

## INDIVIDUALS CHALLENGING DIRECTIVES IN EU COURTS

SACHA PRECHAL\*

### 1. Directives and adverse effects for individuals

In scholarly writing, much attention has been paid to the effects of directives which are of avail to individuals. The most obvious examples in this respect are the much-debated questions of direct effect of directives, consistent interpretation of national law, and State liability for their non- or incorrect implementation. However, directives not only confer rights on individuals and can be relied upon by them for some other beneficial purposes, such as a legality review of national law provisions. Very often, they also create obligations for individuals or have other adverse effects for them, such as limiting their rights.

Although, as a rule, these negative effects reach individuals *indirectly*, i.e. through national implementing measures, individuals may have an obvious interest in challenging the legality of the directive itself or, at least, certain of its provisions which are at the basis of the domestic measures.<sup>1</sup> What the exact consequences will be, if such a challenge is successful, depends on various factors. Invalidation of a directive may have a bearing on the status of domestic law implementing that directive, but it does not necessarily mean that that domestic law is automatically invalid. It may be that there is a sufficient legal basis for the legislation at issue in national law and that the rules can be maintained, despite the fact that they serve to implement a directive that has subsequently been declared invalid. However, such domestic legislation has to comply with EU law whenever that law is applicable.<sup>2</sup>

The “data retention saga” is a good illustration in this respect. After the judgment in *Digital Rights*,<sup>3</sup> in which the Court of Justice declared the Data

\* Judge at the Court of Justice of the EU and Professor of European Law, Utrecht University. All views expressed in this contribution are strictly personal.

1. As a rule, it is often only certain provisions of a directive that are challenged. However, for convenience’s sake, I will refer in the present text to “directives”.

2. A detailed and insightful discussion of the consequences of a successful challenge to a directive for national law and proceedings, and the complex questions that may arise in this context, is provided by Vandamme, *The Invalid Directive* (Europa Law Publishing 2005), in particular Chapters 4 and 5.

3. Joined Cases C-293/12 and C-594/12, *Digital Rights Ireland et al*, EU:C:2014:238.

Retention Directive<sup>4</sup> to be incompatible with the right to privacy and data protection provided for by Articles 7 and 8 of the Charter of Fundamental Rights (CFR) and therefore invalid, national data retention measures had to comply with the pre-existing E-Privacy Directive.<sup>5</sup> In particular, the exercise of the option provided for in Article 15(1) of that Directive – according to which Member States may enact, under certain conditions, legislative measures providing for the retention of data – must respect the requirements stemming from Articles 7, 8 and 11, as well as Article 52(1), of the Charter.<sup>6</sup>

Challenges to directives or some of their provisions by individuals are not very common. Even less frequent is the declaration of invalidity or annulment as a result of these actions. In fact, only in a few cases were individual plaintiffs successful. The most well-known example is probably the judgment in the *Test-Achats* case,<sup>7</sup> concerning the invalidation of a provision in Directive 2004/113 (equal treatment in the access to and supply of goods and services)<sup>8</sup> and in the already mentioned case of *Digital Rights*.<sup>9</sup> The rather exceptional character of invalidation is due to a number of “techniques” used by the Court to avoid a declaration of invalidity or annulment of directives.

First, the provisions at issue are interpreted, to the extent possible, in such a way as to ensure their consistency with higher-ranking norms of primary EU law.<sup>10</sup> Indeed, a general principle of interpretation requires that “an EU measure [...] be interpreted, as far as possible, in such a way as not to affect its validity and in conformity with primary law as a whole and, in particular, with the provisions of the Charter”.<sup>11</sup> A second important technique is the restraint exercised when reviewing acts which involve political, economic and social choices, or where the technical or scientific context is complicated, and the Union legislature is called on to undertake complex assessments. In this respect, the legislature has a broad discretion and the review is, in terms of intensity, a limited one.<sup>12</sup> Directives will often qualify as legislative acts involving such a broad discretion. Thirdly, in certain situations, the directive may be “saved” by

4. Directive 2006/24, O.J. 2006, L 105/54.

5. Directive 2002/58, O.J. 2002, L 201/37.

6. As is well-known, this gave rise to ample litigation, starting with Joined Cases C-203/15 and C-698/15, *Tele2 Sverige and Watson and Others*, EU:C:2016:970.

7. Case C-236/09, *Association belge des Consommateurs Test-Achats et al*, EU:C:2011:100.

8. O.J. 2004, L 373/37.

9. The very first case was Case C-212/91, *Angelopharm*, EU:C:1994:21.

10. Cf. for instance Case C-817/19, *Ligue des droits humains*, EU:C:2022:491, paras. 85–228.

11. Joined Cases C-391/16, C-77/17 and C-78/17, *M. et al*, EU:C:2019:403, para 77.

12. Case C-127/07, *Société Arcelor Atlantique et Lorraine et al*, EU:C:2008:728, para 57.

partial invalidation, as this allows the valid part to remain in force. After all, it is often only one or a limited number of provisions which are challenged, rather than the entire directive. However, when declaring invalid only the challenged provisions, the Court has to consider whether the invalidation of those provisions may affect the validity of a directive as a whole.<sup>13</sup>

That said, there is a wide range of grounds that may be relied upon in order to challenge the legality of a directive, irrespective of the procedure that is followed, to the extent that these grounds coincide.

A brief look at the preliminary ruling cases shows, for instance, that those grounds may include principles of customary international law and various international treaties such as the Convention on International Civil Aviation, the Kyoto Protocol and the Open Skies Agreement,<sup>14</sup> the United Nations Convention on the Law of the Sea and International Convention for the Prevention of Pollution from Ships,<sup>15</sup> the Aarhus Convention,<sup>16</sup> and the United Nations Convention on the Rights of Persons with Disabilities.<sup>17</sup>

Other grounds concern the legal basis or certain procedural aspects (infringement of essential procedural requirements, inadequacy of the statement of reasons).<sup>18</sup> General principles of law (legal certainty, proportionality, non-retroactivity, equal treatment) are often invoked,<sup>19</sup> as well as, though less often, other Union law principles, such as the principle of subsidiarity or the principle of transparency.<sup>20</sup>

Another category of grounds are the fundamental treaty freedoms or other provisions of the TFEU (for instance Article 78(1) TFEU and Article 191 TFEU).<sup>21</sup> Finally and somewhat unsurprisingly, arguments drawing upon the violation of fundamental rights are a favourite. Nowadays it is indeed the Charter of Fundamental Rights that is often relied upon (for instance, Article 6, Article 11, Article 16, Article 17, Article 18, Articles 20

13. Cf. Case C-547/14 *Phillip Morris*, EU:C:2016:325, para 56.

14. Case C-366/10, *Air Transport Association of America et al*, EU:C:2011:864.

15. Case C-308/06, *Intertanko et al*, EU:C:2008:312.

16. Case C-543/14, *Ordre des barreaux francophones et germanophone*, EU:C:2016:605.

17. Case C-363/12, *Z.*, EU:C:2014:159 and Case C-356/12, *Glatzel*, EU:C:2014:350.

18. Case C-14/10, *Nickel Institute*, EU:C:2011:503, Case C-643/16, *American Express*, EU:C:2018:67; Case C-390/15, *Rzecznik Praw Obywatelskich*, EU:C:2017:174.

19. Case C-331/88, *Fedesa*, EU:C:1990:391; Case C-220/17, *Planta Tabak*, EU:C:2019:76; Case C-477/14, *Pillbox 38*, EU:C:2016:324.

20. Case C-547/14, *Philip Morris*, EU:C:2016:325; Case C-160/20, *Stichting Rookpreventie Jeugd*, EU:C:2022:101.

21. Case C-151/17, *Swedish Match*, EU:C:2018:938; Case C-97/09, *Smelz*, EU:C:2010:632; Joined Cases C-391/16; Joined Cases C-77/17 and C-78/17, *M. et al*, EU:C:2019:403.

and 21, Article 35, Article 37 and Article 47).<sup>22</sup> However, this trend started already in the pre-Charter era.<sup>23</sup>

While there is apparently no lack of grounds to be invoked, as was already observed above, the actions are rarely successful. To the reasons already mentioned, one may add that some of the international treaties were not justiciable for the purposes of examining the validity of EU law provisions.<sup>24</sup> The same holds true for certain provisions of the Charter.<sup>25</sup> In other cases, the interference with fundamental rights was often justified under Article 52(1) CFR. So far, it has been in particular Articles 7 and 8 CFR that brought about the result sought by the applicants.<sup>26</sup>

The illegality of directives is a question to be decided by the Luxembourg courts. What procedural options do individuals have in this respect? I will briefly consider two “avenues” at the disposal of individuals, namely the action for annulment as well as an action in domestic courts combined with the preliminary ruling procedure.<sup>27</sup>

## 2. Action for annulment

In a successful annulment action, a directive will be declared void, with effect *ex tunc* and *erga omnes*. However, first the individual plaintiffs have to take the hurdle of being directly and individually concerned. In addition to that, another matter had to be clarified first: Article 230 EC was silent on directives. The fourth paragraph allowed legality review of “a decision addressed to another

22. Case C-601/15 PPU, *J.N.*, EU:C:2016:84; Joined Cases C-293/12 and C-594/12, *Digital Rights Ireland et al*, EU:C:2014:238; Case C-817/19, *Ligue des droits humains*, ECLI:EU:C:2022:491; Case C-283/11, *Sky Österreich*, EU:C:2013:28; Case C-477/14, *Pillbox 38*, EU:C:2016:324; Case C-160/20, *Stichting Rookpreventie Jeugd*, EU:C:2022:101; Case C-444/15, *Associazione Italia Nostra Onlus*, EU:C:2016:978; Case C-543/14, *Ordre des barreaux francophones et germanophone*, EU:C:2016:605; Case C-234/21, *Défense active des Amateurs d’Armes*, pending.

23. Fundamental right to property in Joined Cases C-20/00 and C-64/00, *Booker Aquaculture et al*, EU:C:2003:397; the freedom to pursue a trade or profession, and the right to property, in Case C-200/96, *Metronome Musik*, EU:C:1998:172; the right to a fair trial (in fact Article 6 of the ECHR) in Case C-305/05, *Ordre des barreaux francophones et germanophone et al*, EU:C:2007:383.

24. Case C-366/10, *Air Transport Association of America et al*, EU:C:2011:864; Case C-308/06, *Intertanko et al*, EU:C:2008:312.

25. In relation to Art. 26 CFR, see Case C-356/12, *Glatzel*, EU:C:2014:350, para 78.

26. Art. 47 CFR, professional secrecy and private life (Art. 7 CFR) are relied upon in Case C-694/20, *Orde van Vlaamse Balies et al*, pending; and Arts. 7 and 8 CFR in Joined Cases C-37/20 and C-601/20, *Luxemburg Business Registers et al*, pending.

27. I will leave aside the exception of illegality, provided for in Art. 277 TFEU and the action for damages. For the latter see, for instance, Case T-16/04, *Arcelor v. Parliament and Council*, EU:T:2010:54, paras. 139–206.

person” or “in the form of a regulation”. According to some, this text excluded *a priori* directives from review. After some confusing case law,<sup>28</sup> the matter was settled in the *Japan Tobacco* case. The General Court pointed out that the very fact that Article 230 EC made no express provision regarding the admissibility of actions brought by private persons for annulment of a directive, was in itself not sufficient to render such actions inadmissible. The Court underlined that individuals cannot be deprived of judicial protection merely by means of the choice of legal instrument by the institutions.<sup>29</sup>

Notwithstanding this clarification, the confusion continued on another (though closely related) front, namely the requirement of “direct concern”. The order in *Nord Stream 2* is illustrative in this respect.<sup>30</sup> First, the General Court recalled the case law according to which the mere fact that the action for annulment is directed against a directive is not a sufficient ground for declaring the actions inadmissible. The General Court equally recalled that an individual may bring an action for annulment against a directive if it is of direct and individual concern to the applicant or if it constitutes a regulatory act which is of direct concern to him and does not entail implementing measures.<sup>31</sup> Next, however, the General Court relied on the well-known case law according to which a directive cannot, of itself, impose obligations on an individual and may therefore not be relied upon as such by the national authorities against operators in the absence of measures transposing that directive previously adopted by those authorities. For that reason, according to the General Court, the provisions of the contested directive cannot, before the adoption of the national transposing measures and independently of those measures, be a direct or immediate source of obligations for the applicant and liable, on that basis, to affect its legal situation directly for the purposes of the fourth paragraph of Article 263 TFEU.<sup>32</sup> The General Court adds that the contested directive, as such and since its entry into force, does not produce immediate and concrete effects on the legal situation of operators such as the applicant and, in any event, not before the expiry of the deadline for its transposition.<sup>33</sup>

28. Cf. Vandamme, *The Invalid Directive* (Europa Law Publishing, 2005), pp. 41–46.

29. Case T-223/01, *Japan Tobacco Inc v. European Parliament and Council*, EU:T:2002:205, para 28. In any case, since Art. 263 TFEU now speaks of “acts” in a general manner, this issue appears to have been definitively resolved.

30. Case T-526/19, *Nord Stream 2*, EU:T:2020:210.

31. Paras. 78–79.

32. The General Court relied on Joined Cases T-172/98 and T-175/98 to T-177/98, *Salamander and Others v. Parliament and Council*, EU:T:2000:168, para 54; and Case T-202/13, *Group Hygiène v. Commission*, EU:T:2014:664, para 33.

33. Paras. 106–108 of the order. These dicta are remarkable since, in other cases, it was already established that some provisions of a directive may be of direct concern to an individual even before the expiration of the implementation deadline. See, for instance,

The result of such a reasoning is indeed a categorical exclusion of the possibility that directives may directly affect the situation of individuals and, as a consequence, an automatic exclusion of standing of individuals who challenge a directive. On appeal, the Court of Justice found that the General Court's reasoning could not be upheld. Briefly put, the Court pointed out that, first, what matters is the substance of the measure and not the form.<sup>34</sup> Secondly, any act may, in principle, directly concern an individual, irrespective of whether it entails implementing measures;<sup>35</sup> the central issue is the direct connection between the act (the directive) and its effects: is there a direct link between the directive and the modification in the legal position of the individual concerned? This boils down to the "usual" test of direct concern, namely, whether the legal effects of the act are sufficiently clear and precise to be applied to the situation concerned and, in particular, whether there is any discretion left on the part of the Member States as to the imposition of the legal effects on the individual.<sup>36</sup> This test is a concrete one and requires an examination by reference to the substance of that act. The fact that, in relation to directives, the Member States are free to choose the form and the method of implementation is not relevant in this context.<sup>37</sup>

After the judgment in *Nord Stream 2*, it is unequivocally clear that directives may, under certain circumstances, be of direct concern to the applicant and that there exists no general or systemic objection in this respect. However, it is probable, taking into account the nature of directives, that the condition of direct concern will be met on rare occasions only. Equally – if not even more exceptional – will be the satisfaction of the requirement of "individual concern".

As a rule, directives are measures of general application and of normative nature. In the past, the Court held that a directive is an indirect

Case T-420/05, *Vischim v. Commission*, EU:T:2009:391, paras. 69 and 74–78; Case T-420/05 R II, *Vischim v. Commission*, EU:T:2006:304, para 33.

34. Case C-348/20 P, *Nord Stream 2 AG v. European Parliament and Council*, EU: C:2022:548, paras. 63–67. Implicitly, the Court dismissed also the parallelism between direct concern and direct effect. Cf. the Opinion of A.G. Bobek in this case, EU:C:2021:831, in particular paras. 40–41.

35. Cf. the third limb of the fourth paragraph of Art. 263 TFEU: in relation to regulatory acts, there is a condition that those do not entail implementing measures, but in addition to that there is the (distinct) requirement that the applicant must also be directly concerned.

36. Case C-348/20 P, *Nord Stream 2 AG v. European Parliament and Council*, EU: C:2022:548, paras. 68–74. On this test in general, see Barents, *Remedies and Procedures before the EU Courts* (Kluwer Law International 2020), pp. 291 et seq.

37. In Case C-348/20 P, *Nord Stream 2 AG v. European Parliament and Council*, EU: C:2022:548, the Court found, unlike the General Court, that the relevant provisions of the directive did not leave discretion to the Member States: see paras. 94–114.

regulatory or legislative measure,<sup>38</sup> pointing out the two-stage process of norm setting. First at the EU level, in the content of the directive and next on the national level. The Member State transposes the content of the directive into national law and thus turns it into a normative measure of domestic law.

According to established case law, on the one hand, the general application of a measure is not called into question by the fact that it is possible to determine more or less precisely the number or even the identity of the persons to whom it applies. As long as it is established that such application takes effect by virtue of an objective legal or factual situation defined by the measure in question, the measure will not be regarded as being of individual concern.<sup>39</sup> On the other hand, the Court accepted that in certain situations a measure of general application might nevertheless be of individual concern to some of the individuals concerned by that measure. That will be the case when a measure affects a group of persons who were identified or identifiable when that measure was adopted because of criteria specific to the members of the group, inasmuch as they form part of a limited class of economic operators.<sup>40</sup> It will not come as a surprise that the latter criteria are rarely fulfilled and, in general, the approach is rather casuistic.<sup>41</sup>

Summing up, in relation to directives, the admissibility of actions for annulment brought by individuals is not entirely excluded. Nevertheless, due to the requirements imposed, admissible cases will remain scarce. The alternative avenue for challenging directives, then, is the preliminary reference on validity.

### 3. Preliminary ruling procedure

The scenario is familiar. Limited access for individuals under Article 263 TFEU is compensated by the preliminary ruling procedure. According to the Court, the TFEU has established, by Articles 263 and 277, on the one hand, and Article 267, on the other, a complete system of legal remedies and

38. Case C-298/89, *Government of Gibraltar v. Council*, EU:C:1993:267, para 16. Note that the judgment dates from the pre-TFEU era. The TFEU has introduced a new difference, namely between legislative and non-legislative acts, in Art. 289 et seq.

39. Case C-348/20 P, *Nord Stream 2 AG v. European Parliament and Council*, EU:C:2022:548, para 157.

40. Case C-348/20 P, *Nord Stream 2 AG v. European Parliament and Council*, EU:C:2022:548, para 158. In this case, the Court found that also the condition of individual concern was satisfied.

41. See Barents, *Remedies and Procedures before the EU Courts* (Kluwer Law International, 2020), pp. 261 et seq.



procedures designed to ensure judicial review of the legality of European Union acts. This review is entrusted to the Courts of the European Union. Where the Union institutions implement an act of general application, this act may be indirectly challenged under Article 277 TFEU. Where that implementation is a matter for the Member States, the individual may plead the invalidity of the European Union act concerned before the national courts. The national court must request a preliminary ruling from the Court of Justice as to the validity of the act, pursuant to Article 267 TFEU, provided that the court considers there to exist arguments for invalidity of that act which are well founded.<sup>42</sup> National courts do not themselves have the power to declare acts of Union institutions invalid, as this is a matter of exclusive jurisdiction of the Court of Justice.<sup>43</sup>

The possibility for an individual to rely, in an action brought before a national court, on the invalidity of a directive may, at least theoretically, be barred by the *TWD* rule.<sup>44</sup> According to that rule, that individual must also bring an action for annulment of the EU measure under Article 263 TFEU within the prescribed time limits, or, if that individual has not done so, this must be a result of not having an undoubted right to bring such an action.<sup>45</sup> However, in the light of the brief discussion above about, in particular, the difficulty to meet the requirement of individual concern, the existence of such an “undoubted right” remains highly theoretical. It will only in exceptional cases lead to inadmissibility of the question on the validity of a directive.<sup>46</sup>

The indirect challenge through the preliminary ruling procedure is based on the premise that Member States establish a system of legal remedies and procedures in which the invalidity of the Union act may be pleaded, giving effect to their obligation under the second subparagraph of Article 19(1) TEU. This subparagraph states that Member States “shall provide remedies sufficient to ensure effective legal protection in the fields covered by European Union law”. In principle, EU law does not require that new remedies be created for this indirect invalidity challenge. That would only be otherwise if, in the domestic legal system, there was no remedy making it possible, even indirectly, to ensure respect for the rights

42. Case C-583/11 P, *Inuit Tapiriit Kanatami*, EU:C:2013:625, paras. 92–96.

43. Case C-314/85, *Foto-Frost*, EU:C:1987:452, paras. 17 and 19.

44. Cf. already in similar sense Case C-408/95, *Eurotunnel*, EU:C:1997:532, paras. 27–29.

45. Case C-188/92, *TWD Textilwerke Deggendorf*, EU:C:1994:90; recently confirmed in Case C-414/18, *Iccrea Banca*, EU:C:2019:1036, para 63.

46. Cf. in this sense Case C-343/09, *Afton Chemical Limited*, EU:C:2010:419, paras. 18–26; and Case C-59/11, *Association Kokopelli*, EU:C:2012:447, paras. 35–36.



which individuals derive from European Union law, or if the sole means of access to a court required parties to break the law.<sup>47</sup>

As is true also for any other Union act of general application, when it comes to challenging, indirectly, the validity of directives, this means that the individuals are dependent on national law and procedures, including the standing rules, and they have to face delays that may exist in national proceedings in certain Member States. Usually, the individual will bring an action against the national implementing measures and, in that context, raise the invalidity of the underlying directive. However, using the pre-withdrawal UK system as an example, an action was possible at an earlier stage already: individuals could seek judicial review of the “intention and/or obligation” to implement a directive.<sup>48</sup> Responding to an argument according to which a request for a preliminary ruling at such a stage should be inadmissible, the Court pointed out that the opportunity to plead the invalidity of an EU act of general application before national courts is not conditional upon that act actually having been the subject of implementing measures adopted pursuant to national law.<sup>49</sup>

Obviously, like in any other case, the requirements for admissibility of the preliminary reference must be satisfied. There must be a genuine dispute between the parties in which the question of the validity of the directive is raised indirectly,<sup>50</sup> the determination of validity of a rule of EU law must bear relation to the facts of the main action or its purpose, and the problem must not be a hypothetical one. Furthermore, the Court must have before it the factual or legal material necessary to give a useful answer to the questions submitted.<sup>51</sup> This implies, *inter alia*, that the referring court should explain what the relationship is between the national law at stake and the directive which is claimed to be invalid.

Another important feature is that the Court examines the validity of an EU act only in the light of the grounds of invalidity set out in the order for reference. Furthermore, if the referring court does not mention the precise reasons which led it to question the validity of the act concerned, the questions relating to the validity thereof will be inadmissible.<sup>52</sup>

47. Case C-583/11 P, *Inuit Tapiriit Kanatami*, EU:C:2013:625, paras. 99–104.

48. Cf., for instance, Case C-547/14, *Philip Morris*, EU:C:2016:325, paras. 33–34.

49. Case C-643/16, *American Express*, EU:C:2018:67, para 30.

50. Case C-643/16, *American Express*, EU:C:2018:67, para 30.

51. Case C-547/14, *Phillip Morris*, EU:C:2016:325, para 32.

52. Case C-547/14, *Phillip Morris*, EU:C:2016:325, para 50. Yet, in another case, the Court proved to be rather lenient: see Case C-643/16, *American Express*, EU:C:2018:67, paras. 26–28.

While there are some instances in which certain questions were indeed inadmissible,<sup>53</sup> the overall approach of the Court is rather liberal. However, these issues also illustrate that, in a preliminary ruling procedure where the question of possible invalidity of a directive plays a part, much depends on the national court making the reference, in addition to the general requirement that the reference on the validity of a directive must be “necessary to enable [the referring court] to give judgment”. This indeed implies a certain discretion for the national court. From an individual’s perspective, this situation is not entirely satisfactory.<sup>54</sup> Similarly, from this same perspective, the allegedly complete system of legal remedies and procedures might seem less complete.

#### 4. Final remarks

The possibilities to challenge the legality of directives is obviously a part of a larger problem, namely the standing for individuals in actions against measures of general application, a topic that has given rise to extensive literature and debate and even certain minor treaty amendments.<sup>55</sup>

In the context of this debate, the unique and somewhat ambiguous character of the directive, as a “two-stage” normative measure, which is primarily directed at the Member States, has played a discreet but specific role. As we have seen, it was only recently that the Court has put an end to a long line of confusing case law, by making clear that the nature of a directive does not as such interfere with the requirement of “direct concern”. In this way, a *per se* hurdle has disappeared. Despite this development, the admissibility of annulment actions by individuals against directives remains limited due to the conditions of “direct and individual concern”. The alternative avenue, through the preliminary ruling procedure, may provide an effective remedy, although the success rate of these cases is not high. However, the most important effect of the validity assessment might be that, while interpreting the relevant provisions of a directive in a way which safeguards their compatibility with norms of primary law, the Court also indicates where the limits lie for national implementing measures.<sup>56</sup>

53. For instance, Case C-547/14, *Phillip Morris*, EU:C:2016:325, paras. 43–46 and 51–52.

54. Cf. also Case C-561/19, *Consorzio Italian Management*, EU:C:2021:799, paras. 53 and 55.

55. Cf. the third limb of the fourth paragraph of Art. 263 TFEU and the second subparagraph of Art. 19(1) TEU.

56. Cf. for example Case C-817/19, *Ligue des droits humains*, ECLI:EU:C:2022:491.