

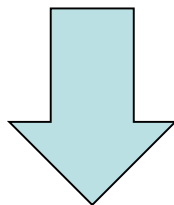
EUROPEAN UNION LAW

PRELIMINARY RULING UNDER ART. 267 TFEU

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Enforcing EU Law through Adjudication...

PRELIMINARY RULINGS



*Indirect
action*

Art. 267 TFEU

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

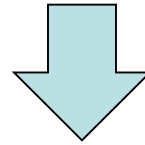
- (a) the interpretation of the Treaties;
- (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

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.

The Jurisdiction of the ECJ

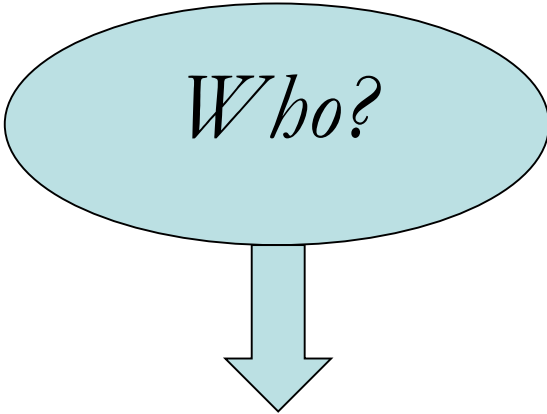
what is the object of the Court's competence
under art. 267 TFEU?



*European
Law*

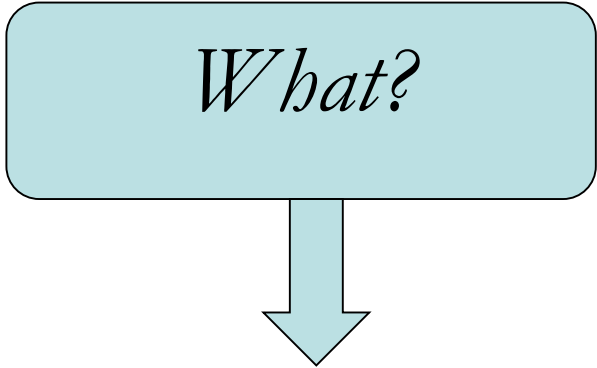
All EU law, EU law only

The Conditions for a Preliminary Ruling



Who?

Judicial authorities (=?)
Dorsch Consult test
Extensive reading (*Broekmeulen*)



What?

A question *necessary* to
give judgment

The Obligation to Refer. The Doctrine of the «acte clair»

Faculty vs. Obligation



Adjustments to the permissive nature of referral:

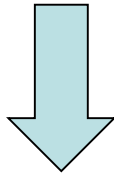
even lower courts **MUST** perform a referral when in doubt as to the validity of an act of the Union

Limits on the obligation to refer:

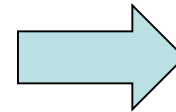
- Clear answer;
- Materially identical question;
- *Acte clair*

The Legal Nature of Preliminary Rulings

- \neq appeals
- =discretionary acts of national courts asking the Court of Justice for interpretative help
- Discretionary (\neq right of the parties to proceedings)
- The preliminary ruling will **not** bind the parties!



*Preliminary rulings do
not DECIDE the
case referred by the
national judge!*



***They only
clarify the
law!***