

# INTEREULAWEAST

European and International Law Master Programme Development in Eastern Europe



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# Handbook

on

# System of Legal Remedies in the EU

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# INTEREULAWEAST

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## Foreword

*The handbook intends to help students to observe a topic of the EU law that is of core importance for EU institutions, the Member States and also individuals (natural and legal persons) when intent to seek legal protection at administrative or judicial level. The topic does not concern a lot the secondary law sources of the EU law, but rather the Treaty on the Functioning of the European Union (TFEU) provisions on the Court of Justice of the European Union procedures/actions and case law. Those provisions (most of them never (substantially) changed since enacted in 1957) still play a successful and a fundamental role of the legal remedies system of the EU law, not letting the individual to be left without a legal protection (denial of justice).*

*Like in national legal systems the EU enacted three possible systems of legal remedies:*

- *Public law remedies*
- *Private law remedies*
- *Constitutional legal remedies*

*Although not seen on the first side and although not all are fully covered by the European Court of Justice, one can, once analyzing the system of actions, finds out all three systems combined, not at one court only, but with all national courts/tribunals together. The EU legal remedies system can therefore be effective only if the national courts work together, jointly, hand in hand, with the European Court of Justice. The handbook is helping users to find how this is possible.*

*The handbook is not written for specific teaching subject and corollary readers can find questions and cases of different difficulties. It is up to each individual user to choose questions and cases which suits to the level of knowledge in question.*

*And, lastly, this is not a book, meaning that it is not intended to give information as a primary aim, but to apply knowledge, gain from books, articles and lectures to questions & cases, also to tables and sketches. However, in spots, the reader will find also text offering certain general or advanced knowledge and understanding. But above all, the handbook intends to gain knowledge on legal skills.*

*Prof. Dr. Rajko Knez*

# Outline

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## Chapter One

### Enforcement of the Union law

/basic principles (*ibi ius, ubi remedium*; principle of effectiveness, denial of justice (*deni de justice*); *effet utile*; etc), legal remedies, systems of enforcement – public and private law remedies/

## Chapter Two

### Judicial organization in the EU

/European courts: national courts, European Courts (CJEU, General Court, Specialized courts); allocation of jurisdiction between the EU courts/

## Chapter Three

### Cooperation between national courts and the Court of Justice of the EU– A reference for a preliminary ruling procedure (Art. 267)

/The initiative for a procedure, the notion of the court, tasks of the national courts and their limits, obligation to request the preliminary procedure *praeter legem*, acts to be interpreted, content of a preliminary ruling interpretation, legal remedies against a decision to request a procedure, the tasks of the ECJ, and interim relief under Art. 267, time issue – litigation strategy plan, the effect of the judgement: *ex tunc, erga omnes, multilateral, stare decisis doctrine*/

## Chapter Four

### The action for infringement of the Union Law (art. 258 et al)

/General, failure for of a MS to fulfil obligation, definition of a failure, objectivity of the procedure; identity of the parties, relationship between Art. 258 and Art. 259; two stage procedure: administrative and judicial stage; burden of proof, sanctions for failure to comply with the judgement/

## Chapter Five

### The action for annulment and the action for failure to act (Art. 263)

/what acts can be annulled; for what reasons; who has *locus standi* – why Art. 263 differs between privileged and non-privileged applicants; notions of direct and individual concern, important changes of the Lisbon Treaty; consequences – results of an application of annulment; why is the action for annulment constitutional in nature; the similarities with the action for failure to act – active and passive breach; link to the objection to illegality/

## Chapter Six

### The action for damages (Art. 268 and Art. 340)

/Subject matter; identity of the parties; damaged caused by institutions and servants; requirements for liability; a notion of a superior rule of law intended to confer rights on individuals; proof of damage, consequences and effect of the judgement – *inter parte*, indirectly *erga omnes*/

## Chapter Seven

### Conclusions

/Private and public law enforcement in the actions at the ECJ – is it ECJ open to private law remedies or only to public law remedies; what is the position of an individual in the legal protection system of the EU; cases/

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## Chapter One

### Enforcement of the Union law

In this chapter the following shall be addressed: which basic principles frame the enforcement system of the EU law and what exactly is the enforcement system of the Union law.

In every legal system rules shall be obeyed. This is not only true for individuals, but also for the states and state authorities. With no difference the EU rules shall also be obeyed. Enforcement mechanisms of the EU law are taking care of the union rules, not national ones. It is equally important for EU that MS obeyed law, as well as individuals and institutions of the EU. Otherwise, the following principles will not be respected and every rule would only be a dead letter on the paper:

*(insert the meaning)*

ubi remedium, ibi ius:

principle of effectiveness (effet utile):

denial of justice (déni de justice)

The enforcement of the EU law is connected with the notion of **legal remedies**. What is the proper understanding of this notion?

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The system of legal remedies is usually divided into **three types of enforcement**:

- 1) **Public law enforcement** (PuLE)
- 2) **Private law enforcement** (PrLE)
- 3) **Constitutional law enforcement** (CLE)

What are basic particularities of these types of enforcement and what are differences among the three systems?

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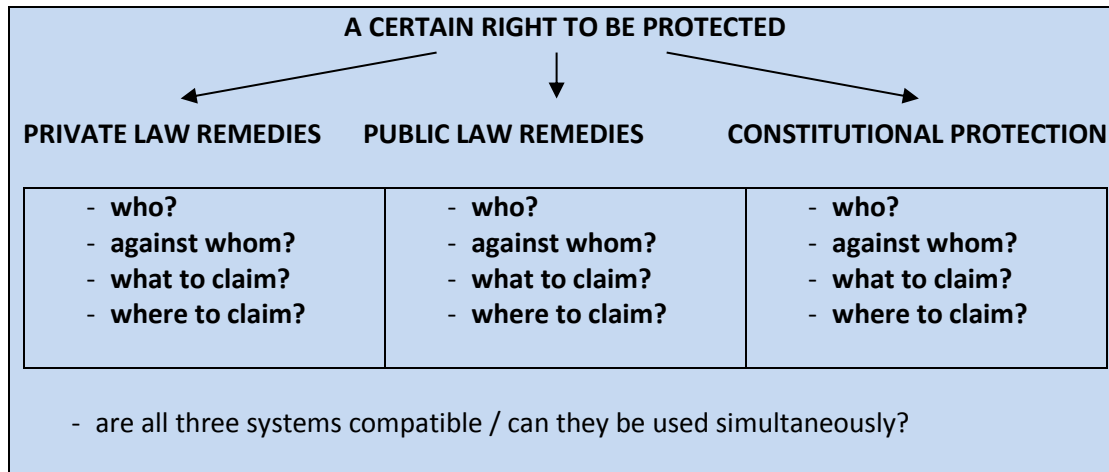
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### Legal Remedies Scheme:



*Discuss the differences among these three pillars and try to answer the above question (in the sketch)!*

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## Chapter Two

# Judicial System in the EU

### A. Introduction

This chapter focuses on the European Court(s) itself, its role in the EU as institution, its composition as guardian of the Union law and its position towards national courts and individuals (i.e. an allocation of jurisdiction between the Union courts).

**Try to underline the important sentences and try to find sentences that reveal the system of PuLE, PrLE and CLP:**



Since the establishment of the Court of Justice of the European Communities in 1952, its mission has been to ensure that "the law is observed" "in the interpretation and application" of the Treaties.

As part of that mission, the Court of Justice:

- reviews the legality of the acts of the institutions of the European Union,
- ensures that the Member States comply with their obligations under Community law,
- interprets Community law at the request of the national courts and tribunals.

The Court thus constitutes the judicial authority of the European Union and, in cooperation with the courts and tribunals of the Member States, it ensures the application and uniform interpretation of Community law. The Court of Justice of the European Communities, which has its seat in Luxembourg, consists of three courts: the Court of Justice, the Court of First Instance (created in 1988) and the Civil Service Tribunal (created in 2004).

Since their establishment, approximately 15 000 judgments have been delivered by the three courts.

As each Member State has its own language and specific legal system, the Court of Justice of the European Communities needs to be a multilingual institution. Its language arrangements have no equivalent in any other court in the world, since each of the official languages of the European Union can be the language of a case. The Court is required to observe the principle of multilingualism in full, because of the need to communicate with the parties in the language of the proceedings and to ensure that its case-law is disseminated throughout the Member States.

### Questions:

This text is taken from official site of the CVRIA ([http://curia.europa.eu/jcms/jcms/Jo2\\_6999/general-presentation](http://curia.europa.eu/jcms/jcms/Jo2_6999/general-presentation)). Rules regarding the European Court are included in the TFEU itself (Arts. \_\_\_\_\_), in the Statutes of the courts and their rules on procedure. On this basis, let us discuss some question about the Court of Justice of the EU (CJEU):

- Why does the EU need a court like CJEU?
- How many courts are we talking about?
- Are these courts appellate courts?
- Are judges nominated by the MS and hence the judges also take care of the interest of the MS? Can they take into account any other interest? Of anybody? Why?
- Is the ECJ in anyway different from other international courts – like the Hague court of justice?

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**Questions:**

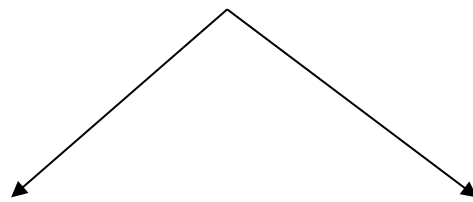
- What criteria are used for the CJEU's jurisdiction:
  - a) personal
  - b) territorial
  - c) any other \_\_\_\_\_ ...
- What is the division of jurisdiction among the MS's courts and CJEU?
- How important (what is the effect) is to take into consideration opinions of the advocate generals (AG) in national law courts cases?
- Is it AG's opinion mandatory at the CJEU?
- Is it the CJEU a federal court?

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[illegible]

## B. Actions at the CJEU

Which actions / procedures are possible at the ECJ?



## Direct actions

- Art. 258, 259, 260 – Action for infringement
- Art. 263, 264 – Action for annulment
- Art. 265 – Action for inactivity (failing to act)
- Art. 269 in connection with Art. 340 – Compensation for damages
- Art. 270 - Staff disputes
- Art. 272 – Arbitration
- .... and some others

### Indirect action

## Art. 267 – Preliminary ruling procedure (PRP)

**independent procedure:**

Art. 277 – exceptio illegalis (exception of illegality)

**Questions:**

- Does the ECJ process objective or/and subjective disputes? What is the difference?
- Is there a hierarchy between the national courts on one side and ECJ on the other?
- Could the national courts be viewed as “European courts”?
- How open is the ECJ for the individual – i.e. when the individual enjoy *locus standing*? What is meant by *locus standi*? What is the proper translation of this notion?

[illegible]

- Can the CJEU make precedent (*stare decisis* doctrine) in any procedure or only under Art. 267 (preliminary ruling procedure)?

*(Right) This is one of the most famous caricatures in respect the CJEU decision (C-213/98, Factortame) in the history. In backstage of the cartoon is a case with important legal rules ... are these rules (which...) precedents?*

[illegible][illegible]

- Where in the judgement can one find legal rules?

In the operative part of the judgement/in its summary/in the findings of the court?

How is the rule to be found; i.e. when can we say that certain paragraph or the final sentence is a legal rule?

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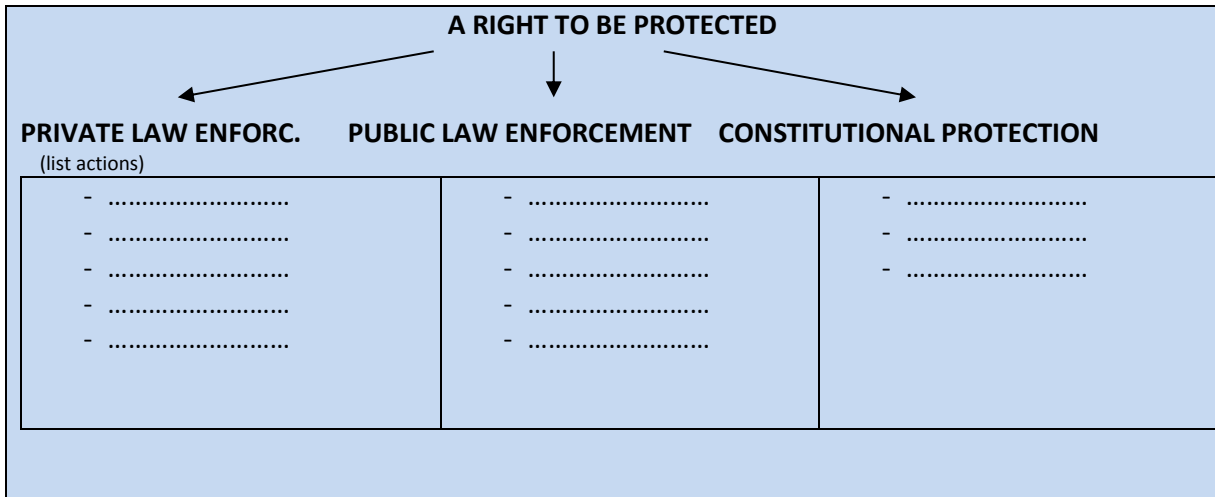
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### C. Actions at the CJEU and relations to PuLE, PrLE and Constitutional Protection

This chapter deals with basic questions of the EU system of judicial protection!

## Is the CJEU engaged in the PuLE, PrLE and Constitutional Protection?



Are actions listed above under PrLE, PuLE and Constitutional Protection compatible in a way that can be used in parallel?

### Case 1:

*An Austrian citizen/driver using the highways in one other MS paid a penalty due to the lack of vignette. The CJEU already judged that this MS introduced a system of vignettes which is discriminatory in its nature. This decision was adopted in a case of lawsuit of the EU Commission versus this MS.*

*Would you suggest her to seek legal remedies and if yes, why, which legal remedies and where?*

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### Case 2:

Compare a national case with the EU law – does the same system of legal remedies exist?

*Res facti*: You were injured in the traffic accidents. You are not responsible at all. The other driver is. Which remedies can this driver expect to be pursued against him? Does the EU law regulates actions between/among legal and natural persons? Why?

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**Case:**

Austrian sellers of cigarettes mandate detectives to supervise in front of different shops in Slovenia and to take photos of those Austrians that buy more than 200 cigarettes. Such limit is in force in Austria (more than 200 cigarettes is not allowed to import from Slovenia) and ones who buy more are charged by detectives for 350,20 EUR. This are costs of the detectives. If they refuse to pay, detectives will start official proceeding due to violation of the Austrian limit... (bellow is the article from Slovene newspaper...)

What do you think of such a case? Is it in line with EU law? If not.... what kind of legal remedies are available... and to whom?

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3) Is it connected with the direct effect?

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4) Who can/must ask for PRP?

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5) PRP is:

- a) mandatory
- b) optional
- c) mandatory, with exemptions (acte clair)

The CILFIT exceptions to Art 234(3)

Case: 283/81 CILFIT v Ministry of Health [1983] (note the Doctrine of Acte clair)

Instruction: Read the summary and underline the most important parts/sentences/legal rules:

Judgment of the Court of 6 October 1982. - Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health. - Reference for a preliminary ruling: Corte suprema di Cassazione - Italy. - Obligation to request a preliminary ruling. - Case 283/81.

## Summary

1. THE OBLIGATION TO REFER TO THE COURT OF JUSTICE QUESTIONS CONCERNING THE INTERPRETATION OF THE EEC TREATY AND OF MEASURES ADOPTED BY THE COMMUNITY INSTITUTIONS WHICH THE THIRD PARAGRAPH OF ARTICLE 177 OF THE EEC TREATY IMPOSES ON NATIONAL COURTS AND TRIBUNALS AGAINST WHOSE DECISIONS THERE IS NO JUDICIAL REMEDY UNDER NATIONAL LAW IS BASED ON COOPERATION, ESTABLISHED WITH A VIEW TO ENSURING THE PROPER APPLICATION AND UNIFORM INTERPRETATION OF COMMUNITY LAW IN ALL THE MEMBER STATES, BETWEEN NATIONAL COURTS, IN THEIR CAPACITY AS COURTS RESPONSIBLE FOR THE APPLICATION OF COMMUNITY LAW, AND THE COURT OF JUSTICE. MORE PARTICULARLY, THE AFORESAID PROVISION SEEKS TO PREVENT THE OCCURRENCE WITHIN THE COMMUNITY OF DIVERGENCES IN JUDICIAL DECISIONS ON QUESTIONS OF COMMUNITY LAW. THE SCOPE OF THAT OBLIGATION MUST THEREFORE BE ASSESSED, IN VIEW OF THOSE OBJECTIVES, BY REFERENCE TO THE POWERS OF THE NATIONAL COURTS, ON THE ONE HAND, AND THOSE OF THE COURT OF JUSTICE, ON THE OTHER.

2. ARTICLE 177 OF THE EEC TREATY DOES NOT CONSTITUTE A MEANS OF REDRESS AVAILABLE TO THE PARTIES TO A CASE PENDING BEFORE A NATIONAL COURT OR TRIBUNAL. THEREFORE THE MERE FACT THAT A PARTY CONTENTS THAT THE DISPUTE GIVES RISE TO A QUESTION CONCERNING THE INTERPRETATION OF COMMUNITY LAW DOES NOT MEAN THAT THE COURT OR TRIBUNAL CONCERNED IS COMPELLED TO CONSIDER THAT A QUESTION HAS BEEN RAISED WITHIN THE MEANING OF THAT ARTICLE. ON THE OTHER HAND, A NATIONAL COURT OR TRIBUNAL MAY, IN AN APPROPRIATE CASE, REFER A MATTER TO THE COURT OF JUSTICE OF ITS OWN MOTION.

3. IT FOLLOWS FROM THE RELATIONSHIP BETWEEN THE SECOND AND THIRD PARAGRAPHS OF ARTICLE 177 OF THE TREATY THAT THE COURTS OR TRIBUNALS REFERRED TO IN THE THIRD PARAGRAPH HAVE THE SAME DISCRETION AS ANY OTHER NATIONAL COURT OR TRIBUNAL TO ASCERTAIN WHETHER A DECISION ON A QUESTION OF COMMUNITY LAW IS NECESSARY TO ENABLE THEM TO GIVE JUDGMENT. ACCORDINGLY, THOSE COURTS OR TRIBUNALS ARE NOT OBLIGED TO REFER TO THE COURT OF JUSTICE A QUESTION CONCERNING THE INTERPRETATION OF COMMUNITY LAW RAISED BEFORE THEM IF THAT QUESTION IS NOT RELEVANT, THAT IS TO SAY, IF THE ANSWER TO THAT QUESTION, REGARDLESS OF WHAT IT MAY BE, CAN IN NO WAY AFFECT THE OUTCOME OF THE CASE. IF, HOWEVER, THOSE COURTS OR TRIBUNALS CONSIDER THAT RECOURSE TO COMMUNITY LAW IS NECESSARY TO ENABLE THEM TO DECIDE A CASE, ARTICLE 177 IMPOSES AN OBLIGATION ON THEM TO REFER TO THE COURT OF JUSTICE ANY QUESTION OF INTERPRETATION WHICH MAY ARISE.

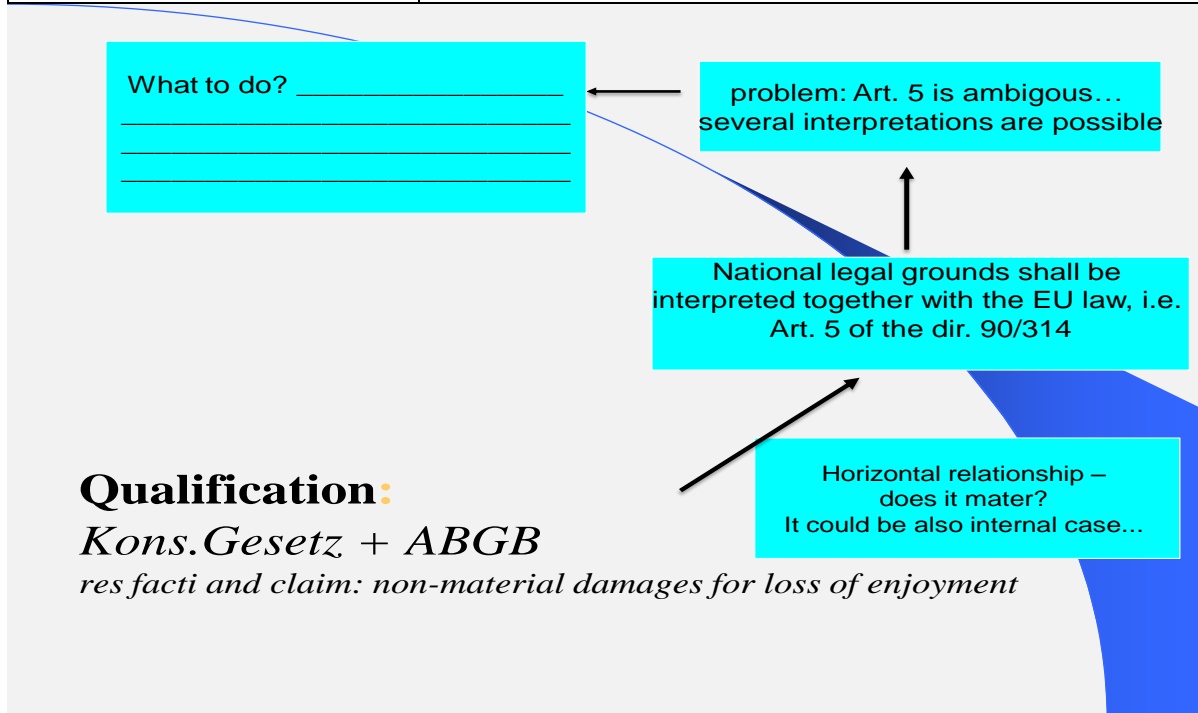
4. ALTHOUGH THE THIRD PARAGRAPH OF ARTICLE 177 OF THE EEC TREATY UNRESERVEDLY REQUIRES NATIONAL COURTS OR TRIBUNALS AGAINST WHOSE DECISIONS THERE IS NO JUDICIAL REMEDY UNDER NATIONAL LAW TO REFER TO THE COURT EVERY QUESTION OF INTERPRETATION RAISED BEFORE THEM, THE AUTHORITY OF AN INTERPRETATION ALREADY GIVEN BY THE COURT MAY HOWEVER DEPRIVE THE OBLIGATION OF ITS PURPOSE AND THUS EMPTY IT OF ITS SUBSTANCE. SUCH IS THE CASE ESPECIALLY WHEN THE QUESTION RAISED IS MATERIALLY IDENTICAL WITH A QUESTION WHICH HAS ALREADY BEEN THE SUBJECT OF A PRELIMINARY RULING IN A SIMILAR CASE OR WHERE PREVIOUS DECISIONS OF THE COURT HAVE ALREADY DEALT WITH THE POINT OF LAW IN QUESTION, IRRESPECTIVE OF THE NATURE OF THE PROCEEDINGS WHICH LED TO THOSE DECISIONS, EVEN THOUGH THE QUESTIONS AT ISSUE ARE NOT STRICTLY IDENTICAL. HOWEVER, IT MUST NOT BE FORGOTTEN THAT IN ALL SUCH CIRCUMSTANCES NATIONAL COURTS AND TRIBUNALS, INCLUDING THOSE REFERRED TO IN THE THIRD PARAGRAPH OF ARTICLE 177, REMAIN ENTIRELY AT LIBERTY TO BRING A MATTER BEFORE THE COURT OF JUSTICE IF THEY CONSIDER IT APPROPRIATE TO DO SO.

5. THE THIRD PARAGRAPH OF ARTICLE 177 OF THE EEC TREATY IS TO BE INTERPRETED AS MEANING THAT A COURT OR TRIBUNAL AGAINST WHOSE DECISIONS THERE IS NO JUDICIAL REMEDY UNDER NATIONAL LAW IS REQUIRED, WHERE A QUESTION OF COMMUNITY LAW IS RAISED BEFORE IT, TO COMPLY WITH ITS OBLIGATION TO BRING THE MATTER BEFORE THE COURT OF JUSTICE, UNLESS IT HAS ESTABLISHED THAT THE CORRECT APPLICATION OF COMMUNITY LAW IS SO OBVIOUS AS TO LEAVE NO SCOPE FOR ANY REASONABLE DOUBT. THE EXISTENCE OF SUCH A POSSIBILITY MUST BE ASSESSED IN THE LIGHT OF THE SPECIFIC CHARACTERISTICS OF COMMUNITY LAW, THE PARTICULAR DIFFICULTIES TO WHICH ITS INTERPRETATION GIVES RISE AND THE RISK OF DIVERGENCES IN JUDICIAL DECISIONS WITHIN THE COMMUNITY.

## Cases & Questions:

<p>A) Is this the case to ask for preliminary ruling?</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p>The family of Simone Leitner booked a package holiday (all-inclusive stay) with TUI at the 'Pamfiliya' Robinson club in Side, Turkey ('the club') for the period 4 to 18 July 2008.</p> <p>On 4 July 2008 Simone Leitner and her parents arrived at the club. There they spent the entire holiday and there they took all their meals. About a week after the start of the holiday, Simone Leitner showed symptoms of salmonella poisoning. The poisoning was attributable to the food offered in the club. The illness, which lasted beyond the end of the holiday, manifested itself in a fever of up to 40 degrees over several days, circulatory difficulties, diarrhoea, vomiting and anxiety. Her parents had to look after her until the end of the holiday. Many other guests in the club also fell ill with the same illness and presented the same symptoms.</p> <p>Two to three weeks after the end of the holiday a letter of complaint concerning Simone Leitner's illness was sent to TUI. Since no reply to that</p>
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	letter was received, Simone Leitner, through her parents, brought an action for damages in the sum of ATS 12 000 EUR.
	The court of first instance awarded the claimant only EUR 2000 for the physical pain and suffering ('Schmerzensgeld') caused by the food poisoning and dismissed the remainder of the application, which was for compensation for the non-material damage caused by loss of enjoyment of the holidays ('entgangene Urlaubsfreude'). That court considered that, if the feelings of dissatisfaction and negative impressions caused by disappointment must be categorised, under Austrian law, as non-material damage, they cannot give rise to compensation because there is no express provision in any Austrian law for compensation for non-material damage of that kind...

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<p>B) Administrative authorities (not only courts) of MS have to apply the EU law....</p>	<p><b>Urteil des Gerichtshofes vom 13. Januar 2004.</b></p> <p><b>Kühne &amp; Heitz NV gegen Produktschap voor Pluimvee en Eieren.</b></p> <p><b>Ersuchen um Vorabentscheidung: College van Beroep voor het bedrijfsleven - Niederlande.</b></p> <p><b>Geflügelfleisch - Ausfuhrerstattungen - Unterlassung einer Vorlage - Bestandskräftige Verwaltungsentscheidung - Wirkung eines Vorabentscheidungsurteils, das der Gerichtshof nach dieser Entscheidung erlässt - Rechtssicherheit - Vorrang des Gemeinschaftsrechts - Grundsatz der Zusammenarbeit - Artikel 10 EG.</b></p> <p><b>Rechtssache C-453/00.</b></p> <p><i>Sammlung der Rechtsprechung 2004 Seite I-00837</i></p> <div style="background-color: #ffffcc; padding: 5px;"> <p>22. Daher ist eine so ausgelegte Bestimmung des Gemeinschaftsrechts von einer Verwaltungsbehörde im Rahmen ihrer Zuständigkeit auch auf Rechtsbeziehungen anzuwenden, die vor dem Erlass der Vorabentscheidung des Gerichtshofes entstanden sind.</p> </div>
<p>... but, do they have also a right to ask for PRP?</p> <p>—————→</p>	<p>According to case 61/65, <i>Vaassen-Göbbels</i> and other cases<sup>2</sup> the criteria to defined term »court« shall be:</p> <ul style="list-style-type: none"> <li>- authority formed by law</li> <li>- is permanent</li> <li>- make decisions based on contentious procedure</li> <li>- is exclusively competent to make decision on the dispute</li> <li>- have to based decision on the law – legitimate cause of action</li> <li>- is independent body</li> <li>- is not a party to a proceeding</li> <li>- and the parties are bound to its decision</li> </ul>
<p>Discuss!</p>	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>
<p>C)</p>	<p>Why would the national courts seek PRP?</p> <ul style="list-style-type: none"> <li>a) because they would like to be European oriented;</li> <li>b) because they just have to;</li> <li>c) because they gain some time;</li> <li>d) because PRP can help them;</li> <li>e) because the parties want that;</li> <li>f) because they are extra paid;</li> <li>g) because the Commission can start procedure under Art. 258?</li> </ul>

<sup>2</sup> Case: 246/80 C. Broekmeulen v Huisarts Registratie Commissie [1981] ECR 2311, Case 54/96 Dorsch Consult [1997] ECR I-4961, Case C-17/00 De Coster [2001] ECR I-09445, Case C-53/03 Syfait v GlaxoSmithKline, judgment 31 May 2005.

D)	<p>Is the PRP part of PuLE or PrLE? Why?</p>
E)	<p>PRP and litigation strategy plan! Do the parties (usually) like to be involved in PRP?</p>
F)	<p>The ECJ decided that the interim relief is not possible under Art. 258! Explain why and where is the <i>ratio</i> of this statement?</p>
G)	<p>The effect of the PRP is:</p> <p>ex tunc: yes / no and why</p> <p>ex nunc: yes / no and why</p> <p>bilateral: yes / no and why</p> <p>multilateral: yes / no and why</p> <p>erga omnes: yes / no and why</p> <p>inter partes: yes / no and why</p> <p>as final decision: yes / no and why</p>

## Chapter Four

# The Action for Infringement of the Union Law (Art. 258 etc)

### A. Introduction

This chapter focuses on failure of the MS to fulfil obligation under EU law. In particular, the question is why the TFEU needs such action. Would it be possible to effectively preserve EU legal order without such action? This action is primarily available to EU Commission to have a tool against the MS (not the individual) and it is a tool for the EU Commission to fulfil the role of guardian of the EU Treaty, TFEU and EU law as such. On the other side, the EU Commission is at all not obliged to use that action. Even more, up to Amsterdam Treaty this action was not effective at all. Since then, however, *money penalty* is possible and the MS are under the pressure to respect the judgement of the ECJ once the infringement is established. The EU Commission is not empowered to impose penalties to each individual MS, but can propose the penalties to the ECJ. The latter remains free to define the *lump sum* or (read "and"<sup>3</sup>) *penalty payment*. This action is also very objective in nature; meaning that action does not allow lot of exemptions and objections for the MS. The procedure is two stage procedure, or when having in mind also the money penalty payment three stage procedure:

- a) administrative stage (aiming to .....)
- b) judicial stage (aiming the ECJ to decide about the infringement)
- c) sanctions for failure to comply with the judgement (proposed by EU Commission but adjudicated by the ECJ).

The action has inter parties effect, however it is a strong signal for other MS, not involved in the case, to change the legislation in case the judgement can be used also in the similar case in any other MS.

### B. Grounds for an action

Usually, such actions are the result of a Member State failing to implement a directive, but it is becoming more and more common for the EU Commission to take to task a Member State for failing to enforce directly binding Regulations or Decisions.

For some examples of Article 258 TFEU actions see:

Case C-484/04 *Commission v United Kingdom*, judgment 7 September 2006

Case C-119/04 *Commission v Italy*, judgment 18 July 2004

Case C-320/03 *Commission v Austria*, judgment 15 November 2005

Case C-204/03 *Commission v Spain*, judgment 6 October 2005

### C. Defences for Member States

There have been number of defences pleaded over time, but few are successful.

#### a) Force Majeure (events outside the control of the parties)

Case: 77/69 *Commission v Belgium* [1970] ECR 237

Case: 101/84 *Commission v Italy* [1985] ECR 2625

#### b) Reciprocity (other Member States are also in breach)

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<sup>3</sup> Case C-304/02, *Com. vs. France*.

Case: C-146/89 Commission v UK [1991] ECR 3533

**c) Technical difficulty**

Case: 128/78 Commission v UK (Re Tachographs) [1979] ECR 419

#### d) Inadequate Implementation of the Union Law

Case: 167/73 Commission v France (Re French Merchant Seamen) [1974] ECR 359

Case: 29/84 Commission v Germany (Re Nursing Directives) [1985] ECR 1661

**e) Action by third parties**

Case 265/95 Commission v France (French farmers) [1997] ECR I-6959

**f) Unlawfulness of the relevant Union measure**

Case C 226/87 Commission v Greece

*Finds out what reasons are relevant for MS to exclude itself from the liability under Art. 258 TFEU?*

[illegible]

### D. Starting questions

- Is this action forming part of PuLE or PrLE? Why?

[illegible]

- How do you think, the EU Commission start the procedure?

[illegible]

- How the EU Commission finds out the potential infringement?

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- Is the individual a party in the procedure under Art. 258?

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- How can the MS shape its defences, if the EU Commission starts the procedure?

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- Can the EU Commission require the MS to stop with the infringement in exchange for normal financing of the EU projects in particular MS; i.e. is the EU Commission allowed to say: we will continue to finance for instance a construction of the highway, through the Cohesion funds, but you have to stop with the infringement (which has no connection with the highway construction)? Can the MS apply exception *non adimpleti contractus*?<sup>4</sup> Why?

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<sup>4</sup> Define the meaning of the notion: \_\_\_\_\_



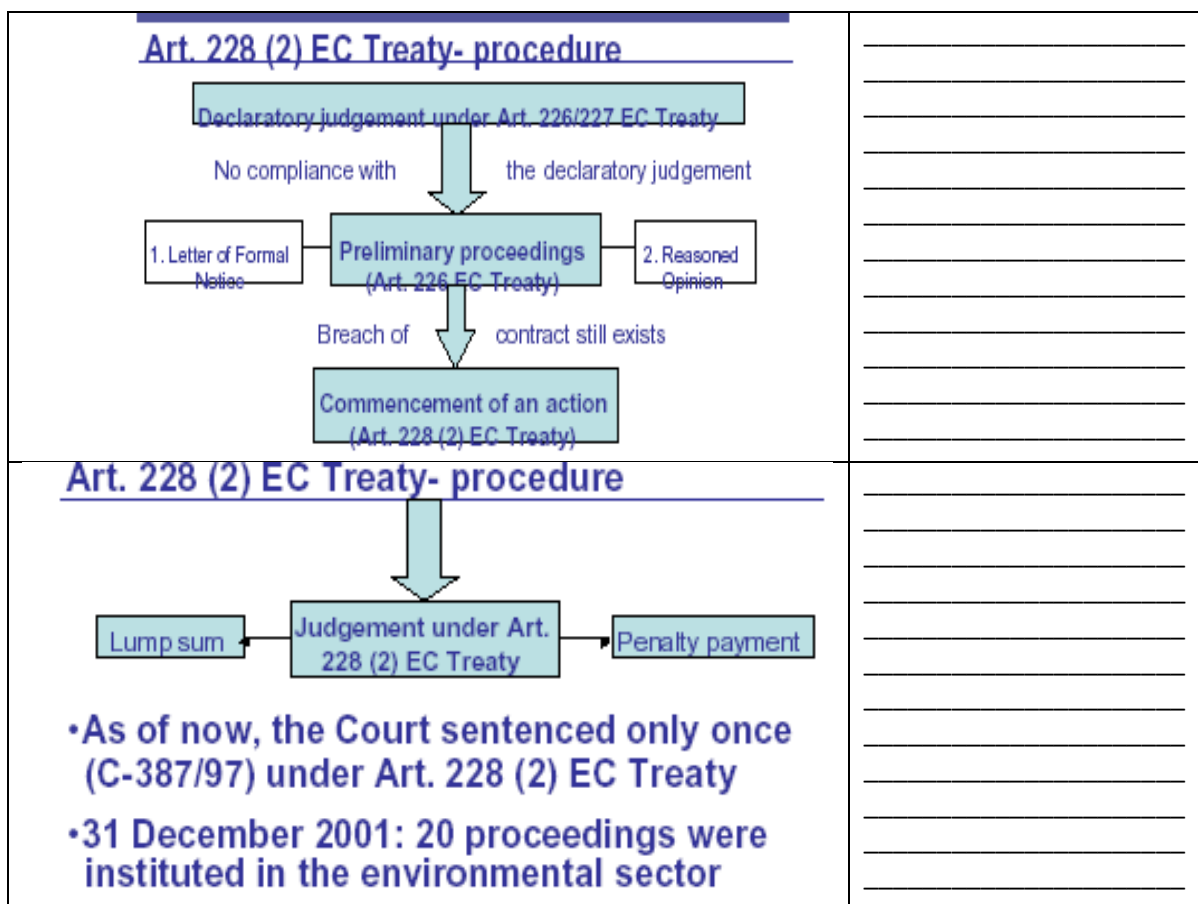
- Discuss this statement of the ECJ in Case 29/84! What is the bottom point of the statement?

*"AS THE COMMISSION HAS POINTED OUT, THE DIRECT EFFECT .... MAY NOT BE USED IN ORDER TO EVADE THE OBLIGATION TO IMPLEMENT A DIRECTIVE ...TO FACILITATE AND SECURE THE FULL APPLICATION ... IN THE MEMBER STATES."*

### E. Case study - procedure in case Kouroupitis (C-387/97)

*This is the first case under ex Art. 228 of the EC Treaty (now Art. 258)*

*Make comments on how you think the procedure is structured in general and in actual case. In order to do so, please, read the case C-397/97 first!*



<p><b>Case “Kouroupitos river”</b></p> <ul style="list-style-type: none"> <li>• <b>4 July 2000: Judgement of the Court</b> →</li> <li>❖ No implementation of all necessary measures to comply with the first judgement and failing to fulfil the obligations under Art. 228 (1) EC Treaty             <ul style="list-style-type: none"> <li>• Only adaption of insufficient fragmentary legislation and ad hoc measures to ensure that waste is disposed of without endangering human health and without harming the environment</li> <li>• Failure to draw up waste management plans for the area</li> </ul> </li> <li>❖ periodic penalty payment: € 20.000/day from delivery of this judgement</li> </ul>	
<p><b>Case “Kouroupitos river”</b></p> <ul style="list-style-type: none"> <li>• <b>Measures that were taken after the judgement:</b> <ul style="list-style-type: none"> <li>❖ Closing down of the Kouroupitos site in February 2001</li> <li>❖ Drawing up of a waste management plan for the area</li> <li>❖ Installation of temporary waste facilities until permanent installations could be constructed</li> </ul> </li> <li>• <b>Payments of Greece: € 5.400.000 and the costs of the rehabilitation of the site</b></li> <li>• <b>Payments of the EU: Funding to build two waste installations</b></li> </ul>	
<p>Is there any link between Art. 267 and 258, 260? Discuss!</p>	

#### F. Case (Prevectron 2 – lightning conductor)

A Slovene company imports the lightning conductor (LC) Prevectron 2 from France. There the LC is legally put on the market. Slovene legislation did not allow the LC which is active and not passive: normal LC is passively waiting for the thunderbolt, whereas Prevectron 2 works differently. It is active all the time. When the air wetness is almost so high that the air cannot be an isolator anymore (i.e. just before the thunderbolt) it actuates itself and draw the thunderbolt on itself.

The Slovene public authority (the competent ministry and the chamber of engineers) was of the opinion that the Prevectron 2 is not safe and Slovenia therefore forbidden to issue a *permit to use buildings* with such LC installed. After a complaint, has been lodged by the importer to the EU Commission, Slovenia adopted the regulation, which allowed also



<p>other LC, but with an obligation to make revisions (prior control) of projects where such other LC are used. Otherwise the building permits or permits to use buildings cannot be issued.</p>	
<p>Is this OK? The Commission would like to close the case. What legal remedies are possible under the PuLE system? Who can be party to such procedures?</p>	

### G. Penalty payment or lump-sum?

Read and discuss the next case, C-302/02: How is such operative part of the judgement possible under Art. 260? Find the **word** in Art. 260 that is at issue? Is the TFEU bringing changes? If yes, what kind and why?

On those grounds, the Court (Grand Chamber) hereby:

1. Declares that:

- by failing to carry out controls of fishing activities in accordance with the requirements laid down by the Community provisions, and
- by failing to ensure that action is taken in respect of infringements of the rules governing fishing activities in accordance with the requirements laid down by the Community provisions,

the French Republic has not implemented all the necessary measures to comply with the judgment of 11 June 1991 in Case C-64/88 *Commission v France* and has accordingly failed to fulfil its obligations under Article 228 EC;

2. Orders the French Republic to pay to the Commission of the European Communities, into the account 'European Community own resources', a penalty payment of EUR 57 761 250 for each period of six months from delivery of the present judgment at the end of which the judgment in Case C-64/88 *Commission v France* has not yet been fully complied with;
3. Orders the French Republic to pay to the Commission of the European Communities, into the account 'European Community own resources', a lump sum of EUR 20 000 000;
4. Orders the French Republic to pay the costs.

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## Chapter Five

# The Action for Annulment and the Action for Failure to Act (Art. 263)

### A. Introduction

This chapter concerns the action for annulment, i.e. actions *against the acts of institutions* of the EU and also action for *their inactivity* – i.e. cases where the EU shall act but it does not. The first action is *constitutional in nature*, the second an *administrative action*. Both are closely connected and **unity principle apply** (i.e. *locus standi* is similarly interpreted). In both cases, namely, the EU institutions are in breach of the EU law (not the national law). In this respect the chapter discusses questions what acts can be annulled and for what reasons. Art. 263 differs between *privileged, semi privileged and non-privileged* applicants and therefore the question who has *locus standi* and under what conditions becomes increasingly important (*Plaumann formula*). Therefore, it is of the greatest concern what conditions are set under par. 4 of Art. 263 for individuals to be a party in a proceeding. The CJEU develop interpretations of direct and individual concern – the two obstacles for individuals that need to be overcome for being an active party - plaintiff. In addition, Lisbon Treaty (TFEU) brings changes, since the case law identified issues of *denial of justice*.<sup>5</sup> The consequences of a successful action are different; the CJEU might rule with the effects *ex tunc* or *ex nunc*. It might also annul a whole act or only part of the act.

Art. 263 aims for a declaration that an act is void and thus enables Union institutions, Member States and natural and legal persons to protect themselves against unlawful, yet binding acts of the EU. Contested act is reviewed in the light of superior - written or unwritten – Union law.

### ARTICLE 263

The Court of Justice of the European Union shall review the legality of legislative acts, of acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament and of the European Council intended to produce legal effects vis-à-vis third parties. It shall also review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties.

It shall for this purpose have jurisdiction in actions brought by a Member State, the European Parliament, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to its application, or misuse of powers.

The Court of Justice shall have jurisdiction under the same conditions in actions brought by the Court of Auditors and by the European Central Bank and by the Committee of the Regions for the purpose of protecting their prerogatives.

This action may be taken by

- Privileged applicants (MS, Commission, European Parliament, Council)
- Semi-privileged applicants (ECB, Committee of the Regions, Court of Auditors)
- Non-privileged applicants (natural or legal persons)

Target of the action is the *annulment of legislative act* created by body/institution of the Union *intended to produce legal effects vis-à-vis third parties*.

<sup>5</sup> Case T-177/01 *Jego-Quere*, [2002] ECR II-2356 and Case C-50/00 *Union de Pequenos Agricultores*: Advocate General Jacobs's opinion 21st March 2002, [2002] ECR I-6677.

Any natural or legal person may, under the conditions **laid down in the first and second paragraphs**, institute proceedings against **an act** addressed to that person or **which** is of direct and individual concern **to them**, and against a regulatory act which is of direct concern to **him or her** and does not entail implementing measures.

Acts setting up bodies, offices and agencies of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of these bodies, offices or agencies intended to produce legal effects in relation to them.

The proceedings provided for in this article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

**Question:**

Can you compare this type of action with alike actions in your national legal system? Is this action “constitutional” or “administrative” in its nature, i.e. do national and administrative / constitutional court have alike jurisdiction?

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## B. General questions

- Why is the action for annulment necessary? Would the EU law be preserved even without such action?

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- Who can be the applicant? Why are there three groups of applicants?

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- Which acts can be annulled? Can the TFEU or EU Treaty be annulled? Why?

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- Is it necessary to annul the acts in order to obtain damages caused by acts?

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- What are reasons for annulment?

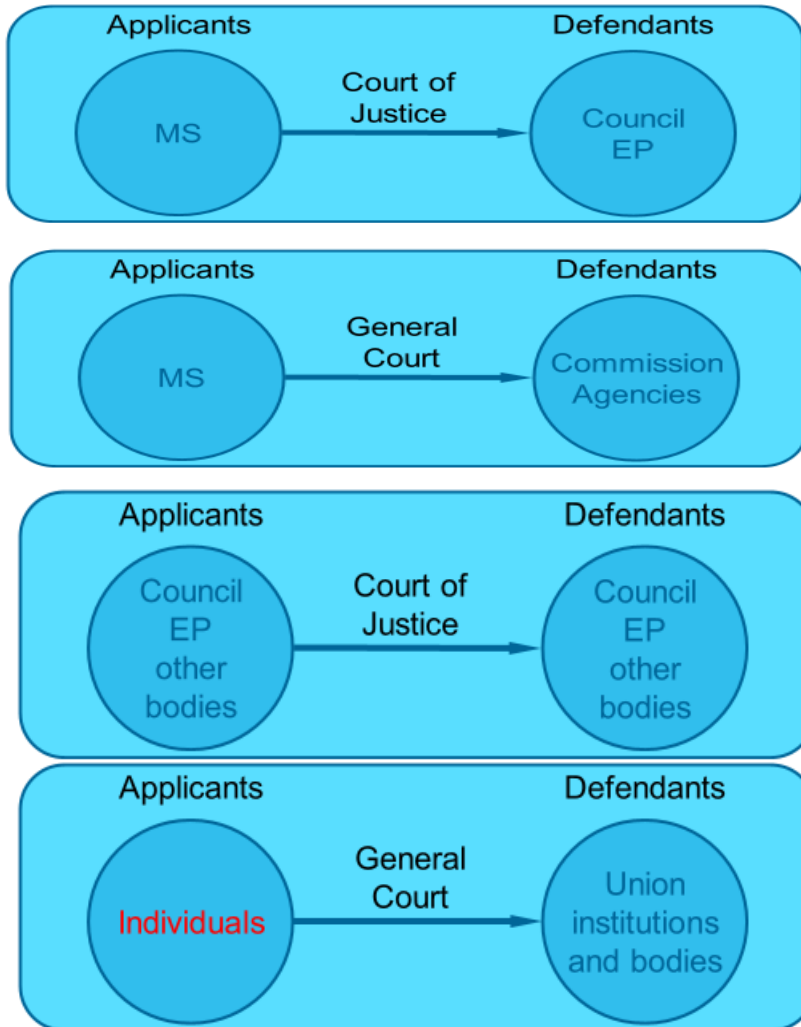
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### C. Shared competence between both courts

The picture of the competence is the following:



#### Question:

Why do you think, it is not only one court that is competent for all actions for annulment? Which criteria is used to divide the competence? Again, is there any similarity with national regulative on action for annulment?

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This article (263) allows the CJEU to review the legality of measures:

- adopted jointly by the European Parliament and the Council
- of the Council,
- of the Commission and of the European Central Bank (other than recommendations and opinions),
- of the European Parliament intended to produce legal effects vis-à-vis third parties.

There are **four** conditions, which must apply before a measure can be successfully challenged:

- the measure must be one which is open to review
- the party making the challenge must have locus standi – (the right to be heard by the Court)
- there must be procedural or substantive illegality of the type mentioned
- the challenge must be within the time limits

*Discuss which parts of Art. 263 require and define these conditions? Which case law of the CJEU defines the conditions in details?*

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### D. Who has locus standi?

- i) *Privileged applicants: Member States, Commission, Council, European Parliament*

*Case: 294/83 Les Verts v European Parliament [1986] ECR 1339*

Case: 302/87 European Parliament v Council (Comitology) [1988] ECR 5615

Case: 70/88 European Parliament v Council [1990] ECR I-2041 (Chernobyl)

- ii) *Semi-privileged applicants: the Court of Auditors and the European Central Bank*

Case: 294/83 Les Verts v European Parliament [1986] ECR 1339

Case: 302/87 European Parliament v Council (Comitology) [1988] ECR 5615

Case: 70/88 European Parliament v Council [1990] ECR I-2041 (Chernobyl)

- iii) *Non-privileged applicants*

Natural and legal persons may have *locus standi* in three circumstances. Where there is:

- A decision addressed to them
- A decision addressed to another person, but which is of **direct and individual concern** to them

- and (NEW – Lisbon treaty - TFEU) **against a regulatory act which is of direct concern to him or her and does not entail implementing measures.**
- Individual concern

Decision addressed to another: Case 25/62 Plaumann v Commission [1963] ECR 95:

The applicant can claim to be individually concerned: '*if that decision affects **them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguishes them individually just as in the case of the person addressed***'.

See also:

Case 11/82 Piraiki-Patraiki [1985] ECR 207

Case 106 and 107/63 Toepfer v Commission [195] ECR 405

- How important is the former wording: **Decision in the form of a Regulation**: and two tests defined by the ECJ:

1. The closed category test

Does the measure apply to a closed category/ a fixed group of persons?

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2. The general application test

Does the measure involve legal consequences for categories of persons viewed in a 'general and abstract manner'? See in this respect the following cases:

*Case 789/79 Calpak v Commission [1980] ECR 1949*

*Case 41-44/70 International Fruit v Commission [1971] ECR 411*

*Case 309/89 Codorniu v Council [1994] ECR I-1853*

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- Is a definition of “and against a regulatory act which is of direct concern to him or her and does not entail implementing measures” already given? See in these respect, if the below cases are still important or not?

*Case T-177/01 Jago-Quere, [2002] ECR II-2356*

*Case C-50/00 Union de Pequenos Agricultores: Advocate General Jacob's opinion 21st March 2002, [2002] ECR I-6677<sup>6</sup>*

<sup>6</sup> Please make sure that you read the Opinion of Advocate-General Jacob's in UPA: it is a valuable source of arguments relating to the test for individual concern.

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Case study: **C-50/00 P, Unión de Pequeños Agricultores**

- Read the case!
- What is the essence of the case?
- Why is this case so particular?
- Is it par. 45 of the judgement a denial of justice? Underline the most important sentences in these three paragraphs?

41 Thus it is for the Member States to establish a system of legal remedies and procedures which ensure respect for the right to effective judicial protection.

42 In that context, in accordance with the principle of sincere cooperation laid down in Article 5 of the Treaty, national courts are required, so far as possible, to interpret and apply national procedural rules governing the exercise of rights of action in a way that enables natural and legal persons to challenge before the courts the legality of any decision or other national measure relative to the application to them of a Community act of general application, by pleading the invalidity of such an act.

45 While it is, admittedly, possible to envisage a system of judicial review of the legality of Community measures of general application different from that established by the founding Treaty and never amended as to its principles, it is for the Member States, if necessary, in accordance with Article 48 EU, to reform the system currently in force.

Why the CJEU “returned the ball” to EU legislator and to the MS instead of taken more open approach to the definition of the individual concern?

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*Why, do you think, the TFEU was changed (in 2009, Lisbon Treaty) in this respect? The court find denial of justice... is the judicial system leaking? Legal safety cannot be achieved?*

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- Direct concern

The non-privileged applicant should prove the cause and the effect. If the measure gives discretionary power to a third party, the fact that the applicant may be affected does not mean the measure is of direct concern to the applicant.

*Case 69/69 Alcan v Commission [1970] ECR 385*

*Case 11/82 Piratki-Patraiki [1985] ECR 207*

## E. What are the grounds for Article 263 application?

There are **four** grounds:

*i Lack of competence.*

Cases: 281, 283-5 and 287/85 Germany and Others v Commission [1987] ECR 3203

*ii Infringement of an essential procedural requirement.*

Case: Roquette Freres v Council (already cited).

*iii Infringement of Treaty provisions or any rule of law relating to its application.*

Case: 152/73 Sotgiu v Deutsche Bundespost [1974] ECR 153

*iv Misuse of powers.*

Case: 105/75 Guiffrida v Council [1976] ECR 1395

*Question:*

*Are these conditions a huge burden for parties to be proved? Or is it rather the paragraph 4 that makes the “doors” almost closed for applicants? In another words – what is being more difficult for the plaintiffs: formal criteria (access to the court and the 4. Par.) or substantial criteria?*

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## F. Acts which have legal effects are reviewable by the ECJ whatever their form or nature

*Case: 22/70 Commission v Council (ERTA case) [1971] ECR 263*

*Case: 60/81 IBM Corp. v Commission [1981] ECR 2639*

*Comment these two cases? Is it possible that an action (with no actual legal act) can constitute “an act”*

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#### D. Time limits to bring an action under Article 263

There is a general provision that an action must be brought within 2 months from the date of publication of the measure in the OJ.

Where the measure is addressed directly to the applicant, the 2 months runs from the date of notification of the measure to the applicant.

It is very difficult to obtain extensions of these time limits.

Question:

*Which theory applies in case of time limit: theory of receipt or theory of transmission?*

[illegible]

## Case

A restaurant in Austria near Celovec is famous one. Most of their celebrity is due to the food, called *Maultasche*. The owner was unpleasantly surprised when he found out that very alike food offered in Slovenia is now geographically protected (see the regulation 21/2010 bellow). He wonders whether he is still allowed to serve *Maultasche* or is such a food prohibited. If the answer is positive, he would like to use legal remedies and start appropriate actions.

*What piece of advice can be given to him?*

## COMMISSION REGULATION (EU) No 31/2010

of 14 January 2010

entering a designation in the register of traditional specialties guaranteed [Idrijski žlikrofi (TSG)]

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 509/2006 of 20 March 2006 on agricultural products and foodstuffs as traditional specialties guaranteed <sup>(1)</sup>, and in particular the first subparagraph of Article 9(4) thereof,

Whereas:

- (1) In accordance with the first subparagraph of Article 8(2) of Regulation (EC) No 509/2006, and pursuant to Article 19(3) of the same Regulation, the application submitted by Slovenia to enter the designation 'Idrijski žlikrofi' in the register was published in the *Official Journal of the European Union* <sup>(2)</sup>.
- (2) As no objection under Article 9 of Regulation (EC) No 509/2006 has been received by the Commission, this designation should be entered in the register.

- (3) The application also requested protection under Article 13(2) of Regulation (EC) No 509/2006. That protection should be granted to the name 'Idrijski žlikrofi' in so far as, in the absence of objections, it could not be demonstrated that the name is used in a lawful, renowned and economically significant manner for similar agricultural products or foodstuffs,

HAS ADOPTED THIS REGULATION:

## Article 1

The name contained in the Annex to this Regulation is hereby entered in the Register.

Protection as referred to in Article 13(2) of Regulation (EC) No 509/2006 shall apply.

## Article 2

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14 January 2010.

For the Commission

The President

José Manuel BARROSO

Questions &amp; Cases:

**Commission Regulation (EC) No xx/xxxxx of xxxx on rules of application for import and export licences in the beef and veal sector** is published in the OJ two days ago. The Chamber of farmers thinks that the Regulation does not enable free movement of goods, but it rather puts obstacles on the market with the administrative measures. What to do? Can you advise the Chamber?

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Case:<sup>7</sup>

Globalisation has advanced dramatically and English has become the dominating language in the world. Business in the European Union is suffering from that because the English skills of most Europeans, in particular of the highly qualified academic professionals, are insufficient to meet the rising standards of the global clients. Therefore, the European Union wants to strengthen the performance and competitiveness of the enterprises and institutions in the member states by radically improving the language skills of its citizens. There are plans to oblige all universities to provide higher education mainly in English language, but the Union is missing the necessary competences.

Finally, the Council, acting on a proposal from the Commission and after consulting the European Parliament, adopts a directive for the mutual recognition of diplomas, certificates and other evidence of formal qualification, based on Art. 53(1) TFEU, the so-called "Higher Education Mutual Recognition Directive" (HEMRD). It obliges and allows the member states to recognise higher educational degrees obtained in other member states only if more than two thirds of all courses and exams in the study program have been done in English. For certain studies, which are closely linked to a special language, like philology, linguistic studies, history, certain cultural studies and studies of national law, the directive provides for exceptions.

The rector of a university in member state A-land is convinced that this directive is illegal under many aspects. He considers it as an assault on the national identities of the member states, which are protected by a fundamental clause in the Treaties. He doubts that it falls under Art. 53(1) Treaty, questions the way it has been

<sup>7</sup> Source: [http://home.lu.lv/~tschmit1/Downloads/Schmitz\\_Cases-EULaw\\_case10.pdf](http://home.lu.lv/~tschmit1/Downloads/Schmitz_Cases-EULaw_case10.pdf)

made and assumes a violation of the economic fundamental freedoms of the citizens. The rector is happy that the law students at his university are well educated in European Union law and asks them:

1. Is the directive legal under European Union law?
2. Who can achieve in which way that the legality of the directive is reviewed by the courts?

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Case:<sup>8</sup>

In 2007 the European Commission adopted (fictitious) Regulation 364/2007, which requires Member States to issue wine import licences each month to importers from outside the EU who submit licence applications during the previous month. On 1 February 2010 the European Commission issued a (fictitious) decision addressed to France allowing it to restrict licences for Argentinian wine imports for February 2010 so as to limit the amount that could be imported into France by an applicant to 10,000 litres during that month.

Argenco SA ('Argenco') imports Argentinian wine into the EU. In January 2010 it applied to import 15,000 litres of wine into France in February. A licence was granted on 2 February but was limited to 10,000 litres. The French authorities claimed to be acting pursuant to the Commission decision of 1 February.

Argenco now seeks your advice on instituting annulment proceedings in the General Court in respect of the Commission decision. Advise Argenco as to whether such an action would be admissible.

How, if at all, would your answer differ if in December 2009 the French authorities had informed Argenco that they had sought permission from the Commission to restrict import licences for Argentinian wine to 10,000 litres for the month of February 2010?

8 ???





## Chapter Six

### The Actions for Damages

This action, rarely used and rarely successful, is a tool for individuals to *obtain* damages:

- a) from EU and
- b) not from the MS.

However, even from the MS is possible to obtain damages (in national procedures) for breach of the EU law (Art. 4 of the TEU) or improper use of the EU law, but not for breach made by the EU institutions. In the latter case, the action shall be brought directly at the CJEU.

- Who can be a party to such proceeding? Which article makes possible the action for damages against EU institutions?

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- Who is the one that can cause damage – EU institution or its servants? Who is the defendant in the court proceeding?

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- What are requirements for liability?

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- Can the EU Treaty cause damage? What is meant by the CJEU when deciding that a superior rule of law intended to confer rights on individuals must be breached in order to obtain damages...?

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- Who has to prove requirements for the successful action?

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- What is the effect of the judgement - *inter parte*, *erga omnes*?

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- List the differences between the actions for damages under Art. 340 and state liability! Could these actions be combined?

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- Case study: C-352/98 P, Bergaderm  
*Read the case! Assess if the action for damages is a proper tool for an individual when contesting the general measure.*

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- Compare the above case with the case 145/83, Stanley  
(Mr. Stanley gave to the EU Commission the smoking gun evidence about the Hoffman La Roche violation of the EU competition law. The EU Commission unfortunately revealed his name to Hoffman La Roche. He was prosecuted due to the economic espionage and put in prison. His wife also committed suicide (sic!).

Some more background:

- Stanley Adams was a senior executive with the Swiss pharmaceutical company Hoffmann-LaRoche when in 1973 he discovered documents which indicated that the company was involved in price-fixing to artificially inflate the price of vitamins. He passed on the documents to the EU Commission, aware that Switzerland, while not part of the EEC, had a free trade agreement with it.
- The EC failed to keep his name confidential during its investigation, passing documents containing Adams' name to Hoffman La Roche. Adams was arrested and charged with industrial espionage and theft. Adams' wife was told that he faced a 20-year jail term for industrial espionage. She committed suicide. In the end, Adams served six months in a Swiss prison. When released, he fled to the United Kingdom and he attempted to recover compensation from both the Swiss government and the European union. In 1985 the European Union agreed to pay Adams £200,000, about 40% of his total costs. He documented the saga in *Roche vs Adams...*




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MATTERS OF CORPORATE CONSCIENCE

*Stanley Adams v. Hoffmann-La Roche*

See also:

How do you comment this article:

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- Case & discussion work:

EU imposed (from political reasons) sanctions to third countries (currently are such sanctions in force against Russia). Due to sanctions, which inter alia, prohibits a trade among companies from EU and Russia, EU companies suffer losses. They do not agree with sanctions.

Is it possible to attack the decision on sanctions (Art. 263 Action for annulment) or/and actions for damages? Under what conditions?

*Try to find some internet articles on this topic, or blogs, which can give some insights to the topic...*



Case T-479/14 Kendrion v EU (Court of Justice): Damages, duration of judicial proceedings, appropriate defendant.

## EU COURT AWARDS DAMAGES FOR 1st TIME IN A SANCTIONS CASE



The General Court of the EU (First Chamber) has awarded damages today for the first time in a sanctions case, in Case T-384/11 *Safa Nicu Sepahan v Council* (25 November 2014).

**Context:** The case follows the pattern of a number of recent sanctions cases in the European court that will be familiar to readers of this blog. The applicant, an Iranian company, was included in 2011 in the EU's targeted sanctions concerning Iran. It said that the reasons given for its inclusion (that is a "communications firm that supplied equipment for the Fordow (Qom) facility built without being declared to the IAEA") were incorrect, that it was not a communications firm and was not involved in the supply of equipment to that facility. The Council of the EU had no evidence, other than the listing proposal from a Member State, to support its reasons; and therefore the Court annulled the company's designation on the grounds that the Council had "manifestly erred" in including the applicant and had not discharged its burden of proof. The Court ordered the Council to bear its own costs and pay half of the applicant's costs.

2 February 2015

## Delayed EU Court Proceedings Can Give Rise to Claims for Damages

The time taken by the European judiciary<sup>1</sup> to adjudicate on cases is of increasing concern. Failure by the General Court to conclude proceedings within a reasonable time triggers a right to compensation. In order to obtain damages, claimants need to make a fresh application before the General Court, separate from that seeking to annul or reduce the fines imposed by the Commission in antitrust cases. A number of damages actions for delayed EU Court proceedings were brought last year. It is now clear that the EU Courts will be held liable for their own delays. However, a number of questions remain unanswered, including the determination of the quantification of the damages.

## Excessive Delays at the GC and the Right to a Fair Trial within a Reasonable Time

It is widely understood that the GC is overloaded and suffers from a significant backlog of cases, in particular as a result of the ever increasing number of appeals of EU decisions in complex competition cases.<sup>2</sup> While this inevitably means that the GC will take longer to process cases, an appellant still has a right to a fair trial within a reasonable time.

Case:

Read the judgement in case Case C-379/10 Commission v Italija

Among other, this is a paragraph from the judgement.

How do you comment it?

In conclusion, the Court finds that, in so far as it rules out the possibility of the State ***incurring liability for an infringement of EU law by a court whose decision is not open to appeal, where the infringement comes about as a result of the way in which that court has interpreted provisions of law or assessed the facts or evidence, and in so far as it limits State liability in this connection to cases involving intentional fault or gross negligence, the Italian legislation is incompatible with the general principle of the liability of Member States for a breach of EU law.***

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## Chapter Seven

## Conclusions

The focus in this handbook is given, *inter alia*, to private and public law enforcement in different actions at the CJEU and in the MS. We will try to summarise whether the CJEU is to any extent open to private law remedies or only to public law remedies. In this respect the position of an individual in the legal protection system of the EU can be assessed. As mentioned in the foreword, all three systems of legal remedies are included in the CJEU competences, however not without connection to national courts (not administrative authorities). This chapter is not focusing to individual action but rather to make overview of all of them, asking which procedure can be used/combined in the individual case. The work in this chapter is of case law nature and depends on active participation.

1. By what procedures can the CJEU review actions of the MS and the other institutions? Are there any areas where it has no such power?

[illegible]

2. Make arguments that the following statements are right/wrong:

- a) System of legal remedies in the EU is framed in a way, that national courts cannot make decisions on EU law and CJEU not on national law; national courts are only empowered to judge upon national law, and vice versa, CJEU is only empowered to judge under EU law;

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- b) Art. 267 TFEU can in no way, even if not respected by the national court, be viewed as a part of constitutional rights of individuals.

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- c) Actions at the CJEU have no suspending effect. Therefore, the interim measures are needed. However, not all actions are suitable for interim measure.

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- d) The direct effect and the state liability are not legal remedies under the EU law.

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3.

Do you think the CJEU can play the role in these disputes between MS and non-MS?

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4. What is the difference between the damages and penalty under Arts. 4 (TEU), 256 and 340 TFEU?

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5. Are damages easily accessible for an individual under EU law?

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6. Is it possible that an individual success to prove the breach of the EU law but at the same time the breach is not remedied and also no damages are adjudged? Is such a case a *denial of justice*?  
(Analyse the case C-224/01, Köbler)

7. What would you do? The party, against whom the arbitral tribunal issued an award, is now in a court enforcement procedure. She was not active at all during the arbitral procedure. The court finds out that arbitral clause could be contrary to the Dir. 93/13 (Missbräuchliche Klauseln in Verbraucherverträgen) and now, the court is faced with several questions, like whether:

- a) can the court judged about the arbitral clause once the award is final;
- b) can the court do that *ex officio* or only once claimed so by the party?

8. Comment this speech of the former commissioner for DG Competition Mario Monti!

*Do you agree?*

*Underline the most important sentences/parts!*

### A. Private Enforcement.

It is widely acknowledged that the private enforcement of EC and national competition law has been extremely limited to date. In Europe, competition law is mostly enforced by Competition agencies, subject to review by the courts. It is much less common that the national courts enforce directly the law at the initiative of private parties.

## 1. Advantages of Private Enforcement

I believe that greater private enforcement of Community competition law would bring clear benefits for the functioning of the internal market and the competitiveness of the European economy:

- The threat of such litigation has a strong deterrent effect and would lead to a higher level of compliance with the competition rules.
- Increased private action would further develop a culture of competition amongst market participants, including consumers, and raise awareness of the competition rules, and
- Private litigants may take action against infringements which the Commission and the national competition authorities would not pursue, or do not have sufficient resources to deal with.

Private actions before national courts should, of course, remain complementary to the public enforcement of EC competition law. The role of the public authorities will continue to be of critical importance in detecting anti-competitive practices such as hard core cartels.

*Mario Monti: Private litigation as a key complement to public enforcement of competition rules and the first conclusions on the implementation of the new Merger Regulation, Fiesole, 17.9.2004*

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## 9. Case:

An Austrian farmer is not satisfied with the Regulation xx/yy which regulates agricultural aid for milk and milk products. He is convinced that the abovementioned regulation is breaching the principle of proportionality<sup>9</sup> and that Austrian farmers shall receive more aid as Italian and others due to the heavy landscape and farming conditions.

He would like to plead annulment of the Regulation at the national court at the same time when applied for higher agricultural aid.

- Would you advise him to do that?
- Is the national court obliged to make decision on this issue?
- Can/have to ask CJEU to help? In what form?

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<sup>9</sup> Explain this principle as developed by the CJEU: \_\_\_\_\_

## Appendix

Articles from the EU Treaty relating to the CJEU and actions:

Articles	
<p><i>EU Court = Court of Justice, General Court and specialised courts</i></p>	<p>SECTION 5 THE COURT OF JUSTICE OF THE EUROPEAN UNION</p>
<p><i>Three formations: - chambers - Grand Chamber - full Court</i></p>	<p>ARTICLE 251</p> <p>The Court of Justice shall sit in chambers or in a Grand Chamber, in accordance with the rules laid down for that purpose in the Statute of the Court of Justice of the European Union.</p> <p>When provided for in the Statute, the Court of Justice may also sit as a full Court.</p>
<p><i>Advocates-General</i></p>	<p>ARTICLE 252</p>
<p><i>8 AGs - can be increased by unanimity</i></p>	<p><b>U</b> The Court of Justice shall be assisted by eight Advocates-General. Should the Court of Justice so request, the Council, acting unanimously, may increase the number of Advocates-General. It</p>
<p><i>- impartial - independent - make submissions when their involvement is required</i></p>	<p>shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require his involvement.</p>
<p><i>Appointments for Court of Justice</i></p>	<p>ARTICLE 253</p>
<p><i>Judges and Advocates- General shall have qualifications for the highest positions within their national legal systems - chosen by common accord</i></p>	<p><b>U</b> The Judges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence; they shall be appointed by common accord of the governments of the Member States for a term of six years <b>after consultation of the panel provided for in Article 255.</b></p>
<p><i>Partial replacement every third year</i></p>	<p>Every three years there shall be a partial replacement of the Judges and Advocates-General, in accordance with the conditions laid down in the Statute of the Court of Justice of the European Union.</p>
<p><i>President elected for 3 years, may be re-elected</i></p>	<p>The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He may be re-elected.</p> <p>Retiring Judges and Advocates-General may be reappointed.</p> <p>The Court of Justice shall appoint its Registrar and lay down the rules governing his service.</p>
<p><i>The Council approves Rules of procedure</i></p>	<p><b>XX</b> The Court of Justice shall establish its Rules of Procedure. Those Rules shall require the approval of the Council.</p>



<p><i>General Court</i> - former Court of First Instance May have more than one judge from each country (for Court of Justice: one per country - Art.19.2 TEU)</p> <p><i>Judges must be:</i> - independent and able for high legal office - Appointed for 6 years; partial rotation every 3 years</p> <p><i>President for 3 years; may be re-elected</i></p> <p><i>Rules by QMV; may also apply to specialised courts</i></p> <p><i>The panel</i></p> <p><i>Panel gives opinions on candidates; 7 members - 6 proposed by</i></p>	<p style="text-align: center;">ARTICLE 254</p> <p>The number of Judges of the <b>General Court</b> shall be determined by the Statute of the Court of Justice of the <b>European Union</b>. The Statute may provide for the <b>General Court</b> to be assisted by Advocates-General.</p> <p>The members of the <b>General Court</b> shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high judicial office. They shall be appointed by common accord of the governments of the Member States for a term of six years <b>after consultation of the panel provided for in Article 255</b>. The membership shall be partially renewed every three years. Retiring members shall be eligible for reappointment.</p> <p>The Judges shall elect the President of the <b>General Court</b> from among their number for a term of three years. He may be re-elected.</p> <p>The <b>General Court</b> shall appoint its Registrar and lay down the rules governing his service.</p> <p><b>XX</b> The <b>General Court</b> shall establish its Rules of Procedure in agreement with the Court of Justice. Those Rules shall require the approval of the Council, acting by a qualified majority.</p> <p>Unless the Statute of the Court of Justice of the <b>European Union</b> provides otherwise, the provisions of the <b>Treaties</b> relating to the Court of Justice shall apply to the <b>General Court</b>.</p> <p style="text-align: center;">ARTICLE 255</p> <p>A panel shall be set up in order to give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the <b>General Court</b> before the governments of the Member States make the appointments referred to in Articles 253 and 254.</p>
<p><i>President of the Court, 1 by the EP</i></p> <p><i>The Council appoints by qualified majority</i></p> <p><i>Jurisdiction of General Court; competences</i></p> <p><i>In principle: Court of first instance Competences can be extended in the Statute</i></p> <p><i>Appeals to the Court of Justice only possible on points of law</i></p>	<p>The panel shall comprise seven persons chosen from among former members of the Court of Justice and the <b>General Court</b>, members of national supreme courts and lawyers of recognised competence, one of whom shall be proposed by the European Parliament.</p> <p><b>XX</b> The Council shall adopt a decision establishing the panel's operating rules and a decision appointing its members. It shall act on the initiative of the President of the Court of Justice.</p> <p style="text-align: center;">ARTICLE 256</p> <p>1. The <b>General Court</b> shall have jurisdiction to hear and determine at first instance actions or proceedings referred to in Articles 263, 265, 268, 270 and 272, with the exception of those assigned to a <b>specialised court set up under Article 257</b> and those reserved in the Statute for the Court of Justice. The Statute may provide for the <b>General Court</b> to have jurisdiction for other classes of action or proceeding.</p> <p>Decisions given by the <b>General Court</b> under this paragraph may be subject to a right of appeal to the Court of Justice on points of law only, under the conditions and within the limits laid down by the Statute.</p>

<p><i>Decisions from the specialised courts can be reviewed by the General Court. Only exceptionally, General Court rulings in 2nd instance can be reviewed by the Court of Justice</i></p> <p><b>Preliminary rulings</b></p> <p><i>Decision of principle by the General Court</i></p> <p><i>Preliminary rulings of General Court can exceptionally be brought for Court of Justice</i></p>	<p>2. The <b>General Court</b> shall have jurisdiction to hear and determine actions or proceedings brought against decisions of the <b>specialised court</b>.</p> <p>Decisions given by the <b>General Court</b> under this paragraph may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of <b>Union</b> law being affected.</p> <p>3. The <b>General Court</b> shall have jurisdiction to hear and determine questions referred for a preliminary ruling under Article 267, in specific areas laid down by the Statute.</p> <p>Where the <b>General Court</b> considers that the case requires a decision of principle likely to affect the unity or consistency of <b>Union</b> law, it may refer the case to the Court of Justice for a ruling.</p> <p>Decisions given by the <b>General Court</b> on questions referred for a preliminary ruling may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of <b>Union</b> law being affected.</p>
<p><b>Specialised courts</b></p> <p><i>Establishment by laws adopted by ordinary legislative procedure;</i></p> <p><i>Specialised courts may be first instance courts in specific areas</i></p> <p><i>Appeals only on points of law, unless otherwise stated</i></p>	<p style="text-align: center;">ARTICLE 257</p> <p><b>X**/XX**</b> The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish specialised courts attached to the General Court to hear and determine at first instance certain classes of action or proceeding brought in specific areas. The European Parliament and the Council shall act either on a proposal from the Commission after consultation of the Court of Justice or at the request of the Court of Justice after consultation of the Commission.</p> <p>The <b>regulation</b> establishing a <b>specialised court</b> shall lay down the rules on the organisation of the court and the extent of the jurisdiction conferred upon it.</p> <p>Decisions given by <b>specialised courts</b> may be subject to a right of appeal on points of law only or, when provided for in the decision establishing the <b>specialised court</b>, a right of appeal also on matters of fact, before the <b>General Court</b>.</p>
<p><i>Independent judges; Appointed unanimously by the Council</i></p> <p><i>Rules of specialised courts adopted by the Council</i></p> <p><i>Unless otherwise stated, rules for Court of Justice also apply to specialised courts</i></p>	<p><b>U</b> The members of the <b>specialised courts</b> shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office. They shall be appointed by the Council, acting unanimously.</p> <p><b>XX</b> The <b>specialised courts</b> shall establish their Rules of Procedure in agreement with the Court of Justice. Those Rules shall require the approval of the Council.</p> <p>Unless the decision establishing the <b>specialised court</b> provides otherwise, the provisions of the <b>Treaties</b> relating to the Court of Justice of the European Union and the provisions of the Statute of the Court of Justice of the European Union shall apply to the <b>specialised court</b>. Title I of the Statute and Article 64 thereof shall in any case apply to the <b>specialised courts</b>.</p>

<i>Bringing a Member State before Union Court</i>	<p>ARTICLE 258</p>
<p><i>By the Commission:</i></p> <ol style="list-style-type: none"> <li>1. Letter of formal notice to the country</li> <li>2. Response by the Member State</li> <li>3. Court decision</li> </ol>	<p>If the Commission considers that a Member State has failed to fulfil an obligation under <b>the Treaties</b>, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.</p> <p>If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union.</p>
<p><i>By another State:</i></p> <ol style="list-style-type: none"> <li>1. Sends matter to Commission</li> <li>2. Each State submits response</li> <li>3. Reasoned opinion from Commission within 3 months</li> <li>4. Court decision</li> </ol>	<p>ARTICLE 259</p>
<p><i>Failure to comply with Court ruling</i></p>	<p>A Member State which considers that another Member State has failed to fulfil an obligation under <b>the Treaties</b> may bring the matter before the Court of Justice of the European Union.</p> <p>Before a Member State brings an action against another Member State for an alleged infringement of an obligation under <b>the Treaties</b>, it shall bring the matter before the Commission.</p> <p>The Commission shall deliver a reasoned opinion after each of the States concerned has been given the opportunity to submit its own case and its observations on the other party's case both orally and in writing.</p> <p>If the Commission has not delivered an opinion within three months of the date on which the matter was brought before it, the absence of such opinion shall not prevent the matter from being brought before the Court.</p>
<p><i>Member States must comply with Union Court rulings</i></p>	<p>ARTICLE 260</p>
<p><i>Commission can take a Member State again to court for non-compliance with Union Court decision</i></p>	<ol style="list-style-type: none"> <li>1. If the Court of Justice of the European Union finds that a Member State has failed to fulfil an obligation under <b>the Treaties</b>, the State shall be required to take the necessary measures to comply with the judgment of the Court.</li> <li>2. If the Commission considers that the Member State concerned has not taken the necessary measures to comply with judgment of the Court, it may bring the case before the Court after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.</li> </ol>
<p><i>Penalty payment Commission proposes fine</i></p>	<p>If the Court finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.</p> <p>This procedure shall be without prejudice to Article 259.</p>
<p><i>New: Commission can specify lump sum</i></p>	<ol style="list-style-type: none"> <li>3. When the Commission brings a case before the Court pursuant to Article 258 on the grounds that the Member State concerned has failed to fulfil its obligation to notify</li> </ol>



<p><i>before judgment</i></p>	<p>measures transposing a directive adopted under a legislative procedure, it may, when it deems appropriate, specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.</p>
<p><i>Fines cannot be higher than those proposed by the Commission</i></p>	<p>If the Court finds that there is an infringement it may impose a lump sum or penalty payment on the Member State concerned not exceeding the amount specified by the Commission. The payment obligation shall take effect on the date set by the Court in its judgment.</p>
<p><i>Penalties</i></p>	<p>Article 261</p>
<p><i>Union Court may have unlimited jurisdiction over penalties</i></p>	<p><b>X**</b> Regulations adopted jointly by the European Parliament and the Council, and by the Council, pursuant to the provisions of <b>the Treaties</b>, may give the Court of Justice of the <b>European Union</b> unlimited jurisdiction with regard to the penalties provided for in such regulations.</p>
	<p>ARTICLE 262</p>
<p><i>Union Court's competence over intellectual property rights may be set out by law</i></p>	<p><b>U*</b> Without prejudice to the other provisions of <b>the Treaties</b>, the Council, acting unanimously <b>in accordance with a special legislative procedure</b> and after consulting the European Parliament, may adopt provisions to confer jurisdiction, to the extent that it shall determine, on the Court of Justice of the <b>European Union</b> in disputes relating to the application of acts adopted on the basis of <b>the Treaties</b> which create <b>European intellectual</b> property rights. The Council shall recommend those provisions to the Member States for adoption in accordance with their respective constitutional requirements.</p>
	<p>ARTICLE 263</p>
<p><i>Legality of acts</i></p>	
<p><i>Union Court: reviews legality of legal acts;</i></p>	<p>The Court of Justice of the <b>European Union</b> shall review the legality of <b>legislative acts</b>, of acts of the Council, of the Commission and of the <b>European Central Bank</b>, other than recommendations and opinions, and of acts of the European Parliament and of the <b>European Council</b> intended to produce legal effects vis-à-vis third parties. It shall also review the <b>legality</b> of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties.</p>
<p><i>has jurisdiction over</i> - lack of competence - infringements of procedural requirements, the Treaties and the rule of law</p>	<p>It shall for this purpose have jurisdiction in actions brought by a Member State, the European Parliament, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of <b>the Treaties</b> or of any rule of law relating to its application, or misuse of powers.</p>
<p><i>Union Court's competence on complaints over prerogatives by:</i></p>	
<p>- Court of Auditors - Central Bank - Committee of the Regions</p>	<p>The Court of Justice shall have jurisdiction under the same conditions in actions brought by the Court of Auditors and by the <b>European Central Bank</b> and by the <b>Committee of the Regions</b> for the purpose of protecting their prerogatives.</p>

<p><i>Persons must be "directly and individually" concerned</i></p>	<p>Any natural or legal person may, under the conditions <b>laid down in the first and second paragraphs</b>, institute proceedings against <b>an act</b> addressed to that person or <b>which</b> is of direct and individual concern to <b>them</b>, and <b>against a regulatory act which is of direct concern to him or her and does not entail implementing measures.</b></p>
<p><i>Special rules for other bodies</i></p>	<p><b>Acts setting up bodies, offices and agencies of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of these bodies, offices or agencies intended to produce legal effects in relation to them.</b></p>
<p><i>Deadline: Cases shall be brought to Court within 2 months</i></p>	<p>The proceedings provided for in this article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.</p>
<p><i>Voidness</i></p>	<p>ARTICLE 264</p>
<p><i>Court can declare an act void if not legal</i></p>	<p>If the action is well founded, the Court of Justice <b>of the European Union</b> shall declare the act concerned to be void.</p>
<p><i>Can also declare some parts valid</i></p>	<p><b>However, the Court shall, if it considers this necessary, state which of the effects of the act which it has declared void shall be considered as definitive.</b></p>
<p><i>Proceedings for failing to act</i></p>	<p>ARTICLE 265</p>
<p><i>Failure of an institution to act can be brought before the Court</i></p>	<p>Should the European Parliament, <b>the European Council</b>, the Council, the Commission or <b>the European Central Bank</b>, in infringement of <b>the Treaties</b>, fail to act, the Member States and the other institutions of the <b>Union</b> may bring an action before the Court of Justice <b>of the European Union</b> to have the infringement established. <b>This Article shall apply, under the same conditions, to bodies, offices and agencies of the Union which fail to act.</b></p>
<p><i>The institution must first have been called upon to act</i></p>	<p>The action shall be admissible only if the institution concerned has first been called upon to act. If, within two months of being so called upon, the institution concerned has not defined its position, the action may be brought within a further period of two months.</p>
<p><i>Anyone may complain</i></p>	<p>Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the Court of Justice <b>of the European Union</b> that an institution, <b>body, office or agency</b> of the <b>Union</b> has failed to address to that person any act other than a recommendation or an opinion.</p>
<p><i>Obligation to comply with judgments</i></p>	<p>ARTICLE 266</p> <p>The institution, <b>body, office or agency</b> whose act has been declared void or whose failure to act has been declared contrary to <b>the Treaties</b> shall be required to take the necessary measures to comply with the judgment of the Court of Justice <b>of the European Union.</b></p> <p>This obligation shall not affect any obligation which may result from the application of the second paragraph of Article 340.</p>

<p><i>Preliminary rulings</i> - the most used and important proceedings</p> <p><i>Areas of preliminary rulings:</i></p> <p>- the Treaties</p> <p>- acts of the Institutions</p> <p><i>Any national court can ask for preliminary rulings</i></p> <p><i>If national right of appeal is exhausted, matter is brought before the EU Court</i></p> <p><i>No delay when request concerns person in custody</i></p>	<p style="text-align: center;">ARTICLE 267</p> <p>The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:</p> <p>(a) the interpretation of the Treaties;</p> <p>(b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;</p> <p>Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.</p> <p>Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.</p> <p>If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.</p>
<p><i>Compensation for damages</i></p> <p><i>Competence in cases of suspension of Member States' rights (lex Austria)</i></p> <p><i>If the Council suspends membership rights, the Court can only verify if procedure has been respected – no verification of the grounds, because Article 7 TEU is "political weapon"</i></p> <p><i>Staff disputes</i></p> <p><i>Disputes between Union and its servants</i></p>	<p style="text-align: center;">ARTICLE 268</p> <p>The Court of Justice of the European Union shall have jurisdiction in disputes relating to compensation for damage provided for in the second paragraph of Article 340.</p> <p style="text-align: center;">Article 269</p> <p>The Court of Justice shall have jurisdiction to decide on the legality of an act adopted by the European Council or by the Council pursuant to Article 7 TEU solely at the request of the Member State concerned by a determination of the European Council or of the Council and in respect solely of the procedural stipulations contained in that Article.</p> <p>Such a request must be made within one month from the date of such determination.</p> <p>The Court shall rule within one month from the date of the request.</p> <p style="text-align: center;">ARTICLE 270</p> <p>The Court of Justice of the European Union shall have jurisdiction in any dispute between the Union and its servants within the limits and under the conditions laid down in the Staff Regulations of Officials and the Conditions of Employment of other servants of the Union.</p>



<i>European Investment Bank issues</i>	ARTICLE 271
<i>The Court can rule on:</i>	The Court of Justice of the European Union shall, within the limits hereinafter laid down, have jurisdiction in disputes concerning:
<i>- the Statute of the EIB</i>	(a) the fulfilment by Member States of obligations under the Statute of the European Investment Bank. In this connection, the Board of Directors of the Bank shall enjoy the powers conferred upon the Commission by Article 258;
<i>- measures adopted by EIB Board of Governors</i>	(b) measures adopted by the Board of Governors of the European Investment Bank. In this connection, any Member State, the Commission or the Board of Directors of the Bank may institute proceedings under the conditions laid down in Article 263;
<i>- fulfilment of obligations by national central banks</i>	(c) measures adopted by the Board of Directors of the European Investment Bank. Proceedings against such measures may be instituted only by Member States or by the Commission, under the conditions laid down in Article 263, and solely on the grounds of non-compliance with the procedure provided for in Article 21(2), (5), (6) and (7) of the Statute of the Bank;  (d) the fulfilment by national central banks of obligations under the Treaties and the Statute of the ESCB and of the ECB. In this connection the powers of the Governing Council of the European Central Bank in respect of national central banks shall be the same as those conferred upon the Commission in respect of Member States by Article 258. If the Court of Justice finds that a national central bank has failed to fulfil an obligation under the Treaties, that bank shall be required to take the necessary measures to comply with the judgment of the Court.
<i>Arbitration</i>	ARTICLE 272
<i>Jurisdiction in cases of both private and public law</i>	The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Union, whether that contract be governed by public or private law.
<i>Disputes between Member States Union Court can rule if countries agree (Primacy clause in Treaties interpretation - Art. 344 TFEU)</i>	ARTICLE 273  The Court of Justice shall have jurisdiction in any dispute between Member States which relates to the subject matter of the Treaties if the dispute is submitted to it under a special agreement between the parties.
<i>Competences of national courts</i>	ARTICLE 274
<i>Member States' courts not excluded in cases where the EU is party</i>	Save where jurisdiction is conferred on the Court of Justice of the European Union by the Treaties, disputes to which the Union is a party shall not on that ground be excluded from the jurisdiction of the courts or tribunals of the Member States.
<i>Competence in CFSP</i>	ARTICLE 275
<i>No competence of Court, except for verification:</i>	The Court of Justice of the European Union shall not have jurisdiction with respect to the provisions relating to the common foreign and security policy nor with respect to acts adopted on the basis of those provisions.
<i>- whether CFSP implementation affects other EU competences - restrictive measures against persons</i>	However, the Court shall have jurisdiction to monitor compliance with Article 40 of the Treaty on European Union and to rule on proceedings, brought in accordance with the conditions laid down in Article 263 of this Treaty, reviewing the legality of European decisions providing for restrictive measures against natural or legal persons adopted by the Council on the basis of Chapter II of Title V of the Treaty on European Union.

<p><i>Area of freedom, security and justice</i></p> <p><i>Court is competent, but no jurisdiction on national police and security authorities for maintenance of law, order and internal security</i></p>	<p style="text-align: center;"><b>ARTICLE 276</b></p> <p><b>In exercising its powers regarding the provisions of Chapters 4 and 5 of Title V relating to the area of freedom, security and justice, the Court of Justice of the European Union shall have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law-enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.</b></p>
<p><i>Inapplicability of acts</i></p> <p><i>Inapplicability of acts can always be invoked, when reviewing their legality</i></p>	<p style="text-align: center;"><b>ARTICLE 277</b></p> <p>Notwithstanding the expiry of the period laid down in Article 263, sixth paragraph, any party may, in proceedings in which <b>an act of general application adopted by an institution, body, office or agency of the Union</b> is at issue, plead the grounds specified in Article 263, second paragraph, in order to invoke before the Court of Justice of the European Union the inapplicability of that act.</p>
<p><i>No suspensory effect</i></p> <p><i>...but Union Court can decide to suspend the contested act</i></p>	<p style="text-align: center;"><b>ARTICLE 278</b></p> <p>Actions brought before the Court of Justice of the European Union shall not have suspensory effect. The Court may, however, if it considers that circumstances so require, order that application of the contested act be suspended.</p>
<p><i>Interim measures</i></p>	<p style="text-align: center;"><b>ARTICLE 279</b></p> <p>The Court of Justice of the European Union may in any cases before it prescribe any necessary interim measures.</p>
<p><i>Enforcement of judgments</i></p>	<p style="text-align: center;"><b>ARTICLE 280</b></p> <p>The judgments of the Court of Justice of the European Union shall be enforceable under the conditions laid down in Article 299.</p>
<p><i>ECB = European Central Bank</i>  <i>ESCB = European system of central banks</i></p> <p><i>Statute is laid down in annexed Protocol</i></p> <p><i>For amendment procedure, EP gains co-decision instead of consultation</i></p>	<p style="text-align: center;"><b>ARTICLE 281</b></p> <p>The Statute of the Court of Justice of the European Union shall be laid down in a separate Protocol.</p> <p>The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may amend the provisions of the Statute, with the exception of Title I and Article 64. The European Parliament and the Council shall act either at the request of the Court of Justice and after consultation of the Commission, or on a proposal from the Commission and after consultation of the Court of Justice.</p>

<p>...</p> <p><i>Contractual liability</i></p> <p><i>The Union can be held responsible for damages and contractual liability</i></p>	<p>ARTICLE 340</p> <p>The contractual liability of the <b>Union</b> shall be governed by the law applicable to the contract in question.</p> <p>In the case of non-contractual liability, the <b>Union</b> shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.</p> <p>Notwithstanding the second paragraph, the European Central Bank shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its servants in the performance of their duties.</p> <p>The personal liability of its servants towards the <b>Union</b> shall be governed by the provisions laid down in their Staff Regulations or in the Conditions of employment applicable to them.</p>
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