

Part II: Quality checks: Structure and Substance

Right to effective judicial protection

The judicial system as a whole

ARTICLE 19 TEU

1. *The Court of Justice of the European Union shall include the **Court of Justice**, the **General Court** and **specialized courts**. It shall ensure that in the interpretation and application of the Treaties the law is observed.*

Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.

2. [...]

3. *The Court of Justice of the European Union shall, in accordance with the Treaties:*

*(a) rule on **actions brought by a Member State, an institution or a natural or legal person**;*

*(b) give **preliminary rulings**, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions;*

(c) rule in other cases provided for in the Treaties.

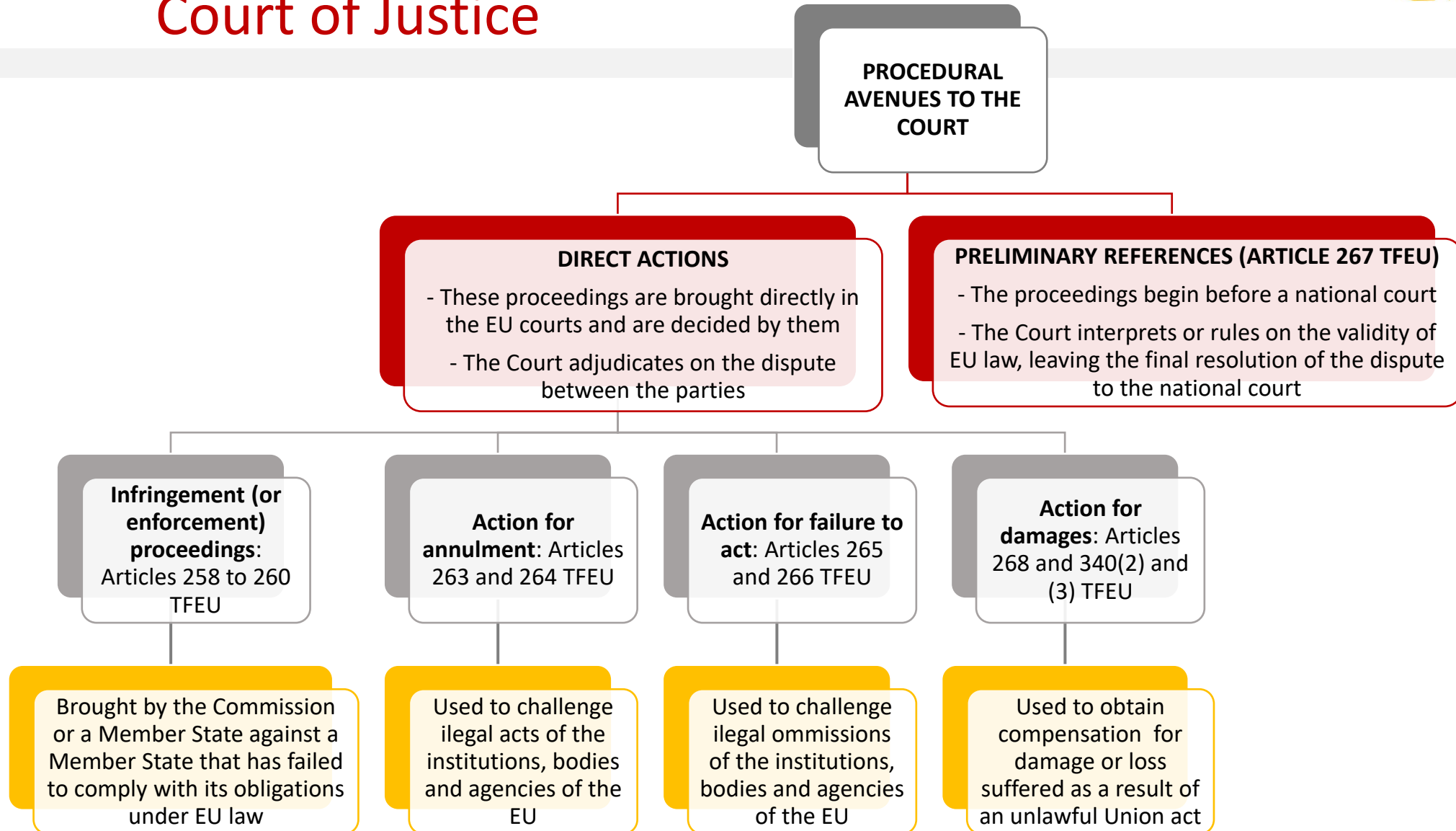
The system as a whole

ARTICLE 47 OF THE CHARTER: Right to an effective remedy and to a fair trial

*“Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the **right to an effective remedy before a tribunal** in compliance with the conditions laid down in this Article. Everyone is entitled to a **fair and public hearing** within a **reasonable time** by an **independent and impartial tribunal** previously **established by law**. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.”*



Procedural avenues to the Court of Justice



What are the acts that can be subject to judicial review?

Article 263 TFEU states that the Court of Justice can review the legality of:

- legislative acts;
- acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions;
- acts of the European Parliament and of the European Council intended to produce legal effects vis-à-vis third parties;
- acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties.

→ It is the content (and intention) of the measure that matters, rather than the form (C-316/91 European Parliament v Council). For that reason, the Court has found that, in addition to acts like regulations, decisions and directives, which are defined in Article 288 TFEU as binding acts, the legality of other types of acts, such as conclusions of the Council meetings, can be challenged (Case C-27/04 Commission v Council).

The action for annulment and the intricate problems of admissibility: standing of the applicant

Who can bring an action for annulment to the Court?

Privileged applicants

- Article 263(2) TFEU: Member States, European Parliament, European Commission and Council
- They have an automatic right to bring proceedings

Semi-privileged applicants

- Article 263(3) TFEU: Court of Auditors, European Central Bank and the Committee of the Regions
- They can only bring proceedings when their prerogatives are at stake

Non-privileged applicants

- Article 263(4) TFEU: Natural and legal persons (i.e. individuals, companies, associations, foundations)
- There are strict standing conditions to challenge a potentially unlawful EU act

The action for annulment and the intricate problems of admissibility

When an action for annulment is brought, the Court examines:

Compliance with the time limit

Article 263(6) TFEU: time limit of 2 months from the date of publication of the measure or of its notification to the applicant or of the day on which it comes to the knowledge of the applicant.

Reviewability of the act

Article 263(1) TFEU: to be reviewable, an act should be legally binding.

Standing of the applicant

Privileged applicants, semi-privileged applicants, non-privileged applicants.

Existence of possible grounds for the annulment of the act

Article 263(2): lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or any rule of law relating to their application, misuse of powers

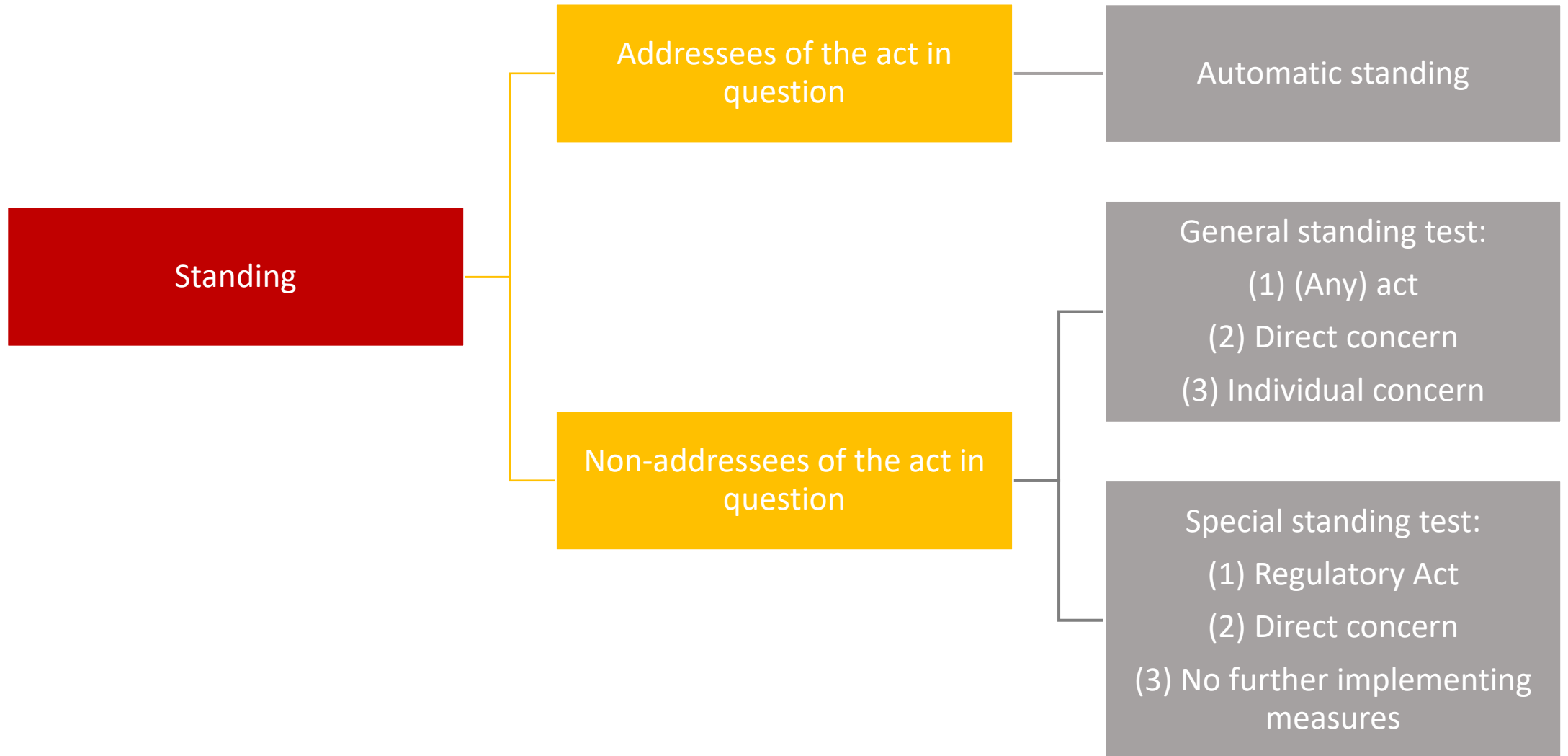
If an action for annulment meets all these requirements and is well founded, the Court declares the **act void**.

When the Court rules that an act is void, the effect of annulment is **generally from the point of the adoption of the act in question** (known as *ex tunc*). The Court may limit the effects of its declaration (*ex nunc*).

Article 263, 4th paragraph, TFEU:

“Any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which 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 action for annulment and the intricate problems of admissibility: the case of non-privileged applicants (Post-Lisbon)



The action for annulment and the intricate problems of admissibility: the case of non-privileged applicants (pre and post-Lisbon)

Article 173, 4th paragraph, EEC/EC Treaty

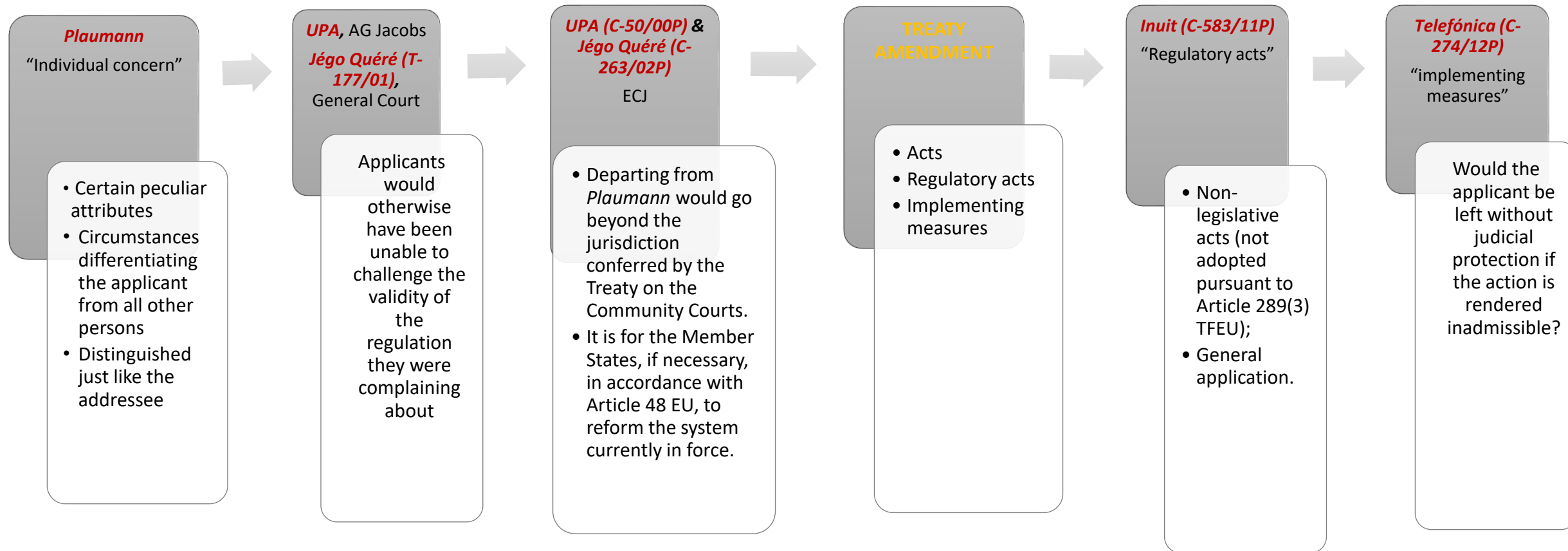
*Any natural or legal person may [...] institute proceedings against a **decision** addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of **direct and individual concern** to the former.*

Article 263, 4th paragraph, TFEU (current wording)

*Any natural or legal person may [...] institute proceedings against an **act** addressed to that person or which 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 action for annulment and the intricate problems of admissibility: the case of non-privileged applicants

How did it all start?



The action for annulment and the intricate problems of admissibility: the case of the Parliament

- While the Parliament is today a fully fledged privileged applicant, it only acquired this status at the time of the **Treaty of Maastricht**;
- **Les Verts** (294/83): *“An interpretation of Article 173 of the Treaty which excluded measures adopted by the European Parliament from those which could be contested would lead to a result contrary both to the spirit of the Treaty (...) and to its system.”*
- **Comitology case** (302/87 *Parliament v Council*): the Court rejected the Parliament's arguments that it should enjoy unlimited standing akin to other privileged applicants;
- **Chernobyl case** (C-70/88 *Parliament v Council*): the Court overruled Comitology and indicated that the *“absence in the Treaties of any provision giving the Parliament the right to bring an action for annulment may constitute a procedural gap”*; in the interests of institutional balance, it decided to allow the Parliament to bring such actions against acts of the Council or the Commission, but *“only to safeguard its prerogatives”* and if the action was *‘founded only on submissions alleging their infringement’*.

The special case of Article 275 TFEU

ARTICLE 275 TFEU

“The Court of Justice of the European Union shall not have jurisdiction with respect to the provisions relating to the common foreign and security policy nor with respect to acts adopted on the basis of those provisions.

However, the Court shall have jurisdiction:

- 1) to **monitor compliance with Article 40** of the Treaty on European Union; and*
- 2) to **rule on proceedings**, brought in accordance with the conditions laid down in the fourth paragraph of Article 263 of this Treaty, reviewing the legality of decisions providing for restrictive measures against natural or legal persons adopted by the Council on the basis of Chapter 2 of Title V of the Treaty on European Union.”*



Conclusive summary on the nature of the EU Judicial System

- The remedies available in the EU legal order are intended to provide a whole system of protection against illegal action of the Member States and Union institutions;
- However, there are some problems of admissibility of actions for annulment, particularly in the case of non-privileged applicants;
- The Lisbon amendments did not provide all the answers as to whether the combination of all remedies available to private parties guarantee complete judicial protection against illegal acts of the institutions as mandated by article 47 of the Charter.



Has the Court of Justice's capacity for reform been exhausted?



Books:

- Barnard & Peers, European Union Law, chapter 10 (until p. 316);
- Vilaça, EU Law and Integration, chapter 9.

Case law:

- *Plaumann v Commission of the EEC*, C-25/62, ECLI:EU:C:1963:17;
- *International Fruit Company and Others v Commission*, C-41/70, ECLI:EU:C:1971:53;
- *Les Verts v Parliament*, C-294/83, ECLI:EU:C:1986:166;
- AG Jacobs Opinion *in UPA*, C-50/00, EU:C:2002:197;
- *Jégo-Quéré*, T-177/01, EU:T:2002:112;
- *UPA*, C-50/00, EU:C:2002:462.

