

**SEMINAR ORGANISED BY THE SUPREME ADMINISTRATIVE COURT OF SWEDEN IN
COOPERATION WITH ACA-EUROPE**

Stockholm, 9-10 October 2023

Questionnaire

***” Preliminary rulings of the Court of Justice of the European Union – from CILFIT to
Conorzio”***

BULGARIA

I Introduction

During the Finnish presidency of the ACA-Europe, 2023-2025, a number of seminars will be arranged relating to the vertical dialogue between the supreme administrative courts and the European Courts – both the Court of Justice of the European Union (CJEU) and the European Court of Human Rights. The Finnish presidency will be a joint effort in close co-operation with Sweden and the first seminar will be held in Stockholm on the 9–10th of October 2023.

The topic for the October seminar is *Preliminary rulings of the Court of Justice of the European Union – from CILFIT to Conorzio*.

In *CILFIT* ([CURIA - List of results \(europa.eu\)](#)) the CJEU provides three situations in which national courts or tribunals of last instance are not subject to the obligation to make a reference 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*).

Later, in *Conorzio* ([CURIA - List of results \(europa.eu\)](#)) the CILFIT criteria were confirmed and complemented. Among other things the CJEU clarifies in *Conorzio* that the national courts must give developed reasons for deciding not to refer a question for a preliminary ruling.

The seminar will focus on issues such as the procedure in the national courts when considering to request a preliminary ruling from the CJEU, the obligation to refer vs. “margin of appreciation” and the use of the CILFIT criteria by the courts. With regard to the procedure *after* the CJEU’s decision topics such as the national follow-up of the judgments, the quality and unambiguity of the judgments and whether national courts call into question or distinguish the judgments of the CJEU will be discussed. Attention will also be given to the role of inferior courts, the impact of requirements of leave to appeal or other “filters” in the national legal system and questions relating to the development of the preliminary ruling system in cooperation with the CJEU.



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The purpose of this questionnaire and the ensuing seminar is to exchange experiences relating to the procedure when our courts consider requesting a preliminary ruling from the CJEU and also how we proceed after having received a judgment from the CJEU. Hopefully this questionnaire will provide useful information for comparative purposes and identify aspects for further workshop discussions. The ultimate aim is that fruitful discussions will provide an increased and enhanced awareness of aspects concerning the preliminary ruling system.

II Background and statistics

1. What is the formal title of your court (also provide the title in English)?

Върховен Административен Съд, Supreme Administrative Court

2. Which principal branches of law are addressed at your court?

Taxation, social security matters, financial aid to individuals, compulsory care of children, environmental issues, migration issues, competition cases, patent and market issues, public procurement issues, land issues.

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)?

The Supreme Administrative Court, the Supreme Court of Cassation (civil and criminal law) and lower civil, criminal and administrative courts.

4. On average, how many incoming cases are registered at your court per year?

Slightly more than 12 000 cases.

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

37

6. Do any branches of law stand out such that preliminary rulings are requested more frequently in respect of that branch?
 - Yes**
 - No**

If "yes", state the branch or branches of law and whether there is any reason why the number of preliminary rulings within that branch or branches stands out.





Value added tax cases are the largest group of cases, that are subject of preliminary rulings. The JCEU judgments in that field of law are a result from the impact of the European law.

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.

One referred case regarding the validity of European Commission Decision C(2021) [5739] of 27 July 2021 cancelling part of the Cohesion Fund contribution to the operational programme ‘Transport 2007-2013’ under the ‘Convergence’ objective in Bulgaria, CCI2007BG161PO004.

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?

- Yes
- No**

If “yes”, did the CJEU grant the request or requests?

- Yes
- No

Please provide an example of a case that has been dealt with according to this special procedure or a case where your court’s request has been rejected.

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?

- Yes
- No**

If “yes”, did the CJEU grant the request or requests?

- Yes
- No

Please provide an example of a case that has been dealt with according to this special procedure or a case where your court’s request has been rejected.



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?

- Yes
- No

If "yes", state the rule and briefly describe the contents.

Provisions can be found in Bulgarian Code of civil procedure („Граждански процесуален кодекс“) and contain the rules concerning the jurisdiction of the national court, the procedure of requesting a preliminary ruling, how to formulate the questions. There are special rules, according which the court must stop the proceedings in the case. The ruling can't be appeal.

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

- Yes
- No

If "yes", briefly state the contents of these documents (for example, whether they regard the procedural handling and/or the substantive assessment in order to ensure compliance with the case law of the CJEU).

Yes, the Supreme Administrative Court establishes a Register for all national cases in which a decision has been taken to request a preliminary ruling. The Register has information about the national file case number, parties in the main proceedings, referred questions, the manner in which the case will be handled following the request for a preliminary ruling to the CJEU, the national judgment after the delivery of 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?

The court, whose decision is subject to appeal, may not grant the party's request for a preliminary ruling on the interpretation of a provision or an act. The ruling shall not be subject to appeal. Also, by asking the question, the court must stop the proceedings in the case. The ruling can't be subject to appeal.

13. Estimate how common it is that your court make a request for a preliminary ruling after the question has been raised by a party relative to when the question is raised *ex officio* by the court.



- Most commonly, the question is raised by a claim brought by a party
- Most commonly, the question is raised ex officio by the court
- **Both are equally common**

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

For example, if there are any time frames for handling a claim from the parties regarding a preliminary ruling, if and how the parties in the case are involved, if a rejection of a request for a preliminary ruling is examined in a separate decision or in conjunction with the final ruling in the case, the number of judges involved in the decision, etc.

The Court decides ex-officio or at the request of the party to begin the procedure requesting a preliminary ruling from the CJEU. The court, whose decision is subject to appeal, may not grant the party's request for a preliminary ruling on the interpretation of a provision or an act. The ruling shall not be subject to appeal. The court whose decision is not subject to appeal shall always ask for interpretation, unless the answer to the question is clear and unambiguous from a previous judgment of the Court of Justice, or the content and the meaning of the provision or act are so clear that they do not evoke any doubt.

By asking the question, the court must stop the proceedings in the case. The ruling shall not be subject to appeal. Proceedings in the case shall be resumed following the ruling of the Court of Justice of the European Union. The Court may order appropriate security and interim measures at the request of the parties, while proceedings are being suspended. The effect of the decision on the question for a preliminary ruling is that, that the ruling of the Court of Justice must be obligatory for all the courts and institutions in the Republic of Bulgaria.

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?

For example, how the court proceeds to determine whether the provision in question has already been interpreted by the CJEU or that the correct interpretation of EU law is so obvious as to leave no scope for any reasonable doubt (acte éclairé/acte clair), if it is common for your court to specifically investigate how other countries have interpreted the provision, how such an investigation then is carried out, if other language versions are consulted, etc.





The national court before which a dispute is brought is responsible for determining both the need for a request for a preliminary ruling and the relevance of the questions it submits to the CJEU. When examining the question whether to request a preliminary ruling or not the court also examines the reasons for that: does the question concern about the interpretation or validity of EU law not national law nor issues of fact raised in the main proceedings, have the questions already been interpreted by CJEU, are there any pending cases regarding the preliminary ruling. A referral must be made as soon as it is clear that a CJEU ruling is necessary for a national court to give judgment and when it is able to define in sufficient detail the legal and factual context of the case and the legal issues which it raises.

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

- Yes
- No**

If "yes", describe which contacts that may occur.

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?

- Yes
- No**

If "yes", describe which contacts that may occur.

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)?

For example, is the reasoning, as a rule, based on the criteria established in the case law of the CJEU, (*inter alia CILFIT*) or does your court refer to additional criteria which do not follow directly from the Court's case law.

According to the national proceedings, when the court rejects the request for a preliminary ruling, which was made by the party to the main proceedings, the court



must give the reasons of the decision. In that aspect, when the referral is not necessary for the court to judge the case, the judge must provide the parties of the legal dispute with the facts, according which he or she (panel of judges) concludes that the question is irrelevant for the proper judgement, the legal issues that rise, have already been interpreted by the CJEU or the correct interpretation of the EU law is obvious and undoubtful. When the court is rejecting the request, before it takes the final decision of the court case, it usually discusses the judgments of the CJEU, that have been delivered and their relevance to the national case.

19. Following the ruling of the CJEU in *Conorzio* 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?

- Yes
- No**

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

- Yes
- No**

If "yes", to what extent can such an appeal be granted?

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

- Yes
- No**

If "yes", can such an appeal be granted?

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)?

- Yes
- No
- The procedure has not been applied**



If “yes”, please describe in what way the procedure differs.

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.

For example, are the questions formulated in a narrow way in order to provide the most concrete guidance possible in the case or in a more open way in order to give the CJEU more freedom to formulate its answer?

The referral usually contains summary of the relevant facts of the case, brief statements of the parties of the case, which contain their view on the answer to be given to the questions referred for a preliminary ruling. The referral contains the Union law, the applicable national rules, a precise reference to the provision or act whose interpretation or validity is the subject of the question, the reasons for which the court makes a request for a preliminary ruling. The referred questions must be formulated simply, clearly and precisely, they must appear in a separate section of the order for reference.

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, 2019/C 380/01, para. 13)?

- Yes
- No

If “yes”, briefly describe the material in the case on which the parties are given the opportunity to comment.

The court, which refers questions for a preliminary ruling to the CJEU, gives the opportunity to the parties of the legal case to comment the court’s draft of the request, when acts *ex-officio* and at the request of the party (please see the response to the question 23 as regards the contents of a request).

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)?



- Yes
- No**

Briefly describe the reasons why your court does or does not usually state its view on the answer to be given to the question referred.

The reason for not standing the court's own view is that it could be seen as prejudging the final outcome of the case.

Leave to appeal and other "filters"

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

- Yes
- No**

If "yes", briefly describe the regime and state whether it applies generally or only to certain types of cases. If "no", please go to question 30.

Bulgarian Constitution and Ordinary law do not prescribe "requirement of leave to appeal" or other forms of filters in order for a case to be admitted for adjudication. The Bulgarian Supreme Administrative Court hasn't got the right to decide whether to grant leave to appeal or not. National Administrative procedure code prescribes which administrative acts and court decisions can be appealed before the Supreme Administrative Court. Subject of an appeal are:

- 1. the contestations against the acts of secondary legislation, except for these of the municipal councils;**
- 2. the contestations against the acts of the Council of Ministers, the Prime Minister, the deputy prime ministers and the ministers, issued while exercising their constitutional powers in the management and performance of government; in the cases provided for by law, as well as when those authorities have delegated their powers to the respective officials, the administrative acts issued by them shall be challenged before the relevant administrative court;**
- 3. the contestations against decisions of the Supreme Judicial Council;**
- 4. the contestations against the bodies of the Bulgarian National Bank;**
- 5. cassation complaints and protests against court decisions of the first instance;**
- 6. private complaints against definitions and orders;**
- 7. claims on cancellation of entered into force court acts upon administrative cases;**



8. the contestations against other acts, determined by a law.

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)?

The court before which the dispute has been brought, acting as a court of last instance or as a court of first instance, must bring the matter before CJEU / has the right to request a preliminary ruling to CJEU, prior to take the final decision of the case and before to deliver the judgment. The court, whose decision is subject to appeal, may not grant the party's request for a preliminary ruling on the interpretation of a provision or an act. The ruling shall not be subject to appeal.

The court whose decision is not subject to appeal must always ask for interpretation, unless the answer to the question is clear and unambiguous from a previous judgment of the Court of Justice, or the content and the meaning of the provision or act are so clear that they do not evoke any doubt.

Where interpretation of provisions of Section IV "Visas, asylum, immigration and other politics, relating to the free movement of persons" of the Treaty establishing the European Community and the interpretation and the validity of acts, adopted under this Section of the Treaty, shall be of importance for the correct settlement of the lawsuit, only the court, whose decision shall not be subject to appeal, may make a request.

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?

0

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?

Please see the response to question 18.

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.





After the CJEU has issued its judgment, the national court which brought the matter before the CJEU, must continue the main proceedings and decide the case. The parties have the opportunity to discuss the CJEU judgement and to express their statements concerning the legal dispute that has been brought before the final court decision. The reporting judge analyses the referred questions in the light of the CJEU judgement and after a big discussion the national case is resolved. The Supreme Administrative Court submits its final judgement by e-mail to the CJEU.

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)?
- Yes
 - No**

If "yes", describe how common it is and please provide an example of a case where such difficulties have occurred.

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

For example, is it relevant that the CJEU has reformulated the referred questions, whether the Advocate General has commented, whether your court has itself given an account of its own position as to the manner in which the referred questions are to be answered, etc.

The national court submits the questions about the interpretation or validity of a provision of EU law, in accordance with the national procedural rules, but the CJEU has the right of the reformulation of the referred questions, for example in the field of taxation and environmental matters. In that cases CJEU alters the original questions, posed by the administrative court and also alters the scope of the reply. In some aspects this reformulation of the questions constitutes more general answer or may be not so clear. This is a factor which may affect the clarity of the judgment of the CJEU.

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?
- Yes



- No**

If "yes", briefly describe what gave rise to the renewed request.

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?

- Yes
- No**

If "yes", briefly describe the matter and whether the proceedings gave rise to amended legislation or altered routines for addressing questions regarding preliminary rulings.

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?

- Yes
- No**

If "yes", briefly describe the matter and whether the proceedings led to legislative amendments or changes in routines for addressing questions regarding preliminary rulings by your court.

