



## Change of Jurisdiction at the European Courts: Transfer of Competence from ECJ to EGC

### 1 Background

The jurisprudence of the European Court of Justice (ECJ) plays a central role in the areas of VAT, customs and excise duty law. These areas of law are determined by EU law. To ensure that EU law is applied uniformly in the Member States, the ECJ decides on its application and interpretation. The national courts are bound by the ECJ's interpretation of the law. If any doubt arises concerning the validity or interpretation of EU law, national courts can refer the matter to the ECJ by means of a reference for a preliminary ruling in accordance with Article 267 TFEU. In some cases, courts are even obliged to do so. Plaintiffs and defendants only have the option of requesting the reference for a preliminary ruling from the national court. Until now, it was the task of the ECJ to decide on such requests. In addition to the ECJ, there is also the so-called General Court (EGC) at EU level. Thus far, this court has mainly dealt with actions for annulment, i.e. actions against legal acts of the EU institutions, and with civil service disputes. This division of jurisdiction has now been changed by a significant amendment to the Statute of the Court of Justice of the EU. This was published in the Official Journal on 12 August 2024 and will enter into force on 1 September 2024.

### 2 Transfer of jurisdiction for preliminary ruling procedures to the EGC

Accordingly, the EGC will now be responsible for preliminary ruling procedures in specific areas. These include the common system of VAT, excise duties, the Customs Code and the tariff classification of goods. These areas of law were chosen for the reform primarily because they supposedly rarely raise fundamental issues that affect the unity or coherence of EU law. In addition, there is already a substantial body of ECJ case law in these areas, which the EGC can draw on. The reform should ultimately reduce the burden placed on the ECJ and allow it to focus more on its tasks as the



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constitutional and supreme court of the EU. The transfer of jurisdiction concerns references for preliminary rulings that are submitted from 1 October 2024. Requests that cannot be allocated exclusively to these subject areas will remain with the ECJ. Furthermore, the ECJ will continue to deal with requests that “raise independent questions relating to the interpretation of primary law, public international law, general principles of Union law or the Charter of Fundamental Rights”, even if the specific areas mentioned above are affected. To enable the ECJ to independently review whether it will continue to have jurisdiction according to these criteria in the future, the national courts will submit every request to the ECJ first – as in the past. Following a preliminary analysis, and after hearing the Vice-President of the ECJ and the First Advocate General, the President of the ECJ will decide, “as quickly as possible”, whether to refer the case to the EGC. If, upon closer examination, the EGC finds that the matter does fall within the jurisdiction of the ECJ, it must refer the request back to the ECJ. If the EGC is of the opinion that the case requires a decision of principle likely to affect the unity or consistency of Union law, it may refer the request to the ECJ. In future, decisions of the EGC/ECJ will briefly explain why the jurisdiction of the deciding court was assumed.

### 3 Adaption of the procedural rules at the EGC

To ensure that the EGC's treatment of requests for preliminary rulings is as similar as possible to the previous approach of the ECJ, the procedure at the EGC will be adapted to that at the ECJ, and corresponding procedural rules will be adopted. This includes the fact that at least one Advocate General will support the EGC in each case, so that, at least in individual cases, there will be an opinion – as before the ECJ. In addition, requests for preliminary rulings will be assigned to specific chambers of the EGC. The EGC will decide on the more detailed allocation to chambers.

### 4 Publication of the parties' statements of case

The amendment to the Statute also provides for a further innovation: In order to strengthen transparency and openness in all preliminary ruling cases, the written statements of case submitted by an interested person, i.e. those of the parties, the Member States, the Commission and, where applicable, certain EU institutions and bodies, are to be published on the website of the Court of Justice of the EU once the case has been closed. However, any party may object to the publication of its own written submissions.

### 5 Consequences for the practice

Regarding the actions that parties to a legal dispute, their legal representatives and the national courts can take in the case of any doubt about the interpretation of EU law, the reform ultimately does not bring any changes. The parties to the legal dispute can only continue to suggest referrals to the ECJ. National courts can, and in some cases must, continue to refer questions on the interpretation or validity of EU law to the ECJ. However, parties to proceedings who do not wish their written statements to be published should, in future, remember to object to such publication. It also remains the case that the jurisdiction of the EGC/ECJ is limited to the validity and interpretation of EU law insofar as it is relevant to the specific legal dispute. It remains the task of the national courts to establish the facts, take evidence and then ultimately decide the specific legal dispute. It will be interesting to see in the future, which references for a preliminary ruling the ECJ will decide to act on itself and which it will pass on to the EGC. After all, in the areas concerned, which are now assigned to the EGC, fundamental questions with major implications for the Member States often arise. Finally, the general principles of Union law will continue to be important in a considerable number of future proceedings.