

PRACTICAL CASE-SOLVING IN EUROPEAN LAW

Diagram 2

Legal actions at the European Court of Justice¹

A. Actions for failure to fulfil obligations (→ against member states), art. 258 et seq. FEU Treaty²

- I. Enforcement actions of the Commission, art. 258
 - only following a preliminary proceedings, art. 258 sub-sect. 1
- II. Actions of other member states, art. 259
 - only following preliminary proceedings, art. 259 sub-sect. 2 - 4
 - rare in practice

B. Actions for annulment (→ of legal acts of the Union), art. 263 et seq. FEU Treaty³

- corresponds to actions for judicial and constitutional review of norms as well as to actions for annulment of administrative acts and in some cases to Organstreit actions (in disputes between constitutional organs) in national law
 - against regulations, directives, decisions and other binding legal acts
 - four *grounds of review* (art. 263 sub-sect. 2): 1. lack of competence (no competence of the Union, no competence of the acting institution, illegitimate exercise of competences); 2. infringement of essential procedural requirements (also of formal requirements); 3. infringement of substantive law (the Treaties or other legal norms, including international treaties which bind the Union); 4. misuse of powers
 - deadline of 2 months, art. 263 sub-sect. 5
- I. Actions of the Council, the European Parliament or the Commission, art. 263 sub-sect. 2
 - II. Restricted: Actions of the Court of Auditors, of the European Central Bank and of the Committee of the Regions, art. 263 sub-sect. 3
 - only for the purpose of protecting their prerogatives
 - III. Actions of member states, art. 263 sub-sect. 2
 - no actions of sub-national entities, such as regions, counties, Länder, communities; however, national law may oblige the national government to take legal action in their interests
 - IV. Restricted: Actions of natural or legal persons, art. 263 sub-sect. 4
 - only actions of the addressees of the legal act or of persons which are directly and individually concerned (also against regulatory acts, which are of direct concern to them and do not entail implementing measures)
 - insofar also actions of legal persons of public law, such as regions, Länder, communities etc
 - Acts setting up bodies, offices and agencies of the Union may lay down specific conditions and arrangements, art. 263 sub-sect. 5

C. Actions for failure to act (→ against Union institutions, bodies, offices and agencies), art. 265 FEU Treaty⁴

- only after the respondent has been called upon to act, art. 265 sub-sect. 2
 - deadline of 2 (other) months, art. 265 sub-sect. 2
- I. Actions of Union institutions (in the sense of art. 13(1) EU Treaty), art. 265 sub-sect. 1
 - II. Actions of member states, art. 265 sub-sect. 1

¹ Concerning the adjustments brought by the Treaty of Lisbon see art. 19 EU Treaty and art. 251 et seq. FEU Treaty. For EURATOM see art. 106a EURATOM Treaty read together with art. 251 et seq. FEU Treaty.

² Formerly (until the Treaty of Lisbon came into force) art. 226 et seq. EC Treaty. These actions initiate the *infringement proceedings*.

³ Formerly art. 230 et seq. EC Treaty. Note: Today, the General Court [formerly the Court of First Instance] has jurisdiction over actions for annulment and for failure to act brought by private persons and over some other kinds of cases (see art. 256(1) FEU Treaty [formerly 225(1) EC Treaty] and art. 51 of the Statute of the Court of Justice).

⁴ Formerly art. 232 EC Treaty.

III. Restricted: actions of natural or legal persons, art. 265 sub-sect. 3

- only actions of the potential addressees of the omitted legal acts
- no actions for failure to address acts to third persons (DISPUTED)

D. References for preliminary rulings (→ by the courts of the member states), art. 267 FEU Treaty⁵

- the most important type of proceedings for the development of legal dogmatic
- binding preliminary ruling on the interpretation of primary and secondary law and on the validity of acts of secondary law (→ the ECJ alone has the power to reject illegal provisions of Union law!)
- only if the question is decisive in the proceedings at the referring court
- obligation to refer for all courts of last resort, art. 267 sub-sect. 3

E. Actions for damages (→ against the Union), art. 268 FEU Treaty⁶

- only in cases of non-contractual liability (art. 340(2) FEU Treaty)
- also actions for liability for legislative acts
- only within a period of 5 years from the occurrence of the event (see art. 46 of the Statute of the Court of Justice)

F. Actions in disputes between the Union and its servants, art. 270 FEU Treaty⁷

G. Opinions (→ on international treaties concluded by the Union), art. 218(11) FEU Treaty⁸

- does not exclude the posterior review of the ratifying act (under art. 263 or 267 FEU Treaty)

H. Other actions

- e.g. actions under art. 271 FEU Treaty (disputes concerning the European Investment Bank or the European Central Bank), art. 272 FEU Treaty (arbitration clauses), art. 273 FEU Treaty (disputes between member states submitted to special agreements between the parties), art. 245 sub-sect. 3 phrase 3 and art. 247 FEU Treaty (compulsory retirement of members of the Commission), art. 269 FEU Treaty (in case of sanctions against member states under art. 7 EU Treaty)
- Note: According to art. 275 FEU Treaty, the jurisdiction of the ECJ is strongly restricted in the field of the Common Foreign and Security Policy (CFSP); furthermore, there are restrictions in the field of judicial and police cooperation (art. 82 et seq., 87 et seq. FEU Treaty) according to art. 276 FEU Treaty⁹

Further reading: *Fairhurst*, Law of the European Union, 6th edition 2007, chapters 5 ff.; *Craig/de Búrca*, EU Law. Text, cases and materials, 4th edition 2007, chapters 10 ff.; *Haratsch/Koenig/Pechstein*, Europarecht, 6th edition 2009, no. 423 ff. (with detailed plans of examination for the individual types of actions).

(Datei: Diagram2 (Cases-EULaw))

⁵ Formerly art. 234 EC Treaty.

⁶ Formerly art. 235 EC Treaty. Note: Today, the General Court has jurisdiction over actions under art. 268 and art. 272 FEU Treaty (see art. 256(1) FEU Treaty).

⁷ Formerly art. 236 EC Treaty. Note: Today, the European Union Civil Service Tribunal has jurisdiction over actions under art. 270 FEU Treaty (see art. 257 sub-sect. 1 FEU Treaty, art. 1 of the annex to the Statute of the Court of Justice).

⁸ Formerly art. 300(6) EC Treaty.

⁹ See for the previous, even further reaching restrictions art. 46 and 35 EU Treaty (old version).