# European Union Law

## **Introduction**

A preliminary ruling can be considered as the decision imposed upon by the Court of Justice of European Union or the CJEU. The ruling is basically made at the special request forwarded by the tribunal or court of a European Union Member State. In respect to the Union Law, preliminary rulings can be regarded as the final determinations. It is evident that request towards preliminary ruling is usually made by submitting distinct questions to the CJEU. There is no scope for any form of abstraction when it comes to forwarding questions to CJEU. It can be claimed that CJEU’s ruling has certainly limited scope to rule in a significant way. Lack of genuine dispute might lead to the CJEU failing to give proper judgment. The Treaty on the Functioning of the European Union (TFEU) has precisely outlined Article 267 constituting some critical points. It has been proclaimed that the CJEU will possess the power to deliver preliminary rulings. From a broader perspective, the preliminary rulings are mainly concerned with the interpretation of Treaties along with interpreting as well as validating acts of offices, agencies, bodies or institutions of the Union. For instance, if any such question is placed before the tribunal or court of any Member State then at a certain point of time the tribunal can influence the Court to undertake a ruling decision. On the other hand, the tribunal or court would certainly handle a particular case only when the Member State’s tribunal or court does not possess any judicial remedy in reference to the national law. The interference of the court depends on the intricacy of a judicial decision. On the other hand, if a case is found to be pending in front of a tribunal or a court of a Member State in regards to any person within custody then the CJEU shall undertake actions with minimum possible delay.

## Discussion

### Overview of the Article 267

The Article 267 of the Treaty on the Functioning of the European Union (TFEU) is a written procedure regarding the preliminary ruling which is introduced by the CJEU to give security of uniform measure and effect within the member states. The Article 267 TFEU has been introduced by the CJEU to fulfil two purposes. Firstly it gives a uniform security to all the member states in the legal order of European Union. Secondly, the Article 267 TFEU will be helpful to national tribunal or court in an encounter situation, when they may need some clarification or justification on Community law. Under the Article 267 TFEU, the CJEU has the power to refer rulings on the questions that are the explanation of European Union law. The preliminary ruling procedure i.e. the Article 267 consider a cooperation system between the national court and CJEU which has made clear that it will give security that European law is same for all the member states. The Article 267 TFEU is applicable to national tribunal or courts, where subordinate courts are not bound to make references. So if a question is raised on European law in front of a national court or tribunals of last resort, the national court has to refer it to the CJEU and which is a compulsory thing for the national English court. The Article 267 TFEU can be treated as the straight relationship between the CJEU and national courts or tribunals. The method under the Article 267 TFEU can be called as the legal blueprint around which the European Union law revolves.

### Terms of the Article 267

Under the EU law, the preliminary rulings for the member states of the EU can be made only by the CJEU. The Article 267 of the TFEU (ex. Article 234 of TEC) states that the CJEU will be provided with the jurisdictional power to give all types of preliminary rulings related to

1. The interpretation of all the Treaties included in the EU Law.
2. The interpretation and validity of the acts governing the bodies, institutions and agencies of the European Union.

Where any question related to such matters is raised before the tribunal or court of a member nation of the Union and the matter is found to be difficult to decide upon with respect to the consideration of the applicability of the EU law terms on the member country then that tribunal or court can request the CJEU to provide a preliminary ruling thereon. Also, where any question is raised with respect to a case pending with a tribunal or court of a member nation against which decisions there remains no adequate judicial remedy as per the national law of the state, then the tribunal or court is provided with the authority to bring the case or matter to the CJEU for providing a preliminary ruling. In case such a question is brought forth with the regard to an individual in custody under a pending case before the tribunal or court of the member country, then the CJEU is provided with the authority to act and give the necessary verdict and ruling while ensuring that minimum delay is done in such case.

### Purpose of the Article 267 of the TFEU on preliminary ruling

As per the Article 267 of the Treaty on the Functioning of the European Union (TFEU), the CJEU is provided with the jurisdiction and authority to deliver the preliminary decisions and rulings related to the imposition of validity and the interpretation of the law of the land of the EU law. It can be identified that the primary motive of documenting the Article 267 of the TFEU is to ensure that there is uniformity observed in the comprehension as well as the implementation of the EU law by all the member states of the Union. The Article 267 is also aimed at establishing the same effect, impact, interpretation and meaning of the EU law in all the member nations. The significance of this article dealing with the preliminary ruling processes to be followed exceeds the statistical relevance of the same. The Article is formulated in line with the increased requirement of uniform judicial control with respect to the compliance of the EU laws. Also, the aspects of the extension and scope of geographical applicability of the EU law with the ascension of other net countries into the membership of the EU, the increasing level of regulatory uniformity and density and the agenda of establishing legal harmonization are intricately related to the Article 267. Thus, the Article267 is aimed at serving three key purposes:

1. The preliminary ruling proceedings described in the article can be used such that the article is applied as an instrument for establishing and securing legal and regulatory unity and uniformity. This Article supports the application of the EU law in a decentralised manner through the jury panels and judges operating within the legal construct of the individual member countries.
2. This preliminary ruling procedure can be used as an instrument to promote further development of the EU law and its integration with the national level legal landscape of the member nations. This procedure empowers the CJEU to further develop the EU law by functioning as a national level court while hearing a case appeal on the basis of the points of the law of the land.
3. Thirdly, the preliminary ruling procedure can be actively used as a mode of protecting the individual rights of the citizens of all the member states of the Union. The individuals of the member nations of EU are granted the opportunity to seek legal assistance and protection from the CJEU directly. But at the same time, there is a specific and strict limitation imposed by the TFEU on the individuals seeking legal assistance and remedies directly from the CJEU[[1]](#footnote-0).

### Advantages and limitations of the Article 267

If any national level court has to take a critical decision involving the implementation of the EU law and is unable to give a right judgement in this matter, then it shall refer that case to the CJEU. The national court is provided with the discretion to refer to the CJEU.A formal request for a reference is made by the national courts through the submission of questions for resolution. But, the questions are submitted with the circumstances which have led to them being asked in the CJEU. While the CJEU has the limited right of only deciding in the question and not enforcing them, the CJEU can also refuse to provide ruling when it finds that a genuine question is absent in the dispute as noted in the case of Pasquale Foglia vs. Mariella Novello[[2]](#footnote-1).Since a preliminary ruling is a decision taken by the CJEU with respect to the interpretation and imposition of the European Union law following a request made by a tribunal or court of any member state of the EU on the sole discretion of the tribunal or the court, it is evident that the Treaty Article is aimed at promoting cooperation between the legal entities at the state level and the union level, respectively. However, this is not always seen in real life cases. The term of Acte Clair or ‘clear act’ enables the EU law to entitle the court to not invoke this article when it is obvious that this would be a waste of resource and time[[3]](#footnote-2). For example, in the case of Srl CILFIT v Ministry of Health (1982)[[4]](#footnote-3), the CJEU held that any member state court is not under any obligation to enter into reference when the case in question comes under the ‘Acte Clair’ and /or when the question has already been ruled out by the CJEU.

How far the Article 267 can help promote the interest of the individuals with respect to the enforcement of EU law remains a debatable topic. This is because no matter how high the level of uniformity assured by the preliminary ruling procedures, there still remains strict limitations on the ways in which individual citizens of a member country can approach the EU CJEU. The limitation remains in the fact that the individuals are not bestowed with the authority to use the member states to any other individual directly before the CJEU. Secondly, the discretion of referring to the CJ remains solely in the hands of the jury panel of the national court or tribunal. The individual party has no right or say in the decision as to whether the court will request the CJEU to provide a ruling with respect to any ongoing or pending case brought into the national level jurisdiction system. Thirdly, the circumstances under which the EU institutions can be used by an individual citizen of a member state are very limited. Therefore, invoking any form of direct contact or impact from the CJEU through the enforcement of the EU law remains challenging for the general people of the Union[[5]](#footnote-4).

In essence, this treaty Article has been included in the TFEU as a measure to facilitate cooperation between the national level courts and tribunals of the EU member countries and thereof the Union. At the same time, the thisArticleguidingthepreliminary ruling is expected to set a higher level of uniformity and non-discrimination in the treatment of cases at the national as well as at the union level. The Article is expected to provide the individuals with the right to access EU law in a fair and uniform way as enforceable through the rulings of the CJEU. In situations when legal or natural individuals are unable to challenge any act or treaty of the EU law before an EU court, then such individual can approach the national level courts and ask them to refer the case in question to the CJEU. This provides the individual entities in the Union the power to challenge the acts and treaties of the EU law and the EU institutions through their respective national courts. This preliminary ruling procedure is supportive of the aim of the member states of the EU to establish a legal system which provides fair procedures and remedies for every citizen and also enforces a higher level of respect and acknowledgement of the rights of individuals to effective and fair legal and judicial protection and assistance. After receiving the request of any natural or legal individual regarding referring to the CJEU, the national court can extend the right to decide whether to provide the ruling in the court itself or request the CJEU. The duty, as well as the right to refer a case, lies exclusively with the national courts or tribunal in which the case has been brought to. Thus, the preliminary rulings are provided as final verdicts under the EU law as referred to in cases by the EU courts. However, the final decision with respect to law enforcement remains with the tribunal or court which has referred to the CJEU for the ruling and this can be decided by the respective courts or tribunals after the ruling of the CJEU has been received by them.The parties to such cases do not have the authority to compel the courts for any kind of reference made to the CJEU. The parties to the case can only lodge appeals to the national court of the member state until the court makes reference to the CJEU. The limited power of individuals is evident in the case of Nordsee vs. Reederei Mond[[6]](#footnote-5), while a party to an arbitration wanted to refer a question to the CJEU, the national court decided not to refer by citing that arbitration is a voluntary action in which jurisdiction is not mandatory. There being a complete absence of any formal remedy for individuals to directly access or approach the assistance of the CJEU under the existing EU law, an individual involved in the main proceedings of a case can only request the Member State Court through suggestion sand implications to approach the CJEU by making reference. This means that there will always be the probability of a gap existing in the legal protection provided to an individual situations when a member state court or tribunal does not agree to the conviction of any party to the case that it is necessary to make a preliminary ruling reference to the CJEU for implementation of the EU law in order to reach a verdict for the case. However, at the same time, it has been stressed upon by the proponents of individual rights in the EU that there are specific consequences that the member state courts or tribunals may face as a result of not referring to the CJEU for ruling related for the mentioned situations and cases which makes it easier for the individual citizens of the member states to exhibit at least some level of control on the national courts or tribunals regarding referring the case to the CJEU. The various consequences of refusing reference include obligation for reopening the case before Member State Court and the infringement proceedings conducted against the Member States observed in the Kuhne & Heinz case[[7]](#footnote-6), member states becomes obliged to compensate the loss which a citizen has incurred due to the infringement of the EU law as a direct result of non-reference to the CJEU as seen in the Gerhard Köbler vs. Republik Österreich State liability case[[8]](#footnote-7).

In this case, the individual was able to sue the government in the national court of Austria- which is a member of the EU because the Austrian national court did not make reference to the Article 267 on the basis that a previous ruling of CJEU has been heard in the case. In response to this, the CJEU gave verdict that it is possible to raise a claim for state liability if the infringement is manifested in nature.

The Treaty Article is considered to be an important pillar in context of the EU legal order development. To a great extent, the CJEU is usually found to be dependent on the references of a national court. Based on such reference, interpretation of a particular case becomes much simpler. There are different arguments placed whether the Treaty Article has been able to create any such impact on the overall legal structure. One of the common benefits of incorporating TFEU’s article is that it safeguards the Court through supplying a wide array of cases from the distinct national courts[[9]](#footnote-8). The influence of the TFEU article has been strong enough to bring forth changes in the legal order. It is clearly evident that the overall power of CJEU has been enhanced through a wide-scale combination of all doctrines. For instance, currently, European judges do possess the power for long-term integration through various judicial means. On the contrary, it is also observed that Article 267 TFEU has not only empowered CJEU but even facilitated distribution of the certain degree of power to private litigants and the national courts[[10]](#footnote-9).

## Conclusion

The notion-uniformity of legal rights across the member states of the EU has been a critical problem faced in the management of the Union since decades. The rights of individuals and member states are also Kwon to be always compromised upon highly binding EU laws enforceable on the members of the body. Though one of the basic purposes of the Article 267 is stated to be provision of individuals with right to contest the EU acts, treaties and institutions, yet in reality a number of subjective and contextual conditions and limitations included in and associated with the Article 267 makes it much less impactful when it comes to providing the individual citizens of the union with sufficient legal rights and protection. Thus, it can be inferred that though the preliminary ruling procedure is used to establish the uniformity of the legal system in the Union and to allow the CJEU to establish key procedures of the legal system to the member states, yet the benefits provided by the Article 267 to the individual member states and their citizens remain much restricted by the discretionary and restrictive terms included in the TFEU.

## References

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