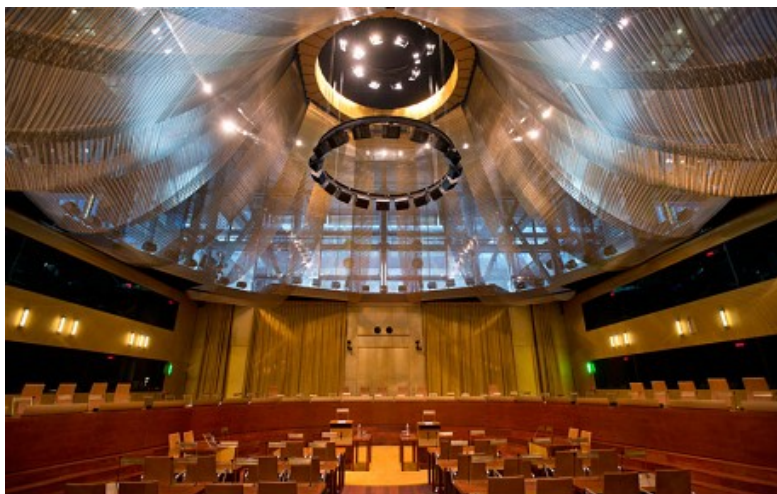


# European Union Law

The CJEU and the Preliminary Ruling Under Art 267 TFEU



Dr. Konstantinos Stylianou

Lecture 5

# The Court of Justice of the European Union

Two constituent court:

Do not confuse the **Court of Justice of the European Union** (seated in Luxembourg):

+ the general court



With the **European Court of Human Rights** (of the Council of Europe) seated in Strasbourg:



Or with the **International Court of Justice** (of the United Nations) seated in The Hague:



# What do international courts do? What does the CJEU do?

CJEU = Court of Justice (CJ) (formerly European Court of Justice (ECJ)) + General Court (GC) (formerly Court of First Instance (CFI))

<u>International Courts</u>		<u>CJEU (all three courts combined – not all courts do everything)</u>
Adjudicate disputes <small>裁决</small>	?	<ul style="list-style-type: none"><li>Rules on actions brought by <u>Member States, EU institutions, and individuals</u> (19(3)(a) TEU)</li><li>Acts as <u>appeals court</u></li></ul>
Interpret <u>primary</u> and <u>secondary</u> law	?	<ul style="list-style-type: none"><li>Interprets the <u>treaties</u>, and <u>secondary law</u> (regulations, directives etc) (19(1) TEU)</li><li>Gives preliminary rulings (19(3)(b) TEU)</li></ul>
Provide advisory opinions	?	<ul style="list-style-type: none"><li>Gives <u>preliminary rulings</u></li><li>Provides opinion on the compatibility of international agreements with community law</li></ul>
Provide case-law that serves as an endless	?	<ul style="list-style-type: none"><li>Yes</li></ul>

# Structure & Composition of CJEU: Court of Justice (CJ)

- Role:
  - Rules on actions:
    - By the Commission or a Member State against another Member State for failure to fulfil a Treaty obligation (Art 258-260 TFEU )
    - By institutions or Member States against an institution for infringement of the Treaties (Art 265 TFEU)
    - By institutions or individuals against EU acts (Art 263 TFEU)
  - Gives preliminary rulings (Art 267)
  - Hears appeals from General Court
  - Provides advisory opinions
- 28 judges (one per member state)
- 11 advocates-general (AG): same status as judges, provide non-binding opinion to the CJ, do not vote, complete freedom and independence in their opinion, push legal boundaries
- 6 year term (renewable)
- Appointed by national governments on their discretion, no formal criteria (“independence beyond doubt” + “qualifications for highest judicial offices” + “of recognized competence”), no scrutiny from EU institutions

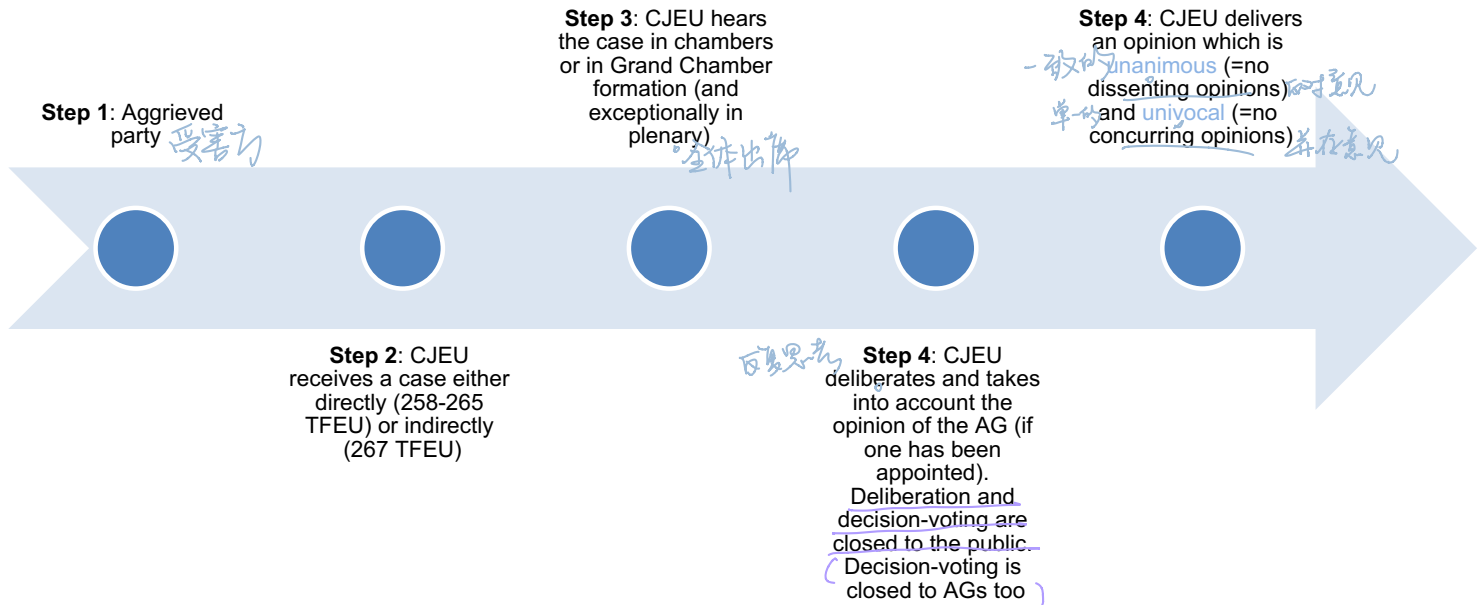
# Structure & Composition of CJEU: General Court (GC)

- Role:
  - Rules on first instance on actions for:
    - Annulment of acts of EU institutions brought by individuals
    - Failure to act brought by individuals
    - For damages caused by the institutions
- 56 judges (two per member state)
- No advocates-general
- 6 year term (renewable)
- Appointed by national governments on their discretion, no formal criteria (“independence beyond doubt” + “qualifications for highest judicial offices” + “of recognized competence”<sup>能力</sup>), no scrutiny from EU institutions

# Does the CJEU provide sufficient judicial protection?

- Articles 263 and 267 TFEU provide together “a complete system of legal remedies and procedures designed to ensure judicial review of the legality of European Union acts.” (Case C-583/11 Inuit)
- Despite the €430 million budget, CJEU struggles with case load
- CJEU handles almost 2000 cases/year, with almost 2500 cases pending. Compare with about 100 cases/year of the US Supreme Court. But also compare with about 70.000 cases/year of the Brazilian Supreme Court.
- Cases may take up to a decade from beginning to end (with an average of 15.6 months).
- New special courts can be created (a proposed EU Patent Court) and the number of judges can be increased.

# How does the CJEU decide a case?





# Access to the CJEU

- Direct: submit a dispute to the CJEU > The CJEU adjudicates the dispute (263 TFEU).
- Indirect (preliminary ruling): submit a dispute to national courts > National court brings a question before the CJEU > The CJEU opines on the question > The national court adjudicates the dispute (267 TFEU).

发表意见

# Please watch these videos

- <https://www.youtube.com/watch?v=-9FOYAKHWnw>
- <https://www.youtube.com/watch?v=vdp12mYPHEM>

# The preliminary ruling procedure (art 267 TFEU)

# What is the preliminary ruling (267 TFEU)

- Process by which:
  - the CJEU
  - opines on questions 发表意见
  - referred to it by national courts or tribunals
  - on:
    - the interpretation of the treaties or
    - the validity and interpretation of acts of the institutions 有效
- What the preliminary ruling is NOT about:
  - It is NOT about how to apply EU law to national legal order (that's up to the national court)
  - It is NOT about how to decide the case before the national court (that's up to the national court)

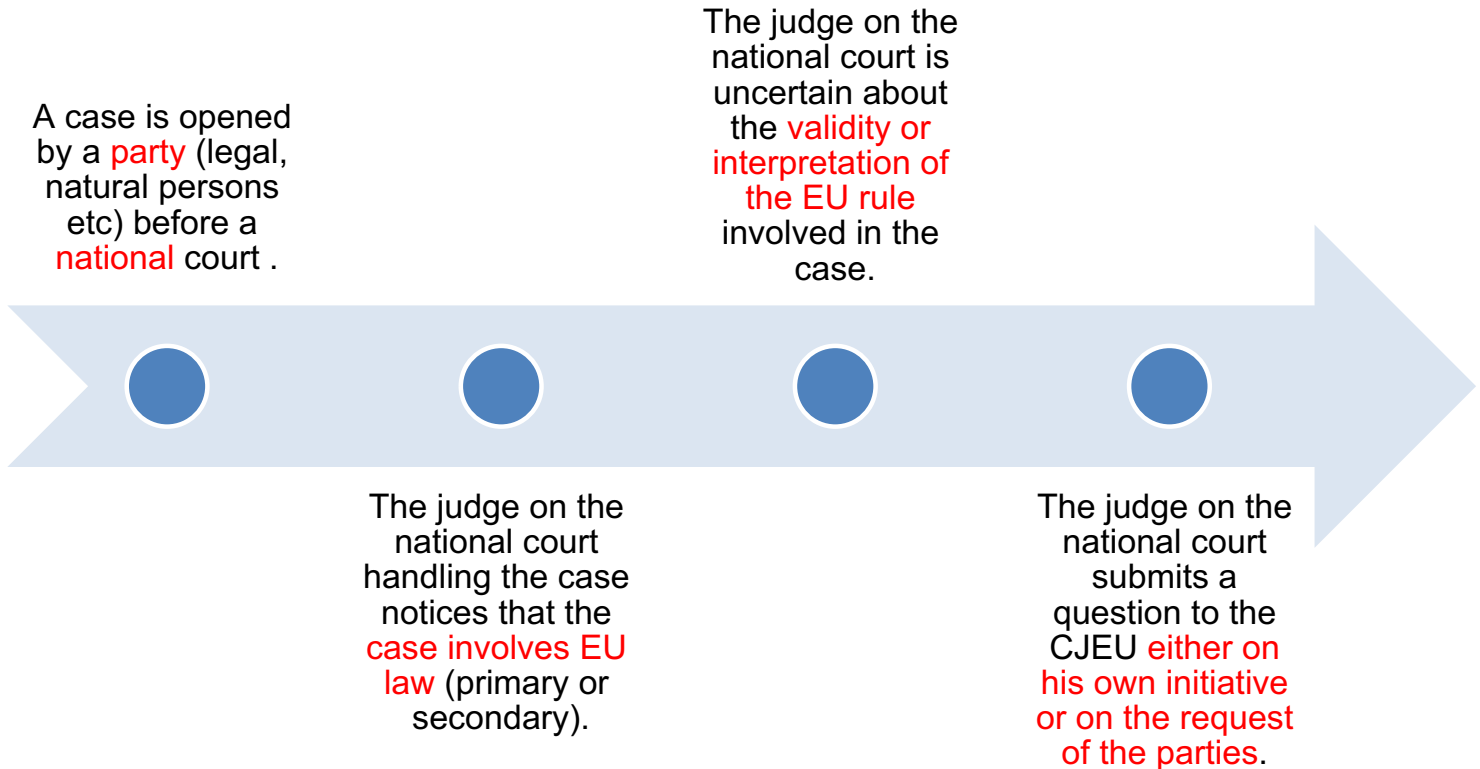
# Aims, purpose, and importance of the preliminary ruling

- Ensures that EU is interpreted and applied uniformly throughout the Union.  
*MS may have different ways to interpret EU law.*
- Maintains quality of EU law by declaring acts invalid where appropriate.
- Increases legitimacy *of the secondary law* of EU acts by subjecting them to judicial review (on top of 263 TFEU).
- Develops dialogue between EU and national courts. — *give national courts the opportunity to ask questions to the CJEU*

# Who refers questions for preliminary ruling

- Member State national courts or tribunals.
- No fixed list or definition of “courts or tribunals”. Standing depends on factors such as (CJEU decides ad hoc):
  - Is the body established by law?
  - Is it permanent?
  - Is its jurisdiction compulsory?
  - Is its procedure inter partes?
  - Does it apply rules of law?
  - Is it independent?
  - Does it resolve legal disputes/ does it exercise judicial function (≠ administrative function)
  - Is it part of a member state’s system?
- Courts of last instance (not necessarily highest court of the country) **must** refer. Lower courts **can** refer (= national judge can ignore a request by the parties to submit a question, or can submit a question without a request).

# How does a preliminary ruling reference reach the CJEU



the conditions for the CJEU to accept the preliminary ruling question

# ↳ Conditions of admissibility <sup>可采纳性</sup>

- Referring body must be a national court or tribunal (see previously).
- No time limit (reference can be made as soon as the need arises), and multiple references can be made while the case is ongoing (i.e. before the national court issues its decision)
- Referring judge must explain and prove why a preliminary ruling is necessary to resolve the dispute.
- The questions submitted to the CJEU must be relevant to the case pending before the national court and to EU law (questions cannot be hypothetical or unrelated to the facts of the case). <sup>— what is unclear and why the CJEU's opinion helps.</sup>
- The question must be in the frames of a pending dispute (not a closed case). <sup>must be directly related to the case</sup>
- The questions must be about interpretation or validity of EU law. Not about facts. Not about how to decide the national case.
- The question must not have been answered before (acte éclairé) or the answer to it be obviously clear (acte claire).



# Upon submission of a request for preliminary ruling

Remember how we get to the request for preliminary ruling:

1. A case is opened by a **party** (legal, natural persons etc) before a **national** court .
2. The judge on the national court handling the case notices that the **case involves EU law** (primary or secondary).
3. The judge on the national court is uncertain about the **validity or interpretation of the EU rule** involved in the case
4. The judge on the national court submits a question to the CJEU **either on his own initiative or on the request of the parties** .

In discussing the case the CJEU:

- Interprets EU law.
- Can declare an EU act invalid.
- CANNOT declare a national act invalid.
- **DOES NOT** decide the national case.
- CJEU guides, national court applies.

National case is suspended until the CJEU delivers the preliminary ruling.

Upon reception of the question the CJEU can:

- Accept and discuss the question and deliver an opinion.
- Add related questions to the question referred by the national court and answer those too.
- "Correct/Amend" a question and provide an answer to that.
- Refer the national judge to a previous similar preliminary ruling (see also acte clair/acte éclairé).
- Reject the question.

Upon delivery of CJEU's preliminary ruling:

- the national judge **MUST apply** it to the national case. Non-compliance is actionable.
- The national judge **CANNOT** declare an EU act invalid.
- Preliminary ruling effects are inter partes, but if the CJEU invalidates an EU act, this effect is erga omnes.

# The Preliminary Ruling in Practice

Case C-362/14 Maximillian Schrems v Data Protection

Commissioner

— FB, IG, Google can no longer transfer personal data collected in EU to US.

- This request relates to the interpretation, in the light of the Charter of Fundamental Rights and Directive 95/46/EC on data protection, to the validity of Commission Decision 2000/520/EC on the adequacy of the protection provided by the safe harbour privacy principles.
- The request has been made in proceedings between Mr Schrems and the (Irish) Data Protection Commissioner concerning the latter's refusal to investigate a complaint made by Mr Schrems regarding the fact that Facebook Ireland transfers the personal data of its users to the USA and keeps it on servers located in that country.
- Mr Schrems challenged the Commissioner's refusal before the High Court.

before Irish national court

# The Preliminary Ruling in Practice

## Case C-362/14 Maximillian Schrems v Data Protection Commissioner

The High Court asked:

- Whether in the course of determining a complaint which has been made to an independent office holder who has been vested by statute with the functions of administering and enforcing data protection legislation that personal data is being transferred to another third country (in this case, the United States of America) the laws and practices of which, it is claimed, do not contain adequate protections for the data subject, *commission decision* **that office holder is absolutely bound by the Community finding to the contrary contained in [Decision 2000/520] having regard to Article 7, Article 8 and Article 47 of [the Charter], the provisions of Article 25(6) of Directive [95/46] notwithstanding?**
- Or, alternatively, may and/or **must the office holder conduct his or her own investigation of the matter in the light of factual developments** in the meantime since that Commission decision was first published?

# The Preliminary Ruling in Practice

Case C-362/14 Maximillian Schrems v Data Protection  
Commissioner

The CJEU opined:

- **Article 25(6) of Directive 95/46/EC must be interpreted as meaning that a decision adopted pursuant to that provision**, such as Commission Decision 2000/520/EC on the adequacy of the protection provided by the **safe harbour privacy principles** **does not prevent a supervisory authority of a Member State, within the meaning of Article 28 of that directive from examining the claim of a person concerning the protection of his rights and freedoms in regard to the processing of personal data relating to him which has been transferred from a Member State to that third country when that person contends that the law and practices in force in the third country do not ensure an adequate level of protection.**
- **Decision 2000/520 is invalid.**

# The Preliminary Ruling in Practice

## Case C-362/14 Maximillian Schrems v Data Protection Commissioner

CJEU obiter: recalled :

- (38) “It should be recalled first of all that the provisions of Directive 95/46, inasmuch as they govern the processing of personal data liable to infringe fundamental freedoms, in particular the right to respect for private life, **must necessarily be interpreted in the light of the fundamental rights guaranteed by the Charter.**”
- (60) “The Court’s settled case-law should be recalled according to which the European Union is a union based on the rule of law in which **all acts of its institutions are subject to review of their compatibility with, in particular, the Treaties, general principles of law and fundamental rights.**”
- (61) That said, **the Court alone has jurisdiction to declare that an EU act**, such as a Commission decision adopted pursuant to Article 25(6) of Directive 95/46, **is invalid**, the exclusivity of that jurisdiction having the purpose of guaranteeing legal certainty by ensuring that EU law is applied uniformly

# Please watch this video

- <https://www.youtube.com/watch?v=OJ1-1Y0UEBA>

remains a unique feature of EU law system

# Has the preliminary ruling process worked well

Yes	No
<ul style="list-style-type: none"><li>Extensively used by lower courts.</li></ul>	<ul style="list-style-type: none"><li>Underused by higher courts. 未充分利用的 not equally used across courts and across countries</li></ul>
<ul style="list-style-type: none"><li>Free for and open to every individual whose case is pending before national courts.</li></ul>	<ul style="list-style-type: none"><li>Only indirect access through a case before national courts.</li><li>Takes too much time (average 1 ½ years (save for procédure préliminaire d'urgence-PPU)) to get response from CJEU</li></ul>
<ul style="list-style-type: none"><li>Member states familiarise themselves with EU law. It's 3:33 contributes to a sharp increase in MS understanding and application of EU law</li></ul>	<ul style="list-style-type: none"><li>(Not all) member states take advantage of the process and not in all areas of law.</li></ul>
<ul style="list-style-type: none"><li>Accounts for many of the most important decisions on the nature and meaning of EU law.</li></ul>	<ul style="list-style-type: none"><li>CJEU's preliminary rulings can be so specific that they strip national courts of their discretion in applying it. doesn't leave much room for the national court to decide what it should do.</li></ul>