

# European Legislation

**Lecture Title: Institutions, preliminary ruling and the jurisdiction of the CJEU**



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**Diploma in Law  
(Malta)**

# The Commission



# The Commission

- Article 17 TEU – 8 primary roles for the Commission
- Composition – One Commissioner from each Member State
- Different composition throughout the years



# Independence and Integrity of the Commission

- Independent Commissioners – notwithstanding nominated by Member States
- Enshrined in the TEU
- Applies even after holding office
- *Commission vs Edith Cresson (Case C-432/04)*



# The President of the European Commission

- Appointment – EC proposes to the EP, the EP elects by majority
- Involved in the appointment of the individual Commissioners
- Appointed for a renewable period of five year
- Power of the European Parliament to veto the whole Commission – *Case of Rocco Buttiglione*



# Role of the President

- Article 17(6) of the TEU:

6. The President of the Commission shall:

- (a) lay down guidelines within which the Commission is to work;
- (b) decide on the internal organisation of the Commission, ensuring that it acts consistently, efficiently and as a collegiate body;
- (c) appoint Vice-Presidents, other than the High Representative of the Union for Foreign Affairs and Security Policy, from among the members of the Commission.

A member of the Commission shall resign if the President so requests. The High Representative of the Union for Foreign Affairs and Security Policy shall resign, in accordance with the procedure set out in Article 18(1), if the President so requests.

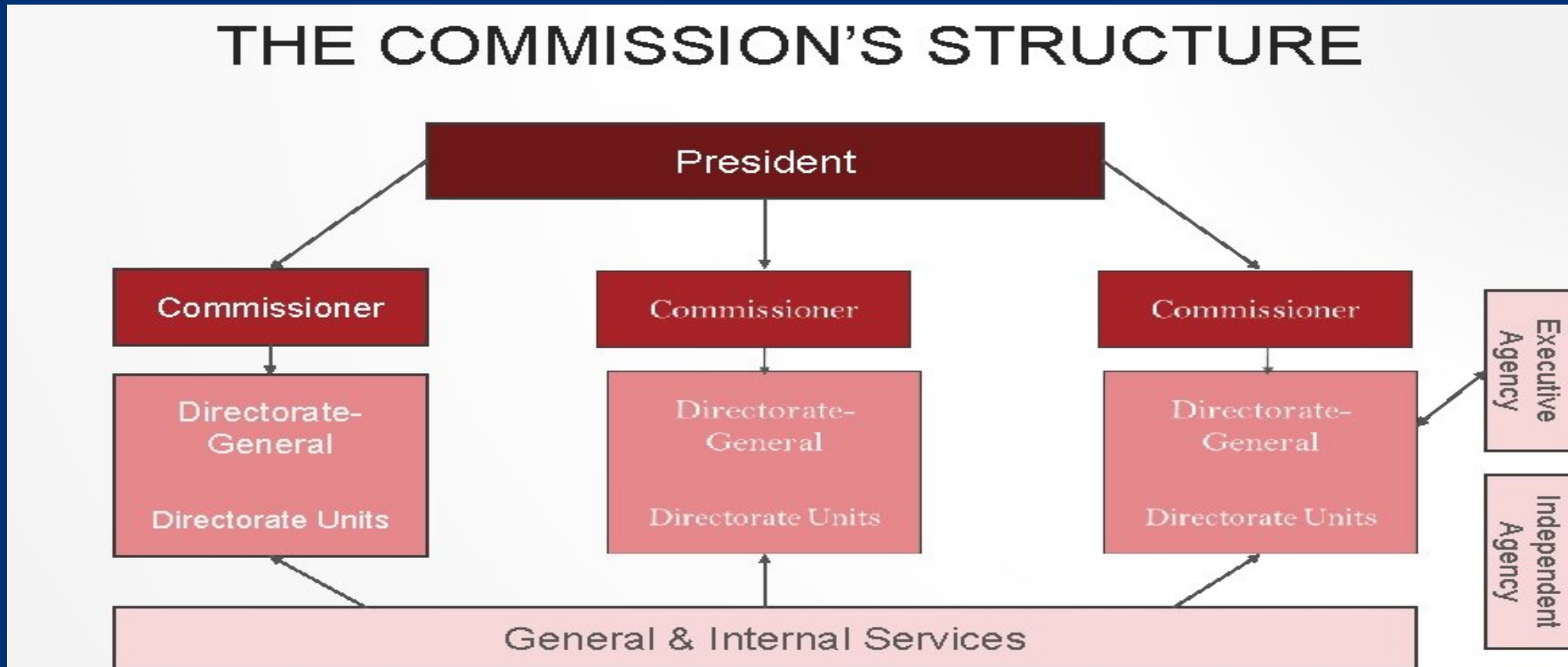


# Structure of the Commission

- Each Commissioner is responsible for one or more policy areas – allocated by the President
- Each Commissioner is assisted by a small Cabinet of officials – personal appointment
- Each Commission is divided by Directorates-General – headed by a Director General
- Each Directorate General is further divided into a number of Directorates



# Structure





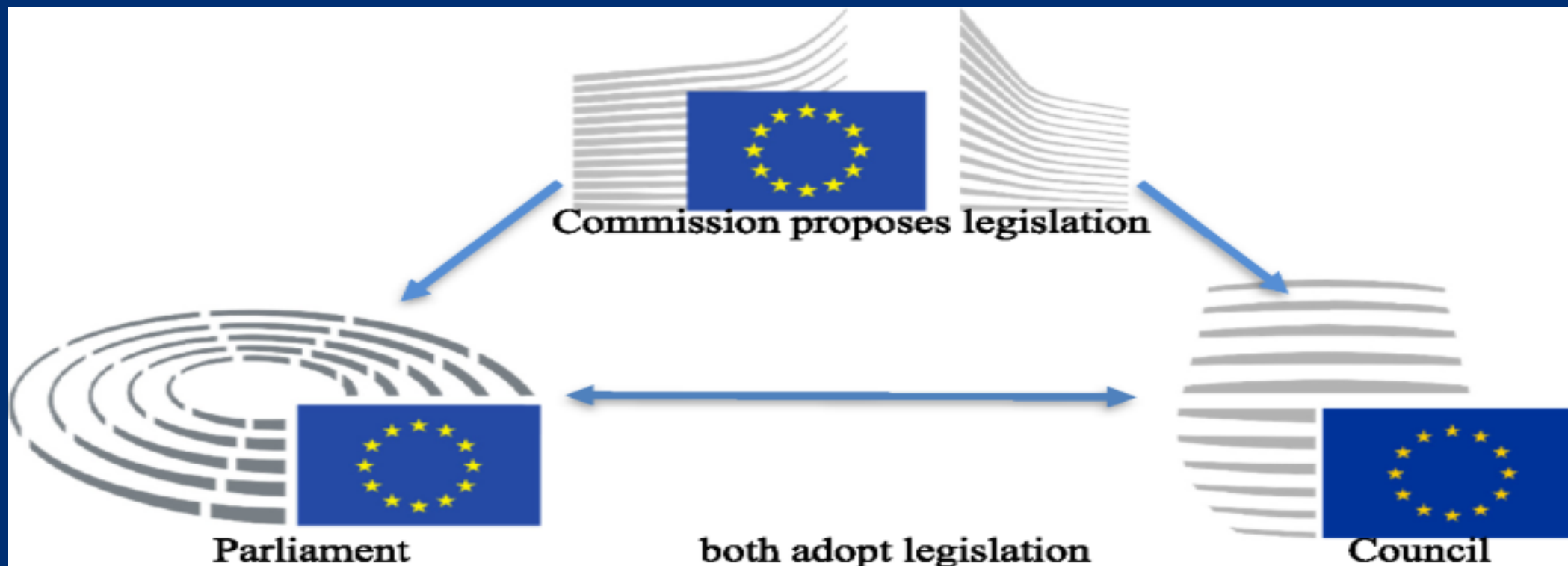
# Termination from Office

- Termination may occur by:
  - Expiry of 5 year period
  - Death
  - Voluntary resignation
  - Compulsory resignation – upon request by the President – *Dalli vs Commission (Case T-562/12)*
  - Compulsory retirement
  - Compulsory collective resignation



# Roles of the Commission

- As initiator of changes in policy and legislation
  - Primary proposer of legislation



# Roles of the Commission

- Represents the Union in negotiations with other groups of states
- Holder of **Union funds** and administers four special funds
  - European Social Fund
  - Cohesion Fund
  - European Agricultural Guidance and Guarantee Fund
  - European Regional Development Fund
- **Guardian of the Treaties**
  - Action against Member States in breach of EU law



# The Council

- Composed of representative of each Member State at ministerial level
- Binds the government of the Member States
- Article 16(6) TEU provides for the Council to meet in different configurations



# The Presidency of the Council

- Held in turn by each Member State for a period of six months
- Trio presidency – coordination over an 18-month period
- Maltese Presidency – January 2017



# Functions of the Council

- Article 16(1) TEU
  - To exercise legislative and budgetary functions.
  - To carry out policy-making and coordinating functions as laid down in the Treaties

Final decisions are made

*Sweden and Turco v Council (Joined cases C-39/05 and C-52/05)*



# European Parliament



# Main elements of the European Parliament

- Originally an 'Assembly' with advisory and supervisory powers
- Transformed to one of the most powerful institutions
- Only directly elected institutions
- However still lacks the power to initiate legislation



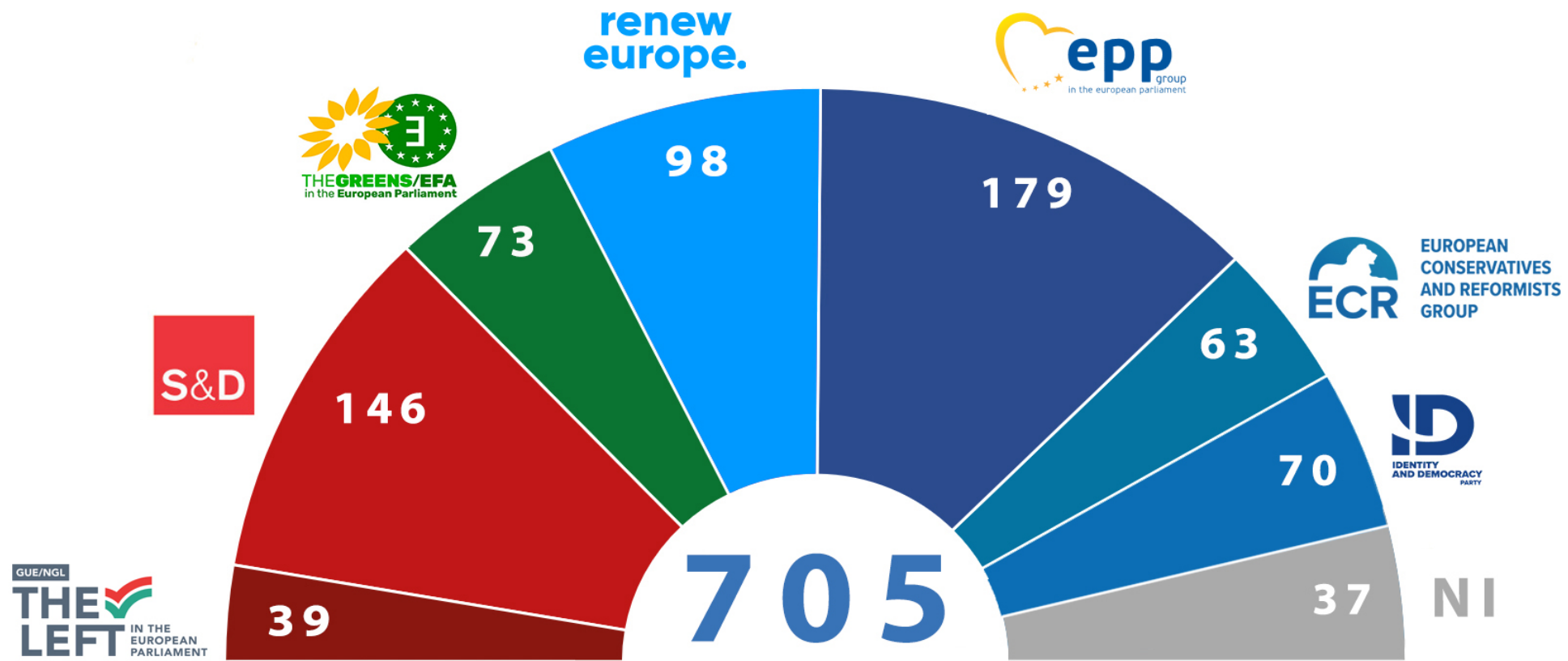


# Composition of the European Parliament

- Members of Parliament elected from all Member States
- Currently 705 MEPs
- Elected for a five year term
- MEPs sit within broad political groupings rather than national groupings



# Political groups in the EP



# Political grouping

- Political activity largely takes places through the groups
- Used to comprise of MEPs elected in at least one-fifth of the Member States and a minimum of twenty
- Case of the 'Identity, Tradition and Sovereignty Group
- Now – at least one-quarter of the Member States and a minimum of twenty-five



# Development of political grouping

- Provide mutual ideological support and identification
- Organizational benefits including funds
- Advantages in the conduct of Parliamentary business
- *Case Jean Claude Martinez et vs European Parliament (Joined Cases T-222/99, T-327/99 and T-329/99)*
  - The constitution was in violation of the concept behind a political grouping



# Powers of Parliament

- 3 main powers:
  - Participation in the legislative process of the Union
  - Acting as the budgetary authority
  - Supervision of the Commission



# Court of Auditors

- Carries out the external audit of the general budget of the Union
- Appointed by each Member States
- Term of 6 years



# European Central Bank

- Enacts Legislation
- Imposes fines
- Submit opinions





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# The Court of Justice of the European Union

- One of the seven institutions of the EU
- Article 19(1) TEU establishes that ‘The Court of Justice of the European Union shall include:
  - the Court of Justice (superior court);
  - the General Court (lower court); and
  - Specialised courts or tribunals



# Main elements

- Role: to ensure EU law is interpreted and applied the same in every EU country and to ensure that MSs and EU institutions abide by EU law.
  - Court of Justice: 1 judge from each EU country, plus 11 advocates general
  - General Court: 56 judges

Established in: 1952

Location: Luxembourg



# The CJEU

- Deemed as the main source of legal principles which govern the way the Union functions
- Governed by the TEU and TFEU and the 'Statute of the Court of Justice of the European Union'
- Not to be confused with the 'European Court of Human Rights'
- Each court has its own Rules of Procedure



# Composition of the CJEU

- Article 19 TEU – One judge from each Member State
- Art. 252 TFEU – Eleven Advocates General and may be increased by the Council acting unanimously
- Appointed by common accord of the government of Member States – a suitability report is issued by a panel of retired judges
- Six year term, may be renewed
- Appointment of Judge Rapporteur to manage the case and draft the final judgment

# Advocates General

- Not a lawyer to the parties, not a judge BUT enjoys equal status to that of a Judge.
- Each case will have one judge rapporteur and one Advocate General
- Gives his personal opinion on the decision that the Court should reach
- Delivered in open court
- Not a binding opinion



# Registrar

- Appointed for six year renewable term
- Filing of documentation, distribution, notification process
- Responsible of the administration



# Chambers

- May sit in Full Court – 27 members – specific instances
- May sit in ‘Grand Chamber’ – 15 members
- May sit in smaller chambers of 3 to 5 judges

Depends on the rules laid down  
By the Statute of the Court



# Formation

- It sits as a full Court when the case is regarded as **exceptionally important** (e.g. proceedings to remove the European Ombudsman or a Commissioner) or at the request of a MS or institution;
- BUT the great majority of cases are heard by chambers of three or five judges.
- The COJ is particularly empowered:
  - 1.to deliver preliminary rulings to national courts under Article 267.
  - 2.to hear review cases from General Court judgments.





# Language

- Applicant chooses the language
- May be held in any of the official languages
- Where the defendant is a Member State – the official language of the Member State is adopted
- French is the working language



# Procedure

1. Written Proceedings
2. Preliminary report
3. Measures of organisation and measures of inquiry
4. Oral Hearing
5. Advocate General's opinion
6. Judgment



# Methods of Interpretation

- **Literal Interpretation** – natural, plain meaning of the text of the legislation
- **Historical Interpretation** – the background for the legislation and the intention of the legislator
- **Contextual Interpretation** – Context a provision within the general scheme of the whole legislation
- **Teleological Interpretation** – Aims and objectives of the Union



# Jurisdiction of the CJEU (in general)

- Article 19 TEU and Articles 251-281 TFEU deal with the jurisdiction of the Court of Justice of the EU.
- Article 19(3) deals with the jurisdiction of the Court:  
*The Court of Justice of the European Union shall, in accordance with the Treaties:*
  - (a) rule on actions brought by a Member State, an institution or a natural or legal person;*
  - (b) give preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions;*
  - (c) rule in other cases provided for in the Treaties.*



# Jurisdiction

- i. References for Preliminary Rulings (Art. 267 TFEU);
- ii. Actions for Failure to Fulfill Treaty Obligations (Art. 258, 259 TFEU);
- iii. Actions for Annulment (direct actions) (Art. 263 TFEU);
- iv. Actions for Failure to Act (Art. 265 TFEU);
- v. Appeals
- vi. Reviews



# Preliminary rulings

- The Court of Justice is empowered to deliver preliminary rulings upon a reference by a national court.
- What are References for preliminary rulings?
  - 1. A national court may require guidance in interpreting and applying EU law;
  - 2. Therefore, it makes a reference to the COJ for guidance;
  - 3. The COJ delivers its preliminary ruling on the questions asked by the national court.
  - 4. This is a process of cooperation between the COJ and national courts BUT the ruling is binding on the national court.
  - 5. Recently, it is being acknowledged that the COJ is in fact above the national courts in EU law matters.



# Why Preliminary Rulings?

- To ensure the effective and uniform application of EU legislation;
- To prevent divergent interpretations of EU law by national courts;



# Effects of Preliminary Rulings

- The COJ's ruling is not merely an opinion, but takes the form of a judgment or reasoned order;
- The national court is bound by the ruling of the COJ.
- Other national courts with similar cases are likewise bound by this ruling/ judgment (multilateral effect of the Court's ruling).
- Several important principles of EU law have been laid down by preliminary rulings (e.g. direct effect, state liability, supremacy of EU law)



# Preliminary reference made by the Maltese Courts

- Malta Dental Technologists Association and John Salomone Reynaud v Superintendent tas-Saħħa Pubblika and Kunsill tal-Professjonijiet Kumplimentari għall-Mediċina, Case C-125/16
- Main focus: interpretation of the Directive on the mutual recognition of qualifications.
- C-71/12 – Vodafone Malta and Mobisle Communications (Const. Court)



## ii. Actions for failure to fulfill Treaty Obligations (Art 258 and 259)

- Infringement procedures
- Has a Member State violated its obligations under EU law?
- Commission vs Malta (Case C-557/15) – action against Malta on the conservation of wild birds
- May impose a fixed or periodic financial penalty if found guilty



# Actions for Annulment (Art. 263 TFEU)

- Referred to as a judicial review action
- Annulment of a regulation, directive or a decision adopted by the Union



# Actions for failure to act (Art 265 TFEU)

- Against institutions and not Member States
- The Court is empowered to determine if the institutions, bodies, offices or agencies of the EU have failed to act under EU law where the Treaties obliges them to act.



# Reviews

- Reviews are delivered in exceptional circumstances.
- The COJ reviews appeals lodged before the General Court from decisions of the Civil Service Tribunal (akin to a second appeal)



# Appeals

- COJ hears Appeals on points of law only against judgments of the General Court.
  - To be lodged within two months and limited to questions of law such as:
    - Lack of competence of the GC;
    - A breach of procedure which adversely affects the the interests of the appellant;
    - Infringement of Union law by the GC itself
- If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court.



# General Court

- Previously known as the Court of First Instance
- Chambers of three or five judges (about 75% of cases are heard by chambers of three judges)
- May also sit as a Grand Chamber (15 judges when the complexity of the case demands it (Art. 50 of the Statute))
- Article 256(1) TFEU – provides for the jurisdiction of the General Court
- 54 judges



# Main heads of jurisdiction of the General Court

- i. Direct actions brought by natural or legal persons against:
  - a) Acts of the institutions
  - b) Regulatory acts
  - c) Failure to act by the institutions
  
- ii. Actions by Member States against the Commission
- iii. Actions by Member States against the Council relating to acts in the field of State Aid, dumping etc
- iv. Actions seeking compensation for damages caused by the institutions of the EU
- v. Actions based on contracts made by the EU and which expressly give jurisdiction to the GC
- vi. Actions relating to Union Trade marks
- vii. Appeals from the Civil Service Tribunal (points of law)





# Specialised Courts

- Article 257 TFEU – European Parliament and the Council to establish ‘Specialised Courts’
- Ad hoc courts
- EU Civil Service Tribunal – only specialised court
- Determines disputes between the EU and its civil servants (recruitment, careers, social security etc)
- Composed of seven judges or three judges





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