JUDICIAL PROTECTION IN THE EC

• The system of judicial protection in the EC: ECJ, Court of First Instance and national judges
• Exclusive competencies of ECJ and Court of first instance: direct actions
• Direct actions: action for infringement (art. 258 TFEU, art. 226 TEC); action for annulment (art. 263 TEC); action for failure to act (art. 265 TFEU, art. 232 TEC); action for damages (art. 248 TFEU, art. 235 TEC); other competencies (e.g. opinion on international agreements)
• Joint competencies of ECJ and national courts
ACTION FOR INFRINGEMENT

- Arts 258-259 TFEU (arts. 226-227 TEC): violation by a member State of an EC legal obligation (e.g. lack of transposition of a directive)
- Liability: only the State for infringements caused by all kind of public bodies
- Infringement: objective standard (not fault)
- Action can be started by the Commission (art. 258 TFEU, art. 226 TEC) or by another member State (art. 259 TFEU, art. 227 TEC); individuals can only request the Commission to act
ACTION FOR INFRINGEMENT: PRE-JUDICIAL PHASE

• Commission: discretionary power to start an action

• Reasoned opinion + observations of the member State; role of informal exchange of views

• Most actions are settled during the pre-judicial phase
ACTION FOR INFRINGEMENT: JUDICIAL PHASE

• If the Commission considers that the State has not duly performed the obligation, it can start an action in front of the ECJ

• Declaratory judgement of the ECJ (art. 260 TFEU,

• Lack of action by the State: second infringement action: the ECJ can impose a pecuniary penalty (art. 260(2) TFEU, art. 228(2) TEC)

• Action by a State: it must first require action by the Commission, but if it does not formulate a reasoned opinion within three months, the State can start an action in front of the ECJ
ACTION FOR ANNULMENT

- Judicial review of EC acts
- Reviewable acts: acts of the Council and EP; acts of the Commission; acts of EP; acts of the ECB; acts must be legally binding
- Different types of standing
- Privileged applicants: EP, Council, Commission, member States. Do not need to prove a specific interest
- Intermediate applicants: ECB, Court of Auditors (previously also EP). Need to prove a specific interest in protecting their powers
- Non-privileged applicants: natural and legal persons
ACTION FOR ANNULMENT
- II

• Natural and legal persons: standing only against a decision addressed to them, or regulations that affect them directly and individually

• Limits to the possibility to challenge an act: cautious position of the ECJ: stricts requirements (see Plaumann 1963) – the act affects the individual interest due to personal qualities or circumstances different from all other subjects of the category
ACTION FOR ANNULMENT - III

• Risk of gaps of judicial protection: no standing in front of the ECJ and no national remedy if there is no national act to challenge (see Union de Pequenos Agricultores 2002, Jégo-Quéré 2002): contrast between the Court of First Instance and the ECJ

• Right to effective judicial protection (art. 47 Charter of fundamental rights, arts 6 and 13 Eur. Convention on human rights); cp. art. 263(4) Lisbon Treaty (“regulatory acts that do not require national implementing measures”)
ACTION FOR ANNULMENT

- V

• Grounds for annulment (art. 263(2) TFEU, art. 230(2) TEC)
• Lack of competence (internal and external)
• Infringement of an essential procedural requirement (e.g. procedure, statement of reasons)
• Violation of the EC Treaty or any legal rule related to its application (also general principles, fundamental human rights, international agreements)
• Misuse of powers
ACTION FOR ANNULMENT - IV

- Deadline for action: two months from publication or notice
- Annulment of an act: general and retroactive effects (art. 264 TFEU, art. 231 TEC); discretionary power of the ECJ to limits the effects for general acts (legal certainty and protection of reliance)
ACTION FOR OMISSION

• Art. 265 TEU, art. 232 TEC: judicial control of violations of duty to act of EC institutions (not discretionary acts)

• Pre-judicial phase: request to act to the institution; deadline of two months for action (suspended by any action)

• Judicial phase: lack of action before expiry of the deadline
ACTION FOR OMISSION - II

- Standing: privileged applicants (EP, Council, Commission, Court of Auditors, member States); ECB (only in the areas of its competence); non-privileged applicants (natural and legal persons): only for acts that would be addressed directly and individually to them
- Justiciable omissions of EP, Council, Commission, ECB
- Decision by the ECJ: declaratory effects; obligation on the institution to take the required action
ACTION FOR DAMAGES

• Arts 268 and 340 TFEU (arts 235 and 288 TEC): duty to pay damages for tort liability of EC institutions according to the general principles common to the laws of the member States (# contractual liability: law of the contract)

• Autonomy of the action in tort from action for annulment or omission (Luetticke 1971, Zuckerfabrik Schoeppenstedt 1971)

• Residual character: available only if there
ACTION FOR DAMAGES - II

- Requirements: damage, proximity (causal link), illegality of action of the EC institution
- Additional requirements for areas with wide margins of discretion (regulatory acts and choices of political economy): serious and manifest breach of a duty; conferral by the violated rule of individual rights (Mulder 1992)
- Parallel regime for State and EC tort liability (Brasserie du Pecheur 1996)
- Prescription: five years from the act that has given rise to liability