

The Law

Article 263 TFEU

- (1) The EU act must be open to review
- (2) The institution or individual seeking to challenge the legality of the measure must have standing (locus standi)
- (3) Procedural or substantive illegality of the type mentioned in para 2
- (4) Challenge must be brought within the time limit (5)
- (5) The proceedings provided in this Article shall be instituted within 2 months of:
 - The publication of the measure, or
 - Of its notification to the plaintiff, or
 - Of the day on which it came to the knowledge of the latter, as the case may be

Article 263 (1): Reviewable acts?

- (1) The CJEU shall review the legality of legislative acts.. other than recommendations and opinions. Legislative acts include regulations, directives, and acts with binding force that produce legal effects.

Article 263 (2): Standing for privileged applicants

Privileged applicants – the member states, European Parliaments, the Council and the Commission are always allowed to bring an action

Semi-privileged applicants – the Court of Auditors, the European Central bank and the Committee of the Regions have standing to defend their own prerogatives.

Article 263 (2): Standing for non-privileged applicants

Natural or legal persons can bring challenge in 3 instances:

- Act addressed to that person
- Act of direct and individual concern to that person (but not the immediate addressee)
- Regulatory act which is of direct concern and does not entail implementing measures.

Why impose conditions for standing?

Floodgate argument: To admit too many challenges would impact greatly on the workload of the CJEU.

Too many challenges will unduly restrict EU decision making and threaten legal certainty.

Concern: If the conditions are interpreted too restrictively, this may threaten the individual's right to effective judicial protection.