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# European Union Law

Direct Access to the CJEU under 263 TFEU



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Lecture 8

*bc there's no national law that we can challenge before domestic court*

# Direct access to the CJEU – 263 TFEU

**Parties** submit a **dispute** to the CJEU for **resolution**.

- Parties: (a) Member States, (b) EU institutions, (c) individuals
- Dispute: legality of acts of EU institutions
- Resolution: CJEU decides on the dispute and decision is **binding** on parties
- Outcome: Annulment of act (e.g. **C-358/14 Poland v Parliament & Council** (rejecting Poland's claims and upholding the Directive))

# Who can bring an action (Standing)

263

Three categories of actors:

- Privileged: MS, EP, Council, Commission (263(2) TEFU)
- Semi-privileged: Court of Auditors, ECB (263(3) TFEU)
- Non-privileged: individuals (natural or legal persons)  
(263(4) TFEU) *(me & you or corporation)*

(the more restrictive the conditions the harder access to justice becomes. This is especially true for non-privileged actors)

the grounds on which one can challenge acts of EU institutions

# On what grounds (263(2) TFEU)

- Lack of competence (e.g. when EU institutions legislate in areas beyond their conferred competences)  
*eg. Germany v EP & Council [2000] (Tobacco advertising case)*  
*被授予的*
- Infringement of an essential procedural requirement (e.g. C-138/79 Isoglucose, consultation with EP)  
*eg. the council fails to consult the EP during the law-making process*  
*高规格*  
*invalid*
- *most common* Infringement of the treaties or any rule of law relating to their application, incl. general principles of EU law (e.g. a Directive that violates the right to non-discrimination)  
*eg. Roquette Frères v Council [1980]*  
*[2001]*  
*eg. Horatula v Council*  
*a regulation is suspected of being contrary to a right protected under the EU charter of fundamental rights.*
- Misuse of power (e.g. C-105/75 Guiffrida, hiring competition to rectify anomalous appointment)  
*滥用*  
*eg. UK v Council (Re-Working Time Directive) [1996]*  
*however failed, the EU is seen as not misusing of powers*

# Against what acts

*as long as it can produce legal effects, even if they might not be legislative acts.*

*They can challenge any legislative act or any piece of secondary legislation passed by the EU as long as they've met that criteria of sort of like the two-month time limit and as it grounds for review.*

This depends on the actor who brings the action:

- Privileged actors (263(1) TFEU): *MS, EP, council, commission*
  - Legislative acts (e.g. directives, regulations)
  - Acts of the Council, of the Commission, and of the ECB if they produce legal effects
  - Acts of the EP and the European Council intended to produce legal effects vis-à-vis third parties (e.g. council negotiation procedures, Commission letters that resolve a competition law dispute)
  - Acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties
  - NOT against recommendations and opinions
  - NOT acts of member states
  - NOT preparatory or acts that do not produce binding and legal effects (C-131/03 RJ Reynolds v Commission)

# Please watch these videos:

- <https://www.youtube.com/watch?v=wYZMQGfxk2g>
- <https://www.youtube.com/watch?v=ql8d-03zgv4>
- [https://www.youtube.com/watch?v=ljw\\_J7X\\_BF8](https://www.youtube.com/watch?v=ljw_J7X_BF8)

# Against what acts

This depends on the actor who brings the action:

*in a similar fashion can also challenge any piece of legislation but  
→ it has to be to do with their remit*

- Semi-privileged actors (263(3) TFEU): *European Central Bank  
Court of Auditors  
Committee of the regions*
  - Same as privileged actors but only for the purpose of protecting their prerogatives *特權 must affect themselves*



*\* differ to Semi-privileged actor, non actors does not need to prove that the act individually concerns them.*

# Against what acts

This depends on the actor who brings the action:

*→ They have to prove that they have a vested interest in the act that they wish to challenge.*

## • Non-privileged actors (263(4) TFEU):

- Same as privileged actors but act has to be addressed to that person (e.g. T-219/99 BA) OR
  - Act is not addressed to that person but is of direct and individual concern to them (e.g. Inuit) OR
  - The act is regulatory (not legislative) AND of direct concern to them AND does not entail implementing measures (e.g. Microban)
- be capable of producing binding legal effects*
- but still need to proof direct concern*

## 2. Direct & individual concern

EU has passed a piece of legislation that has directly affected the applicant

Direct (T-243/01 Sony):

- Uninterrupted 'automatic' causality between the act and the legal situation of subject. *without any further actions needing to be adopted to produce legal effect.*
- Should leave little or no discretion to member states  
*e.g. a regulation that bans certain kinds of commercial activity*

Individual (C-25/62 Plaumann, T-243/01 Sony): *Commission* *=> want to challenge acts have certain characteristics*

- Subjects are identified "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 those factors [subjects are **distinguished**] **individually just as in the case of the person addressed**."  
*fixed, closed class*
- E.g. in Sony: "although the contested regulation is worded in a general and abstract manner, it focuses specifically on the classification of the PlayStation 2 because [...] [the technical description] is so specific that it could not have applied to any products other than the PlayStation 2, at least not at the time the contested regulation entered into force."
- Involvement in consultation process leading up to the act can be proof of individual concern (e.g. T-464/04 Impala)

# Direct & individual concern

- The 'direct and individual' requirements are hard to satisfy and place natural and legal persons at a disadvantage.
- Alternative standards have been proposed by Advocates General and the General Court, but they have been rejected by the Court of Justice:
  - “a person is to be regarded as individually concerned [...] where by reason of his particular circumstances, the measure has, or is liable to have, a substantial adverse effect on his interests.” (C-50/00 UPA) (no 'direct' effect requirement, 'individually' is not assessed relative to other actors)
  - “a person is to be regarded as individually concerned by a Community measure of general application that concerns him directly if the measure in question affects his legal position, in a manner which is both definite and immediate, by restricting his rights or by imposing obligations on him. The number and position of other persons who are likewise affected by the measure [...] are of no relevance in that regard.” (C-263/02 Jago Quere)

*makes it slightly easier for individuals to prove vested interest*

## 3. Direct Concern and the act is **Regulatory act**

It doesn't produce a legislative act bc it doesn't follow a legislative procedure, it follows delegated or implementing powers that were granted to it by the council or the EP

- Meaning not defined in the treaty
- Regulatory acts are a special category of acts of general application that do not require implementing measures. One needs to prove only direct concern (+ no implementing measures + non-legislative act) (C-605/10 Inuit, T-262/10 Microban)
- Regulatory acts are juxtaposed (i.e. mutually exclusive) to legislative acts. For those one has to prove direct *and* individual concern
- The reason for the lower standard for regulatory acts is that they do not enjoy the high level of legitimacy that legislative acts do. The Court of Justice has also noted that there is no absolute right of access to justice in the Charter, and therefore the limited conditions under which one can attack legislative and regulatory acts are justified. *eg. Inuit v EP & Council [2013]*
- In Inuit the act was a Directive adopted under the OLP and therefore it was a legislative act. In Microban the act was a Directive adopted under the Commission's implementing powers, and because it was of general applicability and did not require further implementing measures it was considered a regulatory act.

# Please watch this video

- <https://www.youtube.com/watch?v=mlNoq7Kn6I4>

## Art 265

- Judicial review for failure to act
- Must have been a duty to act
  - *European Parliament v Commission* [1985]
- Must be the person to whom a decision would have been addressed
  - *Lord Bethel v Commission* [1982]
- The institution must then define its position

实际要做的任何事情都只是说明原因，而这并不是非常重要的

## Judicial Review - Arts 263 and 265 TFEU

### Advantages and disadvantages

#### Advantages

- Provides a means of annulling *ultra vires* community law
- Can challenge an institution for failing to act
- Broad grounds for review (proportionality)
- Simple for institutions to make a challenge

具有文章优势，因此提供了废除超病毒社区的方法

#### Disadvantages

- Short time to challenge (2 months)
- *Plaumann* test almost impossible to satisfy
- Difficult to bring a successful case under art. 265