



# How to Read, Interpret and Implement a CJEU Judgment

**Maciej Szpunar**

First Advocate General  
Court of Justice of the European Union

EJTN-Judicial Training

The EU Preliminary Ruling Procedure

**Luxembourg, 23 October 2020**

# Rules governing procedure

- ▶ Protocol (No 3) [to the TEU and TFEU] on the Statute of the Court of Justice of the European Union
  - Contains the broad principles regarding judges and Advocates General (AGs), the organisation of the Courts (ECJ and General Court) and the procedure
  - Article 281 TFEU
  - Article 51 TEU – The Protocols and Annexes to the Treaties form an integral part thereof

# Rules governing procedure

- ▶ Rules of Procedure of the Court of Justice (RP)
  - Contains ‘any provisions necessary for applying and, where required, supplementing the Statute’, Article 63 Statute
  - All details regarding procedure
  - Legal basis: Article 253(6) TFEU
  - Crucial provision: Article 94 RP – Content of the request for a preliminary ruling

# Statistics

- ▶ 2019
  - Out of 865 cases completed, 601 were preliminary rulings (69%)
- ▶ 2018
  - Out of 760 cases completed, 520 were preliminary rulings (68%)
- ▶ 2017
  - Out of 699 cases completed, 447 were preliminary rulings (64%)

# Read

- ▶ Structure of judgment
  - Formal part
  - Legal framework: international law, EU law, national law
  - Facts in the main proceedings
  - Question(s) referred
  - Reply to question(s)
  - Costs
  - Operative part

# Read

## JUDGMENT OF THE COURT (First Chamber)

19 October 2016\*

(Reference for a preliminary ruling — Articles 34 TFEU and 36 TFEU — Free movement of goods — National legislation — Prescription-only medicinal products for human use — Sale by pharmacies — Setting of fixed prices — Quantitative restriction on imports — Measure having equivalent effect — Justification — Protection of the health and life of humans)

In Case C-148/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf, Germany), made by decision of 24 March 2015, received at the Court on 30 March 2015, in the proceedings

**Deutsche Parkinson Vereinigung eV**

v.

**Zentrale zur Bekämpfung unlauteren Wettbewerbs eV,**

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, E. Regan (Rapporteur), A. Arabadjiev, C.G. Fernlund and S. Rodin, Judges,

Advocate General: M. Szpunar,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 17 March 2016,

after considering the observations submitted on behalf of:

\* Language of the case: German.

# Read

- ▶ Formation of the Court
  - Chamber of 3, 5, 15 (Grand Chamber) or 27 (full Court) judges
  - Article 16 Statute and Article 60 RP
    - Chamber of 3 or 5 judges: standard
    - Specialised 5 judge chamber for urgent preliminary ruling procedure, Article 11(2) RP
    - Grand Chamber: Difficult or important cases or by explicit request by Member State or EU institution
    - Full court: in cases of 'exceptional importance' and dismissal/compulsory retirement/deprivation of office of Ombudsman/Commissioners/members of CoA

# Read

- ▶ Reporting judge
  - Rule: designated by the Court President, Article 15(1) RP
  - Exception for urgent preliminary ruling procedure (Arts 107 et seq. RP): designated on proposal from Chamber President, Article 15(2) RP
- ▶ Advocate General
  - Cases are assigned by First AG, Article 16 RP



# Read

## ▶ Hearing

- Article 23 Statute and Article 76 RP
  - Notification of preliminary questions to
    - Parties of the main proceedings
    - Member States
    - EU Commission
    - EU author of the act the validity or interpretation of which is in dispute (i.e. normally Council and Parliament)
  - Parties and interested persons may submit reasoned request for a hearing

# Read

## ▶ Hearing

- Article 23 Statute and Article 76 RP
  - No hearing if Court considers, on reading the written pleadings or observations lodged during the written part of the procedure, that it has sufficient information to give a ruling

# Read

- Deutsche Parkinson Vereinigung eV, by T. Diekmann, Rechtsanwalt, K. Nordlander, advokat, M. Meulenbelt, advocaat, and D. Costesec, Solicitor,
- Zentrale zur Bekämpfung unlauteren Wettbewerbs eV, by C. Dechamps, Rechtsanwalt, and J. Schwarze,
- the German Government, by T. Henze and A. Lippstreu, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, assisted by M. Russo, avvocato dello Stato,
- the Netherlands Government, by M. Bulterman and M. de Ree, acting as Agents,
- the Swedish Government, by A. Falk, C. Meyer-Seitz, U. Persson, N. Otte Widgren, E. Karlsson and L. Swedenborg, acting as Agents,
- the European Commission, by E. Manhaeve, J. Herkommer and A. Sipos, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 June 2016,  
gives the following

## Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 34 TFEU and 36 TFEU.
- 2 The request has been made in proceedings between Deutsche Parkinson Vereinigung eV ('DPV') and the Zentrale zur Bekämpfung unlauteren Wettbewerbs eV (Association for Protection Against Unfair Competition, 'the ZBUW') concerning the setting, in German law, of fixed prices for the sale by pharmacies of prescription-only medicinal products for human use.

# Read

- ▶ Opinion of an Advocate General
  - Article 20(5) Statute
    - No AG Opinion if case raises no new point of law
- ▶ Language of the case
  - Article 37(3) RP: the language of the case is the language of the referring court
  - Not to be confused with the working language of the Court, addressed below

# Read

- ▶ Structure of judgment
  - Formal part
  - Legal framework: international law, EU law, national law
  - Facts in the main proceedings
  - Question(s) referred
  - Reply to question(s)
  - Costs
  - Operative part

# Interpret

- ▶ General legal methods of interpretation
  - Textual, systematic, historic, teleologic
  - Article 31 Vienna Convention on the law of Treaties
  - In the Court's terminology: spirit, general scheme wording
- ▶ ECJ/267 TFEU specificities
  - Re-formulation of questions
  - Inadmissibility of questions
  - Reporting judge / Advocate General – questions of nationality

# Interpret

- ▶ ECJ/267 TFEU specificities
  - Wording – Language
    - Principle of multilingualism and linguistic equality
    - Working language of Court: French
  - Legal concepts can differ in meaning between EU law and national law
  - Precedent and the Court of Justice
  - Collegiate nature of judgments
  - Transnational composition of chambers
  - No dissenting opinions

# Implement

- ▶ National judge is judge of EU (law)
  - ECJ provides interpretation of EU law or (rarely) ruling on validity of secondary EU law
  - ECJ bound by interpretation of national law done by national judge
  - National judge hands down judgment and applies law to the facts of the case
    - Degree of scrutiny employed by ECJ varies
    - Example: proportionality test



# Implement

## ▶ Example 1: C-148/15, Deutsche Parkinson

### Costs

- 47 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. **Article 34 TFEU must be interpreted as meaning that national legislation, such as that at issue in the main proceedings, which provides for a system of fixed prices for the sale by pharmacies of prescription-only medicinal products for human use, constitutes a measure having equivalent effect to a quantitative restriction on imports, within the meaning of that article, since that legislation has a greater impact on the sale of prescription-only medicinal products by pharmacies established in other Member States than on the sale of the same medicinal products by pharmacies established within the national territory.**
2. **Article 36 TFEU must be interpreted as meaning that national legislation, such as that at issue in the main proceedings, which provides for a system of fixed prices for the sale by pharmacies of prescription-only medicinal products for human use, cannot be justified on grounds of the protection of health and life of humans, within the meaning of that article, inasmuch as that legislation is not appropriate for attaining the objectives pursued.**

[Signatures]

# Implement

## ▶ Example 2: C-293/14, Hiebler

On those grounds, the Court (First Chamber) hereby rules:

1. Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market must be interpreted as covering, in all respects, the pursuit of a trade, such as the trade of chimney sweep as described in the main proceedings, even though that trade entails the performance not only of private economic activities but also of fire safety regulation tasks.
2. Articles 10(4) and 15(1), (2)(a) and (3) of Directive 2006/123 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which limits, in all respects, a license to trade as a chimney sweep to a particular geographical area, if that legislation does not seek to attain, in a consistent and systematic manner, the objective of public health protection, which is a matter to be determined by the national court.

Article 15(4) of Directive 2006/123 must be interpreted as not precluding such legislation where fire safety regulation tasks are classified as tasks connected with a service of general economic interest, provided that the territorial restriction imposed is necessary and proportionate to the performance of those tasks under economically viable conditions. It is for the national court to carry out that assessment.

[Signatures]

# Implement

- ▶ AG Opinion often helps to grasp the context of a case
- ▶ Effect of judgments
  - Binding effect inter partes: national judge under direct obligation to implement judgment
  - Factual erga omnes effect
    - Future reply by reasoned order, Article 99 RP
      - Question is identical to question on which Court has already ruled
      - Reply to question may be clearly deduced from existing case-law
      - Answer to the question referred admits of no reasonable doubt

# Implement

- ▶ Relationship between ECJ and national judge
  - Initially: horizontal and bilateral
  - Now: vertical and multilateral
  - National judge is invited to communicate to the ECJ Registrar the follow-up given to the case on the national level and a copy of the final judgment

# Further reading

- ▶ Texts governing procedure
- ▶ ECJ case-law database
- ▶ National case-law database
- ▶ **Lenaerts/Gutiérrez-Fons, To Say What the Law of the EU Is: Methods of Interpretation and the European Court of Justice**