

**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



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questionnaire will provide useful information for comparative purposes and identify aspects for further workshop discussions. The ultimate aim is that fruitful discussions will provide an increased and enhanced awareness of aspects concerning the preliminary ruling system.

II Background and statistics

1. What is the formal title of your court (also provide the title in English)?

Lietuvos vyriausiosios administracinis teismas, the Supreme Administrative Court of Lithuania.

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

Tax, competition, social security, public procurement, environment, construction, to name a few, and a variety of other administrative decisions which are contested before the court.

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 Supreme Administrative Court of Lithuania, the Supreme Court of Lithuania.

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

Although normally court receives 3 500 cases per year on average, there has been a clear influx of cases in 2021-2022 due to migration crisis (up to 4 700 cases last year).

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

39.

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.

Value added tax (VAT) (9 times).



The number of requests for a preliminary ruling in VAT disputes dovetails tendencies in CJEU's own caseload dominated by tax related questions. There are numerous reasons why VAT category gets such attention in the Court – disputes in VAT are quite difficult, often the clarity of VAT directive rules is contested, directives are not always properly transposed into national law which raises issues applying them, scope of economic activities is getting more complex over time, etc.

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.





On 30th of June, 2022 in Case C-72/22 PPU the CJEU granted our request for a preliminary ruling to be dealt with under the urgent procedure. In this case a third-country national who was in Lithuania illegally wanted to get international protection and was held in detention when the decision to make the reference for a preliminary ruling was adopted.

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.

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?

Parties of the case can ask court to request a preliminary ruling in their appeal to the court and later during the proceedings.

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.

Either 3 or 5 justices (that are already handling the case. There is no special composition of a court for such requests) decide whether preliminary ruling is necessary. If such request comes from one of the parties, then usually all the arguments for (or against) are already laid down in their procedural documents, and the Court does not provide them with any additional opportunity to voice their opinions on the matter. The Court also does not issue a separate ruling in case party's request has been rejected, instead reasoning for such decision is given in the final ruling of the case.

If the Court decides to refer a question to the CJEU ex officio, then it might (although it is not a rule in every case) offer parties to provide their positions on the EU law rule (or its applicability) that is being considered. However, the Court does not consult final draft of the request (or questions that are formulated therein) with the parties.

There are no particular timeframes constraining judges on this matter. It is also noteworthy that in such cases justices are usually assisted by advisors who specialise in EU law matters.

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.

After the Court decides that a particular provision of EU law is relevant, extensive research on its interpretation and application in the practice of CJEU is carried out (looking at either same or similar enough questions / situations in CJEU decisions, or requests already pending before the court). However, it is not common to investigate practice of other Member States.

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.

If the Court rejects party's claim to request a preliminary ruling, a reasoning is always provided in the final judgement. However, the extent of such reasoning differs in each individual case and inter alia depends on whether acte éclairé or acte clair doctrine is followed (e. g. if the matter has already been directly addressed in CJEU practice, there will be concise information about such case and rules formulated therein). However, each decision rejecting such claim would at least have evaluation of relevance of the question, explanation why the Court sees no reasonable doubt on the correct interpretation of EU law provision, or clarification that provision has already been interpreted by CJEU.

*It should also be mentioned that in one case the European Court of Human Rights found a violation due to insufficient reasoning on what specific legal grounds the Court considered the application of the EU law to be so obvious that no doubts could arise (*Baltic Master Ltd v. Lithuania*, application no. 55092/16)*

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?





It largely depends on a case, but in general questions are as concise and precise as possible (knowing the possibility of reformulation of referred questions), so that the answers can help to solve the case that the Court is handling.

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 sometimes are given the opportunity to comment on the relevant EU law rule, but not the ruling itself (please see the response to question 14).

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.

Judges do not provide their own view because it could later be interpreted as having a preconceived notion on the final result of the case. As only the CJEU is entitled to provide official interpretation of EU acts, it is not necessary to engage in such elaborations at that point in a rendered decision.

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.

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)?
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?
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?

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 issues its judgment, the parties of the national case are provided with the opportunity to comment on the ruling.

After the analysis of the judgement (especially in a light of questions raised in the national case), in which justices may be assisted by advisor (please see the response to question 14), the judge referee discusses the judgement with the rest of the bench and a court hearing is planned. After deliberations, the final ruling in the case is issued.

The Supreme Administrative Court's final ruling is then sent by e-mail to the CJEU (after no longer than 20 working days after adopting the decision). If Art. 101 or 102 of TFEU are directly applicable in the ruling, then a copy is sent to Directorate-General for Competition (also by e-mail).

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.

In addition to already provided examples, issues mostly arise when the CJEU provides a rather general account of EU law (which might then also be applied a few different ways) and leaves the precise application of it to the national court. Slight differences of language versions (if compared) might also raise some confusion.

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.

