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# GENERAL REPORT

## *"Preliminary rulings of the Court of Justice of the European Union – from CILFIT to Consorzio"*



## I INTRODUCTION

The upcoming ACA-Europe seminar in Stockholm on the 9th – 10th October 2023 will address the issue of preliminary rulings from the Court of Justice of the European Union (CJEU).

The title of the seminar is *Preliminary rulings of the Court of Justice of the European Union – from CILFIT to Consorzio*. As the title reveals, focus will be on the obligation of national courts of last instance to make requests for preliminary rulings as interpreted in case law.

The existence of the preliminary ruling procedure, enshrined in Article 267 of the Treaty on the Functioning of the European Union (TFEU), may be explained by the fact that the EU lacks a federal-type court system, meaning that the maintenance of EU law primarily relies on loyal cooperation by national courts. Against this background, the relationship between the CJEU and the national courts is not based on a hierarchical order, but instead on cooperation between the courts.

The CJEU has on several occasions pointed out that the system has been established to ensure that EU law is interpreted uniformly. It has also stressed that while the preliminary ruling procedure entails direct cooperation between the CJEU and national courts, it is always the national court hearing the case which considers the need for such a request. This reflects the division of functions between the national courts and the CJEU. The CJEU does not present a solution to the national case but only assists with the interpretation of EU law, thus maintaining its role as the exclusive interpreter of EU-law. If the national courts disregard their obligation to request preliminary rulings, there is a risk of an infringement procedure before the CJEU.

As is well known to the national courts, Article 267 TFEU provides the CJEU with competence to give preliminary rulings concerning a) the interpretation of the Treaties and b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union.

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However, the boundaries of the obligation of national courts to request preliminary rulings are less clear in the Treaty article and have, thus, been laid down in the case law of the CJEU.

The CILFIT-ruling from 1982 (C-283/81) provides three situations in which national courts or tribunals of last instance are not subject to the obligation to make a request for a preliminary ruling, namely when:

i) the question is irrelevant for the resolution of the dispute;
ii) the provision of EU law in question has already been interpreted by the Court (*acte éclairé*);
iii) the correct interpretation of EU law is so obvious as to leave no scope for any reasonable doubt (*acte clair*).

In the recent case Consorzio from 2021 (C-561/19), the CJEU clarified the third criteria of the CILFIT-case (*acte clair*). The CJEU took the opportunity to remind the national courts of the primary purpose of the preliminary ruling procedure – to ensure that EU law is interpreted uniformly by the national courts – by adding the requirement that a court of last instance must be convinced that the matter would be equally obvious to the other courts of the EU Member States and to the CJEU. However, the CJEU pointed out that it is not sufficient that the national court has already requested a preliminary ruling in the same national proceeding (as was the situation in that case). The Consorzio ruling additionally obliges the national courts to state the reasons for *not* requesting a preliminary ruling.

The focus of the questionnaire sent out to the ACA-members in preparation of the seminar has been the procedure in the national courts when considering whether to make a request for a preliminary ruling to the CJEU, as well as the more substantive considerations made by the national courts in this context.

A common thread through the questionnaire has been to get an overview of how the national courts relate to the above-mentioned case law *in practice*. For example, which considerations are made when establishing whether an issue is *acte éclairé* or *acte clair,* or how do the national courts of last instance state the reasons for rejecting a claim for a preliminary ruling?

The questionnaire was answered by 28 ACA members and guests: *Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden* and *the United Kingdom* (guest).

The responding courts have provided much interesting information, showing that there are both similarities and differences between the national courts' procedures relating to preliminary rulings. This General Report contains a *summary* of the responses and will hopefully constitute a good basis for fruitful discussions at the upcoming seminar.

The General Report follows the outline of the questionnaire and is divided into five chapters, this introduction being the *first*.

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The *second* chapter provides background and statistics which are presented separately in the annexes to the report.

The *third* chapter relates to the procedure in national courts when considering requesting a preliminary ruling. It includes sub-sections focusing on how the questions submitted to the

CJEU are formulated and whether the preliminary ruling procedure in the courts differs when the question is raised in a case requiring leave to appeal or other “filters”.

The *fourth* chapter focuses on the process after having received the judgment of the CJEU, e.g., whether the national court has experienced difficulties in interpreting the CJEU ruling and applying it to the national case.

The *fifth* and final chapter brings up the issue of whether there have been instances where national courts have been found to have failed to fulfill the obligation to make a reference for a preliminary ruling from the CJEU.



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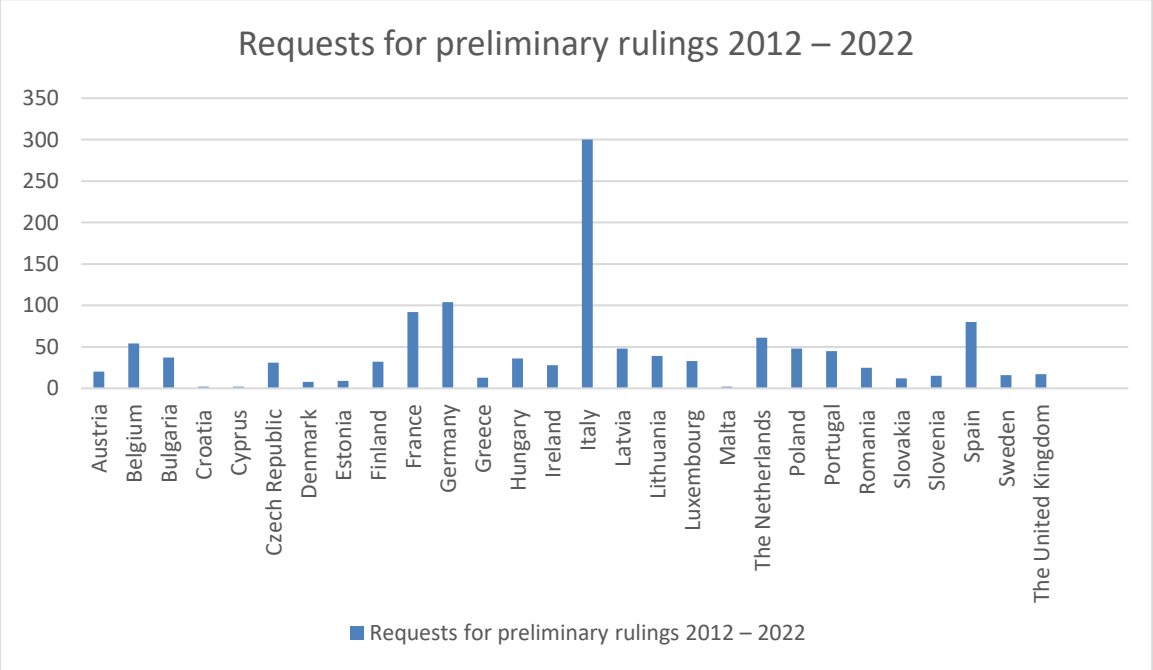
# II BACKGROUND AND STATISTICS

1. **What is the formal title of your court (also provide the title in English)?**
2. **Which principal branches of law are addressed at your court?**
3. **Which court or courts in your legal system falls under the obligation to refer questions to CJEU for a preliminary ruling (article 267.3 TFEU)?**
4. **On average, how many incoming cases are registered at your court per year?**

The answers to questions 1 to 4 below are presented separately in Annex I-II insofar as they are relevant in this context.

**5. How many preliminary rulings has your court requested from the CJEU during the period 2012 to 2022?**




See annex II for data on the number of preliminary rulings.

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## 6. Do any branches of law stand out such that preliminary rulings are requested more frequently in respect of that branch?

The vast majority of responding courts (23 of 28) answer that preliminary rulings are requested more frequently in some branches of law. The most common area of law where preliminary rulings are requested is tax law, in particular VAT. Fifteen of the responding courts answer that it is the most common or one of the most common branches of law where a preliminary ruling has been requested.

Other areas of law where requests for preliminary rulings are more frequent are migration law (*Austria, Belgium, Czech Republic, Finland, Germany, Luxembourg, the Netherlands* and *Slovenia*), environmental law (*Belgium*, *Czech Republic, Finland, France, Germany, Ireland, Italy* and *Slovakia*) and public procurement (*Belgium*, *Finland*, *Italy, Latvia* and *Portugal*).

## 7. Estimate the number of referred cases from your court during the period 2012 to 2022 that have related to the validity of an EU act itself.

*It is part of the EU's constitutional system that national courts review the validity of secondary legislation, ensuring that it remains within the EU's limits of competence and has been adopted using the correct decision-making procedure. In the case Foto-Frost (C-314/85) the CJEU declared that national courts have no jurisdiction themselves to declare that acts of Community institutions are invalid. Furthermore, the CJEU has pointed out in the case Gaston Schul Douane-expediteur (C-461/03) that the CILFIT criteria are inapplicable to the preliminary ruling procedure relating to the validity of Community acts. Instead, national courts are under an unconditional obligation to refer cases on validity to the CJEU, since this court is the exclusive interpreter of EU law.*

The majority of responding courts have not requested a preliminary ruling on the validity of an EU act (19 of 28). However, some courts stand out and have requested preliminary rulings regarding the validity of an EU act in several cases. *France* has made such requests in seven cases, *Italy* in four cases and *the Netherlands* in five cases. This could be seen against the background that these courts have also requested preliminary rulings in a relatively large number of cases during the same period. *France* has requested a preliminary ruling in 92 cases, *Italy* in about 300 cases and *the Netherlands* in 61 cases.



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## 8. Has your court requested an "expedited preliminary ruling procedure" (art. 105–106 Rules of Procedures of the Court of Justice) in any of the cases referred?

*The expedited preliminary ruling procedure is a procedure where the nature and exceptional circumstances of the case require it to be handled quickly. The procedure can be applied irrespective of the type of proceedings. An expedited procedure must be sought only when particular circumstances create an emergency that warrants a quick CJEU ruling on the questions referred. This could arise, for example, if there is a serious and immediate danger to public health or to the environment, which a prompt decision by the CJEU might help to avert, or if particular circumstances require uncertainties concerning fundamental issues of national constitutional law and of EU law to be resolved within a very short time.*[1]

Eleven of the responding courts have requested an expedited preliminary ruling procedure in one or more of the cases referred between 2012 and 2022. However, in eight out of those eleven cases the request was not granted. In some cases, the national court has been informed of the decision not to grant the request for an expedited procedure only when the CJEU issued a judgement in the case.

*Greece* replies that the court requested a preliminary ruling according to the expedited procedure in October 2019, since the applicant otherwise would lose the right to sign a contract with the metropolitan railway company. The CJEU issued a judgement in March 2021, which mentioned that the request had been rejected by a decision of its President.

*Germany* states that the Federal Administrative Court asked for an expedited procedure by the CJEU relying on Art. 105 in March 2017 in the joined cases Ibrahim (C-297/17 and C-318/17), Sharqawi and others (C-319/17) and Magamadov (C-438/17). The CJEU rejected the petition and gave its preliminary ruling on March 2019, two years after the request for an expedited procedure.

*Italy* has in a case concerning public procurement, Tedeschi and Consorzio Stabile Istant Service (C-402/18), requested an expedited preliminary ruling procedure on the ground that the case involved a matter of principle and that the public contract at issue in the main proceedings was intended to ensure the smooth functioning of a university in Rome. The President of the CJEU rejected the request considering that the nature of the case did not require that it be dealt with within a short time. The decision was partly motivated by reference to the fact that the significant number of subjects and legal relationships potentially affected by the judgement of the Court was not deemed suitable to justify the expedited procedure.

[1] See the CJEU fact sheet on urgent preliminary ruling procedure and expedited procedure https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-10/tra-doc-en-div-c-0000-2019-201906086-05_00.pdf

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*The Netherlands* requested an expedited preliminary ruling procedure in a case concerning the lawfulness of the detention of a third-country national. The detention order had already been lifted but nonetheless the court asked for the application of the expedited procedure because the question referred was relevant for all cases pending before Dutch courts in which compliance with conditions governing the lawfulness of detention was at stake. The CJEU did not grant the request.

The most recent case where *Spain* asked for an expedited procedure concerned Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States, Puig Gordi and Others (C-158/21). The petition was rejected. The CJEU argued that since the preliminary ruling procedure requires the proceedings pending before the referring court to be stayed during the CJEU's answer, that suspensive effect inherent in the procedure cannot justify a reference for a preliminary ruling being submitted to the expedited procedure. It was also added that the fact that the persons subject to the main criminal proceedings were not in custody was a reason for not initiating the expedited procedure.

Requests for an expedited preliminary ruling procedure have been rejected in cases from *France,* Confédération Paysanne and Others (C-688/21), concerning deliberate release of genetically modified organisms, *Luxembourg,* Berlioz Investment Fund (C-682/15), concerning request for information sent to a third party and *Portugal,* Ambisig (C-469/22), regarding public procurement procedures.

*Poland* answers that an expedited preliminary ruling procedure was granted in case A.B. and Others (C-824/18) that concerned the right of appeal to a court in individual cases concerning the exercise of the position of judge of the court of last instance of a Member State (Supreme Court).

The expedited procedure has also been granted in several cases where *Ireland* has requested a preliminary ruling:D (C-428/15), OG, Parquet de Lübeck (C-508/18), PF, Prosecutor General of Lithuania (C-509/18) and The Minister for Justice and Equality (C-480/21). *Romania* answers that the expedited procedure has been granted in five related references for preliminary rulings in criminal matters.

## 9. Has your court requested an "urgent preliminary ruling procedure" (art. 107–114 Rules of Procedures of the Court of Justice) in any of the cases referred?

*The urgent preliminary ruling procedure is a procedure applicable only in cases involving questions relating to freedom, security and justice. In particular, it limits the number of parties permitted to submit written observations and allows, in cases of extreme urgency, for the written stage of the procedure to be omitted before the CJEU.*

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*According to the CJEU's fact sheet, urgent procedures are most likely to be accepted when i) there is a risk of deterioration of the parent/child relationship, ii) there is a deprivation of liberty (as required by Article 267 para 4 TFEU) and iii) when there is risk of interference with fundamental rights.*[2]

Most of the responding courts have not requested an urgent preliminary ruling procedure in any cases referred between 2012 and 2022. Five courts answer that they have requested an urgent preliminary ruling procedure (*Finland, Ireland, Lithuania, the Netherlands* and *Slovenia*).

*Finland's* request, which concerned the Schengen agreement and Directive 2013/32/EU on common procedures for granting and withdrawing international protection, was rejected. In A.S (C-490/16) the Supreme Court in *Slovenia* requested that the preliminary ruling should be dealt with under the urgent procedure, but the CJEU decided that it was unnecessary to grant the request. Later, by decision of the President of the CJEU, the case was accorded priority treatment. In C. K. and Others (C-578/16) the CJEU granted the court's request. The references for preliminary rulings in both cases concerned international protection.

In a few cases from *Ireland,* C v. M (C- 376/14) and Governor of Cloverhill Prison and Others (C-479/21), *Lithuania,* Valstybės sienos apsaugos tarnyba (C-72/22), and *the Netherlands, G. and R.* (C-383/13), the urgent procedure was granted.

# III THE PROCEDURE IN NATIONAL COURTS CONCERNING REQUESTS FOR A PRELIMINARY RULING

## 10. Does your national legislation contain any provisions concerning the procedure relating to requests for a preliminary ruling from the CJEU?

*In principle, EU law provides sufficient legal basis for a national court to make a reference to the CJEU. There is thus strictly speaking no need for implementing measures. Where such measures nevertheless exist, they can neither limit nor, arguably, extend the national courts' access to the preliminary reference procedure; a limitation would be in breach of the Member State's obligations under the Treaties, whereas an extension would presumably entail that references fall outside the scope of the CJEU's competence and thus result in declarations of inadmissibility. National law may, however, reproduce the content of EU law and may also lay*

[2] See the CJEU fact sheet on urgent preliminary ruling procedure and expedited procedure https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-10/tra-doc-en-div-c-0000-2019-201906086-05_00.pdf

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*down more detailed procedural rules for the part of the procedure taking place before the national court.*

Approximately half of the responding courts (*Austria, Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Malta, Poland, Romania, Slovakia, Slovenia, Spain, Sweden* and *the United Kingdom*) have national legislation that contains provisions concerning the procedure relating to requests for a preliminary ruling. In general, the rules state an obligation to suspend the proceedings when a question is referred to the CJEU. Some countries also have rules concerning, for instance, when a court is obliged to make a reference for a preliminary ruling (*Cyprus, Romania* and *Slovenia*), the procedure when requesting a preliminary ruling (*Bulgaria, Cyprus* and *Hungary*), the content of the request (*Cyprus* and *Hungary*) and conditions for withdrawal of a request for a preliminary ruling (*Austria*).

The *Maltese* regulation states that it is the responsibility of a Maltese tribunal, not the parties, to settle the terms of the reference to the CJEU. It also states that the reference shall identify as clearly, succinctly and simply as the nature of the case permits the question to which the tribunal seeks an answer and that it is desirable that language should be used which lends itself readily to translation. The regulation also has relatively detailed provisions on what should be included in the referring document.

The *Swedish* legislation only contains provisions relating to the obligation to give reasons for rejecting a claim to request a preliminary ruling.

In *the United Kingdom* courts and tribunals are, since the end of the transition period, prohibited from making references to the CJEU. However, the Withdrawal Agreement makes provision for certain references from courts and tribunals in the United Kingdom concerning Part Two of the Withdrawal Agreement. Additionally, the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement makes special provision for future references to the CJEU. Article 12(1) provides that the authorities shall be responsible for implementing and applying the provisions of EU law made applicable by the Protocol to and in the United Kingdom in respect of Northern Ireland. The Withdrawal Agreement also envisages the possibility of a reference concerning the interpretation and application of EU law relating to continuing budgetary obligations. The Supreme Court has its own rules of procedure which continue to govern the making of references to the CJEU.

## 11. Does your court have any routine documents, guidelines, etc., for the procedure concerning requesting a preliminary ruling?

Only nine of the responding courts have routine documents or guidelines concerning the procedure for requesting a preliminary ruling.

*Cyprus, Denmark, the Netherlands, Sweden* and, to some extent, *the United Kingdom* have internal documents regarding the practical procedural handling of cases in which a decision

has been taken to request a preliminary ruling. They include, for example, routines concerning that the parties shall have the possibility to comment on a draft request, the content of the request, the way information shall be provided to the CJEU and the way the case shall be handled following the request for a preliminary ruling to the CJEU.

*The Netherlands'* internal documents also prescribe that the 'Committee on European Union Law' (an advisory body composed of State Councillors with an expertise in EU law) should be consulted on the draft questions.

*France* has a routine document ("Guide du rapporteur") that specifies, in particular, the cases in which such a reference is necessary in accordance with the CILFIT criteria and the grounds of reference that must be used in the decision, rules on notification in the event of a referral and rules for drafting decisions after the CJEU has replied. The document is currently being updated in the light of the recent case law from the CJEU on the motivation of decisions concerning a reference for a preliminary ruling.

Some courts answer that the court itself does not have any "official" routine documents, but that such documents have been produced by others. In *Estonia* one of the judges has published a handbook on requests for a preliminary ruling from the CJEU. In *Portugal* the Centre for Judicial Studies has published a Practical Guide for Preliminary Rulings.

*Bulgaria* has established a register for all national cases in which a decision has been taken to request a preliminary ruling. The register includes, inter alia, information on referred questions, how the case will be handled following the request for a preliminary ruling to the CJEU and the national judgment after the decision of the CJEU.

## 12. What possibilities are available to a party in the case in your court to claim that the court shall request a preliminary ruling from the CJEU?

In all responding countries the parties may claim that the court shall request a preliminary ruling, in general in the appeal or later during the subsequent proceedings. The decision as to whether to make such a request to the CJEU lies, however, of course with the national court.

*Italy* states that the possibility for the parties to request referral should be granted up to 30 days (or 15 in special proceedings) before the date of the public hearing. It is the same term established for submitting final briefs. Sometimes the parties make a request for a preliminary ruling during the public hearing, considering that the question may be raised *ex proprio muto* as well.

In *the United Kingdom* courts and tribunals are, since the end of the transition period, as a rule prohibited from making requests for preliminary rulings to the CJEU (see answer to question 10). In the situation where such requests are exceptionally permitted there are no rules as to how parties may claim that the court should refer a question for a preliminary ruling to the

CJEU. However, there is an opportunity on the Supreme Court's standard application form for leave to appeal and on its standard form for notice of objection and notice of acknowledgment, for a party to indicate that they are asking the Supreme Court to make a reference to the CJEU.

## 13. Estimate how common it is that your court makes a request for a preliminary ruling after the question has been raised by a party relative to when the question is raised ex officio (ex proprio muto) by the court.

*It is for the national court to decide of its own motion (*ex proprio muto*) whether to refer a reference for a preliminary ruling, and how the questions should be formulated. It is thus within the remit of the national court to investigate and establish the legal position in accordance with the principle of jura novit curia. In effect, the national court is free to refer the matter for a preliminary ruling even if the parties oppose this. The CJEU has underlined that each national court has an independent right to refer the matter to the Court of Justice when it considers it necessary to rule on the matter (Salonia v Poidomani e Giglio C-126/80).*

About 40 percent of the responding courts estimate that it is most common that the court makes a request for a preliminary ruling after the question has been raised by a party (*Belgium*, *Cyprus, Denmark, France, Hungary, Italy, Luxembourg, Malta, Romania, Slovakia, Sweden* and *the United Kingdom*). About 20 percent estimate that it is most common that the question is raised *ex proprio muto* by the court (*Croatia, Czech Republic, Estonia, Germany* and *Latvia*). About 40 percent of the courts estimate that both scenarios are equally common (*Austria, Bulgaria, Finland, Greece, Ireland, Lithuania, the Netherlands, Poland, Portugal, Slovenia* and *Spain*).

## 14. Briefly describe what the procedure looks like when your court considers requesting a preliminary ruling from the CJEU.

The procedure when considering requesting a preliminary ruling reflects the general procedure for cases in the respective courts. In cases requiring leave to appeal the decision to request a preliminary ruling is, in general, taken after the decision to grant leave to appeal. In cases where a court holds an oral hearing, the decision to request a preliminary ruling is usually taken after the hearing. Most commonly, the decision to request a preliminary ruling is taken in a composition of the same number of judges as when deciding a case on the merits.

None of the responding courts have any specific timeframes prescribed for handling claims to request a preliminary ruling. Several courts answer that if they request a preliminary ruling the court at the same time decides that the proceedings shall be suspended.

Several courts answer that the parties are given the opportunity to comment on a draft of the request for a preliminary ruling (*Denmark, Finland, Malta, Sweden* and *the United Kingdom*). *The Netherlands* only invites the parties to comment on the questions. *Luxembourg* lets the parties comment on the appropriateness and content of the preliminary questions proposed by the court. In *Latvia* the judge referee prepares and sends a letter to the parties, asking for their views on the interpretation of the relevant EU provisions and setting out the court's observations and possible questions on which the parties may comment and express their opinions.

Other courts answer that the parties are not consulted on the content of the preliminary question to the CJEU (*Austria, Poland* and *Slovenia*). *Estonia* has sometimes presented the parties with draft questions but sometimes simply text on the issues. *Lithuania* sometimes invites the parties to provide their positions on the EU law rule, but the court does not consult with the parties on the final draft of the request. In *Spain* the court holds a hearing on the opportunity to raise the question, specifying the terms of the question and stating the reasons for its necessity.

Some courts answer that, in cases where the order for reference to the CJEU is instituted by the court *ex proprio motu*, the court must hear the parties and give them opportunity to express their views (*Cyprus and Romania*).

*The Netherlands* has a special procedure before the court decides to request a preliminary ruling from the CJEU. A first draft of the preliminary reference and questions is produced by a chamber of three State Councillors. The draft is then presented to the "Committee on European Union Law", an internal advisory body composed of State Councillors with an expertise in EU law. This advisory body is invited to comment on the reference and draft questions. Once the questions have been finalized the parties are invited to comment. The draft questions are also sent to other courts in the Netherlands via two networks concerning EU law and administrative law for district courts and appeal courts. The district courts and appeal courts are only informed of the draft and thereby the Court's intention to make a request for a preliminary ruling. They are not invited to advise on the draft question.

*Czech Republic* answers that cases after cassation complaint are assigned to a specific judge (rapporteur), who examines the case and comes to a preliminary legal conclusion which may include a consideration of whether it is necessary to request a preliminary ruling. The judge may request that the Documentation and Analytics Department elaborate an analysis of the EU law or CJEU case law related to the legal issue at hand.

Almost all the responding courts answer that a decision not to request a preliminary ruling is normally taken in the final ruling of the case. *Cyprus,* however, answers that the court will hand down a separate decision for dismissing the application concerning a preliminary ruling before it proceeds to issuing its final decision.



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## 15. Briefly describe which considerations (in substance) that are made when your court examines the question whether to request a preliminary ruling or not from the CJEU?

*The obligation of courts of last instance to request a preliminary ruling, currently laid down in the third paragraph of Article 267 TFEU, has been (somewhat) limited by the CJEU´s case law. The CILFIT-ruling from 1982 provides three situations in which national courts or tribunals of last instance are not subject to the obligation to make a request for a preliminary ruling, the CILFIT criteria. Section I of the report, Introduction, provides an overview of the CILFIT criteria and the more recent ruling Consorzio.*

All responding courts state that they apply the CILFIT criteria in order to determine whether there is a need to make a request for a preliminary ruling. In general, the court then conducts an analysis of the relevant EU law provision and examines the way it has been interpreted by the CJEU, as well as whether there are any pending cases regarding preliminary rulings from other countries. Some courts answer that when analyzing the relevant EU law provision, in addition to relevant CJEU case law, they take into account, among other things, guidance documents from the Commission.

*Estonia* answers that when the court conducts an analysis of the relevant provision it always includes other language versions, as they have had several experiences of the Estonian version substantially differing from the French, English and/or German versions.

The majority of responding courts answer that normally they do not examine how other countries interpret the provision in order to be able to assess whether the issue is *acte clair*. Some states answer that sometimes they have asked in the ACA forum how other states have dealt with the same questions (*Estonia, Latvia, the Netherlands* and *Slovakia*). *Slovenia* points out that it is common to look at the practice of at least some other supreme courts if it is accessible.

*The United Kingdom* states that the court examines carefully whether the determination of a point of EU law really is necessary for deciding the case, as it is conscious that making a reference will introduce further delay for its resolution.

## 16. Is the government or other branches of the executive power ever involved before your court requests a preliminary ruling?

*Provisions of EU law are in many instances the result of complicated political compromises and often leave substantial legitimate room for judicial interpretation. Moreover, it is clear that a large number of references for preliminary rulings requires the CJEU to not only interpret EU law, but also to properly understand the political intention underlying the national legal provisions and to appreciate the specific application of such provisions to the case in hand.*



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*Against this background, the right of Member States to submit observations to the CJEU in the context of preliminary references has been found to be important for the proper functioning of the system. This system introduces an unusual possibility for direct communication by political actors in a judicial sphere of decision-making.*

Almost all the responding courts state that neither the government nor other branches of the executive power are ever involved before the court requests a preliminary ruling from the CJEU.

*Austria, Belgium, Czech Republic, Estonia, France* and *Malta* clarify that the government or other branches of the executive power can be parties to the administrative court proceedings and have an opportunity either to argue that the court should request a preliminary ruling or to state their view if the other party has made such an argument. *Luxembourg* states that the administration behind the contested act is represented before the court by a government representative and thus is entitled to submit its comments on the appropriateness and content of the preliminary questions proposed by the court. Furthermore, *Estonia* points out that the administrative courts, on certain grounds, have the possibility to ask for information and/or an opinion from authorities that might not be parties to the proceedings but have expert knowledge on the matter. The Supreme Court of Estonia has found this possibility quite useful, especially in more complex cases. In addition, the court has on a couple of occasions involved the European Commission in a similar way.

## 17. Are there ever any contacts between your court and the government or other branches of the executive power to inform about a preliminary ruling after it has been requested by your court?

Almost all the responding courts state that there are no contacts between the court and the government or other branches of the executive power to inform about a preliminary ruling after it has been requested.

In *Germany*, however, the Federal Ministry of Justice is informed of each request after it has been adopted. Furthermore, in *Slovakia* the resolution on the suspension of proceedings when the Supreme Administrative Court decides to request a preliminary ruling must be immediately delivered to the Ministry of Justice. Similarly, *Hungary* states that the order of the referring court shall be forwarded to the Minister of Justice for his or her information simultaneously with the sending of the order to the CJEU. This obligation was interpreted by the CJEU in the judgment in VB Pénzügyi Lízing (C-137/08).[3]

[3] In this judgment CJEU confirms that a domestic obligation for national courts to inform e.g. the Ministry of Justice is compatible with EU law as long as the requirement does not interfere with the dialogue between the courts set up by Article 267 TFEU.

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## 18. How does your court state the reasons for rejecting a claim for a preliminary ruling (cf. question 29 below regarding cases where leave to appeal or other "filters" are prescribed)?

Several courts answer that they, in general, base a rejection of a claim to request a preliminary ruling on the case law of the CJEU and the *acte clair* and *acte éclairé* doctrines. *Spain* points out that in any case, the reasoning must be sufficient and capable of answering all the questions raised by the parties at the hearing. Numerous courts (*Belgium*, *Bulgaria, Croatia, Finland, Hungary, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Slovenia* and *Sweden*) indicate that the decision at a minimum will state whether a referral is unnecessary because the question of EU law raised is irrelevant for the dispute, the interpretation of the EU law provision concerned is based on the CJEU´s case law or the interpretation of EU law is so obvious as to leave no scope for any reasonable doubt. In addition, a preliminary ruling in *Belgium* is sometimes rejected based on other factors such as lack of competence to deal with the appeal, lack of clarity of the claim, absence of a cross-border aspect or a risk of jeopardising a party's rights of defence. *Lithuania* highlights that the European Court of Human Rights (ECtHR) found that there was a violation of article 6 of the European Convention on Human Rights due to insufficient reasoning on what specific legal grounds the court considered the application of EU law to be so obvious that no doubts could arise (Baltic Master Ltd vs. Lithuania, 55092/16, 16 April 2019).

Some courts (*Estonia, France, Germany, Lithuania, Latvia, the Netherlands, Slovakia* and *Slovenia*) state that the reasons for the rejection are normally included in the decision on the merits. *Austria* and *Czech Republic* indicate that the reasoning may also be deduced from the reasoning of the judgement. *Sweden* answers that there is more scope for giving detailed reasons for rejecting a claim in cases which are examined on the merits, compared to cases where leave to appeal is denied.

Some courts (*Bulgaria, Cyprus, Finland, Hungary* and *Sweden*) highlight that there are national provisions on the reasoning for rejecting a claim although these are not always aimed specifically at preliminary rulings. Other courts (*Austria* and *Czech Republic*) respond that there are no national provisions explicitly stating whether the court must state the reasons for rejecting a claim.

In *Ireland* the leading authority of the court's obligation to make a preliminary reference is in the national case law which refers to both CILFIT and Consorzio.

Several courts (*Czech Republic, Denmark, Finland, Lithuania, Luxembourg, the Netherlands, Slovenia, Sweden* and *the United Kingdom*) specifically state that the extent of the reasoning depends on the individual case. In *Lithuania* the reasoning can depend on whether the *acte clair* or *acte éclairé* doctrine is followed, e. g., if the matter has already been directly addressed in the CJEU's case law there will be concise information about such a case and the rules formulated therein. Similarly, *Cyprus, Czech Republic* and *Estonia* stress that if the basis for rejection is the *acte éclairé* doctrine, the reasoning will include references to the relevant CJEU

case law. However, when arguing for the *acte clair* doctrine, different language versions are often referred to in *Estonia*.

*Czech Republic* points out that the extent of the reasoning can depend on the activity of the parties, their argumentation and the complexity of the legal issue at hand. For example, if the party raising a specific question provides detailed explanations as to why the request should be made, or only presents general/vague argumentation. Generally, the court first considers whether the question raised is relevant to the case and subsequently whether the legal issue at hand is *acte clair* or *acte éclairé*.

*The Netherlands* answers that the court does not state the reasons for rejecting requests for preliminary rulings in cases which are decided by summary judgment in accordance with the Immigration Act. Summary judgments are only used in cases where the appeal does not raise questions that must be answered in the interest of the unity or the development of the law, or to ensure effective judicial protection in the general sense. The ECtHR has previously held that the dismissal of an appeal by summary judgment is in accordance with article 6(1) of the European Convention on Human Rights (Khalid El Khalloufi vs. the Netherlands, 37164/17, 26 November 2019).

## 19. Following the ruling of the CJEU in Consorzio and of the European Court of Human Rights in Sanofi Pasteur v. France and Rutar and Rutar Marketing d.o.o. v. Slovenia, does your court give more extensive reasons for rejecting a party's claim to request a preliminary ruling?

*In the above-mentioned judgements the CJEU and the ECtHR have highlighted the national court's obligation to state reasons when rejecting a party's claim to request a preliminary ruling. The ECtHR has stressed the importance of fostering public confidence in an objective and transparent justice system and the CJEU has stated that a national court or tribunal against whose decisions there is no judicial remedy under national law must show either that the question of EU law raised is irrelevant for the resolution of the dispute, that the interpretation of the EU law provision concerned is based on the Court's case-law or, in the absence of such case-law, that the interpretation of EU law was so obvious to the national court or tribunal of last instance as to leave no scope for any reasonable doubt.*

Only *Austria, Malta, the Netherlands, Romania* and *Spain* answer that the reasons for rejecting a party's claim to request a preliminary ruling are more extensive since the rulings of the CJEU and the ECtHR.

## 20. Is it possible to appeal a decision of your court to make or not make a request for a preliminary ruling?

Almost all the responding courts answer that it is not possible to appeal a decision of the court to make or not make a request for a preliminary ruling. However, *Germany* and *Portugal* respond that it is possible.

*Spain* answers that although it is not possible to appeal such a decision of the Supreme Court, a remedy to the Constitutional Court could be made under certain circumstances. Similarly, *Slovenia* stresses that the only, and very limited, option to appeal a decision of the Supreme Court is a constitutional complaint. This is possible in the case of complaints stemming from the violation of human rights and fundamental freedoms by individual acts, for example if the court doesn't respond to a party's claim for requesting a preliminary ruling or does not fulfil its duty to give related reasons. *Czech Republic* also states that though it is not possible to appeal a decision, a party to the proceedings in the court may lodge a complaint to the Constitutional Court, claiming that the decision interfered with the party's fundamental rights and freedoms. In this context, the Constitutional Court has repeatedly held that failure to provide reasoning for the rejection of a party's request for a case to be referred to the CJEU for a preliminary ruling constitutes a violation of the right to a fair trial. A complaint in *Belgium* is also possible to the Court of Cassation in the event of conflicts regarding jurisdiction.

*Italy* highlights that the CJEU recently in C-497/20 (Randstad Italia) rejected the request for a preliminary ruling referred by the Supreme Court of Cassation seeking to establish whether EU law must be interpreted as precluding a provision of the Constitution of the Italian Republic, which has the effect that individual parties cannot challenge the conformity with EU law of a judgment of the highest court in the administrative order (the Council of State) by means of an appeal before the highest court in the Italian judicial order (the Supreme Court of Cassation). The CJEU considered that the provision limits the jurisdiction of the Supreme Court of Cassation to hear and determine appeals against judgments of the Council of State, regardless of whether these are based on provisions of national law or of EU law. In those circumstances, the CJEU held that such a rule of domestic law does not breach the principle of equivalence.

## 21. Can a lower court's decision to make or not make a request for a preliminary ruling be appealed to a higher court?

*In some cases, the CJEU has ruled on the possibilities of challenging a national court's decision concerning a request for a preliminary ruling. In its earlier case law (Rheinmuhlen, C-146/73) the CJEU stated that a rule of national law whereby a court is bound on points of law by the rulings of a superior court cannot on this ground alone deprive the inferior courts of their power, provided for under Article 267 TFEU, to request a preliminary ruling from the CJEU. However, Article 267 does not preclude a decision of a national court to make such a request*

*from the CJEU from remaining subject to the legal remedies normally available under national law. In a more recent ruling (Cartesio, C-210/06), the CJEU has held that while EU law does not prevent lower courts' decisions to make requests for preliminary rulings from being subject to appeal, the outcome of that appeal cannot limit the lower court's possibility to make or retain such a request.*

Several states answer that it is possible to appeal a lower court's decision to make or not make a request for a preliminary ruling to a higher court (*Belgium*, *Denmark, France, Germany, Hungary, Malta, the Netherlands, Portugal, Slovakia, Spain* and *the United Kingdom)*.

*Czech Republic, Germany, Hungary, the Netherlands*, *Slovakia* and *Slovenia* clarify that if a party seeks to challenge a lower court's decision not to request a preliminary ruling it has to challenge the final ruling of the court. In *Czech Republic* a decision not to make a request may be challenged by the unsuccessful party before the Supreme Administrative Court on grounds of unlawfulness, unreviewability or procedural faults. Therefore, the rejection may be *de facto* appealed as a part of the final decision. In *Slovenia* the party can argue that a violation has occurred because the Administrative Court didn't adequately respond to the application of EU law. The Administrative Court is obliged to give a response to such a claim if it is relevant for the case. If the Supreme Court determines that there has been a procedural violation the case will be referred to the Administrative Court. Also in *Portugal*, a preliminary reference order can be challenged in the sole appeal to be lodged against the final decision. Though, in some cases a separate appeal is allowed under the Civil Procedure Code. *Slovakia* clarifies that the result of a successful claim in this matter will result in the Supreme Administrative Court filing a request for a preliminary ruling.

Both *Denmark* and *the Netherlands* specifically state that only a lower court's decision not to make a request for a preliminary ruling can be appealed to a higher court. *Germany* specifies that if the party succeeds in its appeal, the higher court will request the preliminary ruling. Also in *the Netherlands*, the higher court can decide to make a request for a preliminary ruling itself.

In *Hungary* it was formerly possible to separately appeal against an order on the referral of a case for a preliminary ruling (but not the rejection of a referral). However, the provision allowing such an appeal was repealed by a subsequent amendment because of the CJEU's judgment in Cartesio (C-210/06). Based on the same case the Supreme Court in *Estonia* has found that such an appeal is inadmissible.

The Chief Public Prosecutor in *Hungary* may, in the interests of legality, challenge a lower court's judgment or order before the Supreme Administrative Court. The removal of this procedural rule from the Hungarian legal system is currently under way, due to the CJEU's judgment in IS (C-564/19).

*Italy* notes that although the lower court's decision cannot be appealed, it could be challenged based on non-compliance with EU law and the parties have the possibility, in their appeal to the Council of State, to claim that the court shall request a preliminary ruling from the CJEU.

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### 22. Are there any differences in the procedure in your court for requesting a preliminary ruling when the question is raised in a case where the expedited or urgent procedure is applied (cf. question 8 and 9 above)?

Only *Slovenia* answers that there are differences in the procedure for requesting a preliminary ruling when the question is raised in a case where the expedited or urgent procedure is applied, by prioritising these cases, if possible, so that they are decided before other cases sent to the court.

Out of the responding courts 16 (*Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Hungary, Ireland, Latvia, Malta, Romania, Slovakia, Sweden* and *the United Kingdom*) answer that these procedures have not been applied.

## FORMULATION OF THE QUESTIONS SUBMITTED TO THE CJEU

### 23. Briefly describe how questions to the CJEU in general are formulated when your court requests a preliminary ruling.

Many of the responding courts (*Belgium*, *Croatia, Estonia, Finland, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia, Sweden* and *the United Kingdom*) state that the manner in which the questions in a request for a preliminary ruling are formulated depends on the individual case. *Romania* specifies that it depends on the degree of complexity of each individual case. Several courts (*Belgium*, *Bulgaria, Croatia, Cyprus, Denmark, Finland, Greece, Latvia, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia* and *Sweden*) describe the content of a request in line with para. 14–20 of the CJEU recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (2019/C 380/01). In general, this includes a description of the EU law and national provisions, a brief description of the relevant circumstances, a description of why there is a need to make a request for a preliminary ruling and the question for which the court wishes to receive an answer. In *Malta* the procedure for requesting a preliminary ruling is regulated in detail in the national legislation.

The answers from a vast majority of the responding courts (*Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Slovakia, Slovenia, Spain* and *Sweden*) indicate that the questions are usually formulated as precisely and concisely as possible. The questions in *Estonia* are usually formulated in a way that is the most useful for the specific case. However, when the court is aware of a larger issue that needs resolving, this might impact the wording of the questions. In formulating the questions, the terminology of the CJEU is used in *the Netherlands*. *Romania* also specifies that the use of terms in the way a question is set out aims to ensure that the style is precise and concise, as far as possible.

In *Spain* the court usually asks several short and accurate questions instead of long and complex ones. The questions are also formulated in such a way that the answers of the CJEU can effectively respond to the specific doubts that have arisen in the case regarding the application and scope of EU law. Similarly, *Czech Republic* indicate that questions formulated in a narrow way can provide the most concrete answer because a general or indirect answer often rather raises further questions. *The Netherlands* highlights that the questions ought to reflect exactly what the court is asking the CJEU for. The questions are formulated in such a way that they can be understood without reference to the motivation that accompanies them. *Germany* points out that the wording of the question must grasp its relevance for the case, which usually causes a certain degree of precision in the wording. Since the CJEU does not always answer the questions the way they were asked the court tries to find a wording of the questions which allow little deviation by the CJEU. In *Luxembourg* the court formulates the question with the aim to obtain as precise answers as possible.

In *Italy* the questions are usually formulated to give the CJEU as much detail as possible and allow a wide and complete ruling that helps to resolve the dispute. *Austria* points out that the questions can be unrelated individual questions or alternative question asked in the event of a certain response to the first question. *Czech Republic* stresses that a request for a preliminary ruling is sometimes based on a party's argument and that the party itself occasionally suggests a formulation of the question to be referred. Thus, the court can take inspiration from the parties. *The United Kingdom* also highlights that when the court intends to make a reference, it will give consequential directions as to the form of the reference and the parties are invited to submit an agreed draft of the question(s) to be referred.

*France* explains that the questions are subject of a separate decision ("*avant-dire-droit*"), i.e., before the court will give an irrevocable ruling on the dispute referred to it. The reasoning is transcribed in the grounds of the decision. This enables the parties, the CJEU and other courts to identify the criteria to refer the question for a preliminary ruling. More generally, the information will help to clarify the content of the question referred and to describe the context in which it arises, to facilitate the CJEU's work without restricting its freedom to formulate an answer.

## 24. Are the parties usually given the opportunity to comment on the request for a preliminary ruling before the request is submitted to the CJEU (cf. the CJEU's recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings, para. 13)?

A vast majority of the responding courts answer that the parties are usually given the opportunity to comment on the request for a preliminary ruling before the request is submitted to the CJEU.

Some courts (*Bulgaria, Denmark, Finland, Malta* and *Sweden*) state that the parties may comment on the court's draft of the request for a preliminary ruling. In *Portugal* and *Spain*, the parties may also comment on all aspects of the request. *The Netherlands* states that the parties are given the opportunity to take note of and comment on the draft preliminary question that the court intends to refer to the CJEU, though the parties are not provided with the full text of the draft. Similarly, in *Latvia* the parties may state their views on the interpretation of the relevant EU law provisions and on the questions to be asked by the court.

Other courts (*Belgium*, *Cyprus, Estonia, Germany, Greece* and *Slovakia*) give the parties an opportunity to comment on the need for a request for a preliminary ruling, for example by the possibility to submit comments on the other party's request for a preliminary ruling or the court's general explanation as to why it is considering making a request. In *Cyprus* all parties will be heard in a public hearing while at the same time having the opportunity to submit written submissions. The parties can then express their views on the merits of the matter but also on the phrasing of any potential preliminary questions. Also in *Latvia*, the parties are sometimes allowed to be heard orally at a preparatory hearing if such is held.

When the Supreme Court in *the United Kingdom* intends to make a reference, it will give consequential directions as to the form of the reference and the parties are invited to submit an agreed draft of the question(s) to be referred. A further statement of facts and issues, for the use of the CJEU, may also be requested from the parties.

*Lithuania* states that parties are sometimes given the opportunity to comment on the relevant EU law provision but not the ruling itself.

*Ireland* answers that a preliminary reference request is written and delivered in court where the parties are told that the court is referring a question of law to the CJEU and sometimes the parties are invited to contribute to the phrasing of the questions.

*Austria, Croatia, Czech Republic, Hungary, Poland* and *Romania* state that parties are usually not given the opportunity to comment on the request for a preliminary ruling before the request is submitted to the CJEU. Though, *Czech Republic* explains that any submission by one party is forward to the others. Thus, the parties may subsequently express their view. In *Romania* the parties only have the right to discuss and argue the factual and moot cases set out in the application and to express their procedural position as to whether the application for a preliminary ruling should be granted or rejected.



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**25. In a request for a preliminary ruling, does your court usually state its own view on the answer to be given to the question referred (cf. the CJEU's recommendations, para. 18)?**

A vast majority of the responding courts (*Austria, Belgium, Bulgaria, Croatia, Cyprus, Denmark, France, Greece, Hungary, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Spain, Sweden* and *the United Kingdom*) answer that they usually do not state their own view on the answer to be given to the question referred. *Germany* points out that the court sometimes, under the discretion of the deciding judges, state its own view. *Poland* also answers that the presentation of the court's view is solely within the competence of the judges who decide on the preliminary ruling. Though, *Luxembourg* points out that only the CJEU can provide answers to its questions. For this reason, *Austria* does not consider a statement of the court's view on the matter necessary.

*Estonia, Italy* and *Poland* refer to cooperation reasons as to why the court includes its own reasoning to the CJEU. In a similar manner, *the Netherlands* presents two reasons for the court to suggest its view. Firstly, it provides information to the CJEU on the relevant provisions of national law and national case law as well as on the facts of the dispute in the main proceedings. Secondly, it can facilitate a thorough discussion of the legal questions that are raised. This helps the CJEU to conduct a deeper legal analysis of the question and to answer the question referred whilst taking due account of the (national) legal and factual context of the case. In cases where the court does not suggest its own answers to the questions it refers, it will nevertheless outline the implications of the possible answers of the CJEU for the national legal system and the case before it.

*Czech Republic* answers that the court is relatively assertive in this respect and states its view explicitly in most of the requests. The reasons for this may vary and depend on the individual case, the judge rapporteur and the chamber which made the request. Though, in some requests the court does not state its view at all but rather formulates an open question. Other requests only contain references to the previous case law of the CJEU and present interpretive alternatives that may come into consideration. Requests with such a reasoning may hint to the fact that members of the chamber had different views on the answer to be given to the question referred. *Poland* also highlights that the presentation of the court's view is solely within the competence of the judges who make the request and that failure to include the national court's view of the case may be due to the divergent views of judges.

Several of the responding courts (*Belgium*, *Bulgaria, Croatia, France, Lithuania, Romania, Slovenia, Sweden* and *the United Kingdom*) answer that they usually do not state their view since it could give the impression that the court is prejudging the final outcome of the case. Also in *Cyprus*, the court doesn't generally state its position for reasons of impartiality. Though *France* highlights that the wording of the question, by virtue of its precision, clearly indicates the points on which it believes the CJEU should rule to shed light on the case at issue in the main proceedings. It is, however, open to the public rapporteur, who gives his opinion at the

hearing, to give his or her personal point of view and to make observations on the question put. *Slovenia* also indicates that it is quite often possible to deduce the reasoning of the court behind the questions referred to the CJEU. The *Latvian* court answers that the request for a preliminary ruling usually contains a very detailed analysis of the relevant issues, providing extensive reasons for the court's doubts regarding the interpretation of EU law provisions. The request may express the court's preliminary view on the interpretation of the relevant provisions, if one has been formed, but more often the court expresses its doubts. *Slovakia* states that the court focus on the questions the CJEU must answer rather than the answers.

## LEAVE TO APPEAL AND OTHER "FILTERS"

### 26. Does your national legal system prescribe any requirement of leave to appeal or other forms of "filter" in order for a case to be admitted for adjudication in your court?

*In Lyckeskog (C-99/00), a national Court of Appeal requested a preliminary ruling from the CJEU asking the question if the Court of Appeal was to be regarded as the last instance, considering that leave to appeal was necessary for the case to be heard by the Supreme Court. The CJEU found that the fact that leave to appeal is required in order for an appeal to be heard does not have the effect of depriving the parties of a judicial remedy. However, the individual must have a judicial remedy in the form of a right to appeal and thereby an opportunity for the higher court to make a request.*

Many of the responding courts (18 of 28) answer that their national legal system prescribes either a requirement of leave to appeal or other forms of filter for a case to be admitted for adjudication (*Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Malta, Portugal, Slovenia, Sweden* and *the United Kingdom).*

It is most common that leave to appeal or other filters, such as certain criteria for declaring a complaint admissible, apply to all or to most of the responding court's cases.

In general terms, the criteria for granting leave to appeal or declaring a case admissible often relate to whether the case at hand raises issues of principle or to the need for securing uniformity of legal practice. Other criteria relate to the existence of manifest errors or whether there are other more extraordinary grounds for the case to be admitted for adjudication by the highest instance. Some of the responding courts also describe requirements relating to monetary thresholds, e.g., that the subject matter of the contested decision involves a certain amount of money/a certain fine.

*Hungary* states that Curia can grant a petition for review on account of the need for a preliminary ruling from the CJEU.

*Bulgaria, Croatia, Italy, Lithuania, Luxembourg, the Netherlands, Poland, Romania, Slovakia* and *Spain* explicitly state that their legal systems do not prescribe any requirements of leave to appeal or other forms of filter.

### 27. Is the preliminary ruling procedure different when the question is raised in a case requiring leave to appeal or another "filter" (cf. question 14 above)?

All courts answer that the preliminary ruling procedure described under question 14 above does not differ if the question of making such a request is raised in a case where leave to appeal or another "filter" applies, as compared to a case which is tried directly on the merits.

*Estonia* and *Latvia* add that if their supreme courts find that a request for a preliminary ruling would be relevant to the solution of the case, and is necessary according to the CILFIT criteria, leave to appeal *must* be granted (or filters set aside) in the case.

*France* clarifies that a request for a preliminary ruling to the CJEU can only be made *after* the case has been admitted for adjudication. *The United Kingdom*, on the other hand, states that the Supreme Court may make such a request *before* determining whether to grant permission to appeal.

### 28. Please estimate in how many cases, out of the total amount of cases in which your court has made a request for a preliminary ruling from the CJEU during the period 2012 to 2022, leave to appeal or other "filters" have been required in order for the case to be admitted for adjudication?

| | |
|---|---|
| Austria | 20 of 20 cases |
| Belgium | 45 of 45 cases |
| Bulgaria | None |
| Croatia | - |
| Cyprus | 2 of 2 cases |
| Czech Republic | 1 of 31 cases |
| Denmark | 2 of 8 cases |
| Estonia | 9 of 9 cases |
| Finland | In 13 out of 32 cases (the comprehensive system of leave to appeal was introduced in |

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| | |
|---|---|
| | the beginning of 2020, hence numbers do not accurately reflect the situation). |
| France | 92 of 92 cases |
| Germany | Majority of cases (cannot do serious estimation) |
| Greece | 4 of 13 cases |
| Hungary | 9 of 36 cases |
| Ireland | 28 of 28 cases |
| Italy | - |
| Latvia | - |
| Lithuania | - |
| Luxembourg | - |
| Malta | - |
| The Netherlands | - |
| Poland | - |
| Portugal | None |
| Romania | - |
| Slovakia | - |
| Slovenia | 4 of 15 cases |
| Spain | - |
| Sweden | 9 of 16 cases |
| The United Kingdom | 17 of 17 cases |



**29. Is the reasoning different as regards rejections of a claim to make a request for a preliminary ruling in cases in which leave to appeal or other "filters" are prescribed?**

*Decisions not to grant leave to appeal are usually succinctly reasoned as the case will not be examined on the merits. However, as regards the obligation to state reasons when rejecting a*

*party's claim to request a preliminary ruling (cf. question 19 above), the case law of the ECtHR and the CJEU does not seem to make a distinction between cases where leave to appeal or other "filters" are prescribed – and leave to appeal is not granted – and cases examined on the merits.*

A vast majority of the responding courts answer that the reasoning as regards rejection of a claim to make a request for a preliminary ruling does not differ in cases in which leave to appeal or other "filters" are prescribed.

*Czech Republic* states that prior to an amendment of the Code of Administrative Justice in 2021, decisions by the Supreme Administrative Court to dismiss a cassation complaint for inadmissibility did not have to be reasoned at all (the rule was repealed in 2021). However, in practice, decisions on inadmissibility were usually reasoned even before the amendment but were generally shorter and focused on reasons of inadmissibility. However, the practice struggled with the question of the extent and depth of reasoning and sometimes oscillated between an approach that was essentially limited to mere references to the previous case law and an approach that slid into reasoning that matched standard decisions on merits. This also applies to the reasoning of decisions on inadmissibility concerning requests for preliminary rulings to the CJEU. Thus, in some decisions, it is mentioned (in the recapitulative part) that the complainant argued that a request should be made, but the Supreme Administrative Court does not react specifically to the argument in its reasoning.

*Estonia* also states that decisions not to grant leave of appeal are usually made with almost no reasoning (except for a reference to the legal basis). Following the ECtHR's case law on the subject, the Supreme Court has discussed the need to give more reasoning when a party has asked the court to request a preliminary ruling. Now, the court's practice is that, as long as the request for a preliminary ruling is not raised for the first time in the appeal in cassation but has already been discussed in courts of lower instance, the court does not need to repeat the reasons why a preliminary ruling was considered unnecessary in earlier instances. However, when the issue has not been analysed by courts of lower instance, the ruling might indeed need to include (brief) reasons for rejecting the claim for a preliminary ruling according to CILFIT criteria. In practice, it has not yet happened in a case that would fall under Article 6 of the European Convention on Human Rights, so no certain conclusions on the court's practice may yet be deduced.

*Slovenia* describes that if the Supreme Court decides not to grant "leave to revision" it does not state any reasons for that decision. According to the Supreme Court it is not relevant if the party has also submitted a claim for a preliminary ruling or not. Legal issues arising from EU law are, however, assessed in the same way as those arising from national law and the Supreme Court has exactly the same approach as with regard to Slovenian law. Slovenia describes that recently there has been a development of inconsistent jurisprudence between the Constitutional Court and the Supreme Court on this point. The Constitutional Court has ruled that EU law (specifically TFEU and the Charter) requires that the Supreme Court provide

reasons for not granting leave to revision, which relate to the dismissal of a party's proposal to make a reference to the CJEU. In other words, the question whether to request a preliminary ruling or not shall, in view of the Constitutional Court, already be considered in the decision-making process of granting leave to revision. As a result of this development, the Supreme Court has submitted a request for a preliminary ruling to the CJEU with the following questions (see Kubera [C-144/23]):

1. Does the third paragraph of Article 267 TFEU preclude a provision of the Code of Civil Procedure under which, in proceedings relating to the grant of leave to bring an appeal on a point of law (*revizija*), the Supreme Court of Slovenia is not to consider the issue of whether, as a result of a party's request that a reference for a preliminary ruling be made to the CJEU, it is required to refer one or more questions to the Court of Justice for a preliminary ruling?

If Question 1 is answered in the affirmative:

2. Must Article 47 of the Charter, regarding the obligation to state the reasons for judicial decisions, be interpreted as meaning that a procedural decision refusing a party's application for leave to bring an appeal on a point of law (*revizija*) under the Code of Civil Procedure constitutes a 'judicial decision' which must state the reasons why the party's request that a reference for a preliminary ruling be made to the CJEU should not be granted in the case at hand?

*The United Kingdom* adds that when the Supreme Court refuses permission to appeal in a case where the application includes a contention that a question should be referred to the CJEU, the Supreme Court gives additional reasons for its decision not to grant permission to appeal, reflecting the reasoning in CILFIT.

# IV THE PROCESS AFTER HAVING RECEIVED THE JUDGMENT OF THE CJEU

## 30. Briefly describe the handling after your court has received the judgment from the CJEU regarding a preliminary ruling.

A vast majority of the responding courts describe the initial handling of a case *after* the national court has received the judgment from the CJEU in a quite similar way. In sum, the courts continue with the proceedings of the previously suspended procedure and the rapporteur/judge referee continues the legal examination of the case in light of the CJEU's preliminary ruling. A draft of a final decision is then presented for a panel of judges, followed by one or more deliberations and the presentation of a final judgment by the national court. In *Denmark*, it is the youngest Justice in the Supreme Court (in terms of appointment), participating in the specific case, who conducts the deeper legal analysis of the question considering the judgment from the CJEU.

*Croatia, Latvia, Luxembourg, the Netherlands* and *Poland* state that the final judgment in the national court is delivered by three Justices, while *Denmark, Finland, Slovenia* and *Sweden* answer that the main rule is that the judgment is delivered by five Justices.

In *the Netherlands*, the draft of the final judgment is first presented to internal advisory bodies, such as the Committee on the Law of the European Union (see question 11 above).

Many of the responding courts describe that the parties in the national case are given the opportunity to comment on the CJEU's ruling before the national court delivers its final judgment (*Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Poland, Spain* and *Sweden*). In Estonia, the court – in addition – often explains its own initial conclusions from the preliminary ruling and directs the parties' attention to the most relevant issues left to discuss.

In *Italy* and in *the United Kingdom* there are time limits for the parties to make submissions in the case. For example, in *the United Kingdom* the parties must file a written submission within 28 days after the CJEU ruling on whether a further hearing before the Supreme Court is necessary or on how the appeal is to be disposed of. In *Slovenia* on the other hand, the parties are usually not given the opportunity to comment on the CJEU ruling, although it is not excluded.

In *the Netherlands*, the AJD publishes a press release on its website to announce the publication of the preliminary ruling at the same time as the ruling is sent to the parties for comments.



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Several responding courts mention that there may also be a (first or second) oral hearing before a final decision is taken in the case (*Cyprus, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta* and *the Netherlands*).

Most responding courts answer that the final decision of the national court is sent to the parties as well as to the CJEU and is published on the national court's website (*Bulgaria, Czech Republic, Estonia, Finland, France, Lithuania, the Netherlands, Portugal, Slovenia* and *Sweden*). *Lithuania* adds that the final decision is sent to the CJEU within 20 working days after adopting the decision and that, if Article 101 or 102 TFEU are directly applicable, a copy is also sent to the Directorate-General for Competition. A few responding courts also mention that they publish the national court's final ruling on their own website for other national courts and the public to read (*Austria, Finland, Luxembourg* and *the Netherlands*). In *Latvia*, both the CJEU's and the national judgment are published on the Supreme Court's website, allowing lawyers, scholars and the public to access and understand the Court's interpretation and application of EU law in a given case.

*Estonia, the Netherlands* and *Slovakia* highlight that the courts also publish a summary in English of the national court's decision on ACA's database for case law, "Jurifast".

*Greece* answers that the final ruling is not sent to the CJEU as it seems there is no legal basis for doing so in EU or national law.

### 31. Has it occurred that your court has had difficulties understanding the specific consequences of the ruling from the CJEU on legal questions in the national case i.e., to use the CJEU's answer as a basis for the decision in the case? (cf. the CJEU's recommendations, para. 11)?

A slight majority (15 of 28) of the responding courts answer that it has not occurred that they have had difficulties understanding the consequences of the CJEU preliminary ruling on the legal questions in the national case (*Austria, Bulgaria, Croatia, Cyprus, Denmark, Hungary, Ireland, Lithuania, Luxembourg, Malta, Poland, Romania, Slovenia* and *Spain*).

Almost as many courts (13 of 28) state that they, in general, have had no such difficulties but point out that there are exceptions and mention one or very few examples. The examples are cited below by case name and number but the legal questions at stake are not presented further in this General Report.

*Belgium* refers to the judgment in TNS Dimarso NV (C-6/15 ) as an example of when difficulties have occurred. The request was formulated in Dutch which initially gave rise to questions. Furthermore, it has happened that the CJEU has considered that the question raised related more to whether national law was in conformity with EU law and the case has then been referred back to the national court.

*Czech Republic* mentions as an example the judgment in Kemwater Prochemie (C-154/20). The Grand Chamber of the Supreme Administrative Court which requested the preliminary ruling followed the legal opinion of the CJEU, but at the same time expressed concern over the problems that the judgment could lead to. The concerns proved to be justified as the Supreme Administrative Court last year again requested a preliminary ruling from the CJEU relating to the application of the Kemwater ProChemie judgment.

*Estonia* mentions the example of Järvelaev (C-580/17), where the CJEU's response was much less concrete than the national court had hoped.

*Finland* refers to an older case, Satakunnan Markkinapörssi Oy ja Satemedia Oy (C-73/07).

*France* gives an example of a case from 2018 – Conféderation Paysanne (C-528/16) – where the Conseil d'Etat found it necessary to refer a question for a preliminary ruling a second time.

*Germany* also states that it has occurred in rare cases that questions have been asked a second time since the first ruling by the CJEU did not fully give the answers looked for - at least from the point of view of the national court (cf question 23). Moreover, the CJEU ruling in Land Nordrhein-Westfalen (C-535/18) is mentioned as an example where the Federal Administrative Court found that the CJEU might not have been fully aware of the purpose of the relevant referred question.

*Greece* refers to the CJEU judgment in Kalliri (C-409/16) as an example of where the national court's subsequent judgment, although only a pure legal question was at stake, contained a dissenting opinion. The national case was then referred to the Grand Chamber who delivered a final judgment also containing a concurring opinion.

*Italy* answers that some difficulties occurred relating to the interpretation of the CJEU judgment in Consorzio.

*Latvia* mentions two examples where some difficulties have been encountered but underline that those difficulties were not considered to be significant (DOBELES HES, C-702/20 and Kuršu zeme, C-273/18*)*.

*The Netherlands* gives three examples. In E.N., S.S, J.Y. (C-556/21) the national court had difficulties understanding the specific consequences for the legal question in the national case. LPG Tankstation (C-120/19) is referred to as an example of where the CJEU formulated a general answer to the questions raised by the national court, still leaving room for the AJD to apply the answer in the national case in its final ruling. In Stichting Varkens in Nood (C-826/18), the national court did not have difficulties using the CJEU ruling as a basis for a decision in the national case, but the ruling still led to complex and unforeseen follow-up questions concerning the implications of the ruling in other similar cases.

*Poland* answers that the Supreme Administrative Court has had no difficulties itself but that the first instance regional administrative courts have had difficulties understanding the specific consequences of the CJEU ruling in Magoora (C-414/07). It led to inconsistencies in case law

until the issue was tried by the Supreme Administrative Court, which in turn led to a unification of case law.

*Sweden* mentions Skellefteå Industrihus (C-248/20) as an example of when some difficulties in understanding a CJEU preliminary ruling have occurred.

*The United Kingdom* states that in the great majority of cases, the dialogue between the Supreme Court and the CJEU has been effective and the CJEU has provided clear answers to the questions referred, which have enabled the Supreme Court to resolve the issues in the pending appeal. The Supreme Court has, infrequently, faced difficulties in understanding the specific consequences of a ruling from the CJEU. However, for example, in ClientEarth (C-404/13 R), the CJEU reformulated the first two of the four questions referred in a way which, as a British Supreme Court Justice put it when the case returned to the Supreme Court, "introduced a degree of ambiguity" and which "had the unfortunate effect of enabling each party to claim success in the issue".

## 32. Briefly describe the factors, if any, which your court considers have had an impact on the clarity of the judgment of the CJEU.

A few of the responding courts answer that it may impact the clarity of the CJEU's judgment if the CJEU reformulates the questions referred by the national court (*Bulgaria, Czech Republic, Germany, Ireland, Lithuania, the Netherlands, Poland, Sweden* and *the United Kingdom*). *Bulgaria* mentions, as an example, that reformulating the questions may alter the scope of the reply and lead to more general answers from the CJEU. *Czech Republic* states that as the original formulation is usually carefully considered, taking into account national law as well as all the relevant circumstances of the case, the reformulation may result in answers to questions that could even be irrelevant to the case.

Another factor that can impact the clarity of the CJEU's judgment is, according to many courts, whether the CJEU provides a direct answer to the questions referred or whether the Court instead provides a more general account of the relevant EU law regime and subsequently leaves the application to the national court in the individual case (*Belgium, Czech Republic, Ireland, Italy, Latvia, Lithuania, the Netherlands, Poland* and *Sweden*).

*Latvia* mentions that the clarity can depend on how clear and comprehensible the reasoning and explanation used by the CJEU is.

According to the *Netherlands*, as well as *France*, the fact that a CJEU response may lead to unforeseen follow-up questions about the implications for national (administrative) law and practice can also affect the clarity.

Some responding courts answer that another factor affecting the clarity of the CJEU judgment can be whether the CJEU has understood the description of the national legal regime or not *(Ireland, the Netherlands, Poland, Slovenia, Slovakia* and *Sweden*). In this context*, Estonia* mentions that it helps to describe the background of the dispute as clearly as possible.

A few responding courts state that the opinion of the Advocate General contributes in a positive way to the clarity of the CJEU judgment (*Austria, Ireland, Italy, Lithuania, the Netherlands, Poland, Slovenia, Slovakia* and *the United Kingdom*).

Clarity is also seen to be affected (negatively) where the request is handled by the CJEU by means of a simplified procedure, i.e., where the answer to the questions is to follow established case law or otherwise admits of no reasonable doubt, but it is not yet clear how the questions will be answered in the individual case (*Ireland* and *Sweden*).

Lastly, some responding courts say that differences in the various language versions is a factor that can impact the clarity of the CJEU's ruling, both in a negative and positive direction (*Austria, Belgium, Ireland, Latvia, Lithuania, Poland, Romania, Slovakia and Sweden*).

## 33. During the period 2012 to 2022, has it occurred that your court has considered it necessary to make a renewed request for a preliminary ruling concerning the same questions?

A vast majority of responding courts (24 of 28) answer that they have not considered it necessary to make a renewed request for a preliminary ruling concerning the same question (*Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia. Finland, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Poland, Romania, Slovakia, Slovenia, Spain, Sweden* and *the United Kingdom*).

However, three courts state that a renewed request has been made and cite the specific cases where it has occurred (*France;* Conféderation Paysanne [C-528/16], *Italy*; Hoffmann-La Roche and Others [C-179/16] and *the Netherlands*; Trijber and Harmsen, [C-240/14 and C-341/14]).

As an example, the answer from *the Netherlands* is cited here.

In 2015, the AJD made a request for a preliminary ruling in the cases Trijber and Harmsen. In these cases, the AJD sought guidance on the applicability of Directive 2006/123 (Service Directive) to purely internal situations as well on the relevant criteria for determining whether such a situation exists. The CJEU issued its preliminary ruling in these cases in October 2015 but following the judgment the AJD still had doubts concerning the applicability of the Services Directive in purely internal situations. In 2016, the AJD made another request for a preliminary ruling with which it sought to ascertain whether the provisions of Chapter III of the Services Directive are applicable to purely internal situations. This led to the preliminary ruling in the Joined Cases Appingedam (C-360/15 and C-31/16), in which the CJEU clearly stated that the provisions of Chapter III of the Services Directive "must be interpreted as meaning that they also apply to a situation where all the relevant elements are confined to a single Member State".

# V MISCELLANEOUS

## 34. Has it occurred that an infringement procedure has been commenced against your Member State as a consequence of the fact that a preliminary ruling was not requested by a court in your State?

Only two courts (*France* and *Sweden*) answer "yes" to this question.

*France* describes the infringement procedure initiated by the Commission in 2018, concerning a tax case, and which led to the CJEU judgment in Commission v. France in October 2018 (C-416/17). The CJEU held that France had failed to fulfil its obligations under Article 267 TFEU as the Conseil d'Etat had not made a second request for a preliminary ruling in the prior Accor case. The CJEU referred, in particular, to the CILFIT criteria and emphasised that the interpretation by the Conseil d'Etat of the EU law provisions in question in Accor had not been so obvious as to leave no room for reasonable doubt. This is the only infringement procedure brought against France for failure to comply with the obligation to refer for a preliminary ruling.

*Sweden* describes the infringement procedure that the Commission initiated in 2004. In an explanatory statement to the Swedish government, the Commission submitted that the low number of cases in which Swedish courts make requests for preliminary rulings from the CJEU constituted a violation of the TFEU. In addition, the Commission emphasised that the fact that the Supreme Court and the Supreme Administrative Court did not reason their decisions to not grant leave to appeal in a case made it impossible for the Commission to verify compliance with the obligation to make requests for preliminary rulings in accordance with the CILFIT criteria. This all led to Sweden adopting new legislation that imposed an obligation for courts of last instance to state the reasons in cases where they rejected a party's claim to request a preliminary ruling from the CJEU. Following the legislative amendment, the Commission concluded the infringement procedure.

*The Netherlands* states that no infringement procedures have been initiated for failure to request a preliminary ruling. Nonetheless, the Commission has applied the "EU pilot mechanism" in some instances due to complaints concerning the alleged breach of EU law for non-referral of preliminary questions to the CJEU in specific cases. Through the pilot mechanism all issues were resolved through informal dialogue.



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## 35. Has your Member State been ordered to pay damages in a matter as a consequence of the fact that a court has failed to make a request for a preliminary ruling or that a court did not rule in accordance with an issued preliminary ruling?

All responding courts answer "no" to this question. Hence, no Member State has been obliged to pay damages in a matter for failing to make a request for a preliminary ruling or for not ruling in accordance with an issued preliminary ruling.

*France* informs that Conseil d'Etat has, however, accepted that the state, under certain conditions, can be held liable for manifest violations of EU law when a national court of last instance fails to request a preliminary ruling from the CJEU (M. Gestas, no. 295831, delivered on the 18th of June 2008). Conseil d'Etat has also more recently, on two occasions, dealt with the issue under which conditions state liability can incur in such cases. To date, the court has never considered that the conditions for state liability have been met in a case submitted to it (Lactalis Ingrédients SNC, no 414423, delivered on the 9th of October 2020, and Société Kermadec, no 443882, delivered on the 1st of April 2022).

*The Netherlands* states that Dutch courts have reviewed the alleged breaches of the duty to make a request for a preliminary ruling by Dutch highest courts and refers to two examples.

In the KLM-vliegers case (delivered on the 21st December 2018, ECLI:NL:HR:2396) commercial pilots working for KLM argued that the Supreme Court violated EU law because – in a previous judgment – it had not made a request for a preliminary ruling regarding age discrimination to the CJEU. The Supreme Court, however, ruled that "the duty to refer" was not violated in that case and considered that "the mere statement that the judges did not fulfil the obligation laid down in art. 267(3) TFEU" was not sufficient to establish State liability.

In the case X and NJCM the claimants brought forward that the Dutch State was liable for not making a request for a preliminary ruling in a case concerning the interpretation of Article 12(2) of Directive 2004/83/EG (international protection). The Court of Appeal, however, ruled that the AJD had not violated article 267(3) TFEU and confirmed the ruling of the AJD that, in relation to the case before it, there was no reasonable doubt concerning the interpretation of Article 12 of Directive 2004/83 (judgment delivered by the Court of Appeal of the Hague on the 15th of January 2019, ECLI:NL:GHDHA:2019:183, as confirmed by the judgment of the Dutch Supreme Court on the 2nd of October 2020, ECLI:NL:HR:2020:1538).

*Slovenia* mentions that the ECtHR just recently, in Rutar and Rutar Marketing d.o.o vs. Slovenia (delivered on the 15th of December 2022, 21164/20, *cf.* question 19 above*)*) decided that the first-instance misdemeanor court, which was the only one to decide the case on the merits, was obliged to give reasons for its refusal to request a preliminary ruling from the CJEU. The ECtHR found that Slovenia had violated article 6 of the European Convention on Human Rights.

# ANNEXES

## Annex I – List of member and guest institutions that submitted a national report in response to the questionnaire

| Country | Institution |
|---|---|
| Austria | Verwaltungsgerichtshof, Supreme Administrative Court |
| Belgium | Conseil d'État – Raad van State, Council of State |
| Bulgaria | Върховен Административен Съд, Supreme Administrative Court |
| Croatia | Visoki upravni sud Republike Hrvatske, High Administrative Court of the Republic of Croatia |
| Cyprus | Ανώτατο Δικαστήριο Κύπρου, Supreme Court of Cyprus |
| Czech Republic | Nejvyšší správní soud, Supreme Administrative Court |
| Denmark | Højesteret, The Supreme Court |
| Estonia | Riigikohus, Supreme Court of Estonia |
| Finland | Korkein hallinto-oikeus, Högsta förvaltningsdomstolen, the Supreme Administrative Court |
| France | Conseil d'État, Council of State |
| Germany | Bundesverwaltungsgericht, Federal Administrative Court |
| Greece | Συμβούλιο της Επικρατείας, Council of State |
| Hungary | Curia of Hungary |
| Ireland | The Supreme Court of Ireland |
| Italy | Consiglio di Stato, Council of State |
| Latvia | Augstākā tiesa (Senāts), Supreme Court of Latvia (Senate) |
| Lithuania | Lietuvos vyriausiasis administracinis teismas, the Supreme Administrative Court of Lithuania |
| Luxembourg | Cour administrative du Grand-Duché de Luxembourg, Luxembourg Administrative Supreme Court |
| Malta | Qorti Kostituzzjonali, Constititional Court and Qorti tal-Appell, Court of Appeal |
| The Netherlands | Afdeling bestuursrechtspraak van de Raad van State, the Administrative Jurisdiction Division of the Council of State |
| Poland | Naczelny Sąd Administracyjny, the Supreme Administrative Court |
| Portugal | Supremo Tribunal Administrativo - Supreme Administrative Court |
| Romania | Înalta Curte de Casaţie şi Justiţie a României, The High Court of Cassation and Justice of Romania |
| Slovakia | Najvyšší správny súd Slovenskej republiky, The Supreme Administrative Court of the Slovak republic |
| Slovenia | Vrhovno sodišče Republike Slovenije, Upravni oddelek The Supreme Court of the Republic of Slovenia, Administrative Law Department |
| Spain | Tribunal Supremo, Supreme Court |
| Sweden | Högsta förvaltningsdomstolen, the Supreme Administrative Court |
| The United Kingdom[4] | The Supreme Court of the United Kingdom |

[4] Invited court



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## Annex II – Quantitative data on the national courts

| Responding courts | Incoming cases per year on average | Preliminary rulings 2012 - 2022 | Branches of law in general | Courts with obligation to refer[5] |
|---|---|---|---|---|
| Austria | 6 500 – 7 000 | 20 | Administrative law | 3 |
| Belgium | 2 275 | 54 | Administrative law | 3 and lower courts |
| Bulgaria | 12 000 | 37 | Administrative law | 2 and lower courts |
| Croatia | 5 500 | 2 | Administrative law | 5 |
| Cyprus | 1 440 | 2 | Administrative law and civil law | 1 |
| Czech Republic | 4 100 | 31 | Administrative law | 2 and lower courts |
| Denmark | 350 | 8 | Criminal, civil and administrative law | 2 and lower courts |
| Estonia | 622 admin. cases | 9 in admin. cases | All branches of law | 1 |
| Finland | 4 000 | 32 | Administrative law | 4 |
| France | 10 000 | 92 | Administrative law | 1 (concerning administrative law)) |
| Germany | 1 000 – 1 500 | 104 | Administrative law (not tax or social law) | 5 |
| Greece | 3 443 | 13 | Administrative law | 4 and lower courts |
| Hungary | 7 500 | 36 | Criminal, civil, administrative and labour law | 1 |
| Ireland | 165 | 28 | All branches of law | 3 |
| Italy | 10 209 | 300 | Administrative law | 3 |
| Latvia | 750 admin. cases | 48 in admin. cases | All branches of law | 2 and lower courts |
| Lithuania | 3 500 | 39 | Administrative law | 2 |
| Luxembourg | 250 | 10 | Administrative law | 3 |
| Malta | 220 in Constitutional Court (CC) and 460 in Court of Appeal (CA) | 2 (CC)<br>0 (CA) | Human rights and electoral law (CC). Civil and administrative law (CA) | 3 |
| The Netherlands | 10 000 | 61 | Administrative law (not tax and social security) | 6 |

[5] The information relates to the question of which court or courts in the national legal system fall under the obligation to refer questions to The CJEU for a preliminary ruling (article 267.3 TFEU). Some responding courts have chosen to list all their national courts that have such an obligation, while others have only listed the highest courts that have an obligation to refer and stated that there is an unspecified number of lower courts that also have such an obligation.

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| | | | | |
|---|---|---|---|---|
| Poland | 20 000 | 48 | Administrative law | 2 and lower courts |
| Portugal | 1 648 | 45 | Administrative law | - |
| Romania | 13 000 | 25 | Criminal, civil and administrative law | 1 and lower courts |
| Slovakia | 2 000 | 12[6] | Administrative law | 2 |
| Slovenia | 800 admin. cases | 15 in admin. cases | All branches of law | 2 |
| Spain | 24 000 | 80 | Civil, criminal, administrative and military law | 4 and lower courts |
| Sweden | 7 000 | 16 | Administrative law | 7 |
| The United Kingdom | 287 | 17 | Civil law and criminal law | - |



[6] The Supreme Administrative Court has requested two preliminary rulings from the CJEU. The Administrative division of the Supreme Court has requested ten preliminary rulings (before the Supreme Administrative Court of the Slovak Republic was established 2021)