



**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"***

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.

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)?

Συμβούλιο της Επικρατείας, Council of State.

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

Taxation, social security, civil servants, environment, Independent Administrative Authorities, immigration - asylum.

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)?

Council of State, Court of Cassation on Civil and Penal Cases (Άρειος Πάγος), Court of Audits, Special Supreme Court, all other courts when judging, according to the law, on last instance.

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

3.443 cases (average 2018-2022).

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

13.

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.

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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.

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.

By a judgement issued on October 8th, 2019 the Suspension Chamber of our Court requested a preliminary ruling according to articles 105–106 of the Rules of Procedure of the Court of Justice (expedited preliminary ruling procedure), because otherwise the applicant would lose the right to sign a contract with the metropolitan railway company; he could only apply for indemnity. The CJEU issued a judgement on March 14th, 2021, which mentioned that the request was rejected by a decision of its President issued on October 19th, 2021.

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.

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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).

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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 have the possibility, in their appeal to the court – and later during the proceedings – to claim that the Court shall request a preliminary ruling from the CJEU.

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.

No difference at all from all other cases.

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 order to determine whether there is a need to make a request for a preliminary ruling, the Court always conducts an analysis of the relevant provision and an examination of the manner in which it has been interpreted by the CJEU, as well as relevant case law of CJEU. Sometimes, the Court examines how courts of other countries interpret the provision in order to be able to assess whether the issue is *acte clair*. In this case the Court usually consults the case law of the courts of one or more of the following countries: France, Belgium, Germany, Austria, Italy; the United Kingdom as well. Language barriers prevail.*

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.

When our Court rejects a party's claim to request a preliminary ruling, it applies the CILFIT criteria; now, Consorzio is taken into consideration. Rejection of a claim for a preliminary ruling is formulated accordingly.

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?

- 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?

A request is always contained in a judgement. The judgement contains an account of the Union law, relevant CJEU case law, national law and case law, the issues raised, a brief (sometimes not so brief, depending on the specific case) description of the relevant circumstances, the position of the parties, a description of why there is a need to make a request for a preliminary ruling and the concrete/precise question for which the court wishes to obtain an answer. The questions are usually formulated as precisely and concisely as possible, since the CJEU takes into account the case as a whole, not being confined by the formulation of the question.

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 given the opportunity to comment on the need of a request for a preliminary ruling and its content, in an adversarial procedure, but they are not given the opportunity to comment on the court's draft of the 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.

No answer on this question is provided from the study of the case law of our Court.

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.

No leave to appeal, or to appeal on points of law is required. Filters concern only appeal and appeal on points of law. When appealing or appealing on points of law the applicant should submit that there is no case law of our Court concerning the legal issue of every grief or that the judgement of the lower court contradicts on such an issue to the case law of any of our supreme courts, the CJEU or the ECHR. In addition, as far as appeals on points of law are concerned, the sum of money at stake should exceed 40.000 euros.

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)?

No.

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?

4.

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.

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.

When the CJEU has issued its judgment, the parties are given by the Court the opportunity to comment on its interpretation and its impact on the case. The usual -adversarial, both written and oral- procedure is followed. Our Court's final ruling is not sent to the CJEU; it seems there is no legal basis for this 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)?

- Yes
- No

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

As a rule, it has not been difficult, but there have been some exceptions. For example, the Court had some difficulties implementing the CJEU judgement Kalliri, 18.10.2017, C-409/16 ([CURIA - List of results \(europa.eu\)](https://eur-lex.europa.eu/curia/doclist/curia/list_results_europa_eu)). Afterwards, although only a legal issue was at stake, our Court delivered a prejudicial judgement, containing a dissenting opinion, which referred the case to the Grand Chamber; this formation delivered a final judgement, containing a concurring opinion.



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.

Our Court has not expressed its view on the matter.

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.

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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?

- 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.

