

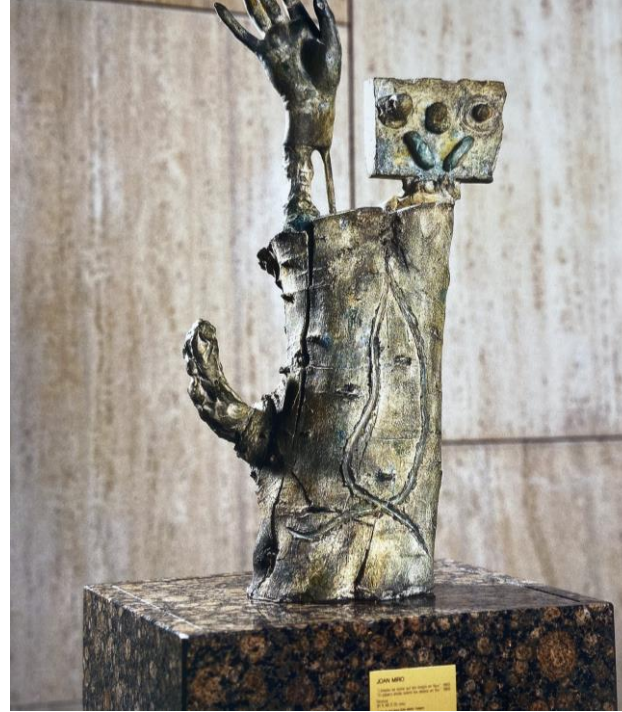


Part I: The Structure of the EU Judicial System and How it Works

SETTING THE STAGE

What is Luxembourg and why is it so important



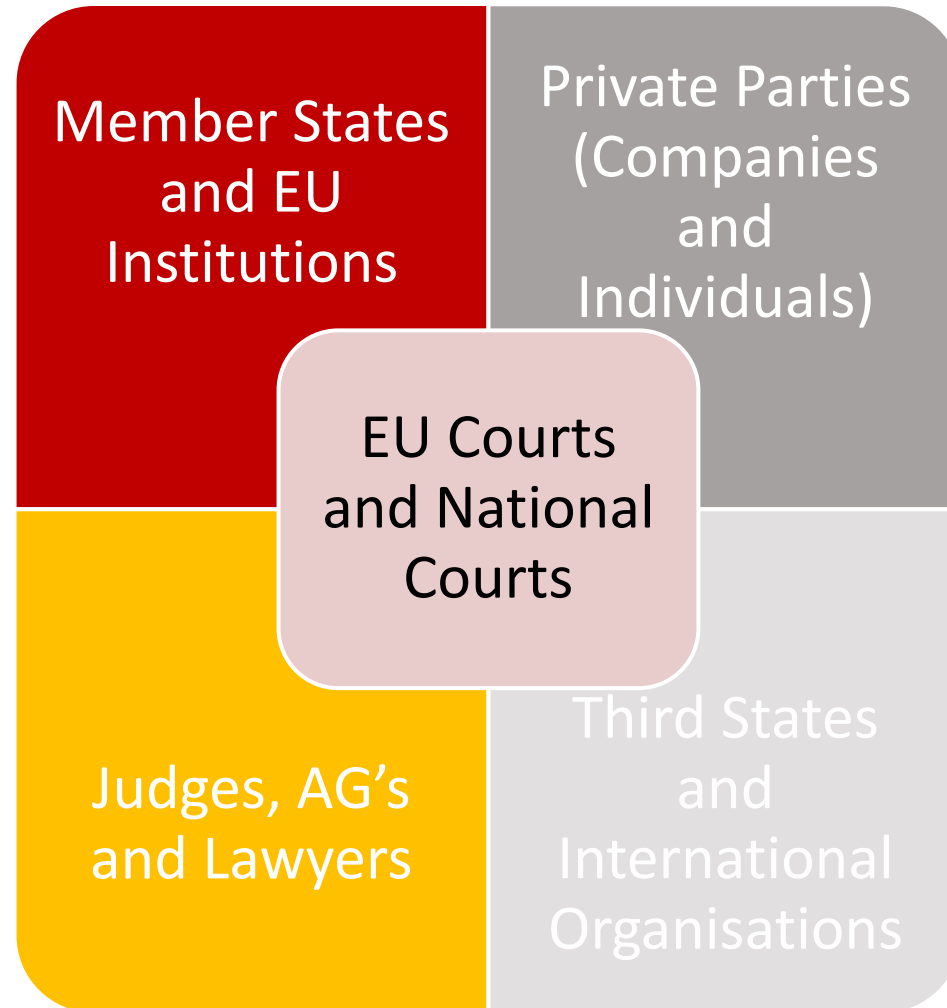


Art at the Court

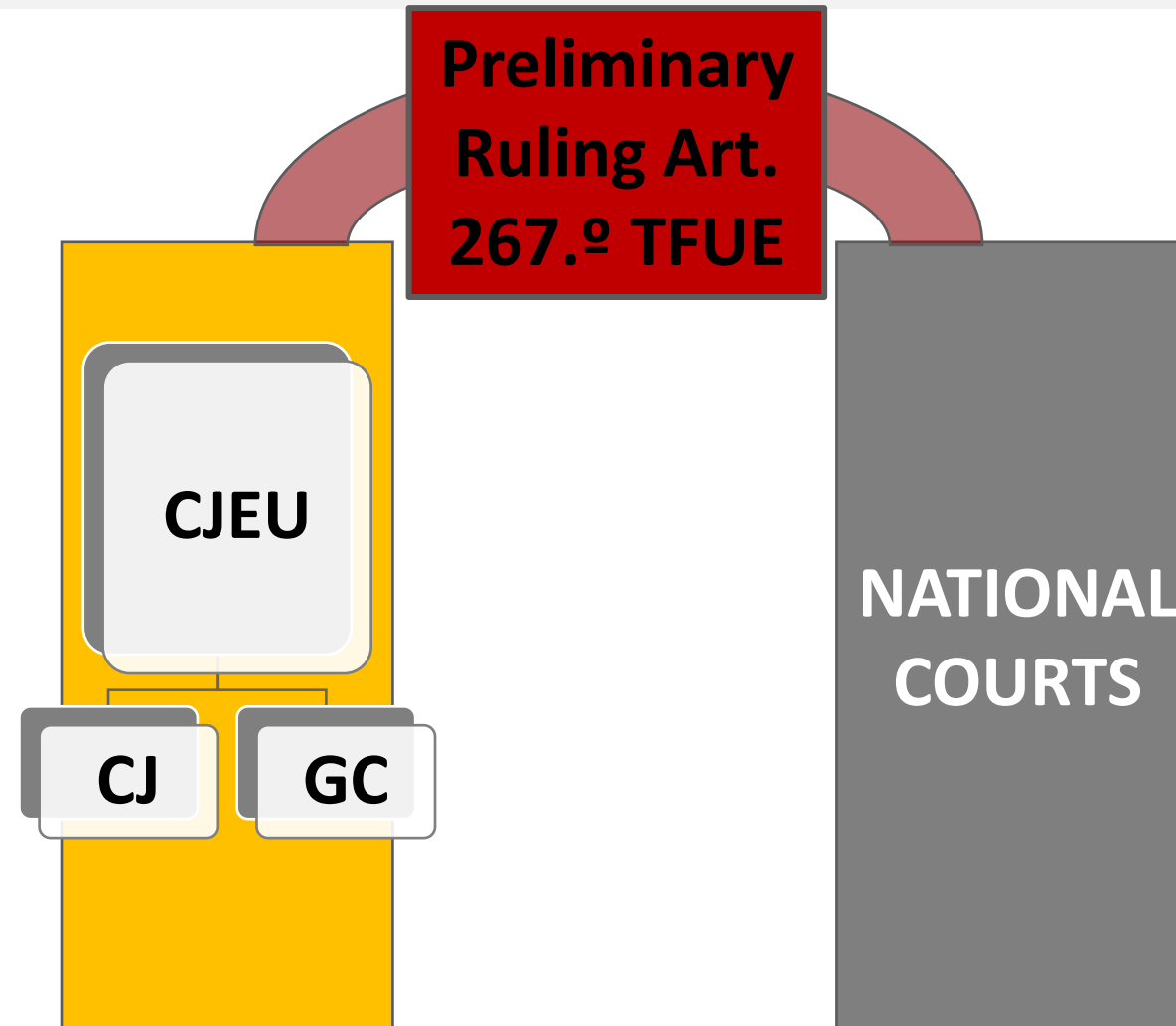
Art of the Court and its Judges



The Actors in the EU



The Two Pillars of the EU Judicial System and the Stone Bridge



Article 267.º TFEU

Article 267 (ex Article 234 TEC)

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.

CILFIT – interpreting of the obligation to refer

“The third paragraph of Article [267 TFEU] is to be interpreted as meaning that:

- a court or tribunal against whose decisions there is no judicial remedy under national law is required,*
- where a question of Community law is raised before it,*
- to comply with its obligation to bring the matter before the Court of Justice,*
- unless it has established that the question raised is irrelevant or that the Community provision in question has already been interpreted by the Court (acte éclairé) or that the correct application of Community law is so obvious as to leave no scope for any reasonable doubt (acte clair).*
- The existence of such a possibility must be assessed in the light of the specific characteristics of Community law, the particular difficulties to which its interpretation gives rise and the risk of divergences in judicial decisions within the Community.”*

Judgment of 6 October 1982, *CILFIT v Ministero della Sanità*, C-283/81, ECLI:EU:C:1982:335, para 21.

FOTO-FROST – validity of EU law (a prater legem obligation to refer)

“In enabling national courts, against those decisions where there is a judicial remedy under national law, to refer to the Court for a preliminary ruling questions on interpretation or validity, Article [267 TFEU] did not settle the question whether those courts themselves may declare that acts of Community institutions are invalid.

Those courts may consider the validity of a Community act and, if they consider that the grounds put forward before them by the parties in support of invalidity are unfounded, they may reject them, concluding that the measure is completely valid. By taking that action they are not calling into question the existence of the Community measure.”

Judgment of 22 October 1987, *Foto-Frost v Hauptzollamt Lübeck-Ost*, C-314/85, ECLI:EU:C:1987:452, paras 13-14.

FOTO-FROST – validity of EU law (1)

“On the other hand, those courts do not have the power to declare acts of the Community institutions invalid.

*As the Court emphasized [...], the **main purpose** of the powers accorded to the Court by Article [267 TFEU] is **to ensure that Community law is applied uniformly by national courts**. That requirement of uniformity is particularly imperative when the validity of a Community act is in question.*

***Divergences** between courts in the Member States as to the **validity of Community acts** would be liable to place in jeopardy the **very unity of the Community legal order** and detract from the fundamental requirement of legal certainty.”*

Judgment of 22 October 1987, *Foto-Frost v Hauptzollamt Lübeck-Ost*, C-314/85, ECLI:EU:C:1987:452, para 15.

FOTO-FROST – coherence of the EU system of judicial protection

*“Since Article [263 TFEU] gives the **Court exclusive jurisdiction** to declare void an act of a Community institution, the **coherence of the system** requires that where the validity of a Community act is challenged before a national court the **power to declare the act invalid must also be reserved to the Court of Justice.**”*

Judgment of 22 October 1987, *Foto-Frost v Hauptzollamt Lübeck-Ost*, C-314/85, ECLI:EU:C:1987:452, paras 17.

Consortio Italian - the coup d'éclat (1)

“The preliminary ruling procedure [...], which is the keystone of the judicial system established by the Treaties, sets up a dialogue [...] between the Court of Justice and the courts of the Member States, having the object of

- securing uniform interpretation of EU law, thereby serving to*
- ensure its consistency, its full effect and its autonomy*
- as well as, ultimately, the particular nature of the law established by the Treaties (see, to that effect, Opinion 2/13 (Accession of the European Union to the ECHR) of 18 December 2014, EU:C:2014:2454, paragraph 176 and the case-law cited, and judgment of 6 March 2018, Achmea, C-284/16, EU:C:2018:158, paragraph 37).”*

Judgment of 6 october 2021, C-561/19, Consortio Italian Management e Catania Multiservizi and Catania Multiservizi, ECLI:EU:C:2021:799, para 27.

Consorzio Italian - the coup d'éclat (2)

“The preliminary ruling mechanism [...] aims to ensure that, in all circumstances:

- EU law has the same effect in all Member States and thus*
- to avoid divergences in its interpretation which the national courts and tribunals have to apply and*
- tends to ensure that application by making available to national judges a means of eliminating difficulties [when] giving EU law its full effect within the framework of the judicial systems of the Member States.*

Thus, national courts and tribunals have the broadest power, or even the obligation, to refer a matter to the Court of Justice if they consider that a case pending before them raises questions involving interpretation of the provisions of EU law or consideration of their validity, necessitating a decision on their part.”

Judgment of 6 october 2021, C-561/19, *Consorzio Italian Management e Catania Multiservizi and Catania Multiservizi*, ECLI:EU:C:2021:799, para 28.

Consorzio Italian - the coup d'éclat (3)

“The system set up by Article 267 TFEU [...] establishes between the Court of Justice and national courts or tribunals direct cooperation as part of which the latter are closely involved in the correct application and uniform interpretation of EU law and also in the protection of individual rights conferred by it.”

Judgment of 6 october 2021, C-561/19, Consorzio Italian Management e Catania Multiservizi and Catania Multiservizi, ECLI:EU:C:2021:799, para 29.

The Key to the Mystery – Bobek’s Opinion 15 April 2021

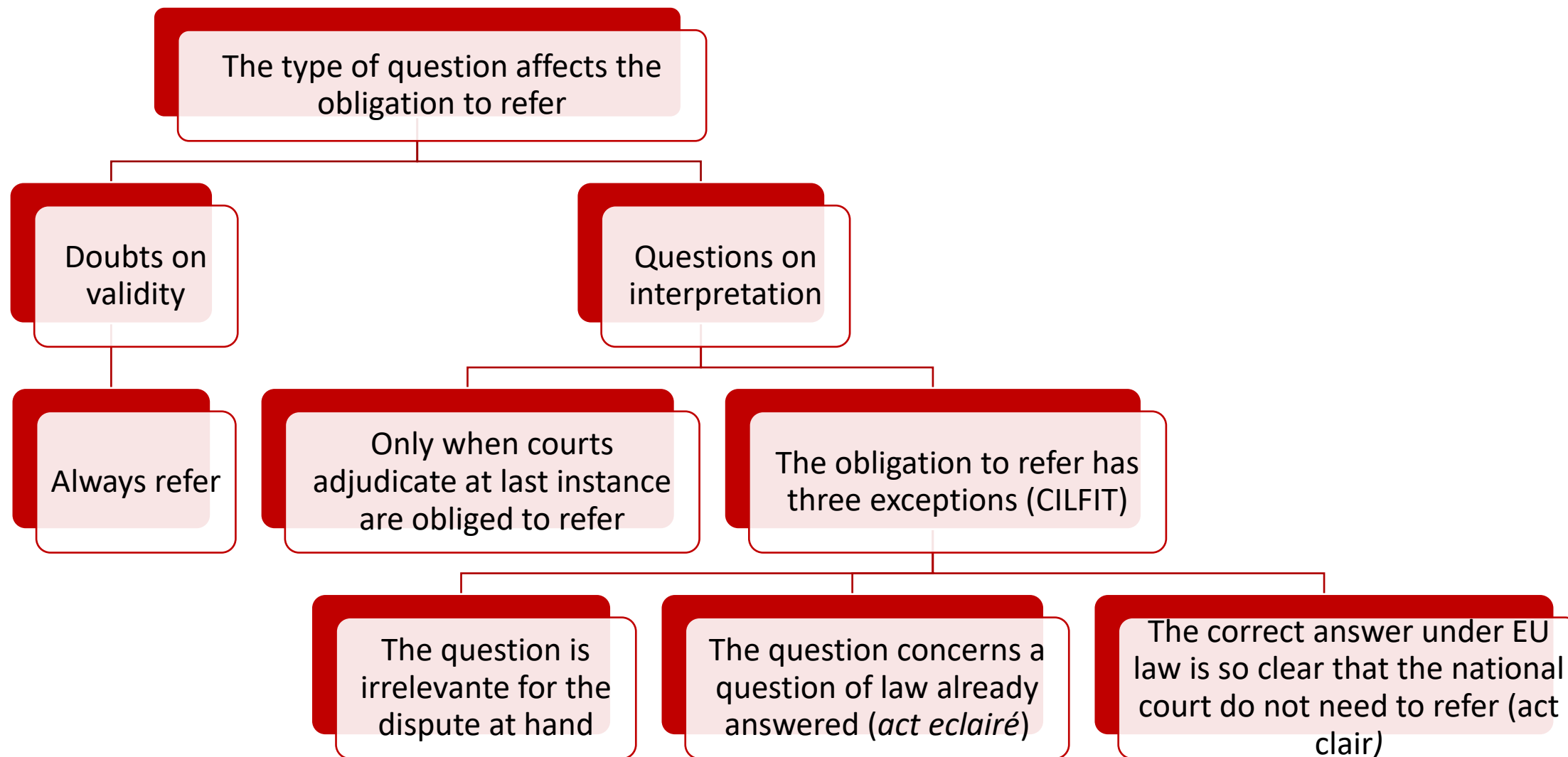
I recommend that the Court answer the question referred by the Consiglio di Stato as follows:

*“Under the third paragraph of Article 267 TFEU, a court or a tribunal of a Member State against whose decisions there is no judicial remedy under national law is to refer the case to the Court of Justice, **provided that**,*

- *first, that case raises a general issue of interpretation of EU law, which may,*
- *second, be reasonably interpreted in more than one possible way and,*
- *third, the way in which the EU law at issue is to be interpreted cannot be inferred from the existing case-law of the Court of Justice.*

*Should such a national court or tribunal, before which an issue of interpretation of EU law has been raised, decide not to submit a request for a preliminary ruling pursuant to that provision, **it is obliged to state adequate reasons to explain which of the three conditions is not met and why.**”*

In sum: the type of question affects the obligation to refer



The respective roles of EU and national courts



- National courts interpret domestic law and address questions to the Court of Justice on the interpretation (or validity) of EU law
- The Court of Justice only provides the interpretation (or rule on the validity) of EU law
- National courts decide the case before them, according to the applicable national law and applying EU law as interpreted by the Court of Justice

The effects of preliminary rulings and the reformulation of questions

1. Court of Justice's answers are binding on the referring court as well as on any other Court facing the same issues in similar circumstances, without prejudice to the possibility of making a new reference
2. Many key principles of EU law were developed through references for preliminary rulings from lower courts
3. The option to reformulate the question gives the Court of Justice leeway to answer key issues:
 - i. The Court can bundle multiple questions to serve an objective of clarification or simplification
 - ii. The Court can reformulate a question to “rescue” it or to give the answer the national court really needs
 - iii. The Court can reformulate a question to answer another question that requires an answer (judicial policy)

Conclusive summary

- There is no hierarchy between EU and national Courts;
- There are no appeals from national courts to the CJEU;
- There are no EU courts within the Member States to apply EU law → national courts are the common EU law judges;
- The EU is not a judicial federalism system, but a decentralized system based on cooperation between the EU courts and the national courts.



Books:

- K. Lenaerts, I. Maselis & K. Gutman, “EU Procedural Law”, Oxford University Press, 2014, pp. 94-106;
- C. Barnard & S. Peers, “European Union Law”, 3rd edition, Oxford University Press, 2020, pp. 284-288, 316-324.

Case-law:

- *CILFIT*, 283/81;
- *Foto-Frost*, 314/85;
- *Consortio Italian Management*, C-561/19;
- AG Bobek Opinion in *Consortio*, C-561/19.

