AIDE-MÉMOIRE

**Actions for annulment under Article 263 TFEU**

Reviewable act: any act adopted by an EU institution, body, office or agency which produces binding legal effect in relation to third parties, irrespective of its form and name.

**Time limit for starting proceedings**

The proceedings must be commenced within **two months** of the publication of the act, or its notification to the applicant, or, in the absence thereof, of the day on which it came to the applicant’s knowledge. This is strictly enforced: the only exceptions are based on force majeure and exceptional circumstances (Case T-12/90 *Bayer AG*).

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**Grounds for annulment**

- Lack of competence (occurs when the administration acts beyond its powers);
- Infringement of an essential procedural requirement (takes place where the relevant EU institution fails to comply with a mandatory procedural requirement in the adoption of the measure);
- Infringement of the Treaties (refers not only to the provisions of the Treaties but to all sources of EU law including general principles of EU law); and,
- Misuse of powers (occurs when a legitimate power is used for an illegal end, or in an illegal way).

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**Outcome of a successful action**

The EU courts, by virtue of Article 264 TFEU, will declare the contested act void. The declaration applies *erga omnes*. The defendant is, under Article 266 TFEU, required to take all necessary measures to comply with the judgment. In exceptional circumstances the CJEU may declare all or some provisions of the annulled act to be operative until a competent institution adopts an act which will replace the one struck down by the Court.
The distinction between regulatory and non-regulatory acts

Regulatory acts
All acts of general application apart from legislative acts.

Non regulatory acts
Legislative acts, i.e. acts adopted in accordance with the ordinary legislative procedure and other special legislative procedures (see Chapter 5)
Plea of illegality under Article 277 TFEU

Can only be invoked as an ancillary plea, that is, to challenge a measure implementing an EU act (for example, a decision which implements a regulation), not the act itself. Any act of general application adopted by an EU institution, body, office or agency is reviewable under Article 277 TFEU.

Time limit for starting proceedings

No time limit, but the plea of illegality cannot be used to circumvent the requirements of Article 263 TFEU (Case 156/77 Commission v Belgium).

Action Under Article 265 TFEU For Failure To Act

“Failure” exists only if an EU institution, body, office or agency has a duty to act deriving from EU law.

Time limit for starting proceedings

- To request the defaulting institution to act: no specific time limit but the request must be made within a reasonable time (Case 59/70 The Netherlands v Commission);
- To start judicial proceedings: two months from the expiry of the two-month period during which the defendant was called upon to act (Joined Cases 5-11/62 and 13-15/62 San Michele), but failed to do so.
(Continued)

APPLICANTS HAVE TO GO THROUGH THE FOLLOWING STAGES:
Administrative stage: the defendant must be called upon to act by the applicant and has to define its position within two months of being called upon by the applicant to act.
Judicial stage: If the defendant fails to act within two months from being called upon, the applicant has a further two months within which to bring proceedings before the EU courts.

Outcome of a successful action
Declaration of the EU court that the defendant has failed to act. Under Article 266 TFEU the defendant must take the necessary measures to comply with the judgment within a reasonable period of time (Case 13/83 EP v Council).