Interpretation and Application of CJEU Decisions by National Courts
Structure of the presentation

- Effect of EU law in the Member States’ legal orders
- Implementation of preliminary rulings
Effect of EU Law in the Member States’ legal orders

- Direct effect of the EU law
- Primacy of EU law, case 6/64, Costa v. ENEL, case 106/77 Simmenthal
EU Treaties do not contain any general rule on the effect of the EU law provisions

Principle of Direct Effect introduced by Court of Justice in landmark case of *Van Gend en Loos, 26/62*
Direct effect of EU law

- primarily law
- secondary legislation
  - regulations
  - directives
  - decisions
Problem:
- Some Treaty provisions drafted in general terms and
- Not all are designed to be applied directly by national courts

Solution:
- ECJ established **criteria for direct effect** (refined since)

Essentially, the provision must be ‘*self–executing*, i.e.:
- *intended to confer rights to individuals*
- *sufficiently clear and precise*
- *unconditional*
Direct effect of regulations

- Article 288 TFEU: A regulation is of “general application...binding in its entirety and directly applicable in all Member States”

- NB Direct applicability v. Direct effect
  Regulations to take immediate effect in domestic law of MS without need for further transposition (direct applicability), so as long as provision in regulation satisfies other criteria for direct effect (i.e. sufficiently precise/ unconditional), can be enforced before national courts
  Direct applicability confirmed by ECJ in C–39/72, Commission v. Italy
Direct effect of directives

- Article 288 TFEU:

“A Directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods”

- Directives are not directly applicable but rather conditional on implementation, and do not have to be addressed to all Member States (unlike Regulations)

- Directives can be directly effective if Member State fail or refuse to implement them (on time/properly), provided they are “unconditional and sufficiently precise” (Van Duyn 41/74) and that they concern the vertical relationship between a Member State and an individual or an economic operator (Marshal C–152/84)
the principle of primacy of the EU law over national law was recognized by ECJ in Costa v. ENEL decision *Case 6/64*

"every national court must, in a case within its jurisdiction, apply community law in its entirety and protect rights which the latter confers on individuals and must accordingly set aside any provision of national law which may conflict with it, whether prior or subsequent to the community rule." (Case 106/77, *Simmenthal*)

the EU law has the same status in relation with national constitutions (11/70 *Internationale Handelsgesellschaft*)
the conceptual basis for the acceptance supremacy of EU law by national courts

generally, they regard supremacy as flowing from their constitutions and not from the authority of the Treaties or the ECJ (France, Germany, Poland, Romania etc.)

Kompetenz–Kompetenz
EU law State liability – the surest legally enforceable mechanism for promoting Member State compliance

- individuals may rely on EU law before national courts to seek redress (i.e. compensation) if they suffered loss or damage as a result of a failure of a MS to meet EU obligations (e.g. incorrect transposition of a directive) – *Francovich*, case C–6–9/90
the result prescribed by the directive should entail the grant of rights to individuals and the content of these rights must be identifiable on the basis of the provisions of the directive;

a sufficiently serious breach of EU law

a causal link between the breach of the State's obligation and the loss and damage suffered by the injured parties must be present.
Implementation of Preliminary Rulings
Article 267 TFUE

(…)
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 judgment, request the Court 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.
Exceptions to the obligation to refer

*CILFIT*, case C–283/81

- Acte éclairé
- Acte clair
- Irrelevancy of the question
Consequences of the an infringement of the obligation to refer

- instruments of national law against the refusal to refer

- remedies under the EU law
  - infringement proceedings will be initiated against the Member State of the court concerned
  - State liability claim under EU Law for judicial wrongs (Köbler)
Effects of ECJ rulings

- preliminary rulings have a binding effect only *inter partes*

- if the ECJ rules that a provision of secondary law is invalid, such a decision is effective *erga omnes* and enforced in all Member States

- the preliminary rulings are not legally binding on other courts, but, in practice, judgments of the ECJ rendered under Article 267 TFUE will in many cases have a factual *erga omnes* effect
Deviation from the preliminary rulings

- the noncompliance of the referring court to the ECJ preliminary ruling constitutes an infringement of the Treaty

- the deviation from existing ECJ case law that has been developed in other cases could be, as far as national courts of last resort are concerned, a violation of the duty to refer