

OTHER METHODS OF REVIEW: COLLATERAL AND INDIRECT

ARTICLE 277 TFEU: THE PLEA OF ILLEGALITY (COLLATERAL REVIEW)

- Applicants can invoke the illegality of a Union act 'of general application' (*Art 277 TFEU*) while they are also conducting a direct action under *Art 263 TFEU*.
- **Art 277 TFEU therefore is not an independent action** as it seeks to accompany proceedings under *Art 263 TFEU*.
- The primary object of review must be a different act.
- Example: ***Inuit I***

ARTICLE 267 TFEU: PRELIMINARY RULINGS (INDIRECT REVIEW)

Also called the **preliminary reference procedure** where the European Court may give rulings on 'the **validity** of acts of the institutions, bodies, offices or agencies of the Union.' (*Art 267(1)(b) TFEU*). This role was further elaborated by the Court in Case 294/83 *Les Verts*, para 23.

The conditions for Art 267 are much more **flexible** than Art 263 TFEU, which has led the Court to favour preliminary reference procedures more (see Textbook, 373)

- The challenges may be brought against *any* Union act
- They can be brought on *any* grounds
- They can be launched by *anyone*
- They can be brought *anytime*.

There are, however, serious disadvantages that make the preliminary reference procedure less favourable than an action for annulment under Art 263 TFEU. (see Textbook, 374).

Several things to consider when answering a question on Art 267 TFEU:

- Art 267(1) TFEU tells us about the **jurisdiction** of the Court in determining the **validity** and **interpretation** of both Treaties and secondary legislation.
 - o Keep in mind scenarios where the Court will refuse to accept these references from national courts, such as when there is no genuine dispute.
- Art 267(2) TFEU's wording implies the discretion to make a reference: 'any court... *may*' → discretion and necessity:
 - o The relevance of the reference, *acte clair*, previous rulings, national rules of precedent.
- Art 267(3) TFEU states an obligation to refer for courts whose decisions will have no judicial remedy.
 - o Bear in mind relevance, previous rulings, and *acte clair*.

Note: These revision charts are useful for a general overview of how you should approach problem questions. However, these are not intended to give you a full understanding on the matter. You should always read the textbook and relevant authorities to ensure you do your best in a problem question. Any references made to R Schuetze, European Union Law (2nd edn) CUP 2018 will henceforth be referenced as 'Textbook'.