

**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  
Consortio"***

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 9–10<sup>th</sup> of October 2023.

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

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 *Consortio* ([CURIA - List of results \(europa.eu\)](#)) the CILFIT criteria were confirmed and complemented. Among other things the CJEU clarifies in *Consortio* 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.

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



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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)?

*Ανώτατο Δικαστήριο Κύπρου. Supreme Court of Cyprus.*

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

*Inter alia, civil service (decisions on appointments, promotions, disciplinary proceedings), regulatory authorities, public procurement, decisions of the land registry, tax, social security, state benefits and other challenged administrative decisions.*

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)?

*All Courts of the Republic may refer questions to the CJEU for a preliminary ruling. However, the Supreme Court is under an obligation to do so if its final decision on the case cannot be appealed (last instance court), none of the exceptions apply and the matter is necessary for the issuance of its own decision.*

*All the other inferior Courts may refer questions to the CJEU if this is necessary for the issuance of their decision: i.e. the District Courts, the Administrative Court, the Administrative Court of International Protection, the Employment Tribunal, the Family Court and the Rent Control Court.*

*In addition, on 1<sup>st</sup> of July 2023, the Supreme Constitutional Court, the Appeal Court, Commercial Court and Admiralty Court will be established.*

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

*Around 1.440 appeals/cases.*

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

*2.*



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.

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.

None.

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.

**Section 34A of the Courts of Justice Law of 1960, L. 14/1960** specifies the conditions under which a Court of the Republic may or is obliged to make a reference for a preliminary ruling to the CJEU. The provisions of this section reflect those of Article 267 of the TFEU.

**The Preliminary Reference to the CJEU Rules of Court (No.1) of 2008, 1/2008** specify the procedure to be followed by all Courts. The rules of procedure include provisions on making an order, the right to be heard, the content of the request, transmission to the CJEU and stay of proceedings.

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).

**The Preliminary Reference to the CJEU Rules of Court (No.1) of 2008, 1/2008** regulate the procedure to be followed and make provisions, *inter alia*, for the parties to be heard before the Court makes an order for a preliminary ruling reference to the CJEU. Similarly, the Rules of Court make provisions in relation to the content of the request as well as for the proceedings to be stayed until the preliminary ruling of the CJEU is issued.

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?

By virtue of the provisions of **the Preliminary Reference to the CJEU Rules of Court (No.1) of 2008, 1/2008**, a party to the proceedings may, at any stage of the said proceedings,





*make an inter partes application to the Court for a reference for a preliminary ruling to be made to the CJEU. The application must be made before the national court issues its final decision. Otherwise, the national court is functus officio unable to make a reference for a preliminary ruling since it has concluded its duty (Zolotukhin v. 1. S.C. Blue Air-Airline Management Solutions S.R.L. a.o., Civil Claim 189/2016, 3.9.2018, C-107/76 Hoffman-La Roche [1977] ECHR 957, Chiron Corp v. Murex-Diagnostics Ltd [1995] All ER (E.C.) 88).*

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.

*A party to the proceedings may, at any stage of the proceedings, make an inter partes application to the Supreme Court requesting the referral of a matter to the CJEU for a preliminary ruling. The application will be fixed for hearing and the parties' arguments will be heard. The Supreme Court when exercising its appellate jurisdiction sits in Benches of three Justices unless the appeal is heard by the Full Bench or the matter has arisen in referral proceedings. Referral proceedings are lodged by the President of the Republic and relate to whether a statute is contrary to the provisions of the Constitution. Such proceedings are heard in plenary sessions. The Supreme Court will hand down a separate decision for dismissing the application before it proceeds in issuing its final decision on the appeal/case/referral. No particular procedural time frames are prescribed.*

*In the occasion that the order for a reference to the CJEU was instituted by the Supreme Court, *ex proprio motu*, the Court must hear the parties first and allow them equal opportunity to express their views and arguments in favour of or against such an order being made. Similarly, the order can be made at any stage in the proceedings after hearing the parties' arguments. For example, the national court may decide that a reference for a preliminary ruling is necessary when it adjudicates upon an interlocutory application for striking out pleadings or for varying the parties. Also, it may do so before or after holding a*



*hearing on the merits. There are no prescribed procedural time frames and the formation of the Court is as described above.*

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.

*In accordance with Article 267 of the TFEU, the Supreme Court being a court of last instance is under an obligation to submit a question to the CJEU for a preliminary ruling unless the *acte clair / acte éclairé* doctrines apply or the matter is not relevant for the resolution of the appeal. The aforementioned settled exceptions will be assessed, one by one, by having regard to the CJEU's case law on the matter as well as whether an interpretation on the particular issue is already pending before the CJEU by another country. The Supreme Court will not proceed in assessing on how other foreign jurisdictions have interpreted the said European acts/provisions.*

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.

*The Supreme Court when dismissing a party's application for a preliminary ruling will hand down a well-reasoned decision in accordance with **Article 30.2. of the Constitution**. By virtue of the Constitution, all decisions of the Courts of the Republic must be well-reasoned. The Court will follow the well settled criteria laid down in the CJEU's case law (relevance and the acte clair and acte éclairé doctrines). For each applicable exception, the Court will give reasons and in the case of the acte éclairé doctrine, the Supreme Court will cite the established body of case law of the CJEU.*

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?

*Guidance on how a request for a preliminary ruling should be set out is provided by the **Preliminary Reference to the CJEU Rules of Court (No.1) of 2008, 1/2008**. The said Rules of Court specifically state that the request must contain: (a) the full name of the referring national Court, (b) the parties’ details, (c) a concise overview of the nature and background of the proceedings, including the most important facts specifying whether they are proven or admitted or alleged, (d) the relevant national provisions, (e) a summary of the parties’ arguments, (f) the relevant EU provisions for which interpretation is requested and (g) the precise reasons why the request for a preliminary ruling is made. The request is concluded by setting out clearly and precisely the questions to the CJEU.*

*Referring national Courts also follow the provisions of **Article 94 of the Rules of Procedure of the CJEU** in relation to the content of the request for a preliminary ruling as well as the **Recommendations of the CJEU on the use of the preliminary ruling procedure (2019/C 380/01)**.*

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 reference for a preliminary ruling is made after the parties have been fully heard. Irrespective of whether the request was instituted by an inter partes application or by the Court of its own motion, all parties will be heard in a public hearing while, at the same time, having the opportunity to submit written submissions. [Please see response to Questions 11 and 14 above for further details]. A respondent to the application who contests the application can file an objection. Therefore, all parties have the opportunity to express their views both on the merits of the matter but also on the phrasing of any potential preliminary questions being put to the CJEU.*

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.

*Stating the view of the referring court might be of assistance to the CJEU in an expedited or urgent request for a preliminary ruling. So far the Supreme Court has not requested a preliminary ruling under such procedures. Furthermore, reluctance might spring from the fact that in some cases the request was instituted by an application of one of the parties which was subsequently contested by the other. Generally speaking, the Court does not usually state its own view for impartiality reasons.*

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.

*There is no requirement for leave to appeal in Cyprus' legal system. Unimpeded access to the Courts is acknowledged by **Article 30.1 of the Constitution**.*





*However, the following ‘filter’ can be said to exist once appeals are lodged: a pre-trial assessment is conducted by the Supreme Court after a judicial review appeal is lodged to the Court. During this stage in the proceedings, the Supreme Court has, under Rule 10 of the **Appeals (Pre-trial procedure, Written Skeleton arguments, Advocacy time limits and Summary procedure for striking out manifestly unfounded appeals) Procedure Rules of 1996. Under Rule 10 of the Procedure Rules of 1996, the power to strike out an appeal if it appears to be prima facie frivolous or vexatious or manifestly unfounded or instituted for the purpose of delaying the course of justice. This pre-trial assessment applies to all types of appeals. The power for the summary determination of an appeal is to be exercised with restraint but without inhibition where the case is found to be such. Before the court strikes out an appeal the appellant has the right to be heard orally or in writing. In fact, the Supreme Court’s power to regulate matters for the summary determination of any appeal or any proceedings before it on the grounds that it is frivolous or vexatious or instituted for the purpose of delaying the course of justice is broad. Article 134.2 of the Constitution prescribes that the Supreme Court may strike out any case that appears to be prima facie frivolous, after hearing the parties’ arguments and may dismiss it without a public hearing if it is satisfied that it is in fact frivolous. In practice, the Supreme Court never dismisses an appeal without a public hearing.***

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)?

*Normally, an inter partes application requesting a preliminary reference to the CJEU will be lodged by a party to the appeal after the case has moved from the pre-trial to the trial stage. Hence, the Supreme Court has already carried out its assessment on whether the appeal is prima facie frivolous, vexatious, manifestly unfounded or instituted for the purpose of delaying the course of justice and has found that it manifests no such grounds for dismissal.*

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?

*In 2 out of 2 appeals.*

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?

*No, it is not. The responses given to questions 15 and 18 apply.*



#### 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.

*The proceedings before the Supreme Court are stayed until the CJEU preliminary ruling is received. Once received, the national Court which is bound by the interpretation of the CJEU, will proceed with the appeal depending on the stage the proceedings were left off. If the reference for a preliminary ruling was requested after the hearing of the appeal was concluded then the Supreme Court will proceed with the issuance of its final judgment. In issuing its final decision the national court will refer in detail to the interpretation given by the CJEU and shall apply it to the merits of the case at hand. Guidance can also be drawn from the Opinion of the Attorney-General. In the circumstances that the reference was made at a prior stage, that is before the commencement of the hearing (the hearing is conducted after the written submissions are filed and takes the form of clarifications) then the Supreme Court will continue by fixing the appeal for hearing.*

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.

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.

