

**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



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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)?

Augstākā tiesa (Senāts)
Supreme Court of Latvia (Senate)

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

The Supreme Court of Latvia (Senate) has three departments - the Department of Civil Cases, the Department of Criminal Cases, and the Department of Administrative Cases. Therefore, it deals with all types of cases.

For the purposes of this questionnaire, we will only provide information on the Department of Administrative Cases.

As no specialised courts are dealing with certain administrative matters in Latvia, the Department of Administrative Cases deals with all administrative cases which have been appealed (for example, cases concerning: 1) taxes; 2) social rights; 3) human rights; 4) citizenship, migration, and asylum rights of individuals; 5) state aid; 6) environment, construction, and territorial planning rights; 7) civil service; 8) competition; 9) public procurement, etc.).

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 following national courts have an obligation to refer questions to CJEU for a preliminary ruling:

- 1) Supreme Court of Latvia (Senate);
- 2) Constitutional Court.

It is also the obligation of any court of first instance (district court) or second instance (regional court) in cases where the law prescribes that a court decision is not subject to appeal.

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

At the Department of Administrative Cases of the Supreme Court around 750 cases are registered per year.



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

The Department of Administrative Cases of the Supreme Court has requested 48 preliminary rulings.

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.

Preliminary rulings are requested in various areas of law. However, questions relating to value-added tax, customs law, public procurement, and state aid are probably requested slightly more frequently. This could be explained by the fact that cases in these areas of law are a relatively large group of cases in the courts where the legislation is based on EU law.

7. Estimate the number of referred cases from your court during the period 2012 to 2022 that have related to the *validity* of an EU act itself.

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.

No specific provisions concerning the procedure relating to requests for a preliminary ruling from the CJEU are adopted in Latvian national legislation.

The right of the courts to refer a request for a preliminary ruling from the CJEU is set out in procedural laws. For example, Section 104¹ of the Administrative Procedure Law provides: „In the cases provided for in the provisions of the European Union law, a court shall submit a question to the Court of Justice of the European Union regarding the interpretation or validity of a provision of the European Union law in order to make a preliminary ruling” (<https://likumi.lv/ta/en/en/id/55567-administrative-procedure-law>). The same provision is also included in Article 5¹ of the Civil Procedure Law (<https://likumi.lv/ta/en/en/id/50500-civil-procedure-law>).

Also, the Section 39 (3) of the Criminal Procedure Law provides: „If a preliminary ruling of the Court of Justice of the European Union on the interpretation or validity of the legal norms of the European Union is necessary for the acceptance of a procedural decision, a prosecutor may propose that the Prosecutor General sends the uncertain matter to the Court of Justice of the European Union”. Section 478 (2) provides that „If a preliminary ruling of the Court of Justice of the European Union on the interpretation and the validity of a legal provision of the European Union is necessary for the trial of a specific case, a court shall send the ambiguous matter to the Court of Justice of the European Union in the manner of a reasoned decision, simultaneously suspending criminal proceedings in the criminal case until the day of coming into force of the preliminary ruling” (<https://likumi.lv/ta/en/en/id/107820-criminal-procedure-law>).



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 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.

If the panel of judges hearing the relevant case (any case shall be examined by panel of three judges) considers that it should decide to submit a question to the CJEU for a preliminary ruling, the judge referee shall prepare and send a letter to the parties, asking for their views on the interpretation of the relevant EU provisions (if not already expressed in the case) and setting out the court’s observations and possible questions on which the parties may comment and express their opinions.

In exceptional cases the parties are given the option to be heard orally at a preparatory hearing, if one is held.

The panel of judges then prepares the request for a preliminary ruling. The request is sent to the CJEU together with the supporting case materials. The request is published on the Supreme Court’s official website.



Also, a rejection of a claim to request a preliminary ruling shall be taken by a panel of three judges. Decisions to reject the claim are normally taken in the final ruling of the case. No specific time frames are prescribed for handling claims to request preliminary rulings.

15. Briefly describe which considerations (in substance) that are made when your court examines the question whether to request a preliminary ruling or not from the CJEU?

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

The considerations a court makes when deciding whether to request a preliminary ruling from the CJEU are typically based on legal principles and guidelines established by EU law. However, these considerations are not exhaustive and may vary depending on the specific circumstances of each case.

The court assesses whether the case involves the interpretation or application of EU law and considers whether a preliminary ruling is necessary to ensure legal certainty and the uniform interpretation of EU law.

The court also examines whether there is an existing CJEU case law that is relevant to the legal issue. If the CJEU has already addressed a similar matter, the court may refer to that precedent rather than seeking a new preliminary ruling.

Special research into how other member states have interpreted this provision has very rarely been carried out. For example, the ACA Forum is being used for these purposes.

The court may also consider the opinions and requests of the parties involved in the case.

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 court is obliged to examine and assess the parties’ claim for a preliminary ruling. When the Supreme Court of Latvia decides to reject a claim for a preliminary ruling, it typically provides reasoning for its decision in a written form that outlines the grounds for rejection. It is usually included in the court’s final decision on the case.

The reasons for rejecting such a claim depend on the content and arguments of the parties’ claim. However, the reasoning is usually based on the criteria set out in the case law of the CJEU.

The rejection of a claim usually is based on the court concluding that the questions raised in the claim are not relevant to the case at hand or do not have a significant impact on the interpretation or validity of European Union law, or on the court finding that the interpretation of European Union law is clear and settled (this usually occurs when the relevant EU law provisions have already been interpreted by the CJEU or when there is well-established jurisprudence on the matter).

19. Following the ruling of the CJEU in *Conorzio* and of the European Court of Human Rights in *Sanofi Pasteur v. France* and *Rutar and Rutar Marketing d.o.o. v. Slovenia*, does your court give more extensive reasons for rejecting a party’s claim to request a preliminary ruling?

- Yes
- No**

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

- Yes
- No**



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

21. Can a lower court’s decision to make a request/not make a request for a preliminary ruling be appealed to a higher court?
- Yes
 - No**

If “yes”, can such an appeal be granted?

22. Are there any differences in the procedure in your court for requesting a preliminary ruling when the question is raised in a case where the expedited or urgent procedure is applied (cf. question 8 and 9 above)?
- Yes
 - No
 - The procedure has not been applied**

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

Formulation of the questions submitted to the CJEU

23. Briefly describe how questions to the CJEU in general are formulated when your court requests a preliminary ruling.

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

The Supreme Court has no unified principles or standards for the formulation of a question to the CJEU for a preliminary ruling. The formulation depends on the particular case. A court decision usually contains:

- 1) a statement of facts (the substance of the appealed administrative act, claims of the applicant and explanations provided by the participants to the administrative proceedings and other relevant circumstances of the case);
- 2) the provisions of the European Union and national law applicable in the case;
- 3) reasons why the interpretation of EU law is subject to question.

The court’s questions are usually formulated in a precise rather than open way.



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.

Yes, usually, the parties may state their views on the interpretation of the relevant EU provisions and on the questions to be asked by the court. The court’s observations and questions are usually sent to the parties in a special letter. Or sometimes, the parties are allowed to be heard orally at a preparatory hearing, if one is held.

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 court’s request for a preliminary ruling usually contains a very detailed analysis of the relevant issues, providing extensive reasons for the court’s doubts about the interpretation of EU provisions. The request may express the court’s preliminary view on the interpretation of the relevant provisions, if one has been formed, but more often, the court expresses its doubts.

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 such mechanism as leave to appeal in the Latvian legal system. However, the Administrative Procedure Law provides certain grounds when the Supreme Court may refuse to initiate cassation proceedings in a particular case:

- 1) case law of the Supreme Court has been established in the issues of application of legal provisions indicated in the cassation complaint, and the appealed judgment complies with it;
- 2) after evaluation of the arguments referred to in the cassation complaint no concerns on the lawfulness of the appealed judgment arise and the case to be examined is not relevant to the establishment of case law;
- 3) the cassation complaint is outright insulting and defiant.

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, the procedure is no different.

If the Supreme Court considers that there are doubts about the interpretation or validity of EU provisions in a case and a request for a preliminary ruling should be submitted to the CJEU, this is a ground for initiating cassation proceedings and the “filters” set out in the previous question cannot be applied.

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?

Not applicable.

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?

Not applicable.

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 Supreme Court shall renew court proceedings. The judgment of the CJEU is sent to the parties, who are given the opportunity to comment on it.



The judge referee and panel of judges hearing the relevant case (a case shall be examined by three judges) analyse the judgment of the CJEU and interpret and apply it to the specific case it concerns. The court considers the CJEU's guidance, reasoning, and legal principles established in the judgment while addressing the issues raised in the preliminary ruling request.

As in any case, if a court does not reach a unanimous opinion, or all judges believe that a case should be examined in a plenary session of the Department of Administrative Cases of the Supreme Court, the court shall take a decision to refer the case for examination in a plenary session.

If the court considers it necessary, an oral hearing may be ordered in accordance with the general procedure. However, usually, a case shall be examined in the written procedure.

The CJEU's judgment and the Supreme Court's final ruling are published on the Supreme Court's official website to ensure transparency and accessibility. This allows lawyers, scholars and the public to access and understand the Court's interpretation and application of EU law in a given case.

The Supreme Court's final ruling is sent to the CJEU.

31. Has it occurred that your court has had difficulties understanding the specific consequences of the ruling from the CJEU on legal questions in the national case i.e. to use the CJEU's answer as a basis for the decision in the case? (*cf.* the CJEU's recommendations, para. 11)?

- Yes**
- No

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

The court generally has no difficulty understanding the specific consequences of the ruling from the CJEU. Some difficulties have been encountered only in exceptional cases. For example, in a recent case *DOBELES HES* ([C-702/20](#)) or *KURŠU ZEME* ([C-273/18](#)). However, these difficulties are not considered to be significant.

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 of the judgment of the CJEU is affected by how clear and comprehensible the reasoning and explanation used by the CJEU is, moreover, whether the language used by the CJEU is too grammatically and legally complex.

The number of references to case law used by the CJEU also affects the clarity of the reasoning. The text can be difficult to read and follow if it contains too many references.

Clarity is also affected by whether the CJEU has given a direct answer to the questions or has instead given a more general explanation of the EU provision in question.

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.

