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A. POPOV, *The Evolving Broad Logic of Declaratory Adjudication in EU Law Judicial Review*, Bruylant, Brussels, 2025, pp. 1- 381

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The question over the completeness – or rather the judicial deficit – of the EU law judicial review and access to judicial remedies is surely not new for EU law scholars. What is, however, an interesting perspective is the one offered by the author of the monography discussed herein. The research question of the book concerns the broad logic of declaratory adjudication in EU law judicial review, which also becomes the lens through which the author offers a conclusion on how to address gaps in the complementarity of direct and indirect judicial review, notably in light of the principle of effective judicial protection.

The book is structured into six chapters. It begins with an analysis of the existing gaps in EU judicial protection, highlighting what the author refers to as the subjectification of standing requirements and the complementarity between the direct and indirect judicial review, all with the aim of enforcing effective judicial protection. The author turns to declaratory adjudication. These declaratory remedies are firstly examined in the context of national law and, secondly, with regard to their application by the Court of Justice and their potential to reduce the gap in achieving effective judicial protection in EU law. The book concludes with an analysis of the EU system of remedies when faced with the Union's international commitments.

Chapter one focuses on the limitations inherent in the EU's rules on admissibility for judicial review, showing how *locus standi* requirements applied to non-privileged applicants under Article 263 TFEU create a structural gap between the formal availability of judicial scrutiny and its practical accessibility. The author stresses that what began as an objective system of review – focused on the legality of an EU act – has evolved into a subjectification of standing requirement for non-privileged applicant. According to the author, this subjectification has been developed through demanding tests on individual and direct concern, and on the presence or absence of implementing measures. Those cumulative hurdles for non-privileged applicants create a decentralisation of the judicial protection which becomes effective only before national judges, hence the need for a complementary function of indirect judicial review.

In chapter two, the principle of complementarity between direct and indirect review is analysed as a means of mitigating the difficulties caused

by the subjectification of standing rules and ensuring the enforcement of effective judicial protection. The author highlights how EU law relies heavily on the preliminary reference procedure on validity, expecting national courts to compensate for the barriers faced by individuals seeking direct access to the EU courts. Consequently, the effectiveness of judicial protection for non-privileged applicants depends on national courts (and ultimately on national procedural law). Where declaratory remedies are foreseen under national procedural law, this structure is reinforced, as litigants can seek judicial clarification without breaching the law. Conversely, where such remedies are not available to national judges, it is argued that there should be an obligation to declare an action admissible, rather than merely an obligation to make best endeavours to do so.

Furthermore, the Parliament and the Commission endorse this reliance on national courts, grounding their expectations in the principle of sincere cooperation. The Commission's infringement powers further strengthen this system by addressing failures of national courts to uphold EU rights. Yet the system's success depends on national courts' willingness and procedural capacity to engage with EU law. Variations across Member States weaken the intended complementarity and undermine the uniformity of judicial protection.

Chapter three begins by acknowledging that full complementarity exists only between actions for annulment and preliminary references on validity; other mechanisms, such as the plea of illegality, are not fully integrated and provide only limited protection. The distinction between substantive and procedural law further complicates the picture, as EU law lays down substantive conditions for judicial protection but relies on national procedural rules for implementation. This reliance interacts uneasily with national procedural autonomy, which is constrained by the principles of effectiveness and equivalence. Differences between annulment and invalidity introduce further divergences, while the *TWD* doctrine adds a restrictive layer by preventing indirect challenges in cases where a direct action would have been possible. Although not fatal to the system, these hurdles reveal fundamental fragilities within the EU's remedial structure.

With chapter four, the narrative moves to declaratory adjudication and, notably, to the role of national declaratory remedies in facilitating judicial review of EU measures. The author stresses that the case law of the Court of Justice (notably in *Unibet*¹ and *Inuit*²) implies that Member States must secure effective remedies capable of addressing EU law

¹ Court of Justice, 13 March 2007, Case C-432/05, *Unibet*.

² Court of Justice (Grand Chamber), 3 October 2013, Case C-583/11 P, *Inuit Tapiriit Kanatami*.

violations, potentially requiring them to create or adapt declaratory procedures that enables applicants to obtain judicial clarification without first violating the law in order to test the validity of an EU measure. A comparative study across various jurisdictions reveals substantial diversity: some provide strong declaratory mechanisms, while others offer restricted or no access to such remedies. This leads to unequal access to EU judicial protection depending on the Member State involved.

Chapter five then turns to the Court of Justice itself and its increasing engagement in declaratory adjudication. Through a series of important preliminary references (*inter alia*, *Imperial Tobacco*³, *Bosman*⁴, *Gauweiler*⁵) the Court has demonstrated a growing willingness to rule on validity questions even in preventive or hypothetical contexts, provided a genuine legal issue arises. This evolution reflects a more openly constitutional role for the Court, enabling preventive adjudication and expanding judicial oversight over EU acts. While limitations remain, particularly in relation to certain measures such as soft law or actions of Member States, which fall outside the Court's reviewability, declaratory adjudication appears to become a defining feature of the Court's contribution broad logic of judicial review.

Chapter six looks at the increasing importance of external review mechanisms in assessing the completeness of the EU's system of remedies. Notably, the European Court of Human Rights' *Bosphorus* presumption generally accepts the EU's high standard of protection but allows for rebuttal where protection is "manifestly deficient", placing external pressure on the EU to maintain rigorous judicial safeguards. Moreover, the Aarhus Convention Compliance Committee has taken a more assertive stance, repeatedly criticising the EU's lack of access to justice for environmental NGOs and prompting amendments to the Aarhus Regulation. These external bodies highlight deficiencies within the EU's remedial architecture and contribute to a broader push toward reform.

The book culminates in the argument that, despite its theoretical coherence, the EU's system of judicial review remains practically deficient in ensuring equal and effective judicial protection. Restrictive standing rules, dependence on national courts, and uneven availability of declaratory remedies collectively undermine the EU's constitutional commitment to access to justice. The analysis ultimately calls for broadening access to direct actions, harmonising declaratory remedies across Member States, and ensuring the availability of preventive review mechanisms. Central to this reform agenda is a proposed revision of

³ Court of Justice, 5 October 2000, Case C-74/99, *Imperial Tobacco Ltd and Others*.

⁴ Court of Justice, 15 December 1995, Case C-415/93, *Bosman*.

⁵ Court of Justice, 16 June 2015, Case C-62/14, *Gauweiler*.

Article 263 TFEU to eliminate the privileged/non-privileged distinction and allow any natural or legal person to bring an action for annulment.

The book has the merit of approaching the issue with a systemic perspective, offering a thorough analysis of the admissibility requirements in direct and indirect actions, and of the complementarity of such actions, with the aim of proposing a way to fill the gaps to an effective judicial protection. Remarkable is the author's intention to interpret Article 19 TEU (together with the principle of sincere cooperation) as the legal basis for enforcing the complementarity between the action for annulment and preliminary reference on validity, by imposing the Member States to adopt declaratory remedies allowing access to the EU Court's judicial review. While the argumentation is solid and encourages the reader to reflect further on these aspects of EU law – with the author demonstrating capacity to explore the intricacies and consequences of EU procedural and substantive issues – it sometime fails to address certain case law that may challenge the conclusions proposed, notably with regard to the case law on the interpretation of the preliminary reference's role to ensure an effective judicial remedy.

The book undoubtedly deepens the discussion on the complementarity of direct and indirect judicial review and on ways to ensure the implementation of the principle of effective judicial protection.