

**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 Consorzio”

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 Consorzio*.

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

Nejvyšší správní soud (Supreme Administrative Court).

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

All administrative law matters (taxes, customs, social security, international protection & migration, spatial planning and building, environment, administrative offences, etc.).

In addition, the SAC also decides on electoral matters, competence conflicts, or disciplinary offences of judges, prosecutors, and enforcement officers.

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)?

- Supreme Court (as the last-instance court for most civil and criminal law cases).
- Supreme Administrative Court [as the last instance court in administrative law cases; judgment of 4 July 2007, no. 3 As 22/2006-138 (no. 1321/2007 Coll. of the SAC)].
- Every ordinary court, if its decision cannot be appealed (e. g., in family law cases, it is generally not possible to lodge an extraordinary appeal with the Supreme Court, thus regional courts are the last-instance courts).

Recently, the Supreme Court also concluded that the Constitutional Court, as a judicial body for the protection of constitutionality, does not have the obligation to request a preliminary ruling under Art. 267(3) of the TFEU when deciding on constitutional complaints against decisions of ordinary courts [judgment of 26 June 2019, no. 30 Cdo 3378/2018-123 (no. 35/2021 Coll. of the SC)]. However, the Constitutional Court itself has never explicitly excluded such obligation, even though it has not made any request for a preliminary ruling to date.



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

Around 4,100 cases (average per year from 2012 to 2022).

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

31 (43 in total since 2003, when the SAC was established; however, 3 of these requests were subsequently withdrawn, cf. C-299/09, *DAR Duale Abfallwirtschaft und Verwertung Ruhrgebiet*, C-253/12, *J. S.*, and C-704/17, *D. H.*).

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.

Out of 43 requests for preliminary rulings made by the SAC since 2003, at least 15 of them concerned tax law. The fact that approximately one-third of requests concerned this branch of law may be explained by the complexity/difficulty of cross-border tax cases and the fact that the legislation – especially regarding the VAT – is primarily based on EU law.

Several requests also concerned international protection & migration (4), free movement of services & establishment (4), social security (4), customs (3), data protection (3), and the environment (4).

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.

2 (C-405/14, *PST CLC*, and C-391/16, *M.*).

8. Has your court requested an "expedited preliminary ruling procedure" (Art. 105–106 Rules of Procedures of the CJEU) 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 CJEU) 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.~~

However, the SAC in C-534/11, *Arslan*, requested an “accelerated procedure” under Art. 104a of the Rules of Procedure of the ECJ (of 19 June 1991). The case concerned detentions of third-country nationals under the Return Directive (2008/115/EC). In the request, the SAC held that in view of the fact that detention constitutes a significant interference with personal freedom, Art. 15(2)(b) of the Directive provides for the right of the detained to initiate “a speedy judicial review” of the lawfulness of the detention. Even though the detention of the complainant in the case had already been terminated, there were many similar cases in which the detention was still ongoing. It was expected that, in these cases, the proceedings would be stayed pending the ECJ's ruling. Eventually, the request was not 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?

Yes

No

If “yes”, state the rule and briefly describe the contents.



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Administrative court procedure – including the procedure before the SAC – is governed by the Code of Administrative Justice (Act no. 150/2002 Coll.). According to its Art. 48(1)(b), the court shall stay the proceeding if it decides to refer a request for a preliminary ruling to the CJEU (with a note referring to relevant articles of the TEU and TFEU).

The same rule applies to civil procedure [Art. 109(1)(d) of the Civil Procedure Code (Act no. 99/1963 Coll.)]. As far as criminal procedure is concerned, apart from the obligation to stay the proceeding, Art. 9a of the Criminal Procedure Code (Act no. 141/1961 Coll.) explicitly states that when making the request, the court shall be guided by “*the relevant rules governing proceedings before the CJEU*”, and that the subsequent decision of the CJEU shall be binding on all the prosecuting authorities.

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).~~

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 parties do not have the possibility to claim that the SAC shall request a preliminary ruling. However, in the cassation complaint, in comments on the complaint or in their further submissions before a decision is made, they have an opportunity to argue that the SAC should make such a request.

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

Most commonly, the initiative lies with the SAC.

Nevertheless, the parties play a more significant role than is usually acknowledged in the requests for preliminary rulings made by the SAC. In almost all 25 cases examined in



a recent research, the parties somehow referred to the EU law in their submissions. In the vast majority of such cases (22), the parties identified that the provisions applicable to their case were derived from EU legislation and were able to refer to the related sources (typically, case-law of the CJEU) and derive relevant arguments from them; in 20 cases, at least one party was able to follow up with an argument of an alleged conflict between Czech legislation or administrative/judicial practice and EU law. However, only in 8 of the examined cases did the parties go one step further and argued that the SAC should request a preliminary ruling (in 2 of these cases without specification, in the rest, the parties even formulated the question to be answered). Thus, most commonly, the parties stuck to identifying a conflict between the Czech and EU law without explicitly trying to initiate a preliminary ruling procedure or formulating the question [Dřínovská, N.; Vikarská, Z. Coming of Age of the Czech (Supreme) Courts, or the First 18 Years of Preliminary References from Brno. *Časopis pro právní vědu a praxi*, 2023, č. 1; available, however only in Czech, here: <https://journals.muni.cz/cpvp/article/view/33432>].

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.

After submission of a cassation complaint, it is assigned to a specific judge (rapporteur), who then examines the case and comes to preliminary legal conclusions. The examination may include a consideration of whether it is necessary to request a preliminary ruling, either based on the parties' arguments or on his/her own view. The judge may also request the Documentation and Analytics Department to elaborate an analysis of the EU law or CJEU case-law related to the legal issue at hand.

Decisions of the SAC are mostly made in three-member chambers. Their meetings are held regularly, where the chamber members present either their drafts of decisions in assigned cases or an overview of such cases with their opinion and a proposal on how to proceed. Finally, in deliberation, the chamber comes to the conclusion that a request for a preliminary ruling shall/not be made. Subsequently, the judge rapporteur either prepares a draft of a final decision (which should include reasoning why the request was not made, if any party argued for it) or an order by which the SAC refers the request to the CJEU and stays the proceedings. Another deliberation at the chamber meeting follows. The chamber then makes a decision (by a majority vote).

In two cases, a preliminary ruling was requested by the Grand Chamber of the SAC (C-311/19, *BONWER WIN*, concerning restrictions on freedom to provide services, and





C-154/20, *Kemwater ProChemie*, concerning claims for VAT deductions if a supplier of goods or services has not been identified). In these cases, the consideration whether to request a preliminary ruling is preceded by a referral to the Grand Chamber from one of the “ordinary” (three-member) chambers. Otherwise, the procedure is the same.

There are no specific time frames. The parties usually do not have the opportunity to comment on the draft before the referral. The order by which the SAC refers the request to the CJEU is, however, then published on the SAC’s website.

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 clair/éclairé*), 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 order to determine whether it is necessary to request a preliminary ruling, the SAC – in light of the *CILFIT* criteria – principally examines the relevant provision of the EU law and the manner in which it (or a similar provision) has been interpreted by the CJEU as well as whether there are any pending cases regarding requests for preliminary rulings from other member states. If the examination of the Czech language version of the provision is inconclusive, other different language versions may also be taken into consideration. The Documentation and Analytics Department is usually involved in this process.

On the other hand, the SAC usually does not specifically examine how other member states interpret the provision in order to assess whether the legal issue is *acte clair/éclairé*. However, for example, when considering the necessity of making one of the latest requests (C-129/23, *BG Technik*), the SAC examined how courts and customs authorities of other member states interpret and apply in practice a particular CJEU judgment (C-198/15, *Invamed*) concerning the tariff classification of electric wheelchairs.

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.





Generally, neither the government nor other branches of the executive power are involved before the SAC requests a preliminary ruling. However, if such executive authorities are also parties to the administrative court proceedings (typically, ministries as the appellate administrative authorities), they have an opportunity either to argue that the SAC should request a preliminary ruling (such a situation may arise especially if they seek the case-law of the SAC to be overridden by the CJEU) or to state its view if the other party made such an argument.

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.

The SAC does not inform the government or other branches of the executive power about requests for preliminary rulings after they have been made. However, the order by which the proceeding is stayed and a request is made shall be delivered to the parties, one of which is an administrative authority. Moreover, the SAC regularly updates a list of requests on its website (<https://www.nssoud.cz/en/references-for-a-preliminary-ruling/lodged-by-the-supreme-administrative-court>).

18. How does your court state the reasons for rejecting a claim to make a request 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.

When the SAC – as the last-instance court within the meaning of Art. 267 TFEU – rejects a party's argument by which it asks the SAC to request a preliminary ruling, it must state the reasons therefor. Even though no provision explicitly provides for an obligation to state such reasons, it flows from general principles related to the right to a fair trial, the case-law of the CJEU (e. g., C-561/19, *Conzorzio*), and the case-law of the ECHR (e. g., most recently, *Georgiou v. Greece*, no. 57378/18).

The extent of such reasoning, however, depends on the individual case. As the SAC repeatedly held, the content and quality of a cassation complaint determine not only the



scope of the review but also the content of the judgment. Thus, the extent is determined by the activity of the parties and their argumentation. Presumably, it is different if a party – among numbers of different arguments – argues that the SAC should request a preliminary ruling without any specification or with general/vague argumentation than if it raises a specific question which shall be answered and explains in detail why the request should be made (frames the case in the context of Czech and EU legislation, points out to potential conflict between Czech and EU law, argues why the correct interpretation of the relevant provision of EU law leaves scope for reasonable doubt and why it cannot be derived from previous case-law of the CJEU, etc.). The complexity of the legal issue at hand also plays a role with respect to the extent of the reasoning.

Generally, when rejecting an argument by which a party asks the SAC to request a preliminary ruling, the SAC first considers whether the question raised is relevant to the case and – subsequently – whether the legal issue at hand is *acte clair/éclairé*, even though not always with explicit reference to the *CILFIT* or *Conorzio* judgment and the criteria thereof. In some cases, the SAC does not reject the argument explicitly with reference to the *CILFIT* criteria but implicitly by providing comprehensive reasoning to the issue concerning the interpretation of EU law instead, indicating that it considers the issue as *acte clair*. The rejection on the basis of the *acte éclairé* criterion is typically reasoned by reference to the case-law of the CJEU and, when necessary, supplemented with further reasoning concerning the applicability of the case-law to the issue at hand (in cases when the CJEU had not interpreted the relevant provision itself, but its correct interpretation still may be derived from the case-law).

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

It is not possible to "appeal" a decision of the SAC. However, a party to the proceedings before the SAC may lodge a complaint with the Constitutional Court, claiming that the



decision interfered with his/her fundamental rights and freedoms. In this context, it is worth mentioning that the Constitutional Court repeatedly held that failure to provide reasoning for the rejection of an argument by which a party asks the SAC to request a preliminary ruling constitutes a violation of the right to a fair trial enshrined in Art. 36 of the Charter of Fundamental Rights and Freedoms (Act no. 2/1993 Coll.); in particular, it is contrary to the principle of reviewable and persuasive justification of courts' decisions (e. g., the ruling of 4 September 2018, no. IV. ÚS 2607/17, and further decisions cited in para. 25 thereof). In the past, the Constitutional Court revoked few decisions of the SAC on this basis (e. g., the ruling of 8 January 2009, no. II. ÚS 1009/08).

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?~~

The regional courts, as the first-instance administrative courts, do not separately decide on arguments by which a party asks to request a preliminary ruling. A decision not to make such a request is only a part of the reasoning of their final decision (on merits). However, the unsuccessful party may challenge the final decision before the SAC on grounds of unlawfulness, unreviewability or procedural faults. Therefore, the rejection may be *de facto* appealed as a part of the final decision and the SAC may potentially revoke such a decision, for example, for lack of reasons.

On the other hand, when a regional court decides to request a preliminary ruling (on the basis of a party's argument), it shall issue an order by which the proceedings is stayed and the request is made; however, the order cannot be appealed (e. g., by other parties).

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



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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 formulation depends on the individual case. However, usually, the questions are formulated in a narrow way in order to provide the most concrete answer, because a general or indirect answer often rather raises further questions.

In general, the request contains a brief description of the relevant circumstances of the case, an account of relevant Czech and EU law or case-law, a description of the legal issue at hand (i. e., why it was necessary to make the request) and the question itself. Not unusually, a request for preliminary ruling is made on the basis of a party's argument (cf. answer to the question no. 13), and the party itself occasionally suggests the formulation of the question to be referred, thus the SAC may take inspiration.

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 parties are usually not given the opportunity to comment on the draft prior to the referral (cf. answer to the question no. 14). However, any submission by one party is forwarded to the others. Thus, if a party argues that the SAC should request a preliminary ruling (e. g., in cassation complaint), other parties may subsequently express their view (regarding necessity of the request, suggested formulation of the question, etc.).

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 SAC is relatively assertive in this respect, as was found by a recent analysis of its requests for preliminary rulings [Dřínovská, N.; Vikarská, Z. Coming of Age of the Czech (Supreme) Courts, or the First 18 Years of Preliminary References from Brno. *Časopis pro právní vědu a praxi*, 2023, č. 1]. Its view on the answer to be given to the question referred is explicitly stated in a majority of requests (e. g., “*The SAC is convinced that...*” or “*The SAC considers that...*”). In few others, the SAC went only as far as to hint its view (e. g., “*The SAC leans more towards an interpretive alternative that...*”).

The reasons for stating the view may be various and depend on the individual case, the judge rapporteur or the chamber which made the request. Nevertheless, it may be assumed that the SAC simply intended to highlight the interpretive alternative which was found as the most convincing so far. However, merely by making the request, the SAC also indicated that its view is not irrefutable and its openness to other alternatives. After all, the CJEU itself considers the preliminary ruling procedure as a platform for dialogue between the CJEU and the courts of the member states (cf., e. g., the opinion of 18 December 2014, 2/13, *Accession of the EU to the ECHR*, para. 176).

On the other hand, in some requests, the SAC did not state its view at all and formulated a rather open question. Other requests contain only references to the previous case-law of the CJEU and presented interpretive alternatives that may come into consideration (with potential arguments for each); requests with such a reasoning may hint at the fact that members of the chamber had different views on the answer to be given to the question referred. However, the reasons for not stating the view may, again, be various.

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.

The Czech legal system does not prescribe any requirement of leave to appeal.





However, according to Art. 104a(1) of the Code of Administrative Justice, if a cassation complaint (an extraordinary legal remedy against decisions of the regional courts as the first-instance administrative courts) in cases decided at the first instance by a single judge does not “*substantially exceed the complainant’s own interests*”, the SAC shall dismiss it for inadmissibility. This institute thus functions as a “filter”, because it allows the SAC to dismiss the complaint after a quasimeritorial review – i. e., after assessing whether or not the complaint exceeds the complainant’s own interests.

Criteria for such an assessment are defined by the SAC’s settled case-law. According to the resolution of 26 April 2006, no. 1 Azs 13/2006-39 (no. 933/2006 Coll. of the SAC), the cassation complaint may be deemed admissible in the following types of cases:

- 1) it concerns a legal issue which has not been addressed at all or not fully by the case-law of the SAC (new/unresolved legal issues);
- 2) it concerns a legal issue which has been addressed differently (inconsistent decision-making of regional courts or chambers of the SAC);
- 3) it is necessary to depart from the previous case-law (when the SAC finds it necessary, in exceptional and justified cases, to address a certain legal issue – which has been addressed uniformly and consistently by administrative courts – differently).

In other words, the cassation complaint is admissible only when - in addition to protecting the public subjective right of an individual - it is also necessary for the SAC to express an opinion on a certain legal issue. Such a situation is only present if the issue has a discernible impact beyond the individual case (i. e., if the decision on the issue will be precedential). In this regard, it is worth mentioning that if the complainant argues that a request for a preliminary ruling should be made, it does not automatically mean that the complaint substantially exceeds his/her interests (the resolution of the SAC of 22 August 2019, no. 3 Azs 17/2019-90).

27. Is the preliminary ruling procedure different when the question is raised in a case requiring leave to appeal or another “filter” (cf. question no. 14 above)?

Until 2021, the cassation complaint could be dismissed for inadmissibility only in international protection cases (i. e., cases involving actions against decisions not to grant asylum or subsidiary protection). From 2021, the institute is applied, as mentioned above, in all cases decided at first instance by a single judge (e. g., international protection cases, actions against decisions on detention and extension of detention of foreigners as well as other decisions which result in the restriction of their personal freedom, actions against decisions on their expulsion, most of the social security cases, administrative offences for which a fine of up to 100 000 CZK may be imposed, etc.). It is estimated that between 30 % and 35 % of cases before the SAC are subject to an admissibility assessment. Thus, approximately one-third of cases are subject to the “filter”.



However, the procedure usually does not differ from the procedure described above (cf. the answer to the question no. 14). Whether a request for a preliminary ruling shall be made is assessed together with question of admissibility of the cassation complaint. If the request is made, it implies that the SAC deemed the complaint as admissible.

- 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?**

1 out of 31 cases (C-391/16, *M.*).

- 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?**

Prior to the 2021 amendment of the Code of Administrative Justice, the decision to dismiss the cassation complaint for inadmissibility did not have to be reasoned at all [Art. 104a(3)]. This rule was repealed in 2021. However, in practice, decisions on inadmissibility were usually reasoned even before the amendment. Generally, the reasoning was 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.

The aforementioned applies also to the part of reasoning of decisions on inadmissibility concerning requests for preliminary references to the CJEU. Thus, in some decisions, it is mentioned – in the recapitulative part – that the complainant argued in favour of the request, but the SAC did not react specifically to the argument in its reasoning (e. g., the resolution of 4 April 2019, no. 3 Azs 120/2018-73, of 27 April 2022, no. 10 Azs 487/2021-47, or of 29 March 2023, no. 7 Ads 241/2021-67). Or, in other decisions, the SAC reacted by giving specific reasons for not making the request (e. g., the resolution of 27 July 2016, no. 1 Azs 162/2016-22, of 25 October 2018, no. 5 Azs 292/2017-69, of 6 March 2019, no. 7 Azs 485/2018-59, or of 22 August 2019, no. 3 Azs 17/2019-90).

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's judgment is received, the SAC issues an order to continue the proceedings. The prevailing practice is that – in the order, or in a subsequent separate letter – the parties are invited to make submissions regarding the judgment (typically, within 2 weeks or a month). In some cases, the parties make no submissions, while in others, a sequence of further submissions exchanged between the parties follows. The judge rapporteur then examines the case again in light of the CJEU judgment and prepares either an updated overview of the case, or a draft of the final decision. Deliberation(s) at the chamber meeting follow(s) until a decision is reached. The final decision is subsequently sent – together with information regarding the case number of the CJEU – to the CJEU.

However, the practice differs (it depends on the individual case and the particular judge rapporteur). Sometimes, the SAC does not invite the parties to make submissions and continues the proceedings directly by issuing a final decision. However, if a party – even if not explicitly invited – makes a submission regarding the CJEU judgment, it is forwarded to the other parties and taken into account.

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.

Usually, no difficulties occur. However, there have been some exceptions. In particular, the judgment in *Kemwater ProChemie* (C-154/20). In its follow-up judgment of 23 March 2022, no. 1 Afs 334/2017-208, the Grand Chamber of the SAC, which requested the preliminary ruling, followed the legal opinion of the CJEU, but at the same time, it expressed a concern over the problems which may arise as consequences of the judgment. Given the fact that the Grand Chamber's task is to unify the existing case-law of the SAC, it would be *ultra vires* if it would be the first to address such legal issues, as they have not been previously addressed by the case-law of "ordinary" (three-member) chambers. The Grand Chamber thus expected the administrative courts will have to deal with the consequences of the *Kemwater ProChemie* judgment in the future.

The concern proved to be justified. One of the latest requests for a preliminary ruling made by the SAC (C-676/22, *B2 Energy*) relates to the application of the *Kemwater*





ProChemie judgment, which is even directly referred to in the formulation of the question. Inconsistent – or rather contradictory – case-law of the SAC is explicitly mentioned in the request as one of the reasons for making it.

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 clarity primarily depends on whether the CJEU directly answered the referred questions or whether it has provided a more general account of the relevant EU law and left the application up to the national court in the individual case. The clarity may also be affected by reformulation of the referred questions. As the original formulation is usually carefully considered, taking into account national law as well as all the relevant circumstances of the case at hand, the reformulation may result in answers to more or less different questions, which could even be irrelevant to the case.

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.~~

