

## TABLE OF CONTENTS

<b>Acknowledgements</b>	V
<b>Summary of Contents</b>	VII
<b>List of Abbreviations</b>	XXIII
<b>Introduction – Adam Łazowski</b>	1

### *Part One – West Meets East*

<i>Chapter 1</i>	
<b>It Works! The European Union in the Wake of Fifth and Sixth Enlargements</b>	7
Adam Łazowski	
1. Introduction	7
2. Fifth and sixth enlargements in a nutshell	8
2.1. From six to fifteen – previous enlargement rounds	8
2.2. From fifteen to twenty-seven	8
2.2.1. Countries of Central and Eastern Europe	9
2.2.2. Cyprus	14
2.2.3. Malta	14
2.3. The Accession Treaties 2003 and 2005	15
2.3.1. The legal character and structure of Accession Treaties	15
2.3.2. Transitional periods	16
2.3.3. Safeguard clauses	17
3. The impact of the fifth and sixth enlargements on the institutional structure of the European Union	19
3.1. The fourth accession criterion	19
3.2. The European Council	21
3.3. The Council of the European Union	22
3.4. The European Parliament	23
3.5. The European Commission	24
3.6. The European Court of Justice and the Court of First Instance	25
4. The impact of the fifth and sixth enlargements on the legal order of the European Union – preliminary remarks	26
5. Conclusions	28

*Chapter 2***La Nouvelle Vague: the Introduction of a More Significant Ost-politik in the EU's Security Policies**

31

Steven Blockmans

1.	Introduction	31
2.	Coherence and consistency in EU security policies	32
3.	External security	34
3.1.	Common Foreign and Security Policy	34
3.1.1.	New sensitivities, new horizons	34
3.1.2.	Aligning to the <i>acquis</i>	36
3.2.	European Security and Defence Policy	36
3.2.1.	Dual enlargement	36
3.2.2.	Aligning to the <i>acquis</i>	37
3.2.3.	Impact of enlargement on the ESDP	38
3.3.	Common neighbourhood policies	39
3.3.1.	Impact of the fifth enlargement on the ENP	40
3.3.2.	Impact of enlargements on EU-Russia relations	43
3.3.3.	Impact of enlargements on the (not so) "frozen" conflicts	47
3.3.4.	The future of the EU's eastern neighbourhood policies: quo vadis?	50
4.	Internal security	52
4.1.	Towards an area of freedom, security and justice	52
4.2.	Border security	54
4.2.1.	Enlarging the borderless zone in Europe	54
4.2.2.	Aligning to the <i>acquis</i>	55
4.2.3.	Impact of Schengen enlargement for EU citizens	56
4.2.4.	Impact of Schengen enlargement on the EU's neighbours	57
4.3.	Counter-terrorism	58
5.	Impact of enlargement on leadership and decision-making	59
6.	Concluding remarks	62

*Part Two – East Meets West**Chapter 3***Constitutional Changes and Challenges in the New Member States**

67

Anneli Albi

1.	Introduction: amendment of constitutions as a prerequisite for smooth application of EU law by courts	67
2.	Delegation of sovereignty	71
3.	Supremacy and direct effect of EC law	77
3.1.	The position of EC law in relation to ordinary national law	77
3.2.	Supremacy of EC law and national constitutions	82
4.	Separation of powers	83
5.	Free movement of EU citizens	85
5.1.	Voting rights of EU citizens	85
5.2.	The sale of real estate	87

---

5.3.	Public service and social rights	89
5.4.	Extradition of own citizens	89
6.	Economic and Monetary Union	92
7.	Other selected issues	93
8.	Concluding remarks: why do EU amendments matter?	95

*Chapter 4***Intertemporal Legal Issues in the European Union Case Law Relating to the 2004 and 2007 Accessions**

99

Saulius Lukas Kalėda

1.	Introduction	99
2.	Legal issues concerning the period preceding accession	99
2.1.	“Interim period”	99
2.2.	Adoption of EU acts in the “interim period”	101
2.3.	Information and consultation procedure	104
2.4.	Modification of the Act of Accession	106
2.5.	Conditions for annulment of Community acts adopted before accession	109
3.	Temporal scope of EU law with regard to the new Member States	112
3.1.	The principle of “immediate effect” of EU law	112
3.2.	Temporal scope of the preliminary rulings’ jurisdiction	114
3.3.	Publication of EU law in the new official languages	119
4.	Concluding remarks	125

*Chapter 5***New European Judges and the Limits of the Possible**

127

Michał Bobek

1.	Introduction	127
2.	The European judicial Hercules in action	128
2.1.	The linguist	128
2.2.	Knowledge of the law	131
2.3.	The comparative lawyer	132
2.4.	The guardian of the European telos	133
3.	National courts: mission impossible?	134
3.1.	Resolved to create an even less and less comprehensible union?	135
3.2.	The limits of knowledge	139
3.3.	Why compare?	142
3.4.	Whose telos?	144
4.	The genuine functioning of the European legal order – “do not do as I say?”	147
4.1.	Ambiguity	147
4.2.	Value unacceptability	149
5.	The relationship between the European Court of Justice and the national courts – the strategy of the second best choice?	151

*Part Three – From Estonia to Bulgaria ... the Application of EU Law*

*Chapter 6*

‘Community, Identity, Stability’: Ideals and Practice in Building a Bridge between the Legal Systems of the European Union and One of the Smallest of the ‘Brave New World’ Julia Lafranque	157
1. Introduction – “Community, Identity, Stability” and legal system(s)	157
2. The application of European Community/Union law in the Estonian legal system	160
2.1. Supremacy of European Union law over Estonian law: from cautious modesty to provocative EU friendliness	161
2.1.1. Respect and silence in the pre-accession phase. Continuous restraint in the judgment of 19 April 2005 of the Supreme Court en banc in the <i>Elections Coalitions II</i> case	161
2.1.2. In the opinion of 11 May 2006, the Constitutional Review Chamber of the Supreme Court favours EU law over the Estonian Constitution. Conflicts about the euro instead of the European Arrest Warrant	165
2.2. Running smoothly: considerable referrals to European Community law in Estonian courts	169
2.2.1. Community law conform interpretation of Estonian law and its limits	171
2.2.2. The Supreme Court as European (administrative) law professor. Reactions to the ECJ Pupino judgment: interpreting the interpretation	174
2.3. Problems in application of European Community law in Estonia: the morning after [the accession] – bittersweet sugar affairs and disappointed farmers	176
2.3.1. Judgment of 5 October 2006 of the Administrative Law Chamber of the Supreme Court in the <i>Hadler</i> case: setting aside national norms which were found to be in non-conformity with EC law	177
2.3.2. Problems with distribution of structural aid of the EU in agricultural matters and the review by Estonian courts	179
3. Estonian law finding its place in the European Community/Union legal system	182
3.1. Getting to know each other in a not-so-friendly way: Commission against Estonia. Defending the honor and joining the others: Estonian jam in Luxembourg	183
3.1.1. Happy unhappiness: resolving most of the problems at early stage	183
3.1.2. Matters of principles: Estonia <i>versus</i> European Commission. Other ways to influence: Estonia as intervener	186
3.2. Loosing the battle: failure of an Estonian company to be admitted to the “playground”. To ask or not to ask a question to the ECJ – that is a question	189
3.2.1. Fishing in wrong waters: order of the Court of First Instance of the EC of 9 January 2007 in the case of Lootus Teine OÜ	189
3.2.2. Application of the acte éclairé and acte claire doctrine. Reasons behind the non-asking and finally getting there...	191

3.3.	Call for improvements of judicial review	198
3.3.1.	Challenges of serving two Gods in the constitutional review	199
3.3.2.	Judicial remedies and discordant perplexity of legal certainty, loyal co-operation and responsibility	202
4.	Conclusions	204
<i>Chapter 7</i>		
<b>Lithuania's Membership in the European Union and Application of EU Law at National Level</b>		209
Irmantas Jarukaitis		
1.	Introduction	209
2.	Constitutional basis of Lithuania's membership in the EU and involvement of national political institutions in EU matters	210
2.1.	The Constitutional Act on Lithuania's Membership in the European Union	210
2.2.	Involvement of national political institutions in EU decision-making	219
3.	The application and interpretation of EU law in Lithuanian courts	222
3.1.	Jurisprudence of the Constitutional Court of Lithuania: from EU law as a doctrinal tool for interpretation of the Constitution to a recognition of the impact of EU law on the Constitution and co-operation with the ECJ	222
3.1.1.	Introduction	222
3.1.2.	Pre-accession jurisprudence of the Constitutional Court	224
3.1.3.	Post-accession jurisprudence of the Constitutional Court	225
3.2.	The interpretation and application of EU law by Lithuanian courts of general competence and administrative courts: a reserved approach	234
4.	Conclusions	240
<i>Chapter 8</i>		
<b>The Application of EU Law in Latvia</b>		243
Galina Zukova		
1.	Introduction	243
2.	The implementation of EU Law into the Latvian legal order	244
3.	The application of EU law in domestic courts	246
3.1.	Contextual observations	246
3.1.1.	The Latvian judicial system	248
3.1.2.	European and international law in the Latvian legal system	248
3.2.	Getting ready for EU membership: pre-accession case law	251
3.3.	The application of EU law and ECJ case law to pre-accession facts	254
3.3.1.	The application of EU law to pre-accession facts	254
3.3.2.	The application of directives to pre-accession facts	255
3.3.3.	The application of ECJ case law to pre-accession facts	256
3.4.	The interpretation of domestic law in light of directives during transposition periods	259
3.5.	EU law as an inherent part of the Latvian legal order	260
3.6.	Duty to rely on ECJ case law	261
3.7.	The application of general principles of EU law	262

---

3.8.	The hierarchy of norms: international or European Union law?	263
4.	Latvia's participation in ECJ proceedings	264
4.1.	Article 226 EC proceedings: Latvia's participation in direct actions against other EU Member States	265
4.2.	Article 230 EC proceedings: Latvia's participation in actions brought against Community institutions	266
4.2.1.	Case T-369/07 <i>Latvia v. Commission of the European Communities</i>	266
4.2.2.	Latvia's participation in actions brought by other Member States	267
4.3.	Article 234 EC: preliminary ruling procedure	269
4.3.1.	The legal framework	269
4.3.2.	References from Latvian courts	270
4.3.3.	Requests to refer a question for preliminary ruling before Latvian courts	272
4.3.4.	Latvia's participation in Article 234 proceedings before the ECJ	274
5.	Conclusions	275

*Chapter 9*

**Poland: Constitutional Drama and Business as Usual**

Adam Łazowski and Aleksandra Wentkowska

1.	Introduction	277
2.	The constitutional framework	278
2.1.	Introduction	278
2.2.	Constitutional legal basis for membership in the European Union	280
2.3.	The status of international law in the domestic legal order: Article 91 of the Constitution	281
3.	EU law in the jurisprudence of the Polish Constitutional Tribunal	284
3.1.	Introduction	284
3.2.	The constitutional drama: European Arrest Warrant and supremacy of EC law on trial	286
3.2.1.	Case P 1/05 on the European Arrest Warrant	286
3.2.2.	Case K 18/04 on the Accession Treaty 2003	289
4.	The application of EU law by Polish courts	292
4.1.	Introduction	292
4.2.	Pre-accession cases and application of EU law	293
4.3.	The principles of supremacy, direct and indirect effect of EC law in operation	298
4.4.	Polish courts and the Third Pillar of the European Union	306
4.4.1.	Introduction	306
4.4.2.	European Arrest Warrant in case law of Polish courts	307
5.	It is important that we keep talking: Polish courts and the preliminary ruling procedure	310
5.1.	Introduction	310
5.2.	The Constitutional Tribunal and the preliminary ruling procedure	311
5.3.	The Supreme Court and the preliminary ruling procedure: to refer or not to refer?	313
5.4.	Knocking on heaven's door: (the unfortunate) case C-168/06 Ceramika Paradyż	315

5.5.	Breaking the ice: case C-313/05 Brzeziński	316
5.6.	EU Citizenship in operation: case C-499/06 Nerkowska	318
6.	Direct actions	319
7.	Conclusions	322
<i>Chapter 10</i>		
<b>What about that ‘Incoming Tide’? The Application of EU Law in Czech Republic</b>		325
Zdeněk Kühn and Michal Bobek		
1.	Introduction	325
2.	Overture: the pre-accession harmonious interpretation	326
2.1.	The justification for the use of EU law before the accession and examples of its application	326
2.2.	Examples of non-application and obstacles to the use of EU law prior to the accession	328
3.	Constitutional position <i>vis-à-vis</i> EU law upon the accession to the European Union	329
3.1.	The constitutional basis of opening the national legal system to EU law and the primacy of EU law	330
3.2.	The relationship between national constitutional law and EU law	331
3.3.	The constitutional duty to apply national law in a manner consistent with EU law	333
3.4.	Constitutional review of EU law by the CCC	333
3.5.	Is there a consistent position of the CCC towards EU law?	335
4.	Application of European Union law after the accession by Czech courts and administrative authorities	336
4.1.	Absence of direct conflicts before courts	337
4.2.	Direct effect and primacy before administrative authorities	339
4.3.	The practice of harmony in interpretation	340
5.	References for preliminary ruling	344
5.1.	The playground and incentives	344
5.2.	Changing the established habits: incentives provided by the CCC for submitting request for preliminary rulings	346
5.3.	The references	347
5.4.	The less successful (?) attempts	350
6.	Infringements and direct actions	353
6.1.	Direct actions	353
6.2.	Infringements proceedings	354
7.	Conclusions	356
<i>Chapter 11</i>		
<b>Europe yet to Come: The Application of EU Law in Slovakia</b>		357
Zdeněk Kühn and Michal Bobek		
1.	Introduction	357
2.	The absence of European Union law arguments prior to the accession	357

---

3.	Constitutional basis for the application of European Union law and the Slovak Constitutional Court	358
3.1.	The case of the European Constitutional Treaty	359
3.2.	The anti-discrimination law case	361
4.	Application of European Union law by national courts after the accession	363
4.1.	The bottom-up emergence of European Union law in Slovak courts	364
4.2.	Potential explanations for the limited use of European Union law by Slovak courts	366
5.	References for preliminary ruling	368
5.1.	The references	369
5.2.	The absence of a reference	372
5.3.	The position of the Slovak Constitutional Court	373
6.	Infringements and direct actions	375
7.	Conclusions	377

*Chapter 12*

<b>The Application of EU Law in Hungary: Challenges and Emerging Practices</b>	379
Tamara Takács	

1.	Introduction	379
2.	Overview of the Hungarian judiciary	379
2.1.	The reform of the Hungarian judiciary following the fall of the Communist regime	380
2.2.	The Constitutional Court's position in the national constitutional order	382
3.	The constitutional amendment as a part of the pre-accession preparation and an appraisal of the authorising article	383
4.	Supremacy of Community law in the Constitutional Court's jurisprudence: before and after accession	385
5.	The application of European Union law by ordinary courts: the <i>Simmenthal</i> -mandate and other challenges	391
6.	The application of EU law by higher courts: direct effect and temporal limitations	393
6.1.	Individuals invoking rights stemming from an EC directive	393
6.2.	Temporal limitation to the application of EC law: the relevance of pre-accession facts	394
7.	EC Regulations in the Hungarian legal order	395
8.	The preliminary ruling procedure in Hungarian law and its application by national courts	397
8.1.	Introduction	397
8.2.	Provisions of Hungarian law on the preliminary ruling procedure	398
8.3.	Preliminary ruling procedure in operation: a Hungarian perspective	399
8.3.1.	National courts entitled to refer	399
8.3.2.	Appeals against decisions to refer	400
8.3.3.	Challenging a decision not to refer	402
8.4.	Legal issues in Hungarian references for preliminary ruling	403
8.4.1.	Temporal limitation to the application of EC law	404
8.4.2.	'Clearly no jurisdiction'	405

8.4.3.	Compatibility of national law with EC law	406
8.4.4.	The interpretation of right of establishment – the <i>Cartesio</i> case	407
8.5.	References for preliminary ruling in the Third Pillar	408
9.	Infringement proceedings against Hungary	409
9.1.	The transposition record	409
9.2.	Enforcing EC law: overview of infringement cases	410
9.2.1.	Cases C-30/07 <i>Commission v. Hungary</i> and C-148/07 <i>Commission v. Hungary</i>	410
9.2.2.	Letters of formal notice in the case of vehicle registration tax and “golden shares”	412
10.	Direct actions challenging EU secondary legislation	415
10.1.	Challenging a Community act by the Hungarian Government	415
10.2.	Individuals challenging Community acts	418
11.	Conclusions	419

### *Chapter 13*

#### **The Application of the EU Law in Slovenia: Teething Troubles of the Blue-eyed Boy**

421

Saša Zagorc and Samo Bardutzky

1.	Introduction	421
2.	Decisions of the Constitutional Court on the application of EU law	422
2.1.	Introduction	422
2.2.	The pre-accession period	423
2.3.	Post-accession decisions	426
2.4.	Supremacy unquestioned?	431
2.5.	European Arrest Warrant	434
3.	Jurisprudence in the field of asylum law with references to EU law	436
4.	Jurisprudence in the field of labour law with references to EU law	437
5.	The preliminary ruling procedure in national law and practice	439
5.1.	Introduction	439
5.2.	The preliminary ruling procedure in national law	439
5.3.	Slovenian courts and the preliminary ruling procedure	442
5.4.	Requests for a preliminary ruling in the practice of the National Review Commission for Reviewing Public Procurement Award Procedures	444
5.5.	Interventions in preliminary ruling procedures initiated by courts from other Member States	446
6.	Infraction procedures initiated by the European Commission and direct actions	448
6.1.	Case C-267/07: the first or the last of the Mohicans?	448
6.2.	Case C-402/08: the first lost case	449
6.3.	Cases C-440/05, C-414/04: (near) failures to intervene	449
7.	Publication of EU legislation in the Official Journal in Slovenian language	450
8.	Conclusions	451

---

<i>Chapter 14</i>	
<b>Malta and European Union Law</b>	453
Ivan Sammut	
1. Introduction	453
2. The EU legal order and its constitutional implications for Maltese law	454
2.1. The Constitution of the Republic of Malta	454
2.2. The European Union Act 2003	455
2.2.1. Introductory remarks	455
2.2.2. The substance of the European Union Act 2003	457
2.3. The impact of the European Union Act 2003 on the Maltese Constitution	459
2.4. The European Union Act 2003 in practice	459
3. The application of EU law in Malta	461
4. European Union law in Maltese courts	464
4.1. The application of EU law by Maltese courts	464
4.2. References for a preliminary ruling	466
5. Enforcement actions against Malta	467
6. Conclusions	470
<i>Chapter 15</i>	
<b>“Back to Reality”: the Implications of EU Membership in the Constitutional Legal Order of Cyprus</b>	471
Stéphanie Laulhé Shaelou	
1. Introduction	471
2. The Application of the Principle of supremacy of EC/EU law in Cyprus	473
2.1. The Cypriot constitutional legal order	473
2.2. International legal agreements in the national legal order	474
2.2.1. Duty of compliance	474
2.2.1.1. Initial legislative action in Cyprus in the context of EU accession	474
2.2.1.2. Judicial catalyst in the context of EU membership	475
2.2.1.3. Legislative (re)action in the context of membership	478
2.2.2. Duty of indirect interpretation	480
3. Principles of judicial integration in Cyprus: preliminary references under Cypriot law	484
3.1. National provisions on the preliminary ruling procedure	484
3.2. Current practice of the preliminary ruling procedure by national courts	489
3.2.1. Competition law and procurement law under the EC Treaty	489
3.2.1.1. Decision not to refer	489
3.2.1.2. Decision to refer	492
3.2.2. Title on visa, immigration and asylum under the EC Treaty: Article 68 EC	493
4. Principles of judicial integration in Cyprus: the application of Community law, infractions and other direct actions before the EU courts	494
4.1. The application of EC regulations in the Cypriot legal order	494
4.2. Infractions and other direct actions before the EU courts	496
4.2.1. Litigation relating to CAP	496

4.2.1.1.	The sugar cases	496
4.2.1.2.	Other agricultural products	498
4.2.2.	Litigation arising out of the application of instruments of secondary legislation within the framework of Protocol 10	500
5.	Conclusions	502
<i>Chapter 16</i>		
<b>The Application of EU Law in Romania</b>		503
Kinga Tibori Szabó		
1.	Introduction	503
1.1.	Short summary of the application process	504
1.2.	The Accession Treaty and associated legal instruments	506
2.	The application of the principle of supremacy	508
2.1.	The 2003 revision of the Romanian Constitution	508
2.2.	The Romanian judiciary and the principle of supremacy	510
2.2.1.	Pre-accession interpretation	510
2.2.2.	The application of the supremacy principle after accession	511
2.2.3.	Supremacy, free movement and reference for preliminary ruling	513
3.	The special aspects of Romania's accession	514
3.1.	The need for a transparent and efficient judicial process	515
3.1.1.	Romanian court system	515
3.1.2.	The long reform process of the judiciary system	515
3.1.3.	The principle of mutual recognition in civil and criminal matters	518
3.1.3.1.	Romanian legislation regarding the European Arrest Warrant	518
3.1.3.2.	The European Arrest Warrant and Romanian courts	519
3.2.	The fight against corruption	521
3.2.1.	The National Integrity Agency	521
3.2.2.	Political willingness to fight corruption	522
3.2.2.1.	Fighting high-level corruption: the National Anti-Corruption Directorate	523
3.2.2.2.	Fighting local corruption	525
4.	Traditional aspects of membership	527
4.1.	Infringement procedures	527
4.2.	Direct actions of Romania before the ECJ and the CFI	531
4.3.	Institutional aspects	532
4.3.1.	Romanian judges at the EU courts	532
4.3.2.	The Romanian Commissioner	532
4.3.3.	Elections to the European Parliament	532
5.	Conclusions	534
<i>Chapter 17</i>		
<b>Learning the Hard Way: Bulgaria and EU Law</b>		537
Adam Łazowski and Svetla Yosifova		
1.	Introduction	537
2.	From association to membership in the European Union	538
2.1.	Association with the European Communities	538

2.2.	Towards the membership in the European Union	541
3.	The Accession Treaty 2005	544
3.1.	Introductory remarks	544
3.2.	Safeguard clauses	544
3.3.	Transitional periods	546
3.3.1.	Free movement of workers	546
3.3.2.	Transitional periods – free movement of capital	548
4.	Post-accession monitoring: co-operation and verification mechanism	550
4.1.	Introduction	550
4.2.	Co-operation and verification mechanism in operation: July 2009	551
5.	The Constitution of Bulgaria and membership of the European Union	553
5.1.	General remarks	553
5.2.	The first amendment	554
5.3.	The second amendment	555
5.4.	The third amendment	555
5.5.	The fourth amendment	556
6.	Pre-accession approximation of laws and case law of Bulgarian courts	557
6.1.	Introduction	557
7.	Apres enlargement: the application of EU law in Bulgaria	559
7.1.	Introduction	559
7.2.	The position of international law in the Bulgarian legal order	560
7.3.	The immediate effect of EU law in Bulgaria and late publication of EU legislation in Bulgarian	560
7.4.	Post-accession cases with pre-accession facts	563
7.5.	Supremacy and direct effect in operation	564
8.	Bulgarian courts and the preliminary ruling procedure	568
8.1.	Breaking the ice: case C-545/07 <i>Apis-Hristovich EOOD v. Lakorda AD</i>	568
8.2.	Subsequent references to the European Court of Justice	568
9.	Direct actions	569
9.1.	Infraction cases against Bulgaria	569
9.2.	Actions for annulment	570
10.	Conclusions	570
 <b>Conclusions: Nowy Świat – Új világ – Nový Svět</b>		571
 <b>About the Authors</b>		575
 <b>Index</b>		581