

EU Constitutional Law: VIII. Judicial review and the protection of rights in the EU

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VIII. JUDICIAL review and the protection of rights in the EU

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4. Special procedures for control of legislative acts – national parliaments

1. Legal protection against EU legal acts

- Art. 19 TEU is the centrepiece of giving the ECJ the competence to review EU legal acts. The ECJ **‘shall ensure that in the interpretation and application of the Treaties the law is observed’**
- The EU is based on the rule of law.
- The ECJ has the constitutional right to review all
 - Treaty amendments (under procedural aspects),
 - Legislative, delegated and implementing acts.
- It may be called upon in special procedures to review the compatibility of Member State law with EU law.

The role of national courts in the review of EU law

- EU Law is part of the MS legal systems and therefore can also be invoked in MS Courts.
- MS Courts are obliged to apply EU law in the same fashion as they would apply national law. They are obliged to give EU law full force and, under Art. 4.3 TEU, are obliged to ensure its
 - utmost effectiveness (C-213/89, *Factortame I*, [1990] ECR I-2433) by
 - using all national remedies equivalent to the application of national law (C-453/99 *Courage*[2001] ECR I-6297)
- The ECJ has the **sole right** to review and overturn EU legal acts. MS Courts will refer cases to the ECJ for the review of EU law (Art. 267 TFEU).

2. Types of action

- a) Action against Member States for failure to fulfil obligations / le recours en manquement / Vertragsverletzungsverfahren (Articles 258-260 TFEU),
- b) Action for annulment of an act / le recours en annulation / Nichtigkeitsklage (Articles 263-264 TFEU),
- c) Complaint for failure to act / le recours en carence / Untätigkeitsklage (Article 265 TFEU),
- d) Preliminary reference procedure / le renvoi préjudiciel / Vorabentscheidungsverfahren (Article 267 TFEU),
- e) Claims for compensation for damage / le recours en réparation des dommages / Schadensersatzverfahren (Article 268 TFEU).

Types of action (cont.)

Others:

- Disputes between the EU and its servants/ litiges entre l'Union et ses agents / Streitsachen zwischen die Union und ihren Bediensteten (Article 270 TFEU),
- Some disputes concerning EIB & ECB (Article 271 TFEU),
- Arbitration clauses/ clauses compromissoires / Schiedsklauseln (Article 272 TFEU),
- Annulment procedure in the context of art. 7 TEU.

Important:

- Suspensory effect/ effet suspensif / aufschiebende Wirkung (Article 278 TFEU),
- Interim measures / mesures provisoires / einstweilige Anordnungen (Article 279 TFEU),
- Opinion / avis / Gutachten (Article 218(11) TFEU: on whether an envisaged agreement is compatible with the Treaty – advisory function).

(a) ARTICLES 258-260 TFEU – Failure to Fulfil Obligations

Action against Member States for failure to fulfil obligations / recours en manquement / Vertragsverletzungsverfahren – background:

- The implementation of EU Law takes place on a multilevel basis:
 - Directives (and some Regulations and Decisions) require implementation in Member States by means of legislative measures.
 - Member States adopt measures of national law necessary to implement legally binding Union acts (Art. 291 TFEU).
- This poses problems with regard to enforcement: Member States must be monitored in order to
 - verify whether they comply with their obligations under Article 4.(3) TEU and
 - achieve the uniform application of EU Law throughout the EU.

Enforcement

There are three ways in which Member States' compliance with EU Law may be enforced:

- By citizens
 - in national courts, relying on the direct effect of (some) EU law,
 - claiming damages from Member States for non-compliance.
- By the Commission
 - under its mandate set out in 17(1) TEU (Commission as 'guardian of the Treaty'),
 - using the procedure provided for in Articles 258-260 TFEU (action against Member States for failure to fulfil obligations/recours en manquement/Vertragsverletzungverfahren). Around 10 % of ECJ cases involve Articles 258-260 TFEU.
- By other Member States under the (extremely rare) procedure set out in Article 259 TFEU.

Procedure under Art. 258 TFEU

Two Phases:

- *Pre-litigation phase / phase précontentieuse / aussergerichtliches Vorverfahren* (Article 258, first paragraph, TFEU),
- *Litigation phase / phase contentieuse / Klageverfahren* (Articles 258, second paragraph, and 260 TFEU).

Pre-litigation (first) phase:

- The pre-litigation phase is a *pre-condition for the admissibility / condition de recevabilité / Zulässigkeits-voraussetzung* of the second litigation phase.
- The Commission may initiate the procedure under Article 258 TFEU:
 - on its own initiative,
 - in response to a complaint (from private parties or from other institutions or governments).

Article 258 TFEU– first phase

The Commission is obliged to analyse all complaints. Under the case law of the ECJ, it takes a *discretionary decision / décision discrétionnaire / Ermessensentscheidung* as to whether it will act upon a complaint.

If it finds a violation, the Commission opens the investigation and informs the Member States of the reasons by means of a *letter of formal notice / mise en demeure / Mahnschreiben* in which it will usually propose solutions and set a date by which compliance must be established.

The Member State has the opportunity to submit its observations on the reason for the investigation.

- This is a precondition for the legality of the opening of the second phase (Case 211/81 *Commission v. Denmark* [1982] ECR I-4547).
- The Commission may continue only on the basis of cases which have been notified to the Member States.
- This results from the general legal principle of the *right to a fair hearing/droit de défense/Recht auf Anhörung*.

Article 258 TFEU– second phase

The pre-litigation phase is closed when the Commission issues a *reasoned opinion / avis motivé / mit Gründen versehene Stellungnahme*.

If the Member State does not comply with the reasoned opinion by the *date / délai / Frist* set by the Commission, the Commission takes a discretionary decision: it '*may / peut / kann*' bring the issue before the ECJ (Article 258(2) TFEU). The dispute then enters into the second – litigation – phase.

The ECJ will call on the Member State to fulfil its obligations if it finds the Commission's reasoned opinion to be justified (and the Member State is in breach of primary or secondary EU legislation). The Member State is then obliged to take the measures required to comply with the judgment of the ECJ (Article 260(1) TFEU).

MS defences – procedural

Concerning the reasoned opinion:

- If the Commission sets no time limit, it must wait until a reasonable time has elapsed before bringing an action before the Court.
- The Member State is not free not to comply (Case 101/84 *Commission v. Italy (Transport Statistics)* [1985] ECR 2629.)
- Although the Commission has discretion as to the length of the period allotted, it must respect the principle of proportionality when setting it.
 - For example, the ECJ has found that 15 days may be sufficient in a case where the pre-litigation phase was extensive but may not be sufficient in instances where a Member State needs to amend its legislation.

MS defences – substantive

No defence possible on the following bases:

- that other Member States are also in breach of the Treaty obligations,
- that a Member State is suffering financial difficulties,
- that the alleged infringement of EU law has ceased (the EU might have an interest in issuing a declaratory judgment for future cases and wish to deter Member States from non-compliance with EU law for short periods of time).

Defence possible on the basis of absolute impossibility (e.g. Case 101/84 *Commission v. Italy* [1985] ECR 2629 – fire in a central data storage facility).

- In this case, the Member State is obliged to notify the Commission of the difficulties, and they must work together to find a solution to the problem of implementation in the spirit of Article 4(3) TEU.

Enforcing an ARTICLE 260 TFEU - judgment

- If the Commission finds the Member State to be in violation of the judgment (i.e. that it has not taken the measures to ensure compliance with EU law), it will restart the procedure:
 - Member State informed of problem.
 - Member State submits its observations.
 - Commission brings the case before the ECJ and requests a lump sum or (daily) penalty payment in the case of further non-compliance by the Member State.

Enforcing an ARTICLE 260 TFEU judgment

- The ECJ can then impose on the Member State a penalty payment which covers the future (two such cases have previously occurred, one against Greece and one against Germany).
- In C-304/02, *Commission v. France* of 12 July 2005, France was ordered to pay:
 - a lump sum penalty for a prolonged (11 year) violation of the rules governing fisheries activities (EUR 20 million).
 - ‘a penalty payment of EUR 57 761 250 for each period of six months from delivery of the present judgment at the end of which the judgment in Case C-64/88 *Commission v. France* has not yet been fully complied with.’

(b) Article 263 TFEU – Annulment

- Under Article 263 TFEU, certain institutions, Member States and natural and legal persons may ask the ECJ to declare void binding legal acts of the EU (legislative, delegated or implementing)
- In an *action for annulment of an act / recours en annulation / Nichtigkeitsklage*.

Article 263 TFEU

Conditions: An act is challengeable under Article 263 TFEU, if:

- Claimant has standing under Article 263 TFEU (conditions differ as to whether a claimant is privileged or not).
 - Privileged claimants: Member States, Council, Commission and the EP (since Treaty of Nice).
 - Others: Court of Auditors, ECB and Committee of Regions are privileged for protection of their prerogatives.
 - Natural or legal persons may institute proceedings only if the act is either addressed to them or is of ‘direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.’
- The claim is brought within two months of publication or of notification to the plaintiff.

ACTS challengeable under Article 263 TFEU

Article 263 TFEU allows for a review of all acts that are 'intended to produce legal effects vis-à-vis third parties' (binding legal acts), including acts of the European Council and of bodies, agencies and offices of the EU.

The ECJ formula (Case C-60/81 *IBM* [1981] ECR 2639): 'any measure the legal effects of which are binding on, and capable of affecting the legal interests of, the applicant by bringing about a distinct change in his legal position is an act or decision which may be the subject of an action under Article 173 for a declaration that it is void.'

Many problems in practice with:

- atypical legal acts
- failure to decide (no decision) e.g. Case C-76/01 *Eurocoton*
- multilevel administrative procedures

Q: Is a reasoned opinion under Article 258.2 TFEU an act subject to an action under Article 263 TFEU ? Can Member States therefore stop the second phase of a procedure for failure to fulfil obligations/recours en manquement/Vertragsverletzungsverfahren?

STANDING UNDER ARTICLE 263 TFEU

- Right to institute proceedings / droit d'introduire un recours / Klagebefugnis
- Public bodies:
 - Member States, the EP (since Treaty of Nice), Commission and Council are privileged. They do not need to demonstrate any specific 'interest' in the matter of a case.
 - The ECB, Court of Auditors and Committee of Regions are privileged in order to protect their 'prerogatives'.
- Natural and legal persons may institute proceedings under Article 263 TFEU if:
 - The *decision [is] addressed to that person / les décisions dont elle est le destinataire / die an sie ergangenen Entscheidungen.*
 - Regulations or decisions which are addressed to another person are of *direct and individual concern to them / la concernent directement et individuellement / sie unmittelbar und individuell betreffen*
 - A regulatory act is of direct concern to them and it does not entail implementing measures / Actes réglementaires qui les concernent directement et qui ne comportent pas des mesures d'exécution / Rechtsakte mit Verordnungscharakter die sie unmittelbar betreffen und keine Durchführungsmaßnahmen nach sich ziehen.
 - What are regulatory acts?

‘Direct and individual concern’

- Basic underlying idea:
 - an act that needs to be implemented may be attacked only indirectly via the implementing act
 - (see also *plea of inapplicability / exception d’inapplicabilité / Einrede der Unanwendbarkeit* under Article 277 TFEU)
- Nevertheless:
 - Article 263 TFEU entitles private individuals to challenge acts that concern the plaintiff directly and individually, an entitlement interpreted restrictively by the ECJ using what is known as the *Plaumann* formula:

Case 25/62 *Plaumann*

‘Persons other than those to whom a decision is addressed may only claim to be individually concerned if that decision affects them 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 these factors distinguishes them individually just as in the case of the person addressed.’ (**Case 25/62 *Plaumann* [1963] ECR 95**).

‘Direct and individual concern’ (cont.)

- The ECJ interprets individuality under the Plaumann formula very strictly.
- Examples of this are rare; e.g. Case C-309/89 *Codorniu* [1994] ECR I-1853 where an old pre-EU registered trade mark (marque déposée) right was threatened by an EU regulation on rights of origin.

Direct and individual concern

More recent case law:

- C-50/00 P *Unión de Pequeños Agricultores (UPA)* [2002] ECR I-6677:
 - ECJ Overturns the GC's ruling and does not follow its Advocate-General (AG).
 - Notes that legal protection will primarily be provided to individuals, via national courts, who have the right to ask the Court to give a preliminary ruling under Article 267 and 277 TFEU.
- C-263/02 P *Jégo-Quééré & Cie SA* [2004] I-nyr:
 - Situation: Jégo is a fishing company fishing mainly for whiting in the east Atlantic south of Ireland. It claims that it is directly and individually concerned by a regulation requiring fishing nets to have a minimum mesh size of 100 mm, which would result in its fishing vessels having to be equipped with new nets.

'Direct and individual concern'

- C-263/02 P *Jégo-Quééré & Cie SA* (cont.):
 - Arguments:
 - No national implementation act is needed. Accordingly, there is no protection under Article 267 TFEU.
 - Inadmissibility of the action brought before the GC would result in a violation of the right to an effective judicial remedy under Article 47 of the Charter of Fundamental Rights of the European Union.
 - ECJ:
 - It is wrong to mix the issue of admissibility (general direct right to bring proceedings for annulment of general measures) with the right to an effective judicial remedy.
 - Under Article 4(3) TEU, Member States are obliged to grant effective legal protection.

Can the ECJ's approach be considered against the background of the Member States' position on a change in the rules on individual entitlements under Art. 263 TFEU?

‘Direct and individual concern’

- In reaction to the gaps arising from this case law, the Lisbon Treaty has widened the scope of admissibility of actions for annulment.
- The problem was that individuals could be left without an effective legal remedy and protection (in potential violation of Article 47 CFR) in cases where Member States have not adopted any implementing measures of EU Law and no legal remedy exists against that situation in MS law (e.g. where a MS has – like the EU level – no ‘declaratory action’).
- The future case-law of the ECJ is expected to clarify the meaning of “regulatory act” for the purpose of determining which EU acts may be subject to an action for annulment

Grounds for annulment

- *Grounds for annulment / moyens d'annulation / Nichtigkeitsgründe* listed in Art. 263 TFEU, second paragraph:
 - Lack of competence/incompétence/Unzuständigkeit:
 - e.g. Case C-376/98 *Germany v. Council (tobacco advertising)*
 - ECJ considers the legal basis of an act. See above for potential problems in this area.
 - Infringement of an essential procedural requirement/violation des formes substantielles/Verletzung wesentlicher Formvorschriften:
 - Review of procedural rules such as those set out in Article 294 TFEU or in any other act of secondary law.
 - Review of general principles of law, e.g. violation of the right to a fair hearing or other formal requirements.

Grounds for annulment

- Infringement of the Treaty or of any rule of law relating to its application / violation du présent traité ou de toute règle de droit relative à son application / Verletzung dieses Vertrags oder einer bei seiner Durchführung anzuwendenden Rechtsnorm:
 - Broad, catch-all reason. Normally pleaded in all Article 263 TFEU cases.
 - This ground for review refers to the compliance with any legal provision which is higher in the hierarchy of norms. It includes written and unwritten principles and was used by the ECJ, for example, to develop the protection of fundamental rights in EU law (see Case 4/73 *Nold*).
- Misuse of powers / détournement de pouvoir / Ermessensmissbrauch:
 - This is the most problematic of the grounds for review.
 - It touches on one of the essential questions of public law: to how much judicial review must administrative/executive activity be submitted? What level of judicial review is permitted?

Grounds for annulment

- Problems with the application of these grounds:
 - Different legal traditions interpret these criteria differently – especially the fourth ground.
 - e.g.: Review of ‘Ermessen’ in German legal tradition is essentially different from French or English review of ‘détournement de pouvoir’.

ARTICLE 263 TFEU

- The ECJ has developed its own interpretation and reviews discretionary decisions by differentiating between:
 - Acts of a legislative nature (wide discretion, review according to French standard).
 - Acts of an administrative nature (since introduction of GC/TUE/EuG) are reviewed more meticulously, also considering whether the administration:
 - has taken all necessary facts into account,
 - was guided by considerations outside its mandate,
 - has drawn conclusions from the facts which are correct and within the possible interpretation of consequences foreseen by the law. (See, for example, Case T-310/01 *Schneider Electric SA v. Commission*.)

Result of an Article 263 ruling

Effects of the review of the legality of an act by the ECJ:

1. 'If the action is well founded, the Court of Justice shall declare the act concerned to be **void**.'/'Si le recours est fondé, la Cour de justice déclare **nul et non avenue** l'acte contesté.'/'Ist die Klage begründet, so erklärt der Gerichtshof die angefochtene Handlung für **nichtig**.' (Article 264 TFUE, first paragraph)
2. Institutions 'shall be **required to take the necessary measures** to comply with the judgment of the Court of Justice.'/'sont **tenues de prendre les mesures** que comporte l'exécution de l'arrêt de la Cour de justice.'/'haben die sich aus dem Urteil des Gerichtshofes ergebenden **Maßnahmen zu ergreifen**.' (Article 266 TFEU, first paragraph)

Effect is:

- *ab initio* (retroactive).
- Court rulings have an effect between the parties only, but limited effect *erga omnes* may arise because institutions are barred from applying the acts in future.

Annulment Procedure in the context of Art. 7 TEU

According to art. 7 TEU:

- On a reasoned proposal by one third of its members, by the European Parliament or the Commission and acting by a majority of four fifths of its members, the Council may determine that there is a clear risk of a serious breach by one Member State of the values set out in art 2, i.e. human dignity, freedom, democracy, equality, the rule of law, respect of human rights, including those of minorities.
- Acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament, the European Council may determine the existence of a serious and persistent breach by a Member State of the values set out in art. 2, following which the Council may decide to suspend certain rights deriving from the application of the Treaties to the Member State in question, including voting rights in the Council.
- The ECJ has jurisdiction to decide of the legality of the acts adopted by Council and European Council following art. 7 TEU solely at the request of the Member State concerned and in respect of the procedures.

Plea of inapplicability – Art. 277 TFEU

- Plea of inapplicability / exception d'inapplicabilité / Einrede der Unanwendbarkeit under Article 277 TFEU:
- Allows the legality of an act of general application adopted by an institution, office or agency of the Union to be challenged in the course of other procedures.
 - The provisions of Article 277 TFEU can thus be raised, e.g. in proceedings brought under Article 263 TFEU.
 - Article 277 TFEU may be used only in proceedings brought before the ECJ/GC and not before the court of a Member State.
 - Article 277 TFEU may not be used by a Member State as a defence in cases brought under Articles 258 and 260 TFEU as this would allow the Member State to circumvent the time limit of Article 263 TFEU.
 - Article 277 TFEU may be used by private parties as well as parties entitled to institute proceedings under Article 263 TFEU.

(c) Failure to act – Art. 265 TFEU

Complaint for failure to act / le recours en carence /
Untätigkeitsklage:

Entitlement to institute proceedings: Article 265 TFEU, first and third paragraphs (EU institutions, Member States, individuals, the ECB within its field of competence) against failure to act of the institutions or of any body, office or agency of the EU.

Admissibility / recevabilité / Zulässigkeit:

- Institution has been called upon to act and has not done so within two months. The claim may be brought within a period/délai/Frist of a further two months.
- As with Article 263 TFEU, Article 265 TFEU distinguishes between parties entitled to institute proceedings and those not so entitled.

Article 265 TFEU(cont.)

Grounds:

- Privileged actors (Article 265, first paragraph) may complain about any failure of an EU institution, body, office or agency to fulfil its legal obligations (arising from any source of law).
- Individuals (Article 265 third paragraph) may complain only about failure to act in instances where they claim their rights are violated by failure to act (*subjective rights*).

Effect: if the ECJ declares the failure to act to be contrary to this Treaty, the defending institution is obliged to take the required action (Article 266 TFEU).

(d) Preliminary Reference - Article 267 TFEU

- Preliminary reference / le renvoi préjudiciel / Vorabentscheidungsverfahren:
- Preliminary rulings as provided for under Article 267 TFEU are the most common cases brought before the ECJ.
- They have played an essential role in the ‘dialogue’ between courts and the development of EU law (e.g. most ‘basic’ cases of establishing the legal order of the EU, such as *Costa/ENEL* and *Van Gend en Loos*, were brought under Article 267 TFEU).
- Article 267 TFEU empowers the ECJ to hand down rulings on
 - the interpretation of TEU and TFEU,
 - the validity or interpretation of acts of the EU institutions.
- It enables individuals to seek (via national courts) a review of EU law.

Article 267 TFEU

Background:

- EU law is part of national law and is applied by the national courts.
- The ECJ has the power to declare and give a final interpretation of EU law.
- The preliminary reference procedure guarantees the uniform application of EU law.

Right and obligation to request a preliminary ruling / faculté et obligation de renvoi / Vorlageberechtigung und Vorlagepflicht:

- Entitlement to seek a preliminary ruling: All courts and tribunals which follow a legal, adversarial procedure and whose decisions legally terminate a dispute are entitled to seek a preliminary ruling (see Case 246/80 *Broekmeulen v. Huisarts Registratie Commissie*).

Article 267 TFEU

Obligation to seek a preliminary ruling on all courts of last instance ‘against whose decisions there is no judicial remedy under national law’ / dont les décisions ne sont pas susceptibles d’un recours juridictionnel de droit interne / dessen Entscheidungen selbst nicht mehr mit Rechtsmitteln des innerstaatlichen Rechts angefochten werden können.

Preliminary rulings are given when a question of validity or interpretation of EU law arises before a court or tribunal of a Member State and that court or tribunal considers that a decision on the question is necessary before it can deliver judgment.

- What happens in cases of existing precedents or lack of doubt as to interpretation? This Article raises the question of the extent to which the courts of MS may apply a margin of discretion in the interpretation of EU law.

Article 267 TFEU – precedents

When may the ECJ refuse to deliver a preliminary ruling?

– Cases of existing **precedents**:

- Cases 28-30/62 *Da Costa en Schaake*, where the ECJ found that the facts and the questions asked by the national court were materially identical to those in case 26/62 *Van Gend en Loos*.
- Now, the ECJ also refuses to rule when ‘previous decisions of the Court have already dealt with the point of law in question ... even though the questions at issue are not strictly identical’ (Case 283/81 *Srl CILFIT*).
- This case-law extends the *inter partes* effect of case-law in a way similar to the approach to precedents used in common law jurisdictions.

ARTICLE 267 TFEU – *acte clair* doctrine

- When can the national court refuse to seek a preliminary ruling?
 - The *acte clair* doctrine assumes that there are questions of EU law which are so obvious that a request for a preliminary ruling is not necessary – the national court can decide, and no question covered by Article 267 exists.
- Summary: in Case 283/81 *Srl CILFIT* [1981] ECR 3415, para. 21, the ECJ sets out three possibilities for not seeking a preliminary ruling:
 - The national court has established that the question is irrelevant.
 - The question has been already interpreted by the ECJ/GC.
 - ‘Correct application of EU law is so obvious as to leave no scope for any reasonable doubt’ (*acte claire*).

Effects of preliminary rulings

- Cases under Article 267 are currently brought before the ECJ, not the GC.
- Effect:
 - Member States' courts are bound to follow the interpretation of the ECJ.
 - Member States' courts are ultimately responsible for the application of EU law in their legal systems.
 - The ECJ will determine only matters of EU law, not matters of national law. It will, therefore not be entitled to review the validity of the request for a preliminary ruling under national law.
- Important:
 - National law which does not comply with the interpretation of EU law is not void, but Member States and their courts may no longer apply their law or interpret it in a manner incompatible with EU law!

3. Jurisdiction of GC and CJ

Sources: TFEU, Statutes of ECJ

The **GC** is a general court of first instance for all cases referred to in Articles:

- 263 (review of legality)
- 265 (failure to act)
- 267 (certain types of preliminary rulings, laid down in statutes in accordance with 256)
- 268 (damages), 270 (disputes involving civil servants, under jurisdiction of Civil Service Tribunal), 272 (arbitration)

Level of appeal against decisions by specialised courts set up under Article 257 (currently, Civil Service Tribunal)

The **CJ** has jurisdiction over matters specifically reserved for it:

First instance for:

- Articles 258-260 (Violation of EU law by a Member State)
- Article 267: preliminary rulings on the basis of requests from national courts (where the GC has no competence); binding jurisdiction on preliminary rulings on police and judicial cooperation in criminal matters

Level of appeal against judgments of the GC on points of law

4. NEW ROLE OF NATIONAL Parliaments in legislative control

- National Parliaments will receive an official role in the review of proposed EU legislative matters.
- They can specifically control the matters with respect to the compliance with the principle of subsidiarity (Art. 4-8 Protocol No 2 to the TEU on the application of the principles of subsidiarity and proportionality).
 - The review must take place if generally one third of the national parliaments request this (in exceptional cases one quarter).

National Parliament Control and ECJ

- Under Art. 8 of the protocol, the ECJ has jurisdiction
 - in actions on grounds of infringement of the principle of subsidiarity by a legislative act,
 - brought in accordance with the rules laid down in Article 263 TFEU by MS,
 - in accordance with their legal order on behalf of their national Parliament or a chamber of Parliament.