

# Article 267 TFEU in practice

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Disclaimer: the author is presenting his personal views and not  
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- The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:
  - (a) the interpretation of the Treaties;
  - (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;
- Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.
- Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.
- If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.

# A court or tribunal

- The term "court or tribunal of a Member State" is an autonomous concept of Union law
- Therefore it is for the Court of Justice to decide what is a court or tribunal
- The criteria are whether the body is established by law, permanent, its jurisdiction is compulsory, its procedure is inter partes, it applies rules of law and it is independent
- C-427/13: the Italian authority for public contracts is not a court because its decisions are not binding

# Possibility or obligation?

- Courts against the decisions of which there is no remedy under national law have an obligation to refer
- They are only allowed not to refer if there is no doubt about the interpretation of Union law
- Acte clair, acte éclairé
- Other courts have a right to refer

# Interpretation vs validity

- Two main types of questions are possible:
- Interpretation of Union law
- Validity of Union law
- Only the Court can decide on the validity of Union law

# Question of Union law...

- C-459/13
- Court rules that mandatory vaccination is not covered by Union law
- Therefore the Court is not competent to answer the question

# ...necessary to decide the case

- The Court does not answer hypothetical questions
- The purpose of the procedure is to help the national court to decide the case
- The purpose is not to give a hypothetical opinion on the interpretation of Union law

# Order of the national court

- The national court must:
- Formulate the question and explain why it is relevant
- Indicate the relevant provisions of Union law
- Describe the facts
- And describe the relevant national legal context

# When it goes wrong...

- C-312/14 Banif Bank
- Advocate General highly critical of the national court
- Suggests that the Court rejects the question
- Sometimes the Court asks the national court for clarifications

# How to get it right?

- Follow the guidance at the Court website

# Stages of procedure

- Reference arrives at the Court
- Translated
- Sent to interested parties (parties in the main case, Union institutions, Member States)
- Interested parties have two months to submit written observations

- Interested parties are sent the observations of other interested parties and can ask for an oral hearing
- Court takes administrative decisions: organisation of oral hearing, appointment of advocate general, chamber
- Oral hearing (if any)
- Opinion of Advocate General (if any)
- Judgment

C-32/11

# C-470/13

- The Court is asked whether it is possible to exclude a participant in the same cartel from a public procurement procedure
- It decides that participation in a cartel, especially if sanctioned with a fine can be considered as grave professional misconduct under the public procurement directives
- The Court therefore decides that it was possible to exclude that participant



Thank you for your attention