Hogan Lovells

# Lifting the veil of mystery

## What can the CJEU do for you?

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# What can the CJEU do for you?

Have you ever wondered what a provision of European Union law means? Answering that question is one of the main prerogatives of the Court of Justice of the European Union or "CJEU".

The CJEU is a key institution of the European Union ("EU"). As with many things relating to the EU, the CJEU may seem arcane and mysterious to some extent. We will lift the shroud of mystery and show how you may profit from an improved understanding of this unique court, its role, rules and procedures.

In this guide, you will:

- Get better acquainted with the CJEU
- Learn more about the CJEU's key roles and prerogatives
- Better understand the procedure and its potential pitfalls
- Receive practical guidance on how to explore this growingly important institution

# Some background to get started

One of the core objectives of the EU is to foster a single market offering free movement of goods, service, people, and capital. To achieve this objective, the EU has created an ever-growing body of common rules which applies in every one of the Member States.

This body of rules, collectively described as EU law, aims at breaking down trade barriers between Member States and at regulating the European Single Market thus created. In more recent years, emphasis has also been put on human rights.


Given the importance of EU law for businesses operating within the EU, companies are well-advised to be aware of the role and prerogatives of the CJEU.

Does the outcome of your case hinge upon the interpretation of EU law? Seeking a preliminary ruling from the CJEU (or objecting against the referral of a question to the CJEU) could be the key to victory in court. Has the European Commission imposed a fine on your company, or has the European Intellectual Property Office rejected your trade mark application? An action before the CJEU may be the only way forward.



## A few terms to have in mind

Community law | former name given to EU law (or Union law) prior to the entry into force of the Treaty of Lisbon in 2009 (this Treaty replaced all references to the European Community and Community law with "EU" and "EU law").

Directive | a legal act of the EU which requires Member States to adopt implementing measures to achieve a certain result. Directives need to be transposed into national law by Member States to become effective. This transposition must occur before a set deadline.

Regulation | a legal act of the EU that does not require implementing measures and is directly enforceable in all Member States after its entry into force.

Reference for a preliminary ruling | also commonly called a referral, this is the procedure by which a national court (and not a party in a dispute) seeks a binding ruling on the validity or interpretation of EU law from the CJEU.

Direct action | an action brought before the CJEU against an EU institution (for example actions for annulment, by which the applicant seeks the annulment of a measure adopted by an EU institution or agency) or against a Member State (such as actions for failure to fulfil obligations, by which the Commission asks the Court to determine whether a Member State is complying with EU law).

# Meet the CJEU

## A fairly young Court

The Court of Justice was created in **1952** by the Treaty of Paris, which established the European Coal and Steel Community. Due to the technical nature of the cases heard by the Court in its early years, it did not attract much attention. But that was due to change.

With the ratification of the Treaties of Rome in **1957**, two new European Communities were created: Euratom and the EEC. The EEC aimed at establishing a common market and the jurisdiction of the Court, known by then as the "Court of Justice of the European Communities", grew accordingly. In particular, the Court was granted the right to annul legal acts when an EU institution overstepped its powers. It was also decided that national courts of Member States should submit questions of interpretation of Community law to the Court of Justice, which would issue so-called "preliminary rulings".

A court of first instance, now known as the General Court, was added in **1989** to lighten the case-load of the Court of Justice. In essence, the General Court hears direct actions brought by private parties and occasionally, Member States against acts of the institutions, bodies, offices or agencies of the EU. Its rulings are subject to appeal before the Court of Justice.

A third court was created in **2005** to adjudicate disputes between the EU and its personnel. However, this "Civil Service Tribunal" was abolished in 2015 when the General Court was reformed. The disputes formerly heard by the Civil Service Tribunal were returned to the jurisdiction of the General Court; while the number of Judges of the General Court was doubled (it now has 54 members).

The Treaty of Lisbon, which entered into force in **2009**, brought a series of significant changes, among which the extension of the jurisdiction of the CJEU to the area of freedom, security and justice. For example, since the Treaty of Lisbon, any national court or tribunal may request a preliminary ruling from the CJEU in the field of police, criminal justice or immigration. In addition, the Charter of Fundamental Rights of the EU has been given the same legal value as the Treaties and now forms part of the body of rules that may be applied by the CJEU.

Today, the way the CJEU operates is mainly governed by Articles 251 to 281 of the Treaty on the Functioning of the EU (the "TFEU"), as well as by the CJEU Statute and the Rules of Procedure of the two courts. The Statute lays out the details of the organisation of the CJEU and provides high-level indications regarding the procedure, whereas the two sets of Rules of Procedure contain the specifics.

### CJEU vs. ECJ: what should you call it?

Since the Treaty of Lisbon, the court system of the EU (consisting of both the Court of Justice and the General Court) is called the "Court of Justice of the European Union".

If you refer to the EU judiciary institution as a whole, CJEU is therefore the most appropriate acronym. ECJ (for "European Court of Justice") is an informal expression refering to the higher court, which is formally called the "Court of Justice".

The "Court of Justice of the European Communities" is outdated and should no longer be used but you may find this name in pre-2009 case law.

# 27 Judges and nearly as many languages

From the original court of seven Judges back in 1952, the Court of Justice has grown to 27 Judges. Judges are appointed by common accord of the governments of the Member States for six years and are partially replaced every three years.

The first female judge, Ms. Fidelma O'Kelly, was appointed by Ireland in 1999. Currently, there are 6 female Judges sitting in the Court of Justice and one female Advocate General.

The Judges elect the President of the Court among themselves for a three-year term, which can be renewed indefinitely. The current President, Mr. Koen Lenaerts from Belgium, is a true veteran of the CJEU. Aside from teaching as a Professor at the Catholic University of Leuven since 1990, where he chairs the Institute of European Law, he has been a judge with the General Court from 1989 to 2003 and a judge at the Court of Justice since 2003.

The 27 Judges of the Court of Justice are assisted by 11 Advocates General, who are also appointed by common accord of the governments of the Member States. An Advocate General is assigned to each case to analyse the legal questions raised by the case and to deliver an opinion to the Court on the solution to be given. To get to know Judges and Advocates General better, you can consult their summary CVs on the website of the Court of Justice (https://curia.europa.eu/jcms/jcms/Jo2_7026/en/).

Most cases are heard by three or five Judges. The Court sits in a so-called "Grand Chamber" of 15 Judges in particularly complex or important cases or when a Member State or an EU institution is a party to the proceedings and so requests. In rare instances (the last instance in 2014), when prescribed by its Statute or when the case is of exceptional importance, the Court may sit in full court of 27 Judges.

Cases may be brought in each of the 24 official languages of the EU. Preliminary rulings are issued in the language of the national court that referred the case to the Court of Justice.

However, French has always been and still is the working language of the Court in its internal deliberations. It was the one common language of the original seven judges back in 1952, and the efficiency benefits of a single language continue to be felt today. Imagine a Grand Chamber of 15 Judges from 15 different countries (where French is not an official language) discussing and deliberating in French to make significant decisions.

Additionally impressive is attending a hearing of the Court of Justice during which up to 24 interpreters, sitting in small cabinets on the side of the room, will translate the debate before the Court for the public.

## A few figures

- **27 Judges** and **11 Advocates General** at the Court of Justice
- **54 Judges** as of January 2020 at the General Court (no permanent Advocates General)
- **2,256 staff** (among which 600 "lawyer-linguists" to translate written documents)
- **429 million euro budget** in 2019
- **39,000 judgments** and orders delivered **since 1952**, more than **22,000** for the **Court of Justice** alone
- **1,905 new cases** brought and **1,739 cases** completed in 2019, including **2,500 cases pending**
- Average duration of proceedings: **14.4 months** (Court of Justice) and **16.9 months** (General Court)
- More than **1.2 million pages** translated in many different languages in 2019

## Indisputable authority

Through a series of landmark cases decided in the 1960s, the Court of Justice established its authority and greatly contributed to the development of what was then called Community law.

In the 1963 Van Gend en Loos case, the Court of Justice declared the European Community a "new legal order" and held that individuals could directly rely on Community law provisions before national courts, thereby giving Community law a "**direct effect**".

In the *Costa v. ENEL* ruling of 1964, the Court of Justice held that Member States had transferred their sovereign rights to the European Community and that Community law could not be overridden by the Member States. The Court of Justice thus established the **principle of the supremacy of Community (and now Union) law**, according to which EU law is binding upon all Member States and takes precedence over national domestic laws.

The same is true for the rulings of the Court of Justice, which provide **uniform and authoritative interpretations of EU law**. The preliminary rulings of the Court of Justice are binding upon every national court of every Member State as well as all Member States and EU institutions.

The Court of Justice also has **authority over the other EU institutions** as it can review, and possibly annul, acts issued by any of the EU institutions, including the European Parliament.

Furthermore, actions can be brought before the Court of Justice **against Member States** who fail to comply with EU law. In 1993, the Court of Justice was given the power to impose financial penalties if a Member State fails to comply with its rulings. The Court of Justice has exercised this power in several instances. For example, in 2005, France was ordered to pay a lump sum of €20 million for failure to comply with a ruling regarding fishing regulations, as well as a €57 million penalty for every additional six-month period of delay in taking appropriate measures. These are powerful tools to obtain compliance and respect.



## Bright people, Shiny architecture

Reflecting the increasing importance of the EU and a growing case-load, the CJEU has expanded and now occupies several buildings in Luxembourg city.

The current main building was completed in 2008 and was designed by French architect Dominique Perrault, who also designed the French National Library in Paris, the Olympic Velodrome in Berlin and the DC Towers in Vienna, among many others.

The main courtroom is enclosed in a gold steel-mesh canopy (recalling the first European Community of Coal and Steel) that can be seen from the outside of the building and lets natural light into the chamber. The CJEU's building complex is intended as a great public plaza, a sort of modern day acropolis that shines in a warm golden finish – a fitting home for one of the most important institutions of the EU.

The building is spacious. Yet, the CJEU is very welcoming: anybody may attend public hearings and live translation in several different languages is provided through earphones available in the room.

## The CJEU, a European Supreme Court?

The Court of Justice may be reminiscent of a supreme court, such as the Supreme Court of the United States. They both rule over matters of law and fundamental rights, their rulings are binding for other courts and they both ensure the consistent interpretation of the body of law they are entrusted with.

But these similarities should not lead to any hasty conclusions. While the U.S. Supreme Court has appellate jurisdiction over almost any case that involves an issue of constitutional and/or federal law of the United States, the CJEU does not hear appeals from decisions handed down by the national courts of Member States.

The CJEU does not review judgments issued by the national courts, even when the case deals with EU law. Referrals for preliminary rulings are not remedies against domestic judgments and the Court of Justice does not adjudicate cases but provides binding interpretations of EU law.

# What is in it for you?

At this stage, you may be wondering what the CJEU can concretely do for you. Ensuring the consistent application of European Union law across Member States is all well and good, but how could it help you?

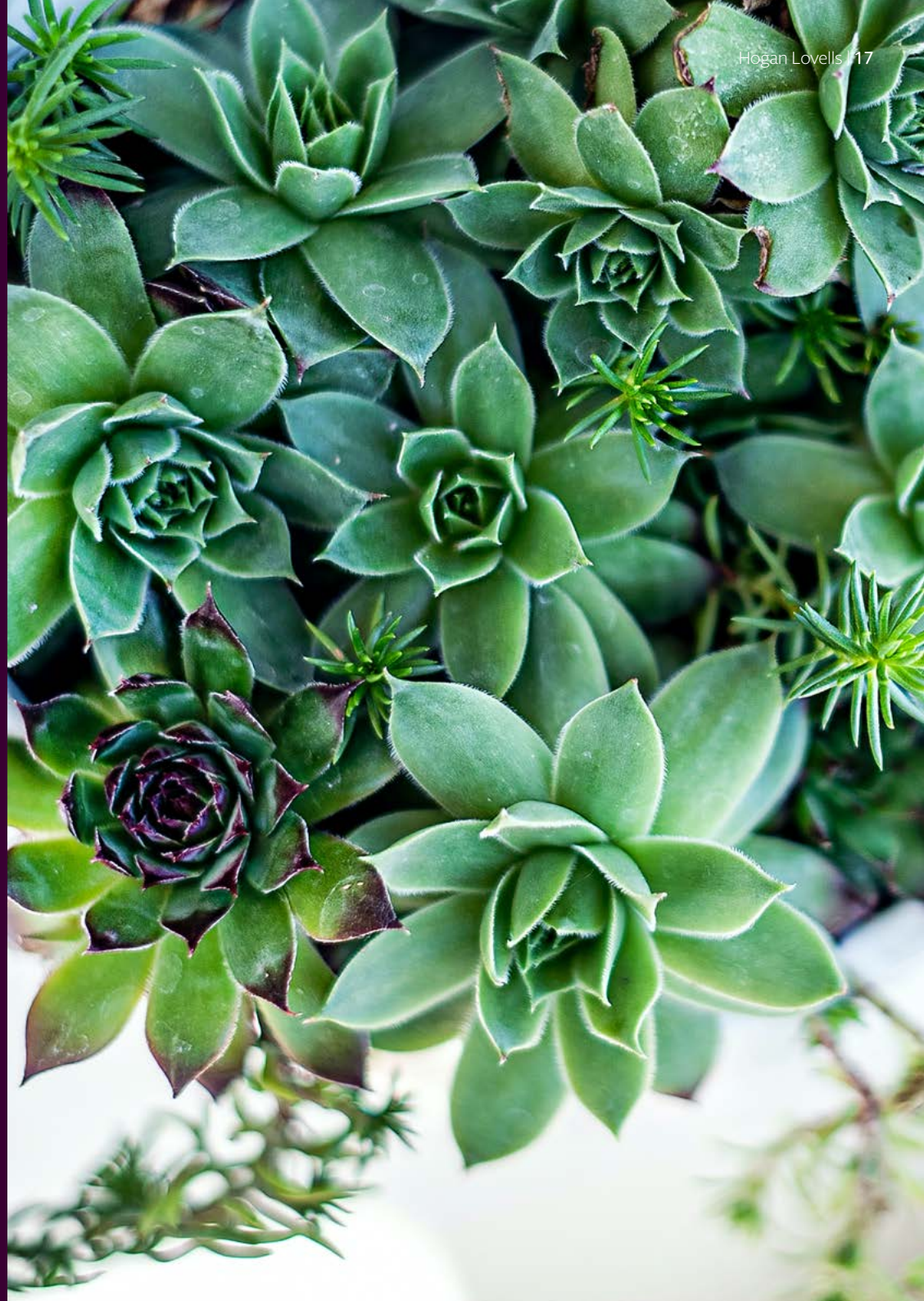
There were 792 cases completed in 2020*

Including 534 preliminary rulings, 37 direct actions, 204 appeals against decisions of the General Court (40 only were successful).

Most frequent subject-matters dealt with:

- Agriculture | 26
- Freedom, security and justice | 119
- Competition and State aid | 104
- Consumer protection | 56
- Customs | 24
- Environment | 48
- Freedoms of movement and establishment, and internal market | 96
- Intellectual property | 27
- Social law | 56
- Taxation | 95
- Transport | 86

* Source: CJEU 2020 Annual report: https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-04/ra_pan_2020_en.pdf



# Preliminary rulings

If you are you unhappy about the turn some domestic proceedings are taking and you believe the national court in question may misconstrue an applicable provision of EU law, you should consider suggesting a detour to Luxembourg to your judge. A so-called "reference for a preliminary ruling" (Article 267 of the TFEU) may be a way to tip the scales in your favor.

This is not an appeal or another dispute between the parties. It is a procedure by which a national court seeks the assistance of the Court of Justice to solve an issue relating to the interpretation of the European Treaties or a provision of EU law. In other words, it is a Q&A between different judges. It results from this that so-called "parties" (i.e. parties to the national proceedings) have limited procedural rights in the course of this dialogue.

Referrals for preliminary rulings go straight to the Court of Justice, i.e. there is no need to stop at the General Court first.

## Who may refer questions **to the Court of Justice?**

- You can't just ask the Court of Justice to issue a preliminary ruling
- **Only national courts** may refer questions to the Court of Justice
- Parties to domestic proceedings may **suggest to the national court to refer a question**
- If the opposing party is suggesting a referral and you think this is irrelevant and/or unnecessary, you may also **object against such referral** and seek to convince the national court that it should not lose time with a referral to the Court of Justice

## **Asking a question,** is it an obligation?

- When there is no judicial remedy under national law against a court's decision, i.e. no further appeal is available, this court must seek a preliminary ruling when they need clarification on the interpretation of a provision of EU law
- This being said, you will need the national court to agree with you that there is an EU law issue: if there is no doubt on the interpretation of EU law, no need (hence no obligation) for a referral
- Other courts have discretion on whether to grant your request. It is therefore crucial to convince the court of the merits of a referral to the Court of Justice (CJEU case law may provide useful arguments in that respect)

## What's **next?**

- Preliminary rulings are not mere opinions, but **binding decisions**
- The court that made the referral will be bound by the interpretation given in the preliminary ruling when settling the case afterwards (the Court of Justice does not settle disputes so the cases are remanded before the national court after preliminary rulings)
- The ruling likewise binds all national courts before which the same problem is or will be raised, as well as Member States and EU institutions
- But in practice the assessement of the cases by the national courts may lead to different outcomes despite one single Court of Justice ruling

## Actions for annulment

When you would like to challenge an act by an EU institution which you believe impacts you adversely, then, subject to various admissibility rules, you can bring an **action for annulment** before the General Court (Article 263 of the TFEU). Examples of EU acts that may be challenged through this kind of action include (but are not limited to) fines, unlawful EU regulations, withdrawal of subsidies or licences or the imposition of import quotas.

### Who may apply?

- While Member States and EU institutions have automatic right of access to the Court in such cases, individuals **citizens and companies** only have limited access
- Individual applicants must establish their right (i.e. "**standing**") to bring a legal challenge and can only question acts which are adressed to them or are of direct and individual concern to them
- The standing requirement and the question of whether there is a **direct and individual concern** are among the most contentious issues in annulment proceedings and may prove a significant hurdle in some cases

### On what grounds?

- Your challenge will be successful if you can establish at least one of the following grounds
- (i) A **lack of competence** (the EU institution did not have the necessary power to take the act)
- (ii) An **infringement of an essential procedural requirement** for the adoption of the act
- (iii) An **infringement of the European Treaties** or of any rule of law relating to their application, which includes any infringement of **EU law**: this is the broadest and therefore the most frequent ground for annulment
- (iv) A **misuse of powers**, which occurs when an EU institution uses its lawful power for any other purpose than that for which it was conferred.

### When?

- Beware that actions for annulment must be brought within **two months of publication** of the measure or its **notification** to you, or, in the absence of either, the date on which it came to your knowledge. Act quickly!

### What's next?

- The decision of the General Court is subject to an **appeal on points of law** before the Court of Justice
- If the challenge is successful, the act is declared **null and void** by the Court of Justice
- All institutions concerned must take all necessary measures to comply with the judgment of the General Court (or the Court of Justice)



## Infringement proceedings against Member States

As explained earlier, the Court of Justice makes sure that Member States fulfill their obligations arising out of the European Treaties and EU law. When a Member State fails to do so, for instance if it is in breach of one of the Treaties or does not comply with a European Regulation or Directive, the European Commission (the executive body of the EU) or other Member States may bring a so-called "**action for failure to fulfill obligations**" (also known as infringement proceedings) against the infringing party.

Such an action may be of interest to you if the Court of Justice compels a Member State to observe your rights, but you cannot bring this action yourself as it is not available to individual applicants. Nevertheless, a complaint filed with the European Commission may in some cases lead to such action being initiated by this EU institution. Keep this option in mind if you think you may suffer from the non-compliance of a Member State with EU law!

Furthermore, if the Court of Justice rules that a Member State violated its EU law obligations, you may consider bringing an action before national courts to receive compensation for the loss you suffered (such actions will be subject to national laws and will thus vary from one Member State to another).

# So how does it work?

Whether you are seeking a preliminary ruling from the Court of Justice or challenging a measure taken by an EU institution, the procedure always starts with a **written phase**.

The so-called "language of the case", i.e. the language in which the proceedings are conducted and submissions must be written, may be chosen by the Parties. However, there are some important exceptions to this rule. When the defendant is a Member State, the language of the case is the official language of this State. In preliminary ruling proceedings, the language of the case is the language of the referring court or tribunal.

In a hurry? You may apply for an **expedited procedure**. You will have to convince the Court that the particular urgency of your case requires fast action. If you manage to do so, your case will be handled as a matter of priority and the procedural calendar may be shortened. In case of a referral for a preliminary ruling, the request for the expedited procedure may only be formulated by the national court making the referral to the Court of Justice.

You can also seek **interim measures** from the Court to prevent serious and irreparable harm to your interests. For instance, you may seek a suspension of the act you are challenging through a direct action.

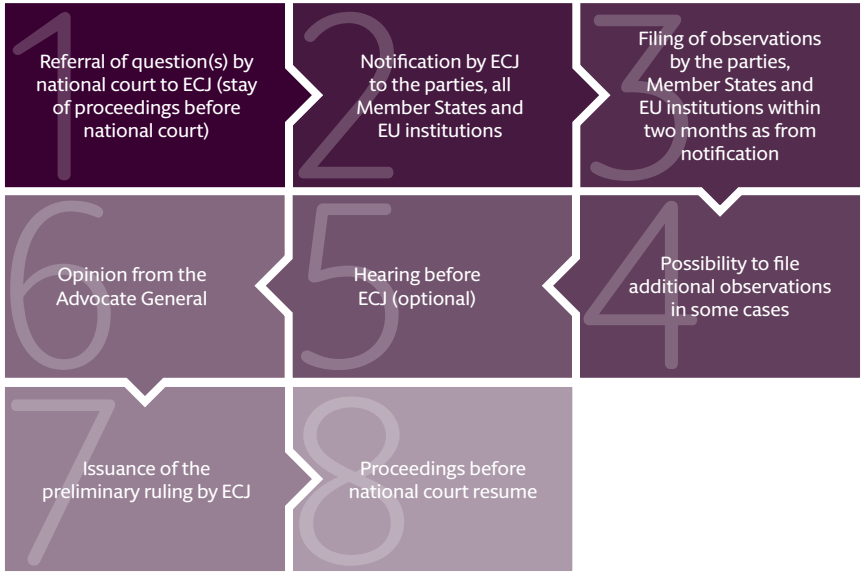
Once the written phase is over, the parties must state within three weeks whether they wish to have a hearing before the Court. The Court also decides if **measures of inquiry**, such as oral testimonies, examination of witnesses or expert reports are appropriate.

If the Court decides to hear oral arguments, the President of the Court will set the date for a **public hearing**, during which the parties present their arguments and may be questioned by the Judges and (in the Court of Justice but not the General Court) the Advocate General. In preliminary rulings proceedings, a few weeks after the hearing, the Advocate General delivers his or her Opinion on the case in open court.

The Court will then deliberate. Decisions are adopted by consensus between the Judges and the Court does not publish any dissenting opinions. Once the Judges have come to a decision, the judgment is pronounced at a public hearing and published in all official languages on the Court's webpage and in the European Court Reports.

The Court's decisions are translated into all 24 official languages. However, article 41 of the Rules of Procedure of the Court of Justice states that the legally authentic text of a judgment is the text drawn up in the language of the case.

Let's have a closer look at the procedural steps for **preliminary rulings**.



## Beware!

These proceedings go very fast at the beginning. In particular, in light of the 2-month timeframe to submit written observations, you should **plan ahead and define your legal strategy as early as possible** (ideally when you discuss the possibility of a referral with the national court).

This includes in particular paying great attention to the **framing and wording of the question(s)** put to the Court of Justice. To the extent possible, you need to ensure that the question will be coherent, easy to understand and that it will maximise the chances that the Court of Justice has a proper understanding of the case and issue at stake and give useful ruling. If there are key facts, they need to be stated in the order of the court referring the question – the Court of Justice cannot determine the facts itself. So do not hesitate to read (once more) the recommendations addressed to national courts on how to initiate preliminary rulings proceedings. Once the question is referred to the Court of Justice, the parties cannot rewrite it, although the Court of Justice is free to reframe the issues in its ruling.

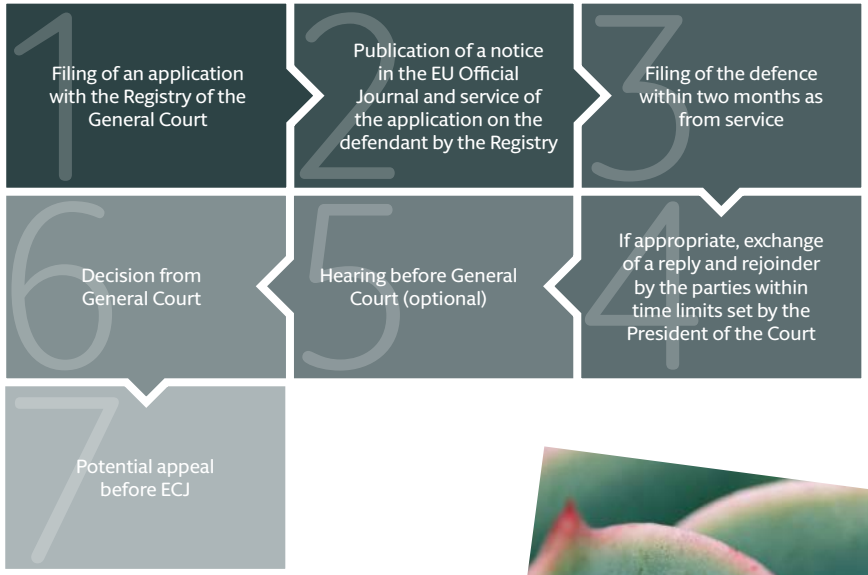
Also bear in mind that written observations should be **very short** (they should not exceed 20 pages). Opening submissions at the hearing should be kept to around 10-15 minutes – the rest of the hearing is for the Court's questions. This is always a challenge.

**Expect to be surprised**. At Court of Justice level, your case takes another dimension and unanticipated developments may occur, such as interventions by third parties, the active involvement of other Member States, questions from the Court of Justice etc. As with any cross-border organisation, you may be reminded of cultural and legal differences between countries.

In a nutshell, **you cannot prepare enough**, either before the question is referred, in the course of the preliminary ruling proceedings, or afterwards concerning the impact this ruling will have on the national proceedings and your business more generally.



## Direct actions are different




> Trying a case at the ECJ is a totally different animal than at any other court because of the multilingual aspect. Precise preparation for the pleading before the ECJ is key. In particular in the life sciences sector we have seen ECJ preliminary rulings changing the whole course of major cross-border cases lately.
>
> Ina Brock

## What impact does brexit have on the CJEU?

The Withdrawal Agreement concluded between the European Union and the United Kingdom establishes the terms of the United Kingdom's withdrawal from the EU. It entered into force on 1st February 2020 and contains provisions which govern the jurisdiction of the CJEU during the transition period and beyond. In accordance with the terms of the Withdrawal Agreement, the Court of Justice continued to have jurisdiction in any proceedings brought by or against the UK before the end of the transition period (31 December 2020). It also continued to have jurisdiction to give preliminary rulings on requests from courts and tribunals of the UK made before the end of the transition period.

As far as the existing body of case law is concerned, the Withdrawal Agreement states that judgments and orders of the CJEU handed down before the end of the transition period shall have binding force in their entirety on and in the UK.

In this respect, the European Union (Withdrawal) Act 2018 passed by the UK Parliament provides that EU legislation that existed before the withdrawal of the UK from the EU is incorporated into UK domestic law, as part of the so-called "retained EU law". Any question as to the validity, meaning or effect of any retained EU law must be decided by UK courts in accordance with any retained case law and any retained general principles of EU law, meaning that the case law of the CJEU will continue to be observed by UK courts. However, the European Union (Withdrawal) Act 2018 states that the UK Supreme Court is not bound by any retained EU case law. In deciding whether to depart from any retained EU case law, the Supreme Court must apply the same test as it would apply in deciding whether to depart from its own case law.

# We are here to help

Even small cases can have considerable consequences when they involve EU law. Many times, we have seen industry-changing rulings from the CJEU issued in what people once believed to be modest disputes.

We use our long-standing involvement in strategic CJEU proceedings, as well as the breadth of our cross-jurisdiction network, to assist companies that (may) end up appearing before the CJEU, either or not by choice.

When EU law provisions are key in a case, determining whether there is room to suggest a referral to the Court of Justice, or to object to the referral suggested by the opposing party, is part of our regular case assessment strategic process.

Similarly, our knowledge of the various actions possible at CJEU level allows us to best identify and use any EU option available in a matter. We combine both a deep understanding of the subject-matters frequently brought before the CJEU (such as competition or intellectual property topics) with equally important procedural skills to best navigate the CJEU landscape at large.

If comparative law may be helpful, we resort quickly to our network of offices and allies in all Member States, and neighboring countries where needed.

Our assistance can also take place alongside your local outside Counsel when you anticipate that your case will soon go the next level. We are there to help with the assessment and preparation and to handle your case before the CJEU if that is the chosen approach. We bring our expertise in European procedural law and our Europe-wide network to the table to offer the extra-help that puts you over the top.

Here are recent examples of cases where we assisted our clients.

Our Munich office has secured a favorable preliminary ruling from the ECJ on the interpretation of a directive, thereby insuring that the duties of our client under this Directive receive adequate and consistent interpretation in a multi-jurisdictional product liability dispute, involving thousands of plaintiffs.

Our Paris Litigation team, together with other US and European lawyers, advised Google Inc. in connection with French legal proceedings relating to the so-called "right to be forgotten" (or more accurately described as the right of private individuals to request that Google "delist" from search results any inaccurate, irrelevant or incomplete content relating to them). Following the referral of several sets of questions to the ECJ, the French Administrative Supreme Court annulled the decision of the French Data Protection Authority (CNIL) for having applied the "right to be forgotten" only to the European versions of its search engine.

Our London and Paris litigation teams assisted a leading pharmaceutical company in a product liability case pending before the ECJ concerning the proof of causal connection and the characterization of a defective product within the meaning of the Product Liability Directive in light of national evidentiary rules.

Our European Competition and EU Law Teams often challenge - or support - decisions of the European Commission in abuse of dominance cases such as Google Shopping and the Microsoft interoperability case, or in cases concerning cartels or other areas of EU competition law. They also represented Unilever in preliminary ruling proceedings before the ECJ related to the definition of "single economic entity" and Airbnb in relation to the application of the so-called "Airbnb Tax".

Our Brussels office also knows the other side as they have assisted the European Commission in defending several cartel fine decisions, notably in the KME case that established the current rules on the scope of review in cartel cases and their compatibility with EU fundamental rights law.

Members of our Madrid IPMT team are lead outside Counsels for the world's leading beer brewer Anheuser-Busch InBev in its longstanding dispute with the Czech brewer Budejovicky Budvar in relation to the trademark BUDWEISER. Besides the management of a huge number of cases affecting several dozens of countries in various continents, they have handled various cases before the Court of Justice and the General Court of the European Union, as well as the European Court of Human Rights. The BUDWEISER trademark dispute, which dates back to more than 100 years, is one of the most high-profile cases in the history of trademark law and has received widespread media coverage.

> "The Court of Justice is a perfect reflection of the complexity and nuance of Europe's legal systems and cultures – any litigant who cannot see that subtlety will fail to persuade."
>
> Christopher Thomas

# ECHR vs. CJEU

These two institutions go hand in hand in the EU legal field but must not be mistaken, each dealing with very specific cases.

The European Court of Human Rights, which is based in Strasbourg in France, is the international court of the Council of Europe, which is not an institution of the European Union, but a separate association of 47 member states, and its purpose is to interpret the European Convention on Human Rights.

On this basis, the ECHR hears applications lodged either by an individual, a group of individuals, or one or more of the 47 member states alleging that a member state has breached one or more of the human rights enumerated in the Convention or its protocols. The rights listed in the Convention are intended to be extensively interpreted.

The following requirements need to be met to lodge a complaint with the ECHR:

- All domestic remedies must have been exhausted in the concerned member state;
- The petitioner must be within the six-month timeframe from the date on which the final domestic decision was taken; and
- The petitioner must have suffered a direct loss as a result of a breach of a provision of the Convention.

The ECHR does not have the power to order a national state to implement or change its national laws, or to reverse the judgment of one of its courts but its decisions can lead to a financial sanction against the concerned member state.

As for the CJEU, we have experience dealing with proceedings before the ECHR. Supporting our clients' strategy in cross-border cases sometimes entails challenging a member state's application of the Convention. Our experience in this field and our network which includes former jurisconsults of the ECHR allows us to advise our clients on the ins and outs of the Court and to give them a clear perspective of what can be expected from such proceedings and the impact it may have in their cases and at a higher level.

Our Paris Litigation team notably filed a petition against France based on the combination of a breach of two distinct rights protected by the Convention: the right to property and the right to a fair trial.

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