

NEWSLETTER – Change of Jurisdiction at the European Courts

10/09/2024

The European Court of Justice (ECJ) is competent for the areas of VAT, customs and excise duty law. These areas of law are determined by EU law. The ECJ decides on legal issues relating to the application and interpretation of the EU law. National courts can refer questions to the ECJ in the form of a reference for a preliminary ruling. It has now been decided to amend the Statute of the European Court of Justice and change its jurisdiction. In the future, the General Court (EGC) will make decisions in specific areas, including VAT, customs, excise duties and the tariff classification of goods in the Combined Nomenclature. The transfer of jurisdiction concerns requests for preliminary rulings that are submitted from 1 October 2024.

Transfer of jurisdiction for preliminary ruling procedures to the EGC

The previously mentioned specific areas of law were chosen for the reform primarily because they rarely raise fundamental issues that affect the unity or coherence of the 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 constitutional and supreme court of the EU. 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 the EU 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, 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 whether to refer the case to the EGC. If the EGC is of the opinion that the case requires a decision likely to affect the unity or consistency of the EU law, it may refer the request back to the ECJ. In future, decisions of the EGC/ECJ will briefly explain why the jurisdiction of the deciding court was assumed.

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.

Publication of the parties' statements of case

The amendment to the Statute also provides for a further novelty: 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.

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Consequences of court jurisdiction changes in practice

Regarding the actions that parties to a legal dispute, their legal representatives and national courts can take in 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 the EU law to the ECJ. However, the parties to proceedings that do not wish their written statements to be published should, in the future, remember to object to such publication. The jurisdiction of the EGC/ECJ remains limited to the validity and interpretation of the EU law insofar as it is relevant to the specific legal dispute. It remains the task of the national courts to establish the facts, collect evidence and then ultimately decide on the specific legal dispute. It remains to be seen which requests 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 the EU law will continue to be important in a considerable number of future proceedings.



Please keep in mind that legislation is subject to frequent change. This newsletter is therefore necessarily based on our understanding and correct interpretation of the law and practice at the time of publication of this newsletter. This newsletter will not be updated due to changes in legislation that occur after the issuance of this letter.

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