialogue between the Court of Justice and the national courts in this setting.

Part III concerns the types of actions constituting protection against acts or failures to act of the Union institutions falling within the ‘shield’ function. These actions comprise the action for annulment under Art. 263 TFEU (Chapter 7); the action for failure to act under Art. 265 TFEU (Chapter 8); the objection of illegality under Art. 277 TFEU (Chapter 9); preliminary rulings on the validity of Union acts under Art. 267 TFEU (Chapter 10); the action for damages against the Union under Arts 268 and 340(2) TFEU (Chapter 11); and the application for an opinion on the compatibility of an international agreement to be concluded by the Union with the provisions of the Treaties under Art. 218(11) TFEU (Chapter 12). In particular, Chapter 10 includes discussion of matters concerning the interlocking system of jurisdiction between the Court of Justice and the national courts when it comes to the direct and indirect routes for assuring the review of the legality of Union acts in connection with actions for annulment and preliminary rulings on validity, respectively.

²⁵ See K. Lenaerts, ‘The European Court of Justice and Process-Oriented Review’ (2012) Y.E.L. 3–16.

Part IV concerns special forms of procedure before the Union courts. These include interim measures before the Union courts (Chapter 13); garnishee orders (Chapter 14); sanctions (Chapter 15); appeals (Chapter 16); the review procedure (Chapter 17); staff cases (Chapter 18); the contractual liability of the Union (the jurisdiction to give judgment pursuant to an arbitration clause or special agreement) (Chapter 19); (disputes relating to) intellectual property rights (Chapter 20); conventions concluded by the Member States (Chapter 21); and the Area of Freedom, Security and Justice (Chapter 22). To varying degrees, these subjects involve preliminary rulings given by the Court of Justice in response to references submitted by national courts, and as far as the Area of Freedom, Security and Justice is concerned, Chapter 22 covers, among other things, the urgent preliminary ruling procedure for cases falling within this area.

Part V deals with the procedure before the Union courts proper. It begins with the various common procedural rules applicable to all cases brought before the Union courts, such as those concerning service and time limits (Chapter 23). Following this, the different types of jurisdiction conferred on the Union courts generally give rise to three main sorts of procedures: first, the procedure in the case of references for a preliminary ruling pursuant to Art. 267 TFEU²⁶ (Chapter 24); second, the procedure in the case of direct actions (Chapter 25);²⁷ and third, the procedure in the case of appeals against decisions of the General Court (Chapter 26). The organization of the subjects presented in Part V reflects the structure of the new Rules of Procedure of the Court of Justice²⁸ and the pre-eminent position of the preliminary ruling procedure.

J. Procedural texts applicable to the procedure before the Union courts

- 1.10** The procedure before the Union courts is governed by a set of procedural texts. First, there are the relevant Treaty provisions conferring jurisdiction on the institution of the Court of Justice of the European Union, which are basically enshrined in Art. 19 TEU and Arts 251–281 TFEU.

Second, there is the Statute of the Court of Justice of the European Union, whose provisions have the same legal force as the Treaty provisions and which is annexed in a Protocol to the Treaties.²⁹ The Statute is divided into five titles with an annex concerning the Civil Service Tribunal, and generally sets down the rules governing the various types of procedures before the Court of Justice, the General Court, and the Civil Service Tribunal, as well as provisions concerning their composition and organization. Under former Art. 245 EC, the rules contained in the Statute (with the exception of those relating to the Status of Judges and Advocates General in Title 1) could only be amended by the Council acting unanimously at the request of the Court of Justice and after consulting the Commission and the European Parliament, or at the request of the Commission and after consulting the

²⁶ With respect to particular issues relating to the procedure applicable to dispute resolution under former Art. 35 EU, see paras 22.13–22.18.

²⁷ As far as the Civil Service Tribunal, this is dealt with in Ch. 18, concerning staff cases.

²⁸ See further n. 32.

²⁹ Protocol (No. 3), annexed to the TEU, the TFEU, and the EAEC Treaty, on the Statute of the Court of Justice of the European Union, [2012] O.J. C326/210, as amended by Regulation (EU, Euratom) No. 741/2012 of the European Parliament and of the Council of 11 August 2012, [2012] O.J. L228/1.

European Parliament and the Court of Justice.³⁰ However, this provision was changed by the Lisbon Treaty so as to provide that the European Parliament and the Council, acting in accordance with the ordinary legislative procedure—meaning by way of qualified majority voting in the Council and the co-decision procedure involving the European Parliament—may amend the provisions of the Statute, save for Title 1 and Art. 64 concerning the language arrangements applicable at the Court of Justice of the European Union, acting either at the request of the Court of Justice and after consultation of the Commission or on a proposal of the Commission and after consultation of the Court of Justice.³¹

Third, the rules set out in the Statute are expanded upon in the Rules of Procedure of the Court of Justice, of the General Court, and of the Civil Service Tribunal,³² which are adopted by each respective Court in agreement with the Court of Justice as regards the latter two, and require the approval of the Council.³³

Finally, there are various other procedural texts applicable to the procedure before the Union courts. For the Court of Justice, there are Supplementary Rules of Procedure,³⁴ Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings,³⁵ and the Practice Directions to the Parties.³⁶ For the General Court and the Civil Service Tribunal, there are also Instructions to the Registrar³⁷ and Practice Directions to parties.³⁸ All relevant texts relating to the procedure can be found on the website of the Court of Justice of the European Union (<<http://curia.europa.eu>>).

³⁰ Art. 245, second para., EC; see also former Art. 160, second para., EAEC (which was repealed by the Lisbon Treaty).

³¹ Art. 281, second para., TFEU.

³² This book incorporates the recent changes made to the Rules of Procedure of the Court of Justice, done at Luxembourg on 25 September 2012 ([2012] O.J. L265/1) replacing the Rules of Procedure of the Court of Justice adopted on 19 June 1991, as last amended on 24 May 2011 ([2011] O.J. L162/17). See also the Rules of Procedure of the General Court, adopted on 2 May 1991 ([1991] O.J. L317/34), as last amended on 19 June 2013 ([2013] O.J. L173/66) and the Rules of Procedure of the Civil Service Tribunal, adopted on 25 July 2007 ([2007] O.J. L225/1; *corrigendum* [2008] O.J. L69/37) and last amended on 18 May 2011 ([2011] O.J. L162/19).

³³ As regards the Court of Justice, see Art. 253, sixth para., TFEU. As regards the General Court, see Art. 254, fifth para., TFEU. As regards the Civil Service Tribunal, see Art. 257, fifth para., TFEU. Pursuant to Art. 16(3) TEU, the Council acts by a qualified majority.

³⁴ Done at Luxembourg on 4 December 1974 ([1974] O.J. L350/29), last amended on 21 February 2006 ([2006] O.J. L72/1).

³⁵ [2012] O.J. C338/1.

³⁶ Available at <<http://www.curia.europa.eu>>.

³⁷ General Court: done at Luxembourg on 3 March 1994 ([1994] O.J. L78/32), last amended on 24 January 2012 ([2012] O.J. L68/20). Civil Service Tribunal: done at Luxembourg on 11 July 2012 ([2012] O.J. L260/1), replacing the Instructions to the Registrar of 19 September 2007 ([2007] O.J. L249/3)].

³⁸ General Court: see the Practice Directions to parties before the General Court, done at Luxembourg on 24 July 2012 ([2012] O.J. L68/23, *corrigendum* [2012] O.J. L73/23). Civil Service Tribunal: see the Practice Directions to parties on judicial proceedings before the European Union Civil Service Tribunal, done at Luxembourg on 11 July 2011 ([2012] O.J. L260/1).