



# Preliminary rulings under Art. 234 EC

**Osijek 04.12.2007**

**by Knut Büsching**

Senate Department for Economics,  
Technology and Women's Issues Berlin

# System of cooperation

- ECJ and national courts ensure together the application of Community law
- The ECJ has the exclusive power to interpret Community law
- Or to judge the validity of Community Acts



# State Aid cases

Two options for the national court

- Reference to the ECJ according to Art. 234 EC
- Possibility to submit the question to the Commission (but: opinion neither binding nor definitive)



# The Scope of Art. 234 EC

- Reference to the ECJ can be made at any stage of the proceedings
- But not until the national proceedings have reached a stage where the national court is able to define the factual and legal context of the question



# Art. 234 EC

- **‘The Court of Justice shall have jurisdiction to give preliminary rulings concerning:**
- **(a) the interpretation of this Treaty,**
- **(b) the validity and interpretation of acts of the institutions of the Community and of the European Central Bank,**
- **(c) the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide.**
- **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 judgement, request the Court of Justice 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 of Justice.’**



# Which questions may be subject of a reference?

- Any question regarding the interpretation of Community law
- Including regulations or recommendations
- In State aid cases, e.g. question if the disputed measure or act constitutes State aid



# Courts entitled to make reference

7

- Any court or tribunal of a member state
- administrative and civil courts fulfil



## Possibility to make a reference

A reference to the ECJ is admissible when:

- The national court has real and substantial doubts as to the interpretation of Community law and
- the question referred must be of relevance for the decision of the main proceedings



## Obligation to make a reference

- Normally the highest (administrative and civil) courts within the Member State
- Also instance courts if they have a substantial doubt on the validity of a Community measure, and where it is obvious that this decision is necessary to give a ruling on the particular case



- Any form allowed by the national procedural law
- The reference should exclusively deal with the relevant point of interpretation or validity and contain the following:
  - a statement of the facts which are essential to a full understanding of the legal significance of the main proceedings;
  - an exposition of the national law which may be applicable;
  - a statement of the reasons prompting the national court to refer the question or questions to the ECJ; and,
  - where appropriate, a summary of the arguments of the parties



# Effects of the ruling by the ECJ

- The ruling is binding on the referring national court and all courts deciding the same case in different instances
- Ruling may require to leave unapplied conflicting national provisions
- Rulings on interpretation and on validity have ergo-omnes effect



Hvala na  
pozorností!

