

**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.

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



**Co-funded by
the European Union**

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)?

Curia of Hungary ("the Curia")

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

Civil law, administrative law, labour law, criminal law.

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 Curia (no other judicial forum in Hungary can be considered to be a court bound by Article 263(3) of TFEU).

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

Over 7500 cases (7767 based on 2021 data).

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

36

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.

Administrative cases and, within that group, mainly Value Added Tax (VAT) cases. This is so because VAT cases form a relatively large category of cases, the legislation applicable to such cases is primarily based on EU law, and the VAT Directive contains several concepts and provisions whose clarification is crucial for the development of appropriate and uniform domestic jurisprudence.



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.

There was no such case.

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.

There has been only one such request from a Hungarian court to the Court of Justice of the European Union, not from the Curia but from the (former) Budapest Administrative and Labour Court, in case C 564/18 LH.

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.

Both the Code of Civil Procedure (Act No. CXXX of 2016, section 130), the Code of Administrative Court Procedure (Act No. I of 2017, section 34), and the Act on Criminal Procedure (Act No. XC of 2017, section 490) contain provisions relating to the preliminary ruling procedure conducted by the CJEU. In substance, each Act provides that the court shall decide on a request for a reference for a preliminary ruling by an order, and the court may change its order. In the order, the court shall specify the question on which a preliminary ruling from the CJEU is sought and shall, to the extent necessary to answer the question, set out the facts of the case, the relevant domestic law, the relevant provisions of EU law, and the circumstances and grounds based on which preliminary ruling proceedings are initiated. When the court sends the order seeking a preliminary ruling to the CJEU, it shall also forward it to the Minister responsible for Justice, for his or her information. A request for a reference for a preliminary ruling shall be rejected by the court in an order, and reasons for the rejection shall be provided in the order or, at the latest, in the judgment.

Moreover, both the Code of Civil Procedure and the Code of Administrative Court Procedure regulate the cases in which a petition for review is admissible. Both procedures specify that the need to refer a case to the CJEU for a preliminary ruling shall constitute an admissibility ground.

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 may request the court to refer the case for a preliminary ruling to the CJEU in their appeal submitted to the court, or later in the proceedings. Such request for referral to the CJEU may also be made in their petition for review, provided that the request for referral has already been included in the action filed to the court.



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 specific time limit is set for the determination of a request for referral to the CJEU. In the practice of the Curia, a rejecting decision takes one of two forms: the Curia decides on the rejection of the request for referral either in a separate reasoned order or in the decision on the merits closing the proceedings (in which latter case the reasons for the rejection are contained in that decision). In practice, the latter form is more common.

Decisions on referrals for preliminary rulings are published on the Curia's website: <https://kuria-birosag.hu/hu/elozetes-donteshozatal>

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 a referral for a preliminary ruling needs to be made, the Curia will examine the relevant practice of the CJEU (that is, cases raising identical or similar points of law). It will also examine whether a request for a preliminary ruling on an identical or similar issue of law made by a national court or a court of another Member State is pending before the CJEU. There have been cases where the Curia has suspended its own proceedings in view of a referral for a preliminary ruling filed by a national court on a similar/identical issue of law, pending before the CJEU.

The Curia will, if necessary, also examine the different language versions of the applicable EU law (usually English, German and French) in order to determine whether the



determination of the case is to be considered sufficiently clear under the doctrine of *acte clair* (that is, whether filing a request for a preliminary ruling is justified).

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.

As mentioned in the answer given to question 10 above, the relevant provisions of the procedural rules provide that the order of the referring court shall be forwarded to the Minister responsible for Justice for his or her information simultaneously with the sending of the order to the CJEU. This obligation applies to all courts, including the Curia. The obligation to inform was interpreted by the CJEU in the judgment given in Case C-137/08 (VB Pénzügyi Lízing Zrt. v Ferenc Schneider).

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.

If the court rejects the party's request for referral for a preliminary ruling, the court must give reasons for the rejection in accordance with the procedural provisions mentioned in the answer to question 10 above.

In its practice, the Curia gives reasons for its decision according to the guidance provided in the *CILFIT* judgment, that is, the reasoning contains that there is no need for a referral for a preliminary ruling because the question raised is irrelevant; or the given provision has





already been interpreted by the CJEU; or the correct interpretation of EU law is so obvious that no reasonable doubt can arise. Apart from the case law of the CJEU, no other sources of law/guidelines specifying additional further criteria can serve as a justification for a refusal.

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?

An appeal or review against a request/non-request for a referral for a preliminary ruling can only be sought by filing a remedy against the entire on-merits decision closing the proceedings before the given court and by challenging the decision to make/not to make a request for a preliminary ruling in the framework of that remedy. Hence, it is not possible for a party to lodge a separate appeal against the order granting/rejecting a request for a referral for a preliminary ruling. The former rules of the Code of Civil Procedure (which were also applicable to administrative proceedings) allowed for a separate appeal in section 155/A(3) of former Act No. IV of 1952: "Against an order on the referral of a case for a preliminary ruling, a separate appeal may be lodged. Against the rejection of a referral for a preliminary ruling, no separate appeal shall lie." However, this provision was repealed by a subsequent amendment because of the CJEU's judgment in the Case of *Cartesio* (C-210/06).



However, under section 667(1) of the Act on Criminal Procedure, the Chief Public Prosecutor may, in the interests of legality, challenge a lower court judgment or order before the Curia. This provision was only once applied, against an order referring a case for a preliminary ruling. In that case, however, the Curia ruled not on the interpretation of EU law, but on the justification for the suspension of the criminal proceedings. The removal of this procedural rule from the Hungarian legal system is currently under way, due to the CJEU's judgment in Case C-564/19 IS.

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** [before the Curia]

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 formulation of the questions in the referrals for preliminary rulings depends on the given case. As a rule, the questions are formulated as precisely and concisely as possible, as the particular circumstances of the case allow.

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.



It cannot be said that it is common practice, but there have been examples where parties have been given the opportunity to comment on the questions to be addressed to the CJEU. See, for example, the preparation of the questions submitted in Case C 228/18 Budapest Bank.

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.

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.

In the case of the Curia, such screening takes place in relation to petitions for review.

The Code of Civil Procedure specifies, on the one hand, (section 408) the cases in which no review is possible. Thus, review is not allowed in property lawsuits where the value disputed in the petition for review does not exceed HUF 5 million. However, this value limit is not applicable to cases seeking damages in relation of the exercise of official authority, or cases for compensation for the infringement of personality rights, or cases related to maintenance, the provision of food, or other payments. Moreover, review is not possible in a property lawsuit if the first instance court's judgment is upheld by the second instance court under the same legal provision with identical legal reasoning.

Under section 409 of the Code of Civil Procedure, if a review of the case would not be possible under the above provisions (namely, under section 408), but the review of the case on other legal grounds is not excluded under the law, the Curia

- may allow a review if the examination of a violation of the law that affects the merits of the case is justified



- a) in order to ensure the unity or development of the courts' jurisprudence,
 - (b) on account of the particular seriousness or social importance of the legal issue involved in the case, or
 - (c) in the absence of a decision to that effect by the second instance court, on account of the need to refer the case to the CJEU for a preliminary ruling.
- and shall allow a review if the judgment deviates on a point of law from a published decision of the Curia.

In administrative court proceedings, it is always necessary to pass a decision on the admissibility of a petition for review (save where the Curia does not examine the merits of the admissibility grounds for some obvious reasons for refusal). Under section 118 of the Code of Administrative Court Procedure, the Curia shall grant a petition for review if

- (a) the examination of a violation of law that affects the merits of the case is justified
 - aa) in order to ensure the unity or development of the courts' jurisprudence,
 - ab) on account of the particular gravity or social significance of the legal issue involved in the case,
 - (ac) on account of the need for a preliminary ruling from the CJEU,
 - (ad) on account of a likely violation of the petitioner's fundamental procedural rights or any other procedural irregularity affecting the merits of the case; or
- b) on account of a deviation on a point of law from a published decision of the Curia.

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)?

There is a difference in the sense that - as it can be seen from the answer to question 26 above - under both the Code of Civil Procedure and the Code of Administrative Court Procedure, the need for a referral for a preliminary ruling must be examined when the admissibility of the petition is being examined.

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?

9 from 36

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?



In the reasoning of the rejection (in the decision on the merits) there is no difference (see the answer 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.

A (previously suspended) case is given a new case number and is returned to the referring judicial panel. The parties will then receive the CJEU's judgment on which they can make comments – at the latest – at the hearing, provided that the Curia does hold a hearing. Thereafter the Curia will pass a final decision based on the CJEU's judgment.

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.

