

Enforcement

Admissibility: reviewable acts

Chart 12 | 7

Topic:

Only acts of the EU institutions, bodies, offices and agencies with legal effects are reviewable acts for the purposes of an annulment procedure. Non-privileged applicants may only challenge certain types of acts.

Reviewable acts in the annulment procedure

Acts must have been adopted by EU institutions

Art. 263 TFEU: legislative acts (i.e. jointly adopted by the EP and the Council (of Ministers); acts of the Council (of Ministers), the Commission, the ECB, the EP and the European Council and acts of bodies, offices and agencies.

Note: originally, acts of the EP were not mentioned; they were added by the ECJ in *Les Verts* (1986).

Acts must have legal effects

Art. 263 TFEU: "acts intended to produce legal effects *vis-à-vis* third parties".

Meaning: measures with legal effects which are binding on the applicant and are capable of affecting the interests of the applicant by bringing about a distinct change in his or her legal position; *Bank Austria* (2006), *Vischim* (2009).

Examples of non-reviewable acts:

- Informal communications such as telex messages; *Sucrimex* (1980); unless they have legal effects; *France v Commission* (1997);
- Internal instructions, unless in reality they constitute a decision; *France v Commission* (1990);
- Preliminary, preparatory or intermediary measures; e.g. *IBM* (1981), *Fern Olivieri* (2003), *Reynolds Tobacco* (2006), *Cestas* (2008).

Specific type of measure depending on the category of applicants

For privileged applicants

All measures adopted by the EU institutions, bodies, offices and agencies, whatever their nature or form, which are intended to have legal effects *vis-à-vis* third parties; *ERTA* (1971).

For non-privileged applicants: Only certain types of acts (legal interest)

Post-Lisbon:

- Acts addressed to the applicant;
- Regulatory acts not addressed to the applicant but of direct concern to this person, if they do not entail implementing measures;
- Other acts not addressed to the applicant but of direct and individual concern to this person.

See **Chart 12/7a**

Enforcement

Admissibility: reviewable acts and non-privileged applicants

Chart 12 | 7a

Topic:

Non-privileged applicants may only challenge certain types of acts.

Non-privileged applicants: reviewable acts in the annulment procedure

Pre-Lisbon: Art. 230 EC

According to the wording of Art. 230 EC only the following:

- Decisions addressed to the applicant, even if not called a decision: e.g. Commission letter; *Infront* (2005), *Deutsche Bahn* (2006);
- Decisions 'in the form of a regulation', if of direct and individual concern to the applicant; e.g. *International Fruit Company* (1971);
- Decisions addressed to someone else, if of direct and individual concern to the applicant; e.g. *Lenzing* (2004), *Campina* (2009).

Though widened through case law to include any act, even if it was truly a legislative measure, if it was of direct and individual concern to the applicant; e.g.:

- Regulations: *Extramet* (1991), *Codorniu* (1994);
- Directives: *Gibraltar* (1993), *UEAPME* (1998), *Salamander* (2000).

Post-Lisbon: Art. 263 TFEU: broadening and widening

Acts addressed to the applicant (same category as pre-Lisbon)

E.g. *Alliance One* (2012) (though decided based on pre-Lisbon law)

Regulatory acts not addressed to the applicant, but of direct concern to this person, if they do not entail implementing measures (new category since the Lisbon revision)

- Regulatory acts: all acts of general application apart from legislative acts (see **Chart 5/11**); *Inuit* (2011);
- Direct concern: same as under the pre-Lisbon law (see **Chart 12/8**); *Microban* (2011);
- No implementing measures: the measure does not require further implementation by the Member States; *Microban* (2011).

E.g. *Microban* (2011): the Commission's decision not to include a substance in the list of additives authorised by Directive 90/128/EEC relating to plastic materials and articles intended to come into contact with foodstuffs

Other acts not addressed to the applicant but of direct and individual concern to this person (category broadened through the Lisbon revision)

Direct and individual concern: see **Chart 12/8**

E.g. *Sharp Shipping Agencies* (2012), concerning a Regulation; possibly also *Switzerland v Commission* (pending; see the AG's opinion), concerning a Commission Decision addressed not addressed to the applicant

Note:

The Court may be tempted to avoid defining the applicable category; e.g. *Etimine* (2011), *Borax* (2011).