Overview: Article 340 TFEU

EU liability in damages

Non-contractual liability: 'The Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties' (Article 340 TFEU)

General principles common to the laws of the Member States—applicant must establish:
- wrongful act
- actual damage
- causation
  \((\text{Lütticke})\)

Wrongful act
\(\text{Schöppenstedt}\)

(General legislative measures involving choices of economic policy)
The applicant must show:

- a sufficiently serious breach \((\text{HNL})\)
  (institution has ‘manifestly and gravely disregarded the limits on its discretion’ with regard to the effect of the measure \((\text{HNL})\); or Court of Justice may require the conduct to be ‘verging on the arbitrary’ \((\text{Amylum})\))

- a superior rule of law for the protection of individuals
  (eg general principles of law, such as non-discrimination \((\text{HNL})\))

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Infringement of a rule of law intended to confer rights on individuals

Test for a sufficiently serious breach: the degree of discretion accorded to the institution, not the arbitrariness of the act or the seriousness of the damage caused

Damage

Must be quantifiable and exceed the loss arising from the normal economic risks inherent in business \((\text{eg HNL})\)

Causation

The damage must be a sufficiently direct consequence of the institution’s breach \((\text{Dumortier})\)