

**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  
Consortio"***

Answers from the Administrative Jurisdiction Division of the Council of State of the  
Netherlands

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 9–10<sup>th</sup> of October 2023.

The topic for the October seminar is *Preliminary rulings of the Court of Justice of the European Union – from CILFIT to Consortio*.

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

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)?

**The formal title of our court is *Afdeling bestuursrechtspraak van de Raad van State*; the Administrative Jurisdiction Division of the Council of State (hereinafter 'AJD').**

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

**There are four highest administrative courts in the Netherlands. Each of them has its own specific jurisdiction in certain matters of administrative law. The AJD is the 'highest general administrative court'. This means that the AJD has jurisdiction to review the lawfulness of any administrative order, unless a specialised administrative court has jurisdiction to do so.**

**There are three specialised administrative courts: 1) the Trade and Industry Appeals Tribunal is the highest administrative court in cases that concern socio-economic questions; 2) the Administrative High Court is the highest administrative court in social security matters and cases concerning civil servants; 3) the Supreme Court (tax chamber) is the highest administrative court in cases concerning tax law.**

**The AJD is divided into three chambers that each address different principal branches of administrative law: the Spatial Planning Chamber, the Migration Chamber and the General Chamber. The Spatial Planning Chamber addresses, inter alia, spatial planning, environmental law, permits and enforcement cases. The Migration Chamber hears cases under the Aliens Act 2000 (such as regular and asylum residence permits and detention). The General chamber hears cases in other fields of administrative law, such as subsidies, education, housing and child benefits, nationality law, data protection, and requests for access to documents.**

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)?

**In the Dutch judicial system, there are several courts of final instance which are obliged to refer questions of EU law to the CJEU for a preliminary ruling per article 267(3) TFEU.**



**In cases of civil law, criminal law and tax law, the court of final instance is the Dutch Supreme Court (*Hoge Raad der Nederlanden*), while the AJD has final jurisdiction in cases of general administrative law. Jurisdiction in final instance in cases of socio-economic law is reserved for the Trade and Industry Appeals Tribunal. The Central Council of Appeals rules in final instance in cases pertaining to social security and civil service law. Only the Appellate Court of Arnhem-Leeuwarden can be seized in cases concerning traffic penalties in final instance, while judgements of the Amsterdam District Court are, in principle, final in cases concerning extradition decisions under the European Arrest Warrant Framework.**

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

**On average 10,000 cases are registered at our court per year.**

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

**During the period 2012 to 2022, our court has requested 61 preliminary rulings from the CJEU**

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.

**The field of Migration law stands out when it comes to the number of requests for a preliminary ruling referred by the AJD. Since 2012, 36 preliminary rulings were requested by the 'Migration Chamber', which is slightly more than half of the total number of preliminary rulings requested (namely 61, see question 5 above). The relatively high number of preliminary references in this field of law can be explained by the fact that it has been harmonised to large extent, as various EU directives concerning migration and asylum as well as free movement of persons need to be implemented and applied at the national level. The AJD is regularly faced with to (complex) questions concerning the interpretation of EU law provisions in those directives.**

**In addition to migration law, preliminary references in the field of tax law by the Dutch Supreme Court stand out in terms of quantity. Between 1 January 2012 and 1 January 2022, the Supreme Court has referred questions concerning the customs union in 26 cases, on indirect taxes (VAT) in 18 cases and questions on direct taxation (income tax) in one case.**



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.

**From 2012 to 2022, the AJD has referred questions regarding the validity of an EU act in five cases. Two of these instances concerned the validity of a provision of an EU Directive, in both of which validity was questioned in light of Charter provisions. For the remainder, the validity questions pertained to Commission decisions. A question of validity of an EU act has been followed by an invalidation by the Court of Justice in two cases, both regarding Commission decisions.**

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.

**A case in which our court requested the use of the expedited preliminary ruling procedure is CJEU 8 November 2022, case C-704/20 (*B and C*). The AJD asked a judicial authority’s review of compliance with the conditions governing the lawfulness of the detention of a third-country national which derive from EU law must lead that authority to raise of its own motion any failure to comply with a condition governing lawfulness which has not been invoked by the person concerned. In the underlying case, the detention of the individuals concerned had already been lifted, meaning that the dispute concerned compensation for unlawful detention. Nonetheless, the AJD asked for the application of the expedited preliminary ruling procedure, because the question it referred was relevant for of all cases pending before Dutch courts in which compliance with conditions governing the lawfulness of detention is at stake, and which according to EU law must be subject to ‘speedy judicial review’ (cf. Article 9(3) of Directive 2013/33/EU and Article 15 of Directive 2008/115/EC).**



The Court of Justice did not grant the request for application of the expedited preliminary ruling procedure. Instead, the Court of Justice initially decided to answer the question referred through the ‘urgent preliminary ruling procedure’, because the case was joined with case C-39/21, in which the district court of The Hague, sitting in s’ Hertogenbosch referred related questions in cases where the individual concerned was still in detention on the date the request was made. Eventually, in case C-39/21 the detention was terminated whilst the request was pending before the Court of Justice, and therefore the urgent preliminary rulings procedure was not applied either. Hence, the Court of Justice decided that joined cases C-704/20 and C-39/21 were dealt with under the ‘ordinary procedure’.

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.

**An example of a case that has been dealt with according to the ‘urgent preliminary ruling procedure’ is CJEU 10 September 2013, case C-383/13 PPU. In this case, the AJD justified the request for application of this procedure by stating that the third-country nationals concerned were in detention and that their situation fell within the scope of Title V of the TFEU relating to freedom, security and justice. By its questions, the AJD asks, in essence, whether the detention must be brought to an end in the situation where the decision to extend the detention measure has been taken in breach of the right to be heard and therefore of the rights of the defence. In the preliminary ruling, the CJEU states that if the answer to this question were affirmative, the detention measures would have to be lifted immediately and therefore the reference for a preliminary ruling has to be dealt with under the urgent preliminary ruling procedure (see point 23).**

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? <sup>1</sup>

- 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).

**Yes, the AJD has internal guidelines for the procedure for requesting a preliminary ruling. These guidelines are laid down in the 'Working document preliminary rulings procedure Administrative Jurisdiction Division'. This working document is continuously revised and updated.**

**The main aim of the document is to give practical, procedural guidance to law clerks and state councillors during the different stages of the preliminary rulings procedure. The working document outlines, *inter alia*, the procedure to be followed when the request for a preliminary ruling is prepared, gives guidance on how to formulate the questions, prescribes that the 'Committee on European Union Law' (an advisory body composed of state councillors with an expertise in EU law) is consulted on the draft questions, and gives instructions on the manner in which the request for a preliminary ruling and other relevant information has to be sent to the CJEU. Finally, the document also prescribes that every request for a preliminary ruling must be accompanied by a press release in collaboration with the communications department.**

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 to claim that the court shall request a preliminary ruling from the CJEU during their appeal to the court and later during the proceedings, until the inquiry is closed (see Article 8:65 General Administrative Law Act).**

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.

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- 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.

**The AJD's internal guidelines on the preliminary rulings procedure (see above question 11) do not prescribe a time frame for handling a request by parties for a preliminary ruling.**

In the event where the decision is made to request a preliminary ruling from the CJEU, a first draft of the preliminary reference and questions is produced by a 'chamber' of three State Councillors (*meervoudige kamer*). Subsequently, a draft version of the preliminary reference and questions is presented to the 'Committee on European Union Law', an internal advisory body composed of State Councillors with an expertise in EU law. This advisory body is invited to comment on the reference and draft questions which, as a general rule, are discussed during a plenary meeting of the Committee on European Union Law. Once the questions have been finalised, parties are invited to comment on those questions (but not on the full text of the draft judgment by which the referral is made, see also below question 25).

In the event where parties request questions to be referred to the CJEU, but the decision is made 'not to refer', this decision is motivated in conjunction with the final ruling in the case. The decision to reject a claim from the parties to request a preliminary ruling from the CJEU can be made by a single State Councillor (*enkelvoudige kamer*), in contrast to the decision 'to refer' which can only be made by a chamber of three State Councillors (as mentioned above).

As a final remark, we note that in case a reference is made to the CJEU, the draft questions are sent to other courts in the Netherlands via the so-called 'GCE-network' and the 'LOVB network'. The GCE-network (network van gerechtscoördinatoren Europees recht) is a courts coordination network which oversees and coordinates the knowledge and application of EU law within all district courts and appeal courts in the Netherlands. The LOVB network (*Landelijk Overleg Vakinhoud Bestuursrechtspraak*) is a network of administrative law sections of the district courts. By distributing the draft questions





**within these networks, district courts and appeal courts are adequately informed of the AJD's intention to make a request for a preliminary ruling. The aim only is to inform these courts about the draft questions, it is not an invitation to advise on the draft questions.**

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 AJD will conduct an extensive analysis of the relevant provisions of EU law and CJEU case law. It will also take into account the preamble(s), preparatory documents, different language versions and commission guidance documents. In addition, the Council may carry out comparative legal research with the help of the ACA-forum and ask whether any of the other highest administrative courts are facing similar legal issues.**

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 rejecting a party's request for a preliminary reference to the CJEU, the AJD will state the reasons for doing so in its final (or interim) judgment. The extent and exact content of the reasoning will vary depending on the circumstances of the individual case. However, the decision will always clearly indicate the ground for rejecting the request (acte clair, acte éclairé or irrelevant question).**

**The AJD does not state the reasons for rejecting requests for preliminary references in cases which are decided by summary judgment in accordance with article 91(2) of the Immigration Act. These judgments simply dismiss the appeal outright and without further reasoning. Summary judgments are only used in cases where the appeal does not raise questions that must be answered in the interest of the unity or the development of the law, or to ensure effective judicial protection in the general sense. The ECtHR has previously held that the dismissal of an appeal by summary judgment is in accordance with article 6(1) ECHR (*Khalid El Khalloufi v. The Netherlands* (2019), §55).**

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 can be lodged against a final ruling of a district court in which that court decides to not make a request for a preliminary ruling can be appealed to a higher court. In appeal, the higher court can decide to make a request for a preliminary ruling itself. In the situation where a lower court decides to make a request for a preliminary ruling, that decision cannot be appealed.**

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 AJD seeks to draft preliminary questions as clearly and precisely as possible with regards to substance and scope. The questions ought to reflect exactly what the AJD is asking the CJEU for. They are formulated in such a way that they can be understood without reference to the motivation that accompanies them. In formulating the questions, the AJD draws on the terminology of the CJEU. The judgment by which the questions are referred will also contain the facts and subject of the case, an account of relevant provisions of EU and national law, as well as national jurisprudence, the reasons for requesting a preliminary ruling, and a proposal for an answer to the questions that AJD is referring.**



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 given the opportunity to take note of and comment on the draft preliminary questions that the AJD intends to refer to the CJEU. Parties are not provided with the full text of the draft judgment by which the referral is made, however. The parties may submit any comments they may have in writing to the AJD within a term of two to four weeks. The term is substantially shorter when the PPU is requested.**

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.

**In a request for a preliminary ruling, our court usually makes an effort to suggest its own answers to the question referred, as suggested by the ECJ's recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (18) . The reason for that is twofold. Firstly, by stating its own view, the AJD (also) provides information to the CJEU on the relevant provisions of national law and national case-law as well as on the facts of the dispute in the main proceedings. Secondly, it can facilitate a thorough discussion on the legal question that are raised. This helps the CJEU to conduct a deep(er) legal analysis of the question and to answer the question referred whilst taking due account of the (national) legal and factual context of the case. In cases where the AJD does not suggest its own answers to the questions it refers, it will nevertheless outline the implications of the possible answers of the CJEU for the national legal system and the case before it.**



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)?

**Not applicable.**

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 AJD publishes a press release on its website to announce the publication of the preliminary ruling.**

**In the meantime, the preliminary ruling is sent to the parties, who are invited to comment on the ruling and, thereafter, on the submissions made by the other parties. The parties are also consulted on whether they prefer to have an oral hearing to share their views on the answer given by the CJEU. If the parties indicate that a hearing is**



needed, a hearing is organized. In the situation where parties do not ask for another hearing, the State Councillors sitting on the case may decide that a hearing is not needed to conduct the legal analysis of the case before them in light of the answers given by the CJEU.

The chamber of State Councillors sitting on the case are, in principle, the same State Councillors who made the request for a preliminary ruling to the Court of Justice in the first place. This also means that the final judgment in the case is again issued by a chamber of three State Councillors (*meervoudige kamer*, see question 14 above). A draft of the final judgment is presented to internal advisory bodies, such as the Committee on the Law of the European Union (see question 11 above).

The AJD's final judgment is published, together with a press release, on the website of the Council of State. The final judgment is also distributed among other Dutch courts via the networks of Dutch district courts and courts of appeal (the LOVB and GCE network, see question 14 above). An English summary of the judgment is published on Jurifast (ACA's database for case law). Finally, the judgment is sent to the CJEU (usually via E-curia).

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.

**In most cases our court does not have difficulties understanding the CJEU's ruling on legal questions in the case before it. In general, it can also understand the consequences of the ruling as a basis for the decision in the specific case. However, there are some exceptions.**

**A first example of a case in which the answer of the CJEU is considered complex, making it difficult to understand the specific consequences for the legal question in the national case, is the judgment in case C-556/21 issued on 30 March 2023 (*E.N., S.S., J.Y.*). This case concerns the question whether the Dublin III Regulation allows a national court hearing an appeal at second instance to provide an interim measure enabling national authorities to refrain from taking a fresh decision pending the outcome of that appeal**





and having the object or effect of suspending the running of the transfer time limit until that outcome.

A second example of a case where our court has had some difficulties understanding the implications of the CJEU's ruling in the national case before it, is the judgment in case C-120/19 issued on 20 May 2021 (*LPG tankstation*). This case addresses the question under what circumstances an administrative decision which, in principle, cannot be challenged by certain applicants could nonetheless be annulled. In this case, the CJEU formulated a general answer to the questions raised by the AJD, still leaving some room for the AJD to apply the answer in the national case in its final ruling.

A third example of a case where the consequences for national law and practice have been complex is the case C-826/18 issued on 14 January 2021 (*Stichting Varkens in Nood*). In this case, which concerned access to justice under the Aarhus Convention, a general and well-established rule of Dutch procedural law could no longer be applied. In this case, the AJD did not have difficulties using the CJEU's ruling as a basis for the decision in the case before it. Nonetheless, the CJEU's ruling in the *Varkens in Nood* case still leads to complex and unforeseen follow-up questions concerning the implications of this preliminary ruling in other cases that (also) concern access to justice in environmental cases.

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 the examples already provided, some factors can be discerned that may affect whether our court has difficulties understanding the specific consequences from a preliminary ruling are 1) whether the CJEU (or Advocate General) has had a correct and full understanding of the national legal and factual context, 2) whether the answer specifically addresses the case at hand or whether a general account of the relevant EU law regime is given; 3) whether room is left to the national court to answer the questions in light of the specific circumstances characterising the particular case, and 4) whether the answer leads to unforeseen follow-up questions about the implications for national (administrative) law and practice.



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.

**In 2015, the AJD made a request for a preliminary ruling in the cases 'Trijber and Harmsen'. In these cases the AJD sought guidance on the applicability of Directive 2006/123 to purely internal situations as well on the relevant criteria for determining whether such a situation exists. The Court of Justice issued its preliminary ruling in these cases on 1 October 2015 (Cases C-340/14 and C-341/14). Following this ruling, the AJD still had doubts concerning the applicability of the Services Directive in purely internal situations. In 2016, the AJD made another request for a preliminary ruling with which it sought to ascertain whether the provisions of Chapter III of the Services Directive are applicable to purely internal situations. This led to the preliminary ruling in Joined Cases C-360/15 and C-31/16 (*Appingedam*), in which the CJEU (clearly) stated that the provisions of Chapter III of the Services Directive 'must be interpreted as meaning that they also apply to a situation where all the relevant elements are confined to a single Member State' (para. 110).**

#### 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.

**An infringement procedure has not been initiated against the Netherlands for failure to request a preliminary ruling. Nonetheless, the Commission applied the 'EU pilot mechanism' in some instances due to complaints filed with the Commission which concerned the alleged breach of EU law for 'non-referral' of preliminary questions to the**





**CJEU in specific cases. Through the pilot mechanism all ‘issues’ were resolved through informal dialogue.**

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.

**The Netherlands has not 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. Nonetheless, Dutch courts have reviewed the alleged breaches of the duty to make a request for a preliminary ruling by Dutch highest courts.**

**In the *KLM-vliegers* case (21 December 2018, ECLI:NL:HR:2396) commercial pilots working for KLM argued that the Supreme Court violated EU law because – in a previous judgment – it had not made a request for a preliminary ruling regarding age discrimination to the CJEU. The Supreme Court, however, ruled that in that case ‘the duty to refer’ was not violated and considered that ‘the mere statement that the judges did not fulfil the obligation laid down in art. 267(3) TFEU’ was not sufficient to establish State liability.**

**In the case *X and NJCM* the claimants brought forward that the Dutch State was liable for not making a request for a preliminary ruling in a case concerning the interpretation of Article 12(2) of Directive 2004/83/EG. The Court of Appeal, however, ruled that the AJD had not violated article 267(3) TFEU and confirmed the ruling of the AJD that, in relation to the case before it, there was no reasonable doubt concerning the interpretation of Article 12 of Directive 2004/83 (See Court of Appeal of The Hague, 15 January 2019, ECLI:NL:GHDHA:2019:183 as confirmed by the judgment of the Dutch Supreme Court of 2 October 2020, ECLI:NL:HR:2020:1538).**

