

The authority of ECJ rulings for national bodies applying EU pesticides law

Webinar Legal Capacity Building

PAN-Europe

16 January 2024



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1.Introduction

Through preliminary rulings, the ECJ has clarified the meaning and scope of specific provisions of EU pesticides law that govern the authorisation process of PPPs.

To what extent are these rulings binding on domestic bodies competent for granting PPP authorisations ?

What are the remedies if the domestic authorities do not comply with these rulings?



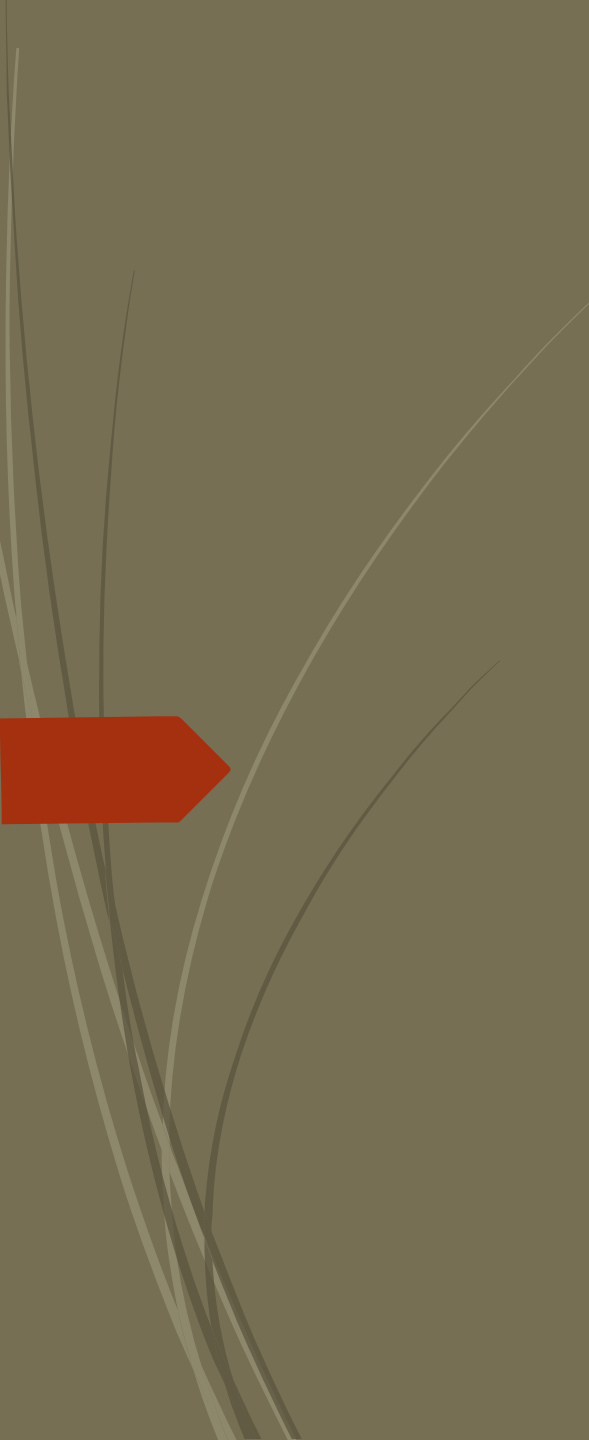
2. What are preliminary rulings?

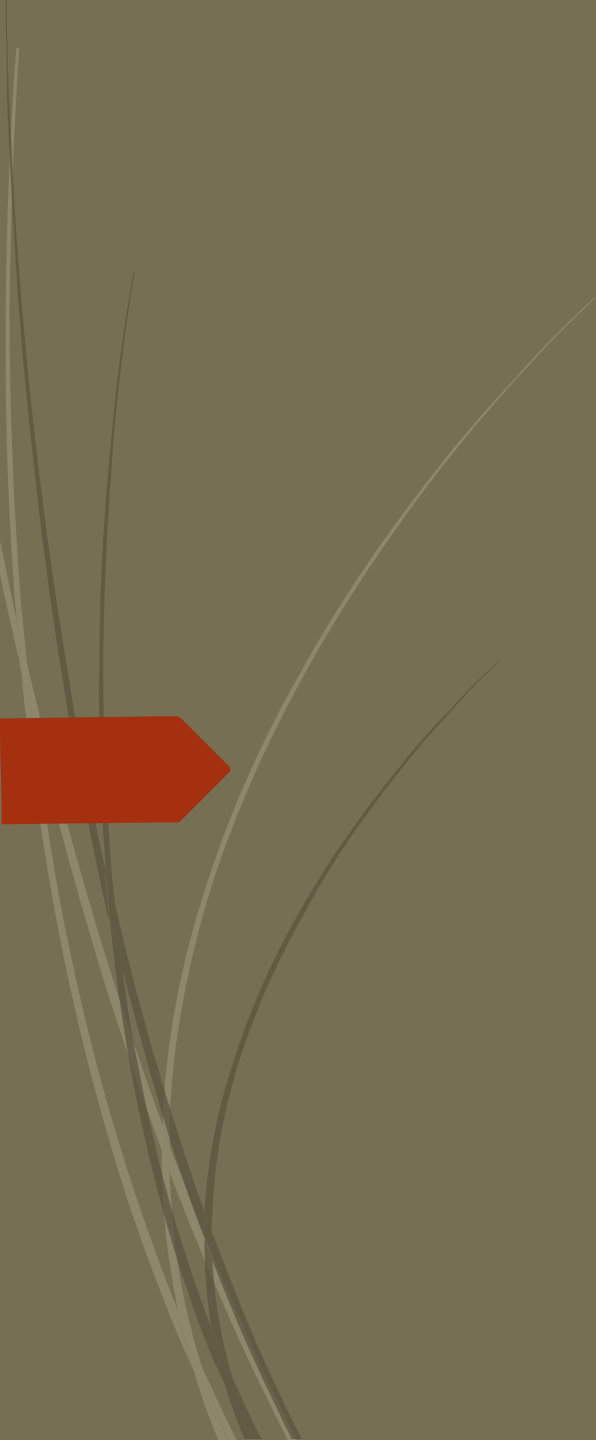
The ECJ is the highest court of law in the EU legal system (General Court / Court of Justice).


One of its competences is to ensure a uniform application of EU law across the EU.

National judges are the first « natural » judges of EU law: they routinely apply EU law.

What happens if they have doubt as to the meaning / scope of a specific EU law provision?

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- ❓ They **can** stay the proceedings and ask the ECJ (CJ) for guidance
 - ❓ They **must** do it if the parties so require and there is no further appeal possible, except if ECJ has already ruled on it or if the act is perfectly clear (*acte clair* doctrine) => otherwise possibility of infringement or liability proceedings (see below) ; also a matter of human rights law.
 - ❓ Question limited to issues of **law**.
 - ❓ The ECJ will not directly rule on the **legality** of a domestic act
 - ❓ Typically: « Is Article [XX] of [Regulation 1107/2009] to be interpreted as precluding [define the practice of the national authority that you challenge] ? »
 - ❓ The national judge is responsible for the wording of the question
 - ❓ No provision of national law can prevent or hinder preliminary references.

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- ❓ How does it work?
 - ❓ Domestic court sends questions to the ECJ
 - ❓ Parties to the proceedings (+ MS and EU institutions) can submit written observations
 - ❓ A hearing usually takes place at the ECJ
 - ❓ The ECJ replies to the questions (between 15 and 18 months from the moment the question was sent)
 - ❓ The case resumes before the national court
 - ❓ The interpretation given by the ECJ is binding on that court



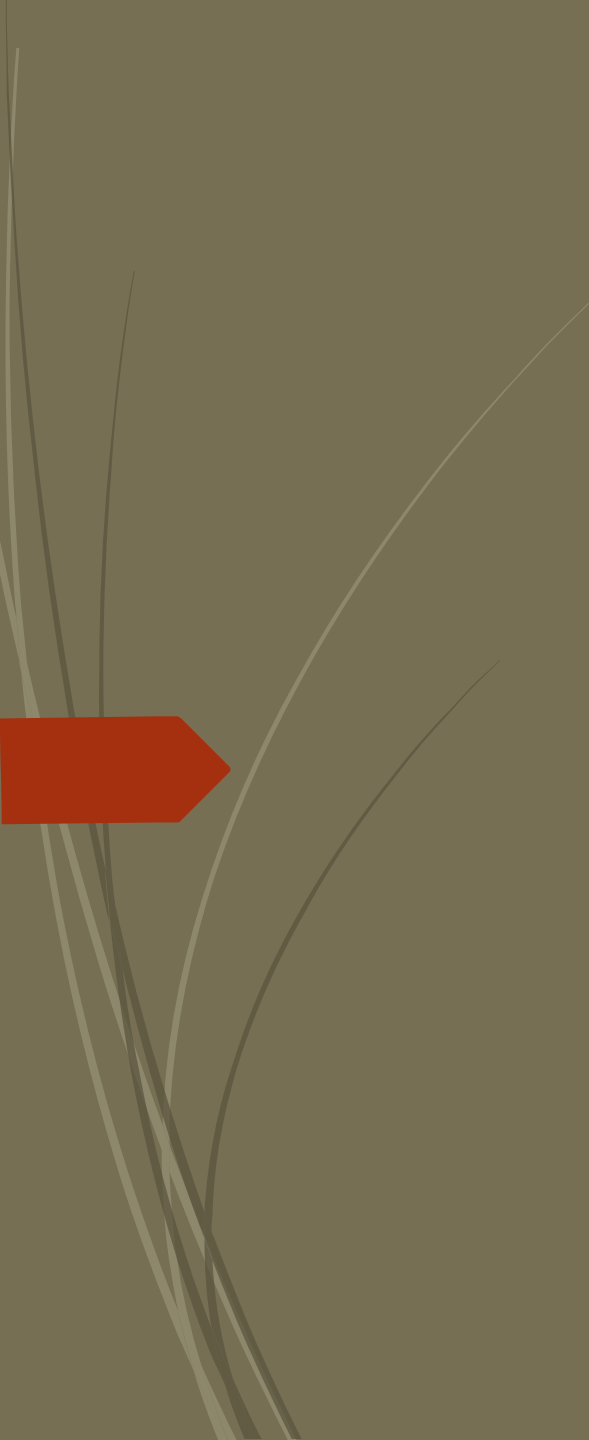
3. The authority of ECJ's preliminary rulings

- ❓ The interpretation of a specific EU law provision given by the ECJ is **binding erga omnes** : it must be respected by any national authority (both administrative and judicial), even though that authority was not involved in the case that led to that ruling.
- ❓ The interpretation becomes part of the law itself: it is incorporated to the provision that it relates to.
- ❓ It becomes the only correct way to apply that provision.
- ❓ The only way to defeat it is to either change the provision or make a new reference to the ECJ in the hope that it will change its mind.
- ❓ (The whole of) EU law enjoys **primacy** over (the whole of) national law => An ECJ ruling cannot be disappplied on the ground that it contradicts national law.



4. What if the ECJ rulings are not faithfully applied?

- ❓ **Example:** An administrative authority
 - ❓ grants an emergency authorisation (Art 53) for a PPP containing a substance that has not been approved based on health- or environment-related motives (>< C-162/21)
 - ❓ grants an authorisation without examining the PPP's long-term toxicity / carcinogenicity (>< C-616/17)
- ❓ What can you do?
- ❓ Ask for the annulment of such an authorisation in front of the competent domestic court (typically an administrative court) on the ground that it is contrary to the PPP Regulation as interpreted by the ECJ.

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- ❓ What if the authority claims that **your reading of the ECJ's ruling is wrong?**
 - ❓ Ask the domestic court to make a preliminary reference
 - ❓ If it does not and upholds the authorisation => Appeal all the way up to the supreme court to obtain a preliminary reference
 - ❓ If refusal by last instance court (and not justified by any of the two exceptions above), consider liability or infringement proceedings (see below), or even proceedings in front of the European Court of Human Rights.
 - ❓ What if the domestic court **refuses to apply the ECJ's ruling?**
 - ❓ Appeal all the way up to the supreme court.
 - ❓ If not successful, consider liability or infringement proceedings (see below)



5. Liability and infringement proceedings

? **Liability proceedings**

- ? In front of domestic (usually civil) courts
- ? Based on domestic civil law but « framed » by ECJ case-law
- ? Typically within 5 years
- ? Goal is to obtain compensation (typically damages) for harm caused by a fault committed by a public body.
- ? Not complying with an ECJ ruling and not complying with the obligation to make a preliminary reference are faults. You need to demonstrate the harm (which can be non-pecuniary).
- ? Possibility for re-opening the trial?



❓ Infringement proceedings

- ❓ You can file a complaint with the Commission
- ❓ The Commission may decide to act upon your complain => No remedy available if it does not!
- ❓ May start pre-litigation (EU Pilot) proceedings
- ❓ If not successful, can bring the matter to the ECJ
- ❓ If ECJ concludes that EU law has been infringed, the infringement must be erased => What does it mean?
- ❓ If ECJ ruling not respected, COM can ask ECJ to order the MS to pay a fine or periodic penalty payments.
- ❓ If does not pay / comply, may lose EU money.



Thank you for your
attention

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