



The preliminary reference procedure and direct taxation

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- ▶ **Article 267 TFEU – channel to build up EU Direct taxation**
- ▶ **Need to supersede Bentham’s conception in EU tax law.**
- ▶ **Frequently, our scholarship neglects institutional aspects to rather focus on the analysis of the substantive outcomes of the CJEU.**
- ▶ **My research question: Which are the techniques/powers granted upon the CJEU within article 267TFEU? Which is the meaning of judicial cooperation in EU Direct taxation?**

- ▶ **Clash between Fundamental Freedoms and national tax law**
- ▶ **Article 267 TFEU is not a mere consultation procedure: assess the compatibility of national law with EU law**
- ▶ **The citizens’ infringement procedure (*Pescatore – Van Gend en Loos*)**
- ▶ **The CJEU as a Constitutional Court**

▶ Organic crisis

- The vanishing of *Vaasen-Göbbels*
- Contradictions and lack of clarity (no rigorous case law)

▶ Functional crisis

- *Costa v. Enel* (separation of functions axiom)
- CJEU – no abstract interpretation is provided

▶ Normative crisis

- Factual settings v. erga omnes effects of the rulings
- The emergence of general principles echoes tensions: acte clair doctrine and limitation of temporal effects of the rulings

- ▶ **The narrative of “protection of EU rights” places the CJEU at the apex of the European Judicial Power**
- ▶ **Vertical and Constructive Cooperation Model: a broad degree of discretion conferred upon the CJEU to drive art. 267 TFEU**
- ▶ **The vertical model:** The CJEU monitors the references requested by national courts (i.e. admissibility of references)
- ▶ **The constructive model:** The CJEU is empowered with certain techniques to foster integration (i.e. reformulation)

- ▶ **The CJEU works as a Constitutional Court**
- ▶ **The CJEU does not engage in judicial activism**
- ▶ **What is the role of the negative integration within the Post-BEPS scenario?**
- ▶ **How do we overcome the current Court's workload?
Towards a “decentralized” European Judicial Power**