

concerning § 10 IV Forms of action before the Court of Justice

Diagram 6

The most important legal actions at the European Court of Justice

A. Actions for failure to fulfil obligations (→ against member states), art. 258 et seq. FEU Treaty¹

- actions of the Commission (art. 258) or of other member states (art. 259) following preliminary proceedings

B. Actions for annulment (→ of legal acts of the Union), art. 263 et seq. FEU Treaty²

- against binding legal acts; corresponds to actions for judicial/constitutional review of norms as well as to actions for annulment of administrative acts and in some cases to disputes between constitutional organs in national law
- actions of member states, the Council, the European Parliament and the Commission; actions of the Court of Auditors, the European Central Bank and the Committee of the Regions for the purpose of protecting their prerogatives
- actions of citizens only if they are addressed or directly and individually concerned
- four *grounds of review* (art. 263 sub-sect. 2): 1. lack of competence; 2. infringement of essential procedural or formal requirements; 3. infringement of substantive law; 4. misuse of powers

C. Actions for failure to act (→ against Union institutions, bodies, offices and agencies), art. 265 FEU Treaty³

D. References for preliminary rulings (→ by the courts of the member states), art. 267 FEU Treaty⁴

- the most important type of proceedings for the development of legal dogmatics
- binding preliminary ruling on the interpretation of primary and secondary law and on the validity of acts of secondary law (→ the ECJ alone has the power to reject illegal provisions of Union law!)
- only if the question is decisive in the proceedings at the referring court
- obligation to refer for all courts of last resort, art. 267 sub-sect. 3

E. Other actions and opinions

- according to special provisions
- opinions on international treaties concluded by the Union under art. 218(11) FEU Treaty

Note: The jurisdiction of the ECJ is strongly restricted in the field of the Common Foreign and Security Policy (cf. art. 275 FEU Treaty); besides, there are restrictions concerning the judicial and police cooperation (cf. art. 276 FEU Treaty).

Further reading: *Barnard/Peers*, European Union Law, 2014, p. 260 ff.; *Craig/de Búrca*, EU Law. Text, cases and materials, 6th edition 2015, chapters 12 ff.; *Fairhurst*, Law of the European Union, 10th edition 2014, p. 177 ff.; for a more detailed diagram see http://home.lu/~tschmit1/Downloads/Schmitz_Cases-EULaw_diagram2.pdf.

(Datei: Diagram 6 (EU Law))

¹ Formerly (until the Treaty of Lisbon came into force) art. 226 et seq. EC Treaty. These actions initiate the *infringement proceedings*.

² Formerly art. 230 et seq. EC Treaty.

³ Formerly art. 232 EC Treaty.

⁴ Formerly art. 234 EC Treaty.